TITLE 31

HEALTH

Chap.

1. General Provisions, 31-1-1 through 31-1-40.
2. Department of Community Health, 31-2-1 through 31-2-20.
2A. Department of Public Health, 31-2A-1 through 31-2A-57.
3. County Boards of Health, 31-3-1 through 31-3-16.
4. Council on Maternal and Infant Health, 31-4-1 through 31-4-3. [Repealed]
5. Administration and Enforcement, 31-5-1 through 31-5-24.
5A. Department of Community Health, 31-5A-1 through 31-5A-8. [Redesignated]
6. State Health Planning and Development, 31-6-1 through 31-6-95.
7. Regulation and Construction of Hospitals and Other Health Care Facilities, 31-7-1 through 31-7-412.
8. Care and Protection of Indigent and Elderly Patients, 31-8-1 through 31-8-304.
9. Consent for Surgical or Medical Treatment, 31-9-1 through 31-9-7.
9A. Woman's Right to Know, 31-9A-1 through 31-9A-8.
9B. Physician's Obligation in Performance of Abortions, 31-9B-1 through 31-9B-3.
10. Vital Records, 31-10-1 through 31-10-33.
11. Emergency Medical Services, 31-11-1 through 31-11-139.
12. Control of Hazardous Conditions, Preventable Diseases, and Metabolic Disorders, 31-12-1 through 31-12-14.
12A. Smoke-free Air, 31-12A-1 through 31-12A-13.
13. Radiation Control, 31-13-1 through 31-13-25.
14. Hospitalization for Tuberculosis, 31-14-1 through 31-14-14.
15. Care and Treatment of Cancer Patients, 31-15-1 through 31-15-6.
15A. Bone Mass Measurement Coverage, 31-15A-1 through 31-15A-3.

16. Care and Treatment of Chronic Renal Disease Patients, 31-16-1 through 31-16-8.

17. Control of Venereal Disease, 31-17-1 through 31-17-8.

17A. Control of HIV, 31-17A-1 through 31-17A-4.

18. Registry for Traumatic Brain and Spinal Cord Injuries, 31-18-1 through 31-18-4.

19. Control of Rabies, 31-19-1 through 31-19-10.

20. Performance of Sterilization Procedures, 31-20-1 through 31-20-6.

21. Dead Bodies, 31-21-1 through 31-21-45.

22. Clinical Laboratories, 31-22-1 through 31-22-13.

23. Eye Banks, 31-23-1 through 31-23-9.

24. Blood Labeling, 31-24-1 through 31-24-8.

25. Articles of Bedding, 31-25-1 through 31-25-13. [Repealed]

26. Practice of Midwifery, 31-26-1 through 31-26-7.

27. Control of Mass Gatherings, 31-27-1 through 31-27-12.

28. Tourist Courts, 31-28-1 through 31-28-7.

29. Compensation of Employees of State Institutions Who Contract Tuberculosis or Infectious Hepatitis, 31-29-1 through 31-29-8.

30. Reports on Veterans Exposed to Agent Orange, 31-30-1 through 31-30-9.

31. Boxing Match Licenses, 31-31-1 through 31-31-6. [Repealed]

32. Advance Directives for Health Care, 31-32-1 through 31-32-14.

33. Health Records, 31-33-1 through 31-33-8.

34. Medical Professionals for Rural Assistance, 31-34-1 through 31-34-20.

35. Vaccinations for Firefighters, Emergency Medical Technicians, and Public Safety Officers, 31-35-1 through 31-35-11.

36. Durable Power of Attorney for Health Care, 31-36-1 through 31-36-13. [Repealed]

36A. Temporary Health Care Placement Decision Maker for an Adult, 31-36A-1 through 31-36A-7.

37. Health Care Personnel, 31-37-1 through 31-37-3. [Repealed]

38. Tanning Facilities, 31-38-1 through 31-38-12.

39. Cardiopulmonary Resuscitation, 31-39-1 through 31-39-9.

40. Body Art Studios, 31-40-1 through 31-40-10.

41. Lead Poisoning Prevention, 31-41-1 through 31-41-19.

42. Osteoporosis Prevention and Treatment Education, 31-42-1 through 31-42-3.

43. Commission on Men's Health, 31-43-1 through 31-43-13. [Repealed]

44. Renal Disease Facilities, 31-44-1 through 31-44-15.

45. Public Swimming Pools, 31-45-1 through 31-45-13.

46. Newborn Umbilical Cord Blood Bank, 31-46-1 through 31-46-5.

47. Arthritis Prevention and Control Program, 31-47-1 through 31-47-3.

48. Health Care Compact, 31-48-1.

49. Georgia Council on Lupus Education and Awareness, 31-49-1 through 31-49-6.

50. Commission on Medical Cannabis, 31-50-1 through 31-50-5. [Repealed]

51. Creation of Low THC Oil Research Program, 31-51-1 through 31-51-10.

52. Terminally Ill Patient's Right To Try Investigational Drugs, Biological Products, and Devices, 31-52-1 through 31-52-10.

53. Office of Health Strategy and Coordination, 31-53-1 through 31-53-23.

Law reviews. — For article, "The Aftermath of Baby Doe and the Evolution of Newborn Intensive Care," see 25 Ga. St. U. L. Rev. 835 (2009). For article, "The Problem of Non-Identity in Valuing Newborn Human Life," see 25 Ga. St. U. L. Rev. 865 (2009). For article, "Baby Doe: Does It Really Apply Now? Palliative Care of the Ill Neonate," see 25 Ga. St. U. L. Rev. 901 (2009). For article, "Why the Capta's Baby Doe Rules Should Be Rejected in Favor of the Best Interests Standard," see 25 Ga. St. U. L. Rev. 909 (2009). For article, "Personal Reflections on Extremely Premature Newborns: Vitalism, Treatment Decisions, and Ethical Permissibility," see 25 Ga. St. U. L. Rev. 931 (2009). For article, "Medical Futility," see 25 Ga. St. U. L. Rev. 985 (2009). For article, "The Baby Doe Regulations and

Tragic Choices at the Bedside: Accepting the Limits of 'Good Process'," see 25 Ga. St. U. L. Rev. 1019 (2009). For article, "Rescuing Baby Doe," see 25 Ga. St. U. L. Rev. 1043 (2009). For article, "Playing God with Baby Doe: Quality of Life and Unpredictable Life Standards at the Start of Life," see 25 Ga. St. U. L. Rev. 1061 (2009). For article, "Baby Doe and Beyond: Examining the Practical and Philosophical Influences Impacting Medical Decision-Making on Behalf of Marginally-Viable Newborns," see 25 Ga. St. U. L. Rev. 1097 (2009). For article, "What Is (And Isn't) Healthism," see 50 Ga. L. Rev. 833 (2016). For article, "Tackling the Social Determinants of Health: A Central for Providers," see 33 Georgia St. U. L. Rev. 217 (2017).

For note, "Baby Doe at Twenty-Five," see 25 Ga. St. U. L. Rev. 801 (2009). For note, "Phase Six Pandemic: A Call to Re-Evaluate Federal Quarantine Authority Before the Next Catastrophic Outbreak," see 44 Ga. L. Rev. 803 (2010).

For comment, "How Will I Know? An Auditing Privilege and Health Care Compliance," see 65 Emory L.J. 1139 (2016).

JUDICIAL DECISIONS

Cited in Tuck v. State, 122 Ga. App. 649, 178 S.E.2d 305 (1970); Montega Corp. v. Grooms, 128 Ga. App. 333, 196 S.E.2d 459 (1973).

RESEARCH REFERENCES

ALR. — Application of Clayton Act to mergers and acquisitions of hospitals and healthcare ssystems (15 U.S.C.A. §§ 12 to 27), 13 A.L.R. Fed. 3d 7.

CHAPTER 1

GENERAL PROVISIONS

Sec.
31-1-1. Definitions.
31-1-2. Use of flammable materials in eyeglass frames; delivery of completed work by offices, companies, or laboratories; penalty.
31-1-3. Detection of hearing impairments in infants; evaluations.
31-1-3.1. Reporting disabled newborn persons; referral to treatment and rehabilitative services.
31-1-3.2. Hearing screenings for newborns.
31-1-4. Penalties for false representation, impersonation.
31-1-5. Compensation of employees for damage to wearing apparel caused by patients.
31-1-6. Reuse of heart pacemakers.
31-1-7. Marking of dentures and other removable dental prostheses for identification.
31-1-8. Notice of proposed special facility.
31-1-9. Breast-feeding of baby.
31-1-10. State health officer; duties.
31-1-11. No legal compulsion to participate in health care system; no legal prohibition on purchase or sale of health insurance in private health care systems.
31-1-12. Hospitals to provide educational information to parents of newborns regarding pertussis disease and availability of a vaccine.
31-1-13. Hemophilia Advisory Board.
31-1-14. Physician Orders for Life-Sustaining Treatment (POLST) forms.
31-1-15. Storage, maintenance, control, and oversight of auto-injectable epinephrine by certain authorized entities.
31-1-16. Reporting information concerning nurses holding multistate licenses.
31-1-17. Notification of dense breast tissue.
31-1-20 through 31-1-22 [Repealed].
31-1-23. Blindness education, screening, and treatment program.
31-1-40. Prohibition on expenditure or use of state resources to advocate for or intend to influence citizens in support of Medicaid expansion under the federal Affordable Care Act.

Cross references. — Inapplicability of implied warranties to injection, transfusion, or other transfer of blood, blood plasma, or transplanting of tissue, bones, or organs, §§ 11-2-316, 51-1-28. Examination and immunization of public school children, §§ 20-2-770, 20-2-771. Barbers and cosmetologists, T. 43, C. 10. Anatomical gifts, § 44-5-140 et seq. Liability for sale of unwholesome provisions of any kind or adulterated drugs, § 51-1-23 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, the article designations in this chapter were removed.

31-1-1. Definitions.

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

(1) "Board" means the Board of Public Health.

(2) "Commissioner" means the commissioner of public health.

(3) "Department" means the Department of Public Health.

History. — Code 1981, § 31-1-1; Ga. L. 2008, p. 12, § 2-7/SB 433; Ga. L. 2009, p. 453, § 1-2/HB 228; Ga. L. 2011, p. 705, § 3-5/HB 214.

Editor's notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-1-2. Use of flammable materials in eyeglass frames; delivery of completed work by offices, companies, or laboratories; penalty.

(a) No person shall distribute, sell, exchange, deliver, or have in his possession with intent to distribute, sell, exchange, or deliver in this state any prescription eyeglass frame or prescription sunglass frame containing any form of cellulose nitrate or other highly flammable material.

(b) Optical offices, manufacturing companies, or laboratories which prepare lenses for prescription eyeglasses or sunglasses, including industrial safety eyewear, and which perform mechanical work upon inert materials in the preparation of such eyeglasses or sunglasses shall in every case deliver the completed product of their efforts only to the physician, optometrist, or licensed dispensing optician who ordered the work performed.

(c) Any person who violates any provision of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as follows: the first offense shall be punished by a fine of not more than $200.00; each subsequent offense shall be punished by a fine of not more than $500.00.

History. — Code 1933, §§ 92A-1901, 92A-9931, enacted by Ga. L. 1970, p. 30, §§ 1, 2; Ga. L. 1973, p. 746, § 1; Ga. L. 1974, p. 515, §§ 1, 2.

Cross references. — Dispensing opticians, T. 43, C. 29. Optometrists, T. 43, C. 30. Physicians, § 43-34-20 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Statute applies only to prescription sunglass frames. 1971 Op. Att'y Gen. No. 71-156.

Noncorrective sunglasses. — General Assembly did not intend that plain noncorrective sunglasses should have safety lenses. 1971 Op. Att'y Gen. No. 71-156.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians and Surgeons, and Other Healers, §§ 250, 251.

C.J.S. — 25 C.J.S., Customs and Usages, § 56 et seq.

31-1-3. Detection of hearing impairments in infants; evaluations.

(a) It shall be the public policy of this state that newborn infants in certain high-risk categories be evaluated for the detection of hearing impairments in order to prevent many of the consequences of these disorders.

(b) The department shall develop guidelines for evaluation and follow-up procedures for the detection of hearing impairments in infants determined by the department to be in those high-risk categories in which the likelihood of such impairments is greatest and shall develop rules and regulations to ensure that all such high-risk infants are evaluated within one year of their birth. No such evaluation shall be made as to any newborn infant if the parents or legal guardian of the child objects thereto on the grounds that such a test would conflict with their religious tenets or practices.

History. — Code 1933, §§ 88-3301a, 88-3302a, enacted by Ga. L. 1978, p. 1726, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 14, 15.

31-1-3.1. Reporting disabled newborn persons; referral to treatment and rehabilitative services.

(a) It is the intent of the General Assembly to ensure the registration by the department of disabled newborn persons in order that all such persons might obtain referral and other services provided by existing state agencies, departments, other organizations, and individuals.

(b) As used in this Code section, the term "disabled newborn person" means a person less than 12 months old who is deaf, blind, or has a serious congenital defect as defined by the department.

(c) Except as otherwise provided, every public and private health and social agency and every physician authorized to practice medicine in this state shall report to the department the name of any person such agency or physician has identified as being a disabled newborn person. The report shall be made within 48 hours after identification of that

person and shall contain the name, age, address, type and extent of disability, social security number, if any, and such other information concerning that person as the department may require.

(d) The department shall establish procedures whereby a disabled newborn person for whom a report is made under this Code section shall be referred with informed consent to appropriate public or private departments or agencies for treatment and rehabilitative services.

(e) The department shall:

(1) Maintain records of reports, notifications, and referrals made under this chapter; and

(2) Maintain and update rosters of public and private departments or agencies which provide services to persons who have disabilities like those of disabled newborn persons and send copies of such rosters and an annual update thereof to each county board of health for those boards of health to make such rosters available to the public.

(f) Statistical information collected under this Code section shall be available to any other federal or state agency or private organization concerned with disabilities of newborn persons, but no names or addresses will be provided without the consent of the immediate family or guardian of the disabled newborn person.

(g) Any person or entity with whom the department enters into a contract after June 30, 1987, for services shall, as a condition of that contract, register with the department (formerly the Division of Public Health of the Department of Community Health) the various services that person or entity is capable of or is already providing to disabled newborn persons and persons having disabilities like those of disabled newborn persons for purposes of the roster of services the department maintains under paragraph (2) of subsection (e) of this Code section.

(h) A person or entity which in good faith makes a report required by subsection (c) of this Code section shall be immune from civil and criminal liability therefor.

History. — Code 1981, § 31-1-3.1, enacted by Ga. L. 1987, p. 393, § 1; Ga. L. 1989, p. 14, § 31; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1997, p. 1585, § 2; Ga. L. 2011, p. 705, § 5-9/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "chapter" was substituted for "article" near the end of paragraph (e)(1).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Extent of Disability Under Social Security Act, 46 POF2d 97.

31-1-3.2. Hearing screenings for newborns.

(a) The General Assembly finds, determines, and declares:

(1) That hearing loss occurs in newborn infants more frequently than any other health condition for which newborn infant screening is required;

(2) That 80 percent of the language ability of a child is established by the time the child is 18 months of age and that hearing is vitally important to the healthy development of such language skills;

(3) That early detection of hearing loss in a child and early intervention and treatment has been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability;

(4) That children with hearing loss who do not receive such early intervention and treatment frequently require special educational services and that such services are publicly funded for the vast majority of children with hearing needs in the state;

(5) That appropriate testing and identification of newborn infants with hearing loss will facilitate early intervention and treatment and may therefore serve the public purposes of promoting the healthy development of children and reducing public expenditure;

(6) The American Academy of Pediatrics, the American Speech-Language-Hearing Association, the American Academy of Audiology, and the American Academy of Otolaryngology, Head and Neck Surgery have recently endorsed the implementation of universal newborn hearing screenings and recommended that such screenings be performed in all birthing hospitals and coordinated by state departments of public health; and

(7) That consumers should be entitled to know whether the hospital at which they choose to deliver their infant provides newborn hearing screening.

(b) As used in this Code section, the term "newborn infant" means an infant after delivery but before discharge from the hospital.

(c) For reasons specified in subsection (a) of this Code section, the General Assembly determines that it would be beneficial and in the best interests of the development of the children of the state that newborn infants' hearing be screened.

(d) Reserved.

(e) It is the intent of the General Assembly that, by July 1, 2002, newborn hearing screening be conducted on no fewer than 95 percent of

all newborn infants born in hospitals in this state, using procedures established by rule and regulation of the Board of Public Health after review of any recommendations of the advisory committee on hearing in newborn infants, created in former subsection (d) of this Code section. Toward that end, on and after July 1, 2001, every licensed or certified hospital and physician shall educate the parents of newborn infants born in such hospitals of the importance of screening the hearing of newborn infants and follow-up care. Education shall not be considered a substitute for the hearing screening described in this subsection. Every licensed or permitted hospital shall report annually to the Department of Public Health concerning the following:

(1) The number of newborn infants born in the hospital;

(2) The number of newborn infants screened;

(3) The number of newborn infants who passed the screening, if administered; and

(4) The number of newborn infants who did not pass the screening, if administered.

(f) Reserved.

(g) Reserved.

(h) Reserved.

(i) A physician, registered professional nurse, including a certified nurse midwife, or other health professional attending a birth outside a hospital or institution shall provide information, as established by the department, to parents regarding places where the parents may have their infants' screening and the importance of such screening.

(j) The department shall encourage the cooperation of local health departments, health care clinics, school districts, health care providers, and any other appropriate resources to promote the screening of newborn infants' hearing and early identification and intervention for those determined to have hearing loss for those infants born outside a hospital or institution.

History. — Code 1981, § 31-1-3.2, enacted by Ga. L. 1999, p. 266, § 1; Ga. L. 2009, p. 453, §§ 1-4, 1-5/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-4/HB 214; Ga. L. 2012, p. 775, § 31/HB 942.

Cross references. — Hearing handicap, T. 30, C. 1. Rights of persons with visual disabilities and deaf persons, T. 30, C. 4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, in subsection (e), ", 2001" was substituted for "of the first year following the year this Code section first becomes effective" and ", 2002" was substituted for "of the second year following the year this Code section first becomes effective".

Pursuant to Code Section 28-9-5, in 2009, "former" was inserted preceding "subsection (d)" in subsection (e).

Editor's notes. — Ga. L. 1999, p. 266, § 1 provided for the repeal of former subsection (d), effective July 1, 2005.

Law reviews. — For article on the

2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-1-4. Penalties for false representation, impersonation.

(a) Any person who shall make, utter, execute, or submit to the department or to any county board of health any oral or written representation, knowing the same to be false, for the purpose of obtaining anything of value, including any service, shall be guilty of a misdemeanor.

(b) Any person who shall impersonate or otherwise falsely hold himself out to any other person as an agent of the department or of any county board of health shall be guilty of a misdemeanor.

History. — Ga. L. 1950, p. 222, §§ 1, 2; Code 1933, §§ 88-9901, 88-9902, enacted by Ga. L. 1964, p. 499, § 1.

Cross references. — Impersonating public officers or employees generally, § 16-10-23.

JUDICIAL DECISIONS

Cited in Abel v. State, 190 Ga. 651, 10 S.E.2d 198 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 21.

31-1-5. Compensation of employees for damage to wearing apparel caused by patients.

(a) As used in this Code section, the term "wearing apparel" includes eyeglasses, hearing aids, clothing, and similar items worn on the person of the employee.

(b) When action by a patient in one of the institutions operated by the department results in damage to an item of wearing apparel of an employee of the institution, the department shall compensate the employee for the loss in the amount of either the repair cost or the replacement value or the cost of the item of wearing apparel, whichever is less. Such losses shall be compensated only in accordance with procedures to be established by the department, and no compensation shall be made by the department in excess of $500.00 per claim.

History. — Code 1933, § 88-2411, enacted by Ga. L. 1981, p. 854, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 279.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 386 et seq.

31-1-6. Reuse of heart pacemakers.

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

(1) "Heart pacemaker" means any electrical device which stimulates the heart muscle so that it contracts at a certain or regular rate.

(2) "Medically acceptable" means conforming to prevailing medical standards of cleanliness and manufacturers' applicable standards for functional operation.

(3) "Person" includes the following:

(A) Any hospital, surgeon, or physician;

(B) Any accredited medical school, college, or university;

(C) Any licensed, accredited, or approved bank or storage facility of human bodies or parts; or

(D) Any specified individual needing implantation of a heart pacemaker.

(b) Any person, as defined in subsection (a) of this Code section, shall be authorized to receive and reuse a heart pacemaker, provided that such device is medically acceptable for its proposed reuse.

(c) This Code section shall not apply to the receipt and reuse of a nuclear-powered pacemaker.

History. — Code 1981, § 31-1-6, enacted by Ga. L. 1984, p. 1034, § 1.

Cross references. — Anatomical gifts, § 44-5-140 et seq. Disposition of heart pacemakers, § 53-4-73.

31-1-7. Marking of dentures and other removable dental prostheses for identification.

(a) Every complete upper and lower denture and removable permanent partial denture fabricated by a dentist licensed in Georgia shall be marked with the name or social security number of the patient for whom it is intended. The marking shall be done during fabrication and shall be permanent, legible, and cosmetically acceptable. The exact location of the marking and the methods used to apply or implant it shall be determined by the dentist.

(b) If, in the professional judgment of the dentist, this marking is not practicable, the marking shall be as follows:

(1) The initials of the patient may be shown if the use of the full name or social security number is impossible; or

(2) The marking may be omitted entirely if none of the markings so specified are practical or clinically safe.

(c) Any removable dental prosthesis in existence prior to July 1, 1988, shall be marked in accordance with this Code section at the time of any subsequent rebasing.

(d) It shall be the duty of the Georgia Board of Dentistry to notify each person licensed to practice dentistry in this state of the requirements of this Code section. Such notification shall be mailed to the address of record of each person licensed to practice dentistry in this state.

History. — Code 1981, § 31-1-7, enacted by Ga. L. 1988, p. 742, § 1; Ga. L. 1991, p. 600, §§ 1, 2.

31-1-8. Notice of proposed special facility.

(a) For the purposes of this Code section, the term "special facility" means any of the following facilities:

(1) A facility utilized for the diagnosis, care, treatment, or hospitalization of persons who are alcoholics, drug dependent individuals, or drug users as defined in paragraph (11) of Code Section 37-7-1; or

(2) A facility operated by the Department of Human Services and used for the treatment and residence of delinquent children, provided such facility affords secure custody.

(b) At least 30 days prior to the expenditure of state funds for any new or additional special facility by the Department of Behavioral Health and Developmental Disabilities or the Department of Human Services or an agency or board of health contracting with the Department of Behavioral Health and Developmental Disabilities or the Department of Human Services, such department or such agency or board shall notify the governing authority of the county and any municipality wherein the special facility is to be located and each member of the General Assembly whose Senate or House district includes any part of the property upon which the facility is to be located. Such notification shall include a description of the proposed special facility, including its proposed location, the category of patients or persons to be confined therein, and the maximum number of patients or persons to be so confined. The Department of Behavioral Health and Developmental Disabilities or the Department of Human Services shall include such requirements in all departmental contracts entered into with such boards or agencies.

History. — Code 1981, § 31-1-8, enacted by Ga. L. 1992, p. 2120, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, in paragraph (a)(2), "Department of Human Services" was substituted for "department", and, in subsection (b), "Department of Behavioral Health and Developmental Disabilities or the Department of Human Services" was substituted for "Department of Human Resources" three times, and "such department" was substituted for "the department" in the first sentence.

31-1-9. Breast-feeding of baby.

The breast-feeding of a baby is an important and basic act of nurture which should be encouraged in the interests of maternal and child health. A mother may breast-feed her baby in any location where the mother and baby are otherwise authorized to be.

History. — Code 1981, § 31-1-9, enacted by Ga. L. 1999, p. 464, § 1; Ga. L. 2002, p. 1139, § 1.

Cross references. — Newborn Baby and Mother Protection Act, § 33-24-58. Employer obligation to provide time for women to express breast milk for infant child, § 34-1-6.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 209 (2002).

31-1-10. State health officer; duties.

(a) The position of state health officer is created. The Governor may appoint the commissioner of public health to serve simultaneously as the state health officer or may appoint another individual to serve as state health officer. Such officer shall serve at the pleasure of the Governor. An individual appointed to serve as state health officer shall be licensed to practice medicine in this state.

(b) The state health officer shall:

(1) Perform such health emergency preparedness and response duties as assigned by the Governor; and

(2) Be authorized to issue a standing order prescribing an opioid antagonist, as such term is defined in Code Section 26-4-116.2, on a state-wide basis under conditions that he or she determines to be in the best interest of this state.

History. — Code 1981, § 31-1-10, enacted by Ga. L. 2009, p. 453, § 1-3/HB 228; Ga. L. 2011, p. 705, § 3-6/HB 214; Ga. L. 2017, p. 22, § 5/SB 121; Ga. L. 2017, p. 319, § 3-2/HB 249.

The 2017 amendments. — The first 2017 amendment, effective May 18, 2017, added the fourth sentence of subsection (a), and substituted the present provisions of subsection (b) for the former provisions, which read: "The state health officer shall perform such health emergency preparedness and response duties as assigned by the Governor." The second 2017 amendment, effective July 1, 2017, made identical changes.

Editor's notes. — Ga. L. 2017, p. 22, § 1/SB 121, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Jeffrey Dallas Gay, Jr., Act.'"

Law reviews. — For article on the

2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article on the 2017 amendment of this Code section, see 34 Ga. St. U. L. Rev. 143 (2017).

31-1-11. No legal compulsion to participate in health care system; no legal prohibition on purchase or sale of health insurance in private health care systems.

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

(1) "Compel" includes penalties or fines.

(2) "Direct payment" or "pay directly" means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(3) "Health care system'" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment for, in full or in part, health care services or health care data or health care information for its participants.

(4) "Lawful health care services" means any health related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services.

(5) "Penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or any named fee with a similar effect established by law or rule by a government established, created, or controlled agency that is used to punish or discourage the exercise of rights protected under this Code section.

(b) To preserve the freedom of citizens of this state to provide for their health care:

(1) No law or rule or regulation shall compel, directly or indirectly, any person, employer, or health care provider to participate in any health care system; and

(2) A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

(c) Subject to reasonable and necessary rules and regulations that do not substantially limit a person's options, the purchase or sale of health insurance in private health care systems shall not be prohibited by law or by rule or regulation.

(d) This Code section shall not:

(1) Affect which health care services a health care provider or hospital is required to perform or provide;

(2) Affect which health care services are permitted by law;

(3) Prohibit care provided pursuant to any statutes enacted by the General Assembly relating to workers' compensation;

(4) Prohibit the imposition by the General Assembly of conditions and limitations on the use or applicability of exemptions and deductions with regard to income taxation;

(5) Affect laws or rules in effect as of January 1, 2009; or

(6) Affect the terms or conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or employer for paying directly for lawful health care services or a health care provider or hospital for accepting direct payment from a person or employer for lawful health care services.

History. — Code 1981, § 31-1-11, enacted by Ga. L. 2010, p. 755, § 1/SB 411.

31-1-12. Hospitals to provide educational information to parents of newborns regarding pertussis disease and availability of a vaccine.

(a) During the postpartum period and prior to discharge, each hospital shall provide parents of newborns educational information on pertussis disease and the availability of a vaccine to protect against such disease. Such educational information shall include, but not be limited to, information on the recommendation by the federal Centers for Disease Control and Prevention that parents of newborns receive the vaccination during the postpartum period to protect the newborns from the transmission of pertussis.

(b) Nothing in this Code section shall be construed to require any hospital to provide or pay for any vaccination against pertussis.

History. — Code 1981, § 31-1-12, enacted by Ga. L. 2011, p. 704, § 1/HB 249.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, Code Section 31-1-12, as enacted by Ga. L. 2011, p. 705, § 2-1, was redesignated as Code Section 31-1-13.

Law reviews. — For article on the 2011 enactment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article, "Health: Department of Public Health," see 28 Ga. St. U. L. Rev. 147 (2011).

31-1-13. Hemophilia Advisory Board.

(a) The commissioner of public health in conjunction with the commissioner of community health shall establish an independent advisory board known as the Hemophilia Advisory Board.

(b)(1) The following persons shall serve as nonvoting members of the Hemophilia Advisory Board:

(A) The commissioner of public health or a designee; and

(B) The commissioner of community health or a designee.

(2) The following voting members shall be appointed by the commissioner of public health, in consultation with the commissioner of community health, and shall serve a three-year term:

(A) One member who is a board certified physician licensed, practicing, and currently treating individuals with hemophilia and other bleeding disorders and who specializes in the treatment of these individuals;

(B) One member who is a nurse licensed, practicing, and currently treating individuals with hemophilia and other bleeding disorders;

(C) One member who is a social worker licensed, practicing, and currently treating individuals with hemophilia and other bleeding disorders;

(D) One member who is a representative of a federally funded hemophilia treatment center in this state;

(E) One member who is a representative of a nonprofit organization that has, as its primary purpose, the provision of services to the population of this state with hemophilia and other bleeding disorders;

(F) One member who is a person who has hemophilia;

(G) One member who is a caregiver of a person who has hemophilia; and

(H) One member who is a person who has a bleeding disorder other than hemophilia or who is a caregiver of a person who has a bleeding disorder other than hemophilia.

(3) The Hemophilia Advisory Board may also have up to five additional nonvoting members as determined appropriate by the commissioner and the commissioner of community health. These nonvoting members may be persons with, or caregivers of a person with, hemophilia or other bleeding disorder or persons experienced in

the diagnosis, treatment, care, and support of individuals with hemophilia or other bleeding disorders.

(c)(1) Board members shall elect from among the voting board members a presiding officer. The presiding officer retains all voting rights.

(2) A majority of the members shall constitute a quorum at any meeting held by the Hemophilia Advisory Board.

(3) If there is a vacancy on the Hemophilia Advisory Board, such position shall be filled in the same manner as the original appointment.

(4) Members of the Hemophilia Advisory Board shall receive no compensation for service on the Hemophilia Advisory Board.

(d) The Hemophilia Advisory Board shall meet at least quarterly and at the call of the commissioner, the commissioner of community health, or the presiding officer and follow all policies and procedures of Chapter 14 of Title 50, relating to open and public meetings.

(e) The department shall provide reasonably necessary administrative support for Hemophilia Advisory Board activities.

(f) The Hemophilia Advisory Board shall review and make recommendations to the commissioner and the commissioner of community health with regard to issues that affect the health and wellness of persons living with hemophilia and other bleeding disorders, including, but not limited to, the following:

(1) Proposed legislative or administrative changes to policies and programs that are integral to the health and wellness of individuals with hemophilia and other bleeding disorders;

(2) Standards of care and treatment for persons living with hemophilia and other bleeding disorders, taking into consideration the federal and state standards of care guidelines developed by state and national organizations, including, but not limited to, the Medical and Scientific Advisory Council of the National Hemophilia Foundation;

(3) The development of community based initiatives to increase awareness of care and treatment for persons living with hemophilia and other bleeding disorders; and

(4) The coordination of public and private support networking systems.

(g) The Hemophilia Advisory Board shall, no later than October 1, 2019, and annually thereafter, submit to the Office of Health Strategy and Coordination a report of its findings and recommendations. Annually thereafter, the commissioner of public health, in consultation with

the commissioner of community health, shall report to the Governor and the General Assembly on the status of implementing the recommendations as proposed by the Hemophilia Advisory Board. The reports shall be made public and shall be subject to public review and comment.

History. — Code 1981, § 31-1-13, enacted by Ga. L. 2011, p. 705, § 2-1/HB 214; Ga. L. 2019, p. 148, § 2-3/HB 186.

The 2019 amendment, effective July 1, 2019, substituted "October 1, 2019, and annually thereafter, submit to the Office of Health Strategy and Coordination" for "January, 2012, and annually thereafter, submit to the Governor and the General Assembly" in the first sentence of subsection (g).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, Code Section 31-1-12, as enacted by Ga. L. 2011, p. 705, § 2-1, was redesignated as Code Section 31-1-13.

Pursuant to Code Section 28-9-5, in 2011, "January 1, 2012" was substituted for "six months after the effective date of this Code section" in subsection (g).

Editor's notes. — Ga. L. 2011, p. 705, § 1-1/HB 214, not codified by the General Assembly, provides that: "Parts I and II of this Act shall be known and may be cited as the 'Hemophilia Advisory Board Act.'"

Ga. L. 2011, p. 705, § 1-2/HB 214, not codified by the General Assembly, provides that: "The General Assembly finds that hemophilia and other bleeding disorders are devastating health conditions that can cause serious financial, social, and emotional hardships for patients and their families. Hemophilia and other bleeding disorders are incurable, so appropriate lifetime care and treatment are necessities for maintaining optimum health. Advancements in drug therapies are allowing individuals greater latitude in managing their conditions, fostering independence, and minimizing chronic complications. As a result, individuals are living longer and are healthier and more productive. However, the rarity of these disorders coupled with the delicate processes of producing clotting factor concentrates makes treating these disorders extremely costly. It is the intent of the General Assembly to establish an advisory board to provide expert advice to the state on health and insurance policies, plans, and programs that impact individuals with hemophilia and other bleeding disorders."

Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

Law reviews. — For article on Crimes and Offenses: Crimes Against the Person, see 35 Ga. St. U. L. Rev. 19 (2018).

31-1-14. Physician Orders for Life-Sustaining Treatment (POLST) forms.

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

(1) "Attending physician" means the physician who has primary responsibility at the time of reference for the treatment and care of the patient.

(2) "Authorized person" shall have the same meaning as in Code Section 31-39-2.

(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of an order regarding end of life care decisions, including the benefits and disadvantages of such an order, and to reach an informed decision regarding the order.

(4) "Health care facility" shall have the same meaning as in Code Section 31-32-2.

(5) "Health care provider" shall have the same meaning as in Code Section 31-32-2.

(6) "Life-sustaining procedures" means medications, machines, or other medical procedures or interventions which, when applied to a patient in a terminal condition or in a state of permanent unconsciousness, could in reasonable medical judgment keep the patient alive but cannot cure the patient and where, in the judgment of the attending physician and a second physician, death will occur without such procedures or interventions. The term "life-sustaining procedures" shall not include the provision of nourishment or hydration, but a patient may direct the withholding or withdrawal of the provision of nourishment or hydration in a POLST form. The term "life-sustaining procedures" shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain.

(7) "Physician Orders for Life-Sustaining Treatment form" or "POLST form" means a form executed pursuant to this Code section which provides directions regarding the patient's end of life care.

(8) "Provision of nourishment or hydration" means the provision of nutrition or fluids by tube or other medical means.

(9) "State of permanent unconsciousness" means an incurable or irreversible condition in which the patient is not aware of himself or herself or his or her environment and in which the patient is showing no behavioral response to his or her environment.

(10) "Terminal condition" means an incurable or irreversible condition which would result in the patient's death in a relatively short period of time.

(b) The department shall develop and make available a Physician Orders for Life-Sustaining Treatment form. On and after July 1, 2016, the department shall notify the chairpersons and each member of the House Committee on Health and Human Services and the Senate Health and Human Services Committee at least 60 days prior to implementing any modification of the POLST form. Such form shall provide directions regarding the patient's end of life care and may be voluntarily executed by either a patient who has decision-making capacity and an attending physician or, if the patient does not have decision-making capacity, by the patient's authorized person and an attending physician; provided, however, that this shall not prevent a health care facility from imposing additional administrative or procedural requirements regarding a patient's end of life care decisions. A

POLST form may be executed when a patient has a serious illness or condition and the attending physician's reasoned judgment is that the patient will die within the next 365 days; provided, however, that a POLST form may be executed at any time if a person has been diagnosed with dementia or another progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior. A POLST form, if signed by an authorized person, shall indicate the relationship of the authorized person to the patient pursuant to paragraph (3) of Code Section 31-39-2.

(c)(1) A POLST form shall constitute a legally sufficient order that may be utilized by a health care provider or health care facility in accordance with its policies and procedures regarding end of life care. Such an order shall remain effective unless the order is revoked by the attending physician upon the consent of the patient or the patient's authorized person. An attending physician who has issued such an order and who transfers care of the patient to another physician shall inform the receiving physician and the health care facility, if applicable, of the order. Review of the POLST form is recommended at care transitions, and such review should be specified on the form.

(2) A POLST form signed by the patient and attending physician and indicating "allow natural death" or "do not resuscitate" or the equivalent may be implemented without restriction. If the POLST form (i) is signed by the attending physician and an authorized person instead of the patient and (ii) indicates "allow natural death" or "do not resuscitate" or the equivalent, in compliance with subsection (c) of Code Section 31-39-4, the POLST form may be implemented or become effective when the patient is a candidate for nonresuscitation, and such consent shall be based in good faith upon what such authorized person determines such candidate for nonresuscitation would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered.

(3) A POLST form addressing interventions other than resuscitation and signed by the patient and attending physician may be implemented without restriction. If the POLST form is signed by an authorized person who is the health care agent named by the patient in an advance directive for health care and the attending physician, in compliance with paragraph (1) of subsection (e) of Code Section 31-32-7, all treatment indications on the POLST form may be implemented. If the POLST form is signed by an authorized person who is not the health care agent named by the patient in an advance directive for health care, treatment indications on the POLST form may be implemented or become effective only when the patient is in

a terminal condition or a state of permanent unconsciousness; provided, however, that a POLST form may become effective at any time if a person has been diagnosed with dementia or another progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior.

(4) A POLST form shall be portable with the patient across care settings and shall be valid in any health care facility in which the patient who is the subject of such form is being treated; provided, however, that this shall not prevent a health care facility from imposing additional requirements regarding a patient's end of life care decisions. A health care facility and a health care provider, in its discretion, may rely upon a POLST form as legally valid consent by the patient to the terms therein.

(5) A copy of a POLST form shall be valid and have the same meaning and effect as the original document.

(6) A physician orders for life-sustaining treatment form which was executed in another state, which is valid under the laws of such state and which is substantially similar to the Georgia POLST form, and contains signatures of (i) either the patient or an authorized person and (ii) the attending physician, shall be treated as a POLST form which complies with this Code section.

(d)(1) Each health care provider, health care facility, and any other person who acts in good faith reliance on a POLST form shall be protected and released to the same extent as though such provider, facility, or other person had interacted directly with the patient as a fully competent person. Without limiting the generality of the foregoing, the following specific provisions shall also govern, protect, and validate the acts of an authorized person and each such health care provider, health care facility, and any other person acting in good faith reliance on such POLST form:

(A) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for complying with a patient's end of life care decisions as provided in a POLST form, even if death or injury to the patient ensues;

(B) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for failure to comply with a patient's end of life care decisions in a POLST form, so long as such health care provider, health care facility, or person promptly informs the patient or the patient's authorized person of such health care provider's, health care facility's, or person's refusal or failure to comply with such patient's end of life care decisions in a POLST

form. The authorized person shall then be responsible for arranging the patient's transfer to another health care provider or health care facility. A health care provider, health care facility, or person who is unwilling to comply with a patient's end of life care decisions in a POLST form shall continue to provide reasonably necessary consultation and care in connection with the pending transfer;

(C) If the actions of a health care provider, health care facility, or person who fails to comply with a patient's end of life care decisions in a POLST form are substantially in accord with reasonable medical standards at the time of reference and such provider, facility, or person cooperates in the transfer of the patient, then the health care provider, health care facility, or person shall not be subject to civil or criminal liability or discipline for unprofessional conduct for failure to comply with such patient's end of life care decisions in a POLST form;

(D) No authorized person who, in good faith, acts with due care for the benefit of the patient and in accordance with a patient's end of life care decisions in a POLST form, or who fails to act, shall be subject to civil or criminal liability for such action or inaction; and

(E) If a POLST form is revoked, a person shall not be subject to criminal prosecution or civil liability for acting in good faith reliance upon a patient's end of life care decisions in a POLST form unless such person had actual knowledge of the revocation.

(2) No person shall be civilly liable for failing or refusing in good faith to effectuate a patient's end of life care decisions in a POLST form regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration.

(3) No physician or any person acting under a physician's direction and no health care facility or any agent or employee thereof who, acting in good faith in accordance with the requirements of this Code section, causes the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from a patient or who otherwise participates in good faith therein shall be subject to any civil or criminal liability or guilty of unprofessional conduct therefor.

(4) Any person who participates in the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration pursuant to a patient's end of life care decisions in a POLST form and who has actual knowledge that such POLST form has been properly revoked shall not have any civil or criminal immunity otherwise granted under this subsection for such conduct.

(e) In the event there are any directions in a patient's previously executed living will, advance directive for health care, durable power of attorney for health care, do not resuscitate order, or other legally authorized instrument that conflict with the directions in a POLST form, the most recent instrument will take precedence to the extent of the conflict.

(f) Nothing in this Code section shall be construed to authorize any act prohibited by Code Section 16-5-5. Any health care provider, health care facility, or any other person who violates Code Section 16-5-5 shall not be entitled to any civil immunity provided pursuant to this Code section.

History. — Code 1981, § 31-1-14, enacted by Ga. L. 2015, p. 305, § 1/SB 109; Ga. L. 2016, p. 757, § 1/SB 305; Ga. L. 2016, p. 864, § 31/HB 737.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, Code Section 31-1-14, as enacted by Ga. L. 2015, p. 312, § 2/SB 126, was redesignated as Code Section 31-1-15.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary administration, see 67 Mercer L. Rev. 273 (2015).

31-1-15. Storage, maintenance, control, and oversight of auto-injectable epinephrine by certain authorized entities.

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

(1) "Authorized entity" means any entity or organization, other than a school subject to Code Section 20-2-776.2, in connection with or at which allergens capable of causing anaphylaxis may be present, as identified by the department. The department shall, through rule or other guidance, identify the types of entities and organizations that are considered authorized entities no later than January 1, 2016, and shall review and update such rule or guidance at least annually thereafter. For purposes of illustration only, such entities may include, but are not limited to, restaurants, recreation camps, youth sports leagues, theme parks and resorts, and sports arenas.

(2) "Auto-injectable epinephrine" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(3) "Health care practitioner" means a physician licensed to practice medicine in this state, an advanced practice registered nurse acting pursuant to the authority of Code Section 43-34-25, and a physician assistant acting pursuant to the authority of subsection (e.1) of Code Section 43-34-103.

(b) An authorized entity may acquire and stock a supply of auto-injectable epinephrine pursuant to a prescription issued in accor-

dance with Code Section 26-4-116.1. Such auto-injectable epinephrine shall be stored in a location readily accessible in an emergency and in accordance with the auto-injectable epinephrine's instructions for use and any additional requirements that may be established by the department. An authorized entity shall designate employees or agents who have completed the training required by subsection (d) of this Code section to be responsible for the storage, maintenance, control, and general oversight of auto-injectable epinephrine acquired by the authorized entity.

(c) An employee or agent of an authorized entity, or any other individual, who has completed the training required by subsection (d) of this Code section may use auto-injectable epinephrine prescribed pursuant to Code Section 26-4-116.1 to:

(1) Provide auto-injectable epinephrine to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, or to the parent, guardian, or caregiver of such individual, for immediate administration, regardless of whether the individual has a prescription for auto-injectable epinephrine or has previously been diagnosed with an allergy; and

(2) Administer auto-injectable epinephrine to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, regardless of whether the individual has a prescription for auto-injectable epinephrine or has previously been diagnosed with an allergy.

(d) An employee, agent, or other individual described in subsection (b) or (c) of this Code section shall complete an anaphylaxis training program and repeat such training at least every two years following completion of the initial anaphylaxis training program. Such training shall be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment or an entity or individual approved by the department. Training may be conducted online or in person and, at a minimum, shall cover:

(1) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis;

(2) Standards and procedures for the storage and administration of auto-injectable epinephrine; and

(3) Emergency follow-up procedures.

(e) An authorized entity that possesses and makes available auto-injectable epinephrine and its employees, agents, and other individuals; a health care practitioner that prescribes or dispenses auto-injectable epinephrine to an authorized entity; a pharmacist or health care practitioner that dispenses auto-injectable epinephrine to

an authorized entity; and an individual or entity that conducts the training described in subsection (d) of this Code section shall not be liable for any injuries or related damages that result from any act or omission taken pursuant to this Code section; provided, however, that this immunity does not apply to acts or omissions constituting willful or wanton misconduct. The administration of auto-injectable epinephrine in accordance with this Code section is not the practice of medicine or any other profession that otherwise requires licensure. This Code section does not eliminate, limit, or reduce any other immunity or defense that may be available under state law, including that provided under Code Section 51-1-29. An entity located in this state shall not be liable for any injuries or related damages that result from the provision or administration of auto-injectable epinephrine outside of this state if the entity:

(1) Would not have been liable for such injuries or related damages had the provision or administration occurred within this state; or

(2) Is not liable for such injuries or related damages under the law of the state in which such provision or administration occurred.

(f) An authorized entity that possesses and makes available auto-injectable epinephrine shall submit to the department, on a form developed by the department, a report including each incident on the authorized entity's premises that involves the administration of auto-injectable epinephrine pursuant to subsection (c) of this Code section and any other information deemed relevant by the department. The department shall annually publish a report that summarizes and analyzes all reports submitted to it under this subsection.

(g) The department shall establish requirements regarding the storage, maintenance, control, and oversight of the auto-injectable epinephrine, including but not limited to any temperature limitations and expiration of such auto-injectable epinephrine.

History. — Code 1981, § 31-1-15, enacted by Ga. L. 2015, p. 312, § 2/SB 126.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, Code Section 31-1-14, as enacted by Ga. L. 2015, p. 312, § 2/SB 126, was redesignated as Code Section 31-1-15.

31-1-16. Reporting information concerning nurses holding multistate licenses.

The Board of Community Health shall require health care providers and entities that employ one or more nurses holding a multistate license pursuant to Article 4 of Chapter 26 of Title 43 for 30 days or more in a calendar year to report to such board the name, address, and duration of employment of each such nurse in a form and pursuant to

a schedule established by such board. The Board of Community Health shall provide such information to the Georgia Board of Nursing.

History. — Code 1981, § 31-1-16, enacted by Ga. L. 2019, p. 219, § 7/SB 168.

Effective date. — This Code section became effective April 25, 2019.

31-1-17. Notification of dense breast tissue.

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

(1) "Dense breast tissue" means heterogeneously or extremely dense breast tissue based on nationally recognized guidelines or systems for breast imaging reporting of mammography including, but not limited to, the Breast Imaging Reporting and Data System established by the American College of Radiology.

(2) "Health care facility" means a hospital, outpatient department, clinic, radiology practice, or mobile unit; an office of a physician; or other medical facility.

(b) If a patient's mammogram demonstrates dense breast tissue, the health care facility that conducted the mammogram shall provide notification to the patient that includes, but is not limited to, the following information, in the summary of the results of a mammography examination that is sent directly to a patient pursuant to 42 U.S.C. Section 263b:

"Your mammogram shows that your breast tissue is dense. Dense breast tissue is very common and is not abnormal. However, dense breast tissue can make it more difficult to detect cancer through a mammogram. Also, dense breast tissue may increase your risk for breast cancer. This information about the result of your mammogram is given to you to increase your awareness. Use this information to talk with your health care provider about whether other supplemental tests in addition to your mammogram may be appropriate for you, based on your individual risk. A report of your results was sent to your ordering physician. If you are self-referred, a report of your results was sent to you in addition to this summary."

History. — Code 1981, § 31-1-17, enacted by Ga. L. 2019, p. 336, § 2/HB 62.

Effective date. — This Code section became effective July 1, 2019.

Cross references. — Breast cancer patient care, § 33-24-70 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, this Code Section enacted as Code Section 31-1-16 was redesignated as Code Section 31-1-17.

Editor's notes. — Ga. L. 2019, p. 336, § 1/HB 62, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'Margie's Law.'"

U.S. Code. — Section 263b of 42 U.S.C., referred to in subsection (b), concerns the certification of mammography facilities.

31-1-20 through 31-1-22.

Reserved. Repealed by Ga. L. 2005, p. 692, § 1/SB 81, effective July 1, 2005.

Editor's notes. — These Code sections were based on Ga. L. 1997, p. 1585, § 3; Ga. L. 1998, p. 128, § 31.

31-1-23. Blindness education, screening, and treatment program.

(a)(1) Subject to availability of funds voluntarily donated and transmitted to the department for such purposes pursuant to subsection (e) of Code Section 40-5-25, the department shall develop a blindness education, screening, and treatment program to provide blindness prevention education and to provide screening and treatment for residents who do not have adequate coverage for such services under a health benefit plan.

(2) Funds voluntarily donated and transmitted to the department pursuant to subsection (e) of Code Section 40-5-25 shall be expended only for purposes of the program provided by this Code section.

(b) The program shall provide for:

(1) Public education about blindness and other eye conditions;

(2) Screenings and eye examinations to identify conditions that may cause blindness; and

(3) Treatment procedures necessary to prevent blindness.

(c) The department may contract for program development with any department approved nonprofit organization dealing with regional and community blindness education, eye donor, and vision treatment services.

(d) The department by regulation shall prescribe eligibility requirements for the program.

History. — Code 1981, § 31-1-23, enacted by Ga. L. 1999, p. 537, § 1.

Cross references. — Funds for operation of schools for deaf and blind persons, § 20-2-302. Georgia Industries for the Blind, T. 30, C. 2. Aid to the blind, § 49-4-50 et seq.

31-1-40. Prohibition on expenditure or use of state resources to advocate for or intend to influence citizens in support of Medicaid expansion under the federal Affordable Care Act.

(a) Neither the state nor any department, agency, bureau, authority, office, or other unit of the state nor any political subdivision of the state shall expend or use moneys, human resources, or assets to advocate or intended to influence the citizens of this state in support of the voluntary expansion by the State of Georgia of eligibility for medical assistance in furtherance of the federal Patient Protection and Affordable Care Act, Public Law 111-148, beyond the eligibility criteria in effect on April 15, 2014, under the provisions of 42 U.S.C. Section 1396a(a)(10)(A)(i)(VIII) of the federal Social Security Act, as amended.

(b) The Attorney General shall enforce the provisions of this Code section in accordance with Article V, Section III, Paragraph IV of the Constitution of the State of Georgia.

(c) Nothing in this Code section shall be construed to prevent an officer or employee of the State of Georgia or of any department, agency, bureau, authority, office, unit, or political subdivision thereof from advocating or attempting to influence public policy:

(1) As part of such person's official duties;

(2) When acting on personal time without using state resources; or

(3) When providing bona fide educational instruction about the federal Patient Protection and Affordable Care Act of 2010 in institutions of higher learning or otherwise.

(d) Nothing in this Code section shall be construed to preclude the state from participating in any Medicaid program.

History. — Code 1981, § 31-1-40, enacted by Ga. L. 2014, p. 243, § 1-2/HB 943; Ga. L. 2019, p. 1056, § 31/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, "April 15, 2014," was substituted for "the effective date of this Code section" near the end of subsection (a).

Pursuant to Code Section 28-9-5, in 2019, "Medicaid" was substituted for "MEDICAID" near the end of subsection (d).

Editor's notes. — Ga. L. 2014, p. 243, § 1-1/HB 943, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Health Care Freedom Act.'"

Law reviews. — For article, "Georgia Health Care Freedom Act," see 31 Ga. St. U. L. Rev. 113 (2014).

For note, "A Compelling Interest? Using Old Conceptions of Public Health Law to Challenge the Affordable Care Act's Contraceptive Mandate," see 31 Ga. St. U. L. Rev. 613 (2015). For note, "Charting the Middle Course: An Argument for Robust But Well-Tailored Health Care Discrimination Protection for the Transgender Community," see 52 Ga. L. Rev. 225 (2017).

CHAPTER 2

DEPARTMENT OF COMMUNITY HEALTH

Sec.
31-2-1. Legislative intent; grant of authority.
31-2-2. Definitions.
31-2-3. Board of Community Health reconstituted; powers, functions, and duties; terms of board members; vacancies; removal; chairperson; expenses.
31-2-4. Department's powers, duties, functions, and responsibilities; divisions; directors; contracts for health benefits.
31-2-5. Transfer of personnel and functions; conforming to federal standards of personnel administration; existing procedures, regulations, and agreements; rules adoption and implementation.
31-2-6. Commissioner of community health created; creation of divisions; allocation of functions.
31-2-7. Rules and regulations; variances and waivers to rules and regulations establishing licensure standards for facilities; exemption of classes of facilities from regulation.
31-2-8. Actions against certain applicants or licensees.
31-2-9. (Repealed effective October 1, 2019) Records check requirement for certain health care facilities; definitions; use of information gathered in investigation; penalties for unauthorized release or disclosure; rules and regulations; retention of fingerprints.
31-2-10. Information and comparisons regarding state-wide cost and quality of health care.
31-2-11. Biopharmaceuticals; expedited review for Georgia based companies.
31-2-12. Pilot program to provide coverage for bariatric surgical procedures for treatment of obesity and related conditions; definitions; eligibility; requirements; evaluation report on two-year pilot program [Repealed].
31-2-13. Inspection warrant.
31-2-14. Nurse aide registry; complaint filing; public access.
31-2-15. Streamlining and expediting credentialing and billing processes.
31-2-16. Rural Health System Innovation Center created; purposes and duties; reporting.
31-2-17. Redesignated.
31-2-17.1. Redesignated.
31-2-18. Redesignated.
31-2-19. Advisory Council for Public Health; members; meetings [Repealed].
31-2-20. Public Health Commission; members; purpose; authority [Repealed].

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Chapter 5A of Title 31 as present Chapter 2 of Title 31 and combined it with former Chapter 2 of Title 31.

Administrative rules and regulations. — General licensing and enforcement requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-25.

Personal care homes, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-62.

Law reviews. — For article, "The Case for Streamlining Emergency Declaration Authorities and Adapting Legal Requirements to Ever-Changing Public Health

Threats," see 67 Emory L.J. 397 (2018). For article, "Do State Lines Make Public Health Emergencies Worse? Federal Versus State Control of Quarantine," see 67 Emory L.J. 491 (2018).

JUDICIAL DECISIONS

Cited in Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980).

RESEARCH REFERENCES

ALR. — Liability of governmental agency for emergency medical or surgical services rendered to poor person without its express authority, 30 A.L.R. 900.

31-2-1. Legislative intent; grant of authority.

Given the growing concern and complexities of health issues in this state, it is the intent of the General Assembly to create a Department of Community Health dedicated to health issues. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(1) Serve as the lead planning agency for all health issues in the state to remedy the current situation wherein the responsibility for health care policy, purchasing, planning, and regulation is spread among many different agencies and achieve determinations of Medicaid eligibility for inmates to attain services at long-term care facilities when he or she is being considered for parole;

(2) Permit the state to maximize its purchasing power and to administer its operations in a manner so as to receive the maximum amount of federal financial participation available in expenditures of the department;

(3) Minimize duplication and maximize administrative efficiency in the state's health care systems by removing overlapping functions and streamlining uncoordinated programs;

(4) Allow the state to develop a better health care infrastructure that is more responsive to the consumers it serves while improving access to and coverage for health care;

(5) Focus more attention and departmental procedures on the issue of wellness, including diet, exercise, and personal responsibility;

(6) Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of conditions deleterious to health or to determine compliance with applicable laws and rules, regulations, and standards thereunder; and

(7) Promulgate and enforce rules and regulations for the licensing of medical facilities wherein abortion procedures under subsections (b) and (c) of Code Section 16-12-141 are to be performed.

History. — Code 1981, § 31-5A-1, enacted by Ga. L. 1999, p. 296, § 1; Code 1981, § 31-2-1, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2011, p. 705, § 4-1/HB 214; Ga. L. 2018, p. 550, § 3-1/SB 407.

The 2018 amendment, effective July 1, 2018, added "and achieve determinations of Medicaid eligibility for inmates to attain services at long-term care facilities when he or she is being considered for parole" at the end of paragraph (1).

Editor's notes. — The substance of the former Code section, pertaining to duty, functions, and powers of the former Department of Human Resources is now contained in the introductory language and paragraphs (6) through (18) of the present Code section. The former Code section was based on Code 1933, § 88-108, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1971, p. 669, § 1; Ga. L. 1973, p. 635, § 2; Ga. L. 1979, p. 823, §§ 1, 2, and was repealed by Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009.

Law reviews. — For article, "Putting the Community Back into the 'Community Benefit' Standard," see 44 Ga. L. Rev. 375 (2010). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 45 (2018).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 31-2-1, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

No private right of action for failing to notify of sickle cell disease. — Trial court properly granted the motion to dismiss or the motion for summary judgment filed by various defendants in a suit brought by plaintiff child, by and through the child's parent, which asserted negligence and negligence per se for failing to inform the plaintiff and the parent, at the time of the plaintiff's birth, that the plaintiff had sickle cell disease. The trial court properly ruled that no private right of action exists for a violation of O.C.G.A. § 31-12-7, and the appellate court clarified that there existed no statutory intent to impose strict liability for violating the notice requirement of § 31-12-7 and substantial compliance with the statute was all that was required, which was shown in that the defendants attempted to contact the plaintiff and the parent but were unable to locate them due to incorrect contact information. In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

Cited in Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980); Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Live Oak Consulting, Inc. v. Dep't of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006); Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 88-112, 88-117, and former Code Section 31-2-1, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Regulation of quarantine and control of tuberculosis. — Department of Human Resources (now the Department of Community Health for these purposes)

has authority to make reasonable rules and regulations regarding quarantine and control of communicable tuberculosis. 1945-47 Op. Att'y Gen. p. 530 (decided under former Code 1933, §§ 88-112 and 88-117).

Phenylketonuria and other inborn errors of metabolism in infants are conditions which the legislature intended to cover under Ga. L. 1964, p. 499, § 1 (see O.C.G.A. § 31-2-9); the State Board of Health (now the Department of Community Health for these purposes) has authority to adopt and promulgate reasonable rules and regulations which will affect prevention, correction, and abatement of such situations and conditions so long as such rules do not violate constitutional or legal guarantees of any person and are within the purview of the powers and duties imposed upon the State Health Department (now the Department of Community Health for these purposes). 1965-66 Op. Att'y Gen. No. 65-81.

Adoption of rules and regulations concerning phenylketonuria would be for the purpose of detection and prevention of a condition which adversely affects the health of citizens of the state, and the State Board of Health (now the Department of Community Health for these purposes) is authorized to adopt such rules and regulations. 1965-66 Op. Att'y Gen. No. 65-81.

Regulation of septic tank construction outside city limits. — Georgia Department of Public Health (now the Department of Community Health for these purposes) is authorized to adopt and enforce rules and regulations establishing standards for construction of septic tanks for housing located outside city limits. 1968 Op. Att'y Gen. No. 68-185.

Power to promulgate rules as to abortions. — Board of Human Resources (now the Department of Community Health for these purposes) has power to promulgate rules and regulations governing abortions when the board finds such regulation appropriate to promote or safeguard the public health; the General Assembly not only gave authority to do this but actually directed that it be done. 1973 Op. Att'y Gen. No. 73-24.

Abortions in facilities under control of department. — Abortions in facilities or institutions under supervision and administrative control of department may be regulated. 1973 Op. Att'y Gen. No. 73-24.

Scope of regulatory power over abortion clinics or other facilities. — With respect to regulation of abortion clinics or other facilities which are not statutorily included in Ga. L. 1964, p. 499, § 1 et seq., or Ga. L. 1970, p. 531, § 1 et seq. (see O.C.G.A. Art. 1, Ch. 7, T. 31, or O.C.G.A. Ch. 22, T. 31), the board (now the Department of Community Health for these purposes) is empowered to regulate these facilities as well as the performance of abortions generally. 1973 Op. Att'y Gen. No. 73-24.

Authority to regulate abortion procedures subject to constitutional developments. — Under its purposely broad statutory authority to safeguard public health, as well as under its statutory authority in specific areas of the public health field, the Board of Human Resources (now the Department of Community Health for these purposes) may regulate, for public health purposes, performance of abortion procedures, limited, however, by constitutional doctrines enunciated by the Supreme Court of the United States. 1973 Op. Att'y Gen. No. 73-24.

Scope of authority regarding Emergency Medical Services standard. — Department of Public Health (now the Department of Community Health for these purposes) was authorized pursuant to its general powers to administer those portions of the Emergency Medical Services standard which pertain to gathering, compilation, and publishing of information regarding emergency medical services and injuries produced by motor vehicle accidents; however, there was no authority for the department to establish training and licensing requirements in various areas covered by Emergency Medical Services standard, nor did there exist any enforcement procedures to assure compliance with any such requirements if established. 1967 Op. Att'y Gen. No. 67-355 (see O.C.G.A. § 31-2-1).

Power to administer Title XIX of Social Security Act. — State Department of Public Health (now the Depart-

ment of Community Health for these purposes) is vested with ample legal authority to administer Title XIX of Social Security Act in Georgia. 1967 Op. Att'y Gen. No. 67-273.

Casualty insurance carried by regulated institutions not subject to department's regulation. — As requirement of carrying adequate casualty insurance is a matter which does not pertain to protection of health and lives of patients in institutions nor to kind and quality of building, equipment, facilities, and institutional services that institutions shall have and use in order to properly care for patients, the Department of Human Resources (now the Department of Community Health for these purposes) cannot legally pass a valid rule requiring institutions to carry adequate casualty insurance. 1967 Op. Att'y Gen. No. 67-177.

Erection of highway signs stating local fluoridated water meets department approval. — As installation of signs on United States and state highways stating that local fluoridated water supply system had been approved by Georgia Department of Public Health (now the Department of Community Health for these purposes) would not in reality affect prevention, correction, and abatement of situations and conditions, which, if not promptly checked, would militate against health of constituents of community, such installation is not within the purview of powers granted to the State Board of Health (now the Department of Community Health for these purposes). 1967 Op. Att'y Gen. No. 67-177.

Department's discretion to withhold state funds from a county. — State Health Department (now Department of Human Resources) has power to withhold at the department's discretion state funds from a county on a variety of grounds, including refusal of county commissioners to approve budget submitted by the county board of health, and can refuse to increase salaries of board of health's staff in line with State Personnel Board rules. 1965-66 Op. Att'y Gen. No. 66-165.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 1, 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 1 et seq.

ALR. — Right of one detained pursuant to quarantine to habeas corpus, 2 A.L.R. 1542.

General delegation of power to guard against spread of contagious disease, 8 A.L.R. 836.

Quarantine of typhoid carrier, 22 A.L.R. 845.

Legality of voluntary nontherapeutic sterilization, 35 A.L.R.3d 1444.

Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons, 62 A.L.R.3d 1237.

Regulation of business of tattooing, 81 A.L.R.3d 1212.

Propriety of state or local government health officer's warrantless search-post-Camara cases, 53 A.L.R.4th 1168.

31-2-2. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Community Health established under Code Section 31-2-3.

(2) "Commissioner" means the commissioner of community health established under Code Section 31-2-6.

(3) "Department" means the Department of Community Health established under Code Section 31-2-4.

(4) "Predecessor agency or unit" means the Department of Community Health, the Division of Public Health of the Department of Human Resources, and the Office of Regulatory Services of the Department of Human Resources.

(5) "State health benefit plan" means the health insurance plan authorized under Article 1 of Chapter 18 of Title 45 and Part 6 of Article 17 of Chapter 2 of Title 20.

(6) "State Personnel Board" means the board established under Article IV, Section III of the Constitution.

History. — Code 1981, § 31-5A-2, enacted by Ga. L. 1999, p. 296, § 1; Code 1981, § 31-2-2, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228.

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-2 as present Code Section 31-2-7.

31-2-3. Board of Community Health reconstituted; powers, functions, and duties; terms of board members; vacancies; removal; chairperson; expenses.

(a) There is reconstituted the Board of Community Health, as of July 1, 2009, which shall establish the general policy to be followed by the Department of Community Health. The powers, functions, and duties of the Board of Community Health as they existed on June 30, 2009, are transferred to the reconstituted Board of Community Health effective July 1, 2009. The board shall consist of nine members appointed by the Governor and confirmed by the Senate.

(b) Board members in office on June 30, 2009, shall serve out the remainder of their respective terms and successors to these board seats shall be appointed in accordance with this Code section. Thereafter, all succeeding appointments shall be for three-year terms from the expiration of the previous term.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board elected by and from the membership of the board who shall be the presiding officer of the board.

(f) The members of the board shall receive a per diem allowance and expenses as shall be set and approved by the Office of Planning and

Budget in conformance with rates and allowances set for members of other state boards.

History. — Code 1981, § 31-5A-3, enacted by Ga. L. 1999, p. 296, § 1; Ga. L. 2000, p. 1706, § 19; Code 1981, § 31-2-3, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228.

Cross references. — Rules and regulations as to sanitary requirements; inspections; unsanitary condition as nuisance, § 43-10-6. Creation of Board of Human Services, creation of position of commissioner of human services, and further provisions regarding general functions and powers of Department of Human Services, T. 49, C. 2.

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-3 as present Code Section 31-2-8.

31-2-4. Department's powers, duties, functions, and responsibilities; divisions; directors; contracts for health benefits.

(a)(1)(A) The Department of Community Health is re-created and established to perform the functions and assume the duties and powers exercised on June 30, 2009, by the Department of Community Health, the Division of Public Health of the Department of Human Resources, and the Office of Regulatory Services of the Department of Human Resources, unless specifically transferred to the Department of Human Services, and such department, division, and office shall be reconstituted as the Department of Community Health effective July 1, 2009. The department shall retain powers and responsibility with respect to the expenditure of any funds appropriated to the department including, without being limited to, funds received by the state pursuant to the settlement of the lawsuit filed by the state against certain tobacco companies, *State of Georgia, et al. v. Philip Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton County Superior Court, December 9, 1998).

(B) On and after July 1, 2011, the functions, duties, and powers of the Department of Community Health relating to the former Division of Public Health of the Department of Human Resources shall be performed and exercised by the Department of Public Health pursuant to Code Section 31-2A-2. No power, function, responsibility, duty, or similar authority held by the Department of Community Health as of June 30, 2009, shall be diminished or lost due to the creation of the Department of Public Health.

(2) The director of the Division of Public Health in office on June 30, 2009, and the director of the Office of Regulatory Services in office on June 30, 2009, shall become directors of the respective division or office which those predecessor agencies or units have become on and after July 1, 2009, and until such time as the commissioner appoints other directors of such divisions or units. The position of director of the Division of Public Health shall be abolished effective July 1, 2011.

(b) Reserved.

(c) The Board of Regents of the University System of Georgia is authorized to contract with the department for health benefits for members, employees, and retirees of the board of regents and the dependents of such members, employees, and retirees and for the administration of such health benefits. The department is also authorized to contract with the board of regents for such purposes.

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

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

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

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

(4) Is authorized to appoint a health care work force policy advisory committee to oversee and coordinate work force planning activities;

(5) Is authorized to solicit and accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out its functions and purposes;

(6) Is authorized to award grants, as funds are available, to hospital authorities, hospitals, and medical-legal partnerships for public health purposes, pursuant to Code Sections 31-7-94 and 31-7-94.1 and paragraph (11) of this subsection;

(7) Shall make provision for meeting the cost of hospital care of persons eligible for public assistance to the extent that federal matching funds are available for such expenditures for hospital care. To accomplish this purpose, the department is authorized to pay from funds appropriated for such purposes the amount required under this paragraph into a trust fund account which shall be available for disbursement for the cost of hospital care of public assistance

recipients. The commissioner, subject to the approval of the Office of Planning and Budget, on the basis of the funds appropriated in any year, shall estimate the scope of hospital care available to public assistance recipients and the approximate per capita cost of such care. Monthly payments into the trust fund for hospital care shall be made on behalf of each public assistance recipient and such payments shall be deemed encumbered for assistance payable. Ledger accounts reflecting payments into and out of the hospital care fund shall be maintained for each of the categories of public assistance established under Code Section 49-4-3. The balance of state funds in such trust fund for the payment of hospital costs in an amount not to exceed the amount of federal funds held in the trust fund by the department available for expenditure under this paragraph shall be deemed encumbered and held in trust for the payment of the costs of hospital care and shall be rebudgeted for this purpose on each quarterly budget required under the laws governing the expenditure of state funds. The state auditor shall audit the funds in the trust fund established under this paragraph in the same manner that any other funds disbursed by the department are audited;

(8) Shall classify and license community living arrangements in accordance with the rules and regulations promulgated by the department for the licensing and enforcement of licensing requirements for persons whose services are financially supported, in whole or in part, by funds authorized through the Department of Behavioral Health and Developmental Disabilities. To be eligible for licensing as a community living arrangement, the residence and services provided must be integrated within the local community. All community living arrangements licensed by the department shall be subject to the provisions of Code Sections 31-2-8 and 31-7-2.2. No person, business entity, corporation, or association, whether operated for profit or not for profit, may operate a community living arrangement without first obtaining a license or provisional license from the department. A license issued pursuant to this paragraph is not assignable or transferable. As used in this paragraph, the term "community living arrangement" means any residence, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food, one or more personal services, support, care, or treatment exclusively for two or more persons who are not related to the owner or administrator of the residence by blood or marriage;

(9) Shall establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for licensure activities for institutions and other health care related entities required to be licensed, permitted, registered, or commissioned by the department pursuant to Chapter 7, 13, 23, or 44 of this

title, Chapter 5 of Title 26, paragraph (8) of this subsection, or Article 7 of Chapter 6 of Title 49. Such schedules shall be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such licensure activities. Such fees may be annually adjusted by the department but shall not be increased by more than the annual rate of inflation as measured by the Consumer Price Index, as reported by the Bureau of Labor Statistics of the United States Department of Labor. All fees paid thereunder shall be paid into the general funds of the State of Georgia. It is the intent of the General Assembly that the proceeds from all fees imposed pursuant to this paragraph be used to support and improve the quality of licensing services provided by the department;

(10)(A) May accept the certification or accreditation of an entity or program by a certification or accreditation body, in accordance with specific standards, as evidence of compliance by the entity or program with the substantially equivalent departmental requirements for issuance or renewal of a permit or provisional permit, provided that such certification or accreditation is established prior to the issuance or renewal of such permits. The department may not require an additional departmental inspection of any entity or program whose certification or accreditation has been accepted by the department, except to the extent that such specific standards are less rigorous or less comprehensive than departmental requirements. Nothing in this Code section shall prohibit either departmental inspections for violations of such standards or requirements or the revocation of or refusal to issue or renew permits, as authorized by applicable law, or for violation of any other applicable law or regulation pursuant thereto.

(B) For purposes of this paragraph, the term:

(i) "Entity or program" means an agency, center, facility, institution, community living arrangement, drug abuse treatment and education program, or entity subject to regulation by the department under Chapters 7, 13, 22, 23, and 44 of this title; Chapter 5 of Title 26; paragraph (8) of this subsection; and Article 7 of Chapter 6 of Title 49.

(ii) "Permit" means any license, permit, registration, or commission issued by the department pursuant to the provisions of the law cited in division (i) of this subparagraph;

(11)(A) Is authorized to approve medical-legal partnerships that comply with standards and guidelines established for such programs for purposes of determining eligibility for grants. The department shall seek input from legal services organizations,

community health advocacy organizations, hospitals, diagnostic and treatment centers, and other primary and specialty health care providers in establishing such standards and guidelines.

(B) For purposes of this paragraph, the term "medical-legal partnership" means a program conducted or established by a nonprofit entity through a collaboration pursuant to a written agreement between one or more medical service providers and one or more legal services programs, including those based within a law school, to provide legal services without charge to assist income-eligible individuals and their families in resolving legal matters or other needs that have an impact on the health of such individuals and families. Written agreements may include a memorandum of understanding or other agreement relating to the operations of the partnership and encompassing the rights and responsibilities of each party thereto. The medical service provider or providers may provide referrals of its patients to the legal services program or programs on matters that may potentially impact the health, health care, or the health care costs of a patient.

(C) A medical-legal partnership that complies with the standards and guidelines established pursuant to this paragraph and has demonstrated the ability and experience to provide high quality patient centered legal services regarding legal matters or other needs that have an impact on the health of individuals and families shall be approved by the department.

(D) This paragraph shall not be construed to require any medical-legal partnership or similar entity to seek or attain approval pursuant to this paragraph in order to operate;

(12) In cooperation with the Department of Corrections and the State Board of Pardons and Paroles, shall establish and implement a Medicaid eligibility determination procedure so that inmates being considered for parole who are eligible for long-term care services may apply for Medicaid; and

(13) Shall request federal approval for and facilitate the application of certificates of need for facilities capable of providing long-term care services, with Medicaid as the primary funding source, to inmates who are eligible for such services and funding upon his or her release from a public institution, as such term is defined in Code Section 49-4-31.

History. — Code 1981, § 31-5A-4, enacted by Ga. L. 1999, p. 296, § 1; Ga. L. 2001, p. 1240, § 1; Ga. L. 2002, p. 1132, § 1; Ga. L. 2002, p. 1324, § 1-4; Code 1981 § 31-2-4, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 1014, § 1/HB 994; Ga. L. 2011, p. 705, § 4-2/HB 214; Ga. L. 2014, p. 397, § 1/SB 352; Ga. L. 2018, p. 550, § 3-2/SB 407; Ga. L. 2019, p. 1056, § 31/SB 52.

The 2018 amendment, effective July

1, 2018, deleted "and" at the end of division (d)(10)(B)(ii), substituted "; and" for the period at the end of subparagraph (d)(11)(D), and added paragraphs (d)(12) and (d)(13).

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, deleted "and" at the end of subparagraph (d)(11)(D).

Cross references. — Georgia Commission on Women, T. 50, C. 12, A. 5.

Code Commission notes. — Ga. L. 2009, p. 745, § 2(14)/SB 97, effective July 1, 2009, purported to substitute "State Personnel Administration" for "State Merit System of Personnel Administration" in former Code Section 31-5A-4, but that amendment was not given effect due to the redesignation and amendment by Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009.

Pursuant to Code Section 28-9-5, in 2009, "work force" was substituted for "workforce" in paragraph (d)(2) and "of" was deleted preceding "the amount required" in the second sentence of paragraph (d)(7).

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-4 as present Code Section 31-2-9.

Administrative rules and regulations. — Hearings and petitions for rule-making, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Administration, Chapter 290-1-1.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 45 (2018).

JUDICIAL DECISIONS

Cited in Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Live Oak Consulting, Inc. v. Dep't of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

31-2-5. Transfer of personnel and functions; conforming to federal standards of personnel administration; existing procedures, regulations, and agreements; rules adoption and implementation.

(a) All persons employed in a predecessor agency or unit on June 30, 2009, shall, on July 1, 2009, become employees of the department. Such employees shall be subject to the employment practices and policies of the department 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 who are transferred to the department shall retain all existing rights under such rules. 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.

(b)(1) The department shall conform to federal standards for a merit system of personnel administration in any respects necessary for

receiving federal grants, and the board is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(2) The department is authorized to employ, on a full-time or part-time basis, such medical, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the department under this chapter. The department is also authorized to contract for such professional services as may be necessary.

(3) Classified employees of the department under this chapter shall in all instances be employed and dismissed in accordance with rules of the State Personnel Board.

(4) All personnel of the department are authorized to be members of the Employees' Retirement System of Georgia as provided in Chapter 2 of Title 47. All rights, credits, and funds in that retirement system which are possessed by state personnel transferred by provisions of this chapter to the department, or otherwise had by persons at the time of employment with the department, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the department.

(c) The department shall succeed to all rules, regulations, policies, procedures, and administrative orders of the predecessor agency or unit which were 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 by this chapter. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law. Rules of the department shall be adopted, promulgated, and implemented as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that only rules promulgated pursuant to Chapter 6 of this title shall be subject to the provisions of Code Section 31-6-21.1.

(d) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by any predecessor agency or unit and which pertain to the functions transferred to the department by this chapter 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. In all such instances, the Department of Community Health shall be substituted for the predecessor agency or unit, and the Department of Community Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(e) On July 1, 2009, the department shall receive custody of the state owned real property in the custody of the predecessor agency or unit on June 30, 2009, and which pertains to the functions transferred to the department by this chapter.

History. — Code 1981, § 31-5A-5, enacted by Ga. L. 1999, p. 296, § 1; Ga. L. 2001, p. 1240, § 2; Code 1981, § 31-2-5, as redesignated by Ga. L. 2009, p. 453 § 1-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-33/HB 642.

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-5 as present Code Section 31-2-10.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

31-2-6. Commissioner of community health created; creation of divisions; allocation of functions.

(a) There is created the position of commissioner of community health. The commissioner shall be the chief administrative officer of the department and shall be subject to appointment and removal by the Governor. Subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department.

(b) There shall be created in the department such divisions as may be found necessary for its effective operation. The commissioner shall have the power to allocate and reallocate functions among the divisions within the department.

History. — Code 1981, § 31-5A-6, enacted by Ga. L. 1999, p. 296, § 1; Code 1981, § 31-2-6, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2011, p. 705, § 4-3/HB 214; Ga. L. 2011, p. 752, § 31/HB 142.

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Code Section 31-2-6 as present Code Section 31-2-11.

Ga. L. 2011, p. 752, § 54(e)/HB 142, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2011 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to subsection (b) of this Code section by Ga. L. 2011, p. 752, § 31(1)/HB 142, was not given effect.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article, "Health: Department of Public Health," see 28 Ga. St. U. L. Rev. 147 (2011).

31-2-7. Rules and regulations; variances and waivers to rules and regulations establishing licensure standards for facilities; exemption of classes of facilities from regulation.

(a) The department is authorized to adopt and promulgate rules and regulations to effect prevention, abatement, and correction of situations and conditions which, if not promptly checked, would militate against the health of the people of this state. Such rules and regulations shall be adapted to the purposes intended, within the purview of the powers and duties imposed upon the department by this chapter, and supersede conflicting rules, regulations, and orders adopted pursuant to the authority of Chapter 3 of this title.

(b) The department upon application or petition may grant variances and waivers to specific rules and regulations which establish standards for facilities or entities regulated by the department as follows:

(1) The department may authorize departure from the literal requirements of a rule or regulation by granting a variance upon a showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application would cause undue hardship. The applicant or petitioner additionally must show that adequate standards affording protection of health, safety, and care exist and will be met in lieu of the exact requirements of the rule or regulation in question;

(2) The department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is met through equivalent standards affording equivalent protection of health, safety, and care;

(3) The department may grant waivers and variances to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation which is the subject of the request are met and that the innovative approach has the potential to improve service delivery;

(4) Waivers or variances which affect an entire class of facilities may only be approved by the Board of Community Health and shall be for a time certain, as determined by the board. A notice of the proposed variance or waiver affecting an entire class of facilities shall be made in accordance with the requirements for notice of rule making in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; or

(5) Variances or waivers which affect only one facility in a class may be approved or denied by the department and shall be for a time certain, as determined by the department. The department shall maintain a record of such action and shall make this information available to the board and all other persons who request it.

This subsection shall not apply to rules adopted by the department pursuant to Code Section 31-6-21.1.

(c) The department may exempt classes of facilities from regulation when, in the department's judgment, regulation would not permit the purpose intended or the class of facilities is subject to similar requirements under other rules and regulations. Such exemptions shall be provided in rules and regulations promulgated by the board.

History. — Code 1933, § 88-110, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-2-4; Ga. L. 1982, p. 1592, §§ 1, 2; Ga. L. 1990, p. 791, § 1; Ga. L. 2003, p. 569, § 1; Code 1981, § 31-2-9, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2-7, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214.

Editor's notes. — Ga. L. 2009, p. 453, § 1-1, effective July 1, 2009, redesignated former Code Section 31-2-7 as present Code Section 31-2-12.

Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-7 as present Code Section 31-2A-8.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, §§ 88-112 and 88-117, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Authority to regulate, quarantine, and control tuberculosis. — Department of Human Resources (now the Department of Community Health for these purposes) has authority to make reasonable rules and regulations regarding quarantine and control of communicable tuberculosis. 1945-47 Op. Att'y Gen. p. 530 (decided under former Code 1933, §§ 88-112 and 88-117).

Power to promulgate rules as to abortions. — Board of Human Resources (now the Department of Community Health for these purposes) has power to promulgate rules and regulations governing abortions when the board finds such regulation appropriate to promote or safeguard the public health; the General Assembly not only gave authority to do this but actually directed that it be done. 1973 Op. Att'y Gen. No. 73-24.

Phenylketonuria and other inborn errors of metabolism in infants are conditions which the legislature intended to cover; the State Board of Health (now the Department of Community Health for these purposes) has authority to adopt and promulgate reasonable rules and regulations which will affect prevention, correction, and abatement of such situations and conditions so long as such rules do not violate constitutional or legal guarantees of any person and are within the purview of the powers and duties imposed upon the State Health Department (now the Department of Community Health for these purposes). 1965-66 Op. Att'y Gen. No. 65-81.

Authority to adopt rules and regulations concerning phenylketonuria. — Adoption of rules and regulations concerning phenylketonuria would be for purpose of detection and prevention of condition which adversely affects health of citizens of the state, and State Board of

Health (now the Department of Community Health for these purposes) is authorized to adopt such rules and regulations. 1965-66 Op. Att'y Gen. No. 65-81.

Regulation of septic tank construction outside city limits. — Georgia Department of Public Health (now the Department of Community Health for these purposes) is authorized to adopt and enforce rules and regulations establishing standards for construction of septic tanks for housing located outside city limits. 1968 Op. Att'y Gen. No. 68-185.

Authority to require licensees under Chapter 13 to notify employees of radiation. — Ample statutory authority exists for Department of Public Health (now the Department of Community Health for these purposes) to require persons or firms licensed under Ga. L. 1964, p. 499 to notify an employee in writing when the employee has received radiation exposure in excess of prescribed limits. 1968 Op. Att'y Gen. No. 68-299.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 1 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 5.

31-2-8. Actions against certain applicants or licensees.

(a) This Code section shall be applicable to any agency, center, facility, institution, community living arrangement, drug abuse treatment and education program, or entity subject to regulation by the department under Chapters 7, 13, 22, 23, and 44 of this title; Chapter 5 of Title 26; paragraph (8) of subsection (d) of Code Section 31-2-4; and Article 7 of Chapter 6 of Title 49. For purposes of this Code section, the term "license" shall be used to refer to any license, permit, registration, or commission issued by the department pursuant to the provisions of the law cited in this subsection.

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

(1) Knowingly made any false statement of material information in connection with the application for a license, or in statements made or on documents submitted to the department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the agency, facility, institution, or entity;

(2) Failed or refused to provide the department with access to the premises subject to regulation or information pertinent to the initial or continued licensing of the agency, facility, institution, or entity;

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

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

(c) When the department finds that any applicant or licensee has violated any provision of subsection (b) of this Code section or laws,

rules, regulations, or formal orders related to the initial or continued licensing of the agency, facility, institution, or entity, the department, subject to notice and opportunity for hearing, may take any of the following actions:

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

(2) Administer a public reprimand;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

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

(5) Revoke any license;

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

(7) Limit or restrict any license as the department deems necessary for the protection of the public, including, but not limited to, restricting some or all services of or admissions into an agency, facility, institution, or entity for a time certain.

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

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

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

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

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

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

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

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

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

(g) The department shall have the authority to make public or private investigations or examinations inside or outside of this state to determine whether the provisions of this Code section or any other law, rule, regulation, or formal order relating to the licensing of any agency,

facility, institution, or entity has been violated. Such investigations may be initiated at any time, in the discretion of the department, and may continue during the pendency of any action initiated by the department pursuant to subsection (c) of this Code section.

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

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

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

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

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

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

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

History. — Code 1981, § 31-2-6, enacted by Ga. L. 1991, p. 341, § 1; Ga. L. 1993, p. 1290, § 1; Ga. L. 1994, p. 1856, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 526, § 2; Ga. L. 2001, p. 1230, § 1; Ga. L. 2003, p. 298, § 2; Ga. L. 2003, p. 558, § 1; Code 1981, § 31-2-11, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2-8, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "42 U.S.C. Section 1396r(h)(2)(A)" was substituted for "42 U.S.C. Section 1396r(h)(2)(a)" in paragraph (c)(6).

Pursuant to Code Section 28-9-5, in 2000, "44" was substituted for "43" in subsection (a).

Pursuant to Code Section 28-9-5, in 2006, the substitution of "23, and 44" for "and 23" was retained in subsection (a) due to the elimination of the repeal of T. 31, Ch. 44, in accordance with Ga. L. 2005, p. 1194, § 1.

Editor's notes. — Ga. L. 2003, p. 298, § 3(b), not codified by the General Assembly, provided that the first 2003 amendment became effective July 1 of the fiscal year following the year in which funds are specifically appropriated for the purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2007 session of the General Assembly, and thus the first 2003 amendment became effective July 1, 2008.

Ga. L. 2005, p. 1194, § 1/SB 48, not codified by the General Assembly, provides: "(b) The following provision of law is repealed:

Section 4 of an Act amending Title 31 of the Official Code of Georgia Annotated, relating to health, approved April 20, 2000 (Ga. L. 2000, p. 526), which now repealed section would have provided for a future repeal or sunset of certain provisions relating to renal dialysis facilities." This 2005 law effectively repeals the automatic repeal provision of Ga. L. 2000, p. 526.

Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-8 as present Code Section 31-2A-9.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 158 (2001).

31-2-9. (Repealed effective October 1, 2019) Records check requirement for certain health care facilities; definitions; use of information gathered in investigation; penalties for unauthorized release or disclosure; rules and regulations; retention of fingerprints.

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

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of the following offenses:

(A) A violation of Code Section 16-5-1;

(B) A violation of Code Section 16-5-21;

(C) A violation of Code Section 16-5-24;

(D) A violation of Code Section 16-5-70;

(E) A violation of Article 8 of Chapter 5 of Title 16;

(F) A violation of Code Section 16-6-1;

(G) A violation of Code Section 16-6-2;

(H) A violation of Code Section 16-6-4;

(I) A violation of Code Section 16-6-5;

(J) A violation of Code Section 16-6-5.1;

(K) A violation of Code Section 16-6-22.2;

(L) A violation of Code Section 16-8-41;

(M) A felony violation of Code Section 31-7-12.1;

(N) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere; or

(O) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Facility" means a:

(A) Personal care home required to be licensed or permitted under Code Section 31-7-12;

(B) Assisted living community required to be licensed under Code Section 31-7-12.2;

(C) Private home care provider required to be licensed under Article 13 of Chapter 7 of this title; or

(D) Community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "License" means the document issued by the department to authorize the facility to operate.

(8) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility providing care to persons under the license of the facility in this state and who:

(A) Purports to or exercises authority of the owner in a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access to persons receiving care at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(9) "Records check application" means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department's determination regarding an owner's criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the

conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) Neither the GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of Title 49 or Article 11 of Chapter 7 of this title.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section.

(g) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention.

History. — Code 1981, § 31-2-14, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Ga. L. 2010, p. 878, § 31/HB 1387; Ga. L. 2011, p. 227, § 10/SB 178; Code 1981, § 31-2-9, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214; Ga. L. 2012, p. 351, § 2/HB 1110; Ga. L. 2013, p. 524, § 3-2/HB 78; Ga. L. 2014, p. 444, § 2-8/HB 271; Ga. L. 2015, p. 598, § 1-8/HB 72; Ga. L. 2018, p. 507, § 2-6/SB 336.

The 2018 amendment, effective July 1, 2018, added subsection (g).

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-9 as present Code Section 31-2-7.

Ga. L. 2018, p. 611, § 1-1/SB 406 provides for the repeal of this Code section effective October 1, 2019.

Law reviews. — For article on the 2011 amendment of this Code section, see

28 Ga. St. U. L. Rev. 147 (2011). For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 63 (2015). For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 119 (2018).

31-2-10. Information and comparisons regarding state-wide cost and quality of health care.

Performance and outcome data and pricing data for selected medical conditions, surgeries, and procedures in hospitals, ambulatory surgery centers, nursing homes, and rehabilitation centers in Georgia shall be reported to the Department of Community Health on a regular basis. The department shall provide for the establishment of a website for the purpose of providing consumers information on the cost and quality of health care in Georgia to include but not be limited to cost comparison information on certain prescription drugs at different pharmacies in Georgia, hospitals, ambulatory surgery centers, nursing homes, and rehabilitation centers and facilities in Georgia.

History. — Code 1981, § 31-5A-7, enacted by Ga. L. 2007, p. 133, § 19/HB 24; Ga. L. 2008, p. 324, § 31/SB 455; Code 1981, § 31-2-15, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2-10, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214.

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

"(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care."

Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-10 as present Code Section 31-2A-10.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For

article, "Health: Department of Public Health," see 28 Ga. St. U. L. Rev. 147 (2011).

31-2-11. Biopharmaceuticals; expedited review for Georgia based companies.

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

(1) "Biopharmaceutical" means the application of biotechnology to the development of pharmaceutical products that improve human health.

(2) "Biotechnology" means any technological application that uses biological systems, living organisms, or derivatives thereof to make or modify products or processes for specific use.

(3) "Georgia biotechnology, biopharmaceutical, or pharmaceutical company" means a biotechnology, biopharmaceutical, or pharmaceutical company, or a corporate division of such a company:

(A) The principal activity of which is research or development, manufacturing, or sales of health care products in this state; and

(B)(i) That had a total economic impact in this state of not less than $60 million during the most recent taxable year;

(ii) That has total capital investment in this state of not less than $100 million; and

(iii) That employs at least 200 Georgia residents.

Such term shall not mean a warehouse used to store health care products.

(4) "Pharmaceutical" means of or pertaining to the knowledge or art of pharmacy or to the art of preparing medicines according to the rules or formulas of pharmacy.

(5) "Research and development" means experimental or laboratory activity for the ultimate purpose of developing new products, improving existing products, developing new uses for existing products, or developing or improving methods for producing products.

(6) "Total economic impact" means the sum of total employee payroll, investment in external research and development, the value of prescription drug samples provided to physicians, and the value of prescription drugs donated to low-income individuals through patient assistance programs.

(b) The Department of Community Health shall expedite the review of any prescription drug or other health care product having an

approved indication from the federal Food and Drug Administration for use with humans and that is produced by a Georgia biotechnology, biopharmaceutical, or pharmaceutical company for any health care coverage provided under the state health benefit plan under Article 1 of Chapter 18 of Title 45, the medical assistance program under Article 7 of Chapter 4 of Title 49, the PeachCare for Kids Program under Article 13 of Chapter 5 of Title 49, or any other health benefit plan or policy administered by or on behalf of the state. Such review shall take place as soon as practicable following the date that such drug or health care product becomes available for public consumption. This subsection shall apply to all contracts entered into or renewed by the Department of Community Health on or after July 1, 2008.

(c) In complying with the provisions of this Code section, the department shall consider the nexus of a biotechnology, biopharmaceutical, or pharmaceutical company in relation to the state along with the financial impact on the state, the quality of the product, and other relevant factors.

History. — Code 1981, § 31-5A-8, enacted by Ga. L. 2008, p. 121, § 1/HB 180; Ga. L. 2009, p. 8, § 31/SB46; Code 1981, § 31-2-16, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2-11, as redesignated by Ga. L. 2011, p. 705, § 4-4/HB 214; Ga. L. 2012, p. 775, § 31/HB 942.

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-11 as present Code Section 31-2-8.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-2-12. Pilot program to provide coverage for bariatric surgical procedures for treatment of obesity and related conditions; definitions; eligibility; requirements; evaluation report on two-year pilot program.

Reserved. Repealed by Ga. L. 2014, p. 172, § 1/HB 511, effective December 31, 2018.

Editor's notes. — This Code section was based on Code 1981, § 31-2-12, enacted by Ga. L. 2014, p. 172, § 1/HB 511. Ga. L. 2019, p. 1056, § 31(3)/SB 52, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, designated this Code section as reserved.

31-2-13. Inspection warrant.

(a) As used in this Code section, the term "commissioner" means the commissioner of community health or his or her designee.

(b) Nothing in this Code section shall be construed to require an inspection warrant when a warrantless inspection is authorized by law or pursuant to a rule or regulation enacted pursuant to this title.

(c) An inspection warrant is an order, in writing, signed by a judicial officer, directed to the commissioner or any person authorized to make inspections for such commissioner and commanding him or her to conduct an inspection required or authorized by:

(1) This title;

(2) Any other law administered by the commissioner;

(3) Rules or regulations promulgated pursuant to this title; or

(4) Rules or regulations promulgated pursuant to any other law administered by the commissioner.

(d) The commissioner or any person authorized to make inspections for such commissioner shall make application for an inspection warrant to a person who is a judicial officer within the meaning of Code Section 17-5-21.

(e)(1) An inspection warrant shall be issued only upon cause and when supported by an affidavit which:

(A) Particularly describes the place, dwelling, structure, premises, or vehicle to be inspected;

(B) Particularly describes the purpose for which the inspection is to be made; and

(C) Contains either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent.

(2) Cause to support the issuance of an inspection warrant shall be deemed to exist if:

(A) Reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle; or

(B) There is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

(f) An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfaction that such extension or renewal is in the public interest. Such inspection warrant shall be executed and returned to the judicial officer by whom it was issued within the time specified in such warrant or within the extended or renewed time. After the expiration of such time, the inspection warrant, unless executed, shall be void.

(g) An inspection pursuant to an inspection warrant:

(1) May be executed at any time as deemed appropriate by the individual executing such warrant but whenever possible shall be made at any time during operating or regular business hours;

(2) Should not be performed in the absence of an owner or occupant of the particular place, dwelling, structure, premises, or vehicle being inspected unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of the law, rule, or regulation being enforced; and

(3) Shall not be made by means of forcible entry, except that the judicial officer may expressly authorize a forcible entry when facts are shown:

(A) Which are sufficient to create a reasonable suspicion of a violation of this title or any other law, rule, or regulation administered by the commissioner or the department, which, if such violation existed, would be an immediate threat to health or safety; or

(B) Establishing that a reasonable attempt to serve a previous inspection warrant has been unsuccessful.

(h) When prior consent for an inspection has been sought and refused and an investigation warrant has been issued, an inspection warrant may be executed without further notice to the owner or occupant of the particular place, dwelling, structure, premises, or vehicle being inspected.

(i) It shall be unlawful for any owner, operator, or employee of the particular place, dwelling, structure, premises, or vehicle being inspected to refuse to allow an inspection pursuant to an inspection warrant issued as provided in this Code section. Any person violating this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 31-2-13, enacted by Ga. L. 2015, p. 598, § 1-9/HB 72.

Law reviews. — For article on the 2015 enactment of this Code section, see 32 Ga. St. U. L. Rev. 63 (2015).

31-2-14. Nurse aide registry; complaint filing; public access.

(a) The nurse aide registry established and maintained by the department as required by 42 C.F.R. Section 483.156 shall include, in addition to nurse aides who work in licensed facilities, nurse aides who provide services in this state in temporary or permanent private residences.

(b) The registry shall provide a method for an inquiry or complaint to be submitted by the public regarding a nurse aide providing services in

private residences. Any such inquiries or complaints shall be handled in the same manner as required for nurse aides who work in licensed facilities.

(c) The department shall ensure that the registry is posted or a link to it is provided in a prominent location on the department's website.

History. — Code 1981, § 31-2-14, enacted by Ga. L. 2016, p. 201, § 1/HB 1037.

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-14 as present Code Section 31-2-9.

31-2-15. Streamlining and expediting credentialing and billing processes.

(a) As used in this Code section, the term "state medical plan" means the state health benefit plan under Article 1 of Chapter 18 of Title 45, the medical assistance program under Article 7 of Chapter 4 of Title 49, the PeachCare for Kids Program under Article 13 of Chapter 5 of Title 49, and any other health benefit plan or policy administered by or on behalf of the state.

(b) The department shall take all reasonable steps to streamline and expedite the credentialing and billing processes for state medical plans, including but not limited to examining the potential for a uniform billing platform or portal; examining the potential for the standardization of billing codes among providers; posting billing criteria and codes on the department's website; enabling a dual track process for credentialing and contract negotiation for new providers; allowing billing for telehealth delivered care and allowing payment for both the on-site provider and off-site provider; and maximizing billing for multiple specialists and multiple encounters with one provider at a single visit in safety net settings, critical access settings, federally qualified health centers, and general practitioner settings.

(c) This Code section shall not be construed to require the department to act in violation of any federal law, rule, or regulation.

History. — Code 1981, § 31-2-15, enacted by Ga. L. 2018, p. 132, § 3B/HB 769.

Effective date. — This Code section became effective July 1, 2018.

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-15 as present Code Section 31-2-10.

Ga. L. 2018, p. 132, § 8(c)/HB 769, not codified by the General Assembly, provides: "(c)(1) Section 3A of this Act shall become effective on July 1, 2018, only if SB 357 or another Act creating the Health Coordination and Innovation Council is enacted by the General Assembly and becomes law in 2018, in which event Section 3B of this Act shall not become effective and shall stand repealed on July 1, 2018.

"(2) If SB 357 or another Act creating the Health Coordination and Innovation Council does not become law in 2018, then Section 3B of this Act shall become effective on July 1, 2018, and Section 3A of this Act shall not become effective and shall stand repealed on July 1, 2018." SB 357 was passed by the General Assembly but was vetoed by the Governor on May 8, 2018, and did not become law.

31-2-16. Rural Health System Innovation Center created; purposes and duties; reporting.

(a) There is created and established the Rural Health System Innovation Center within the department's State Office of Rural Health to serve as a research organization that utilizes Georgia's academic, public health policy, data, and workforce resources to develop new approaches for financing and delivering health care in this state. The department shall release a request for proposals, no later than December 1, 2018, to identify a postsecondary institution within the state in which the center shall be located. Such postsecondary institution shall have a health program or college that focuses on rural and underserved areas of the state. The department shall reissue a request for proposal after seven years and every five years thereafter.

(b) The purposes and duties of the Rural Health System Innovation Center shall be to:

(1) Develop a research program to identify and analyze significant health system problems and to propose solutions and best practices to such problems;

(2) Focus on access improvement to affordable health care in rural Georgia;

(3) Synthesize existing studies, reports, and data to provide a baseline assessment and set measurable goals as part of Georgia's strategic reform plan;

(4) Incorporate recommendations from state reform efforts to build the state's reform plan;

(5) Evaluate and make recommendations for the fiscal stabilization of rural health care delivery systems and ensure their design is appropriate for the community served by such systems;

(6) Provide technical assistance and expertise to address immediate needs of rural communities;

(7) Develop state-wide pilot projects, identify innovative approaches to funding these projects, and track and evaluate the projects' performance;

(8) Connect to a central health data repository for collection and dissemination of health data and serve as a clearinghouse for data integration and analysis;

(9) Produce studies that address cost-drivers and duplication to eliminate barriers to health care and reduce costs;

(10) Monitor current and future health care workforce needs and advise the Georgia Board of Health Care Workforce of significant changes in need or demand;

(11) Participate in other state-wide health initiatives or programs affecting the entire state and nonrural areas of Georgia. The center shall cooperate with other health related state entities, including but not limited to the department, the Department of Public Health, the Department of Human Services, the Department of Behavioral Health and Developmental Disabilities, and the Office of Health Strategy and Coordination and all other health related state boards, commissions, committees, councils, offices, and other entities on state-wide health initiatives or programs; and

(12)(A) In conjunction with the State Office of Rural Health, develop standards for education curriculum no later than January 1, 2019, which will be provided to leadership, including, but not limited to, hospital executive leadership, hospital board members, and hospital authority members of rural hospital organizations, as defined in Code Section 31-8-9.1, and to other rural health care facilities upon request. The curriculum shall include, at a minimum, legal, fiduciary, grant management, planning, and compliance training. The center shall approve education programs by any entity that the center determines to meet such standards.

(B) The chief executive officer, the chief financial officer, every board member, and every hospital authority member, if operated by a hospital authority pursuant to Article 4 of Chapter 7 of this title, of a rural hospital organization as defined in Code Section 31-8-9.1, shall be required to complete an education program approved by the center pursuant to this paragraph no later than December 31, 2020, or within 12 months of initial hiring or appointment and every two years thereafter.

(C) Any board member or hospital authority member who does not complete the education program as required pursuant to subparagraph (B) of this paragraph shall be ineligible to continue serving as a board member or hospital authority member. The center may provide for notice and a grace period for board members and hospital authority members to come into compliance with such requirement. A vacancy created pursuant to this subparagraph on the board of a hospital authority shall be filled in the same manner as provided in subsection (c) of Code Section 31-7-72 for the initial appointment of members of the hospital authority.

(D) At the discretion of the department, any rural hospital organization that fails to ensure compliance by the chief executive officer, the chief financial officer, every board member, and every hospital authority member with the education requirements contained in subparagraph (B) of this paragraph shall be deemed:

(i) Ineligible to receive contributions from the tax credit provided pursuant to Code Section 48-7-29.20;

(ii) Ineligible to participate in any grant programs offered by the state; and

(iii) Subject to a fine of $10,000.00 per violation.

(c) The center is authorized to make application for and receive funds and grants as may be necessary to, and utilize and disburse such funds for such purposes and projects as will, carry out the purposes of the center.

(d) The center is authorized to enter into contracts, agreements, and arrangements with colleges and universities to advance the work of the center. The center shall also be authorized to enter into contracts and agreements with the federal government; political subdivisions of this state; private firms, foundations, or institutions; or individuals for specific research on any aspects of rural health care as may be related to the purposes of this Code section. The center shall contract with a school of medicine in this state to provide clinical health care expertise to the center.

(e) On or before October 1 of each year, the center shall file a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Health and Human Services, the Senate Health and Human Services Committee, the House Committee on Appropriations, the Senate Appropriations Committee, and the Office of Health Strategy and Coordination. The report shall include a summary of the activities of the center during the calendar year, including but not limited to the total number of hospital executives, hospital board members, and hospital authority members who received training from the center; the status of rural health care in the state; and recommendations, if any, for legislation as may be necessary to improve the programs and services offered by the center.

History. — Code 1981, § 31-2-16, enacted by Ga. L. 2018, p. 132, § 3B/HB 769; Ga. L. 2019, p. 148, § 2-4/HB 186; Ga. L. 2019, p. 224, § 2/SB 207; Ga. L. 2019, p. 1056, § 31/SB 52.

Effective date. — This Code section became effective July 1, 2018.

The 2019 amendments. — The first 2019 amendment, effective July 1, 2019, deleted commas following "including" and "limited to" in the middle of the second sentences of paragraph (b)(11) and subsection (e); in paragraph (b)(11), in the second sentence, deleted "and" following "Department of Human Services" and inserted "and the Office of Health Strategy and Coordination" in the middle; and, in the first sentence of subsection (e), deleted "and" preceding "the Senate Appropriations Committee", and added ", and the Office of Health Strategy and Coordination" at the end. The second 2019 amendment, effective July 1, 2019, substituted "Georgia Board of Health Care Workforce" for "Georgia Board for Physician Workforce" in paragraph (b)(10). The third 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (b)(12)(B).

Editor's notes. — Ga. L. 2011, p. 705, § 4-4/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-16 as present Code Section 31-2-11.

Ga. L. 2018, p. 132, § 8(c)/HB 769, not codified by the General Assembly, provided: "(c)(1) Section 3A of this Act shall become effective on July 1, 2018, only if SB 357 or another Act creating the Health Coordination and Innovation Council is enacted by the General Assembly and becomes law in 2018, in which event Section 3B of this Act shall not become effective and shall stand repealed on July 1, 2018.

"(2) If SB 357 or another Act creating the Health Coordination and Innovation Council does not become law in 2018, then Section 3B of this Act shall become effective on July 1, 2018, and Section 3A of this Act shall not become effective and shall stand repealed on July 1, 2018." SB 357 was passed by the General Assembly but was vetoed by the Governor on May 8, 2018, and did not become law.

Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

31-2-17. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-17 as present Code Section 31-2A-13.

31-2-17.1. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-17.1 as present Code Section 31-2A-14.

31-2-18. Redesignated.

Editor's notes. — Ga. L. 2011, p. 705, § 3-2/HB 214, effective July 1, 2011, redesignated former Code Section 31-2-18 as present Code Section 31-2A-15.

31-2-19. Advisory Council for Public Health; members; meetings.

Repealed by Ga. L. 2011, p. 705, § 4-5/HB 214, effective July 1, 2011.

Editor's notes. — This Code section was based on Code 1981, § 31-2-19, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228.

Law reviews. — For article on the 2011 repeal of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-2-20. Public Health Commission; members; purpose; authority.

Repealed by Ga. L. 2009, p. 453, § 1-1/HB 228, effective December 31, 2010.

Editor's notes. — This Code section was based on Code 1981, § 31-2-20, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228.

CHAPTER 2A

DEPARTMENT OF PUBLIC HEALTH

Article 1

General Provisions

Sec.

31-2A-1. Creation of Board of Public Health; powers, duties, and functions of Board of Community Health transferred to the Board of Public Health; board composition and terms; vacancies, removal; chairperson; reimbursement of expenses.
31-2A-2. Creation of Department of Public Health; transition of powers, function, and duties to new agency; commissioner of public health; creation of divisions.
31-2A-3. Department of Public Health successor to certain rules, regulations, policies, procedures, administrative orders, rights, interests, and obligations of Department of Community Health.
31-2A-4. Obligation to safeguard and promote health of people of the state.
31-2A-5. Office of Women's Health; duties; reporting.
31-2A-6. Rules and regulations.
31-2A-7. "Conviction data" defined; department authorized to receive data from law enforcement relevant to employment decisions; criminal history information; retention of fingerprints.
31-2A-8. Department as agency of state for receipt and administration of federal and other funds.
31-2A-9. Studies and surveys of programs.
31-2A-10. Venue of actions against department or board.
31-2A-11. Standards for sewage management systems.
31-2A-12. Rules and regulations governing operation of land disposal sites for septic tank waste from one business [Repealed].

Sec.

31-2A-13. Diabetes coordinator; central repository for data related to prevention and treatment of diabetes.
31-2A-14. Georgia Diabetes Control Grant Program; advisory committee; administration of authorized grant programs; grant criteria.
31-2A-15. Additional duties of commissioner; authority to convene expert panels and consult with experts.
31-2A-16. Maternal Mortality Review Committee established.
31-2A-17. Alzheimer's Disease Registry established; purpose; procedures; rules and regulations; confidentiality of data.
31-2A-18. Establishment of the Low THC Oil Patient Registry; definitions; purpose; registration cards; semiannual reports; waiver forms; annual review and recommendations.
31-2A-19. Creation of Joint Study Commission on Low THC Medical Oil Access; membership; operation; reporting; abolishment [Repealed].

Article 2

Positive Alternatives for Pregnancy and Parenting Grant Program

31-2A-30. Legislative authority [Repealed].
31-2A-31. Definitions.
31-2A-32. Positive Alternatives for Pregnancy and Parenting Grant Program.
31-2A-33. Administration and duties.
31-2A-34. Services funded by program.
31-2A-35. Grants.
31-2A-36. Criteria for grant consideration.
31-2A-37. Record maintenance and reporting.
31-2A-38. Confidentiality.
31-2A-39. Annual audit.

Sec.
31-2A-40. Reports to the General Assembly.
31-2A-41. Acceptance of donations, contributions, and gifts.

Article 3

Perinatal Facilities

31-2A-50. Legislative findings.
31-2A-51. Definitions.
31-2A-52. Approval as designated perinatal facility; establishing criteria for levels of maternal and neonatal care.
31-2A-53. Application process; review and redesignation of facilities; failure to comply with criteria.
31-2A-54. Listing of designated facilities; self-assessment tool.
31-2A-55. Provisions are not medical care; individualized care and treatment.
31-2A-56. Advertisement prohibited unless designated by department.
31-2A-57. Regulatory authority.

Law reviews. — For article on the 2011 enactment of this chapter, see 28 Ga. St. U. L. Rev. 147 (2011). For article, "Do State Lines Make Public Health Emergencies Worse? Federal Versus State Control of Quarantine," see 67 Emory L.J. 491 (2018).

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — The existing provisions of Chapter 2A were designated as Article 1 of Chapter 2A by Ga. L. 2016, p. 214, § 1/SB 308, effective July 1, 2016.

31-2A-1. Creation of Board of Public Health; powers, duties, and functions of Board of Community Health transferred to the Board of Public Health; board composition and terms; vacancies, removal; chairperson; reimbursement of expenses.

(a) There is created the Board of Public Health which shall establish the general policy to be followed by the Department of Public Health. The powers, functions, and duties of the Board of Community Health as they existed on June 30, 2011, with regard to the Division of Public Health and the Office of Health Improvement, unless otherwise provided in this Act, are transferred to the Board of Public Health effective July 1, 2011. The board shall consist of nine members appointed by the Governor and confirmed by the Senate.

(b) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; and three members shall be appointed for three years. Thereafter, all succeeding appointments shall be for three-year terms from the expiration of the previous term.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant. An appointment to fill a vacancy other than by expiration of a term of office shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board elected by and from the membership of the board who shall be the presiding officer of the board.

(f) The members of the board shall receive the same daily expense allowance and reimbursement of expenses as provided in Code Section 45-7-21 for members of other state boards.

History. — Code 1981, § 31-2A-1, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.

Law reviews. — For article, "Health: Department of Public Health," see 28 Ga. St. U. L. Rev. 147 (2011).

31-2A-2. Creation of Department of Public Health; transition of powers, function, and duties to new agency; commissioner of public health; creation of divisions.

(a) There is created a Department of Public Health. The powers, functions, and duties of the Division of Public Health and the Office of Health Improvement of the Department of Community Health as they existed on June 30, 2011, unless otherwise provided in this Act, are transferred to the Department of Public Health effective July 1, 2011.

(b) There is created the position of commissioner of public health. The commissioner shall be the chief administrative officer of the department and be both appointed and removed by the Governor. Subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department.

(c) There shall be created in the department such divisions as may be found necessary for its effective operation. The commissioner shall have the power to allocate and reallocate functions among the divisions within the department.

History. — Code 1981, § 31-2A-2, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.

Law reviews. — For article, "Health: Department of Public Health," see 28 Ga. St. U. L. Rev. 147 (2011).

31-2A-3. Department of Public Health successor to certain rules, regulations, policies, procedures, administrative orders, rights, interests, and obligations of Department of Community Health.

(a) The Department of Public Health shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Community Health that are in effect on June 30, 2011, or scheduled to go into effect on or after July 1, 2011, and which relate to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2 and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Community Health that are in effect on June 30, 2011, which relate to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Public Health by proper authority or as otherwise provided by law.

(b) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions as identified by the Office of Planning and Budget entered into before July 1, 2011, by the Department of Community Health which relate to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2 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 Public Health. In all such instances, the Department of Public Health shall be substituted for the Department of Community Health, and the Department of Public Health shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(c) All persons employed by the Department of Community Health in capacities which relate to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2 on June 30, 2011, shall, on July 1, 2011, become employees of the Department of Public Health in similar capacities, as determined by the commissioner of public health. Such employees shall be subject to the employment practices and policies of the Department of Public Health on and after July 1, 2011, 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 who are transferred to the department shall retain all existing rights under such rules. Accrued annual and sick leave possessed by the transferred employees on June 30, 2011, shall be retained by such employees as employees of the Department of Public Health.

(d) On July 1, 2011, the Department of Public Health shall receive custody of the state owned real property in the custody of the Depart-

ment of Community Health on June 30, 2011, and which pertains to the functions transferred to the Department of Public Health pursuant to Code Section 31-2A-2.

History. — Code 1981, § 31-2A-3, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214; Ga. L. 2012, p. 446, § 2-34/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

31-2A-4. Obligation to safeguard and promote health of people of the state.

The Department of Public Health shall safeguard and promote the health of the people of this state and is empowered to employ all legal means appropriate to that end. Illustrating, without limiting, the foregoing grant of authority, the department is empowered to:

(1) Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease, disorders, and disabilities and to provide research, conduct investigations, and disseminate information concerning reduction in the incidence and proper control of disease, disorders, and disabilities;

(2) Forestall and correct physical, chemical, and biological conditions that, if left to run their course, could be injurious to health;

(3) Regulate and require the use of sanitary facilities at construction sites and places of public assembly and to regulate persons, firms, and corporations engaged in the rental and service of portable chemical toilets;

(4) Isolate and treat persons afflicted with a communicable disease who are either unable or unwilling to observe the department's rules and regulations for the suppression of such disease and to establish, to that end, complete or modified quarantine, surveillance, or isolation of persons and animals exposed to a disease communicable to man;

(5) Procure and distribute drugs and biologicals and purchase services from clinics, laboratories, hospitals, and other health facilities and, when authorized by law, to acquire and operate such facilities;

(6) Cooperate with agencies and departments of the federal government and of the state by supplying consultant services in medical

and hospital programs and in the health aspects of civil defense, emergency preparedness, and emergency response;

(7) Prevent, detect, and relieve physical defects and deformities;

(8) Promote the prevention, early detection, and control of problems affecting the dental and oral health of the citizens of Georgia;

(9) Contract with county boards of health to assist in the performance of services incumbent upon them under Chapter 3 of this title and, in the event of grave emergencies of more than local peril, to employ whatever means may be at its disposal to overcome such emergencies;

(10) Contract and execute releases for assistance in the performance of its functions and the exercise of its powers and to supply services which are within its purview to perform;

(11) Enter into or upon public or private property at reasonable times for the purpose of inspecting same to determine the presence of disease and conditions deleterious to health or to determine compliance with health laws and rules, regulations, and standards thereunder;

(12) Establish, by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a schedule of fees for laboratory services provided, schedules to be determined in a manner so as to help defray the costs incurred by the department, but in no event to exceed such costs, both direct and indirect, in providing such laboratory services, provided no person shall be denied services on the basis of his or her inability to pay. All fees paid thereunder shall be paid into the general funds of the State of Georgia. The individual who requests the services authorized in this paragraph, or the individual for whom the laboratory services authorized in this paragraph are performed, shall be responsible for payment of the service fees. As used in this paragraph, the term "individual" means a natural person or his or her responsible health benefit policy or Title XVIII, XIX, or XXI of the federal Social Security Act of 1935;

(13) Exchange data with the Department of Community Health for purposes of health improvement and fraud prevention for programs operated by the Department of Community Health pursuant to mutually agreed upon data sharing agreements and in accordance with federal confidentiality laws relating to health care;

(14) Provide The Council of Superior Court Clerks of Georgia the data set forth in Code Section 15-12-40.1, without charge and in the electronic format requested; and

(15) Maintain and administer the electronic prescription drug monitoring program data base established under Code Section 16-13-57.

History. — Code 1981, § 31-2A-4, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214; Ga. L. 2014, p. 451, § 10/HB 776; Ga. L. 2017, p. 319, § 1-5/HB 249.

The 2017 amendment, effective July 1, 2017, deleted "and" at the end of paragraph (13), substituted "; and" for the period at the end of paragraph (14), and added paragraph (15).

Law reviews. — For note, "Don't Let the Bed Bugs Bill: Landlord Liability for Bed Bug Infestations," see 34 Ga. St. U. L. Rev. 479 (2018).

31-2A-5. Office of Women's Health; duties; reporting.

(a) There is created in the department the Office of Women's Health. Attached to the office shall be an 11 member advisory council. The members of the advisory council shall be appointed by the Governor and shall be representative of major public and private agencies and organizations in the state and shall be experienced in or have demonstrated particular interest in women's health issues. Each member shall be appointed for two years and until his or her successor is appointed. The members shall be eligible to succeed themselves. The council shall elect its chairperson from among the councilmembers for a term of two years. The Governor may name an honorary chairperson of the council.

(b) The Office of Women's Health shall serve in an advisory capacity to the Office of Health Strategy and Coordination. In particular, the office shall:

(1) Raise awareness of women's nonreproductive health issues;

(2) Inform and engage in prevention and education activities relating to women's nonreproductive health issues;

(3) Serve as a clearing-house for women's health information for purposes of planning and coordination;

(4) Issue reports of the office's activities and findings; and

(5) Develop and distribute a state comprehensive plan to address women's health issues.

(c) The council shall meet upon the call of its chairperson, the board, or the commissioner.

(d) The Office of Women's Health, no later than October 1, 2019, and annually thereafter, shall submit to the Office of Health Strategy and Coordination a report of its findings and recommendations.

History. — Code 1981, § 31-2A-5, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214; Ga. L. 2019, p. 148, § 2-5/HB 186.

The 2019 amendment, effective July 1, 2019, substituted "Office of Health Strategy and Coordination" for "Governor, the General Assembly, the board, the department, and all other state agencies in matters relating to women's health" in the first sentence of subsection (b); and added subsection (d).

Editor's notes. — Ga. L. 2019, p. 148,

§ 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

31-2A-6. Rules and regulations.

(a) The department is authorized to adopt and promulgate rules and regulations to effect prevention, abatement, and correction of situations and conditions which, if not promptly checked, would militate against the health of the people of this state. Such rules and regulations shall be adapted to the purposes intended, within the purview of the powers and duties imposed upon the department by this chapter, and supersede conflicting rules, regulations, and orders adopted pursuant to the authority of Chapter 3 of this title.

(b) The department upon application or petition may grant variances and waivers to specific rules and regulations which establish standards for facilities or entities regulated by the department as follows:

(1) The department may authorize departure from the literal requirements of a rule or regulation by granting a variance upon a showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application would cause undue hardship. The applicant or petitioner additionally must show that adequate standards affording protection of health, safety, and care exist and will be met in lieu of the exact requirements of the rule or regulation in question;

(2) The department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is met through equivalent standards affording equivalent protection of health, safety, and care;

(3) The department may grant waivers and variances to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation which is the subject of the request are met and that the innovative approach has the potential to improve service delivery;

(4) Waivers or variances which affect an entire class of facilities may only be approved by the Board of Public Health and shall be for a time certain, as determined by the board. A notice of the proposed variance or waiver affecting an entire class of facilities shall be made in accordance with the requirements for notice of rule making in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; or

(5) Variances or waivers which affect only one facility in a class may be approved or denied by the department and shall be for a time certain, as determined by the department. The department shall maintain a record of such action and shall make this information available to the board and all other persons who request it.

(c) The department may exempt classes of facilities from regulation when, in the department's judgment, regulation would not permit the purpose intended or the class of facilities is subject to similar requirements under other rules and regulations. Such exemptions shall be provided in rules and regulations promulgated by the board.

History. — Code 1981, § 31-2A-6, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214.

31-2A-7. "Conviction data" defined; department authorized to receive data from law enforcement relevant to employment decisions; criminal history information; retention of fingerprints.

(a) As used in this Code section, the term "conviction data" means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position the duties of which involve direct care, treatment, custodial responsibilities, or any combination thereof for its clients. The department may also receive conviction data which is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position if, in the judgment of the department, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety of clients, the general public, or other employees.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (b) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report

and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions or decisions concerning individuals in the care of the department and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data, all such conviction data collected by the department or its agent shall be maintained by the department or agent pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Nothing in this Code section shall be construed to allow criminal history information, including arrest and conviction data, to be released or disclosed to any individual, including members of county boards of health, who is not directly involved in the hiring process.

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

(f) The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any and all other information which it may be provided pursuant to state or federal law which is relevant to any person in the care of the department. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such persons to the proper law enforcement agency for a name based check of such person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such circumstances, the department shall submit fingerprints of those persons together with any required records search fee to the Federal Bureau of Investigation within 15 calendar

days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person.

(g) The department shall be authorized to conduct a name or descriptor based check of any person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who provides care or is in contact with persons under the care of the department without the consent of such person and without fingerprint comparison to the fullest extent permissible by federal and state law.

(h) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention.

History. — Code 1981, § 31-2A-7, enacted by Ga. L. 2011, p. 705, § 3-1/HB 214; Ga. L. 2018, p. 507, § 2-7/SB 336.

The 2018 amendment, effective July 1, 2018, added subsection (h).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "data" was substituted for "date" in the last sentence of subsection (d).

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 119 (2018).

31-2A-8. Department as agency of state for receipt and administration of federal and other funds.

The department is designated and empowered as the agency of this state to apply for, receive, and administer grants and donations for health purposes from the federal government and from any of its departments, agencies, and instrumentalities; from appropriations of the state; and from any other sources in conformity with law. The department shall have the authority to prescribe the purposes for which such funds may be used in order to:

(1) Provide, extend, and improve maternal and child health services;

(2) Locate children already disabled or suffering from conditions leading to a disability and provide for such children medical, surgical, corrective, and other services and to provide for facilities for diagnosis, hospitalization, and aftercare;

(3) Advance the prevention and control of cancer and of venereal, tubercular, and other diseases;

(4) Forestall and correct conditions that, if left to run their course, could be injurious to health;

(5) Conduct programs which lie within the scope and the power of the department relating to industrial hygiene, control of ionizing radiation, occupational health, water quality, water pollution control, and planning and development of water resources;

(6) Administer grants-in-aid to assist in the construction of publicly owned and operated general and special medical facilities;

(7) Conduct programs:

(A) Relating to chronic illness;

(B) Relating to the dental and oral health of the people of this state which are appropriate to the purpose of the department; and

(C) Relating to the physical health of the people of this state which are appropriate to the purpose of the department; and

(8) Develop the health aspects of emergency preparedness and emergency response.

When a plan is required to be approved by any department, agency, or instrumentality of the federal government as condition precedent to the making of grants for health purposes, the department, as agent of this state, is directed to formulate, submit, and secure approval of that plan and thereafter, upon its approval and the receipt of funds payable thereunder, to carry the plan into effect in accordance with its terms, applying thereto the funds so received as well as other applicable amounts from whatever source.

History. — Code 1933, § 88-111, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1972, p. 1069, § 3; Ga. L. 1978, p. 941, § 1; Code 1981, § 31-2-2; Code 1981, § 31-2-7, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-8, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.

OPINIONS OF THE ATTORNEY GENERAL

Regulation of septic tank construction outside city limits. — Georgia Department of Public Health (now the Department of Community Health for these purposes) is authorized to adopt and enforce rules and regulations establishing standards for construction of septic tanks for housing located outside city limits. 1968 Op. Att'y Gen. No. 68-185.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 2.

C.J.S. — 39A C.J.S., Health and Environment, § 1 et seq.

ALR. — Presumption as to gratuitous character of services of relative in caring for children of one not of same household, 24 A.L.R. 962.

Liability of one releasing institutionalized mental patient for harm he causes, 38 A.L.R.3d 699.

Right of medical patient to obtain, or physician to prescribe, laetrile for treatment of illness — state cases, 5 A.L.R.4th 219.

31-2A-9. Studies and surveys of programs.

The department, from time to time, shall make or cause to be made studies and surveys to determine the quality, scope, and reach of its programs.

History. — Code 1933, § 88-109, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-2-3; Code 1981, § 31-2-8, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-9, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 50, 52, 58, 60, 66, 72, 73.

C.J.S. — 39A C.J.S., Health and Environment, §§ 28 et seq., 43.

31-2A-10. Venue of actions against department or board.

Actions at law and in equity against the department, the board, or any of its members predicated upon omissions or acts done in their official capacity or under color thereof shall be brought in the appropriate county; provided, however, that nothing in this Code section shall be construed as waiving the immunity of the state to be sued without its consent.

History. — Code 1933, § 88-118, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-2-5; Ga. L. 1991, p. 94, § 31; Code 1981, § 31-2-10, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-10, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.

JUDICIAL DECISIONS

"Appropriate county" means the county in which the cause of action originated. Newsome v. Department of Human Resources, 199 Ga. App. 419, 405 S.E.2d 61, cert. denied, 199 Ga. App. 906, 405 S.E.2d 61 (1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 33.

C.J.S. — 39A C.J.S., Health and Environment, § 26.

ALR. — Right of one detained pursuant to quarantine to habeas corpus, 2 A.L.R. 1542.

Tort liability of governmental unit for injury or damage resulting from insecticide and vermin eradication operations, 25 A.L.R.2d 1057.

Liability for wrongful autopsy, 18 A.L.R.4th 858.

31-2A-11. Standards for sewage management systems.

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

(1) "Chamber system" means a system of chambers with each chamber being a molded polyolefin plastic, arch shaped, hollow structure with an exposed bottom area and solid top and louvered sidewall for infiltration of effluent into adjoining bottom and sidewall soil areas. Chambers may be of different sizes and configurations to obtain desired surface areas.

(2) "Conventional system" means a system traditionally used composed of perforated pipe surrounded by gravel or stone masking for the infiltration of effluent into adjoining bottom and side soil areas.

(3) "On-site sewage management system" means a sewage management system other than a public or community sewage treatment system serving one or more buildings, mobile homes, recreational vehicles, residences, or other facilities designed or used for human occupancy or congregation. Such term shall include, without limitation, conventional and chamber septic tank systems, privies, and experimental and alternative on-site sewage management systems which are designed to be physically incapable of a surface discharge of effluent that may be approved by the department.

(4) "Prior approved system" means only a chamber system or conventional system or component of such system which is designed to be physically incapable of a surface discharge of effluent and which was properly approved pursuant to subparagraph (a)(2)(B) of this Code section, as such Code section became law on April 19, 1994, for use according to manufacturers' recommendations, prior to April 14, 1997.

(5) "Unsatisfactory service" means documented substandard performance as compared to other approved systems or components.

(b) The department shall have the authority as it deems necessary and proper to adopt state-wide regulations for on-site sewage management systems, including but not limited to experimental and alternative systems. The department is authorized to require that any such on-site sewage management system be examined and approved prior to allowing the use of such system in the state; provided, however, that any prior approved system shall continue to be approved for installation in every county of the state pursuant to the manufacturer's recommendations, including sizing of no less than 50 percent of trench length of a conventional system designed for equal flows in similar soil conditions. Upon written request of one-half or more of the health districts in the state, the department is authorized to require the reexamination of any such system or component thereof, provided that documentation is

submitted indicating unsatisfactory service of such system or component thereof. Before any such examination or reexamination, the department may require the person, persons, or organization manufacturing or marketing the system to reimburse the department or its agent for the reasonable expenses of such examination.

(c)(1) This subsection shall not be construed to prohibit the governing authority of any county or municipality in the state from adopting and enforcing codes at the local level; provided, however, that no county, municipality, or state agency may require any certified septic tank installer or certified septic tank pumper who has executed and deposited a bond as authorized in paragraph (2) of this subsection to give or furnish or execute any code compliance bond or similar bond for the purpose of ensuring that all construction, installation, or modifications are made or completed in compliance with the county or municipal ordinances or building and construction codes.

(2) In order to protect the public from damages arising from any work by a certified septic tank installer or certified septic tank pumper that fails to comply with any state construction codes or with the ordinances or building and construction codes adopted by any county or municipal corporation, any such certified septic tank installer or certified septic tank pumper may execute and deposit with the judge of the probate court in the county of his or her principal place of business a bond in the sum of $10,000.00. Such bond shall be a cash bond of $10,000.00 or executed by a surety authorized and qualified to write surety bonds in the State of Georgia and shall be approved by the local county or municipal health department. Such bond shall be conditioned upon all work done or supervised by such certificate holder complying with the provisions of any state construction codes or any ordinances or building and construction codes of any county or municipal corporation wherein the work is performed. Action on such bond may be brought against the principal and surety thereon in the name of and for the benefit of any person who suffers damages as a consequence of said certificate holder's work not conforming to the requirements of any ordinances or building and construction codes; provided, however, that the aggregate liability of the surety to all persons so damaged shall in no event exceed the sum of such bond.

(3) In any case where a bond is required under this subsection, the certified septic tank installer or certified septic tank pumper shall file a copy of the bond with the county or municipal health department in the political subdivision wherein the work is being performed.

(4) The provisions of this subsection shall not apply to or affect any bonding requirements involving contracts for public works as provided in Chapter 10 of Title 13.

(d) This Code section does not restrict the work of a plumber licensed by the State Construction Industry Licensing Board to access any on-site sewage management system for the purpose of servicing or repairing any plumbing system or connection to the on-site sewage management system.

History. — Code 1981, § 31-2-7, enacted by Ga. L. 1992, p. 3308, § 1; Ga. L. 1994, p. 1777, § 1; Ga. L. 1997, p. 708, § 1; Ga. L. 2002, p. 850, § 1; Ga. L. 2006, p. 292, § 1/HB 724; Code 1981, § 31-2-12, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-11, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "April 14, 1997" was substituted for "the effective date of this Code section" at the end of paragraph (a)(4).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

Constitutionality. — Manufacturer of systems for on-site management of sewage was not unconstitutionally deprived of a vested right by the 1997 amendment to the statute, which did not include its systems in the definition of "prior approved systems." Jackson County Bd. of Health v. Fugett Constr., Inc., 270 Ga. 667, 514 S.E.2d 28 (1999).

31-2A-12. Rules and regulations governing operation of land disposal sites for septic tank waste from one business.

Reserved. Repealed by Ga. L. 2012, p. 843, § 1B/HB 1102, effective July 1, 2014.

Editor's notes. — This Code section was based on Code 1981, § 31-2-8, enacted by Ga. L. 2002, p. 927, § 6A; Ga. L. 2007, p. 127, § 5/HB 463; Code 1981, § 31-2-13, as redesignated by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-12, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214; Ga. L. 2012, p. 843, § 1B/HB 1102; Ga. L. 2016, p. 864, § 31/HB 737 and was repealed by its own terms effective July 1, 2014.

31-2A-13. Diabetes coordinator; central repository for data related to prevention and treatment of diabetes.

The commissioner is authorized to appoint a diabetes coordinator within the department to coordinate with other state departments and agencies to ensure that all programs that impact the prevention and treatment of diabetes are coordinated, that duplication of efforts is minimized, and that the impact of such programs is maximized in an attempt to reduce the health consequences and complications of diabetes in Georgia. The department shall serve as the central repository for this state's departments and agencies for data related to the prevention and treatment of diabetes.

History. — Code 1981, § 31-2-17, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-13, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.

Cross references. — Training school employees in caring for students with diabetes, § 20-2-779.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-2A-14. Georgia Diabetes Control Grant Program; advisory committee; administration of authorized grant programs; grant criteria.

(a) There is established within the Department of Public Health the Georgia Diabetes Control Grant Program. The purpose of the grant program shall be to develop, implement, and promote a state-wide effort to combat the proliferation of Type 2 diabetes and pre-diabetes.

(b) The program shall be under the direction of a seven-member advisory committee, appointed by the Governor. The Governor, in making such appointments, shall ensure to the greatest extent possible that the membership of the advisory committee is representative of this state's geographic and demographic composition, with appropriate attention to the representation of women, minorities, and rural Georgia. The appointments made by the Governor shall include one member who is:

(1) A physician licensed in this state;

(2) A registered nurse licensed in this state;

(3) A dietitian licensed in this state;

(4) A diabetes educator;

(5) A representative of the business community;

(6) A pharmacist licensed in this state; and

(7) A consumer who has diabetes.

The commissioner, or his or her designee, shall serve as an ex officio, nonvoting member of the advisory committee. Appointed advisory committee members shall be named for five-year terms staggered so that one term will expire each year, except for the fourth and fifth year, when two terms will expire. Their successors shall be named for five-year terms.

(c) The Georgia Diabetes Control Grant Program shall be authorized to administer two grant programs targeted at new, expanded, or innovative approaches to address diabetes as follows:

(1) A program to provide grants to middle schools and high schools to promote the understanding and prevention of diabetes may be

established by the program. Such grants shall be provided through the appropriate local board of education. Grant requests shall contain specific information regarding requirements as to how the grant should be spent and how such spending promotes the understanding and prevention of diabetes. Grant recipients shall be required to provide the advisory committee with quarterly reports of the results of the grant program; and

(2) A program to provide grants to health care providers for support of evidence based diabetes programs for education, screening, disease management, and self-management targeting populations at greatest risk for pre-diabetes, diabetes, and the complications of diabetes; and grants may also be awarded to address evidence based activities that focus on policy, systems, and environmental changes that support prevention, early detection, and treatment of diabetes. Eligible entities shall include community and faith based clinics and other organizations, federally qualified health centers, regional and county health departments, hospitals, and other public entities, and other health related service providers which are qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986. Such entities shall have been in existence for at least three years, demonstrate financial stability, utilize evidence based practices, and show measurable results in their programs.

(d) The advisory committee shall work with the department to establish grant criteria and make award decisions, with the goal of creating a state-wide set of resources to assist residents of Georgia in their efforts to prevent or treat diabetes. Grants shall not be used for funding existing programs.

(e) The grant program shall be under the direction of the diabetes coordinator appointed pursuant to Code Section 31-2A-13. The department shall provide sufficient staff, administrative support, and such other resources as may be necessary for the diabetes coordinator to carry out the duties required by this Code section.

(f) This Code section shall be subject to appropriation from the General Assembly.

History. — Code 1981, § 31-2-17.1, enacted by Ga. L. 2010, p. 548, § 1-3/SB 435; Code 1981, § 31-2A-14, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214; Ga. L. 2011, p. 752, § 31/HB 142.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "dietitian" was substituted for "dietician" in paragraph (b)(3).

Editor's notes. — Ga. L. 2010, p. 548, § 1-1/SB 435, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Diabetes is a chronic disease caused by the inability of the pancreas to produce insulin or to use the insulin produced in the proper way;

"(2) If untreated and poorly managed,

diabetes has been medically proven to lead to blindness, kidney failure, amputation, heart attack, and stroke;

"(3) Diabetes is the sixth leading cause of death in the United States, responsible for a similar number of deaths each year as HIV/AIDS;

"(4) In Georgia, the prevalence of diabetes is 8 percent higher than the nation as a whole;

"(5) One out of three people with diabetes are not aware that they have the disease;

"(6) Without aggressive societal action, the number of people living with diabetes in Georgia will more than double to 1,697,000 people in the next 20 years, cutting life short for these people by ten to 20 years; and

"(7) Without aggressive societal action, the economic burden of diabetes on the State of Georgia is expected to grow from $5 billion each year to about $11.9 billion in the next 20 years."

Ga. L. 2010, p. 548, § 1-2/SB 435, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Diabetes and Health Improvement Act of 2010.'"

Pursuant to the terms of subsection (f), funds were not appropriated at the 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, or 2019 sessions of the General Assembly.

Ga. L. 2011, p. 752, § 54(e)/HB 142, not codified by the General Assembly, provides that: "In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2011 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to subsection (b) of this Code section by Ga. L. 2011, p. 752, § 31(2)/HB 142, was not given effect.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-2A-15. Additional duties of commissioner; authority to convene expert panels and consult with experts.

(a) In addition to other authority and duties granted in this title, the commissioner shall:

(1) Provide a written report of expenditures made for public health purposes in the prior fiscal year to the Governor, the Speaker of the House of Representatives, and the Lieutenant Governor no later than December 1 of each year beginning December 1, 2010; and

(2) Serve as the chief liaison to county boards of health through their directors on matters related to the operations and programmatic responsibilities of such county boards of health; provided, however, the commissioner may designate a person from within the department to serve as such chief liaison.

(b) The commissioner shall be authorized to convene one or more panels of experts to address various public health issues and may consult with experts on epidemiological and emergency preparedness issues.

History. — Code 1981, § 31-2-18, enacted by Ga. L. 2009, p. 453, § 1-1/HB 228; Code 1981, § 31-2A-15, as redesignated by Ga. L. 2011, p. 705, § 3-2/HB 214.

Law reviews. — For article on the

2011 amendment of this Code section, see
28 Ga. St. U. L. Rev. 147 (2011).

31-2A-16. Maternal Mortality Review Committee established.

(a) The General Assembly finds that:

(1) Georgia currently ranks fiftieth in maternal deaths in the United States;

(2) Maternal deaths are a serious public health concern and have a tremendous family and societal impact;

(3) Maternal deaths are significantly underestimated and inadequately documented, preventing efforts to identify and reduce or eliminate the causes of death;

(4) No processes exist in this state for the confidential identification, investigation, or dissemination of findings regarding maternal deaths;

(5) The federal Centers for Disease Control and Prevention has determined that maternal deaths should be investigated through state based maternal mortality reviews in order to institute the systemic changes needed to decrease maternal mortality; and

(6) There is a need to establish a program to review maternal deaths and to develop strategies for the prevention of maternal deaths in Georgia.

(b) The Department of Public Health shall establish a Maternal Mortality Review Committee to review maternal deaths and to develop strategies for the prevention of maternal deaths. The committee shall be multidisciplinary and composed of members as deemed appropriate by the department. The department may contract with an external organization to assist in collecting, analyzing, and disseminating maternal mortality information, organizing and convening meetings of the committee, and other tasks as may be incident to these activities, including providing the necessary data, information, and resources to ensure successful completion of the ongoing review required by this Code section.

(c) The committee shall:

(1) Identify maternal death cases;

(2) Review medical records and other relevant data;

(3) Contact family members and other affected or involved persons to collect additional relevant data;

(4) Consult with relevant experts to evaluate the records and data;

(5) Make determinations regarding the preventability of maternal deaths;

(6) Develop recommendations for the prevention of maternal deaths; and

(7) Disseminate findings and recommendations to policy makers, health care providers, health care facilities, and the general public.

(d)(1) Health care providers licensed pursuant to Title 43, health care facilities licensed pursuant to Chapter 7 of Title 31, and pharmacies licensed pursuant to Chapter 4 of Title 26 shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee.

(2) A health care provider, health care facility, or pharmacy providing access to medical records pursuant to this Code section shall not be held liable for civil damages or be subject to any criminal or disciplinary action for good faith efforts in providing such records.

(e)(1) Information, records, reports, statements, notes, memoranda, or other data collected pursuant to this Code section shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency, or person. Such information, records, reports, statements, notes, memoranda, or other data shall not be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the department or any other person, except as may be necessary for the purpose of furthering the review of the committee of the case to which they relate. No person participating in such review shall disclose, in any manner, the information so obtained except in strict conformity with such review project.

(2) All information, records of interviews, written reports, statements, notes, memoranda, or other data obtained by the department, the committee, and other persons, agencies, or organizations so authorized by the department pursuant to this Code section shall be confidential.

(f)(1) All proceedings and activities of the committee under this Code section, opinions of members of such committee formed as a result of such proceedings and activities, and records obtained, created, or maintained pursuant to this Code section, including records of interviews, written reports, and statements procured by the department or any other person, agency, or organization acting jointly or under contract with the department in connection with the requirements of this Code section, shall be confidential and shall not be subject to Chapter 14 of Title 50, relating to open meetings, or Article 4 of Chapter 18 of Title 50, relating to open records, or subject to

subpoena, discovery, or introduction into evidence in any civil or criminal proceeding; provided, however, that nothing in this Code section shall be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the committee's proceedings.

(2) Members of the committee shall not be questioned in any civil or criminal proceeding regarding the information presented in or opinions formed as a result of a meeting or communication of the committee; provided, however, that nothing in this Code section shall be construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information.

(g) Reports of aggregated nonindividually identifiable data shall be compiled on a routine basis for distribution in an effort to further study the causes and problems associated with maternal deaths. A detailed annual report shall be submitted no later than October 1 to the Office of Health Strategy and Coordination.

History. — Code 1981, § 31-2A-16, enacted by Ga. L. 2014, p. 337, § 1/SB 273; Ga. L. 2019, p. 148, § 2-6/HB 186.

The 2019 amendment, effective July 1, 2019, substituted the present provisions of the second sentence of subsection (g) for the former provisions, which read: "Reports shall be distributed to the General Assembly, health care providers and facilities, key government agencies, and others necessary to reduce the maternal death rate".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 31-2A-16, as enacted by Ga. L. 2014, p. 822, § 1/HB 966, was redesignated as Code Section 31-2A-17.

Editor's notes. — Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

31-2A-17. Alzheimer's Disease Registry established; purpose; procedures; rules and regulations; confidentiality of data.

(a) There is established within the Department of Public Health the Alzheimer's Disease Registry.

(b) The purpose of the registry shall be to assist in the development of public policy and planning relative to Alzheimer's disease and related disorders. The registry shall provide a central data base of individuals with Alzheimer's disease or related disorders.

(c) The department shall establish procedures and promulgate rules and regulations for the establishment and operation of the registry. Such procedures, rules, and regulations shall provide for:

(1) Collecting and evaluating data regarding the prevalence of Alzheimer's disease and related disorders in Georgia, including who shall report the data to the registry;

(2) Determining what information shall be maintained in the registry and the length of time such data shall be available;

(3) Sharing of data for policy planning purposes;

(4) Disclosing nonidentifying data to support Alzheimer's and related disorder research;

(5) The methodology by which families and physicians of persons who are reported to the registry shall be contacted to gather additional data; and

(6) Information about public and private resources.

(d) The collected data in the registry shall be confidential, and all persons to whom the data is released shall maintain patient confidentiality. No publication of information, biotechnical research, or medical data shall be made that identifies any patient by name. The registry shall be established and regulated pursuant to the requirements of 42 U.S.C. Section 1301, et seq., and P.L. 104-191, the federal Health Insurance Portability and Accountability Act of 1996.

History. — Code 1981, § 31-2A-17, enacted by Ga. L. 2014, p. 822, § 1/HB 966.

Cross references. — Alzheimer's and Related Dementias State Plan, T. 49, C. 6, Art. 8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2014, Code Section 31-2A-16, as enacted by Ga. L. 2014, p. 822, § 1/HB 966, was redesignated as Code Section 31-2A-17.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 enactment of this Code section, see 31 Ga. St. U. L. Rev. 129 (2014).

31-2A-18. Establishment of the Low THC Oil Patient Registry; definitions; purpose; registration cards; semiannual reports; waiver forms; annual review and recommendations.

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

(1) "Board" means the Georgia Composite Medical Board.

(2) "Caregiver" means the parent, guardian, or legal custodian of an individual who is less than 18 years of age or the legal guardian of an adult.

(3) "Condition" means:

(A) Cancer, when such disease is diagnosed as end stage or the treatment produces related wasting illness or recalcitrant nausea and vomiting;

(B) Amyotrophic lateral sclerosis, when such disease is diagnosed as severe or end stage;

(C) Seizure disorders related to a diagnosis of epilepsy or trauma related head injuries;

(D) Multiple sclerosis, when such disease is diagnosed as severe or end stage;

(E) Crohn's disease;

(F) Mitochondrial disease;

(G) Parkinson's disease, when such disease is diagnosed as severe or end stage;

(H) Sickle cell disease, when such disease is diagnosed as severe or end stage;

(I) Tourette's syndrome, when such syndrome is diagnosed as severe;

(J) Autism spectrum disorder, when such disorder is diagnosed for a patient who is at least 18 years of age, or severe autism, when diagnosed for a patient who is less than 18 years of age;

(K) Epidermolysis bullosa;

(L) Alzheimer's disease, when such disease is diagnosed as severe or end stage;

(M) Acquired immune deficiency syndrome, when such syndrome is diagnosed as severe or end stage;

(N) Peripheral neuropathy, when such symptoms are diagnosed as severe or end stage;

(O) Post-traumatic stress disorder resulting from direct exposure to or the witnessing of a trauma for a patient who is at least 18 years of age; or

(P) Intractable pain.

(4) "Department" means the Department of Public Health.

(5) "Intractable pain" means pain that has a cause that cannot be removed and for which, according to generally accepted medical practice, the full range of pain management modalities appropriate for the patient has been used for a period of at least six months without adequate results or with intolerable side effects.

(6) "Low THC oil" shall have the same meaning as set forth in Code Section 16-12-190.

(7) "Physician" means an individual licensed to practice medicine pursuant to Article 2 of Chapter 34 of Title 43.

(8) "Registry" means the Low THC Oil Patient Registry.

(b) There is established within the department the Low THC Oil Patient Registry.

(c) The purpose of the registry is to provide a registration of individuals and caregivers who have been issued registration cards. The department shall establish procedures and promulgate rules and regulations for the establishment and operation of the registration process and dispensing of registry cards to individuals and caregivers.

(d) The department shall issue a registration card to individuals who have been certified to the department by his or her physician as being diagnosed with a condition or is an inpatient or outpatient in a hospice program and have been authorized by such physician to use low THC oil as treatment. The department shall issue a registration card to a caregiver when the circumstances warrant the issuance of such card. The board shall establish procedures and promulgate rules and regulations to assist physicians in providing required uniform information relating to certification and any other matter relating to the issuance of certifications. In promulgating such rules and regulations, the board shall require that physicians have a doctor-patient relationship when certifying an individual as needing low THC oil and physicians shall be required to be treating such individual for the specific condition requiring such treatment or be treating such individual in a hospice program. A physician shall seek and review information about a patient from the prescription drug monitoring program data base established pursuant to Code Section 16-13-57 prior to certifying such patient to the department as being diagnosed with a specific condition that requires the use of low THC oil as treatment.

(e) The board shall require physicians to issue semiannual reports to the board. Such reports shall require physicians to provide information, including, but not limited to, dosages recommended for a particular condition, patient clinical responses, levels of tetrahydrocannabinol or tetrahydrocannabinolic acid present in test results, compliance, responses to treatment, side effects, and drug interactions. Such reports shall be used for research purposes to determine the efficacy of the use of low THC oil as a treatment for conditions.

(f) Information received and records kept by the department for purposes of administering this Code section shall be confidential; provided, however, that such information shall be disclosed:

(1) Upon written request of an individual or caregiver registered pursuant to this Code section; and

(2) To peace officers and prosecuting attorneys for the purpose of:

(A) Verifying that an individual in possession of a registration card is registered pursuant to this Code section; or

(B) Determining that an individual in possession of low THC oil is registered pursuant to this Code section.

(g) The board shall develop a waiver form that will advise that the use of cannabinoids and THC containing products have not been approved by the FDA and the clinical benefits are unknown and may cause harm. Any patient or caregiver shall sign such waiver prior to his or her approval for registration.

(h) The board, in coordination with the Department of Public Health, shall annually review the conditions included in paragraph (3) of subsection (a) of this Code section and recommend additional conditions that have been shown through medical research to be effectively treated with low THC oil. Such recommendations shall include recommended dosages for a particular condition, patient responses to treatment with respect to the particular condition, and drug interactions with other drugs commonly taken by patients with the particular condition. Such recommendations shall be made jointly by the board and the Department of Public Health to the General Assembly no later than December 1 of each year.

History. — Code 1981, § 31-2A-18, enacted by Ga. L. 2015, p. 49, § 2-1/HB 1; Ga. L. 2017, p. 611, § 2/SB 16; Ga. L. 2017, p. 774, § 31/HB 323; Ga. L. 2018, p. 148, § 2/HB 65; Ga. L. 2019, p. 43, § 6/HB 324.

The 2017 amendments. — The first 2017 amendment, effective July 1, 2017, substituted "disease is diagnosed as" for "diagnosis is" throughout paragraph (a)(3); substituted "illness or" for "illness," in subparagraph (a)(3)(A); inserted "a" in subparagraph (a)(3)(C); deleted "or" at the end of subparagraph (a)(3)(G); substituted a semicolon for a period at the end of subparagraph (a)(3)(H); added subparagraphs (a)(3)(I) through (a)(3)(N); deleted the former third and fourth sentences in subsection (c), which read: "Only individuals residing in this state for at least one year or a child born in this state less than one year old shall be eligible for registration under this Code section. Nothing in this Code section shall apply to any Georgia residents living temporarily in another state for the purpose of securing THC oil for treatment of any condition under this Code section."; in subsection (d), in the first sentence, substituted "individuals who have" for "individuals and caregivers as soon as practicable but no later than September 1, 2015, when an individual has" near the beginning, inserted "or is an inpatient or outpatient in a hospice program", substituted "have been authorized" for "has been authorized" near the middle, and deleted "for such condition" following "as treatment" at the end, added the second sentence, and, in the fourth sentence, substituted "treating such individual" for "treating an individual" near the middle, and added "or be treating such individual in a hospice program" at the end; in subsection (e), substituted "semiannual" for "quarterly" in the first sentence, in the second sentence, inserted "patient" and inserted "levels of tetrahydrocannabinol or tetrahydrocannabinolic acid present in test results,". The second 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (a)(3)(A).

The 2018 amendment, effective July 1, 2018, in subsection (a), deleted "or" at the end of subparagraph (a)(3)(M), substituted a semicolon for a period at the end of subparagraph (a)(3)(N), added subparagraphs (a)(3)(O) and (a)(3)(P), added paragraph (a)(5), redesignated former paragraphs (a)(5) through (a)(7) as present paragraphs (a)(6) through (a)(8), respectively; and added subsection (h).

The 2019 amendment, effective July 1, 2019, added the last sentence in subsection (d); added the last sentence in subsection (e); and, in subsection (h), inserted ", in coordination with the Department of Public Health," near the beginning of the first sentence and inserted "jointly by the board and the Department of Public Health" in the middle of the last sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2017, a comma was deleted following "nausea" in subparagraph (a)(3)(A).

Editor's notes. — Ga. L. 2015, p. 49, § 1-1/HB 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Haleigh's Hope Act.'"

Ga. L. 2019, p. 43, § 1/HB 324, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'Georgia's Hope Act.'"

Ga. L. 2019, p. 43, § 2/HB 324, not codified by the General Assembly, provides that: "(a) The General Assembly finds that the establishment of the Low THC Oil Patient Registry in 2015 allows Georgia patients to possess low THC oil but provides no way to access low THC oil. The General Assembly finds that thousands of Georgians have serious medical conditions that can be improved by the medically approved use of cannabis and that the law should not stand between them and treatment necessary for life and health. The General Assembly finds that the purpose of this Act is to allow the legitimate use of medical cannabis for health care, including palliative care. The General Assembly finds that this Act does not in any way diminish this state's strong public policy and laws against illegal drug use, nor should it be deemed in any manner to advocate, authorize, promote, or legally or socially accept the use of marijuana for children or adults for any nonmedical use.

"(b) The General Assembly further finds that:

"(1) Low THC oil can offer significant medical benefits to patients;

"(2) Low THC oil can only be derived from the cannabis plant;

"(3) A carefully constructed system of in-state cultivation to benefit only those patients authorized by Georgia law and approved by their physician would benefit patients within the State of Georgia;

"(4) The State of Georgia is deeply opposed to any recreational or nonmedical use of marijuana, and any system to help patients access low THC oil should be as limited in scope as possible;

"(5) Business opportunities resulting from a system of in-state cultivation should be inclusive of minority, women, and veteran owned businesses;

"(6) Businesses resulting from this Act should include at least 20 percent participation by minority, women, and veteran owned businesses as licensees, suppliers, and partners of businesses licensed under this Act; and

"(7) The State of Georgia should encourage active participation by minority, women, and veteran owned businesses, as well as take any steps necessary to ensure there is no discrimination in the issuance of licenses or participation in business activities resulting from this Act."

Law reviews. — For article on the 2015 enactment of this Code section, see 32 Ga. St. U. L. Rev. 153 (2015).

RESEARCH REFERENCES

ALR. — Propriety of employer's discharge of or failure to hire employee due to employee's use of medical marijuana, 57 A.L.R.6th 285.

31-2A-19. Creation of Joint Study Commission on Low THC Medical Oil Access; membership; operation; reporting; abolishment.

Reserved. Repealed by Ga. L. 2018, p. 148, § 1/HB 65, effective December 31, 2018.

Editor's notes. — This Code section was based on Code 1981, § 31-2A-19, enacted by Ga. L. 2018, p. 148, § 1/HB 65.

ARTICLE 2

POSITIVE ALTERNATIVES FOR PREGNANCY AND PARENTING GRANT PROGRAM

31-2A-30. Legislative authority.

Reserved. Repealed by Ga. L. 2017, p. 764, § 2-1/SB 193, effective July 1, 2017.

Editor's notes. — This Code section was based on Ga. L. 2016, p. 214, § 2/SB 308.

Ga. L. 2017, p. 764, § 1-1/SB 193, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Untreated chlamydial infection has been linked to problems during pregnancy, including preterm labor, premature rupture of membranes, and low birth weight. The newborn may also become infected during delivery as the baby passes through the birth canal. Exposed newborns can develop eye and lung infections; and

"(2) Untreated gonococcal infection in pregnancy has been linked to miscarriages, premature birth and low birth weight, premature rupture of membranes, and chorioamnionitis. Gonorrhea can also infect an infant during delivery as the infant passes through the birth canal. If untreated, infants can develop eye infections."

31-2A-31. Definitions.

As used in this article, the term:

(1) "Attending physician" means the physician who has primary responsibility at the time of reference for the treatment and care of the client.

(2) "Client" means a person seeking or receiving pregnancy support services.

(3) "Contract management agency" or "agency" means a nongovernmental charitable organization in this state which is a 501(c)(3) tax-exempt organization under the Internal Revenue Code of 1986 and whose mission and practice is to promote alternatives to abortion services at no cost.

(4) "Direct client service providers" or "providers" means nonprofit organizations with a contractual relationship with the contract

management agency and that provide direct pregnancy support services to clients at no cost.

(5) Reserved.

(6) "Pregnancy support services" means those services that encourage childbirth instead of voluntary termination of pregnancy and which assist pregnant women or women who believe they may be pregnant to choose childbirth whether they intend to parent or select adoption for the child.

(7) "Program" means the Positive Alternatives for Pregnancy and Parenting Grant Program.

History. — Code 1981, § 31-2A-31, enacted by Ga. L. 2016, p. 214, § 2/SB 308; Ga. L. 2017, p. 764, § 2-2/SB 193; Ga. L. 2018, p. 1112, § 31/SB 365.

The 2017 amendment, effective July 1, 2017, near the end of paragraph (3), substituted "promote" for "provide" and deleted "to medically indigent women" following "services" near the end; substituted the present provisions of paragraph (5) for the former provisions, which read: "'Medically indigent' means a person who is without health insurance or who has health insurance that does not cover pregnancy or related conditions for which treatment and services are sought and whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget."; and substituted the present provisions of paragraph (8) for the former provisions, which read: "'Trust fund' means the Indigent Care Trust Fund created by Code Section 31-8-152.".

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, repealed the reservation of paragraph (8).

Editor's notes. — Ga. L. 2017, p. 764, § 1-1/SB 193, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Untreated chlamydial infection has been linked to problems during pregnancy, including preterm labor, premature rupture of membranes, and low birth weight. The newborn may also become infected during delivery as the baby passes through the birth canal. Exposed newborns can develop eye and lung infections; and

"(2) Untreated gonococcal infection in pregnancy has been linked to miscarriages, premature birth and low birth weight, premature rupture of membranes, and chorioamnionitis. Gonorrhea can also infect an infant during delivery as the infant passes through the birth canal. If untreated, infants can develop eye infections."

31-2A-32. Positive Alternatives for Pregnancy and Parenting Grant Program.

There is established within the department the Positive Alternatives for Pregnancy and Parenting Grant Program. The purpose of the program shall be to develop a state-wide effort that promotes healthy pregnancies and childbirth by awarding grants to nonprofit organizations that provide pregnancy support services.

History. — Code 1981, § 31-2A-32, enacted by Ga. L. 2016, p. 214, § 2/SB 308; Ga. L. 2017, p. 764, § 2-3/SB 193; Ga. L. 2017, p. 774, § 31/HB 323.

The 2017 amendments. — The first 2017 amendment, effective July 1, 2017, in the second sentence, deleted "grant" preceding "program" and substituted "develop a state-wide effort that promotes healthy pregnancies and childbirth" for "promote healthy pregnancies and childbirth". The second 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, deleted "grant" preceding "program" at the beginning of the second sentence.

Editor's notes. — Ga. L. 2017, p. 764, § 1-1/SB 193, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Untreated chlamydial infection has been linked to problems during pregnancy, including preterm labor, premature rupture of membranes, and low birth weight. The newborn may also become infected during delivery as the baby passes through the birth canal. Exposed newborns can develop eye and lung infections; and

"(2) Untreated gonococcal infection in pregnancy has been linked to miscarriages, premature birth and low birth weight, premature rupture of membranes, and chorioamnionitis. Gonorrhea can also infect an infant during delivery as the infant passes through the birth canal. If untreated, infants can develop eye infections."

31-2A-33. Administration and duties.

(a) The department shall oversee the program and is authorized to contract with a contract management agency to administer the program.

(b) The contract management agency selected by the department shall meet the definition of a contract management agency as defined in paragraph (3) of Code Section 31-2A-31 and shall:

(1) Create a grant application process;

(2) Evaluate grant applications and make recommendations to the department;

(3) Communicate acceptance or denial of grant applications to direct client service providers;

(4) Monitor compliance with the terms and conditions of the grant;

(5) Maintain records for each grant applicant and award; and

(6) Coordinate activities and correspondence between the department and direct client service providers.

History. — Code 1981, § 31-2A-33, enacted by Ga. L. 2016, p. 214, § 2/SB 308; Ga. L. 2017, p. 764, § 2-4/SB 193.

The 2017 amendment, effective July 1, 2017, added "meet the definition of a contract management agency as defined in paragraph (3) of Code Section 31-2A-31 and shall" at the end of subsection (b).

Editor's notes. — Ga. L. 2017, p. 764, § 1-1/SB 193, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Untreated chlamydial infection has been linked to problems during pregnancy, including preterm labor, premature rupture of membranes, and low birth weight. The newborn may also become infected during delivery as the baby passes through the birth canal. Exposed newborns can develop eye and lung infections; and

"(2) Untreated gonococcal infection in pregnancy has been linked to miscarriages, premature birth and low birth

weight, premature rupture of membranes, and chorioamnionitis. Gonorrhea can also infect an infant during delivery as the infant passes through the birth canal. If untreated, infants can develop eye infections."

31-2A-34. Services funded by program.

The services which shall be funded by the program include:

(1) Medical care and information, including but not limited to pregnancy tests, sexually transmitted infection tests, other health screenings, ultrasound service, prenatal care, and birth classes and planning;

(2) Nutritional services and education;

(3) Housing, education, and employment assistance during pregnancy and up to one year following a birth;

(4) Adoption education, planning, and services;

(5) Child care assistance if necessary for the client to receive pregnancy support services;

(6) Parenting education and support services for up to one year following a birth;

(7) Material items which are supportive of pregnancy and childbirth, including but not limited to cribs, car seats, clothing, formula, or other safety devices; and

(8) Information regarding health care benefits, including but not limited to available Medicaid coverage for the client for pregnancy care that provides health coverage for the client's child upon his or her birth.

History. — Code 1981, § 31-2A-34, enacted by Ga. L. 2016, p. 214, § 2/SB 308; Ga. L. 2017, p. 774, § 31/HB 323.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised language and punctuation throughout this Code section.

31-2A-35. Grants.

(a) Grants shall be awarded annually on a competitive basis to direct client service providers who display competent experience in providing any of the services included in Code Section 31-2A-34 pursuant to guidelines and criteria established pursuant to this article.

(b) The department shall, with input from the agency, determine the maximum grant amount to be awarded to each direct client service provider, and such grant amount shall not exceed 85 percent of the annual revenue for the prior year of any provider.

(c) The grant agreement entered into between the agency and a direct client service provider shall stipulate that the grant shall be used to provide any or all pregnancy support services at the discretion of the service provider pursuant to Code Section 31-2A-34. The agreement shall further stipulate that a direct client service provider shall not perform, promote, or act as a referral for an abortion, except as otherwise provided in paragraph (9) of subsection (a) of Code Section 31-2A-36, and that grant funds shall not be used to promote or be otherwise expended for political or religious purposes, including, but not limited to, counseling or written material. Nothing in this article shall be construed to prohibit any direct client service provider from promoting or expending nongrant funds for a political or religious purpose.

History. — Code 1981, § 31-2A-35, enacted by Ga. L. 2016, p. 214, § 2/SB 308; Ga. L. 2017, p. 764, § 2-5/SB 193.

The 2017 amendment, effective July 1, 2017, inserted "any of" in the middle of subsection (a); and, in subsection (c), in the first sentence, inserted "any or all" and inserted "at the discretion of the service provider", and added the third sentence.

Editor's notes. — Ga. L. 2017, p. 764, § 1-1/SB 193, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Untreated chlamydial infection has been linked to problems during pregnancy, including preterm labor, premature rupture of membranes, and low birth weight. The newborn may also become infected during delivery as the baby passes through the birth canal. Exposed newborns can develop eye and lung infections; and

"(2) Untreated gonococcal infection in pregnancy has been linked to miscarriages, premature birth and low birth weight, premature rupture of membranes, and chorioamnionitis. Gonorrhea can also infect an infant during delivery as the infant passes through the birth canal. If untreated, infants can develop eye infections."

31-2A-36. Criteria for grant consideration.

(a) In order to be considered for a grant under this article, each direct client service provider shall:

(1) Be a nonprofit organization incorporated in this state with a tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986;

(2) Have a primary mission of promoting healthy pregnancy and childbirth;

(3) Have a system of financial accountability consistent with generally accepted accounting principles, including an annual budget;

(4) Have a board that hires and supervises a director who manages the organization's operations;

(5) Have provided pregnancy support services for a minimum of one year;

(6) Offer, at a minimum, pregnancy tests and counseling for women who are or may be experiencing unplanned pregnancies;

(7) Provide confidential and free pregnancy support services;

(8) Provide each pregnant client with accurate information on the developmental characteristics of babies and of unborn children, including offering the printed materials described in Code Section 31-9A-4 on fetal development and assistance available following a birth;

(9) Ensure that grant money is not used to encourage or affirmatively counsel a client to have an abortion unless the client's attending physician diagnoses a condition which makes such abortion necessary to prevent her death; to provide her an abortion; or to directly refer her to an abortion provider for an abortion; and

(10) Maintain confidentiality of all data, files, and records of clients related to the services provided and in compliance with state and federal laws.

(b) The department shall publish the direct client service provider criteria on its website.

History. — Code 1981, § 31-2A-36, enacted by Ga. L. 2016, p. 214, § 2/SB 308.

31-2A-37. Record maintenance and reporting.

Each direct client service provider shall maintain accurate records and report data to the agency annually on forms and in the manner required by the department. Reports shall include the number of clients who:

(1) Utilized pregnancy support services;

(2) Are pregnant;

(3) Chose childbirth after receiving pregnancy support services;

(4) Chose adoption after receiving pregnancy support services; and

(5) Chose abortion after receiving pregnancy support services.

Each provider may be required to provide other information and data at the discretion of the department.

History. — Code 1981, § 31-2A-37, enacted by Ga. L. 2016, p. 214, § 2/SB 308.

31-2A-38. Confidentiality.

Confidentiality of all data, files, and records of clients related to the services provided under this article shall be maintained by the department, contract management agency, and direct client service providers pursuant to federal and state laws related to privacy of medical records, including requirements under the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

History. — Code 1981, § 31-2A-38, enacted by Ga. L. 2016, p. 214, § 2/SB 308.

31-2A-39. Annual audit.

The agency shall conduct an annual audit of each direct client service provider by an independent certified public accountant within 120 days of the completion of its fiscal year verifying that it has complied with all requirements of this article and any other requirements of the department.

History. — Code 1981, § 31-2A-39, enacted by Ga. L. 2016, p. 214, § 2/SB 308.

31-2A-40. Reports to the General Assembly.

(a) The department shall annually report to the General Assembly on its use of trust funds appropriated to the department pursuant to this article.

(b) The department shall also provide an annual report no later than September 30 of each year beginning September 30, 2017, which shall provide the following information for the immediately preceding fiscal year:

(1) The amount of any contributions or other funding received;

(2) The total amount of expenses; and

(3) The amount of trust funds disbursed through the agency to direct client service providers.

(c) The reports required by this Code section shall be made available to the public free of charge by electronic means and in such other manner as the department deems appropriate.

History. — Code 1981, § 31-2A-40, enacted by Ga. L. 2016, p. 214, § 2/SB 308.

31-2A-41. Acceptance of donations, contributions, and gifts.

The department is authorized to accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out the functions and purposes of this article.

History. — Code 1981, § 31-2A-41, enacted by Ga. L. 2016, p. 214, § 2/SB 308.

ARTICLE 3

PERINATAL FACILITIES

Effective date. — This article became effective July 1, 2018.

31-2A-50. Legislative findings.

The General Assembly finds and declares that:

(1) Georgia ranks as the forty-ninth worst in the nation for the number of maternal deaths occurring during and one year after pregnancy;

(2) Georgia ranks as the thirty-second worst in the nation for the number of infant deaths occurring before the first birthday;

(3) Georgia ranks as the forty-fifth worst in the nation for the percentage of premature births, a leading cause of infant deaths;

(4) Low birth weight or premature infants are more likely to survive if the birth takes place in a facility which is prepared to handle the risks associated with such deliveries;

(5) Several states have established programs to inspect and designate facilities that have developed the capacity to provide expanded levels of neonatal and maternal care; and

(6) Therefore, it is in the best interest of the residents of this state to establish a program that encourages the improvement of quality of care to create better maternal and neonatal outcomes.

History. — Code 1981, § 31-2A-50, enacted by Ga. L. 2018, p. 344, § 1/HB 909; Ga. L. 2019, p. 1056, § 31/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (1).

31-2A-51. Definitions.

As used in this article, the term:

(1) "Designated facility" means a perinatal facility that has been inspected and approved by the department pursuant to this article as meeting its established criteria for a particular maternal or neonatal level of care.

(2) "Perinatal facility" means a hospital, clinic, or birthing center that provides maternal or neonatal health care services.

History. — Code 1981, § 31-2A-51, enacted by Ga. L. 2018, p. 344, § 1/HB 909.

31-2A-52. Approval as designated perinatal facility; establishing criteria for levels of maternal and neonatal care.

(a) The department shall establish a procedure by which a perinatal facility may request approval as a designated facility which has achieved a particular maternal or neonatal level of care.

(b)(1) The department shall establish through rule making the criteria for levels of maternal and neonatal care, ranging from basic care to such additional levels of care as may be deemed appropriate for the protection of mothers and infants at elevated risk.

(2) The department shall establish separate criteria for levels of maternal care and neonatal care. Such criteria may include, without limitation, data collection and reporting, arrangements for patient transportation, and protocols for coordination with and referral of patients to and from other health care facilities.

(3) In establishing or revising the criteria for maternal and neonatal levels of care, the department shall conduct public comment hearings; solicit the views of hospitals, birthing centers, health care providers, and related professional associations; and give due consideration to the current recommendations of medical and scientific organizations in the field of perinatal medicine.

History. — Code 1981, § 31-2A-52, enacted by Ga. L. 2018, p. 344, § 1/HB 909; Ga. L. 2019, p. 1056, § 31/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (b)(1).

31-2A-53. Application process; review and redesignation of facilities; failure to comply with criteria.

(a) A perinatal facility may apply to the department for designation through an application process to be determined by the department. The facility shall demonstrate to the satisfaction of the department that it meets the applicable criteria for the requested level of care. The application process may include an on-site inspection of the facility at the discretion of the department.

(b) The department may establish requirements for the periodic review and redesignation of designated facilities.

(c) The department may suspend or revoke the designation of a designated facility, after notice and hearing, if the department determines that the facility is no longer in compliance with the criteria established pursuant to this article.

History. — Code 1981, § 31-2A-53, enacted by Ga. L. 2018, p. 344, § 1/HB 909.

31-2A-54. Listing of designated facilities; self-assessment tool.

(a) On or before December 31, 2019, the department shall post and annually update a list of designated facilities on its website.

(b) The department shall adopt or develop a self-assessment tool for use by perinatal facilities that includes separate, minimum requirements for neonatal and maternal levels of care. The department shall post this assessment tool on its website no later than July 1, 2019.

History. — Code 1981, § 31-2A-54, enacted by Ga. L. 2018, p. 344, § 1/HB 909.

31-2A-55. Provisions are not medical care; individualized care and treatment.

This article, and any criteria developed by the department pursuant to this article, shall not be construed to be a medical practice guideline or to establish a standard of care for treatment and shall not be used to restrict or expand the authority of a hospital or other health care facility to provide services for which it has received a license under state law. The General Assembly intends that all patients be treated individually based on each patient's needs and circumstances.

History. — Code 1981, § 31-2A-55, enacted by Ga. L. 2018, p. 344, § 1/HB 909.

31-2A-56. Advertisement prohibited unless designated by department.

No person or facility may advertise to the public, by way of any medium whatsoever, that it is a designated facility or has achieved a particular level of maternal or neonatal care according to the criteria established pursuant to this article, unless it has been designated as such by the department.

History. — Code 1981, § 31-2A-56, enacted by Ga. L. 2018, p. 344, § 1/HB 909.

31-2A-57. Regulatory authority.

The department shall be authorized to promulgate rules and regulations to carry out the purposes of this article.

History. — Code 1981, § 31-2A-57, enacted by Ga. L. 2018, p. 344, § 1/HB 909.

CHAPTER 3

COUNTY BOARDS OF HEALTH

Sec.
31-3-1. Creation.
31-3-2. Composition; terms of members.
31-3-2.1. Option for certain counties to create board of health and wellness by ordinance [Repealed].
31-3-3. Duty to inform department of membership.
31-3-4. Powers.
31-3-5. Functions.
31-3-5.1. Conformity prerequisite to building permit.
31-3-5.2. Definition of "gray water"; lawful use.
31-3-6. Rules and regulations of local application.
31-3-7. Compensation for members' attendance at meetings.
31-3-8. Records.
31-3-9. Office quarters and equipment.
31-3-10. Legal representation.
31-3-11. Appointments of director and staff; supervision.
31-3-12. Duties of director.
31-3-12.1. Contracts between county boards; authorization for and provisions applicable to county board of health serving as community service board.
31-3-13. Declaration of public policy; contracts for assistance to boards.
31-3-14. Financing of expenses.
31-3-15. Establishment of health districts.
31-3-16. Enforcement under local ordinances.

JUDICIAL DECISIONS

Administrative Procedure Act does not apply to county boards of health. — Administrative Procedure Act, O.C.G.A. T. 50, Ch. 13, does not apply to county boards of health as these boards are not included within the definition of "agency." Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983).

Choice of site for public health clinic subject to private rights. — General power to establish and operate public health clinic does not include authority to ignore private rights in selecting location. Benton v. Pittard, 197 Ga. 843, 31 S.E.2d 6 (1944).

Cited in Brock v. Chappell, 196 Ga. 567, 27 S.E.2d 38 (1943); Georgia Dep't of Human Resources v. Demory, 138 Ga. App. 888, 227 S.E.2d 788 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Power to implement and enforce state health laws and regulations vested in county boards. — While county and district health agencies have enforcement responsibilities for state health laws and implementing regulations of Department of Human Resources (now the Department of Community Health for these purposes) the department itself has no direct statutory power over manner in which enforcement responsibility is met; instead that power is vested in county board of health. 1974 Op. Att'y Gen. No. 74-19.

Employees of county boards of health are county employees unless otherwise provided; therefore, for purposes of unemployment compensation, employees of various county boards of health are county employees, and county boards are accordingly responsible for all required reports and contributions for these employees. 1978 Op. Att'y Gen. No. 78-22.

County board of health employees are employees of county for workers' compensation purposes. — County board of health exists as operating arm of county and the board's employees are for purposes of workmen's (now workers') compensation classified as county employees. 1960-61 Op. Att'y Gen. p. 590.

RESEARCH REFERENCES

ALR. — Liability of governmental agency for emergency medical or surgical services rendered to poor person without its express authority, 93 A.L.R. 900.

Propriety of state or local government health officer's warrantless search — post-Camara cases, 53 A.L.R.4th 1168.

31-3-1. Creation.

There is established a county board of health in each and every county of this state.

History. — Ga. L. 1914, p. 124, § 2; Code 1933, § 88-201; Ga. L. 1941, p. 317, § 1; Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Cited in Williams v. Board of Educ., 180 Ga. 85, 178 S.E. 148 (1935); Abel v. State, 190 Ga. 651, 10 S.E.2d 198 (1940); Hood v. Burson, 194 Ga. 30, 20 S.E.2d 755 (1942).

OPINIONS OF THE ATTORNEY GENERAL

Criteria for determining appointing authority for position. — In determining whether commissioner, Department of Human Resources (now the Department of Community Health for these purposes), or district health director is appointing authority for any particular employee, it is necessary to consider the source of creation and funding of the position in question. 1974 Op. Att'y Gen. No. 74-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8, 9.

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-3-2. Composition; terms of members.

(a) Each county board of health shall be composed of seven members as follows:

(1) One member shall be the chief executive officer of the governing authority of the county, by whatever name called, or some member designated by said officer; in counties where the governing authority is the judge of the probate court of the county, he shall be the member so appointed;

(2) One member shall be the county superintendent of schools or other school personnel may be designated by said superintendent for such time period as determined by the superintendent but not to exceed such superintendent's contract term;

(3) Except as otherwise provided in this paragraph, one member to be appointed by the governing authority of the county shall be a physician actively practicing medicine in the county and licensed under Chapter 34 of Title 43. If there are fewer than four physicians actively practicing in the county or if there is no physician actively practicing in the county who is willing and able to serve, the governing authority may appoint a person licensed as a nurse or dentist under Chapter 26 or 11, respectively, of Title 43, and actively practicing such profession in the county or any other person having a familiarity with and concern for the provision of medical services in the county;

(4) One member to be appointed by the governing authority of the county shall be a consumer, a representative of a consumer, or a person from an advocacy agency or group, which member will represent on the board the county's consumers of health services;

(5) One member to be appointed by the governing authority of the largest municipality in the county shall be a person interested in promoting public health who is a consumer or a nurse licensed under Chapter 26 of Title 43;

(6) One member to be appointed by the governing authority of the county shall be a consumer member who will represent on the board the county's needy, underprivileged, or elderly community; and

(7) One member shall be the chief executive officer of the governing authority of the largest municipality of the county, by whatever name called, or some member designated by said officer; provided, however, that whenever the legal situs of such largest municipality lies within an adjoining county, the county governing authority may adopt an ordinance providing:

(A) For the selection by the county governing authority of the chief executive officer, by whatever name designated, of the governing authority of any municipality lying wholly or partially within the county to fill the position on the county board of health authorized by this paragraph;

(B) That the chief executive officer so selected may designate another member of the respective municipal governing authority, whose term of office is the same as that of the chief executive officer, to serve in the place of the chief executive officer;

(C) That the chief executive officer so selected or the chief executive officer's designee shall serve for a term of office as a

member of the county board of health concurrent with the term of office as a member of the municipal governing authority;

(D) That a vacancy in the position on the county board of health which is held by the chief executive officer or the chief executive officer's designee shall be filled for the unexpired term by the county governing authority; and

(E) That the first member of the county board of health selected by the county governing authority under such ordinance may take office at any time on or after January 1, 1987, and that the term of office of the member of the county board of health holding office pursuant to this paragraph on December 31, 1986, shall expire on the day immediately preceding the day such first member selected under such ordinance takes office.

(b) No member appointed to the county board of health shall be an employee of the county board of health or of the department.

(c) The terms of the members of county boards of health serving as such on June 30, 1985, and who are serving in membership positions required to be filled by grand jury appointment, shall expire at the end of June 30, 1985, and upon the appointment and qualification of their successors.

(d) The initial term of the member first appointed pursuant to paragraph (3) of subsection (a) of this Code section shall begin July 1, 1985, and shall expire December 31, 1987; the initial term of the member first appointed pursuant to paragraph (4) of subsection (a) of this Code section shall begin July 1, 1985, and shall expire December 31, 1986; the initial term of the member first appointed pursuant to paragraph (6) of subsection (a) of this Code section shall begin July 1, 1984, and expire December 31, 1985; and the initial term of the member first appointed pursuant to paragraph (5) of subsection (a) of this Code section shall begin July 1, 1984, and shall expire December 31, 1986. After these initial terms, members appointed pursuant to paragraphs (3), (4), (5), and (6) of subsection (a) of this Code section shall take office the first day of January immediately following the expiration of the immediately preceding term of that office and serve terms of six years and until their successors are appointed and qualified. Vacancies in any such membership shall be filled, for the unexpired term and until a successor is appointed and qualified, in the same manner as the original appointment.

(e) Persons holding office as members pursuant to paragraph (1), (2), or (7) of subsection (a) of this Code section shall serve as members while holding their offices as chief executive officer of the governing authority of the county, county superintendent of schools, or chief executive officer of the largest municipality of the county, respectively.

(f) In each county having a population of not less than 400,000 and not more than 500,000 according to the United States decennial census of 1990 or any future such census, the superintendent of the largest municipal school system in the county shall serve in an ex officio capacity as an additional member of the county board of health.

History. — Ga. L. 1914, p. 124, § 2; Code 1933, § 88-201; Code 1933, § 88-202, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1967, p. 544, § 1; Ga. L. 1982, p. 506, § 1; Ga. L. 1984, p. 1325, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1986, p. 1242, § 1; Ga. L. 1987, p. 185, § 1; Ga. L. 1992, p. 1217, § 1; Ga. L. 1993, p. 1445, § 1; Ga. L. 1998, p. 855, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "who" was deleted preceding "shall" in paragraphs (a)(4) through (a)(6).

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

JUDICIAL DECISIONS

Cited in Abel v. State, 190 Ga. 651, 10 S.E.2d 198 (1940).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under this Code section, prior to its 1984 amendment, are included in the annotations for this Code section.

Paragraph (a)(7) of O.C.G.A. § 31-3-2 construed. — One member of a county board of health must be the chief executive officer or a member of the governing authority of the largest municipality of the county. 1986 Op. Att'y Gen. No. U86-5.

County manager may not serve on board of health. — Language of this section requires that either the head of the governing authority serve, or that some other member of the governing authority be designated to serve instead. The chairman of the county commissioners may not appoint a county manager, who is not a county commissioner, to serve on the county board of health. 1980 Op. Att'y Gen. No. 80-25.

Board member may not be county board of health member. — Person may not serve simultaneously as a member of the Board of Human Resources and as a member of a county board of health. 1985 Op. Att'y Gen. No. 85-28.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8, 9.

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-3-2.1. Option for certain counties to create board of health and wellness by ordinance.

Repealed by Ga. L. 2016, p. 520, § 1/HB 885, effective April 27, 2016.

Editor's notes. — This Code section was based on Code 1981, § 31-3-2.1, enacted by Ga. L. 1985, p. 384, § 1; Ga. L. 1987, p. 169, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1998, p. 916, § 1; Ga. L. 2002, p. 1473, § 1.

Ga. L. 2016, p. 520, § 2/HB 885, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval; provided, however, that for any county board of health and wellness which was established by county ordinance pursuant to the former provisions of Code Section 31-3-2.1 and which is still in existence as of the effective date of this Act, the members of such board shall remain in office and such board shall remain in existence until a county board of health is constituted pursuant to Code Section 31-3-2 for such county or until June 30, 2017, whichever occurs first."

31-3-3. Duty to inform department of membership.

The county board of health shall keep the department informed of the names, addresses, and terms of office of its members.

History. — Code 1933, § 88-208, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8, 9.

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-3-4. Powers.

(a) The county board of health is empowered to:

(1) Establish and adopt bylaws for its own governance. Meetings shall be held no less frequently than quarterly;

(2) Exercise responsibility and authority in all matters within the county pertaining to health unless the responsibility for enforcement of such is by law that of another agency;

(3) Take such steps as may be necessary to prevent and suppress disease and conditions deleterious to health and to determine compliance with health laws and rules, regulations, and standards adopted thereunder;

(4) Adopt and enforce rules and regulations appropriate to its functions and powers, provided such rules and regulations are not in conflict with the rules and regulations of the department. Such rules and regulations must be reasonably adapted to the purposes intended and must be within the purview of the powers and duties imposed upon the county board of health by this chapter;

(5) Receive and administer all grants, gifts, moneys, and donations for purposes pertaining to health pursuant to this chapter;

(6) Make contracts and establish fees for the provision of public health services provided by county boards of health, including but not limited to environmental health services, which fees may be charged

to persons or to establishments and premises within the county for inspection of such establishments, premises, structures and appurtenances thereto, or for other county board of health services. All such fees may be used to defray costs of providing such local services and shall supplement but not replace state or federal funding. No person shall be denied services on the basis of that person's inability to pay. The scope of services, operating details, contracts, and fees approved by the county board of health shall also be approved by the district director of health. No fees for environmental health services may be charged unless the schedule of fees for such services has been approved by the county governing authority;

(7) Contract with the Department of Public Health or other agencies for assistance in the performance of its functions and the exercise of its powers and for supplying services which are within its purview to perform, provided that such contracts and amendments thereto shall have first been approved by the department. In entering into any contracts to perform its functions and to exercise its powers, and for supplying services which are within its purview to perform, any county board of health or any health district created under the authority of Code Section 31-3-15 shall be considered an agency and such agency shall have the authority to contract with any other county board of health; combination of county boards of health; any other health district; public or private hospitals; hospital authorities; medical schools; training and educational institutions; departments and agencies of the state; county or municipal governments; persons, partnerships, corporations, and associations, public or private; the United States government or the government of any other state; or any other legal entity; and

(8) The county board of health in each county of this state having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census is authorized to develop and implement activities for the prevention of injuries and incorporate injury prevention measures in rules and regulations which are within the purview of the county board of health to promulgate which shall be effective when adopted by an ordinance of the county governing authority.

(b) Notwithstanding the provisions contained in subsection (a) of this Code section and Code Section 31-3-5, nothing contained in this Code section or Code Section 31-3-5 shall be construed to empower a county board of health to adopt any rules or regulations or provisions to enforce any rules or regulations pertaining to matters provided for or otherwise regulated pursuant to the provisions of Part 1 of Article 2 of Chapter 8 of Title 12, the "Georgia Comprehensive Solid Waste Management Act," as now or hereafter amended, or the rules and regulations promulgated pursuant to such part.

History. — Code 1933, § 88-204, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1966, p. 380, § 1; Ga. L. 1976, p. 1420, § 1; Ga. L. 1978, p. 2031, § 1; Ga. L. 1984, p. 1325, § 2; Ga. L. 1985, p. 419, § 1; Ga. L. 1988, p. 1757, § 1; Ga. L. 1992, p. 1204, § 1; Ga. L. 1992, p. 3308, § 1.1; Ga. L. 1993, p. 1445, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — Regulation of restaurants, taverns, and other establishments by county boards of health and Department of Public Health, § 26-2-370 et seq. Inspection of funeral establishments by county boards of health, § 43-18-75.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "such part" was substituted for "such Act" at the end of subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

County not "employer" within meaning of federal civil rights statute. — Position of mental health center service coordinator at a county health department is created by the State of Georgia and is governed by the Georgia State Merit System of Personnel Administration for the Georgia Department of Human Resources (now the Department of Community Health for these purposes) with respect to the terms and conditions of employment, including hiring, termination, promotion, demotion, and wage rates. A fortiori, the county is not an "employer" within the meaning of Title VII of the federal Civil Rights Act of 1964. Lewis v. DeKalb County, 569 F. Supp. 11 (N.D. Ga. 1983).

Provisions of paragraph (a)(3) do not include matters relating to public safety. Vinson v. Howe Bldrs. Ass'n of Atlanta, 233 Ga. 948, 213 S.E.2d 890 (1975).

Safety regulations to prevent traumatic death and drowning not within board's powers. — Traumatic death or drowning is not deleterious to health within the meaning of this section and safety regulations to prevent those occurrences are not within the scope of the board's powers. Vinson v. Howe Bldrs. Ass'n, 233 Ga. 948, 213 S.E.2d 890 (1975).

Authorized fees. — Legislature, by the legislature's use of the language "other public health services" in former paragraph (6) of O.C.G.A. § 31-3-4, intended to authorize fee collection only for those personal health care services, such as nursing homes services and mental health care, which are provided by county health boards to individual citizens. Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983).

Assessment of fees for inspection of public hotels, motels, and restaurants is simply not within the contemplation of former paragraph (6) of O.C.G.A. § 31-3-4. Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983).

Cited in Rice v. Oaks Investors II, 292 Ga. App. 692, 666 S.E.2d 63 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

General Consideration
Fees for Services
Contracts Pursuant to Code Section

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 88-203, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

County boards' authority regarding provision of home health care services. — County boards of health have

authority to make contracts and establish and accept fees for purpose of providing home health care services, including service of physical therapy, for chronically ill and aged. 1970 Op. Att'y Gen. No. U70-215.

Boards authorized to serve patients. — County boards of health clearly are created for public health purposes, and the boards have authority to serve patients among other activities. 1987 Op. Att'y Gen. No. U87-19.

General laws regulating solid waste handling do not preclude county regulation. — Existence of general laws relating to regulation of solid waste handling and management does not necessarily preclude adoption of regulations on same subject by county boards of health, provided such regulations have a reasonable relation to protection of health of citizenry of county and are not prohibited by express or implied language in Solid Waste Management Act or rules and regulations promulgated thereunder. 1976 Op. Att'y Gen. No. 76-17.

Rules and regulations of county boards of health prevail over municipal regulations. 1954-56 Op. Att'y Gen. p. 571 (decided under former Code 1933, § 88-203 prior to amendment of Chapter 88-2 by Ga. L. 1964, p. 499, § 1).

Department's discretion to withhold state funds from a county. — State Health Department (now the Department of Community Health for these purposes) has power to withhold at the department's discretion state funds from a county on a variety of grounds, including refusal of county commissioners to approve budget submitted by county board of health, and can refuse to increase salaries of board of health's staff in line with State Personnel Board rules. 1965-66 Op. Att'y Gen. No. 66-165.

Fees for Services

Right of county boards to fees for health services rendered by employee. — Since the county board of health has the general authority to establish and accept fees for purpose of providing health care services for the ill, it can therefore set, collect, and retain fees for these services where rendered by an employee. 1975 Op. Att'y Gen. No. 75-22.

County board shall maintain funds separate from general county funds. — Ga. L. 1964, p. 499, § 1, and Ga. L. 1966, p. 380, § 1 (see O.C.G.A. §§ 31-3-4, 31-3-8, and 31-3-14) indicate that county board of health shall maintain the county's funds separate from those of county, rather than that the county's funds should be paid into general county funds. 1971 Op. Att'y Gen. No. U71-120.

County boards need not pay money received for services to county commissioner or treasury. — County boards of health are not required to pay over money received for services performed by board to county commissioners or county treasury. 1971 Op. Att'y Gen. No. U71-120.

Contracts Pursuant to Code Section

Purpose of the contract must come within parameters of grant of contracting power given to county board of health. 1980 Op. Att'y Gen. No. 80-52.

Part of authority to contract is authority to give consideration. — Since both the counties and the department have authority to contract, it was self-evident that they have the authority to give consideration for the contract since, pursuant to former Code 1933, § 20-301, consideration was essential to a contract and a contract without consideration was unenforceable. 1975 Op. Att'y Gen. No. 75-22.

Department's consideration for contract entered may be services of state employee. 1975 Op. Att'y Gen. No. 75-22.

Consideration of county in form of services to state. — Consideration given by county for contract may be rendering of services to state which county would not otherwise be obligated to perform, or, if county is already obligated to perform such services, some other consideration such as money may be substituted. 1975 Op. Att'y Gen. No. 75-22.

County board of health, in providing consideration to support a contract, may provide personal services. 1980 Op. Att'y Gen. No. 80-52.

Department of Human Resources may provide employee for private

Contracts Pursuant to Code Section (Cont'd)

nonprofit corporation. — Department of Human Resources (now the Department of Community Health for these purposes) may contractually obligate itself to provide, through a county board of health, one of its employees to work for a private nonprofit corporation which furnishes mental health services. 1980 Op. Att'y Gen. No. 80-52.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 2, 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 4 et seq.

ALR. — Right of one detained pursuant to quarantine to habeas corpus, 2 A.L.R. 1542.

Regulation of business of tattooing, 81 A.L.R.3d 1212.

31-3-5. Functions.

(a) Subject to the provisions of Code Section 31-2A-11 and subsection (b) of this Code section, each county board of health shall have and discharge, within its jurisdiction, subject to any valid local Act which shall remain in force and effect, the following functions:

(1) To determine the health needs and resources of its jurisdiction by research and by collection, analysis, and evaluation of all data pertaining to the health of the community;

(2) To develop, in cooperation with the department, programs, activities, and facilities responsive to the needs of its area;

(3) To secure compliance with the rules and regulations of the department that have local application; and

(4) To enforce, or cause enforcement of, all laws pertaining to health unless the responsibility for the enforcement of such laws is that of another agency.

(b) Each county board of health shall have the power and duty to adopt regulations providing standards and requirements governing the installation of on-site sewage management systems within the incorporated and unincorporated area of the county, subject to the provisions of Code Section 31-2A-11, any rules and regulations promulgated under Code Section 31-2A-11, and subsection (d) of this Code section. Such regulations shall include and be limited to the following:

(1) Specifying the locations within the incorporated and unincorporated area of the county where on-site sewage management systems may be installed;

(2) Specifying the minimum lot size or land area which may be served by an on-site sewage management system based on scientific data regarding on-site sewage management systems;

(3) Specifying the types of residences, buildings, or facilities which may be served by on-site sewage management systems;

(4) Issuing permits for the installation of on-site sewage management systems prior to such installation;

(5) Inspecting on-site sewage management system installations prior to the completion of the installation; and

(6) Providing for ongoing maintenance of such systems, except for nonmechanical residential sewage management systems.

(c) Nothing in this Code section or in Code Section 31-3-5.1 shall limit the power of a county or municipal governing authority to exercise its zoning powers or to establish minimum lot sizes larger than the minimum lot sizes specified pursuant to subsection (b) of this Code section.

(d)(1) Any person may register with the department to conduct soil investigations and prepare soil reports of a site within the state for an on-site sewage management system who meets any one of the following criteria:

(A) Qualifies as a soil classifier as defined in subparagraph (B) of paragraph (3) of this subsection;

(B) Holds a valid certificate of registration as a professional engineer issued pursuant to Chapter 15 of Title 43 and is practicing within his or her area of engineering competency;

(C) Holds a valid certificate of registration as a registered geologist issued pursuant to Chapter 19 of Title 43 and is practicing within his or her area of geologic competency; or

(D) Is a soil and water conservation technician as defined in subparagraph (A) of paragraph (3) of this subsection.

(2) Upon the submission of an evaluation of the suitability of a site within the state for an on-site sewage management system by such a person who is registered with the department, the county board of health shall be required to accept the evaluation unless such evaluation is found by the county board of health to be deficient or questionable. If the county board of health finds such evaluation to be deficient or questionable, the board shall, within three working days of making such finding, issue a written determination stating all deficiencies and all measures needed to correct the deficiencies. A copy of this determination shall be provided to the state director of environmental health.

(3) As used in this subsection, the term:

(A) "Soil and water conservation technician" means a person employed as a soil and water conservation technician by a soil and

water conservation district provided for in Article 2 of Chapter 6 of Title 2.

(B) "Soil classifier" means a person who:

(i) Holds at least a bachelor of science degree from an accredited college or university with a major in soil science or a related field of science. This degree shall include 30 semester credit hours or equivalent quarter credit hours in the biological, physical, chemical, and earth sciences with a minimum of 15 semester credit hours or equivalent quarter hours in soil science courses meeting the following distribution:

(I) A minimum of one course in soil classification, morphology, genesis, and mapping; and

(II) The remaining soil science credits must be in at least three of the following eight categories: introductory soil science; soil fertility; soil microbiology; soil chemistry; soil physics; soil management, soils and land use, or soils and the environment; soil mineralogy; or a three credit maximum in independent study, geology, or hydrology; and

(ii) Has at least four years of verifiable full-time or equivalent part-time experience under the supervision of a soil classifier who has met the education and experience requirements provided in this subparagraph. Such experience must be obtained after meeting all educational requirements defined in this subparagraph and must have been spent actively mapping, identifying, and classifying soil features and interpreting the influence of soil features on soil uses including, but not limited to, conducting soil investigations for determining the suitability of sites for on-site sewage management systems as approved by the department's soil classifiers advisory committee; and

(iii) Has successfully passed a written examination pertaining to site investigations for on-site sewage management systems administered or approved by the department.

History. — Code 1933, § 88-203, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1997, p. 708, § 2; Ga. L. 2000, p. 549, § 1; Ga. L. 2003, p. 302, § 1; Ga. L. 2009, p. 453, § 1-10/HB 228; Ga. L. 2011, p. 705, § 3-3/HB 214.

Cross references. — Powers and duties of county boards of health with regard to providing of mental health and developmental disabilities services, T. 37, C. 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, subparagraphs (d)(1)(A) and (d)(1)(B) (now subparagraphs (d)(3)(A) and (d)(3)(B)) were placed in alphabetical order.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

County not "employer" within meaning of federal civil rights statute. — Position of mental health center service coordinator at a county health department is created by the State of Georgia and is governed by the Georgia State Merit System of Personnel Administration for the Georgia Department of Human Resources (now the Department of Community Health for these purposes) with respect to the terms and conditions of employment, including hiring, termination, promotion, demotion, and wage rates. A fortiori, the county is not an "employer" within the meaning of Title VII of the federal Civil Rights Act of 1964. Lewis v. DeKalb County, 569 F. Supp. 11 (N.D. Ga. 1983).

Cited in In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Power to implement and enforce state health laws and regulations vested in county boards. — While county and district health agencies have enforcement responsibilities for state health laws and implementing regulations of Department of Human Resources (now the Department of Community Health for these purposes), the department itself has no direct statutory power over manner in which enforcement responsibility is met; instead that power is vested in county board of health. 1974 Op. Att'y Gen. No. 74-19.

Boards authorized to serve patients. — County boards of health clearly are created for public health purposes and the boards have authority to serve patients among other activities. 1987 Op. Att'y Gen. No. U87-19.

Criteria for determining appointing authority for position. — In determining whether commissioner, Department of Human Resources, or district health director is appointing authority for any particular employee, it is necessary to consider the source of creation and funding of the position in question. 1974 Op. Att'y Gen. No. 74-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 10 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 10.

31-3-5.1. Conformity prerequisite to building permit.

No building permit for the construction of any residence, building, or other facility which is to be served by a sewage management system shall be issued by or pursuant to the authority of a county governing authority unless the sewage management system installation permit is in conformity with standards contained in Code Section 31-2A-11 for sewage management systems. No person, firm, corporation, or other entity shall install a sewage management system in violation of the provisions of Code Section 31-2A-11 or the regulations of a county board of health adopted pursuant to the authority of Code Section 31-3-5. Each county governing authority shall provide by ordinance or resolution for the enforcement of the provisions of this Code section.

History. — Code 1981, § 31-3-5.1, enacted by Ga. L. 1986, p. 227, § 1; Ga. L. 1992, p. 3308, § 2; Ga. L. 1994, p. 1777, § 2; Ga. L. 1997, p. 708, § 3; Ga. L. 2009,

p. 453, § 1-10/HB 228; Ga. L. 2011, p. 705, § 3-3/HB 214.

Cross references. — Building standards and requirements generally, T. 8, C. 2.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-3-5.2. Definition of "gray water"; lawful use.

(a) As used in this Code section, the term "gray water" means waste water discharged from residential lavatories, bathtubs, showers, clothes washers, and laundry trays.

(b) Private residential direct reuse of gray water shall be lawful if the following conditions are met:

(1) Gray water originating from the residence shall be used and contained within the property boundary for household gardening, composting, lawn watering, or landscape irrigation;

(2) Gray water shall not be used for irrigation of food plants;

(3) The gray water shall not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from home photography laboratories or similar hobbyist or home occupational activities;

(4) The application of gray water shall be managed to minimize standing water on the surface;

(5) The application of gray water shall be outside of a floodway;

(6) The gray water shall not contain water used to wash diapers or similarly soiled or infectious garments unless the gray water is disinfected before irrigation; and

(7) The gray water shall be applied only by hand watering using garden watering cans or similar hand-held containers.

(c) County boards of health shall adopt the provisions of subsection (b) of this Code section by regulation. Local governing bodies shall be authorized to punish violations of said regulations as local ordinance violations, provided that the penalty for each such violation shall not exceed a $100.00 fine.

History. — Code 1981, § 31-3-5.2, enacted by Ga. L. 2008, p. 720, § 1/SB 463; Ga. L. 2009, p. 8, § 31/SB 46.

31-3-6. Rules and regulations of local application.

The county board of health shall have authority to establish rules and regulations which apply to all citizens and premises of the county or to

specified areas and citizens therein without regard to the remainder of the county.

History. — Code 1933, § 88-205, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 9, 10.

31-3-7. Compensation for members' attendance at meetings.

Members of county boards of health shall be paid not more than $25.00 per day for their attendance at meetings of the board, provided funds therefor have been established by budget and are available from funds allocated to that purpose.

History. — Code 1933, § 88-206, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1989, p. 312, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 14.

31-3-8. Records.

The county board of health shall record and preserve true and correct minutes of its proceedings in a book kept for that purpose and shall maintain or cause to be maintained, unless maintained by the governing authority of the county, accurate double entry accounting records including but not limited to:

(1) Prenumbered duplicates of receipts issued for funds received showing the source of such funds; and

(2) Records and financial reports including a general ledger maintained in accordance with generally accepted principles of accounting and in accordance with such standards as may be prescribed by the governing authority of the county and the department. Such records shall show all receipts and disbursements, identifying each item and, in the case of disbursements, listing to whom paid, dates, amounts, and objects of expenditure. All accounting records shall be subject to any audits made of general county financial operations and shall be made available for the purpose of such audits.

History. — Code 1933, § 88-207, enacted by Ga. L. 1964, p. 499, § 1.

Cross references. — Requirements of audit reports generally, § 36-60-8.

OPINIONS OF THE ATTORNEY GENERAL

Code section indicates county board shall maintain funds separate from general county funds. — Ga. L. 1964, p. 499, § 1, and Ga. L. 1966, p. 380, § 1, indicate that county board of health shall maintain the board's funds separate from those of county, rather than that the board's funds should be paid into general county funds. 1971 Op. Att'y Gen. No. U71-120.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 20 et seq., 36.

31-3-9. Office quarters and equipment.

The governing body of the county shall provide the county board of health with quarters and equipment sufficient for its operation.

History. — Code 1933, § 88-209, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Cited in Lewis v. DeKalb County, 569 F. Supp. 11 (N.D. Ga. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 9, 10.

31-3-10. Legal representation.

The county board of health may require the legal services of the county attorney or, its budget permitting, may employ other counsel to assist in performing its duties.

History. — Code 1933, § 88-210, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8 et seq., 19, 20.

C.J.S. — 39A C.J.S., Health and Environment, §§ 9, 10.

ALR. — Power of fire, water, or health commissioners, or the like, to employ counsel, 2 A.L.R. 1212.

31-3-11. Appointments of director and staff; supervision.

(a) The county board of health shall appoint as its chief executive officer a director who shall be a physician licensed to practice medicine

under Chapter 34 of Title 43 and who otherwise meets the requirements of the rules of the State Personnel Board. The director, subject to the approval of the county board of health, shall designate aides and assistants pursuant to the budget adopted by the county board of health in accordance with Code Section 31-3-14.

(b) Each employee of a county board of health whose duties include enforcing those environmental health laws of this state or environmental health regulations of that board of health relating to septic tanks or individual sewage management systems shall be subject to the direction and supervision of the district director of environmental health, although the hiring and termination from employment of such employee shall be subject to the director of that county board of health. The employment activities of such employee with regard to environmental health shall be reported to the director of environmental health through the district director of environmental health at least quarterly. The director of environmental health may recommend to that director of that county board of health personnel actions, including but not limited to termination, which the director of environmental health deems appropriate for such employee's failure or refusal to comply with the direction of the director of environmental health in the carrying out of the environmental health employment duties of such employee. As used in this subsection, the term "director of environmental health" means the director of environmental health of the Department of Public Health.

History. — Code 1933, § 88-211, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2000, p. 549, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2011, p. 705, § 6-1/HB 214; Ga. L. 2012, p. 446, § 2-35/HB 642.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "environmental" was substituted for "environment" near the end of the second sentence of subsection (b).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

County not "employer" within meaning of federal civil rights statute. — Position of mental health center service coordinator at a county health department is created by the State of Georgia and is governed by the Georgia State Merit System of Personnel Administration for the Georgia Department of Human Resources (now the Department of Community Health for these purposes) with respect to the terms and conditions of employment including hiring, termina-

tion, promotion, demotion, and wage rates. A fortiori, the county is not an "employer" within the meaning of Title VII of the federal Civil Rights Act of 1964. Lewis v. DeKalb County, 569 F. Supp. 11 (N.D. Ga. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Criteria for determining appointing authority for position. — In determining whether commissioner, Department of Human Resources (now the Department of Community Health for these purposes), or district health director is appointing authority for any particular employee, it is necessary to consider the source of creation and funding of the position in question. 1974 Op. Att'y Gen. No. 74-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8 et seq., 25, 26.

C.J.S. — 39A C.J.S., Health and Environment, § 9 et seq.

31-3-12. Duties of director.

Subject to the policies and directives of the county board of health and the policies and directives of the multiple county districts served, the director shall perform the functions and exercise the powers set forth in this chapter except the power to adopt bylaws and to adopt rules and regulations and may delegate the powers and authority conferred, or any part thereof, to one or more individuals as he may deem appropriate. The director shall devote his entire time to the service of the county board of health and to the multiple county districts, where created, and shall be vigilant in procuring compliance with its rules and regulations and with Georgia health laws and rules and regulations adopted thereunder that have application within the county and district. He shall make reports to the county board of health and the agency in charge of the multiple county district in such manner and form and with such frequency as required by it and shall also report to the department in such manner, detail, and form as the department may specify.

History. — Code 1933, § 88-212, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 25 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 9 et seq.

ALR. — Personal liability of health officer, 24 A.L.R. 798.

31-3-12.1. Contracts between county boards; authorization for and provisions applicable to county board of health serving as community service board.

(a) In addition to any other power authorized by law, the county governing authority may authorize the county board of health to enter into a contract with the Department of Behavioral Health and Developmental Disabilities or a community mental health, developmental disabilities, and addictive diseases service board created under Chapter 2 of Title 37 to provide certain mental health, developmental disabilities, and addictive diseases services based on the contractual agreement between the parties. In the event that the county governing authority exercises the authority granted by this subsection, the county board of health shall appoint a director for mental health, developmental disabilities, and addictive diseases or a supervisor of the specific service which is being provided by the county board of health, whichever is applicable, who shall meet the requirements established by this subsection. The director for mental health, developmental disabilities, and addictive diseases, or the service supervisor, shall not be required to be a physician and shall be a person other than the director of the county board of health appointed pursuant to Code Section 31-3-11. Further, such director for mental health, developmental disabilities, and addictive diseases or such supervisor of the specific service shall report directly to the county board of health and shall have no formal reporting relationship with the director of the county board of health.

(b) Pursuant to subsection (e) of Code Section 37-2-6, a county governing authority may authorize the membership of a county board of health to serve as the membership of a community mental health, developmental disabilities, and addictive diseases service board, provided that the county governing authority, the county board of health, and any other affected county governing authority act pursuant to subsection (e) of Code Section 37-2-6. If the membership of a county board of health exercises the authority granted pursuant to this subsection and Chapter 2 of Title 37 to serve as the membership of a community service board, the membership of the county board of health shall constitute the membership of the community service board and, at any time that such members are exercising duties and powers related to mental health, developmental disabilities, and addictive diseases, the community service board shall be an independent agency and shall operate in accordance with the provisions of Title 37 as a community service board. Notwithstanding any provisions of law to the contrary, a community service board and a county board of health which have the same membership may contract with each other, provided that any such contract is approved by the department and the Department of Behavioral Health and Developmental Disabilities prior to adoption.

History. — Code 1981, § 31-3-12.1, enacted by Ga. L. 1993, p. 1445, § 3; Ga. L. 1994, p. 437, § 1; Ga. L. 2002, p. 1324, § 1-3; Ga. L. 2006, p. 310, § 1/HB 1223; Ga. L. 2009, p. 453, § 3-9/HB 228.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

Ga. L. 2006, p. 310, § 10/HB 1223, not codified by the General Assembly, provides that: "Nothing in this Act shall be construed to affect or abate any right accrued or vested prior to July 1, 2006, or any action or proceeding commenced prior to July 1, 2006, under any law amended or repealed by this Act."

Ga. L. 2006, p. 310, § 11/HB 1223, not codified by the General Assembly, provides that: "This Act shall become effective July 1, 2006, except that those provisions which authorize community service boards to amend their bylaws and authorize county governing authorities to appoint no sooner than May 1, 2006, any community service board members to take office on July 1, 2006, shall become effective upon the approval of this Act by the Governor or upon its becoming law without such approval." This Act was approved by the Governor on April 21, 2006.

31-3-13. Declaration of public policy; contracts for assistance to boards.

No population area or unit of this state shall be without health services responsive to its needs. Because it is recognized that all counties are not equally able to effectuate this policy, a county board of health may contract for assistance in the performance of its functions and exercise of its powers, provided that such proposed contract and any amendments thereto shall have first been approved by the department.

History. — Code 1933, § 88-213, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 19, 20.

C.J.S. — 39A C.J.S., Health and Environment, §§ 7 et seq., 16, 17, 26.

31-3-14. Financing of expenses.

The county board of health, at a regular or called meeting, at a time appropriate to the fiscal operation of the county, shall determine and fix the amount of money needed for the fiscal or calendar year, as the case may be, in accordance with a budget itemizing anticipated income and expenditure; the budget shall include any unobligated moneys carried over from the current period and funds to be made available from sources other than county taxes. The expenditures anticipated, after applying credits, shall be certified by the county board of health, with a copy of the budget, to the taxing authority of the county, which may fix and levy a tax rate sufficient to raise such amount at the same time and in the same manner prescribed for levying taxes for other county

purposes, provided the taxing authority of the county deems the budget reasonable. If, however, the taxing authority of the county should deem the budget unreasonable, it shall promptly return the budget to the county board of health with its objections attached thereto for the purpose of resubmission.

History. — Code 1933, § 88-214, enacted by Ga. L. 1964, p. 499, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Expense of confining rabid animals to be included in budget. — Local county boards of health should prescribe rules for prevention and control of rabies by providing for vaccination, tagging, and certification of dogs and for confinement of any animal which exhibits signs of rabies; the cost of such confinement would be an expense of the county board of health to be included in the board's budget which is submitted to local taxing authorities. 1965-66 Op. Att'y Gen. No. 65-21.

County board shall maintain funds separate from general county funds. — Ga. L. 1964, p. 499, § 1, and Ga. L. 1966, p. 380, § 1 indicate that county board of health shall maintain the board's funds separate from those of county, rather than that the board's funds should be paid into general county funds. 1971 Op. Att'y Gen. No. U71-120.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 17, 18.

C.J.S. — 39A C.J.S., Health and Environment, §§ 91, 92.

31-3-15. Establishment of health districts.

The department is authorized, with the consent of the boards of health and the county authorities of the counties involved, to establish health districts composed of one or more counties. The county boards of health of the constituent counties shall, at the call of the commissioner, meet in joint session to approve the selection of a director appointed by the commissioner to serve such boards in common. A county board of health is authorized to appoint one of its members to represent the board at a joint meeting for this purpose. The director shall be a physician who is licensed to practice medicine under Chapter 34 of Title 43 and who otherwise meets the requirements of the rules of the State Personnel Board. The district director shall have the same powers, duties, and responsibility as a director serving a single county board of health. To further the purposes of this Code section, county boards of health may contract with each other for the provision of multicounty services and also exercise any additional powers as authorized by paragraph (7) of subsection (a) of Code Section 31-3-4; and in the performance of such contracts a county board of health may utilize its employees in other counties.

History. — Code 1933, § 88-215, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1978, p. 2031, § 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-36/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Lewis v. DeKalb County, 569 F. Supp. 11 (N.D. Ga. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Staff member appointed by director need not be licensed physician if not practicing medicine. — Staff member appointed by director of a health district, including director of a subordinate administrative unit, need not be a licensed physician, as long as the staff member does not engage in any activity which constitutes the practice of medicine and, in case of a position affected by the State Merit System of Personnel Administration, such licensure is not a requirement of the position the employee holds. 1978 Op. Att'y Gen. No. 78-9.

Criteria for determining appointing authority for position. — In determining whether commissioner, Department of Human Resources (now the Department of Community Health for these purposes), or district health director is appointing authority for any particular employee, it is necessary to consider the source of creation and funding of the position in question. 1974 Op. Att'y Gen. No. 74-89.

Construction with § 45-20-2. — O.C.G.A. § 31-3-15 does not require that the position of District Health Officer be placed in the classified service of the State Merit System and, accordingly, there is no conflict between O.C.G.A. §§ 31-3-15 and 45-20-2, which defines classified and unclassified service. 1985 Op. Att'y Gen. No. 85-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 8, 9.

C.J.S. — 39A C.J.S., Health and Environment, §§ 7 et seq., 26.

31-3-16. Enforcement under local ordinances.

It is not the intent of this chapter to abrogate the terms of a municipal charter or laws of local application which authorize a governing body within the county to provide penalties for a violation of a valid rule and regulation of the county board of health.

History. — Code 1933, § 88-218, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 8 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 7 et seq., 26.

CHAPTER 4

COUNCIL ON MATERNAL AND INFANT HEALTH

Sec.
31-4-1 through 31-4-3 [Repealed].

31-4-1 through 31-4-3.

Reserved. Repealed by Ga. L. 2009, p. 453, § 2-15/HB 228, effective July 1, 2009.

Editor's notes. — This chapter consisted of Code Sections 31-4-1 through 31-4-3 and was based on Ga. L. 1972, p. 635, §§ 1, 2, 3; Ga. L. 1974, p. 269, § 1; Ga. L. 1978, p. 1763, § 1; Ga. L. 1979, p. 766, § 1; Ga. L. 1982, p. 3, § 31.

CHAPTER 5

ADMINISTRATION AND ENFORCEMENT

Article 1

General Provisions

Sec.
31-5-1. Adoption of rules and regulations.
31-5-2. Hearings.
31-5-3. Appeals.
31-5-4. Testimony or production of evidence by compulsory process.
31-5-5. Classification of confidential and privileged materials.
31-5-6. Distribution of rules.
31-5-7. Application of this chapter.
31-5-8. Penalty for violations of the provisions of this title.
31-5-9. Injunctions for enjoining violations of the provisions of this title; supersedeas; attachment for contempt; injunctions to abate public nuisances; where actions may be instituted.
31-5-10. Notifying department or board of health of conditions on private property which are injurious to the public; inspection warrant; notice to owner and occupant; abatement.

Article 2

Inspection Warrants

31-5-20. "Inspection warrant" defined.
31-5-21. Persons who may obtain inspection warrants; authorization of searches and inspections of property.
31-5-22. Issuance; grounds.
31-5-23. Contents.
31-5-24. Exclusion of evidence obtained [Repealed].

Cross references. — Establishment and enforcement of sanitary regulations pertaining to restaurants, taverns and other establishments, § 26-2-370 et seq. Similar provisions regarding administration and enforcement of mental health laws, T. 37, C. 1. Administrative procedure generally, T. 50, C. 13.

JUDICIAL DECISIONS

County boards of health. — Administrative Procedure Act, O.C.G.A. T. 50, Ch. 13, does not apply to county boards of health as these boards are not included within the definition of "agency." Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983).

ARTICLE 1

GENERAL PROVISIONS

31-5-1. Adoption of rules and regulations.

All rules and regulations of the Department of Public Health and any county board of health shall be adopted after due notice to and hearing by persons and parties affected thereby; and such rules and regulations shall be maintained in a book kept for that purpose, orderly arranged and indexed and subject to inspection by the public during regular business hours. The agency adopting such rules and regulations shall

make copies thereof available for distribution to persons interested in or affected thereby. Such agencies are also authorized to provide for the mimeographing, printing, or other reproduction of their regulations and the distribution thereof. No rule or regulation shall become effective as law until 30 days after its adoption, except in cases of emergencies constituting an imminent threat to the public, in which event such rules or regulations shall become effective upon adoption; but, in all such cases, the agency adopting same shall as a part thereof state the conditions found by it to justify such immediate effectiveness. Where deemed desirable by the agency, hearing and notice as provided in Code Section 31-5-2 may be conducted by it prior to adoption of any rule or regulation.

History. — Code 1933, § 88-307, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 38, 90.

C.J.S. — 39A C.J.S., Health and Environment, §§ 18 et seq., 36.

31-5-2. Hearings.

Hearings shall be required for any and all quasi-judicial actions and in any other proceeding required by this title or the Constitution of Georgia. All such hearings shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1933, § 88-304, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1977, p. 309, § 1; Ga. L. 1993, p. 1290, § 2; Ga. L. 1995, p. 10, § 31; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 453, § 1-22/HB 228.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Inapplicable to WIC Program. — Public hearing was not required before the Department of Human Resources (now the Department of Community Health for these purposes) adopted Women, Infants and Children (WIC) Program vendor handbook, since WIC is not a service of the DHR (now the Department of Community Health for these purposes). Accordingly, O.C.G.A. T. 31 was inapplicable to the WIC program. So v. Ledbetter, 209 Ga. App. 666, 434 S.E.2d 517 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Only person authorized to conduct hearings for county board of health is board's chief executive officer. 1975 Op. Att'y Gen. No. U75-90.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 39, 89.

C.J.S. — 39A C.J.S., Health and Environment, §§ 20 et seq., 81 et seq.

ALR. — Malicious prosecution predicated upon prosecution, institution, or instigation of disciplinary proceeding against member of medical or allied profession, 39 A.L.R.3d 473.

31-5-3. Appeals.

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

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

(3) Appeal to the superior court shall be by petition which shall be filed in the clerk's office of such court within 30 days after the final order or action of the department; the petition shall set forth the names of the parties taking the appeal, the order, rule, regulation, or decision appealed from, and the reason it is claimed to be erroneous. The enforcement of the order or action appealed from shall not be stayed until and unless so ordered and directed by the reviewing court. A reviewing court may order a stay only if the court makes a finding that the public health, safety, and welfare will not be harmed by the issuance of the stay. Upon the filing of such petition, the petitioner shall serve on the commissioner a copy thereof in a manner prescribed by law for the service of process, unless such service of process is waived. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the department, not shown in the

record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs. The court shall not substitute its judgment for that of the department as to the weight of the evidence on questions of fact. The court may affirm the decision of the department or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(A) In violation of constitutional or statutory provisions;

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

(C) Made upon unlawful procedure;

(D) Affected by other error of law;

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

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

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

History. — Code 1933, § 88-305, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1986, p. 1280, § 1; Ga. L. 2000, p. 1589, § 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in paragraph (a)(3) the paragraphs (1) through (6) added were redesignated as subparagraphs (a)(3)(A) through (a)(3)(F), respectively.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

JUDICIAL DECISIONS

Appeal from assessment of inspection fees. — O.C.G.A. § 31-5-3 did not provide a hotel, motel, and restaurant association with an avenue of administrative appeal from a county board of health's assessment of inspection fees since there was no "proceeding" or hearing conducted by the board to which the association

could have been a party. Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983).

Cited in Cobb County Health Dep't v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 39, 89.

C.J.S. — 39A C.J.S., Health and Environment, § 20 et seq.

ALR. — Right of public officer or board to appeal from a judicial decision affecting his or its order or decision, 117 A.L.R. 216.

31-5-4. Testimony or production of evidence by compulsory process.

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

History. — Code 1933, § 88-303, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 39, 89, 95 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 20 et seq.

31-5-5. Classification of confidential and privileged materials.

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

History. — Code 1933, § 88-306, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2011, p. 99, § 42/HB 24.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

JUDICIAL DECISIONS

Cited in Theragenics Corp. v. Department of Natural Resources, 244 Ga. App. 829, 536 S.E.2d 613 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 95 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 20 et seq.

31-5-6. Distribution of rules.

The department and all county boards of health are directed to prescribe and make available for distribution the rules of practice and procedure to implement this chapter.

History. — Code 1933, § 88-308, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 95 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 20 et seq.

31-5-7. Application of this chapter.

This chapter shall apply to all other chapters of this title and all amendments hereafter enacted with respect thereto unless provided otherwise expressly or by necessary implication.

History. — Code 1933, § 88-309, enacted by Ga. L. 1964, p. 499, § 1.

31-5-8. Penalty for violations of the provisions of this title.

Any person violating the provisions of this title shall be guilty of a misdemeanor, provided that this Code section shall not apply to violations of the provisions of Chapter 20, 22, or 24 of this title.

History. — Code 1933, § 88-301, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Cited in Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons, 127 Ga. App. 574, 194 S.E.2d 299 (1972).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 84.

31-5-9. Injunctions for enjoining violations of the provisions of this title; supersedeas; attachment for contempt; injunctions to abate public nuisances; where actions may be instituted.

(a) The Department of Public Health and all county boards of health and the Department of Community Health, as appropriate, are empowered to institute appropriate proceedings for injunction in the courts of competent jurisdiction in this state for the purpose of enjoining a violation of any provision of this title as now existing or as may be hereafter amended or of any regulation or order duly issued by the department, any county board of health, or the Department of Community Health provided that this Code section shall not apply to violations of the provisions of Chapter 20 of this title. The department, the county boards of health, and the Department of Community Health, as appropriate, are also empowered to maintain action for injunction to abate any public nuisance which is injurious to the public health, safety, or comfort. Such actions may be maintained notwithstanding the fact that such violation also constitutes a crime and notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the department, any county board, or the Department of Community Health, as the case may be, in the county in which a violation of any provision of this title occurs. For purposes of this Code section, the county boards of health are declared to be legal entities capable of maintaining actions in their respective names without naming the individuals constituting such board, or acting on behalf of the department, as the case may be.

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

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

History. — Code 1933, § 88-302, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1997, p. 544, § 1; Ga. L. 1998, p. 128, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-10/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

Cited in Cobb County Health Dep't v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970); Cason v. Upson County Bd. of Health, 227 Ga. 451, 181 S.E.2d 487 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 93, 103 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 83, 89.

31-5-10. Notifying department or board of health of conditions on private property which are injurious to the public; inspection warrant; notice to owner and occupant; abatement.

(a) The provisions of this Code section shall apply only in those counties of this state having a population of 450,000 or more according to the United States decennial census of 1980 or any future such census.

(b) Any person who knows or suspects that a condition exists on private property, which condition is injurious to the public health, safety, or comfort, shall immediately notify the Department of Public Health or the county board of health. Upon receiving such notice, the department or the county board of health shall be authorized to obtain an inspection warrant as provided in Code Section 31-5-21. If the department or the county board of health determines that there exists a condition which is injurious to the public health, safety, or comfort, the department or county board of health shall, by registered or certified mail or statutory overnight delivery with return receipt requested, notify the occupants of the property and, if different from the occupant, the person, firm, or corporation which owns the property. Notice to the owner shall be sent to the address shown on the county or municipal property tax records.

(c) If the department or the county board of health brings an action for injunction to abate a public nuisance which is injurious to the public

health, safety, or comfort, process shall be served on the occupants of the property and on any person, firm, or corporation having any interest in the property according to the county property records. Service shall be made in accordance with Code Section 9-11-4; and, if any person, firm, or corporation to be served resides outside the state, has departed the state, cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, the judge or clerk may make an order that the service be made by publication of summons as provided in Code Section 9-11-4.

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

History. — Code 1981, § 31-5-10, enacted by Ga. L. 1985, p. 388, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2015, p. 598, § 1-10/HB 72.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 63 (2015).

JUDICIAL DECISIONS

County's recovery of compensatory damages not authorized. — When a county recovered, identified, and properly disposed of bodies found at a crematorium, O.C.G.A. §§ 31-5-10(d) and 41-2-9(a)(7) did not authorize the county to recover the county's costs of doing so as compensatory damages in a tort action against the crematorium, funeral homes, and funeral directors alleging negligence and public nuisance claims; §§ 31-5-10 and 41-2-9 do not authorize a county to obtain compensatory damages in a tort action as a means of redress for abating a public nuisance. Walker County v. Tri-State Crematory, 284 Ga. App. 34, 643 S.E.2d 324 (2007).

RESEARCH REFERENCES

ALR. — Construction and application of "Municipal Cost Recovery Rule," or "Free Public Services Doctrine," 32 A.L.R.6th 261.

ARTICLE 2

INSPECTION WARRANTS

Cross references. — Further provisions regarding use of inspection warrants in enforcement of public health laws, § 37-1-70 et seq.

RESEARCH REFERENCES

ALR. — Propriety of state or local government health officer's warrantless search — post-Camara cases, 53 A.L.R.4th 1168.

31-5-20. "Inspection warrant" defined.

As used in this article, the term "inspection warrant" means a warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of any of the provisions of laws authorizing licensure, inspection, or regulation by the Department of Public Health or a local agency thereof.

History. — Code 1933, § 88-301A, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 1982, p. 1667, §§ 1, 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-11/HB 214; Ga. L. 2015, p. 598, § 1-11/HB 72.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 63 (2015).

31-5-21. Persons who may obtain inspection warrants; authorization of searches and inspections of property.

The commissioner of public health or his or her delegate or the director of any county board of health, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this chapter. Such warrant shall authorize the commissioner of public health or the director of any county board of health, or the agents of any, or the Department of Agriculture, as appropriate, to conduct a search or inspection of property, either with or without the consent of the person whose property is to be searched or inspected, if such search or inspection is one that is elsewhere authorized under the rules and regulations duly promulgated under this title or any provision of law which authorizes licensure, inspection, or regulation by the Department of Public Health or a local agency thereof.

History. — Code 1933, § 88-302A, enacted by Ga. L. 1975, p. 693, § 1; Ga. L. 1982, p. 1667, §§ 1, 2; Ga. L. 1998, p. 128, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-12/HB 214; Ga. L. 2015, p. 598, § 1-12/HB 72.

Cross references. — Search warrants generally, § 17-5-20 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 63 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 58, 60, 66, 72, 73, 86, 88.

C.J.S. — 39A C.J.S., Health and Environment, §§ 47 et seq., 66, 81 et seq.

31-5-22. Issuance; grounds.

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

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

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

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

History. — Code 1933, §§ 88-303A, 88-304A, enacted by Ga. L. 1975, p. 693, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 58, 60, 66, 72, 73.

C.J.S. — 39A C.J.S., Health and Environment, § 81 et seq.

31-5-23. Contents.

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

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

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

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

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

History. — Code 1933, § 88-305A, enacted by Ga. L. 1975, p. 693, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 81 et seq.

31-5-24. Exclusion of evidence obtained.

Repealed by Ga. L. 2015, p. 598, § 1-13/HB 72, effective July 1, 2015.

Editor's notes. — This Code section was based on Code 1933, § 88-306A, enacted by Ga. L. 1975, p. 693, § 1.

Law reviews. — For article on the 2015 repeal of this Code section, see 32 Ga. St. U. L. Rev. 63 (2015).

CHAPTER 5A

DEPARTMENT OF COMMUNITY HEALTH

Sec.
31-5A-1 through 31-5A-8. Redesignated.

31-5A-1 through 31-5A-8.

Editor's notes. — Ga. L. 2009, p. 453, § 1-1/HB 228, effective July 1, 2009, redesignated former Chapter 5A of Title 31 as present Chapter 2 of Title 31.

CHAPTER 6

STATE HEALTH PLANNING AND DEVELOPMENT

Article 1

General Provisions

Sec.
31-6-1. Declaration of policy.
31-6-2. Definitions.
31-6-3. "Medical use rights" defined; limitations.

Article 2

Organization

31-6-20. Health Strategies Council generally [Repealed].
31-6-21. Department of Community Health functions and powers.
31-6-21.1. Procedures for rule making by Department of Community Health.
31-6-22. Commissioner of department [Repealed].

Article 3

Certificate of Need Program

31-6-40. Certificate of need required for new institutional health services; exemption.
31-6-40.1. Acquisition of health care facilities; penalty for failure to notify department; limitation on applications; agreement to care for indigent patients; requirements for destination cancer hospitals; notice and hearing provisions for penalties authorized.
31-6-40.2. New perinatal services.
31-6-40.3. Conversion of destination cancer hospital to general cancer hospital; procedure; requirements.
31-6-41. Scope and term of validity of certificate.
31-6-42. Qualifications for issuance of certificate.
31-6-42.1. Payment of obligations prior to granting or modifying a certificate of need.
31-6-43. Acceptance or rejection of application for certificate.
31-6-44. Certificate of Need Appeal Panel.
31-6-44.1. Judicial review.
31-6-45. Revocation of certificate of need; enforcement of chapter; regulatory investigations and examinations.
31-6-45.1. Automatic revocation of certificate of need or authority.
31-6-45.2. Participation as Medicaid provider requirement; termination by health care facility of participation as provider of medical assistance; monetary penalty.
31-6-46. Annual report by department.
31-6-47. Exemptions from chapter.
31-6-47.1. Prior notice and approval of certain activities.
31-6-48. Prior entities abolished; transfer of contractual obligations.
31-6-49. Transitional provisions.
31-6-50. Application of review procedures to expenditures under Section 1122 of the federal Social Security Act.

Article 4

Reports

31-6-70. Reports to the department by certain health care facilities and all ambulatory surgical centers and imaging centers; public availability.

Article 5

State Commission on the Efficacy of the Certificate of Need Program

31-6-90 through 31-6-95 [Repealed].

Cross references. — Offering continuing care when resident purchases resident owned living unit, § 33-45-7.1. Administration of mental health and developmental disabilities services generally, T. 37, C. 2.

Editor's notes. — Ga. L. 1983, p. 1566, § 1, effective July 1, 1983, repealed the Code sections formerly codified at this chapter, also pertaining to state health planning and development, and enacted the current chapter. The former chapter consisted of Code Sections 31-6-1, 31-6-2, 31-6-20 through 31-6-28, and 31-6-40 through 31-6-51 and was based on Ga. L. 1978, p. 941, § 4; Ga. L. 1979, p. 1109, §§ 1-3; and Ga. L. 1982, p. 3, § 31.

Administrative rules and regulations. — Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Health Planning, Chapter 111-2-1.

Certificate of need, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Health Planning, Chapter 111-2-2.

Patient's right to independent review, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Health Planning, Chapter 111-2-3.

JUDICIAL DECISIONS

Enforcement of chapter. — Prior to the 1983 reenactment, O.C.G.A. T. 31, Ch. 6, authorized a health planning agency to bring an action to enforce provisions of that chapter, but did not give standing to a competitor of a health service provider. Executive Comm. v. Metro Ambulance Servs., Inc., 250 Ga. 61, 296 S.E.2d 547 (1982).

RESEARCH REFERENCES

ALR. — Regulation of practice of acupuncture, 17 A.L.R.4th 964.

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Denial of Hospital Staff Privileges, 1 POF2d 65.

Hospital's Failure to Supervise Private Physician Using Hospital Facilities, 6 POF2d 647.

Hospital Liability for Negligent Selection of Staff Physician, 14 POF3d 433.

Hospital Liability for Negligent Retention of Staff Physician, 15 POF3d 181.

Discrimination in Provision of Medical Services on Basis of Disability, 49 POF3d 1.

Liability of Physician for Improper Referral of Patients to a Medical Care Facility in which Physician has a Financial Interest, 61 POF3d 245.

Liability of Health Maintenance Organizations, 66 POF3d 1.

31-6-1. Declaration of policy.

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 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.

History. — Code 1981, § 31-6-1, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 2008, p. 12, § 1-1/SB 433.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, the second occurrence of "and" was deleted preceding "purposes, it is essential" in the second sentence.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Constitutionality. — By the statute's plain terms, O.C.G.A. § 31-6-40(a)(7)(C) does not authorize monopolistic contracts relating to providers of new institutional health services and only requires that all such providers obtain a Certificate of Need (CON) before adding new services; thus, it did not implicate the Anti-Competitive Contracts Clause in any way as the requirement did not authorize contracts between service providers or anyone else that would encourage a monopoly. Women's Surgical Ctr., LLC v. Berry, 302 Ga. 349, 806 S.E.2d 606 (2017).

Statute serves legitimate legislative purpose. — Georgia Supreme Court held the availability of quality health care services was certainly a legitimate legislative purpose and that the government objectives with respect to Georgia's certificate of need laws were indeed legitimate. Women's Surgical Ctr., LLC v. Berry, 302 Ga. 349, 806 S.E.2d 606 (2017).

Certificate of Need. — Reversal of the agency and denial of a Certificate of Need (CON) was affirmed because the atypical barrier exception did not support the agency's grant of the CON as the agency's interpretation of the atypical barrier exception in the rule was inconsistent with the plain language of the rule, clearly erroneous, and prejudiced the substantial rights of the challenging hospitals who already provided the same services. ASMC, LLC v. Northside Hosp., Inc., 344 Ga. App. 576, 810 S.E.2d 663 (2018), cert. denied, 2018 Ga. LEXIS 610 (Ga. 2018).

Cited in St. Joseph's Hosp. v. Hospital Corp. of Am., 795 F.2d 948 (11th Cir. 1986); HCA Health Servs., Inc. v. Roach, 263 Ga. 798, 439 S.E.2d 494 (1994); Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016); Cobb Hospital, Inc. v. Department of Community Health, 825 S.E.2d 886, No. A18A2009, 2019 Ga. App. LEXIS 183 (2019).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-6-2. Definitions.

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 finding 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 and includes, but is not limited to, the following: radiology and diagnostic imaging, such as magnetic resonance imaging and positron emission tomography (PET); 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 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) Reserved.

(12) "Department" means the Department of Community Health established under Chapter 2 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 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 $10 million. Notwithstanding the provisions 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.

(16.1) "General cancer hospital" means an institution which was an existing and approved destination cancer hospital as of January 1, 2019; has obtained final certificate of need approval for conversion

from a destination cancer hospital to a general cancer hospital in accordance with Code Section 31-6-40.3; and offers inpatient and outpatient diagnostic, therapeutic, treatment, and rehabilitative cancer care services or other services to diagnose or treat co-morbid medical conditions or diseases of cancer patients so long as such services do not result in the offering of any new or expanded clinical health service that would require a certificate of need under this chapter unless a certificate of need or letter of determination has been obtained for such new or expanded services.

(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; freestanding emergency departments or facilities not located on a hospital's primary campus; 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.

(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, micro-hospitals, general cancer hospitals, 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 free-standing ambulatory surgical center that is jointly owned by a hospital in the same county as the center or a hospital in a 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.

(23.1) "Life plan 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, 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.

(23.2) "Micro-hospital" means a hospital in a rural county which has at least two and not more than seven inpatient beds and which provides emergency services seven days per week and 24 hours per day.

(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 individu-

als, 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.

(30.1) "Primary campus" means the building at which the majority of a hospital's or a remote location of a hospital's licensed and operational inpatient hospital beds are located, and includes the health care facilities of such hospital within 1,000 yards of such building. Any health care facility operated under a hospital's license prior to July 1, 2019, but not on the hospital's primary campus shall remain part of such hospital but shall not constitute such hospital's primary campus unless otherwise meeting the requirements of this paragraph.

(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.

(31.1) "Remote location of a hospital" means a hospital facility or organization that is either created by, or acquired by, a hospital that is the main provider for the purpose of furnishing inpatient hospital services under the name, ownership, and financial and administrative control of the main provider.

(32) "Rural county" means a county having a population of less than 50,000 according to the United States decennial census of 2010 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 or a general 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 50,000 according to the United States decennial census of 2010 or any future such census.

History. — Code 1981, § 31-6-2, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1989, p. 1566, § 1; Ga. L. 1989, p. 1685, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1991, p. 1871, §§ 1-5.1; Ga. L. 1991, p. 1880, § 1; Ga. L. 1999, p. 296, §§ 3, 4, 22; Ga. L. 2007, p. 173, § 2A/HB 429; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-8/HB 228; Ga. L. 2018, p. 132, § 4/HB 769; Ga. L. 2019, p. 148, § 1-1/HB 186; Ga. L. 2019, p. 945, § 1/HB 300.

The 2018 amendment, effective July

1, 2018, inserted "micro-hospitals," near the end of paragraph (21); added paragraph (23.1); and substituted "50,000" for "35,000" and "2010" for "2000" in paragraphs (32) and (38).

The 2019 amendments. — The first 2019 amendment, effective July 1, 2019, substituted "finding" for "determination" near the beginning of paragraph (6); in paragraph (8), deleted ", or parts of the physical plant where such services are located in a health care facility," following "health care facility" near the middle, inserted "(PET)", substituted "medical-surgical" for "medical/surgical" in the middle, and substituted "open heart" for "open-heart" near the end; substituted the present provisions of paragraph (14) for the former provisions, which read: "'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 $2.5 million; or

"(B) The expenditure or commitment of funds exceeding $1 million 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."; added paragraph (16.1); inserted "freestanding emergency departments or facilities not located on a hospital's primary campus;" in the middle of paragraph (17); inserted "general cancer hospitals," near the end of the last sentence of paragraph (21); added paragraphs (30.1) and (31.1); and added "or a general cancer hospital" at the end of the last sentence of paragraph (35). The second 2019 amendment, effective July 1, 2019, substituted "Reserved." for the former provisions of paragraph (11), which read: "'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."; added paragraph (23.1); and redesignated former paragraph (23.1) as present paragraph (23.2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a misspelling of the first occurrence of "services" in paragraph (15) was corrected.

Pursuant to Code Section 28-9-5, in 2008, in paragraph (17), a semicolon was deleted at the end, and, in paragraph (23), "a contiguous" was substituted for "an contiguous" in the first sentence.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Certificate of need. — Division of Health Planning granting a certificate of need was not arbitrary and capricious as the proposed new institutional health service was reasonably consistent with the relevant goals and objectives of the State

Health Plan as set forth in Ga. Comp. R. & Regs. r. 272-2-.08(b)(1), and it did not err in interpreting the 12-month rule in O.C.G.A. § 31-6-2. Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003).

Ga. Comp. R. Regs. 111-2-2-.40, which provided that an ambulatory surgical center (ASC) that was part of a hospital was not subject to more stringent certificate of need (CON) specifications, was not unconstitutionally vague because it stated two clear examples of when an ASC was part of a hospital and provided that other situations would be considered under case-by-case review by the Department of Community Health. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 295 Ga. 446, 761 S.E.2d 74 (2014).

Cited in Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985); St. Joseph's Hosp. v. Thunderbolt Health Care, Inc., 237 Ga. App. 454, 517 S.E.2d 334 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Effect to be given to rules of State Health Planning and Development Agency under former statutes. — Those State Health Planning and Development Agency's rules in effect on June 30, 1983, which refer to the $150,000 threshold in former O.C.G.A. § 31-6-2, or do not distinguish between capital expenditures and equipment expenditures as set out in § 31-6-2(14)(B) and (F) are "inconsistent with this chapter" under O.C.G.A. § 31-6-49, but so as to effectuate the General Assembly's intent will be read together and harmonized with the controlling dollar amounts and classifications of the new law. 1983 Op. Att'y Gen. No. 83-34.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 9.

31-6-3. "Medical use rights" defined; limitations.

(a) As used in this Code section, the term "medical use rights" means rights or interests in real property in which the owner of the property has agreed not to sell or lease such real property for identified medical uses or purposes.

(b) It shall be unlawful for any health care facility to purchase, renew, extend, lease, maintain, or hold medical use rights.

(c) This Code section shall not be construed to impair any contracts in existence as of July 1, 2019.

History. — Code 1981, § 31-6-3, enacted by Ga. L. 2019, p. 148, § 1-2/HB 186.

Effective date. — This Code section became effective July 1, 2019.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "July 1, 2019" was substituted for "the effective date of this Code section" at the end of subsection (c).

ARTICLE 2

ORGANIZATION

31-6-20. Health Strategies Council generally.

Reserved. Repealed by Ga. L. 2012, p. 1132, § 1/SB 407, effective July 1, 2012.

Editor's notes. — This Code section was based on Code 1981, § 31-6-20, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1990, p. 1903, § 7; Ga. L. 1991, p. 1880, §§ 2, 3; Ga. L. 1996, p. 6, § 31; Ga. L. 1999, p. 296, §§ 5, 22; Ga. L. 2005, p. 1036, § 24/SB 49; Ga. L. 2007, p. 173, § 2B/HB 429; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46.

31-6-21. Department of Community Health functions and powers.

(a) The Department of Community Health, established under Chapter 2 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. The department shall provide, by rule, for procedures to administer its functions until otherwise provided by the board.

(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 with recommendations from technical advisory committees;

(3) To seek advice, at its discretion, from technical advisory committees 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, other determinations, 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 care 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 life plan community sheltered facilities;

(9) To provide, by rule, for a reasonable and equitable fee schedule for certificate of need applications; provided, however, that a certificate of need application filed by or on behalf of a hospital in a rural county shall be exempt from any such fee;

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

(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; and

(12) Study the amount of uncompensated indigent and charity care provided by each type of health care facility, recommend requirements for the levels of uncompensated indigent and charity care required to be performed by each health care facility type and develop standardized reporting requirements for the department to accurately track the amount of uncompensated indigent and charity care provided by each health care facility.

(c) The commissioner shall have the power to establish and abolish technical advisory committees as he or she deems necessary, in consultation with the board, to inform effective strategy development and execution.

History. — Code 1981, § 31-6-21, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1985, p. 829, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1994, p. 684, § 1; Ga. L. 1999, p. 296, §§ 6, 22; Ga. L. 2007, p. 173, § 2C/HB 429; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-8/HB 228; Ga. L. 2019, p. 148, § 1-3/HB 186; Ga. L. 2019, p. 945, § 2/HB 300.

The 2019 amendments. — The first 2019 amendment, effective July 1, 2019, added "with recommendations from technical advisory committees" at the end of paragraph (b)(2); substituted "technical advisory committees" for "the Health Strategies Council" in paragraph (b)(3); inserted ", other determinations," in paragraph (b)(5); inserted "care" near the end of the first sentence of paragraph (b)(8); added the proviso at the end of paragraph (b)(9); deleted "and" at the end of paragraph (b)(10); substituted "; and" for a period at the end of paragraph (b)(11); and added paragraph (b)(12) and subsection (c). The second 2019 amendment, effective July 1, 2019, substituted "life plan" for "continuing care retirement" near the end of the last sentence of paragraph (b)(8).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

U.S. Code. — Section 1122 of the federal Social Security Act of 1935, as amended, referred to in paragraph (11), is codified as 42 U.S.C. § 1320a-1.

JUDICIAL DECISIONS

Criteria used by Review Board. — Review Board could use not only the considerations listed in O.C.G.A. § 31-6-42, but also Health Planning Agency standards and criteria interpreting those standards, to make a decision in the case before the board. North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Reversal of the agency and denial of a Certificate of Need (CON) was affirmed because the atypical barrier exception did not support the agency's grant of the CON as the agency's interpretation of the atypical barrier exception in the rule was inconsistent with the plain language of the rule, clearly erroneous, and prejudiced the substantial rights of the challenging hospitals who already provided the same services. ASMC, LLC v. Northside Hosp., Inc., 344 Ga. App. 576, 810 S.E.2d 663 (2018), cert. denied, 2018 Ga. LEXIS 610 (Ga. 2018).

Authority of hearing panel. — Approval of hospital's certificate of need (CON) application for improvements and renovations was affirmed because the plain language of O.C.G.A. § 31-6-44 precluded a panel hearing officer from considering a challenge to a CON applicant's existing CON status and the exclusive authority to determine whether a health care facility maintained an active CON was legislatively relegated to other divisions of the Georgia Department of Community Health. Cobb Hospital, Inc. v. Department of Community Health, 825 S.E.2d 886, No. A18A2009, 2019 Ga. App. LEXIS 183 (2019).

Rule 272-2-.09(13) construed. — Cardiac Surgery Rule, Rule 272-2-.09(13), promulgated pursuant to O.C.G.A. § 31-6-21, does not place a two-year moratorium on applications for adult cardiac surgery services and pediatric cardiac catheterization and surgical services, but merely requires that the applicant show need. Chatham County Hosp. Auth. & Mem. Medical Center, Inc. v. St. Joseph's Hosp., 178 Ga. App. 628, 344 S.E.2d 463 (1986).

Cited in Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003).

31-6-21.1. Procedures for rule making by Department of Community Health.

(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.

(j) This Code section shall apply only to rules adopted pursuant to this chapter.

History. — Code 1981, § 31-6-21.1, enacted by Ga. L. 1985, p. 829, § 2; Ga. L. 1986, p. 148, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1994, p. 684, § 2; Ga. L. 1999, p. 296, § 22; Ga. L. 2005, p. 48, § 1/HB 309; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 453, § 1-23/HB 228.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 1985, "April 3, 1985" was substituted for "this Code section becomes effective" in subsection (e).

Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following "1985" in subsection (e).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For article, "The Status of Administrative Agencies under the Georgia Constitution," see 40 Ga. L. Rev. 1109 (2006).

JUDICIAL DECISIONS

Definition of "part of a hospital" not unconstitutionally vague. — Ga. Comp. R. Regs. 111-2-2-.40, which provided that an ambulatory surgical center (ASC) that was part of a hospital was not subject to more stringent certificate of need (CON) specifications, was not unconstitutionally vague because it stated two clear examples of when an ASC was part of a hospital and provided that other situations would be considered under a case-by-case review by the Department of Community Health. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 295 Ga. 446, 761 S.E.2d 74 (2014).

Promulgation of executive branch rules and legislative oversight thereof. — O.C.G.A. § 31-6-21.1 does not violate the separation of powers doctrine simply because the statute enables the Department of Community Health to promulgate and adopt regulations pursuant to a delegated power; the statute does not invest the legislature with executive power, nor does the statute invest the executive with legislative power. Nor could it be said that the statute runs afoul of enactment, bicameralism, and presentment provisions, as the statute allows for the adoption of rules consistent with legislation, but it does not enable the department to make laws. Albany Surgical, P.C. v. Ga. Dep't of Cmty. Health, 278 Ga. 366, 602 S.E.2d 648 (2004).

Cited in Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003).

31-6-22. Commissioner of department.

Repealed by Ga. L. 2008, p. 12, § 1-1/SB 433, effective July 1, 2008.

Editor's notes. — This Code section was based on Code 1981, § 31-6-22, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1999, p. 296, § 7.

ARTICLE 3

CERTIFICATE OF NEED PROGRAM

Law reviews. — For article, "Contracting to Preserve Open Science: Consideration-Based Regulation in Patent Law," see 58 Emory L.J. 889 (2009).

31-6-40. Certificate of need required for new institutional health services; exemption.

(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, expanded, or relocated health care facility, except as otherwise provided in Code Section 31-6-47;

(2) Any expenditure by or on behalf of a health care facility in excess of $10 million which, under generally accepted accounting principles consistently applied, is a capital expenditure, except expenditures for acquisition of an existing health care facility. The dollar amounts specified in this paragraph and in 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, 2019, 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 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, except as otherwise provided in Code Section 31-6-47;

(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;

(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; and

(8) The conversion of a destination cancer hospital to a general cancer hospital.

(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 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 annual reports in the same manner and in accordance with Code Section 31-6-70; and

(B)(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 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 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 (B) 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 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.

History. — Code 1981, § 31-6-40, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1991, p. 1871, § 6; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2019, p. 148, § 1-4/HB 186.

The 2019 amendment, effective July 1, 2019, rewrote subsection (a); deleted former subparagraph (c)(2)(A), which read: "Provide notice to the department of the name, ownership, location, single specialty, and services provided in the exempt facility;"; substituted "(A) Provide" for "(B) Beginning on January 1, 2009, provide"; redesignated former subparagraph (c)(2)(C) as present subparagraph (c)(2)(B); and substituted "Subparagraph (B)" for "Subparagraph (C)" at the beginning of the last sentence of the undesignated paragraph of subparagraph (c)(2)(B).

Cross references. — Licensed hospice exempt from certificate of need requirement, § 31-7-179.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "a" was deleted following "no case shall" in the seventh sentence of subsection (d).

Editor's notes. — By resolution (Ga. L. 1990, p. 970), the General Assembly directed the State Health Planning Agency to make certain studies and reports and to update its rules and regulations.

Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017). For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

JUDICIAL DECISIONS

Constitutionality. — By the statute's plain terms, O.C.G.A. § 31-6-40(a)(7)(C) does not authorize monopolistic contracts relating to providers of new institutional health services and only requires that all such providers obtain a Certificate of Need (CON) before adding new services; thus, it did not implicate the Anti-Competitive Contracts Clause in any way as the requirement did not authorize contracts between service providers or anyone else that would encourage a monopoly. Women's Surgical Ctr., LLC v. Berry, 302 Ga. 349, 806 S.E.2d 606 (2017).

Venue of action. — Trial court did not err in the court's denial of the motion to transfer venue in a case involving an application for a Certificate of Need (CON) because the company began the process of purchasing property and applied for a CON to develop a psychiatric hospital in Coweta County, Georgia; therefore, the company engaged in business activities such that venue was proper there. Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016).

Health care legitimate legislative concern. — Georgia Supreme Court held the availability of quality health care services was certainly a legitimate legislative purpose and that the government objectives with respect to Georgia's certificate of need laws were indeed legitimate. Women's Surgical Ctr., LLC v. Berry, 302 Ga. 349, 806 S.E.2d 606 (2017).

Relocation of facility. — Nothing in O.C.G.A. § 31-6-40, or in rules of the State Health Planning Agency, gave the State Health Planning Agency (now Department of Community Health) authority to exempt a facility from Certificate of Need requirements if the facility was relocated. HCA Health Servs., Inc. v. Roach, 263 Ga. 798, 439 S.E.2d 494 (1994).

State Health Planning Agency (now Department of Community Health) did not have discretion to exempt a health care provider from review procedures established by the certificate of need program. North Fulton Medical Ctr. v. Roach, 263 Ga. 814, 440 S.E.2d 18 (1994).

Relocation rule invalid. — Relocation rule under which the State Health Planning Agency (now Department of Community Health) issued a certificate of need to a facility more than two years after it had already relocated to a new site and commenced operation was in direct conflict with the requirement that both new and relocating facilities first must obtain a certificate of need before commencing operations. North Fulton Medical Ctr., Inc. v. Stephenson, 269 Ga. 540, 501 S.E.2d 798 (1998).

Determination of agency to "grandfather" facility. — State Health Planning Agency (now Department of Community Health) did not have discretion to determine whether to "grandfather" a particular health care facility; rather, the agency is simply authorized to determine whether the facility may be grandfathered as one which existed and performed the same services prior to the Certificate of Need program in 1979. HCA Health Servs., Inc. v. Roach, 263 Ga. 798, 439 S.E.2d 494 (1994).

Mobile cardiac catherization unit which was "grandfathered" and exempt from obtaining a certificate of need when the unit began operating was required to obtain a certificate of need when the unit was relocated. Phoebe Putney Mem. Hosp. v. Roach, 267 Ga. 619, 480 S.E.2d 595 (1997).

"Offered in a hospital." — Trial court erred in determining that the Georgia Department of Community Health's interpretation of the phrase "offered in a hospital" violated the equipment threshold provision in O.C.G.A. § 31-6-40. Medical Ctr. of Cent. Ga. v. Hosp. Auth., 340 Ga. App. 499, 798 S.E.2d 42 (2017).

Conversion of hospital beds into skilled nursing beds. — Certificate of need was properly granted to a hospital for an 11 bed nursing facility, which would be created by converting 13 general acute care hospital beds into 11 skilled nursing beds, notwithstanding the contention of a nursing home that the nursing home should have received the certificate of need. St. Joseph's Hosp. v. Thunderbolt Health Care, Inc., 237 Ga. App. 454, 517 S.E.2d 334 (1999).

Application to Open Records Act. — Procedures set forth in O.C.G.A. T. 31, Ch. 6, Art. 3, for consideration of a certificate of need by the Health Planning Agency (now Department of Community Health), and appeal to the Health Planning Review Board (now Certificate of Need Appeal Panel), establish administrative proceedings within the meaning of O.C.G.A. § 50-18-70. Clayton County Hosp. Auth. v. Webb, 208 Ga. App. 91, 430 S.E.2d 89 (1993).

Exhaustion of administrative remedies. — Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health and its Commissioner from requiring its members to respond to certain disputed requests in an annual survey because the futility exception to the exhaustion requirement was inapplicable; the Commissioner's position in the lawsuit did not establish futility because actions taken to defend a lawsuit could not establish futility. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 724 S.E.2d 386 (2012).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health (DCH) and its Commissioner from requiring its members to respond to certain disputed

requests in an annual survey because the "acting outside statutory authority" exception to the exhaustion requirement did not apply; the society did not allege that DCH was acting wholly outside DCH's jurisdiction under O.C.G.A. § 31-6-70 to conduct surveys, but instead, the society claimed that the manner in which the survey was being conducted did not fully comply with the procedural requirements of the statute. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 724 S.E.2d 386 (2012).

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(a)(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ACSs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ACSs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

Authority of hearing panel. — Approval of a hospital's certificate of need (CON) application for improvements and renovations was affirmed because the plain language of O.C.G.A. § 31-6-44 precluded a panel hearing officer from considering a challenge to a CON applicant's existing CON status and the exclusive authority to determine whether a health care facility maintained an active CON was legislatively relegated to other divisions of the Georgia Department of Community Health. Cobb Hospital, Inc. v. Department of Community Health, 825 S.E.2d 886, No. A18A2009, 2019 Ga. App. LEXIS 183 (2019).

Certificate of need properly granted. — Division of Health Planning (now Department of Community Health) granting a certificate of need was not arbitrary and capricious as the proposed new institutional health service was reasonably consistent with the relevant goals and objectives of the State Health Plan as set forth in Ga. Comp. R. & Regs. r. 272-2-.08(b)(1), and it did not err in interpreting the 12-month rule in O.C.G.A. § 31-6-2. Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003).

Trial court erred in reversing the grant of a certificate of need on the ground that the applicant was attempting to circumvent a cease-and-desist order issued to a corporation owned by the same individual as the applicant; by seeking the certificate of need, the applicant was not doing anything that the law did not allow, the Department of Community Health held an extensive evidentiary hearing before granting the application, and the trial court improperly disregarded the corporate forms of the corporation and the applicant based on the fact that they were owned by the same individual. Global Diagnostic Dev., LLC v. Diagnostic Imaging of Atlanta, 284 Ga. App. 66, 643 S.E.2d 338 (2007).

Because the hearing officer's factual findings and conclusions of law were consistent with an application of the atypical barrier exception to remedy a barrier to services faced by an identified group of patients, and not to award a certificate of need (CON) simply for the purpose of making it more convenient for patients, the plaintiff did not show that the defendant in the defendant's final order violated Ga. Comp. R. & Regs. 111-2-2-.42(3)(b)4, the Certificate of Need Act, or the Hughston Surgical criteria. Kennestone Hosp. v. Dep't of Cmty. Health, 346 Ga. App. 70, 815 S.E.2d 266 (2018).

Substantial evidence supported the Department of Community Health's (Department) finding of a need for the proposed hospital based on rising population, general growth in the area, and increased emergency room usage at other hospitals and, thus, the Department was authorized to conclude that the appellee's cer-

tificate of need application met the general need requirements for a new short-stay hospital. Doctors Hosp. of Augusta v. Ga. Dep't of Cmty. Health, No. A19A0567, 2019 Ga. App. LEXIS 235 (Apr. 30, 2019).

Certificate of need properly denied. — Given the ability of an area's patients to secure adult open-heart surgery service at a significant rate, the Georgia Health Planning Review Board (now Certificate of Need Appeal Panel) did not exceed the board's authority, abuse the board's discretion, act arbitrarily or without substantial evidence, or otherwise err by rejecting the hearing officer's determination that a certificate of need (CON) should be issued to the area's medical center under a geographical barrier exception to the Georgia Department of Community Health's CON regulations. The Board determined that neither the use of out-of-state services, nor the reluctance of the area's physicians to refer patients to in-state facilities, created a geographical barrier warranting an exception. Ga. Dep't of Cmty. Health v. Satilla Health Servs., 266 Ga. App. 880, 598 S.E.2d 514 (2004).

Appellate court reinstated the agency denial of a Certificate of Need to establish an inpatient psychiatric hospital because the agency's conclusion that the applicant did not meet the applicant's burden of establishing no adverse impact on similar existing programs was supported by substantial evidence, in particular, expert testimony and exhibits regarding the applicant's unrealistic projections, overinflated market share, and failure to account for an existing facility's additional 30 pediatric beds. Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016).

Cited in Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003); Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Increase of ten beds or ten percent of bed capacity requires certificate when new service created. — Though an increase of the lesser of ten beds or ten percent of bed capacity would be excluded from review generally under O.C.G.A. § 31-6-47(a)(15), it is likely that such increases would require a certificate of need if the new beds were used to create new institutional health services. 1983 Op. Att'y Gen. No. 83-34.

Hospital authority may apply for certificate of need outside its area of operation and without the permission of the affected governing authority or hospital authority board in the planned service area; provided, however, that in order to implement the certificate, permission to pursue the health care activity would be required. 1995 Op. Att'y Gen. No. 95-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, §§ 5, 6.

31-6-40.1. Acquisition of health care facilities; penalty for failure to notify department; limitation on applications; agreement to care for indigent patients; requirements for destination cancer hospitals; notice and hearing provisions for penalties authorized.

(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.

(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 million for the first year of noncompliance, $4 million for the second consecutive year of noncompliance, and $6 million for the third consecutive year of noncompliance. Such fine amount shall reset to $2 million 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 million. It is the intent of the General Assembly that all revenues collected from any such fines 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.

History. — Code 1981, § 31-6-40.1, enacted by Ga. L. 1991, p. 1419, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2019, p. 148, § 1-5/HB 186.

The 2019 amendment, effective July 1, 2019, deleted former subsection (b.1), which read: "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."

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-40.2. New perinatal services.

(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's 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.

History. — Code 1981, § 31-6-40.2, enacted by Ga. L. 1992, p. 1068, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "April 6, 1992" was substituted for "the date this Code Section becomes effective" in paragraph (a)(4), and "this paragraph or paragraph (1)" was substituted for "paragraph (1) or (2)" in the last sentence of paragraph (c)(2).

Pursuant to Code Section 28-9-5, in 2008, "service's" was substituted for "service" in paragraph (a)(6).

Editor's notes. — Ga. L. 2008, p. 12,

§ 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For note on 1992 enactment of this Code section, see 9 Ga. St. U. L. Rev. 265 (1992).

JUDICIAL DECISIONS

Cited in Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-40.3. Conversion of destination cancer hospital to general cancer hospital; procedure; requirements.

(a) On and after July 1, 2019, a destination cancer hospital may apply for a certificate of need to convert to a general cancer hospital in accordance with this Code section. A destination cancer hospital that elects to convert to a general cancer hospital shall notify the department in a form and manner established by the department.

(b) The department shall establish a form and process for a destination cancer hospital to submit a certificate of need application to convert to a general cancer hospital; provided, however, that such a conversion shall not be subject to any of the considerations in Code Section 31-6-42 or service specific rules and shall not be subject to opposition or appeal by any other health care facilities. The department shall develop such form and guidance required by this subsection within 30 days of July 1, 2019. Upon its receipt of a complete application for a destination cancer hospital to convert to a general cancer hospital, the department shall issue such certificate of need within 60 days.

(c) Upon the conversion of a destination cancer hospital to a general cancer hospital:

(1) The general cancer hospital may continue to provide all institutional health care services and other services it provided as of the date of such conversion, including but not limited to inpatient beds, outpatient services, surgery, radiation therapy, imaging, and positron emission tomography (PET) scanning, without any further approval from the department;

(2) The destination cancer hospital shall be classified as a general cancer hospital under this chapter and shall be subject to all requirements and conditions applicable to hospitals under this article, including but not limited to, indigent and charity care and inventories and methodologies to determine need for additional providers or services; and

(3) The hospital's inpatient beds, operating rooms, radiation therapy equipment, and imaging equipment existing on the date of

conversion shall not be counted in the inventory by the department for purposes of determining need for additional providers or services, except that any inpatient beds, operating rooms, radiation therapy equipment, and imaging equipment added after the date of conversion shall be counted in accordance with the department's rules and regulations.

(d) In the event that a destination cancer hospital does not convert to a general cancer hospital, it shall remain subject to all requirements and conditions applicable to destination cancer hospitals under this article.

History. — Code 1981, § 31-6-40.3, enacted by Ga. L. 2019, p. 148, § 1-6/HB 186.

Effective date. — This Code section became effective July 1, 2019.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "July 1, 2019" was substituted for "the effective date of this Act" at the end of the second sentence in subsection (b).

31-6-41. Scope and term of validity of certificate.

(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, service 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.

History. — Code 1981, § 31-6-41, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Cancellation of certificate of need proper. — Trial court properly affirmed an administrative decision cancelling a nursing home's certificate of need as the nursing home failed to comply with applicable statutory and regulatory requirements with regard to completing the project timely and providing documentation that ongoing construction was being undertaken. Further, several site inspections established that, in fact, no construction was being undertaken for the project. Southern Crescent Rehab. & Ret. Ctr., Inc. v. Ga. Dep't of Cmty. Health, 290 Ga. App. 863, 660 S.E.2d 792 (2008), cert. denied, 2008 Ga. LEXIS 679 (2008).

31-6-42. Qualifications for issuance of certificate.

(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 agree-

ment 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.

History. — Code 1981, § 31-6-42, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

Definition of "part of a hospital" not unconsitutionally vague. — Ga. Comp. R. Regs. 111-2-2-.40, which provided that an ambulatory surgical center (ASC) that was part of a hospital was not subject to more stringent certificate of need (CON) specifications, was not unconstitutionally vague because it stated two clear examples of when an ASC was part of a hospital and provided that other situations would be considered under a case-by-case review by the Department of Community Health. Ga. Dep't of Cmty. Health v. Northside Hosp., Inc., 295 Ga. 446, 761 S.E.2d 74 (2014).

Criteria used by Review Board. — Review Board (now Certificate of Need Appeal Panel) could use not only the considerations listed in O.C.G.A. § 31-6-42, but also State Health Planning and Development Agency (now Department of Community Health) standards and criteria in interpreting those standards to make a decision in the case before the board. North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

In determining whether a given application was consistent with the considerations set forth in O.C.G.A. § 31-6-42 and the State Health Planning Agency (now Department of Community Health) rules, the board was entitled to place more emphasis on one consideration than another absent some mandatory language to the contrary, and such emphasis was entitled to great deference by a reviewing court. Medical Ctr., Inc. v. State Health Planning Agency, 219 Ga. App. 334, 464 S.E.2d 925 (1995).

Authority of hearing panel. — Under the plain language of both O.C.G.A. § 31-6-42 and Ga. Comp. R. & Regs. 274-1-.09(1)(a) and (b), the Certificate of Need (CON) Appeal Panel hearing officer had no authority to examine the Georgia Department of Community Health's initial determination of the health care facility's existing CON status. Cobb Hospital, Inc. v. Department of Community Health,

825 S.E.2d 886, No. A18A2009, 2019 Ga. App. LEXIS 183 (2019).

Approval of the hospital's certificate of need (CON) application for improvements and renovations was affirmed because the plain language of O.C.G.A. § 31-6-44 precluded the panel hearing officer from considering a challenge to a CON applicant's existing CON status and the exclusive authority to determine whether a health care facility maintained an active CON was legislatively relegated to other divisions of the Georgia Department of Community Health. Cobb Hospital, Inc. v. Department of Community Health, 825 S.E.2d 886, No. A18A2009, 2019 Ga. App. LEXIS 183 (2019).

Opposing hospitals failed to show harm from alleged deficiencies in hearing officer's decision. — Two hospitals that opposed an application for a certificate of need for perinatal services failed to show any harm resulting from alleged deficiencies in the initial decision issued by a hearing officer of the Department of Community Health which prejudiced the hospitals' ability to present their case to the hearing officer. The hospitals could have, but did not, present additional evidence pursuant to O.C.G.A. § 31-6-44. Palmyra Park Hosp., Inc. v. Phoebe Sumter Med. Ctr., 310 Ga. App. 487, 714 S.E.2d 71 (2011).

Evidence sustaining denial of applications. — Determination by the State Health Planning Agency (now Department of Community Health) that the establishment of open heart surgery service at two applying hospitals would adversely impact existing service was supported by evidence that open heart service at another hospital would be reduced to less than 350 procedures annually and by more than ten percent of its total annual volume. Hospital Auth. v. State Health Planning Agency, 211 Ga. App. 407, 438 S.E.2d 912 (1993).

Trial court erred by reversing a decision of the Department of Community Health denying an ambulatory surgery center's application for a certificate of need to develop an orthopedic center in a city as the trial court substituted the court's own judgment for that of the agency since the Department made a finding that the service area already had a surplus of operating rooms, which were significantly underutilized, and the ambulatory surgery center failed to prove that any specific patient population was in need of the new center or that any barrier to quality care existed. Surgery Ctr., LLC v. Hughston Surgical Inst., LLC, 293 Ga. App. 879, 668 S.E.2d 326 (2008).

Appellate court reinstated the agency denial of a Certificate of Need to establish an inpatient psychiatric hospital because the agency's conclusion that the applicant did not meet the applicant's burden of establishing no adverse impact on similar existing programs was supported by substantial evidence, in particular, expert testimony and exhibits regarding the applicant's unrealistic projections, overinflated market share, and failure to account for an existing facility's additional 30 pediatric beds. Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016).

Reversal of the agency and denial of a Certificate of Need (CON) was affirmed because the atypical barrier exception did not support the agency's grant of the CON as its interpretation of the atypical barrier exception in the rule was inconsistent with the plain language of the rule, clearly erroneous, and prejudiced the substantial rights of the challenging hospitals who already provided the same services. ASMC, LLC v. Northside Hosp., Inc., 344 Ga. App. 576, 810 S.E.2d 663 (2018), cert. denied, 2018 Ga. LEXIS 610 (Ga. 2018).

Cited in St. Joseph's Hosp. v. Hospital Corp. of Am., 795 F.2d 948 (11th Cir. 1986).

31-6-42.1. Payment of obligations prior to granting or modifying a certificate of need.

No applicant for a new certificate of need, a modification to an existing certificate of need, or a conversion of a certificate of need that has any outstanding amounts owed to the state including fines,

penalties, fees, or other payments for noncompliance with any requirements contained in Code Section 31-6-40.1, 31-6-45.2, 31-6-70, 31-7-280, or 31-8-179.2 shall be eligible to receive a new certificate of need or a modification to an existing certificate of need unless such applicant pays such outstanding amounts to the state. Any such fines, penalties, fees, or other payments for noncompliance shall be subject to the same notices and hearing for the levy of fines under Code Section 31-6-45.

History. — Code 1981, § 31-6-42.1, enacted by Ga. L. 2019, p. 148, § 1-7/HB 186.

Effective date. — This Code section became effective July 1, 2019.

31-6-43. Acceptance or rejection of application for certificate.

(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 commission 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 commission 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)(1) 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.

(2) No party may oppose an application for a certificate of need for a proposed project unless:

(A) Such party offers substantially similar services as proposed within a 35 mile radius of the proposed project or has a service area that overlaps the applicant's proposed service area; or

(B) Such party has submitted a competing application in the same batching cycle and is proposing to establish the same type of facility proposed or offers substantially similar services as proposed and has a service area that overlaps the applicant's proposed service area.

(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 permitted to oppose an application pursuant to paragraph (2) of subsection (d) of this Code section to meet with the department and to provide additional information to the department. In order for any such 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 depart-

ment 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 commission 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 notice 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."

(k) 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.

History. — Code 1981, § 31-6-43, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1989, p. 1317, §§ 6.15, 6.16; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2008, p. 181, § 15/HB 1216; Ga. L. 2012, p. 775, § 31/HB 942; Ga. L. 2019, p. 148, § 1-8/HB 186.

The 2019 amendment, effective July 1, 2019, designated the existing provisions of subsection (d) as paragraph (d)(1); added paragraph (d)(2); and, in subsection (h), substituted "permitted to oppose an application pursuant to paragraph (2) of subsection (d) of this Code section" for "opposed to an application" in the third sentence and substituted "any such" for "an" near the beginning of the fourth sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, subsection (g), as enacted by Ga. L. 2008, p. 12, § 1-1, was redesignated as subsection (k).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Certificate of need properly denied. — Given the ability of an area's patients to secure adult open-heart surgery service at a significant rate, the Georgia Health Planning Review Board (now Certificate of Need Appeal Panel) did not exceed the board's authority, abuse the board's discretion, act arbitrarily or without substantial evidence, or otherwise err by rejecting the hearing officer's determination that a certificate of need (CON) should be issued to the area's medical center under a geographical barrier exception to the Georgia Department of Community Health's CON regulations. The Board determined that neither the use of out-of-state services, nor the reluctance of the area's physicians to refer patients to in-state facilities, created a geographical barrier warranting an exception. Ga. Dep't of Cmty. Health v. Satilla Health Servs., 266 Ga. App. 880, 598 S.E.2d 514 (2004).

Appellate court reinstated the agency denial of a Certificate of Need to establish an inpatient psychiatric hospital because the agency's conclusion that the applicant did not meet the applicant's burden of establishing no adverse impact on similar existing programs was supported by substantial evidence, in particular, expert testimony and exhibits regarding the applicant's unrealistic projections, overinflated market share, and failure to account for an existing facility's additional 30 pediatric beds. Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016).

Date time begins. — Date an agency made the determination that a reapplication was complete was the day the 90-day time limit of subsection (c) of O.C.G.A. § 31-6-43 for ruling on the reapplication began to run. State Health Planning Agency v. Cribb Indus., Inc., 204 Ga. App. 285, 419 S.E.2d 123 (1992).

Opposing hospitals failed to show harm from alleged deficiencies in hearing officer's decision. — Two hospitals that opposed an application for a certificate of need for perinatal services failed to show any harm resulting from alleged deficiencies in the initial decision issued by a hearing officer of the Department of Community Health which prejudiced the hospitals' ability to present their case to the hearing officer. The hospitals could have, but did not, present additional evidence pursuant to O.C.G.A. § 31-6-44. Palmyra Park Hosp., Inc. v. Phoebe Sumter Med. Ctr., 310 Ga. App. 487, 714 S.E.2d 71 (2011).

Timely review of reapplication. — State Health Planning Agency's (now Department of Community Health) extension of the time for review of a nursing home application beyond the 90 day time limit set forth in subsection (c) of O.C.G.A. § 31-6-43 was warranted since the agency had offered to provide the applicant with an opportunity to meet and discuss the application and to submit additional evidence, but the applicant requested a delay of the meeting that made a decision within the 90 day time limit impracticable. State Health Planning Agency v. Cribb Indus., Inc., 204 Ga. App. 285, 419 S.E.2d 123 (1992).

Department decisions entitled to deference. — Appellate court must defer to decisions on the issuance of certificates of need of the Georgia Department of

Community Health, which is charged with balancing numerous factors in determining the need for additional medical facilities, as it is not feasible to have comprehensive medical facilities in every Georgia town, and the judiciary is ill-equipped to resolve the complex issues inherent in state health planning. Ga. Dep't of Cmty. Health v. Satilla Health Servs., 266 Ga. App. 880, 598 S.E.2d 514 (2004).

Cited in ASMC, LLC v. Northside Hosp., Inc., 344 Ga. App. 576, 810 S.E.2d 663 (2018).

31-6-44. Certificate of Need Appeal Panel.

(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.

(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 party that is permitted to oppose an application pursuant to paragraph (2) of subsection (d) of Code Section 31-6-43 that has notified the department prior to its decision that such party is opposed to the application before 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 party that is permitted to oppose an application pursuant to paragraph (2) of subsection (d) of Code Section 31-6-43, 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 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.

History. — Code 1981, § 31-6-44, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1986, p. 744, § 1; Ga. L. 1990, p. 1469, § 1; Ga. L. 1990, p. 1903, § 8; Ga. L. 1994, p. 684, § 3; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2019, p. 148, § 1-9/HB 186.

The 2019 amendment, effective July 1, 2019, deleted the former last sentence of subsection (a), which read: "The terms of all members of the Health Planning Review Board serving as such on June 30, 2008, shall automatically terminate on such date."; and, in subsection (d), rewrote the first sentence, which read: "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.", and, in the third sentence, substituted "party that is permitted to oppose an application pursuant to paragraph (2) of subsection (d) of Code Section 31-6-43" for "competing applicant, or any competing health care facility, or any county or municipal government".

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2008, a second occurrence of the word "of" was deleted preceding "the date of" in the last sentence of subsection (i).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Administrative rules and regulations. — Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health Certificate of Need Appeal Panel, Chapter 274-1.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

JUDICIAL DECISIONS

Residents who oppose plans to build a new hospital do not have standing to appeal to the Health Planning Review Board (now Certificate of Need Appeal Panel) a decision by the State Health Planning and Development Agency (now Department of Community Health) for a certificate of need approving construction of the new hospital. Loyd v. Georgia State Health Planning & Dev. Agency, 168 Ga. App. 850, 310 S.E.2d 738 (1983).

Criteria used by Review Board. — Review Board (now Certificate of Need Appeal Panel) could use not only the considerations listed in O.C.G.A. § 31-6-42, but also Health Planning Agency (now Department of Community Health) standards and criteria interpreting those standards to make a decision in the case before the board. North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Ex parte contacts between the assistant attorney general representing the state's interest and the chair of the Review Board (now Certificate of Need Appeal Panel) were not prejudicial to the fair conduct of the hearing when the contacts did not affect an issue of standing, the legal effect of a legislative resolution, and the manner in which votes were taken, nor did the contacts affect the full consideration of each party's interest before the Review Board. North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Ex parte contacts between the assistant attorney general and the chair of the Review Board (now Certificate of Need Appeal Panel) regarding findings of facts and conclusions of law two weeks after the decision of the Review Board had been reached were not prejudicial when the contacts were for the sole purpose of drafting an opinion to support the decision already reached and announced. North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Agency proper party respondent to petition seeking review of board's decision. — Health Planning Review Board (now Certificate of Need Appeal Panel) is a solely adjudicatory, quasi-judicial body, and is an inappropriate party to an appeal of the board's rulings in court. A decision by the Health Planning Review Board is a final administrative decision for purposes of judicial appeal, and the Health Planning Agency, not the Review Board, is the proper party respondent to a petition seeking judicial review of the board's determination. Loyd v. Georgia State Health Planning & Dev. Agency, 168 Ga. App. 850, 310 S.E.2d 738 (1983).

Authority of hearing panel. — Approval of hospital's certificate of need (CON) application for improvements and renovations was affirmed because the plain language of O.C.G.A. § 31-6-44 precluded the panel hearing officer from considering a challenge to a CON applicant's existing CON status and the exclusive authority to determine whether a health care facility maintained an active CON was legislatively relegated to other divisions of the Georgia Department of Community Health. Cobb Hospital, Inc. v. Department of Community Health, 825

S.E.2d 886, No. A18A2009, 2019 Ga. App. LEXIS 183 (2019).

Panel hearing officer simply reviews whether certificate of need (CON) application at issue, granted or denied by the Georgia Department of Community Health was consistent with the enumerated considerations as O.C.G.A. § 31-6-44 does not endow a panel hearing officer with any other authority. Cobb Hospital, Inc. v. Department of Community Health, 825 S.E.2d 886, No. A18A2009, 2019 Ga. App. LEXIS 183 (2019).

Powers of administrative review. — Review board, in reversing a decision of the Health Planning Agency (now Department of Community Health) which had denied a certificate of need for construction of a nursing home in Alpharetta County, acted beyond the board's powers of administrative review of contested cases by deeming the "County Deficit Rule" of the planning agency inapplicable in a controversy to which the rule applied by the rule's express terms, or by applying the rule to part of the county instead of to the entire county. Dogwood Square Nursing Ctr., Inc. v. State Health Planning Agency, 255 Ga. 694, 341 S.E.2d 432 (1986).

Review Board's reliance upon the principles of res judicata to deny an application for a certificate of need was authorized since the original application had been denied on the basis of the "County Deficit Rule" and the applicant did not introduce evidence upon reapplication which was sufficient to show that the applicant's proposed facility would comport with the same rule. State Health Planning Agency v. Cribb Indus., Inc., 204 Ga. App. 285, 419 S.E.2d 123 (1992).

Evidence sustaining denial of applications. — Determination by the State Health Planning Agency (now Department of Community Health) that the establishment of open heart surgery service at two applying hospitals would adversely impact existing service was supported by evidence that open heart service at another hospital would be reduced to less than 350 procedures annually and by more than ten percent of the total annual volume. Hospital Auth. v. State Health Planning Agency, 211 Ga. App. 407, 438 S.E.2d 912 (1993).

Given the ability of an area's patients to secure adult open-heart surgery service at a significant rate, the Georgia Health Planning Review Board (now Certificate of Need Appeal Panel) did not exceed the board's authority, abuse the board's discretion, act arbitrarily or without substantial evidence, or otherwise err by rejecting the hearing officer's determination that a certificate of need (CON) should be issued to the area's medical center under a geographical barrier exception to the Georgia Department of Community Health's CON regulations. The Board determined that neither the use of out-of-state services, nor the reluctance of the area's physicians to refer patients to in-state facilities, created a geographical barrier warranting an exception. Ga. Dep't of Cmty. Health v. Satilla Health Servs., 266 Ga. App. 880, 598 S.E.2d 514 (2004).

Appellate court reinstated the agency denial of a Certificate of Need to establish an inpatient psychiatric hospital because the agency's conclusion that the applicant did not meet the applicant's burden of establishing no adverse impact on similar existing programs was supported by substantial evidence, in particular, expert testimony and exhibits regarding the applicant's unrealistic projections, overinflated market share, and failure to account for an existing facility's additional 30 pediatric beds. Tanner Med. Ctr., Inc. v. Vest Newnan, LLC, 337 Ga. App. 884, 789 S.E.2d 258 (2016).

Reversal of the agency and denial of a Certificate of Need (CON) was affirmed because the atypical barrier exception did not support the agency's grant of the CON as the agency's interpretation of the atypical barrier exception in the rule was inconsistent with the plain language of the rule, clearly erroneous, and prejudiced the substantial rights of the challenging hospitals who already provided the same services. ASMC, LLC v. Northside Hosp., Inc., 344 Ga. App. 576, 810 S.E.2d 663 (2018), cert. denied, 2018 Ga. LEXIS 610 (Ga. 2018).

Error in reversing grant of certificate of need. — Trial court erred in reversing the grant of a certificate of need on the ground that the applicant was

attempting to circumvent a cease-and-desist order issued to a corporation owned by the same individual as the applicant; by seeking the certificate of need, the applicant was not doing anything that the law did not allow, the Department of Community Health held an extensive evidentiary hearing before granting the application, and the trial court improperly disregarded the corporate forms of the corporation and the applicant based on the fact that they were owned by the same individual. Global Diagnostic Dev., LLC v. Diagnostic Imaging of Atlanta, 284 Ga. App. 66, 643 S.E.2d 338 (2007).

Superior court erred in reversing a decision of the Georgia Department of Community Health, which awarded a medical center a certificate of need, because the agency's decision was supported by substantial evidence, and the department's interpretation of the applicable regulations, as requiring only an amendment of the center's application, rather than a new application, was not plainly erroneous. Northeast Ga. Med. Ctr., Inc. v. Winder HMA, Inc., 303 Ga. App. 50, 693 S.E.2d 110 (2010).

Cancellation of certificate of need proper. — Trial court properly affirmed an administrative decision cancelling a nursing home's certificate of need as the nursing home failed to comply with applicable statutory and regulatory requirements with regard to completing the project timely and providing documentation that ongoing construction was being undertaken. Further, several site inspections established that, in fact, no construction was being undertaken for the project. Southern Crescent Rehab. & Ret. Ctr., Inc. v. Ga. Dep't of Cmty. Health, 290 Ga. App. 863, 660 S.E.2d 792 (2008), cert. denied, 2008 Ga. LEXIS 679 (2008).

Admission of additional evidence permitted. — Two hospitals that opposed an application for a certificate of need for perinatal services failed to show any harm resulting from alleged deficiencies in the initial decision issued by a hearing officer of the Department of Community Health which prejudiced the hospitals' ability to present the hospitals' case to the hearing officer. The hospitals could have, but did not, present additional evidence pursuant to O.C.G.A. § 31-6-44. Palmyra Park Hosp., Inc. v. Phoebe Sumter Med. Ctr., 310 Ga. App. 487, 714 S.E.2d 71 (2011).

Error in reversing denial of certificate of need. — Trial court erred by reversing a decision of the Department of Community Health denying an ambulatory surgery center's application for a certificate of need to develop an orthopedic center in a city as the trial court substituted the court's own judgment for that of the agency since the Department made a finding that the service area already had a surplus of operating rooms, which were significantly underutilized, and the ambulatory surgery center failed to prove that any specific patient population was in need of the new center or that any barrier to quality care existed. Surgery Ctr., LLC v. Hughston Surgical Inst., LLC, 293 Ga. App. 879, 668 S.E.2d 326 (2008).

Cited in St. Joseph's Hosp. v. Hospital Corp. of Am., 795 F.2d 948 (11th Cir. 1986); American Medical Int'l, Inc. v. Charter Lake Hosp., 186 Ga. App. 204, 366 S.E.2d 795 (1988); HCA Health Servs. of Ga., Inc. v. Roach, 265 Ga. 501, 458 S.E.2d 118 (1995); Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Greene v. Dep't of Cmty. Health, 293 Ga. App. 201, 666 S.E.2d 590 (2008); Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Administrative review. — Prior to the 1983 reenactment, applicants proposing a capital expenditure, as well as health systems agencies and persons who qualify as a "party" or "persons aggrieved" under the Georgia Administrative Procedure Act, O.C.G.A. T. 50, Ch. 13, have a right to appeal to the State Health Planning Review Board (now Certificate of Need Appeal Panel) decisions of the State Health Planning and Development Agency (now Department of Community

Health) relative to § 1122 of the Social Security Act, 42 U.S.C. § 1320a-1(a). 1981 Op. Att'y Gen. No. 81-8.

31-6-44.1. Judicial review.

(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.

History. — Code 1981, § 31-6-44.1, enacted by Ga. L. 2008, p. 12, § 1-1/SB 433.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the enactment of this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For annual survey on administrative law, see 65 Mercer L. Rev. 41 (2013). For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017). For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018).

JUDICIAL DECISIONS

Construction. — Georgia Court of Appeals finds that the Georgia legislature uses the term "jurisdiction" under O.C.G.A. § 31-6-44.1(c) with regard to attorney fees because the legislature intends to refer to something other than a challenge asserting that the Georgia Department of Community Health (DCH) exceeded the department's statutory authority or acted ultra vires in issuing a particular decision with regard to a Certificate of Need; rather, the Court of Appeals concludes that the legislature intends the second exception to encompass challenges to the DCH's jurisdiction as a whole. Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

Georgia Court of Appeals concludes that the Georgia legislature uses the term "jurisdiction" in O.C.G.A. § 31-6-44.1(c) to refer to the Georgia Department of Community Health's general power to act and not to the department's authority to act with regard to a particular Certificate of Need. Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

DCH order affirmed by operation of law. — In an appeal from a decision of the Georgia Department of Community Health (DCH) granting a certificate of need to a surgical facility, when the trial court failed to enter the court's order until 48 days after the hearing, under O.C.G.A. § 31-6-44.1, the final decision of the DCH was affirmed by operation of law, making the trial court's order void. Kennestone Hosp., Inc. v. Cartersville Med. Ctr., Inc., 341 Ga. App. 28, 798 S.E.2d 381 (2017).

Attorney's fees. — When the Department of Community Health's denial of a

certificate of need was affirmed, the appellants' motion for attorney fees was improperly denied because the superior court's order on remand denied the appellee's petition, thus establishing that the appellants were the prevailing parties of the appeal to the superior court as decided by a final order of that court; the appellate court's previous order noted that a fee award in favor of the appellants would be issued following the return of the remittitur to the trial court; and the appellate court's previous decision affirmed the denial of the certificate on grounds independent of the appellee's constitutional challenge to the need rule, thus mooting those issues. Tanner Medical Center, Inc. v. Vest Newnan, LLC, 344 Ga. App. 901, 811 S.E.2d 527 (2018).

Requirements met. — In a dispute by a hospital challenging the grant of a certificate of need to a competitor, because the trial court held a hearing on the Department of Community Health's and the competitor's motion to dismiss within 120 days and its order granting dismissal was entered less than 30 days later, the requirements of O.C.G.A. § 31-6-44.1(b) were fulfilled. Doctors Hosp. of Augusta, LLC v. Dep't of Cmty. Health, 344 Ga. App. 583, 811 S.E.2d 64 (2018).

Judicial review of agency decisions. — Reversal of the agency and denial of a Certificate of Need (CON) was affirmed because the atypical barrier exception did not support the agency's grant of the CON as the agency's interpretation of the atypical barrier exception in the rule was inconsistent with the plain language of the rule, clearly erroneous, and prejudiced the substantial rights of the challenging hospitals who already provided the same services. ASMC, LLC v. Northside Hosp., Inc., 344 Ga. App. 576, 810 S.E.2d 663 (2018), cert. denied, 2018 Ga. LEXIS 610 (Ga. 2018).

Application. — Trial court erred by denying a health system's motion for attorney fees pursuant to O.C.G.A. § 31-6-44.1(c) with regard to its successful defense to a certificate of need challenge determination of the Georgia Department of Community Health (DCH) because the challenging hospital did not assert a jurisdictional challenge to the DCH's determination, thus, the challenge did not fall into the exception to fees under § 31-6-44.1(c). Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-45. Revocation of certificate of need; enforcement of chapter; regulatory investigations and examinations.

(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 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.

History. — Code 1981, § 31-6-45, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1991, p. 1871, § 7; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, a comma was deleted following "denied" near the end of the first sentence of subsection (c).

Pursuant to Code Section 28-9-5, in 1999, "commissioner" was substituted for "executive director" in the last sentence of subsection (c).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For annual survey on administrative law, see 69 Mercer L. Rev. 15 (2017).

JUDICIAL DECISIONS

Enforcement. — Prior to the 1983 reenactment, the health planning agency was authorized to bring an action to enforce provisions of O.C.G.A. T. 31, Ch. 6, but a competitor of a health service provider was not. Executive Comm. v. Metro Ambulance Servs., Inc., 250 Ga. 61, 296 S.E.2d 547 (1982).

Competing health care provider is not entitled to bring an enforcement action for injunctive relief against another provider of health care services violating the Certificate of Need Program. Diversified Health Mgt. Servs., Inc. v. Visiting Nurses Ass'n, 254 Ga. 500, 330 S.E.2d 885 (1985).

Competing health care provider has standing to bring a mandamus action to compel the State Health Planning and Development Agency (now Department of Community Health) to institute proceedings against another provider of health care services who is violating the statutory law governing certificates of need. Diversified Health Mgt. Servs., Inc. v. Visiting Nurses Ass'n, 254 Ga. 500, 330 S.E.2d 885 (1985).

Cancellation of certificate of need proper. — Trial court properly affirmed an administrative decision cancelling a nursing home's certificate of need as the nursing home failed to comply with applicable statutory and regulatory requirements with regard to completing the project timely and providing documentation that ongoing construction was being undertaken. Further, several site inspections established that, in fact, no construction was being undertaken for the project. Southern Crescent Rehab. & Ret. Ctr., Inc. v. Ga. Dep't of Cmty. Health, 290 Ga. App. 863, 660 S.E.2d 792 (2008), cert. denied, 2008 Ga. LEXIS 679 (2008).

Cited in HCA Health Servs. of Ga., Inc. v. Roach, 265 Ga. 501, 458 S.E.2d 118

(1995); Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

31-6-45.1. Automatic revocation of certificate of need or authority.

(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.

History. — Code 1981, § 31-6-45.1, enacted by Ga. L. 1990, p. 860, § 1; Ga. L. 1991, p. 328, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2000, p. 136, § 31; Ga. L. 2001, p. 4, § 31; Ga. L. 2008, p. 12, § 1-1/SB 433.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "this title" was substituted for "Title 31" in paragraphs (a)(1) and (a)(2).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-45.2. Participation as Medicaid provider requirement; termination by health care facility of participation as provider of medical assistance; monetary penalty.

(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.

History. — Code 1981, § 31-6-45.2, enacted by Ga. L. 1992, p. 1068, § 2; Ga. L. 1999, p. 296, §§ 22, 24; Ga. L. 2008, p. 12, § 1-1/SB 433.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "April 6, 1992" was substituted for "the effective date of this Code section" in the introductory language of subsection (a) (now subsection (b)) and in paragraph (a)(1) (now paragraph (b)(1)), and "government" was substituted for "governments" in paragraph (a)(2) (now paragraph (b)(2)).

Pursuant to Code Section 28-9-5, in 1999, "Health Planning Agency" was substituted for "department" and "Health Planning Agency's" was substituted for "department's" in paragraph (a)(1) (now paragraph (b)(1)) and "commissioner" was substituted for "executive director" in the first sentence of subsection (c) (now subsection (d)).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For note on 1992 enactment of this Code section, see 9 Ga. St. U. L. Rev. 265 (1992).

31-6-46. Annual report by department.

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.

History. — Code 1981, § 31-6-46, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1999, p. 296, § 22; Ga. L. 2005, p. 48, § 2/HB 309; Ga. L. 2008, p. 12, § 1-1/SB 433.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-47. Exemptions from chapter.

(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. Section 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 restructuring or acquisition of existing health care facilities by stock or asset purchase, merger, consolidation, or other lawful means;

(9.1) The purchase of a closing hospital or of a hospital that has been closed for no more than 12 months by a hospital in a contiguous county to repurpose the facility as a micro-hospital;

(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, magnetic resonance imaging, positron emission tomography (PET), and positron emission tomography/computed tomography 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 a nationally recognized health care accreditation body;

(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 United States Bureau of the Census of the Department of Commerce, 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 such 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; administrative office space; conference rooms; education facilities; lobbies; common spaces; clinical staff lounges and sleep areas; waiting rooms; bathrooms; cafeterias; hallways; engineering facilities; mechanical systems; roofs; grounds; signage; family meeting or lounge areas; other nonclinical physical plant renovations or upgrades that do not result in new or expanded clinical health services, and state mental health facilities;

(17) Life plan communities, provided that the skilled nursing component of the facility is for the exclusive use of residents of the life plan 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 life plan 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 life plan community sheltered nursing facility may utilize not more than 50 percent of its licensed beds for patients who are not residents of the life plan community. In the second year of operation, the life plan community shall allow not more than 40 percent of its licensed beds for new patients who are not residents of the life plan community. In the third year of operation, the life plan community shall allow not more than 30 percent of its licensed beds for new patients who are not residents of the life plan community. In the fourth year of operation, the life plan community shall allow not more than 20 percent of its licensed beds for new patients who are not residents of the life plan community. In the fifth year of operation, the life plan community shall allow not more than 10 percent of its licensed beds for new patients who are not residents of the life plan community. At no time during the first five years shall the life plan community sheltered nursing facility occupy more than 50 percent of its licensed beds with patients who are not residents under contract with the life plan community. At the end of the five-year period, the life plan community sheltered nursing facility shall be utilized exclusively by residents of the life plan community, and at no time shall a resident of a life plan community be denied access to the sheltered nursing facility. At no time shall any existing patient be forced to leave the life plan 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 $2.5 million; 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 division 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, that 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 million;

(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, that 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, intermediate care facility, or micro-hospital 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;

(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; 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;

(27) The renovation, remodeling, refurbishment, or upgrading of a health care facility, so long as the project does not result in any of the following:

(A) The offering of any new or expanded clinical health services;

(B) Any increase in inpatient bed capacity;

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

(D) A capital expenditure exceeding the threshold contained in paragraph (2) of subsection (a) of Code Section 31-6-40;

(28) Other than for equipment used to provide positron emission tomography (PET) services, the acquisition of diagnostic, therapeutic, or other imaging equipment with a value of $3 million or less, by or on behalf of:

(A) A hospital; or

(B) An individual private physician or single group practice of physicians exclusively for use on patients of such private physician or single group practice of physicians and such private physician or member of such single group practice of physicians is physically present at the practice location where the diagnostic or other imaging equipment is located at least 75 percent of the time that the equipment is in use.

The amount specified in this paragraph 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 and in paragraph (10) of this subsection 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; and

(29) A capital expenditure of $10 million or less by a hospital at such hospital's primary campus for:

(A) The expansion or addition of the following clinical health services: operating rooms, other than dedicated outpatient operating rooms; medical-surgical services; gynecology; procedure rooms; intensive care; pharmaceutical services; pediatrics; cardiac care or other general hospital services; provided, however, that such expenditure does not include the expansion or addition of inpatient beds or the conversion of one type of inpatient bed to another type of inpatient bed; or

(B) The movement of clinical health services from one location on the hospital's primary campus to another location on such hospital's primary campus.

(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.

History. — Code 1981, § 31-6-47, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1984, p. 22, § 31; Ga. L. 1989, p. 393, § 1; Ga. L. 1991, p. 1419, § 2; Ga. L. 1991, p. 1871, § 8; Ga. L. 1999, p. 296, §§ 22, 24; Ga. L. 2008, p. 9, § 2/HB 967; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-24/HB 228; Ga. L. 2012, p. 337, § 1/SB 361; Ga. L. 2018, p. 132, § 5/HB 769; Ga. L. 2019, p. 148, § 1-10/HB 186; Ga. L. 2019, p. 945, § 3/HB 300; Ga. L. 2019, p. 1056, § 31/SB 52.

The 2018 amendment, effective July 1, 2018, added paragraph (a)(9.2); and inserted ", or micro-hospital" near the middle of paragraph (a)(24).

The 2019 amendments. — The first 2019 amendment, effective July 1, 2019, substituted "42 U.S.C. Section" for "42 U.S.C. §" in paragraph (a)(5); substituted the present provisions of paragraph (a)(9) for the former provisions, which read: "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;"; deleted former paragraph (a)(9.1), which read: "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 restructur-

ing or acquisition is made by any entity described in subparagraph (A), (B), or (C) of paragraph (9) of this subsection;"; redesignated former paragraph (a)(9.2) as present paragraph (a)(9.1); inserted ", magnetic resonance imaging, positron emission tomography (PET), and positron emission tomography/computed tomography" near the end of paragraph (a)(10.1); in paragraph (a)(12), inserted "United States" and deleted "of the United States government," preceding "calculated from the date"; substituted "such equipment" for "said equipment" in the middle of paragraph (a)(13); inserted "administrative office space; conference rooms; education facilities; lobbies; common spaces; clinical staff lounges and sleep areas; waiting rooms; bathrooms; cafeterias; hallways; engineering facilities; mechanical systems; roofs; grounds; signage; family meeting or lounge areas; other nonclinical physical plant renovations or upgrades that do not result in new or expanded clinical health services," in paragraph (a)(16); inserted "that" near the beginning of the proviso following division (a)(18)(C)(ii) and in the proviso in subparagraph (a)(20)(E); deleted "and" at the end of paragraph (a)(25); substituted a semicolon for a period at the end of division (a)(26)(B)(iii); and added paragraphs (a)(27) through (a)(29). The second 2019 amendment, effective July 1, 2019, in paragraph (17), substituted "life plan" for "continuing care retirement" throughout the paragraph. The third 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, inserted "that" following "provided, however," in the undesignated language at the end of subparagraph (a)(18)(C) and in subparagraph (a)(20)(E).

Code Commission notes. — The amendment of this Code section by Ga. L. 2008, p. 9, § 2/HB 967, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 12, § 1-1/SB 433. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2019, "continuing care retirement" was deleted near the end of paragraph (a)(17).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section by that Act shall only apply to applications submitted on or after July 1, 2008.

JUDICIAL DECISIONS

Rule-making authority of planning agency. — Relocation rule of the planning agency that purported to exempt certain relocations from compliance with statutory certificate of need requirements, thereby denying opposing parties the opportunity to obtain review by the review board and the courts, was invalid as an unconstitutional attempt to exercise legislative power. HCA Health Servs. of Ga., Inc. v. Roach, 265 Ga. 501, 458 S.E.2d 118 (1995).

Mobile cardiac catherization unit which was "grandfathered" and exempt from obtaining a certificate of need when the unit began operating was required to obtain a certificate of need when the unit was relocated. Phoebe Putney Mem. Hosp. v. Roach, 267 Ga. 619, 480 S.E.2d 595 (1997).

Replacement equipment. — Healthcare provider did not show that the Department of Community Health committed an error of law in ordering the healthcare provider to cease operations until the healthcare provider obtained a certificate of need; the healthcare provider was not using replacement equipment at the time it moved and, thus, whether the Department of Community Health earlier issued a correct letter of nonreviewability was not at issue at the time the healthcare provider relocated to a new center with new equipment. N. Atlanta Scan Assocs. v. Dep't of Cmty. Health, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Exhaustion of administrative remedies. — Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health and the Department's Commissioner from requiring the Department's

members to respond to certain disputed requests in an annual survey because the futility exception to the exhaustion requirement was inapplicable; the Commissioner's position in the lawsuit did not establish futility because actions taken to defend a lawsuit could not establish futility. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 724 S.E.2d 386 (2012).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health (DCH) and the Department's Commissioner from requiring the Department's members to respond to certain disputed requests in an annual survey because the "acting outside statutory authority" exception to the exhaustion requirement did not apply; the society did not allege that DCH was acting wholly outside the Department's jurisdiction under O.C.G.A. § 31-6-70 to conduct surveys, but instead, the society claimed that the manner in which the survey was being conducted did not fully comply with the procedural requirements of the statute. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 724 S.E.2d 386 (2012).

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(a)(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ASCs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

Cited in HCA Health Servs., Inc. v. Roach, 263 Ga. 798, 439 S.E.2d 494 (1994); Lakeview Behavioral Health Sys., LLC v. UHS Peachford, LP, 321 Ga. App. 820, 743 S.E.2d 492 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Increase of ten beds or 10 percent of bed capacity requires certificate where new service created. — Though an increase of the lesser of ten beds or 10 percent of bed capacity would be excluded from review generally under paragraph (a)(15) of O.C.G.A. § 31-6-47, it is likely that such increases would require a certificate of need if the new beds were used to create new institutional health services. 1983 Op. Att'y Gen. No. 83-34.

State Health Planning and Development Agency rules under former § 31-6-50 given effect under O.C.G.A. § 31-6-47. — To the extent that the exclusions in O.C.G.A. § 31-6-47 are identical to or essentially the same as those in former § 31-6-50, those State Health Planning and Development Agency (now Department of Community Health) rules in effect on June 30, 1983, as to such exclusions will remain effective on or after July 1, 1983, and until new rules are adopted. 1983 Op. Att'y Gen. No. 83-34.

Any State Health Planning and Development Agency (now Department of Community Health) rules in effect on June 30, 1983, which require a certificate of need for expenditures which increase the bed capacity of a hospital by up to ten beds or 10 percent of capacity, whichever is less, are "inconsistent with this chapter" under O.C.G.A. § 31-6-49 and therefore not controlling after July 1, 1983. 1983 Op. Att'y Gen. No. 83-34.

31-6-47.1. Prior notice and approval of certain activities.

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), (26), (27), (28), and (29) of subsection (a) of Code Section 31-6-47. The department shall establish timeframes, forms, and criteria to request a letter of determination that an activity is properly exempt or excluded under this chapter prior to its implementation. The department shall publish notice of all requests for letters of determination regarding 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. If no objection to a request for determination is filed within 30 days of the department's receipt of such request for determination, the department shall have 60 days from the date of the department's receipt of such request to review the request and issue a letter of determination. The department may adopt rules for deciding when it is not practicable to provide a determination in 60 days and may extend the review period upon written notice to the requestor but only for an extended period of no longer than an additional 30 days.

History. — Code 1981, § 31-6-47.1, enacted by Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2019, p. 148, § 1-11/HB 186.

The 2019 amendment, effective July 1, 2019, substituted "(25), (26), (27), (28), and (29)" for "(25), and (26)" in the second sentence, substituted "department shall establish timeframes, forms, and criteria to request a letter of determination" for "department shall be authorized to establish timeframes, forms, and criteria relating to its certification" in the third sentence, substituted "letters of determination regarding" for "approval of an" in the fourth sentence, and added the last two sentences.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the enactment of this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-48. Prior entities abolished; transfer of contractual obligations.

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 2 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.

History. — Code 1981, § 31-6-48, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1991, p. 1880, § 4; Ga. L. 1999, p. 296, § 8; Ga. L. 2000, p. 136, § 31; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2009, p. 453, § 1-25/HB 228.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

31-6-49. Transitional provisions.

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.

History. — Code 1981, § 31-6-49, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1999, p. 296, § 8; Ga. L. 2008, p. 12, § 1-1/SB 433.

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

OPINIONS OF THE ATTORNEY GENERAL

Effect to be given to prior rules of State Health Planning and Development Agency. — Any portions of the State Health Planning and Development

Agency's (now Department of Community Health) rules in effect on June 30, 1983, which are not "inconsistent with this chapter" under former paragraph (3) of O.C.G.A. § 31-6-49, or which can be adapted to the new law merely by making numerical substitutions, will remain in effect on that date, and will continue in effect until new rules are adopted. 1983 Op. Att'y Gen. No. 83-34.

Those State Health Planning and Development Agency's (now Department of Community Health) rules in effect on June 30, 1983 which refer to the $150,000 threshold in former § 31-6-2, or do not distinguish between capital expenditures and equipment expenditures as set out in current § 31-6-2(14)(B) and (F) are "inconsistent with this chapter" under former paragraph (3) of O.C.G.A. § 31-6-49, but so as to effectuate the General Assembly's intent will be read together and harmonized with the controlling dollar amounts and classifications of the new law. 1983 Op. Att'y Gen. No. 83-34.

Any provisions in the State Health Planning and Development Agency's (now Department of Community Health) rules in effect on June 30, 1983 which provide for health system agency participation in the certificate of need review process on or after July 1, 1983 will be "inconsistent with this chapter" under former paragraph (3) of O.C.G.A. § 31-6-49, and as such will not be effective on or after July 1, 1983. 1983 Op. Att'y Gen. No. 83-34.

To the extent that the exclusions in present O.C.G.A. § 31-6-47 are identical to or essentially the same as those in former § 31-6-50, those State Health Planning and Development Agency (now Department of Community Health) rules in effect on June 30, 1983 as to such exclusions will remain effective on or after July 1, 1983 and until new rules are adopted. 1983 Op. Att'y Gen. No. 83-34.

Any State Health Planning and Development Agency (now Department of Community Health) rules in effect on June 30, 1983 which require a certificate of need for expenditures which increase the bed capacity of a hospital by up to ten beds or 10 percent of capacity, whichever is less, is "inconsistent with this chapter" under former paragraph (3) of O.C.G.A. § 31-6-49 and therefore not controlling after July 1, 1983. 1983 Op. Att'y Gen. No. 83-34.

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

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.

History. — Code 1981, § 31-6-50, enacted by Ga. L. 1983, p. 1566, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "31-6-42 through 31-6-44" was substituted for "31-6-42, 31-6-43, and 31-6-44".

Pursuant to Code Section 28-9-5, in 1999, "Health Planning Agency" was substituted for "department".

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

U.S. Code. — Section 1122 of the Social Security Act, as amended, referred to in this Code section, is codified as 42 U.S.C. § 1320a-1.

OPINIONS OF THE ATTORNEY GENERAL

Appeal of agency decisions. — Prior to the 1983 reenactment, applicants proposing a capital expenditure, as well as health systems agencies and persons who qualify as a "party" or "persons aggrieved" under the "Georgia Administrative Procedure Act" (O.C.G.A. Ch. 13, T. 50) have the right to appeal to the State Health Planning Review Board (now Certificate of Need Appeal Panel) decisions of the State Health Planning and Development Agency (now Department of Community Health) relative to § 1122 of the Social Security Act, 42 U.S.C. § 1320a-1(a). 1981 Op. Att'y Gen. No. 81-8.

ARTICLE 4

REPORTS

31-6-70. Reports to the department by certain health care facilities and all ambulatory surgical centers and imaging centers; public availability.

(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 such health care information as determined by the department. The report shall be due on the date determined by the department 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 and nonindigent 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;

(8) For cases involving indigent persons and nonindigent person receiving charity care:

(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 and nonindigent care costs incurred by the health care facility by county of residence;

(9) Transfers to a hospital or hospital emergency department, including both direct transfers and transfers by emergency medical services;

(10) Number of rooms, beds, procedures, and patients, including, without limitation, demographic information and payer source;

(11) Patient origin by county; and

(12) Operational information such as procedure types, volumes, and charges.

(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 reports required by this Code section and may provide in said form for further categorical divisions of the information listed in subsections (b) or (c.1) of this Code section.

(e)(1) In the event the department does not receive 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 within 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.

(g) The department shall make publicly available all annual reports submitted pursuant to this Code section on the department website. The department shall also provide a copy of such annual reports to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Health and Human Services and the Senate Health and Human Services Committee.

(h) All health care facilities, ambulatory surgical centers, and imaging centers required to submit an annual report pursuant to subsection (a) of this Code section shall make such annual reports publicly available on their websites.

History. — Code 1981, § 31-6-70, enacted by Ga. L. 1985, p. 827, § 1; Ga. L. 1987, p. 573, § 1; Ga. L. 1988, p. 13, § 31; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 1-1/SB 433; Ga. L. 2019, p. 148, § 1-12/HB 186.

The 2019 amendment, effective July 1, 2019, in subsection (a), substituted "report of such health care information as determined by" for "report of certain health care information to be submitted to" near the end of the first sentence and substituted "date determined by the department" for "last day of January" in the second sentence; inserted "and nonindigent" in paragraph (b)(6) and subparagraph (b)(8)(E); deleted "and" at the end of paragraph (b)(7); inserted "and nonindigent person receiving charity care" in paragraph (b)(8); substituted a semicolon for a period at the end of subparagraph (b)(8)(E); and added paragraphs (b)(9) through (b)(12); in subsection (d), substituted "reports required by this Code section" for "report required by subsection (a) of this Code section" near the middle and substituted "subsections (b) or (c.1)" for "subsection (b)" near the end; deleted "information responsive to subparagraph (c)(2)(A) of Code Section 31-6-40 by December 30, 2008, or" following "does not receive" near the beginning of paragraph (e)(1); and added subsections (g) and (h).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "within such" was substituted for "with such" in paragraph (e)(2).

Editor's notes. — Ga. L. 2008, p. 12, § 3-1/SB 433, not codified by the General Assembly, provides that the amendment to this Code section shall only apply to applications submitted on or after July 1, 2008.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

Exhaustion of administrative remedies. — Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's ction seeking to prevent the Georgia Department of Community Health (DCH) and the Departmen'ts Commissioner from requiring the Department's members to respond to certain disputed requests in an annual survey because the "acting outside statutory authority" exception to the exhaustion requirement did not apply; the society did not allege that DCH was acting wholly outside the Department's jurisdiction under O.C.G.A. § 31-6-70 to conduct surveys, but instead, the society claimed that the manner in which the survey was being

conducted did not fully comply with the procedural requirements of the statute. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 724 S.E.2d 386 (2012).

Court of appeals erred in ruling that a society of surgery centers did not have to exhaust administrative remedies under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19(a), in the society's action seeking to prevent the Georgia Department of Community Health and the Department's Commissioner from requiring its members to respond to certain disputed requests in an annual survey because the futility exception to the exhaustion requirement was inapplicable; the Commissioner's position in the lawsuit did not establish futility because actions taken to defend a lawsuit could not establish futility. Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs., 290 Ga. 628, 724 S.E.2d 386 (2012).

Because the Georgia Society of Ambulatory Surgical Centers represented the interests of members that had adequate administrative remedies, and those members had not exhausted those remedies, the trial court was required to dismiss its case alleging that an annual survey the Georgia Department of Community Health (DCH) issued to ambulatory surgery centers (ASC) sought information beyond the scope of O.C.G.A. § 31-6-70. Furthermore, the procedures set forth in the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-19 and O.C.G.A. §§ 31-6-40(c), and 31-6-47(a)(18), and Ga. Comp. R. & Regs. 111-2-2-.05(2)(e) were available to ASCs before DCH took any final adverse action against them for failing to provide the required survey information, the procedures afforded adequate administrative remedies to aggrieved ASCs. Ga. Soc'y of Ambulatory Surgery Ctrs. v. Ga. Dep't of Cmty. Health, 316 Ga. App. 433, 729 S.E.2d 565 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authority may apply for certificate of need outside the hospital's area of operation and without the permission of the affected governing authority or hospital authority board in the planned service area; provided, however, that in order to implement the certificate, permission to pursue the health care activity would be required. 1995 Op. Att'y Gen. No. 95-13.

ARTICLE 5

STATE COMMISSION ON THE EFFICACY OF THE CERTIFICATE OF NEED PROGRAM

31-6-90 through 31-6-95.

Repealed pursuant to Code Section 31-6-95, which provided for the repeal of this article on June 30, 2007.

Editor's notes. — This article was based on Code 1981, §§ 31-6-90 through 31-6-95, enacted by Ga. L. 2005, p. 43, § 1/HB 390.

CHAPTER 7

REGULATION AND CONSTRUCTION OF HOSPITALS AND OTHER HEALTH CARE FACILITIES

Article 1

Regulation of Hospitals and Related Institutions

Sec.

31-7-1. Definitions.

31-7-2. Classification of institutions.

31-7-2.1. Rules and regulations; availability of reports of cited deficiencies; disclosure of survey worksheets and documents.

31-7-2.2. Determination that patients or residents in an institution, community living arrangement, or treatment program are in danger; relocation of patients or residents; suspension of admissions.

31-7-3. Requirements for permits to operate institutions.

31-7-3.1. Posting sign by hospital operating emergency room notifying individuals of legal rights in emergencies.

31-7-3.2. Notice of cited deficiency and imposition of sanction.

31-7-3.3. "Excluded party" defined; liability; notice; dismissal; other procedural factors.

31-7-3.4. Carrying of liability insurance or establishment of self-insurance trust as condition precedent to obtaining or maintaining permit.

31-7-4. Denial or revocation of permits.

31-7-5. Exemptions from permit requirements; application of this chapter to federally operated institutions.

31-7-6. Provision of data for research purposes by organizations rendering patient care; liability of providers of data; use of data; confidentiality.

31-7-7. Refusal or revocation by public hospital of staff privileges.

31-7-7.1. Denial of staff privileges based upon license, board certification, or membership in professional association.

31-7-8. Reports of disciplinary actions against persons authorized to practice professions under Chapter 11, 34, or 35 of Title 43.

31-7-9. Reports by physicians and other personnel of nonaccidental injuries to patients; immunity from liability.

31-7-10. Certification and approval of hospitals eligible to render service under a group nonprofit hospital insurance plan; supervision of such hospitals; withdrawal of approval.

31-7-11. Written summary of hospital service charge rates.

31-7-12. "Personal care home" and "personal services" defined; licensure and registration; inspection by local boards; fees; investigations; waiver, variance, or exemption.

31-7-12.1. Unlicensed personal care home; civil penalties; negligence per se for certain legal claims; declared nuisance dangerous to public health, safety, and welfare; criminal sanctions.

31-7-12.2. Regulation and licensing of assisted living communities; legislative intent; definitions; procedures; requirements for medication aides.

31-7-12.3. (Effective until October 1, 2019. See note.) Adoption of rules and regulations to implement Code Sections 31-7-12 and 31-7-12.2.

31-7-12.3. (Effective October 1, 2019. See note.) Adoption of rules and regulations to implement

Sec.

Code Sections 31-7-12 and 31-7-12.2.
31-7-13. Transfer of property upon death of patient.
31-7-14. Blood supplies; blood donor storage programs.
31-7-15. Review of professional practices by a peer review committee.
31-7-16. Determination or pronouncement of death of patient who died in facility classified as nursing home.
31-7-17. Licensure and regulation of hospitals and related institutions transferred to Department of Community Health.
31-7-18. Influenza vaccinations for discharged patients aged 65 and older; vaccinations or other measures for health care workers and other employees in hospitals; immunity from liability; standing orders.
31-7-19. Nursing homes to annually offer influenza vaccinations to health care workers and other employees; immunity from liability.
31-7-20. Medical facilities to make good faith application to southern regional TRICARE managed care support coordinator for certification in the TRICARE program.
31-7-21. Provision of influenza education information to assisted living community residents.
31-7-22. Required publication by hospital of certain documentation on website; updating; penalty for noncompliance; enforcement; individual criminal penalty.

Article 2

Georgia Building Authority (Hospital)

31-7-23 through 31-7-40 [Repealed].

Article 3

Grants for Construction and Modernization of Medical Facilities

Sec.

31-7-50. Authorization of grants-in-aid.
31-7-51. Definitions.
31-7-52. Amounts of grants for construction and modernization.
31-7-53. Matching formula; priority system; use of earnings; approval of federal grant.
31-7-54. Manner of expenditure of construction funds.
31-7-55. Administration of state funds.
31-7-56. Adherence to federal law and regulations.
31-7-57. Procedure for grants to sponsors of construction projects; injunction of operation by transferee in violation of article.

Article 4

County and Municipal Hospital Authorities

31-7-70. Short title.
31-7-71. Definitions.
31-7-72. Creation of hospital authority in each county and municipality.
31-7-72.1. Merger of hospital authorities.
31-7-73. Creation of additional hospital authority in counties with large populations.
31-7-74. Residency requirement; officers; compensation; rules and regulations.
31-7-74.1. Definitions; disclosures required; prohibited transactions; exceptions; sanctioning; sanctioning of members violating prohibition; authorization of authority to make stricter rules; preemption of other laws; applicability.

Sec.
31-7-74.2. Oath to be taken by members of hospital authority.
31-7-74.3. Sale or lease by hospital authority; hearing required; factors to be considered at hearing; applicability; requirements for lease.
31-7-74.4. Board members deemed directors upon sale or lease of hospital.
31-7-75. Functions and powers.
31-7-75.1. Proceeds of sale of hospital held in trust to fund indigent health care.
31-7-75.2. Exemption from disclosure for potentially commercially valuable plan, proposal, or strategy.
31-7-75.3. Home health agency services operated by hospitals [Repealed].
31-7-76. Procedure in event of failure of authority to perform minimum functions; determination of removal from office; appointments to fill vacancies created by removal.
31-7-77. Prohibition on for-profit projects; rates and charges; utilization of revenues to pay certain obligations.
31-7-78. Issuance and sale of negotiable revenue anticipation certificates.
31-7-79. Liability on revenue certificates; tax exemption.
31-7-80. Form and contents of revenue certificates; validity of signatures thereon.
31-7-81. Confirmation and validation of revenue certificates.
31-7-82. Enforcement of rights of revenue certificate holders; procedure in event of default.
31-7-83. Investment of surplus moneys and moneys received through issuance of revenue certificates.
31-7-84. Payment for authority's services and facilities; levy of tax by political subdivisions; compliance by authority with county budgetary procedures.
Sec.
31-7-85. Contracts with political subdivisions.
31-7-86. Manner of operating property conveyed or leased to authority.
31-7-87. Hypothecation or mortgaging of purchased hospital facilities.
31-7-88. Payment of general obligations.
31-7-89. Procedure for dissolution; disposition of property.
31-7-89.1. "Control" defined; sale or lease by hospital authority subject to requirements of Article 15 of this chapter.
31-7-90. Annual report; budget.
31-7-90.1. Community benefit report; report disclosing member ownership in entities transacting business with authority.
31-7-91. Required annual audit.
31-7-92. Filing of audits.
31-7-93. Failure to provide for audit.
31-7-94. Grants to hospital authorities and rural hospital organizations.
31-7-94.1. Rural Hospital Organization Assistance Act; legislative findings; certification of rural hospitals for grant eligibility; rules and regulations.
31-7-95. Funding of medical education provided by hospital authorities and designated teaching hospitals.
31-7-96. Construction of article.

Article 5

Residential Care Facilities for the Elderly Authorities

31-7-110. Short title.
31-7-111. Findings; declaration of policy.
31-7-112. Definitions.
31-7-113. Creation of Residential Care Facilities for the Elderly Authority in each county and municipality; board of directors.
31-7-114. Powers of authorities.
31-7-115. Lease or sale of projects.
31-7-116. Provisions contained in obli-

Sec.
gations and security for obligations; procedures for issuance of bonds and bond anticipation notes; interest rates; limitations and conditions.
31-7-117. Liability for bonds or other obligations.
31-7-118. Exemption from taxation.
31-7-119. Holding moneys as trust funds; pledges for payment of bonds.
31-7-120. Construction of article.

Article 6

Peer Review Groups

31-7-130. Legislative intent.
31-7-131. Definitions.
31-7-132. Immunity from liability for peer review activities; immunity from liability of persons providing information.
31-7-133. Confidentiality of review organization's records.

Article 6A

Medical Review Committees

31-7-140. "Medical review committee" defined.
31-7-141. Committee members immune from liability.
31-7-142. Liability of those providing health care facilities or services.
31-7-143. Committee proceedings and records immune from discovery or use as evidence in civil actions.

Article 7

Home Health Agencies

31-7-150. Definitions.
31-7-151. License required; license may not be transferred but may be suspended or revoked.
31-7-152. Application for license.
31-7-153. Standards for patient care and agency operation; regulations as to issuance, denial, suspension, or revocation of licenses; hearings.
31-7-154. Inspections.
Sec.
31-7-155. Certificates of need for new service or extending service area; exemption from certificate.
31-7-156. Fee system for services under this article.
31-7-157. Exemptions from article.
31-7-158. Penalties for unlicensed operation.
31-7-159. Licensure and regulation of home health agencies transferred to Department of Community Health.

Article 8

Health Service Provider Psychologists

31-7-160. Definitions.
31-7-161. Appointment to staff of medical facility or institution.
31-7-162. Training and experience requirements.
31-7-163. Status of present psychologist staff members.
31-7-164. Limitation or revocation of staff privileges.
31-7-165. Report of denial of staff privileges.

Article 9

Hospice Care

31-7-170. Short title.
31-7-171. Legislative findings and purpose.
31-7-172. Definitions.
31-7-173. License required.
31-7-174. Application for license.
31-7-175. Administration of article.
31-7-176. Responsibilities of provider of hospice care.
31-7-176.1. Determination or pronouncement of death.
31-7-177. Inpatient beds.
31-7-178. Inspection.
31-7-179. Certificate of need not required.

Article 10

Patient Centered and Family Focused Palliative Care

31-7-190. Legislative intent.
31-7-191. Definitions.

Sec.
31-7-192. Georgia Palliative Care and Quality of Life Advisory Council.
31-7-193. Palliative Care Consumer and Professional Information and Education Program.

Article 11

Facility Licensing and Employee Records Checks

31-7-250. (Repealed effective October 1, 2019) Definitions.
31-7-251. (Repealed effective October 1, 2019) New facility licensing; facility directors.
31-7-252. (Repealed effective October 1, 2019) Director records check applications and employee preliminary records check applications; satisfactory alternative evidence; contracts for records check determinations.
31-7-253. (Repealed effective October 1, 2019) Written notification as to department's preliminary records check determinations; effect of unsatisfactory determinations; issuance of temporary licenses.
31-7-254. (Repealed effective October 1, 2019) Transmission of director's fingerprints to Georgia Crime Information Center for review; notification to department of findings; retention of fingerprints.
31-7-255. (Repealed effective October 1, 2019) Issuance of regular licenses.
31-7-256. Expiration of facility licenses issued prior to July 1, 1985; issuance of temporary or regular licenses [Repealed].
31-7-257. Procedure upon issuance of temporary licenses [Repealed].
31-7-258. (Repealed effective October 1, 2019) Change of facility director; notification to department; effect of department determination.
31-7-259. (Repealed effective October 1, 2019) Preliminary records check determination; suspension or revocation of license; refusal to issue regular license; fingerprint check; employment history; director's criminal liability; exempt employees; mitigating factors in criminal records check; civil penalty.
31-7-260. (Repealed effective October 1, 2019) Cooperation of Georgia Crime Information Center and law enforcement agencies with department; liability for misuse or attempted misuse of information.
31-7-261. (Repealed effective October 1, 2019) Liability for claims in connection with dissemination of information or determination based thereon.
31-7-262. (Repealed effective October 1, 2019) Supplemental nature of requirements of this article.
31-7-263. (Repealed effective October 1, 2019) Contested cases for purposes of the "Georgia Administrative Procedure Act."
31-7-264. (Repealed effective October 1, 2019) Regulatory power of department.
31-7-265. (Repealed effective October 1, 2019) Facility licensing and employee records checks for personal care homes transferred to Department of Community Health.

Article 12

Health Care Data Collection

31-7-280. Health care provider annual reports; form.
31-7-281. Data system established; departmental authority.
31-7-282. Collection and submission of data.
31-7-283. Compilation and dissemination of information; rules and regulations.
31-7-284. Public disclosure; updating of data base; publication; fees.
31-7-285. Confidentiality; liability.

Article 13

Private Home Care Providers

Sec.

31-7-300. Definitions.
31-7-301. License requirement; license not assignable or transferable.
31-7-302. Rules and regulations; authority of department to issue, suspend, or revoke licenses.
31-7-303. Inspections; requirements for exemption.
31-7-304. Fees.
31-7-305. Exempt services.
31-7-306. Applications received prior to effective date of article.
31-7-307. Certificate of need not required of licensees; operation of licensee as home health agency not authorized.
31-7-308. Licensure and regulation of private home care providers transferred to Department of Community Health.

Article 14

Nursing Homes Employee Records Checks (Effective until October 1, 2019)

31-7-350. Definitions.
31-7-351. Request for criminal record check; employment application form notice.
31-7-352. Immunity from liability.
31-7-353. Penalty for hiring applicant with criminal record.
31-7-354. Authority to enforce article; rules and regulations.

Article 14

Georgia Long-term Care Background Check Program (Effective October 1, 2019)

31-7-350. Short title; purpose.
31-7-351. Definitions.
31-7-352. Registry check required; validation of licensing.
31-7-353. Records check application; transmittal of fingerprints; penalties for unauthorized release or disclosure of information.
31-7-354. Consent to background checks; certain results of background check barring employment; rights of owner, applicant, or employee.
31-7-355. Personnel files; when department may require background check; result of unsatisfactory determination.
31-7-356. Facility's failure to comply with provisions; penalty.
31-7-357. Required notice on application form.
31-7-358. License revocation or withholding; additional requirements.
31-7-359. Liability for civil damages; sovereign immunity not waived.
31-7-360. Rules and regulations.
31-7-361. Transfer of responsibilities, rights, and personnel between departments.

Article 14A

Central Caregiver Registry

31-7-380. (Effective October 1, 2019) Purpose and intent.
31-7-381. (Effective October 1, 2019) Definitions.
31-7-382. (Effective October 1, 2019) Establishment of central caregiver registry.
31-7-383. (Effective October 1, 2019) Private employer's inquiry with department on eligibility of employee; employer responsible for decisions.
31-7-384. (Effective October 1, 2019) Appeal of ineligibility determination.
31-7-385. (Effective October 1, 2019) Immunity from liability.
31-7-386. (Effective October 1, 2019) Rules and regulations.

Article 15

Hospital Acquisition

31-7-400. Definitions.
31-7-401. Notice to Attorney General of acquisition.
31-7-402. Content and form of notice to Attorney General; retention

Sec.
of experts; payment of costs and expenses.
31-7-403. Certification of interest in acquiring entity; certification of financial interest in business associated with party to disposition; statement of fair dealing; opposing board members exempt.
31-7-404. Publication of notice.
31-7-405. Public hearing; expert or consultant required to testify; testimony; representative of acquiring entity to testify.
31-7-406. Purpose of public hearing; factors to be addressed in disclosure.
31-7-407. Attorney General to ensure compliance with article; other persons not precluded from instituting judicial proceedings.
Sec.
31-7-407.1. Report of findings.
31-7-408. Notice required prior to issuance or renewal of permit to operate hospital; permit subject to revocation or suspension for failure to comply.
31-7-409. Prospective operation of article.
31-7-410. Authority of Attorney General unaffected.
31-7-411. Attorney General's power under article same as under Code Section 45-15-17.
31-7-412. Disposition or acquisition made in violation of requirements of article null and void; violators subject to fine; Attorney General to instigate proceedings to impose fine within one year.

Cross references. — Authority of board of regents with regard to Eugene Talmadge Memorial Hospital, § 20-3-520 et seq. Requirement of smoke detectors for nursing homes, § 25-2-40. Offering continuing care when resident purchases resident owned living unit, § 33-45-7.1. Designation of emergency receiving facilities for examination of mentally ill persons, alcoholics, and others, §§ 37-3-40 et seq., 37-7-40 et seq. Designation of evaluating facilities for examination of persons ordered by court to undergo evaluation for mental illness, alcoholism, and other conditions, §§ 37-3-60, 37-7-60. Authority of Department of Veterans Service and Veterans Service Board to construct and operate hospitals, nursing homes, and other facilities for care of war veterans, § 38-4-2. Registered nurses and licensed practical nurses, T. 43, C. 26. Physical therapists, T. 43, C. 33. Physicians, osteopaths, T. 43, C. 34.

Administrative rules and regulations. — General licensing and enforcement requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-25.

Personal care homes, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-62.

Rules and regulations for residential mental health facilities for children and youth, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-68.

Rules and regulations for proxy caregivers used in licensed healthcare facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Chapter 111-8-100.

Law reviews. — For article, "Baby Doe Cases: Compromise and Moral Dilemma," see 34 Emory L.J. 545 (1985). For article, "State of Emergency: Why Georgia's Standard of Care in Emergency Rooms is Harmful to Your Health," see 45 Ga. L. Rev. 275 (2010). For article, "The Olmstead Decision: The Road to Dignity and Freedom," see 26 Ga. St. U. L. Rev. 651 (2010). For article, "Olmstead's Promise and Cohousing's Potential," see 26 Ga.

St. U. L. Rev. 663 (2010). For article, "From the Inside Out: Personal Perspectives of Six Georgians on Their Institutional Experiences," see 26 Ga. St. U. L. Rev. 741 (2010). For article, "The Constitutional Right to Community Services," see 26 Ga. St. U. L. Rev. 763 (2010). For article, "Reconsidering Makin v. Hawaii: The Right of Medicaid Beneficiaries to Home-Based Services as an Alternative to Institutionalization," see 26 Ga. St. U. L. Rev. 803 (2010). For article, "The Potential and Risks of Relying on Title II's Integration Mandate to Close Segregated Institutions," see 26 Ga. St. U. L. Rev. 855 (2010). For article, "Beyond Residential Segregation: The Application of Olmstead to Segregated Employment Settings," see 26 Ga. St. U. L. Rev. 875 (2010). For article, "From Almshouses to Nursing Homes and Community Care: Lessons from Medicaid's History," see 26 Ga. St. U. L. Rev. 937 (2010).

For note, "Deinstitutionalization: Georgia's Progress in Developing and Implementing an 'Effectively Working Plan' as Required by Olmstead v. L.C. ex rel," see 25 Ga. St. U. L. Rev. 699 (2009).

JUDICIAL DECISIONS

Cited in Richards v. Emanuel County Hosp. Auth., 603 F. Supp. 81 (S.D. Ga. 1984).

RESEARCH REFERENCES

Am. Jur. Trials. — Defending Hospital — Negligence of Physician-Employee, 19 Am. Jur. Trials 431.

Hospital Recovery Room Accidents, 25 Am. Jur. Trials 185.

Hospital Liability for Nursing Medication Errors, 29 Am. Jur. Trials 591.

Due Process Considerations in Suspension of Hospital Staff Privileges, 32 Am. Jur. Trials 1.

Establishing Hospital Liability under the Emergency Medical Treatment and Active Labor Act for "Patient Dumping", 62 Am. Jur. Trials 119.

Liability of Hospital or Other Emergency Room Service Provider for Injury to Patient or Visitor, 67 Am. Jur. Trials 271.

Medical and Legal Aspects of Chemical and Physical Restraint in the Nursing Home, 75 Am. Jur. Trials 1.

ALR. — Licensing and regulation of nursing or rest homes, 53 A.L.R.4th 689.

What patient claims against doctor, hospital, or similar health care provider are not subject to statutes specifically governing actions and damages for medical malpractice, 89 A.L.R.4th 887.

Liability of hospital for injury to person invited or permitted to accompany patient during emergency room treatment, 90 A.L.R.4th 478.

Liability of hospital, physician, or other medical personnel for death or injury from use of drugs to stimulate labor, 1 A.L.R.5th 243.

Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by improper administration of, or failure to administer, anesthesia or tranquilizers, or similar drugs, during labor and delivery, 1 A.L.R.5th 269.

Opposition to construction of new hospital or expansion of existing hospital's facilities as violation of Sherman Act (15 U.S.C. § 1 et seq.), 88 A.L.R. Fed. 478.

ARTICLE 1

REGULATION OF HOSPITALS AND RELATED INSTITUTIONS

Editor's notes. — Ga. L. 2001, p. 1172, § 2, not codified by the General Assembly, provides that: "No hospital shall release for public use any autopsy photographs or images without the written permission of the family."

Law reviews. — For article, "Hospital Mergers, Market Concentration and the Herfindahl-Hirschman Index," see 33 Emory L.J. 869 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Department cannot regulate abortion facilities not within definition of institution. — Law concerning regulation of hospitals and related institutions cannot be utilized by Department of Human Resources (now the Department of Community Health for these purposes) to extend regulation to abortions performed in facilities other than those embraced by the term institution. 1973 Op. Att'y Gen. No. 73-24.

Casualty insurance carried by regulated institutions not subject to department's regulation. — Since the requirement of carrying adequate casualty insurance is a matter which does not pertain to protection of health and lives of patients in institutions nor to kind and quality of building, equipment, facilities and institutional services that institutions shall have and use in order to properly care for patients, the Department of Human Resources (now the Department of Community Health for these purposes) cannot legally pass a valid rule requiring institutions to carry adequate casualty insurance. 1967 Op. Att'y Gen. No. 67-177.

RESEARCH REFERENCES

ALR. — Liability of private noncharitable hospital or sanitarium for improper care or treatment of patient, 39 A.L.R. 1431; 124 A.L.R. 186.

Hospital's liability for care of convalescing patient, 70 A.L.R.2d 377.

Malpractice in diagnosis and treatment of tetanus, 28 A.L.R.3d 1364.

Hospital's liability for injury or death to patient resulting from or connected with administration of anesthetic, 31 A.L.R.3d 1114.

Hospital's liability to patient for injury allegedly sustained from absence of particular equipment intended for use in diagnosis or treatment of patient, 50 A.L.R.3d 1141.

Hospital's liability for patient's injury or death resulting from escape or attempted escape, 37 A.L.R.4th 200.

31-7-1. Definitions.

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, assisted living 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, assisted living community, 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.

History. — Code 1933, § 88-1901, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 715, § 3; Ga. L. 1973, p. 635, § 3; Ga. L. 1978, p. 1757, § 1; Code 1933, § 88-1913, enacted by Ga. L. 1980, p. 1040, § 2; Ga. L. 1982, p. 3, § 31; Ga. L. 1982, p. 864, §§ 1, 3; Ga. L. 1983, p. 3, § 22; Ga. L. 1989, p. 1566, § 2; Ga. L. 1990, p. 381, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1993, p. 1445, § 4; Ga. L. 2002, p. 1324, § 1-5; Ga. L. 2003, p. 558, § 2; Ga. L. 2008, p. 12, § 2-8/SB 433; Ga. L. 2011, p. 227, § 11/SB 178.

Cross references. — "Personal care home" defined, § 31-7-12. Conscious sedation, § 43-11-21.

Editor's notes. — Ga. L. 1993, p. 1445, § 18.1, not codified by the General Assembly, provides: "Nothing in this Act shall be construed to repeal any provision of Chapter 5 of Title 37 of the Official Code of Georgia Annotated, the 'Community Services Act for the Mentally Retarded.'"

JUDICIAL DECISIONS

Cited in Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973); Reddix v. Chatham County Hosp. Auth., 134 Ga. App. 860, 216 S.E.2d 680 (1975); Redd v. State, 240 Ga. 753, 243 S.E.2d 16 (1978); Primary Care Physicians Group v. Ledbetter, 634 F. Supp. 78 (N.D. Ga. 1986); Wofford v. Glynn Brunswick Mem. Hosp., 864 F.2d 117 (11th Cir. 1989).

OPINIONS OF THE ATTORNEY GENERAL

Department cannot regulate abortion facilities not within definition of institution. — Law concerning regulation of hospitals and institutions cannot be utilized by Department of Human Resources (now the Department of Community Health for these purposes) to extend regulation to abortions performed in facilities other than those embraced by the term institution. 1973 Op. Att'y Gen. No. 73-24.

Classification and operation by department of Gracewood and Central State Hospitals. — Department of Human Resources (now the Department of Community Health for these purposes) has authority to classify units of Gracewood State School and Hospital and Central State Hospital as a skilled nursing home and general hospital and has ample authority to operate these institutions. 1969 Op. Att'y Gen. No. 69-243.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, §§ 1, 17 et seq.

Am. Jur. Pleading and Practice Forms. — 13B Am. Jur. Pleading and Practice Forms, Hospitals, § 2.

C.J.S. — 41 C.J.S., Hospitals, § 1 et seq.

ALR. — Liability of hospital, physician, or other medical personnel for death or injury to mother or child caused by im-

proper procedures during caesarean delivery, 76 A.L.R.4th 1112.

31-7-2. Classification of institutions.

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

History. — Ga. L. 1946, p. 34, § 1; Ga. L. 1958, p. 322, § 1; Code 1933, § 88-1904, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Department regulations governing free-standing emergency care clinics violated First Amendment rights of plaintiff physicians since the regulations were more extensive than necessary to serve the governmental interest of prohibiting misleading advertising and were impermissibly vague in providing that facilities which used such terms as "emergency," "crisis," "sudden," "acute" or a similar meaning term fell within the regulatory ambit. Primary Care Physicians Group v. Ledbetter, 634 F. Supp. 78 (N.D. Ga. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Classification and operation by department of Gracewood and Central State Hospitals. — Department of Human Resources (now the Department of Community Health for these purposes) has authority to classify units of Gracewood State School and Hospital and Central State Hospital as a skilled nursing home and general hospital and has ample authority to operate these institutions. 1969 Op. Att'y Gen. No. 69-243.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 4, 6.

31-7-2.1. Rules and regulations; availability of reports of cited deficiencies; disclosure of survey worksheets and documents.

(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 31-2-8; 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 Article 4 of Chapter 18 of Title 50.

History. — Code 1933, § 88-1903, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1991, p. 1603, § 1; Ga. L. 1996, p. 1024, § 1; Ga. L. 2002, p. 415, § 31; Ga. L. 2004, p. 443, § 1; Ga. L. 2008, p. 12, § 2-9/SB 433; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, an extra "the" was deleted preceding "federal Centers for Medicare and Medicaid Services" near the end of the first sentence in subsection (c).

Pursuant to Code Section 28-9-5, in 2004, a hyphen was inserted twice between the words "private pay" and once between the words "Medicaid eligible" and the words "medicare eligible" in the second and third sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 2008, "Article 4 of Chapter 18 of Title 50." was substituted for "Code Section 50-18-70 et seq." in the last sentence of subsection (c).

U.S. Code. — Requirements for nursing facilities, 42 U.S.C. § 1396r.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

For note on 1991 amendment of this Code section, see 8 Ga. St. U. L. Rev. 74 (1992).

31-7-2.2. Determination that patients or residents in an institution, community living arrangement, or treatment program are in danger; relocation of patients or residents; suspension of admissions.

(a)(1) The commissioner may order the emergency relocation of patients or residents from an institution subject to licensure under this chapter, a community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4, or a drug abuse treatment and education program subject to licensure under Chapter 5 of Title 26 when the commissioner has determined that the patients or residents are subject to an imminent and substantial danger.

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

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

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

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

(b)(1) The commissioner may order the emergency placement of a monitor in an institution subject to licensure under this chapter, a community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4, or a drug abuse treatment and education program subject to licensure under Chapter 5 of Title 26 when one or more of the following conditions are present:

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

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

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

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

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

(c)(1) The commissioner may order the emergency prohibition of admissions to an institution subject to licensure under this chapter, a community living arrangement subject to licensure under paragraph (8) of subsection (d) of Code Section 31-2-4, or program subject to licensure under Chapter 5 of Title 26 when such institution, community living arrangement, or drug abuse treatment and education program has failed to correct a violation of departmental permit rules or regulations within a reasonable period of time, as specified in the department's corrective order, and the violation:

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

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

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

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

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

History. — Code 1981, § 31-7-2.2, enacted by Ga. L. 1983, p. 1323, § 1; Ga. L. 2003, p. 558, § 3; Ga. L. 2009, p. 453, § 1-26/HB 228.

Administrative rules and regulations. — Monitoring, suspension of admissions, or transfer of patients or residents of hospitals and related institutions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Public Health, Chapter 290-5-44.

JUDICIAL DECISIONS

Discretionary function of state agency. — Decision of the Department of Human Resources (now the Department of Community Health for these purposes) to review records, discuss with staff residents' care needs in a personal care home, and obtain a physician's statement regarding a resident's condition, in order to determine if the resident was a suitable resident at the home, rather than taking other action, including reassessing the patient or ordering emergency relocation, entailed policy judgments in which alternate courses of action were weighed in light of competing economic and social factors, and was the performance of a discretionary function or duty within the exception stated in O.C.G.A. § 50-21-24(2). Bruton v. State Dep't of Human Resources, 235 Ga. App. 291, 509 S.E.2d 363 (1998).

31-7-3. Requirements for permits to operate institutions.

(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.

(b) The department may accept the certification or accreditation of an institution by the American Osteopathy Association or a nationally recognized health care accreditation body, in accordance with specific standards, as evidence of that institution's compliance with the substantially equivalent departmental requirements for issuance or renewal of a permit or provisional permit, provided that such certification or accreditation is established prior to the issuance or renewal of such permits. The department may not require an additional departmental inspection of any institution whose certification or accreditation has been accepted by the department, except to the extent that such specific standards are less rigorous or less comprehensive than departmental requirements. Nothing contained in this Code section shall prohibit departmental inspections for violations of such standards or requirements nor shall it prohibit the revocation of or refusal to issue or renew permits, as authorized by Code Section 31-7-4, or for violation of any other applicable law or regulation pursuant thereto.

(c) The department shall require a facility licensed under this article and rules and regulations adopted pursuant thereto to have a written and regularly rehearsed disaster preparedness plan, approved by the department, for staff and residents to follow in case of fire, explosion, or other emergency, including interruption of electrical power supply, gas-heating supply, and water supply. The plan shall include written procedures for personnel to follow in an emergency including care of the

resident; notification of attending physician and other persons responsible for the resident; and arrangements for transportation, for hospitalization, for alternate living arrangements, for emergency energy sources, or for other appropriate services.

(d)(1) When an application for licensure to operate a personal care home, as defined in subsection (a) of Code Section 31-7-12, or an assisted living community, as defined in Code Section 31-7-12.2, has been made, the department shall inform the office of the state long-term care ombudsman of the name and address of the applicant prior to issuing authority to operate or receive residents and shall provide to the ombudsman program an opportunity to provide to the department information relevant to the applicant's fitness to operate as a licensed personal care home or an assisted living community.

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

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

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

History. — Ga. L. 1946, p. 34, § 3; Ga. L. 1958, p. 322, § 3; Code 1933, § 88-1905, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1981, p. 920, § 1; Ga. L. 1983, p. 783, § 1; Ga. L. 1994, p. 1358, § 1; Ga. L. 2008, p. 12, § 2-10/SB 433; Ga. L. 2011, p. 227, § 12/SB 178; Ga. L. 2012, p. 337, § 2/SB 361.

Cross references. — Certificate of need required for offering health care and exemptions, § 31-6-40 et seq.

JUDICIAL DECISIONS

Permit requirement as prerequisite to recovery for services rendered. — Permit requirement is clearly a regulatory measure as to health, not a fund-raising or tax measure or mere business permit. Under these circumstances, in order to recover for services rendered, it must be shown that a hospital is properly licensed, or is a holder of the proper permit at the time services are rendered. Proctor v. Lanier Collection Agency & Serv., Inc., 147 Ga. App. 104, 248 S.E.2d 179 (1978), overruled on other grounds, Merrill Lynch v. Zimmerman, 248 Ga. 580, 285 S.E.2d 181 (1981).

Cited in Culverhouse v. Atlanta Ass'n for Convalescent Aged Persons, 127 Ga. App. 574, 194 S.E.2d 299 (1972); Doe v.

Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973); Reddix v. Chatham County Hosp. Auth., 134 Ga. App. 860, 216 S.E.2d 680 (1975); Todd v. Physicians & Surgeons Community Hosp., 165 Ga. App. 656, 302 S.E.2d 378 (1983); Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 638 S.E.2d 447 (2006).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, §§ 5, 6.

C.J.S. — 41 C.J.S., Hospitals, §§ 1 et seq., 9 et seq.

ALR. — Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people, 61 A.L.R.3d 278.

31-7-3.1. Posting sign by hospital operating emergency room notifying individuals of legal rights in emergencies.

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

History. — Code 1981, § 31-7-3.1, enacted by Ga. L. 1990, p. 1810, § 1.

31-7-3.2. Notice of cited deficiency and imposition of sanction.

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

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

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

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

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

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

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

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

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

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

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

(e) Each applicant to a facility shall receive upon written request with his application a copy of the most recent notice which has been distributed pursuant to this subsection. The facility may inform the applicant of any corrective actions taken in response to the cited deficiencies contained in such notice.

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

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

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

(i) No violation of any regulation promulgated pursuant to the federal Nursing Home Reform Act, 42 U.S.C. Sections 1396r and 1395i-3, or any regulation included in Ga. Comp. R. & Regs. 111-8-50 or 111-8-56 or the successor of such regulations as they existed on May 12, 2015, shall constitute negligence per se; provided, however, that the court in any civil action shall take judicial notice of these regulations and admit them into evidence if found to be relevant to the harm alleged in the complaint. Nothing in this subsection shall abrogate any express cause of action authorized under law or be construed to amend

or repeal any provision of the "Bill of Rights for Residents of Long-term Care Facilities" in Article 5 of Chapter 8 of this title.

(j)(1) The results or findings of a federal or state survey or inspection of a nursing home facility, including any statement of deficiencies or reports, shall not be used or referenced in an advertisement or solicitation by any person or any entity, unless the advertisement or solicitation includes all of the following:

(A) The date the survey was conducted;

(B) A statement that the Department of Community Health conducts a survey of all nursing home facilities at least once every 15 months;

(C) If a finding or deficiency cited in the statement of deficiencies has been substantially corrected, a statement that the finding or deficiency has been substantially corrected and the date that the finding or deficiency was substantially corrected;

(D) The number of findings and deficiencies cited in the statement of deficiencies on the basis of the survey and a disclosure of the severity level for each finding and deficiency;

(E) The average number of findings and deficiencies cited in statements of deficiencies on the basis of surveys conducted by the department during the same calendar year as the survey used in the advertisement;

(F) A disclosure of whether each finding or deficiency caused actual bodily harm to any residents and the number of residents harmed thereby; and

(G) A statement that the advertisement is neither authorized nor endorsed by any government agency.

(2) In addition to any other remedies and damages allowed by law, a party found to have violated paragraph (1) of this subsection shall be liable for attorney fees and expenses of litigation incurred in an action to restrain or enjoin such violation; provided, however, that damages, attorney fees, and expenses of litigation shall not be recoverable against any newspaper, news outlet, or broadcaster publishing an advertisement or solicitation submitted by a third party for a fee.

History. — Code 1981, § 31-7-3.2, enacted by Ga. L. 1991, p. 1603, § 2; Ga. L. 2015, p. 1315, § 1/HB 342; Ga. L. 2016, p. 864, § 31/HB 737.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "May 12, 2015" was substituted for "the effective date of this subsection" in the first sentence of subsection (i).

Editor's notes. — Ga. L. 2015, p. 1315, § 2/HB 342, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law with-

out such approval and shall apply to all causes of actions arising on and after such date."

Law reviews. — For annual survey on trial practice and procedure, see 67 Mercer L. Rev. 257 (2015).

For note on 1991 enactment of this Code section, see 8 Ga. St. U. L. Rev. 74 (1992).

31-7-3.3. "Excluded party" defined; liability; notice; dismissal; other procedural factors.

(a) As used in this Code section, the term "excluded party" means a person or entity that neither performs, has the duty to perform, nor controls the performance of any of the following functions at or on behalf of a nursing home or intermediate care home where alleged injuries occurred:

(1) Providing management, operation, or administrative services for such home;

(2) Hiring or firing of the administrator, director of nursing, or other staff working at such home;

(3) Setting or controlling the budget of such home;

(4) Staffing or determining the level of staff at such home;

(5) Providing direct care, treatment, or services to the residents of such home;

(6) Making decisions regarding the care, treatment, or services provided to residents at such home; or

(7) Adopting, implementing, or enforcing the policies and procedures for such home.

(b) Except as otherwise provided by law, the mere ownership of an entity shall not, by itself, create the duty to perform the functions listed in subsection (a) of this Code section.

(c) An excluded party shall not be named in a civil action that alleges its direct or vicarious liability for the personal injury or death of one or more residents of a nursing home or intermediate care home or a violation of residents' rights at such home under Article 5 of Chapter 8 of this title.

(d) Any person or entity named as a defendant in a civil action or arbitration, that claims to be an excluded party, may serve a notice of such claim upon the plaintiff. Such notice shall be sent to counsel for the plaintiff by certified mail, return receipt requested, or, if the plaintiff does not have an attorney, to the plaintiff personally via certified mail, return receipt requested. Such notice shall be served after the discovery period begins under applicable law for the case but not later than 30 days after such discovery period begins.

(e) If, after the expiration of 90 days from the date the notice described in subsection (d) of this Code section is received, the plaintiff does not agree to a dismissal without prejudice of such defendant claiming to be an excluded party, and:

(1) The court later determines that there is no genuine issue of material fact as to whether such defendant is an excluded party, grants summary judgment to such defendant as to this issue, and such order becomes final after any appeal; or

(2) If an arbitrator enters judgment for such defendant as to this issue and determines that there was not a good faith basis in law and fact for the plaintiff's claim that such defendant was not an excluded party and such order becomes final after any appeal,

then such finding by an arbitrator or final judgment by a court shall be deemed a finding that the plaintiff's claim against such defendant was substantially frivolous, substantially groundless, or substantially vexatious. Upon such a final judgment or finding, such excluded party shall be entitled to an award of reasonable and necessary attorneys' fees and expenses of litigation upon the filing of a motion. The court or arbitrator shall award only such reasonable and necessary attorneys' fees and expenses of litigation as the court or arbitrator determines were related to the defense of only such excluded party and not to the defense of other defendants in such action, unless otherwise authorized by law. Such attorneys' fees and expenses so awarded shall be assessed against the party asserting such claim, against such party's attorney, or against both in such manner as is just.

(f) In the event that the plaintiff prevails on any claim against a defendant claiming to be an excluded party and if the court or an arbitrator determines that there was not a good faith basis in law and fact for the defendant's claim that such defendant was an excluded party, and such order becomes final after appeal, then such judgment by a court or arbitrator shall be deemed a finding that the contention by such defendant that it was an excluded party was substantially frivolous, substantially groundless, or substantially vexatious. Upon such a final judgment or finding, the plaintiff shall be entitled to an award of reasonable and necessary attorneys' fees and expenses of litigation upon the filing of a motion. The court or arbitrator shall award only such reasonable and necessary attorneys' fees and expenses of litigation that were incurred in the pursuit of the action against the defendant claiming to be an excluded party, and the plaintiff shall not be entitled to an award of reasonable and necessary attorneys' fees and expenses of litigation that were incurred in the pursuit of the action against other defendants, unless otherwise authorized by law. Such attorneys' fees and expenses so awarded shall be assessed against the party asserting such claim, against such party's attorney, or against both in such manner as is just.

(g) Notwithstanding Code Section 51-7-85, subsections (e) and (f) of this Code section shall be in addition to and shall not limit a party's right to pursue a recovery pursuant to Code Section 9-15-14 or Article 5 of Chapter 7 of Title 51.

(h) The time period set forth in subsection (e) of this Code section may be extended by agreement of the parties or by order of the court; provided, however, that if during such time period any party files a motion to stay the case or a motion to compel arbitration, such time period shall be extended for 30 days following the date the court rules on such motion; and provided, further, that if any party files a motion to compel discovery, such period shall be extended until 30 days following the date that the party complies with the court's order to produce discovery, whichever is later.

(i) A defendant which is a licensee shall not identify an excluded party as a potentially at-fault nonparty for purposes of apportionment under Code Section 51-12-33, unless such nonparty has entered into a settlement agreement with the plaintiff or claimant.

History. — Code 1981, § 31-7-3.3, enacted by Ga. L. 2016, p. 550, § 1/HB 920; Ga. L. 2017, p. 774, § 31/HB 323.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "its direct" for "their direct" near the beginning of subsection (c); substituted "that claims" for "who claims" in the first sentence of subsection (d); and substituted "such claim," for "such claim, or" near the end of the last sentence of the ending undesignated paragraph in subsection (e) and near the middle of the last sentence of subsection (f).

Editor's notes. — Ga. L. 2016, p. 550, § 2/HB 920, not codified by the General Assembly, makes this Code section applicable to any claim filed on or after July 1, 2016.

31-7-3.4. Carrying of liability insurance or establishment of self-insurance trust as condition precedent to obtaining or maintaining permit.

(a) As used in this Code section, the term "nursing home claim" means a claim alleging direct or vicarious liability for the personal injury or death of one or more residents of a nursing home or intermediate care home or a violation of residents' rights at such home under Article 5 of Chapter 8 of this title.

(b)(1) As a condition precedent to obtaining or maintaining a permit under this article to operate a nursing home or intermediate care home, a licensee shall carry or be covered by liability insurance coverages or establish or have established for its benefit a self-insurance trust for a nursing home claim.

(2) If a licensee fails to carry or be covered by liability insurance coverages or establish or have established for its benefit a self-insurance trust for a nursing home claim, the department shall

provide notice to such licensee of its noncompliance and allow such licensee 60 days in which to comply. A licensee's failure to maintain such coverage or establish such trust shall result in the department:

(A) Revoking such licensee's permit issued pursuant to this article to operate the nursing home or intermediate care home;

(B) Denying any application to renew such permit; and

(C) Denying any application for a change of ownership of the nursing home or intermediate care home.

History. — Code 1981, § 31-7-3.4, enacted by Ga. L. 2016, p. 550, § 1/HB 920.
Editor's notes. — Ga. L. 2016, p. 550, § 2/HB 920, not codified by the General Assembly, makes this Code section applicable to any claim filed on or after July 1, 2016.

31-7-4. Denial or revocation of permits.

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.

History. — Ga. L. 1946, p. 34, §§ 3, 4; Ga. L. 1958, p. 322, § 3; Code 1933, § 88-1906, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2008, p. 12, § 2-11/SB 433.

JUDICIAL DECISIONS

Cited in Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.
ALR. — Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people, 61 A.L.R.3d 278.

31-7-5. Exemptions from permit requirements; application of this chapter to federally operated institutions.

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.

History. — Ga. L. 1946, p. 34, § 6; Code 1933, § 88-1907, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2008, p. 12, § 2-12/SB 433.

JUDICIAL DECISIONS

Procedure in challenging constitutionality. — In an action by freestanding emergency care clinics challenging the constitutionality of O.C.G.A. § 31-7-1 et seq. (regulation of hospitals, etc.) on the ground that the statute's exemption for private physicians' offices violated the plaintiffs' equal protection rights, a subpoena of documents from the Georgia Hospital Association, relating to lobbying efforts in support of the legislation, was quashed as the documents were irrelevant to the question the court had to decide, that is, whether there was any conceivable purpose which may have justified the statute. Primary Care Physicians Group v. Ledbetter, 102 F.R.D. 254 (N.D. Ga. 1984).

Cited in Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985).

31-7-6. Provision of data for research purposes by organizations rendering patient care; liability of providers of data; use of data; confidentiality.

(a) Any hospital, health care facility, medical or skilled nursing home, or other organization rendering patient care may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to research groups approved by the medical staff of the institution involved, to governmental health agencies, medical associations and societies, or to any in-hospital medical staff committee, to be used in the course of any study for the purpose of reducing rates of morbidity or mortality; and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, or by reason of having released or published the findings and conclusions of such groups to advance medical research or medical education or to achieve the most effective use of health manpower and facilities, or by reason of having released or published generally a summary of such studies.

(b) The research groups approved by the medical staff of the institution involved, governmental health agencies, medical associations and societies, or any in-hospital medical staff committee shall use or

publish material described in subsection (a) of this Code section only for the purpose of advancing medical research or medical education, or to achieve the most effective use of health manpower and facilities, in the interest of reducing rates of morbidity or mortality, except that a summary of such studies may be released by any such group for general publication.

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

History. — Code 1933, §§ 88-1908, 88-1909, 88-1910, enacted by Ga. L. 1966, p. 310, §§ 1-3.

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 33.

31-7-7. Refusal or revocation by public hospital of staff privileges.

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

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

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

History. — Code 1933, § 88-1911, enacted by Ga. L. 1976, p. 326, § 1; Ga. L. 1978, p. 1969, § 1; Ga. L. 1984, p. 967, § 1; Ga. L. 1990, p. 561, § 1.

JUDICIAL DECISIONS

Nurse-midwife was "licensed medical practitioner." — Woman licensed by the state as a registered nurse and certified as a nurse-midwife by the American College of Nurse Midwives was a "licensed medical practitioner" as contemplated under O.C.G.A. § 31-7-7. Sweeney v. Athens Regional Medical Ctr., 705 F. Supp. 1556 (M.D. Ga. 1989).

State action immunity. — Provision that staff privilege decisions may be based on "the appropriate utilization of hospital facilities" makes it foreseeable that a hospital authority would engage in anticompetitive conduct through its peer review activities, and, thus, the members of a peer review committee were shielded by state action immunity from a suit for injunctive relief by a doctor who was denied staff privileges. Crosby v. Hospital Auth., 93 F.3d 1515 (11th Cir. 1996), cert. denied, 520 U.S. 1116, 117 S. Ct. 1246, 137 L. Ed. 2d 328 (1997).

Hospital held immune from federal antitrust claims. — Hospital which was acting in accordance with the state's policy to displace competition with regulation in the area of denying or revoking hospital staff privileges was immune from federal antitrust claims under the "state action exemption" doctrine. Sweeney v. Athens Regional Medical Ctr., 705 F. Supp. 1556 (M.D. Ga. 1989).

Injunction prohibiting hospital from limiting privileges. — Trial court did not abuse the court's discretion in denying a hospital's motion to dissolve an interlocutory and permanent injunction entered in favor of a group of doctors prohibiting the hospital from limiting the doctors from freely exercising their clinical privileges and practicing cardiology at the hospital, despite a resolution by the hospital's board of directors prohibiting the doctors from exercising the privileges, as the prohibition denied the doctors certain procedural protections which could not be ignored when implementing exclusive provider contracts. Satilla Health Servs., Inc. v. Bell, 280 Ga. App. 123, 633 S.E.2d 575 (2006).

Nondiscriminatory bylaws. — Public hospital bylaws excluding physicians who do not have allopathic postgraduate training from the medical staff do not violate O.C.G.A. § 31-7-7 when the by-

laws are rationally related to differences in allopathic and nonallopathic training and promote a legitimate state interest in providing quality health care. Silverstein v. Gwinnett Hosp. Auth., 672 F. Supp. 1444 (N.D. Ga. 1987), aff'd, 861 F.2d 1560 (11th Cir. 1988).

Public hospital bylaw requiring specific postgraduate specialty training or residency in order for physicians to be eligible for admission to the medical staff did not transgress the equal protection or due process rights of osteopathic physicians, nor did it offend the anti-discrimination provisions of O.C.G.A. § 31-7-7(a). Silverstein v. Gwinnett Hosp. Auth., 861 F.2d 1560 (11th Cir. 1988).

After the defendant hospital amended the hospital's bylaws to require the hospital's medical/dental staff to have $1 million malpractice insurance, and subsequently terminated plaintiff staff physician's hospital privileges for failure to provide proof of malpractice insurance coverage, the trial court correctly granted summary judgment in favor of the hospital on the physician's Sherman Act claim against the hospital which included unlawful restraint of trade, monopoly, and boycott, and intentional interference with contract since the hospital's decision was an administrative policy adopted by the hospital in furtherance of the administration, operation, maintenance, and control of the hospital. Stein v. Tri-City Hosp. Auth., 192 Ga. App. 289, 384 S.E.2d 430, cert. denied, 192 Ga. App. 903, 384 S.E.2d 430 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 16.

C.J.S. — 41 C.J.S., Hospitals, § 29 et seq.

ALR. — Propriety of hospital's conditioning physician's staff privileges on his carrying professional liability or malpractice insurance, 7 A.L.R.4th 1238.

Exclusion of, or discrimination against, physician or surgeon by hospital, 28 A.L.R.5th 107.

Denial by hospital of staff privileges or referrals to physician or other health care practitioner as violation of Sherman Act (15 USCS § 1 et seq.), 89 A.L.R. Fed. 419.

What constitutes "state action" rendering public official's participation in private antitrust activity immune from application of federal antitrust laws, 109 A.L.R. Fed. 758.

31-7-7.1. Denial of staff privileges based upon license, board certification, or membership in professional association.

Notwithstanding the provisions of Code Section 31-7-7, if a hospital offers or provides a service which is within the scope of practice of a person licensed as a doctor of podiatric medicine, doctor of osteopathic medicine, or doctor of dentistry, that hospital may not deny to any such licensee staff privileges at such hospital based solely upon that person's license, board certification, or specialty membership in a professional association.

History. — Code 1981, § 31-7-7.1, enacted by Ga. L. 1997, p. 911, § 1; Ga. L. 1998, p. 548, § 1.

31-7-8. Reports of disciplinary actions against persons authorized to practice professions under Chapter 11, 34, or 35 of Title 43.

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

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

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

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

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

(f) The failure of an institution to comply with this Code section shall be grounds for the denial, refusal to renew, or revocation of the permit for the operation of the institution issued pursuant to this chapter.

History. — Code 1933, § 88-1912, enacted by Ga. L. 1977, p. 257, § 1; Ga. L. 1983, p. 882, § 1; Ga. L. 1990, p. 561, § 2; Ga. L. 2001, p. 192, § 1.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 249 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 16 et seq.

C.J.S. — 41 C.J.S., Hospitals, §§ 16 et seq., 29 et seq.

31-7-9. Reports by physicians and other personnel of nonaccidental injuries to patients; immunity from liability.

(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.

(b) Any:

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

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

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

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

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

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

(d) Any person or persons participating in the making of a report or causing a report to be made to the appropriate police authority pursuant to this Code section or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be

immune from any civil liability that might otherwise be incurred or imposed, providing such participation pursuant to this Code section shall be in good faith.

History. — Code 1933, § 88-1913, enacted by Ga. L. 1980, p. 1040, § 2; Ga. L. 1982, p. 1249, §§ 1, 2; Ga. L. 1985, p. 898, § 1; Ga. L. 2008, p. 12, § 2-13/SB 433.

Law reviews. — For article, "Hospital Liability for Physician Negligence in Georgia: A Realistic Approach," see 37 Mercer L. Rev. 701 (1986).

31-7-10. Certification and approval of hospitals eligible to render service under a group nonprofit hospital insurance plan; supervision of such hospitals; withdrawal of approval.

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

History. — Ga. L. 1937, p. 355, § 6.
Law reviews. — For article, "Entity and Identity," see 60 Emory L.J. 1257 (2011).

RESEARCH REFERENCES

C.J.S. — 44 C.J.S., Insurance, § 63 et seq.

31-7-11. Written summary of hospital service charge rates.

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

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

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

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

(4) Operating room charges;

(5) Recovery room charges;

(6) Intravenous administration charges;

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

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

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

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

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

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

History. — Code 1981, § 31-7-11, enacted by Ga. L. 1983, p. 1307, § 1; Ga. L. 1984, p. 22, § 31.

Code Commission notes. — Code Section 31-7-11 was added to the Code by both Ga. L. 1983, p. 1307, § 1 and Ga. L. 1984, p. 778, § 1. The former is set out above and the latter has been redesignated as Code Section 31-7-13 pursuant to the authority granted in Code Section 28-9-5.

Law reviews. — For article, "Price Transparency and Incomplete Contracts in Health Care," see 67 Emory L.J. 1 (2017).

JUDICIAL DECISIONS

Contract construction. — Under the rules of contract construction, O.C.G.A. § 31-7-11(a) became a part of the contract between a health care provider and two uninsured patients regarding payment for services rendered by the provider, and the parties were presumed to have contracted with reference to the statute and the statute's effect on the contracts; hence, these rules of contract construction enabled the trial court to conclude that the agreement in the contracts to pay for "all charges" unambiguously referred to the written summary of specific charges required by O.C.G.A. § 31-7-11(a) which established the price terms on which the parties intended to bind themselves. Morrell v. Wellstar Health Sys., Inc., 280 Ga. App. 1, 633 S.E.2d 68 (2006).

Breach of contract claim. — Appellants' breach of contract claim was properly dismissed as appellants were free to avail themselves of the procedure established in O.C.G.A. § 31-7-11, allowing purchasers of hospital services to use the mandatorily available pricing information to compare hospital charges and to make cost-effective decisions; having agreed to pay a hospital corporation's fees and charges, appellants could not argue that the appellants agreed to something else. Satterfield v. S. Reg'l Health Sys., 280 Ga. App. 584, 634 S.E.2d 530 (2006).

Cited in Cox v. Athens Reg'l Med. Ctr.,

Inc., 279 Ga. App. 586, 631 S.E.2d 792 (2006).

31-7-12. "Personal care home" and "personal services" defined; licensure and registration; inspection by local boards; fees; investigations; waiver, variance, or exemption.

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

(1) "Personal care home" means any dwelling, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one or more personal services for two or more adults who are not related to the owner or administrator by blood or marriage. This term shall not include host homes, as defined in paragraph (18) of subsection (b) of Code Section 37-1-20.

(2) "Personal services" includes, but is not limited to, individual assistance with or supervision of self-administered medication and essential activities of daily living such as eating, bathing, grooming, dressing, and toileting. Personal services shall not include medical, nursing, or health services; provided, however, that the department shall be authorized to grant a waiver of this provision in the same manner as provided for in Code Section 31-7-12.3 for the waiver of rules and regulations and in the same manner and only to the same extent as granted on or before June 30, 2011.

(b) All personal care homes shall be licensed as provided for in Code Section 31-7-3, except that, in lieu of licensure, the department may require persons who operate personal care homes with two or three beds for nonfamily adults to comply with registration requirements delineated by the department. Such registration requirements within this category shall authorize the department to promulgate pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," reasonable standards to protect the health, safety, and welfare of the occupants of such personal care homes.

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

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

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

History. — Code 1981, § 31-7-11, enacted by Ga. L. 1983, p. 1323, § 1.1; Code 1981, § 31-7-12, as redesignated by Ga. L. 1984, p. 22, § 31; Ga. L. 1984, p. 649, § 1; Ga. L. 1985, p. 952, § 1; Ga. L. 1988, p. 13, § 31; Ga. L. 1992, p. 1392, § 1; Ga. L. 1993, p. 317, § 1; Ga. L. 2008, p. 263, § 1/SB 469; Ga. L. 2009, p. 453, § 1-27/HB 228; Ga. L. 2011, p. 227, § 13/SB 178.

Code Commission notes. — Code Section 31-7-11 was added to the Code by both Ga. L. 1983, p. 1307, § 1 and Ga. L. 1983, p. 1323, § 1.1. The latter section was redesignated as Code Section 31-7-12 by Ga. L. 1984, p. 22, § 31, effective February 3, 1984, pursuant to the authority granted in Code Section 28-9-5.

31-7-12.1. Unlicensed personal care home; civil penalties; negligence per se for certain legal claims; declared nuisance dangerous to public health, safety, and welfare; criminal sanctions.

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

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

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

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

(b) Any unlicensed personal care home shall be assessed by the department, after opportunity for hearing in accordance with the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," a civil penalty in the amount of $100.00 per bed per day for each day of violation of subsection (b) of Code Section 31-7-12. The department shall send a notice by certified mail or statutory overnight delivery stating that licensure is required and the department's intent to impose a civil penalty. Such notice shall be deemed to be constructively received on the date of the first attempt to deliver such notice by the United States Postal Service. The department shall take no action to collect such civil penalty until after opportunity for a hearing.

(c) In addition to other remedies available to the department, the civil penalty authorized by subsection (b) of this Code section shall be

doubled if the owner or operator continues to operate the unlicensed personal care home, after receipt of notice pursuant to subsection (b) of this Code section.

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

(e) In addition to the sanctions authorized herein, an unlicensed personal care home shall be deemed to be negligent per se in the event of any claim for personal injury or wrongful death of a resident.

(f) It is declared that the owning or operating of an unlicensed personal care home in this state constitutes a nuisance dangerous to the public health, safety, and welfare. The commissioner or the district attorney of the judicial circuit in which such unlicensed personal care home is located may file a petition to abate such nuisance as provided in Chapter 2 of Title 41.

(g) Upon the designation by the department and with the consent of any local or state law enforcement agency, and subject to a written memorandum of understanding between the department and such agencies, Georgia Peace Officer Standards and Training certified investigators of such law enforcement agencies may act as agents of the department in conducting inspections of unlicensed personal care homes required to be licensed under this chapter. Such investigations shall be limited to instances where a law enforcement agency is performing law enforcement duties and has consent or a warrant to enter the home. Law enforcement agencies shall not be authorized to recoup any of the costs of inspections performed pursuant to this subsection from the department.

(h) Any person who owns or operates a personal care home in violation of subsection (b) of Code Section 31-7-12 shall be guilty of a misdemeanor for a first violation, unless such violation is in conjunction with a violation of Article 8 of Chapter 5 of Title 16, in which case such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than five years. Upon conviction for a second or subsequent such violation, such person shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than ten years.

History. — Code 1981, § 31-7-12.1, enacted by Ga. L. 1994, p. 461, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2011, p. 227, § 13A/SB 178; Ga. L. 2012, p. 351, § 3/HB 1110; Ga. L. 2014, p. 682, § 1/HB 899; Ga. L. 2019, p. 81, § 7/HB 424.

The 2019 amendment, effective April 18, 2019, added subsection (g); redesig-

nated former subsection (g) as present subsection (h); and substituted "a violation of Article 8 of Chapter 5 of Title 16" for "abuse, neglect, or exploitation as defined in Code Section 30-5-3" in the middle of the first sentence of subsection (h).

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

31-7-12.2. Regulation and licensing of assisted living communities; legislative intent; definitions; procedures; requirements for medication aides.

(a) It is the intention of the General Assembly to establish a new licensure category of long-term care provider which shall be referred to as "assisted living community." An assisted living community shall be authorized, in accordance with this Code section, to provide certain services that are beyond the scope of services that a personal care home is authorized to provide.

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

(1) "Ambulatory" means the ability to move from place to place by walking, either unaided or aided by a prosthesis, brace, cane, crutches, walker, or hand rails, or by propelling a wheelchair and to respond to an emergency condition, whether caused by fire or otherwise, and escape with minimal human assistance using the normal means of egress.

(2) "Assisted living care" includes:

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

(B) The administration of medications by a medication aide in accordance with this Code section; and

(C) The provision of assisted self-preservation in accordance with this Code section.

(3) "Assisted living community" means a personal care home with a minimum of 25 beds that is licensed as an assisted living community pursuant to Code Section 31-7-3.

(4) "Assisted self-preservation" means the capacity of a resident to be evacuated from an assisted living community, to a designated point of safety and within an established period of time as determined by the Office of the Safety Fire Commissioner. Assisted self-preservation is a function of all of the following:

(A) The condition of the individual;

(B) The assistance that is available to be provided to the individual by the staff of the assisted living community; and

(C) The construction of the building in which the assisted living community is housed, including whether such building meets the state fire safety requirements applicable to an existing health care occupancy.

(5) "Continuous medical or nursing care" means medical or nursing care required other than on a periodic basis or for a short-term illness.

(c) An assisted living community shall not admit or retain an individual who is not ambulatory unless the individual is capable of assisted self-preservation. In the event that the department determines that one or more residents of an assisted living community are not capable of assisted self-preservation due to the condition of the resident, the capabilities of the staff of the assisted living community, the construction of the building in which the assisted living community is housed, or a combination of these factors, the department shall have the authority to consider any of the following actions:

(1) An increase in the staffing of the assisted living community to a level that is sufficient to ensure that each resident is capable of assisted self-preservation;

(2) A change in the staffing assignments of the assisted living community if such change would ensure that each resident is capable of assisted self-preservation;

(3) A change in rooms or the location of residents as necessary to ensure that each resident is capable of assisted self-preservation;

(4) The utilization of any specialized equipment that would ensure that each resident is capable of assisted self-preservation. For purposes of this paragraph, specialized equipment shall only include a prosthesis, brace, cane, crutches, walker, hand rails, and a wheelchair;

(5) A cessation in the further admission of individuals who are not ambulatory until such time that the assisted living community has taken actions necessary to ensure that all residents are capable of assisted self-preservation;

(6) The transfer or discharge of any resident who is not capable of assisted self-preservation; and

(7) Any action set forth in Code Section 31-2-8.

(d) An assisted living community shall maintain a current list of all residents who are not ambulatory but who are capable of assisted

self-preservation. The list shall be provided upon request to the department and maintained at all times by the assisted living community.

(e) An assisted living community shall maintain fire detection and prevention equipment, including visual signals with alarms for hearing impaired residents, in accordance with manufacturer instructions and the requirements of the Office of the Safety Fire Commissioner.

(f) An assisted living community shall not admit or retain an individual who is in need of continuous medical or nursing care. Other than as permitted by a medication aide pursuant to paragraph (7) of subsection (g) of this Code section, medical, nursing, or health services required on a periodic basis, or for short-term illness, shall not be provided as services of an assisted living community. When such services are required, they shall be purchased by the resident or the resident's representative or legal surrogate, if any, from appropriate providers managed independently from the assisted living community. An assisted living community may assist in arranging for such services, but not in the provision of such services.

(g)(1) An assisted living community may employ certified medication aides for the purpose of performing the technical aspects of the administration of certain medications in accordance with this subsection. An assisted living community that employs one or more certified medication aides must have a safe medication and treatment administration system that meets all the requirements of this subsection.

(2) The department shall establish and maintain a medication aide registry containing the names of each individual in Georgia who is certified by the department as a medication aide. An assisted living community may not employ an individual as a medication aide unless such individual is listed in the medication aide registry in good standing.

(3) An applicant for certification as a medication aide shall meet the following qualifications:

(A) Be a Georgia certified nurse aide with current certification in good standing;

(B) Have successfully completed a state approved medication aide training program administered by a Georgia licensed registered nurse, pharmacist, or physician;

(C) Have successfully passed, with a minimum passing score of 80 percent, a written competency examination; and

(D) Have demonstrated the requisite clinical skills to serve as a medication aide in accordance with a standardized checklist developed by the department.

(4) A record of the successful completion of the written competency examination and clinical skills standardized checklist by an applicant for certification as a medication aide shall be included in the medication aide registry within 30 business days of evaluation. Each candidate for certification as a medication aide shall have the opportunity to take the written competency examination three times before being required to retake and successfully complete the medication aide training program.

(5) An assisted living community shall annually conduct a comprehensive clinical skills competency review of each medication aide employed by the assisted living community.

(6) Certificates issued pursuant to this subsection shall be renewed biennially according to schedules and fees approved by the department.

(7) A medication aide who meets the criteria established in this subsection shall be permitted to perform the following tasks in an assisted living community in accordance with the written instructions of a physician:

(A) Administer physician ordered oral, ophthalmic, topical, otic, nasal, vaginal, and rectal medications;

(B) Administer insulin, epinephrine, and B12 pursuant to physician direction and protocol;

(C) Administer medication via a metered dose inhaler;

(D) Conduct finger stick blood glucose testing following established protocol;

(E) Administer a commercially prepared disposable enema as ordered by a physician;

(F) Assist residents in the supervision of self-administration of medication; and

(G) Administer liquid morphine to a resident of the assisted living community who is the patient of a licensed hospice, pursuant to a hospice physician's written order that contains specific instructions for indication, dosage, frequency, and route of administration, provided that the licensed hospice consents to the use and administration of liquid morphine as described in this subparagraph. The medication aide shall observe and document the resident's need for all "as needed" (PRN) liquid morphine in such resident's record and such indications of need may include verbalizations of pain, groaning, grimacing, or restlessness. The initial dose of any liquid morphine administered pursuant to this subparagraph shall be administered and assessed by a licensed hospice health care

professional to observe and address any adverse reactions to such medication. The assisted living community shall ensure that any medication aides who will be administering liquid morphine to any hospice patients in such assisted living community pursuant to this subparagraph receive adequate training from a licensed hospice on the safe and proper administration of liquid morphine prior to such administration and on an annual basis thereafter. The assisted living community shall maintain documentation of all training provided and shall adhere to all security and storage requirements for liquid morphine required under state and federal law, including but not limited to any rules promulgated by the department. Notwithstanding the foregoing, the supply of liquid morphine on-site at the assisted living community shall be limited to no more than 50 ml for each hospice patient in the assisted living community and shall only be administered under limited circumstances when a licensed hospice health care professional is not otherwise available. The department shall promulgate rules and regulations to implement this subparagraph. The authority provided to a medication aide pursuant to this subparagraph shall be in addition to the authority provided to a medication aide pursuant to subparagraphs (A) through (F) of this paragraph and shall not be construed to limit any authority or practice of a medication aide in effect prior to May 11, 2019.

(8) A medication aide shall record in the medication administration record all medications that such medication aide has personally administered to a resident of an assisted living community and any refusal of a resident to take a medication. A medication aide shall observe a resident to whom medication has been administered and shall report any changes in the condition of such resident to the personal representative or legal surrogate of such resident.

(9) All medication administered by a medication aide in accordance with this Code section shall be in unit or multidose packaging.

(10) An assisted living community that employs one or more medication aides to administer medications in accordance with this subsection shall secure the services of a licensed pharmacist to perform the following duties:

(A) Perform a quarterly review of the drug regimen of each resident of the assisted living community and report any irregularities to the assisted living community administrator;

(B) Remove for proper disposal any drugs that are expired, discontinued, in a deteriorated condition, or when the resident for whom such drugs were ordered is no longer a resident;

(C) Establish or review policies and procedures for safe and effective drug therapy, distribution, use, and control; and

(D) Monitor compliance with established policies and procedures for medication handling and storage.

(11) An assisted living community that employs one or more medication aides to administer medications in accordance with this subsection shall ensure that each medication aide receives ongoing medication training as prescribed by the department. A registered professional nurse or pharmacist shall conduct random medication administration observations on a quarterly basis and report any issues to the assisted living community administrator.

(h) An assisted living community shall establish a written care plan for each resident. Such care plan shall describe the needs of the resident and how such needs will be met.

(i) An assisted living community shall not be permitted to enroll as a provider of medical assistance, as defined in paragraph (6) of Code Section 49-4-141, or receive any funds authorized or paid pursuant to Title XIX of the Social Security Act.

History. — Code 1981, § 31-7-12.2, enacted by Ga. L. 2011, p. 227, § 1/SB 178; Ga. L. 2012, p. 775, § 31/HB 942; Ga. L. 2019, p. 1052, § 1/HB 374.

The 2019 amendment, effective May 11, 2019, substituted "such" for "the" in the second sentence of paragraph (g)(2) and in the first and second sentences in paragraph (g)(8); substituted "state approved" for "state-approved" in subparagraph (g)(3)(B); deleted "and" at the end of subparagraph (g)(7)(E); added "; and" at the end of subparagraph (g)(7)(F); and added subparagraph (g)(7)(G); inserted "shall" following "administered and" in the middle of the second sentence of paragraph (g)(8); and substituted "when" for "where" in the middle of subparagraph (g)(10)(B).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "31-2-8" was substituted for "31-2-11" at the end of paragraph (c)(7).

Pursuant to Code Section 28-9-5, in 2019, "aide in effect prior to May 11, 2019" was substituted for "aide in effect prior to the effective date of this subparagraph" at the end of the last sentence of subparagraph (g)(7)(G).

31-7-12.3. (Effective until October 1, 2019. See note.) Adoption of rules and regulations to implement Code Sections 31-7-12 and 31-7-12.2.

The department shall adopt rules and regulations to implement Code Sections 31-7-12 and 31-7-12.2. Such rules and regulations shall establish meaningful distinctions between the levels of care provided by personal care homes, assisted living communities, and nursing homes but shall not curtail the scope or levels of services provided by personal care homes or nursing homes as of June 30, 2011; provided, however, that nothing in this chapter shall preclude the department from issuing waivers or variances to personal care homes of the rules and regulations established pursuant to this Code section. Notwithstanding Code Section 31-2-9 or 31-7-12.2, the department shall not grant a waiver or variance unless:

(1) There are adequate standards affording protection for the health and safety of residents of the personal care home;

(2) The resident of the personal care home provides a medical assessment conducted by a licensed health care professional who is unaffiliated with the personal care home which identifies the needs of the resident; and

(3) The department finds that the personal care home can provide or arrange for the appropriate level of care for the resident.

History. — Code 1981, § 31-7-12.3, enacted by Ga. L. 2011, p. 227, § 1/SB 178.

Editor's notes. — Code Section 31-7-12.3 is set out twice in this Code. The first version is effective until October 1, 2019, and the second version becomes effective on that date.

31-7-12.3. (Effective October 1, 2019. See note.) Adoption of rules and regulations to implement Code Sections 31-7-12 and 31-7-12.2.

The department shall adopt rules and regulations to implement Code Sections 31-7-12 and 31-7-12.2. Such rules and regulations shall establish meaningful distinctions between the levels of care provided by personal care homes, assisted living communities, and nursing homes but shall not curtail the scope or levels of services provided by personal care homes or nursing homes as of June 30, 2011; provided, however, that nothing in this chapter shall preclude the department from issuing waivers or variances to personal care homes of the rules and regulations established pursuant to this Code section. Notwithstanding Code Section 31-7-12.2, the department shall not grant a waiver or variance unless:

(1) There are adequate standards affording protection for the health and safety of residents of the personal care home;

(2) The resident of the personal care home provides a medical assessment conducted by a licensed health care professional who is unaffiliated with the personal care home which identifies the needs of the resident; and

(3) The department finds that the personal care home can provide or arrange for the appropriate level of care for the resident.

History. — Code 1981, § 31-7-12.3, enacted by Ga. L. 2011, p. 227, § 1/SB 178; Ga. L. 2018, p. 611, § 1-2/SB 406.

The 2018 amendment, effective October 1, 2019, deleted "31-2-9 or" preceding "31-7-12.2" near the end of the introductory paragraph of this Code section.

Editor's notes. — Code Section 31-7-12.3 is set out twice in this Code. The first version is effective until October 1, 2019, and the second version becomes effective on that date.

31-7-13. Transfer of property upon death of patient.

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

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

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

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

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

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

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

(b) The transfer of possession to the surviving spouse or any of the other family members or persons listed in subsection (a) of this Code section shall operate as a complete acquittal and discharge to the hospital or nursing home of liability from any suit, claim, or demand of whatever nature by any heir, distributee, or creditor of the patient, or any other person as relates to the property transferred. Such distribution is authorized to be made as provided in this Code section without the necessity of administration of the estate of the patient and without the necessity of obtaining an order that no administration of such estate is necessary.

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

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

History. — Code 1981, § 31-7-11, enacted by Ga. L. 1984, p. 778, § 1; Ga. L. 2009, p. 8, § 31/SB 46.

Code Commission notes. — Code Section 31-7-11 was added to the Code by both Ga. L. 1983, p. 1307, § 1, and Ga. L. 1984, p. 778, § 1. The former is set out as Code Section 31-7-11 and the latter is set out above as Code Section 31-7-13 pursuant to the authority granted by Code Section 28-9-5.

31-7-14. Blood supplies; blood donor storage programs.

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

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

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

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

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

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

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

(f) A medical facility or licensed medical practitioner providing health care to a person who utilizes the provisions of this Code section shall not be liable in damages for injury or death occurring during or as a result of the medical or surgical treatment if the injury or death results from use of the blood supplied by the donors selected by the

patient, unless that facility or practitioner is grossly negligent with regard to such use.

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

History. — Code 1981, § 31-7-14, enacted by Ga. L. 1987, p. 1091, § 1.

Code Commission notes. — Ga. L. 1987, p. 1091, § 1 and Ga. L. 1987, p. 1494, § 1 enacted different Code sections designated Code Section 31-7-14. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. 1987, p. 1494, § 1 was redesignated as Code Section 31-7-15.

31-7-15. Review of professional practices by a peer review committee.

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

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

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

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

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

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

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

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

History. — Code 1981, § 31-7-15, enacted by Ga. L. 1987, p. 1494, § 1.

Code Commission notes. — Ga. L. 1987, p. 1091, § 1 and Ga. L. 1987, p. 1494, § 1 enacted different Code sections designated Code Section 31-7-14. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. 1987, p. 1494, § 1 was redesignated as Code Section 31-7-15.

JUDICIAL DECISIONS

What constitutes peer review records. — Reports generated as part of the state's hospital licensing activities, rather than as peer review activities, are not protected from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq. Georgia Hosp. Ass'n v. Ledbetter, 260 Ga. 477, 396 S.E.2d 488 (1990).

Scope of peer review. — Nothing in O.C.G.A. § 31-7-131(3)(B)(vi) implies that every part of the review in O.C.G.A. § 31-7-15 constitutes peer review. Hosp. Auth. v. Meeks, 285 Ga. 521, 678 S.E.2d 71 (2009).

No expansion of civil immunity afforded to peer review groups. — O.C.G.A. § 31-7-15 does not expand the privilege set forth in O.C.G.A. § 31-7-133(a) to those proceedings and records of a peer review committee which involve only the credentialing process and not a peer review function. The same analysis is equally applicable in holding that § 31-7-15 does not expand the civil immunity otherwise afforded to peer review groups under O.C.G.A. § 31-7-132(a) so as to include all aspects of the credentialing process. Hosp. Auth. v. Meeks, 285 Ga. 521, 678 S.E.2d 71 (2009).

State action immunity. — Action of individual doctors on a peer review committee were actions of a hospital authority for purposes of the state action immunity doctrine and, thus, the members were immune from an antitrust action brought by a doctor who was denied staff privileges. Crosby v. Hospital Auth., 93 F.3d 1515 (11th Cir. 1996), cert. denied, 520 U.S. 1116, 117 S. Ct. 1246, 137 L. Ed. 2d 328 (1997).

Hospital bylaws are not contract. — Hospital bylaws, by themselves, do not constitute a contract per se between the hospital and the doctors because there is no mutual exchange of consideration which brought the bylaws into existence. Robles v. Humana Hosp. Cartersville, 785 F. Supp. 989 (N.D. Ga. 1992).

Bylaws may be enforced by injunction. — Hospital is bound by the bylaws the hospital creates and if the hospital does not follow the procedures established by the bylaws, the court can enjoin the hospital to follow those procedures. Robles v. Humana Hosp. Cartersville, 785 F. Supp. 989 (N.D. Ga. 1992).

Cited in Hosp. Auth. of Valdosta v. Meeks, 294 Ga. App. 629, 669 S.E.2d 667 (2008).

RESEARCH REFERENCES

ALR. — Right of voluntary disclosure of privileged proceedings of hospital medical review or doctor evaluation processes, 60 A.L.R.4th 1273.

Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action, 69 A.L.R.5th 559.

31-7-16. Determination or pronouncement of death of patient who died in facility classified as nursing home.

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

History. — Code 1981, § 31-7-16, enacted by Ga. L. 1996, p. 1243, § 1; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2017, p. 625, § 1/SB 96.

The 2017 amendment, effective July 1, 2017, in the first sentence, inserted ", a nurse practitioner," near the beginning and deleted "that, when said patient is a registered organ donor, only a physician may make the determination or pronouncement of death; provided, further," preceding "that when it" near the end.

31-7-17. Licensure and regulation of hospitals and related institutions transferred to Department of Community Health.

(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 (now known as the Department of Human Services) 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 who are transferred to the department shall retain all existing rights under such rules. 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.

History. — Code 1981, § 31-7-17, enacted by Ga. L. 2008, p. 12, § 2-14/SB 433; Ga. L. 2009, p. 453, § 1-28/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-37/HB 642.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 31-7-17, as enacted by Ga. L. 2008, p. 520, § 1, was redesignated as Code Section 31-7-18.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

31-7-18. Influenza vaccinations for discharged patients aged 65 and older; vaccinations or other measures for health care workers and other employees in hospitals; immunity from liability; standing orders.

(a) Prior to discharging any inpatient who is 65 years of age or older, a hospital shall offer the inpatient vaccinations for the influenza virus and pneumococcal disease in accordance with the recommendations of the Centers for Disease Control and Prevention and any applicable rules and regulations of the department, unless contraindicated and contingent on availability of such vaccine. A hospital may offer other patients such vaccinations in accordance with the recommendations of the Centers for Disease Control and Prevention and any applicable rules and regulations of the department. The vaccinations may be administered pursuant to a standing order that has been approved by the hospital's medical staff.

(b) A hospital shall annually offer to its health care workers and other employees who have direct contact with patients, at no cost, vaccinations for the influenza virus in accordance with the recommendations of the Centers for Disease Control and Prevention, subject to availability of the vaccine. A hospital may offer to its health care workers and other employees any other vaccination, test, or prophylactic measure required or recommended by, and in accordance with the recommendations of, the Centers for Disease Control and Prevention. All such vaccinations, tests, or prophylactic measures may be offered or administered pursuant to standing orders approved by the hospital's medical staff to ensure the safety of employees, patients, visitors, and contractors.

(c) A hospital or health care provider acting in good faith and in accordance with generally accepted health care standards applicable to such hospital or health care provider shall not be subject to administrative, civil, or criminal liability or to discipline for unprofessional conduct for complying with the requirements of this Code section.

(d) Nothing in this Code section shall restrict or limit the use of standing orders in hospitals for any other lawful purpose.

History. — Code 1981, § 31-7-18, enacted by Ga. L. 2008, p. 520, § 1/HB 1105; Ga. L. 2009, p. 184, § 2/HB 217; Ga. L. 2010, p. 529, § 1/HB 1179.

Cross references. — Influenza vaccine protocol agreements, § 43-34-26.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 31-7-17, as enacted by Ga. L. 2008, p. 520, § 1, was redesignated as Code Section 31-7-18.

31-7-19. Nursing homes to annually offer influenza vaccinations to health care workers and other employees; immunity from liability.

(a) Each nursing home shall annually offer on site to its health care workers and other employees who have direct contact with patients, at no cost, vaccinations for the influenza virus in accordance with the recommendations of the Centers for Disease Control and Prevention, subject to availability of the vaccine. Each nursing home shall keep on record a signed statement from each such health care worker and employee stating that he or she has been offered vaccination against the influenza virus and has either accepted or declined such vaccination. A nursing home may offer to its health care workers and other employees who have direct contact with patients any other vaccination required or recommended by, and in accordance with the recommendations of, the Centers for Disease Control and Prevention, which may be offered or administered pursuant to standing orders approved by the nursing home's medical staff to ensure the safety of employees, patients, visitors, and contractors.

(b) A nursing home or health care provider acting in good faith and in accordance with generally accepted health care standards applicable to such nursing home or health care provider shall not be subject to administrative, civil, or criminal liability or to discipline for unprofessional conduct for complying with the requirements of this Code section.

History. — Code 1981, § 31-7-19, enacted by Ga. L. 2013, p. 783, § 1/HB 208.

31-7-20. Medical facilities to make good faith application to southern regional TRICARE managed care support coordinator for certification in the TRICARE program.

(a) Each medical facility in this state shall, not later than July 1, 2015, make a good faith application to the southern regional TRICARE managed care support contractor for certification in the TRICARE program.

(b) If any medical facility fails to qualify for certification in the TRICARE program, such medical facility shall implement a plan to upgrade the facility, equipment, personnel, or such other cause for the disqualification within one year of notice of such deficiency.

(c) Each medical facility shall submit reports to the commissioner detailing its efforts to join the TRICARE program and shall submit copies of applications, acceptances or rejections, correspondences, and any other information the commissioner deems necessary.

(d) The commissioner shall maintain files on each medical facility in this state and shall monitor each medical facility's efforts to join the TRICARE program.

(e) Nothing in this Code section shall require a medical facility to enter into a contract with the southern regional managed care support contractor or to participate in TRICARE as a network provider or as a participating non-network provider, as such terms are defined in the federal TRICARE regulations.

History. — Code 1981, § 31-7-20, enacted by Ga. L. 2014, p. 83, § 1-1/SB 391.

Editor's notes. — Ga. L. 2008, p. 224, § 2/SB 130, effective July 1, 2008, repealed this Code section. Former Code Section 31-7-20 was part of former Article 2 of this chapter, relating to the Georgia Building Authority (Hospital), and was based on Ga. L. 1939, p. 144, § 1; Ga. L. 1967, p. 860, § 1; Ga. L. 1996, p. 6, § 31.

31-7-21. Provision of influenza education information to assisted living community residents.

(a) Each assisted living community shall annually provide to each of its residents, no later than September 1 of each year, educational information on influenza disease. Such information shall include, but is not limited to, the risks associated with influenza disease; the availability, effectiveness, and known contraindications of the influenza immunization; causes and symptoms of influenza; and the means in which it is spread. Provision of the appropriate and current Vaccine Information Statement as provided by the Centers for Disease Control and Prevention shall be deemed to comply with this subsection.

(b) Nothing in this Code section shall be construed to require an assisted living community to provide or pay for any vaccination against influenza for its residents.

(c) No person shall have a cause of action for any loss or damage caused by any act or omission resulting from providing, or the lack of providing, educational information pursuant to this Code section.

History. — Code 1981, § 31-7-21, enacted by Ga. L. 2016, p. 544, § 1/HB 902.

Editor's notes. — Ga. L. 2008, p. 224, § 2/SB 130, effective July 1, 2008, repealed this Code section. Former Code Section 31-7-21 was part of former Article 2 of this chapter, relating to the Georgia Building Authority (Hospital), and was based on Ga. L. 1939, p. 144, § 3; Ga. L. 1964, p. 95, § 1; Ga. L. 1967, p. 860, § 2.

31-7-22. Required publication by hospital of certain documentation on website; updating; penalty for noncompliance; enforcement; individual criminal penalty.

(a) As used in this Code section, the term "hospital" means a nonprofit hospital, a hospital owned or operated by a hospital authority,

or a nonprofit corporation formed, created, or operated by or on behalf of a hospital authority.

(b) Beginning October 1, 2019, each hospital in this state shall post a link in a prominent location on the main page of its website to the most recent version of the following documents:

(1) Federal related disclosures:

(A) Copies of audited financial statements that are general purpose financial statements, which express the unqualified opinion of an independent certified public accounting firm for the most recently completed fiscal year for the hospital; each of its affiliates, except those affiliates that were inactive or that had an immaterial amount of total assets; and the hospital's parent corporation that include the following:

(i) A PDF version of all audited financial statements;

(ii) A note in the hospital's audited financial statements that identifies individual amounts for such hospital's gross patient revenue, allowances, charity care, and net patient revenue;

(iii) Audited consolidated financial statements for hospitals with subsidiaries and consolidating financial statements that at a minimum contain a balance sheet and statement of operations and that provide a breakout of the hospital's and each subsidiary's numbers with a report from independent accountants on other financial information; and

(iv) Audited consolidated financial statements for the hospital's parent corporation and consolidating financial statements that at a minimum contain a balance sheet and statement of operations and that provide a breakout of the hospital's and each affiliate's numbers with a report from independent accountants on other financial information; and

(B) Copy of audited Internal Revenue Service Form 990, including Schedule H for hospitals and other applicable attachments; provided, however, that for any hospital not required to file IRS Form 990, the department shall establish and provide a form that collects the same information as is contained in Internal Revenue Service Form 990, including Schedule H for hospitals, as applicable; and

(2) Georgia supplemental disclosures:

(A) Copy of the hospital's completed annual hospital questionnaire, as required by the department;

(B) The community benefit report prepared pursuant to Code Section 31-7-90.1, if applicable;

(C) The disproportionate share hospital survey, if applicable;

(D) Listing of all real property holdings of the hospital, including the location and size, parcel ID number, purchase price, current use, and any improvements made to such property;

(E) Listing of any ownership or interest the nonprofit hospital has in any joint venture, partnership, subsidiary holding company, or captive insurance company; where any such entity is domiciled; and the value of any such ownership or interest;

(F) Listing of any bonded indebtedness, outstanding loans, and bond defaults, whether or not in forbearance; and any bond disclosure sites of the hospital;

(G) A report that identifies by purpose, the ending fund balances of the net assets of the hospital and each affiliate as of the close of the most recently completed fiscal year, distinguishing between donor permanently restricted, donor temporarily restricted, board restricted and unrestricted fund balances. The hospital's interest in its foundation shall be deducted from the foundation's total fund balance;

(H) Copy of all going concern statements regarding the hospital;

(I) The most recent legal chart of corporate structure, including the hospital, each of its affiliates and subsidiaries, and its parent corporation, duly dated;

(J) Report listing the salaries and fringe benefits for the ten highest paid administrative positions in the hospital. Each position shall be identified by its complete, unabbreviated title. Fringe benefits shall include all forms of compensation, whether actual or deferred, made to or on behalf of the employee, whether full or part-time;

(K) Evidence of accreditation by accrediting bodies, including, but not limited to, the Joint Commission and DNV; and

(L) Copy of the hospital's policies regarding the provision of charity care and reduced cost services to the indigent, excluding medical assistance recipients, and its debt collection practices.

(c) Each hospital shall update the documents in the links posted pursuant to subsection (b) of this Code section on July 1 of each year or more frequently at its discretion. Noncurrent documents shall remain posted and accessible on the hospital's website indefinitely.

(d) All documents listed in subsection (b) of this Code section shall be prepared in accordance with generally accepted accounting principles, as applicable.

(e) The department shall also post a link in a prominent location on its website to the documents listed in subsection (b) of this Code section for each hospital in this state.

(f) Any hospital that fails to post the documents required pursuant to subsection (b) of this Code section within 30 days of the dates required in this Code section shall be suspended from receiving any state funds or any donations pursuant to Code Section 48-7-29.20; provided, however, that the department shall provide a hospital notice of any deficiency and opportunity to correct such deficiency prior to any suspension of funds pursuant to this subsection.

(g) The department shall have jurisdiction to enforce this Code section and to promulgate rules and regulations required to administer this Code section.

(h) Any person who knowingly and willfully includes false, fictitious, or fraudulent information in any documents required to be posted pursuant to this Code section shall be subject to a violation of Code Section 16-10-20.

History. — Code 1981, § 31-7-22, enacted by Ga. L. 2019, p. 183, § 1/HB 321.

Effective date. — This Code section became effective April 25, 2019.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, the enactment of this Code section by Ga. L. 2019, p. 148, § 1-13/HB 186, irreconcilably conflicted with and was treated as superseded by Ga. L. 2019, p. 183, § 1/HB 321.

Editor's notes. — Ga. L. 2008, p. 224, § 2, effective July 1, 2008, repealed this Code section. Former Code Section 31-7-22 was part of former Article 2 of this chapter, relating to the Georgia Building Authority (Hospital), and was based on Ga. L. 1939, p. 144, § 2; Ga. L. 1941, p. 250, § 1; Ga. L. 1967, p. 862, § 1; Ga. L. 1972, p. 1015, § 417; Ga. L. 1985, p. 149, § 31; Ga. L. 1988, p. 426, § 1.

ARTICLE 2

GEORGIA BUILDING AUTHORITY (HOSPITAL)

31-7-23 through 31-7-40.

Reserved. Repealed by Ga. L. 2008, p. 224, § 2/SB 130, effective July 1, 2008.

Editor's notes. — This article consisted of former Code Sections 31-7-20 through 31-7-40, relating to the Georgia Building Authority (Hospital), and was based on Ga. L. 1939, p. 144, §§ 1-17, 19; Ga. L. 1941, p. 250, §§ 1, 4; Ga. L. 1946, p. 56, § 1; Ga. L. 1951, p. 22, § 1; Ga. L. 1953, p. 357, § 1; Ga. L. 1960, p. 48, § 1; Ga. L. 1964, p. 95, §§ 1-3; Ga. L. 1964, p. 666, § 1; Ga. L. 1966, p. 302, § 1; Ga. L. 1967, p. 852, § 1; Ga. L. 1967, p. 860, §§ 1-4; Ga. L. 1967, p. 862, § 1; Ga. L. 1970, p. 159, § 1; Ga. L. 1972, p. 1015, § 417; Ga. L. 1983, p. 3, § 55; Ga. L. 1985, p. 149, § 31; Ga. L. 1988, p. 426, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1993, p. 1402, § 18; Ga. L. 1996, p. 6, § 31; Ga. L. 2001, p. 4, § 31.

ARTICLE 3

GRANTS FOR CONSTRUCTION AND MODERNIZATION OF MEDICAL FACILITIES

JUDICIAL DECISIONS

Cited in Brown v. Wright, 231 Ga. 686, 203 S.E.2d 487 (1974).

31-7-50. Authorization of grants-in-aid.

The state is authorized to make grants to any county, municipality, or any combination thereof or to any hospital authority to assist in the construction and modernization of publicly owned and publicly operated medical facilities, auxiliary medical facilities, and mental health centers as defined in Code Section 31-7-51. The amount of the grant shall be determined in accordance with Code Sections 31-7-52 and 31-7-53.

History. — Ga. L. 1949, p. 263, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 214, § 1; Ga. L. 1955, p. 410, § 1; Code 1933, § 88-2101, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1966, p. 716, § 1; Ga. L. 2015, p. 385, § 4-2/HB 252.

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

31-7-51. Definitions.

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

(1) "Auxiliary medical facilities" means diagnostic and treatment facilities, nursing homes, chronic illness hospitals, and rehabilitation centers.

(2) "Construction project" means a program for the construction of any medical facility or auxiliary medical facility or mental health center, as evidenced by the approval of a project under Title VI or Title VII of the federal Public Health Service Act, as now or hereafter amended.

(3) "Hospital authority" means any hospital authority created under the "Hospital Authorities Law," Article 4 of this chapter, as now or hereafter amended.

(4) "Medical facilities" means general hospitals, psychiatric hospitals, nurse training facilities, tuberculosis hospitals, and public health centers.

(5) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment

of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated.

(6) Reserved.

(7) "Modernization project" means the alteration, major repair, remodeling, replacement, and renovation of existing buildings (including original equipment thereof) and replacement of obsolete, built-in equipment of existing buildings, as evidenced by the approval of a project under Title VI or Title VII of the federal Public Health Service Act, as now or hereafter amended.

(8) "Publicly operated" means operated by a county, municipality, hospital authority, or any combination thereof.

(9) "Publicly owned" means that a county, municipality, hospital authority, or any combination thereof holds title to or has a long-term lease acceptable to the state agency on the property on which the construction or modernization is proposed.

(10) "State agency" means the State Health Planning and Development Agency or any successor designated as the agency of state government to administer the state construction and modernization plan and receive funds pursuant to Titles VI and VII of the federal Public Health Service Act, as amended.

(b) The terms "hospital," "psychiatric hospital," "nurse training facilities," "public health center," "rehabilitation facility," "nursing home," "chronic illness hospital," "long-term care facility," "mental health center," "construction," "cost of construction," "modernization," and "cost of modernization" shall have meanings consistent with those respectively ascribed to them in Titles VI and VII of the federal Public Health Service Act, as now or hereafter amended.

History. — Code 1933, § 88-2102, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 2015, p. 385, § 4-3/HB 252.

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

U.S. Code. — Titles VI and VII of the Public Health Service Act, as amended, referred to in this Code section, are codified as 42 U.S.C. § 291 et seq. and 42 U.S.C. § 292a et seq., respectively.

JUDICIAL DECISIONS

Cited in Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985).

31-7-52. Amounts of grants for construction and modernization.

(a) Grants for construction projects or modernization projects made from state appropriations pursuant to this article shall be in an amount equal to one-third of the allowable cost of the project, except as otherwise provided in this article.

(b) In the event that state funds appropriated or otherwise made available during a given fiscal year for construction or modernization are not sufficient to match available federal funds, the state agency shall be empowered to:

(1) Reduce the percentage of contribution by the state below one-third of the allowable cost of the project in order to obtain the optimum amount of construction with funds available; and

(2) At its option, annually establish a ceiling which shall be the maximum amount that can be allotted to each or any medical facility project approved in the given fiscal year, provided that any ceiling so established shall not result in the allotment to a medical facility project of an amount greater than the one-third of allowable cost specified in subsection (a) of this Code section.

(c) The aggregate of federal and state funds granted to publicly owned and publicly operated construction or modernization projects shall be 66 2/3 percent unless state funds are inadequate to obtain optimum construction, in which event the state agency is authorized to establish an aggregate less than 66 2/3 percent.

(d) In the event an aggregate of federal and state funds is established at less than 66 2/3 percent, the state agency is authorized to establish a matching formula for any category of construction which is different from any other matching formula for any other category of construction; the state agency is further authorized to establish a matching formula for any category of modernization which is different from the matching formula for construction projects.

History. — Ga. L. 1949, p. 263, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 214, § 1; Ga. L. 1955, p. 410, § 1; Code 1933, § 88-2103, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1966, p. 716, § 1; Ga. L. 1969, p. 715, §§ 4, 5.

31-7-53. Matching formula; priority system; use of earnings; approval of federal grant.

(a) The state agency shall establish a matching formula for each construction and modernization category by fiscal year. Any change in a matching formula shall apply in the same manner to each construction and modernization project within the category approved during the fiscal year.

(b) Grants made pursuant to this article shall be in accordance with the priority system as approved by the state agency and the United States secretary of health and human services.

(c) No part of the net earnings of publicly owned and publicly operated medical facilities, auxiliary medical facilities, and mental health centers constructed with the assistance of a grant under this article shall inure to the benefit of any private corporation or individual.

(d) Any grant made pursuant to this article shall be contingent upon the approval for that project of a federal grant approved by the United States secretary of health and human services under either Title VI or Title VII of the federal Public Health Service Act, as now or hereafter amended.

History. — Ga. L. 1949, p. 263, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 214, § 1; Ga. L. 1955, p. 410, § 1; Code 1933, § 88-2105, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2104, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1982, p. 3, § 31; Ga. L. 1992, p. 6, § 31; Ga. L. 2015, p. 385, § 4-4/HB 252; Ga. L. 2017, p. 774, § 31/HB 323.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "the federal Public Health Service Act" for "the Public Health Service Act" near the end of subsection (d).

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

U.S. Code. — Titles VI and VII of the Public Health Service Act, as amended, referred to in subsection (d), are codified as 42 U.S.C. § 291 et seq. and 42 U.S.C. § 292a et seq., respectively.

31-7-54. Manner of expenditure of construction funds.

In order to assist the several counties, municipalities, or any combination thereof or any hospital authorities created under the "Hospital Authorities Law," Article 4 of this chapter, such funds as are appropriated for each fiscal year for the construction of publicly owned and publicly operated medical facilities, auxiliary medical facilities, and mental health centers shall be expended in accordance with the provisions of this article.

History. — Ga. L. 1949, p. 263, § 2; Ga. L. 1955, p. 410, § 2; Code 1933, § 88-2106, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2105, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 2015, p. 385, § 4-5/HB 252.

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

31-7-55. Administration of state funds.

The state agency is to be the sole agency for the administration of state funds pursuant to this article. The administration of such funds

shall be in direct conjunction with that of federal funds under Titles VI and VII of the Public Health Service Act, as now or hereafter amended.

History. — Ga. L. 1949, p. 263, § 3; Ga. L. 1955, p. 410, § 3; Code 1933, § 88-2107, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2106, enacted by Ga. L. 1966, p. 716, § 1.

U.S. Code. — Titles VI and VII of the Public Health Service Act, as amended, referred to in this Code section, are codified as 42 U.S.C. § 291 et seq. and 42 U.S.C. § 292a et seq., respectively.

31-7-56. Adherence to federal law and regulations.

The establishment of hospital service areas, the determination of relative need, the priority of projects, and the standards of construction shall be consistent with Titles VI and VII of the Public Health Service Act, as now or hereafter amended, and the federal regulations prescribed thereunder.

History. — Ga. L. 1949, p. 263, § 5; Ga. L. 1955, p. 410, § 5; Code 1933, § 88-2108, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2107, enacted by Ga. L. 1966, p. 716, § 1.

U.S. Code. — Titles VI and VII of the Public Health Service Act, as amended, referred to in this Code section, are codified as 42 U.S.C. § 291 et seq. and 42 U.S.C. § 292a et seq., respectively.

31-7-57. Procedure for grants to sponsors of construction projects; injunction of operation by transferee in violation of article.

(a) For each construction project, there shall be submitted to the state agency an application for state funds.

(b) Upon approving an application under this Code section, the state agency shall submit a budget request to the Office of Planning and Budget, based upon such application. Approval by the Office of Planning and Budget shall constitute an obligation of the state.

(c) Payments to the sponsor of a construction project shall be made in installments as construction progresses at intervals to be determined at the discretion of the state agency; and the state agency shall have the right to inspect and audit records and accounts of the sponsor as a condition precedent to making payments.

(d) If any publicly owned and publicly operated medical facility, auxiliary medical facility, or mental health center for which funds have been paid under this Code section shall be leased to any corporation, person, organization, or body other than one eligible to receive a grant under this article or shall be sold or used for any purpose contrary to the provision under which the grant was made, at any time within 20 years after completion of construction, and such change in lease, sale, or use is not approved by the state agency, such agency may bring an equitable proceeding for writ of injunction against any person, firm, corporation,

or organization operating in violation of this article. The proceedings shall be filed in the county in which such persons reside or, in the case of a firm or corporation, where such firm or corporation maintains its principal office; and, unless it is shown that such person, firm, or corporation which has leased such medical facility, auxiliary medical facility, or mental health center would have been eligible to accept the grant-in-aid from the state in the first instance and the lease has been approved by the state agency or the sale or use has been approved by such agency, the writ of injunction shall issue and such person, firm, or corporation shall be perpetually enjoined throughout the state from operating in violation of the provisions of this subsection. It shall not be necessary in order to obtain the equitable relief provided in this subsection that the state agency show that such person, firm, or corporation is ineligible nor to prove that there is no adequate remedy at law. In addition, the state agency shall be entitled to bring an action and recover from the transferor and transferee of any facility specified in this subsection such percentage of the value of the facility as the state grant bore toward the total construction cost of that facility as determined by agreement of the parties or by action brought in court.

History. — Ga. L. 1949, p. 263, § 7; Ga. L. 1955, p. 410, § 6; Code 1933, § 88-2109, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-2108, enacted by Ga. L. 1966, p. 716, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2015, p. 385, § 4-6/HB 252.

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

ARTICLE 4

COUNTY AND MUNICIPAL HOSPITAL AUTHORITIES

Cross references. — Use of excess proceeds of bonds issued by county or municipal corporation to match state and federal contributions to build and equip hospital in such county or municipal corporation, § 36-60-7.

Law reviews. — For article noting the exclusion of public authorities from the Georgia Administrative Procedure Act, see 1 Ga. St. B. J. 269 (1965). For article surveying legislative and judicial developments in Georgia local government law for 1978-79, see 31 Mercer L. Rev. 155 (1979). For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For article, "Tackling the Social Determinants of Health: A Central for Providers," see 33 Georgia St. U. L. Rev. 217 (2017).

For note, "Bearing Hospital Tax Breaks: How Nonprofits Benefit from Your Surprise Medical Bills," see 35 Ga. St. U. L. Rev. 809 (2019).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1941, p. 241, as amended, which was subsequently repealed but was succeeded by provisions in this article, are included in the annotations for this article.

Georgia Hospital Authorities Law,

O.C.G.A. § 31-7-70 et seq., is constitutional. Cheely v. State, 251 Ga. 685, 309 S.E.2d 128 (1983).

Hospital authorities created under the law are local, not state, instrumentalities. Fulton-DeKalb Hosp. Auth. v. Gaither, 241 Ga. 572, 247 S.E.2d 89 (1978).

Hospital authority was a local, not state, instrumentality, and was not entitled to immunity under the Eleventh Amendment in a federal civil rights act suit brought by a paramedic against the authority. Baxter v. Fulton-DeKalb Hosp. Auth., 764 F. Supp. 1510 (N.D. Ga. 1991).

Hospital authority not within workers' compensation definition of "employer". — Local hospital authority is an instrumentality of the county and not of the state and, therefore, it is not covered by Workmen's (now Workers') Compensation Law under the law's definition of "employer" as a state instrumentality. Fulton-DeKalb Hosp. Auth. v. Gaither, 241 Ga. 572, 247 S.E.2d 89 (1978).

Hospital authorities are subject to "open records" law. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospitals operated by authorities are subject to examination by grand juries as facilities of county. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospital authorities are exempt from sales and use taxes. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospital authorities are exempt from Georgia Business Corporation Code. — Phrase "corporations engaged in any business" in Ga. L. 1975, p. 190, § 1 (see O.C.G.A. § 34-9-4) includes only those corporations governed by the Georgia Business Corporation Code (see O.C.G.A. Ch. 2, T. 14). Hospital authorities are not governed by the Georgia Business Corporation Code, but are expressly exempted therefrom. Fulton-DeKalb Hosp. Auth. v. Gaither, 241 Ga. 572, 247 S.E.2d 89 (1978).

Exemption from ad valorem taxation. — Hospital authority property is public property and, as such, is exempt from ad valorem taxation. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospital authority cannot sue for libel. Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

Hospital authorities subject to negligence suits by patients. — Hospital authority is subject to suit for damages resulting from personal injury the hospital negligently inflicts upon one of the hospital's patients or for the negligent actions of the hospital's agents, servants, or employees. Hospital Auth. v. Shubert, 96 Ga. App. 222, 99 S.E.2d 708 (1957) (decided under former Ga. L. 1941, p. 241, as amended), but see Hall v. Hospital Auth., 93 Ga. App. 319, 91 S.E.2d 530 (1956).

Hospital authority is subject to suit for damages for personal injuries to patients resulting from negligence of the hospital's agents, servants, or employees. Hospital Auth. v. Misfeldt, 99 Ga. App. 702, 109 S.E.2d 816 (1959) (decided under former Ga. L. 1941, p. 241, as amended); but see Hall v. Hospital Auth., 93 Ga. App. 319, 91 S.E.2d 530 (1956).

Hospital authority not subject to tort suits. — State has right to delegate to public corporation the governmental right and duty which the state has to protect and preserve the health of the state's citizens; when the state properly does so the corporation maintaining and operating a hospital under such delegated authority, not for profit, is in the exercise of a governmental function and not subject to suit in a tort action. Hall v. Hospital Auth., 93 Ga. App. 319, 91 S.E.2d 530 (1956) (decided under former Ga. L. 1941, p. 241, as amended), but see Hospital Auth. v. Shubert, 96 Ga. App. 222, 99 S.E.2d 708 (1957); Hospital Auth. v. Misfeldt, 99 Ga. App. 702, 109 S.E.2d 816 (1959).

Hospital authorities established pursuant to the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., are entitled to the defense of governmental immunity except to the extent there has been a waiver under the state constitution. Hospital Auth. v. Litterilla, 199 Ga. App. 345, 404 S.E.2d 796 (1991).

Cited in Medical Ctr. Hosp. Auth. v. Andrews, 162 Ga. App. 687, 292 S.E.2d 197 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authority within definition of an operation for purely charitable purposes. — County hospital authority established and operated pursuant to provisions of the Hospital Authorities Law comes within definition of an operation for purely charitable purposes. 1968 Op. Att'y Gen. No. 68-280.

Applicability of Fair Labor Standards Act to employees of hospital authorities. — Hospital authorities are subject to minimum wage and maximum hours provisions of Fair Labor Standards Act, 29 U.S.C., with respect to employees employed in any hospital or related institution, school for physically or mentally handicapped or gifted children, or any institution of higher learning. 1965-66 Op. Att'y Gen. No. 66-249.

State has no jurisdiction over county hospital authority except state auditor prescribes forms for annual report. 1945-47 Op. Att'y Gen. p. 65.

County hospital authority is authorized to make term loans. 1969 Op. Att'y Gen. No. 69-9.

Authority may contract with private ambulance service for back-up service. — Hospital Authority may enter into contract with private ambulance service, on trip by trip basis, to provide for back-up ambulance service for the Authority. 1970 Op. Att'y Gen. No. 70-200.

Local government investment pool. — Hospital authorities created pursuant to O.C.G.A. T. 31, Ch. 7, Art. 4 are not eligible to participate in the local government investment pool created by O.C.G.A. § 36-83-8. 1982 Op. Att'y Gen. No. 82-78.

Authority to acquire or build dormitory-type facility for elderly. — Hospital authority is authorized under O.C.G.A. T. 31, Ch. 7, Art. 4, to acquire or build a dormitory-type facility for the elderly. 1984 Op. Att'y Gen. No. U84-9.

Construction with Residential Care Facilities for Elderly Authorities Act. — Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and the Residential Care Facilities for the Elderly Authorities Act, O.C.G.A. § 31-7-110 et seq., should not be viewed as mutually exclusive and may be harmonized. 1984 Op. Att'y Gen. No. U84-9.

While both the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and the Residential Care Facilities for the Elderly Authorities Act, O.C.G.A. § 31-7-110 et seq., allow either authority to acquire or build a facility, a Residential Care Facilities for the Elderly Authority, as opposed to a Hospital Authority, may not operate a facility. 1984 Op. Att'y Gen. No. U84-9.

Disposition of surplus funds. — County hospital authority may remit surplus funds to the authority's participating units only in a manner acceptable to all parties and, in the alternative, may expend the authority's surplus funds in accord with the authority's permitted activities under the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq. 1987 Op. Att'y Gen. No. U87-19.

Hospital as "employer" under Peace Officer and Annuity Benefit Fund. — Hospital authority does not satisfy the statutory definition of an "employer" under the act governing the Peace Officer and Annuity Benefit Fund and, therefore, the authority's security personnel are not entitled to membership in that Fund. 1991 Op. Att'y Gen. No. U91-12.

31-7-70. Short title.

This article shall be known and may be cited as the "Hospital Authorities Law."

History. — Code 1933, § 88-1801, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1996, p. 6, § 31.

Administrative rules and regulations. — Rural Hospital Assistance Act, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Health Planning, Chapter 111-2-4.

Law reviews. — For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

Ga. L. 1964, p. 499, § 1 repealed and superseded the 1941 Hospital Authorities Law. Collins v. Nix, 125 Ga. App. 520, 188 S.E.2d 235 (1972) (see O.C.G.A. § 31-7-70).

Members of authority boards cannot discharge duties by proxy. — Since such authorities as this section creates are in effect instrumentalities of the state discharging essential governmental obligations, it would be contrary to public interest to hold that members of boards of such authorities could discharge their solemn responsibilities by way of proxies; therefore, they must discharge them in person. Collins v. Nix, 125 Ga. App. 520, 188 S.E.2d 235 (1972).

Punitive damages not allowed against authority. — It is against Georgia public policy to allow an award of punitive damages in a medical malpractice action against a hospital authority created as a governmental entity under the Hospital Authorities Act, O.C.G.A. § 31-7-70 et seq. Hospital Auth. v. Martin, 210 Ga. App. 893, 438 S.E.2d 103 (1993), aff'd, 264 Ga. 626, 449 S.E.2d 827 (1994).

Hospital authority's receipt of funds from two counties in general support of an indigent treatment program did not divest the authority or the authority's hospital of their character as county agencies or instrumentalities so as to waive sovereign immunity. Culberson v. Fulton-DeKalb Hosp. Auth., 201 Ga. App. 347, 411 S.E.2d 75, cert. denied, 201 Ga. App. 905, 411 S.E.2d 75 (1991).

ERISA preemption. — In a breach of contract case, defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss on the basis of Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 et seq., preemption was denied because the insured's former employer, a hospital authority, was a government political subdivision, agency, or instrumentality for purposes of ERISA's governmental plan exemption; the hospital authority was created pursuant to the Georgia Hospital Authorities Act, O.C.G.A. § 31-7-70 et seq. Williams-Mason v. Reliance Std. Life Ins. Co., No. CV206-124, 2006 U.S. Dist. LEXIS 40052 (S.D. Ga. June 16, 2006).

Cited in Hospital Auth. v. Stewart, 226 Ga. 530, 175 S.E.2d 857 (1970); Daughtrey v. State, 226 Ga. 758, 177 S.E.2d 670 (1970).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authority may not own or operate a for profit business corporation. 1995 Op. Att'y Gen. No. U95-11.

Conflict of interest of hospital authority board member. — Member of a hospital authority board has an impermissible conflict of interest if the member has any financial interest, not de minimis, in an entity conducting business with the authority notwithstanding the existence of an intermediary between the board and the entity. 1995 Op. Att'y Gen. No. U95-11.

Authority's right to operate and charge for ambulance service. — Hospital authority has right to operate ambulance service for transportation of patients to and from the authority's hospital and may make charges for such service. 1965-66 Op. Att'y Gen. No. 66-176.

RESEARCH REFERENCES

ALR. — Medical malpractice: negligent catheterization, 31 A.L.R.5th 1.

31-7-71. Definitions.

As used in this article, the term:

(1) "Area of operation" means the area within the city or county activating an authority. Such term shall also mean any other city or county in which the authority wishes to operate, provided the governing authorities and the board of any hospital authorities of such city and county request or approve such operation.

(2) "Authority" or "hospital authority" means any public corporation created by this article.

(3) "Governing body" means the elected or duly appointed officials constituting the governing body of a city or county.

(4) "Participating units" or "participating subdivisions" means any two or more counties, or any two or more municipalities, or a combination of any county and any municipality acting together for the creation of an authority.

(5) "Project" includes the acquisition, construction, and equipping of hospitals, health care facilities, dormitories, office buildings, clinics, housing accommodations, nursing homes, rehabilitation centers, extended care facilities, and other public health facilities for the use of patients and officers and employees of any institution under the supervision and control of any hospital authority or leased by the hospital authority for operation by others to promote the public health needs of the community and all utilities and facilities deemed by the authority necessary or convenient for the efficient operation thereof. Such term may also include any such institutions, utilities, and facilities located outside the city or county in which the authority is located, provided that the acquisition, construction, equipping, and operation thereof is requested or approved by the governing bodies of such city and county in which the project is located and by the board of any hospital authorities located within such city and county or provided that the acquisition, construction, equipping, and operation is to be located in the area of operation of the authority.

(6) "Resolution" means the resolution or ordinance to be adopted by governing bodies pursuant to which authorities are established.

History. — Ga. L. 1941, p. 241, § 2; Code 1933, § 88-1802, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 103, § 1; Ga. L. 1972, p. 683, § 1; Ga. L. 1973, p. 190, § 1; Ga. L. 1991, p. 1391, §§ 1, 2.

JUDICIAL DECISIONS

Authorized acts. — Whether the hospital authority authorized the purchase of the hospital without considering, among other factors, the anticompetitive adverse effect of the acquisition on healthcare in the community and alternatives to leasing the hospital to the defendants were irrelevant. The state put the ultimate say-so for the provision and management of healthcare in the hands of the healthcare authorities. FTC v. Phoebe Putney Health Sys., 793 F. Supp. 2d 1356 (M.D. Ga. 2011), aff'd, 663 F.3d 1369 (11th Cir. 2011).

Antitrust actions. — In O.C.G.A. §§ 31-7-71 and 31-7-75, the Georgia legislature authorized hospital authorities (HA) power to acquire and lease hospitals to others, and must have anticipated that HA's could reduce competition, so state-action immunity applied to defendant HA's acquisition of a second hospital and the HA's lease to another defendant, an entity the HA created, and plaintiff Federal Trade Commission's complaint under 15 U.S.C. § 18 properly failed. FTC v. Phoebe Putney Health Sys., 663 F.3d 1369 (11th Cir. 2011) (Unpublished).

Facilities need not necessarily be provided in hospital building or on the premises on which the hospital building is located, but may be provided by contractual arrangements. Richmond County Hosp. Auth. v. Richmond County, 255 Ga. 183, 336 S.E.2d 562 (1985).

Office building used and operated as provided in this section is for a public purpose. Petty v. Hospital Auth., 233 Ga. 109, 210 S.E.2d 317 (1974).

Cited in Hospital Auth. v. Stewart, 226 Ga. 530, 175 S.E.2d 857 (1970); Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU, 240 Ga. 444, 241 S.E.2d 196 (1978); Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985).

OPINIONS OF THE ATTORNEY GENERAL

"Project" includes renovation of hospital-type facilities. — Literally, a project which undertook to renovate a facility for the public health activities of a county health department would be a permitted activity of a hospital authority, but the enumeration of facilities in the definition of "project" may be read to imply the normal hospital and hospital-type facilities as opposed to the administrative type facility normally associated with a public health department. 1987 Op. Att'y Gen. No. U87-19.

County's agreement to subsidize hospital authority ambulance service. — Agreement by county with hospital authority in nature of contract in which county agrees to subsidize ambulance service operated by hospital authority does not violate any provisions of state Constitution and county would be authorized to pay sums of money to hospital authority for this service. 1968 Op. Att'y Gen. No. 68-280.

Deposit of funds exceeding F.D.I.C. insurance. — Collecting officer or officer holding funds of hospital authority may deposit the funds in local bank or banks notwithstanding the fact that the amount so deposited may exceed the Federal Deposit Insurance Corporation insurance on account, if authority required depository to give bond or make deposit of securities in trust to secure such deposits, pursuant to former Code 1993, §§ 89-810 and 89-812. 1969 Op. Att'y Gen. No. 69-500.

31-7-72. Creation of hospital authority in each county and municipality.

(a) There is created in and for each county and municipal corporation of the state a public body corporate and politic to be known as the "hospital authority" of such county or city, which shall consist of a board of not less than five nor more than nine members to be appointed by the

governing body of the county or municipal corporation of the area of operation for staggered terms as specified by resolution of the governing body. The number of members of any hospital authority as of March 1, 1984, may be increased by not more than two additional members by the adoption of a resolution of the members of the hospital authority, and such additional members shall be appointed through the same process used for filling vacancies which was in effect for such hospital authority on January 1, 1984. Whenever an appointment to fill a vacancy on the board of any hospital authority is made, either for an unexpired term or a full term, consideration shall be given as to whether a licensed doctor of medicine or registered nurse currently serves on such authority. If no licensed doctor of medicine or registered nurse currently serves on such authority, then consideration shall be given to the nomination and choice of a licensed doctor of medicine or a registered nurse to fill such vacancy. No authority created under this Code section shall transact any business or exercise any powers under this Code section until the governing body of the area of operation shall, by proper resolution, declare that there is need for an authority to function in such county or municipal corporation. Copies of a resolution so adopted and any resolution adopted by the governing body providing for filling vacancies in the membership of the authority or making any changes in membership shall be filed with the department.

(b) Appointments to fill vacancies on the board of any hospital authority activated on or after March 15, 1964, for either an unexpired or full term as fixed in the original resolution or ordinance creating the authority, shall be made as follows:

(1) The governing body of the area of operation shall submit a list of three eligible persons to the board of the hospital authority;

(2) The board at its next regular meeting shall either select one of the three persons named in such list or decline to select any of the persons named in the list. If the board declines to select any of the persons named on the list, it shall so notify the governing body; and

(3) Upon receipt of notification that the board has declined to select any of the persons named in the governing body's list, the governing body shall submit a second list of three eligible persons, no one of whom was named on the first list, to the board of the hospital authority. The board at its next regular meeting after receipt of the second list shall select one of the three persons named in the second list.

(c) Appointments to fill vacancies for either an unexpired or full term on the boards of all hospital authorities in existence prior to March 15, 1964, shall be governed by the terms of a resolution adopted prescribing the manner by which vacancies are filled, unless changed by local legislation or constitutional amendment.

(d) Any two or more counties or any two or more municipalities or any county or municipality, or a combination of any county and any municipality, by a like resolution or ordinance of their respective governing bodies, may authorize the exercise of the powers provided for in this article by an authority. The membership of such authority affected by like resolutions of the respective governing bodies of any two or more of the governing bodies of the participating units shall be not less than five nor more than 15 members, the terms and distribution of members between the participating units to be provided for by the resolutions adopted by the governing bodies of the participating units. The resolutions of the governing bodies of participating units acting together for the creation of an authority may be amended by the governing bodies of the participating units from time to time. Where the governing bodies of participating units have acted together for the creation of an authority under this subsection and where at least one of those participating units is a county having a population of 35,000 or less according to the United States decennial census of 1990 or any future such census, the method of filling vacancies upon such authority may be changed only by local Act of the General Assembly and, when so changed, shall be governed by that local Act.

(e)(1) Nothing in this Code section is intended to invalidate any of the acts of existing boards of authorities. Hospital authorities shall be granted the same exemptions and exclusions from taxes as are now granted to cities and counties for the operation of facilities similar to facilities to be operated by hospital authorities as provided for under this title.

(2) Notwithstanding the provisions of paragraph (1) of this subsection or any other law to the contrary, any real property in which 50 percent or more of the floor space thereof, excluding halls, corridors, and public spaces, is rented or leased by persons, firms, or corporations engaged in or conducting a private for profit business or profession owned by a hospital authority which is located in a county having a population of 50,000 or more according to the United States decennial census of 1990 or any future such census or owned by any subsidiary or affiliate thereof and which hospital authority or subsidiary or affiliate thereof operates a hospital containing more than 100 beds, shall be subject to all state, county, and municipal ad valorem taxes in the same manner as other private property.

(f) The project or projects of an authority created by two or more counties, or two or more municipalities, or a combination of any county and any municipality may be located outside of the area of the sponsor's operation when it is determined by the trustees that this will best serve the purposes of the facility and provided it is located within the area of service and within 12 miles of the hospital location or within 12 miles of the sponsoring county or municipality, whichever is farther.

(g) Hospital authorities created pursuant to this Code section shall have perpetual existence.

History. — Ga. L. 1941, p. 241, §§ 3, 4; Ga. L. 1949, p. 1141, §§ 1, 2; Code 1933, § 88-1803, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 347, § 1; Ga. L. 1978, p. 1974, § 1; Ga. L. 1984, p. 585, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1994, p. 781, § 1; Ga. L. 1998, p. 900, § 3.

Law reviews. — For review of 1998 legislation relating to insurance, see 15 Ga. St. U. L. Rev. 143 (1998). For annual survey of real property law, see 68 Mercer L. Rev. 231 (2016).

JUDICIAL DECISIONS

Analysis

General Consideration
Appointments to Hospital Authority Boards
Exemption From Taxation

General Consideration

Construction of "resolution". — Resolution referred to in subsection (c) of O.C.G.A. § 31-7-72 is that of the hospital authority's board. Brophy v. McCranie, 264 Ga. 187, 442 S.E.2d 230 (1994).

State action immunity. — Hospital authority was an instrumentality, agency, or "political subdivision" of the state for purposes of the state action immunity doctrine and, thus, was immune from an antitrust action brought by a doctor who was denied staff privileges. Crosby v. Hospital Auth., 93 F.3d 1515 (11th Cir. 1996), cert. denied, 520 U.S. 1116, 117 S. Ct. 1246, 137 L. Ed. 2d 328 (1997).

Cited in Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970); Daughtrey v. State, 226 Ga. 758, 177 S.E.2d 670 (1970); Tanksley v. Foster, 227 Ga. 158, 179 S.E.2d 257 (1971); Collins v. Nix, 125 Ga. App. 520, 188 S.E.2d 235 (1972); Gaither v. Fulton-DeKalb Hosp. Auth., 144 Ga. App. 16, 240 S.E.2d 560 (1977); Fulton-DeKalb Hosp. Auth. v. Gaither, 241 Ga. 572, 247 S.E.2d 89 (1978); Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981); United States v. Wingo, 723 F. Supp. 798 (N.D. Ga. 1989); United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

Appointments to Hospital Authority Boards

Subsection (b) not subject to change by exercise of home rule provision of state Constitution. — Language providing for appointment of members of boards of hospital authorities is not subject to change by exercise of home rule powers contained in Ga. Const. 1976, Art. IX, Sec. II, Para. I (see now Ga. Const. 1983, Art. IX, Sec. II, Para. I). Commissioners of Wayne County v. Smith, 240 Ga. 540, 242 S.E.2d 47 (1978).

Exemption From Taxation

Intent behind tax exemption for hospital authorities. — See Undercofler v. Hospital Auth., 221 Ga. 501, 145 S.E.2d 487 (1965).

Tax exemption provision of O.C.G.A. § 31-7-72(e) not ambiguous. — There is no ambiguity in words "the same exemptions and exclusions from taxes as are now granted to cities and counties." Undercofler v. Hospital Auth., 221 Ga. 501, 145 S.E.2d 487 (1965).

Subsection (e) of this section does not violate requirement of uniformity in taxation. Blackmon v. Cobb County-Marietta Water Auth., 126 Ga. App. 459, 191 S.E.2d 128 (1972).

Tax exemption of subsection (e) not violative of Constitution. — Sentence whereby hospital authorities are given

Exemption From Taxation (Cont'd)

the same exemption from taxes as cities and counties are now granted does not offend Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. III, Sec. V, Para. III). It is germane to the subject matter stated in the caption and therefore conforms to the Constitution. Undercofler v. Hospital Auth., 221 Ga. 501, 145 S.E.2d 487 (1965).

Hospital property properly found exempt. — Trial court did not err in finding that the eight parcels owned by the Hospital Authority were exempt from ad valorem taxation because no evidence in the record created an issue of fact regarding the usage of the properties, but rather the evidence established that all of the parcels at issue, including those containing parking areas, furthered the legitimate function of the Hospital Authority. Columbus Board of Tax Assessors v. Medical Center Hospital Authority, 336 Ga. App. 746, 783 S.E.2d 182 (2016).

Trial court did not err in finding that the parcel in which the hospital and the clinic, which was for-profit, were located was exempt from ad valorem property taxes as the parcel contained both facilities when the Hospital Authority purchased the property and the square footage of the clinic was less than half of the hospital's square footage. Columbus Board of Tax Assessors v. Medical Center Hospital Authority, 336 Ga. App. 746, 783 S.E.2d 182 (2016).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authority not within provisions of Constitution authorizing temporary loans. — County hospital authority is not either a county, municipality, political subdivision of the state authorized to levy taxes, or county board of education so as to come within provisions of Ga. Const. 1976, Art. IX, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. IX, Sec. V, Para. V). 1969 Op. Att'y Gen. No. 69-9.

Governing bodies of counties or municipal corporations operating hospital authorities may, by resolution, change membership in hospital authority. 1970 Op. Att'y Gen. No. U70-217.

Selection of board members from subsequent list invalid prior to 1978 amendment. — When a hospital authority board elected by resolution to fill vacancies pursuant to this section as it existed prior to amendment in 1978 but rejected a list of three nominees and made its selection from a subsequent list, that appointment was invalid. 1980 Op. Att'y Gen. No. 80-12.

Authorities existing prior to March 15, 1964, may elect to continue filling vacancies as in past. — Action of board of hospital authority in existence prior to March 15, 1964, in electing by resolution to continue to fill vacancies thereon in the same manner as was done prior to approval of O.C.G.A. § 31-7-72 is valid, even though that resolution has not been filed with the governing authority. However, the hospital authority in question should file their previously adopted resolution with the appropriate governing authority so as to enable the Hospital Authority to act as a de jure as opposed to a de facto body. 1981 Op. Att'y Gen. No. 81-89.

Hospital authorities are public authorities which may purchase goods manufactured by Correctional Industries Administration. 1970 Op. Att'y Gen. No. 70-88.

Hospital authority may deposit funds exceeding F.D.I.C. insurance if depository gives bond. — Collecting officer or officer holding funds of hospital authority may deposit those funds in local bank or banks notwithstanding the fact the that the amount so deposited may exceed the Federal Deposit Insurance Corporation insurance on account, if authority requires depository to give bond or make deposit of securities in trust to secure such deposits, pursuant to former Code 1933, §§ 89-810 and 89-812. 1969 Op. Att'y Gen. No. 69-500.

Contract between hospital authority and member creates conflict of interest. — Conflict of interest exists when any member of a hospital authority, whether the member be a physician, at-

torney, architect, or member of any other profession, contracts with the authority to render professional services to the authority for or on behalf of the authority on a fee basis or for a stated stipend. 1983 Op. Att'y Gen. No. U83-5.

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 8.
ALR. — Prospective use for tax-exempt purposes as entitling property to tax exemption, 54 A.L.R.3d 9.

31-7-72.1. Merger of hospital authorities.

(a) A hospital authority activated for a county pursuant to Code Section 31-7-73 may be merged with a hospital authority activated for that county under Code Section 31-7-72 upon compliance with this Code section and approval by resolution of the governing authority of the county in which the authorities are located. A majority of the board of each such hospital authority must approve such merger by a resolution which is adopted by each such board and is filed with the department. That resolution shall set forth:

(1) The name of each hospital authority planning to merge and the name of the surviving hospital authority into which each plans to merge; and

(2) The terms and conditions of the planned merger.

(b) The merger authorized by subsection (a) of this Code section shall not become effective until the governing authority of the county of operation of the merging hospitals appoints the members of the board of the surviving hospital authority by proper resolution and files copies of such resolution with the department. The governing authority is not required but is authorized to appoint as a member of the surviving hospital authority any member of a hospital authority planning to merge. The board of the surviving hospital shall consist of not more than 15 members with initial appointments for such staggered terms as provided in the resolution of the county governing authority. Appointments to fill vacancies for either an unexpired or full term shall thereafter be filled as authorized for an authority under subsection (c) of Code Section 31-7-72. The surviving hospital authority shall be in all other respects a hospital authority created under Code Section 31-7-72.

(c) A county whose hospital authorities have merged under the authority of this Code section shall not thereafter be prohibited from activating a hospital authority under Code Section 31-7-73.

(d) When a merger under this Code section takes effect:

(1) Each hospital authority party to the merger merges into the surviving hospital authority and the separate existence of each such hospital authority except the surviving hospital authority ceases;

(2) The ownership of and authority to operate the hospitals owned by each hospital authority and the title to all real estate and other property owned by each hospital authority party to the merger is vested in the surviving hospital authority without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving hospital authority has all liabilities and obligations of each hospital authority party to the merger; and

(4) A proceeding pending against any hospital authority party to the merger may be continued as if the merger did not occur or the surviving hospital authority may be substituted in the proceeding for the hospital authority whose existence ceased.

(e) It is declared by the General Assembly of Georgia that in the exercise of the power specifically granted to them by this Code section, hospital authorities are acting pursuant to state policy and shall be immune from antitrust liability to the same degree and extent as enjoyed by the State of Georgia.

History. — Code 1981, § 31-7-72.1, enacted by Ga. L. 1993, p. 1020, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, a comma was deleted preceding "the title" in paragraph (d)(2).

JUDICIAL DECISIONS

Antitrust actions. — In O.C.G.A. §§ 31-7-71 and 31-7-75, the Georgia legislature authorized hospital authorities (HA) power to acquire and lease hospitals to others, and must have anticipated the HA could reduce competition, so state-action immunity applied to defendant HA's acquisition of a second hospital and the HA's lease to another defendant, an entity the HA created, and plaintiff Federal Trade Commission's complaint under 15 U.S.C. § 18 properly failed; the 1993 enactment of O.C.G.A. § 31-7-72.1 to the Hospital Authorities Law, stating that hospital mergers by HAs were immune from antitrust liability did not mean the original law was enacted without an anticipation of anticompetitive effects. FTC v. Phoebe Putney Health Sys., 663 F.3d 1369 (11th Cir. 2011) (Unpublished).

31-7-73. Creation of additional hospital authority in counties with large populations.

(a) Any other provision of this article to the contrary notwithstanding, there is created in and for each county of this state having a population of 100,000 or more according to the United States decennial census of 1970 or any future such census a public body corporate and politic to be known as the "_____ Hospital Authority." Each such hospital authority shall be a separate entity and in addition to the hospital authority of each county of this state created pursuant to Code Section 31-7-72.

(b) Each such additional hospital authority shall consist of a board of not less than five nor more than nine members to be appointed by the governing body of each such county for staggered terms, as specified by resolution of the governing body. No hospital authority created under this Code section shall transact any business or exercise any powers under this Code section until the governing body of each such county declares by proper resolution that there is a need for an additional hospital authority to function within such county, which resolution shall also determine and declare that such hospital authority is being created pursuant to this Code section and shall adopt a designation for the hospital authority so as to reflect that it is a separate and distinct entity from the hospital authority created pursuant to Code Section 31-7-72. A copy of such resolution shall be filed with the department. Copies of any resolutions adopted by the governing body of the county for the purpose of filling vacancies in the membership of the hospital authority or for making any changes in membership shall also be filed with the department.

(c) Appointments to fill vacancies on the board of any such hospital authority shall be made as provided in Code Section 31-7-72.

(d) All provisions of this article, including, but not limited to, the rights, powers, duties, obligations, and exemptions from taxation provided thereby for hospital authorities shall apply to the additional hospital authorities created pursuant to this Code section and the hospital authorities so created shall, in all respects, to the extent applicable for the purposes of this chapter, be treated as though they had been created pursuant to Code Section 31-7-72.

(e) It is declared that this Code section shall be cumulative of and supplemental to Code Section 31-7-72 and not in lieu thereof. It is expressly provided that nothing contained in this Code section shall invalidate or abrogate any of the actions or obligations of existing hospital authorities created pursuant to Code Section 31-7-72 and further that nothing contained in this Code section shall be construed as adversely affecting the rights and interests of the holders or owners of any bonds, certificates, or obligations now or hereafter issued by such existing hospital authorities.

History. — Code 1933, § 88-1803.1, enacted by Ga. L. 1972, p. 683, § 2.

JUDICIAL DECISIONS

Cited in FTC v. Phoebe Putney Health Sys., 663 F.3d 1369 (11th Cir. 2011) (Unpublished).

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 12 et seq.

ALR. — Prospective use for tax-exempt purposes as entitling property to tax exemption, 54 A.L.R.3d 9.

31-7-74. Residency requirement; officers; compensation; rules and regulations.

The members of a hospital authority shall be residents of the participating units comprising the authority. The requirement of residence shall not apply to authorities activated under subsection (d) of Code Section 31-7-72, provided they are selected from within the area of service and within 12 miles of the hospital location or within 12 miles of the sponsoring county or municipality, whichever is farther. The members shall elect one of their number as chair and another as vice chair and shall also elect a secretary-treasurer, who need not be a member. The members shall receive no compensation for their services, either as members or as employees of the authority but may be reimbursed for their actual expenses incurred in the performance of their duties or, in the alternative, the members may elect to be reimbursed for such expenses on a per diem basis in an amount not to exceed $100.00 per meeting and the total amount not to exceed $100.00 per month. The authority shall make rules and regulations for its governance and may delegate to one or more of its members, officers, agents, or employees such powers and duties as may be deemed necessary and proper.

History. — Ga. L. 1941, p. 241, § 4; Code 1933, § 88-1804, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 347, § 2; Ga. L. 1983, p. 1317, § 1; Ga. L. 1984, p. 874, § 1; Ga. L. 1997, p. 1404, § 2.

JUDICIAL DECISIONS

Delegation of duty does not relieve authority of responsibility for negligence. — Duty of screening candidates for admission to medical staff of hospital may be delegated to existing members of staff, and such staff members are agents of hospital authority, which is responsible for any default or negligence in properly selecting new members of staff. Joiner v. Mitchell County Hosp. Auth., 125 Ga. App. 1, 186 S.E.2d 307 (1971), aff'd, 229 Ga. 140, 189 S.E.2d 412 (1972).

Cited in Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981); Georgia Magnetic Imaging, Inc. v. Green County Hosp. Auth., 219 Ga. App. 502, 466 S.E.2d 41 (1995); Kendall v. Griffin-Spalding County Hosp. Auth., 242 Ga. App. 821, 531 S.E.2d 396 (2000); United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-74.1. Definitions; disclosures required; prohibited transactions; exceptions; sanctioning; sanctioning of members violating prohibition; authorization of authority to make stricter rules; preemption of other laws; applicability.

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

(1) "Family" means spouse, child, or sibling.

(2) "Financial interest" means the direct or indirect ownership of any assets or stock of any business.

(3) "Substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

(4) "Transact business" or "transact any business" or "transaction" means any sale or lease of any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative.

(b) Each member of a hospital authority shall disclose upon his or her selection as a member, and at least annually thereafter, the following described interests and relationships:

(1) Any financial interest held by the member or the member's family, or held by an entity in which the member or the member's family owns a financial interest, in any health care provider, any managed care provider or network, or any entity which sells products or services to the authority;

(2) Any position held by the member or the member's family as an officer, director, or employee of a hospital, hospital holding company, other health care provider, or managed care network; and

(3) Any contract which exists between the member or the member's family, or any entity in which the member or the member's family owns a financial interest, and the authority, including, but not limited to, supply contracts, service contracts, and leases.

(c) Except as otherwise provided in this Code section, no authority member, no hospital chief executive, and no hospital system chief executive officer shall, for such person or for any entity in which such person or such person's family has a substantial interest, transact any business with such authority.

(d) The prohibition of subsection (c) of this Code section shall not apply to:

(1) Any relationship whereunder a person licensed under Title 43 provides to such authority or its medical facilities any services;

(2) Any officer or employee of a trust company or bank which has been selected to be the depository of the funds of such nonprofit corporation; or

(3) Any transaction by a board member or a board member's family where the amount of all transactions between the parties is $1,000.00 or less in any one year.

(e) A transaction in which any member of an authority has a financial interest or relationship described in subsection (b) of this Code section which does not constitute a substantial interest may be approved if, at the time of such approval:

(1) The material facts of the transaction and the member's financial interest are disclosed or known to the authority's board;

(2) The interested member is absent from any portion of a meeting which discusses or votes upon said transaction; and

(3) The members approving the transaction in good faith reasonably believe that the transaction is fair to the authority.

(f) Notwithstanding the provisions of subsection (c) of this Code section, a transaction in which any member of an authority has a substantial interest may be approved if:

(1) The transaction was submitted to a competitive process for requests for proposals, which includes but is not limited to consideration of all submitted proposals for price, quality, and appropriateness; and

(2) Notice of the transaction was published in the official county organ not less than two weeks prior to the approval of the board;

(3) Opportunity for public comment concerning the proposed transaction was provided at a meeting of the board;

(4) At the time of approval, the members approving the transaction in good faith reasonably believe that the transaction is fair and is in the best interests of the authority; and

(5) The interested member is absent from any portion of a meeting which discusses or votes upon said transaction.

(g) For purposes of this Code section, a transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the members on the board present and voting who have no financial interest in the transaction. A majority, but not less than two, of all the noninterested members on the board present and voting constitutes a quorum for purposes of action that complies with this Code section.

(h) Any action by an authority which is taken in compliance with the applicable requirements of this Code section may not be enjoined, set

aside, or give rise to an award of damages or other sanctions against the authority or any member or officer on the ground of a member's or officer's interest in such transaction. For any action by an authority not in compliance with such requirements, any member knowingly violating such requirements shall be immediately sanctioned, which may include, but not be limited to, reprimand, temporary suspension, or permanent removal from the authority after appropriate notice and hearing. The entity having appointed such member shall have the authority to impose any sanction.

(i) Nothing in this Code section shall prevent an authority from having stricter rules relating to interests or relationships than what is provided in this Code section.

(j) To the extent the provisions of this Code section conflict with the provisions of any other law, the provisions of this Code section shall govern.

(k) The provisions of this Code section shall apply to those individuals serving as members of an authority who are appointed or reappointed on or after July 1, 1997. However, this Code section shall apply to all members of an authority, regardless of appointment date, serving on or after July 1, 1998.

History. — Code 1981, § 31-7-74.1, enacted by Ga. L. 1997, p. 1404, § 3.

31-7-74.2. Oath to be taken by members of hospital authority.

Each member of a hospital authority shall take in the presence of an officer authorized to administer same the following oath:

> I, _____, citizen of _____ _____ County, Georgia, do solemnly swear that I will, to the best of my ability, without favor or affection to any person and without any unauthorized financial gain or compensation to myself, faithfully and fairly discharge all of the duties and responsibilities that devolve upon me as a member of _____ Hospital Authority, during the term of my service as such member.

History. — Code 1981, § 31-7-74.2, enacted by Ga. L. 1997, p. 1404, § 3.

31-7-74.3. Sale or lease by hospital authority; hearing required; factors to be considered at hearing; applicability; requirements for lease.

(a) No hospital which is owned by a hospital authority may be sold or leased to a for profit entity, a not for profit entity, or another hospital

authority unless a public hearing regarding such action is held in the county where such hospital is located at least 60 days prior to such sale or lease becoming effective. In the event there is more than one participating unit for an authority, a hearing shall be held in each participating unit's county at least 60 days prior to the sale or lease becoming effective. The hospital authority must publish notice of the hearing at least three times, with the first such notice appearing at least 60 days prior to the hearing in the legal organ of each participating unit. At each such public hearing, the hospital authority shall describe, discuss, or otherwise disclose:

(1) The reasonably foreseeable adverse and beneficial effects of such lease or sale upon health care in the service area of the hospitals to be leased or sold, and, for purposes of this paragraph, the service area shall include the county in which the hospital is located and each adjoining county;

(2) A financial statement indicating the estimated value of the total assets and liabilities to be transferred or received in the transaction; however, if the value of any individual asset exceeds $100,000.00, a description and the value of such assets shall be indicated on the financial statement; and

(3) The resumes of the top five executive officers who will manage the facility after it is sold or leased.

This subsection shall not apply to any transaction which is subject to the provisions of Code Section 31-7-89.1.

(b) No hospital which is owned by a hospital authority may be leased to another person, corporation, or business entity, other than as provided in paragraphs (23) and (24) of Code Section 31-7-75, unless such lease requires that:

(1) At least one member of the hospital authority will serve as a full voting member upon the governing body or local board of the business entity exercising control and management powers over the leased hospital; and

(2) The governing body or local board of the business entity exercising control and management powers over the leased hospital submits to the governing authority of each county in which the hospital is located, within 90 days after the close of the calendar year or that entity's fiscal year, a complete and detailed financial statement for that entity.

(c) Provisions of a lease required by subsection (b) of this Code section may not be renegotiated or otherwise altered or amended for the duration of such lease.

History. — Code 1981, § 31-7-74.3, enacted by Ga. L. 1997, p. 1404, § 3; Ga. L. 1998, p. 128, § 31.

31-7-74.4. Board members deemed directors upon sale or lease of hospital.

Members on the board of a hospital authority at the time of a sale or lease of a hospital owned by such hospital authority shall be deemed directors and subject to the provisions of Part 6 of Article 8 of Chapter 3 of Title 14, relating to conflicting interest transactions with respect to the proceeds of such sale or lease.

History. — Code 1981, § 31-7-74.4, enacted by Ga. L. 2019, p. 183, § 2/HB 321.

Effective date. — This Code section became effective April 25, 2019.

31-7-75. Functions and powers.

Every hospital authority shall be deemed to exercise public and essential governmental functions and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued;

(2) To have a seal and alter the same;

(3) To make and execute contracts and other instruments necessary to exercise the powers of the authority;

(4) To acquire by purchase, lease, or otherwise and to operate projects;

(5) To construct, reconstruct, improve, alter, and repair projects;

(6) To sell to others, or to lease to others for any number of years up to a maximum of 40 years, any lands, buildings, structures, or facilities constituting all or any part of any existing or hereafter established project. In the event a hospital authority undertakes to sell a hospital facility, such authority shall, prior to the execution of a contract of sale, provide reasonable public notice of such sale and provide for a public hearing to receive comments from the public concerning such sale. This power shall be unaffected by the language set forth in paragraph (13) of this Code section or any implications arising therefrom unless grants of assistance have been received by the authority with respect to such lands, buildings, structures, or facilities, in which case approval in writing as set forth in paragraph (13) of this Code section shall be obtained prior to selling or leasing to others within 20 years after completion of construction;

(7) To lease for any number of years up to a maximum of 40 years for operation by others any project, provided that the authority shall have first determined that such lease will promote the public health needs of the community by making additional facilities available in the community or by lowering the cost of health care in the community and that the authority shall have retained sufficient control over any project so leased so as to ensure that the lessee will not in any event obtain more than a reasonable rate of return on its investment in the project, which reasonable rate of return, if and when realized by such lessee, shall not contravene in any way the mandate set forth in Code Section 31-7-77 specifying that no authority shall operate or construct any project for profit. Any lessee shall agree in the lease to pay rent sufficient in each year to pay the principal of and the interest on any revenue anticipation certificates proposed to be issued to finance the cost of the construction or acquisition of any such project and to pay off or refinance, in whole or in part, any outstanding debt or obligation of the lessee (including any redemption or prepayment premium due thereon) which was incurred in connection with the acquisition and construction of facilities of such lessee and the amount necessary in the opinion of the authority to be paid each year into any reserve funds which the authority may deem advisable to be established in connection with the retirement of the proposed revenue anticipation certificates and the maintenance of the project. Any such lease shall further provide that the cost of all insurance with respect to the project and the cost of maintenance and repair thereof shall be borne by the lessee. In carrying out a refinancing plan with regard to any outstanding debt or obligation of the lessee which was incurred in connection with the acquisition and construction of facilities of such lessee, the authority may use proceeds of any revenue anticipation certificates issued for such purpose to acquire such outstanding debt or obligation, in whole or in part, and may itself or through a fiduciary or agent hold and pledge such acquired debt or obligation as security for the payment of such revenue anticipation certificates. The powers granted in this paragraph shall be unaffected by the language set forth in paragraph (13) of this Code section or any implications arising therefrom unless grants of assistance have been received by the authority with respect to such project, in which case approval in writing as set forth in paragraph (13) of this Code section shall be obtained prior to leasing to others within 20 years after completion of construction. Any revenues derived by the authority from any such lease shall be applied by the authority to the payment of any revenue anticipation certificates issued in connection with the acquisition and construction of the project and the payment, in whole or in part, of any outstanding debt or obligation of the lessee which was incurred in connection with the acquisition and construction of facilities of such lessee (including any

redemption or prepayment premium due thereon) or to the payment of any other expenses incurred in connection with acquiring, financing, maintaining, expanding, operating, or equipping the project;

(8) To extend credit or make loans to others for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans may be secured by such loan agreements, mortgages, security agreements, contracts, or other instruments or fees or charges, for a term not to exceed 40 years, and upon such terms and conditions as the authority shall determine reasonable in connection with such loans, including provisions for the establishment and maintenance of reserves and insurance funds, and in the exercise of powers granted by this Code section in connection with a project, to require the inclusion in any contract, loan agreement, security agreement, or other instrument such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of a project as the authority may deem necessary or desirable;

(9) To acquire, accept, or retain equitable interests, security interests, or other interests in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(10) To establish rates and charges for the services and use of the facilities of the authority;

(11) To accept gifts, grants, or devises of any property;

(12) To acquire by the exercise of the right of eminent domain any property essential to the purposes of the authority;

(13) To sell or lease within 20 years after the completion of construction of properties or facilities operated by the hospital authority where grants of financial assistance have been received from federal or state governments, after such action has first been approved by the department in writing;

(14) To exchange, transfer, assign, pledge, mortgage, or dispose of any real or personal property or interest therein;

(15) To mortgage, pledge, or assign any revenue, income, tolls, charges, or fees received by the authority;

(16) To issue revenue anticipation certificates or other evidences of indebtedness for the purpose of providing funds to carry out the duties of the authority; provided, however, that the maturity of any such indebtedness shall not extend for more than 40 years;

(17) To borrow money for any corporate purpose;

(18) To appoint officers, agents, and employees;

(19) To make use of any facilities afforded by the federal government or any agency or instrumentality thereof;

(20) To receive, from the governing body of political subdivisions issuing the same, proceeds from the sale of general obligation bonds or other county obligations issued for hospital authority purposes;

(21) To exercise any or all powers now or hereafter possessed by private corporations performing similar functions;

(22) To make plans for unmet needs of their respective communities;

(23) To contract for the management and operation of the project by a professional hospital or medical facilities consultant or management firm. Each such contract shall require the consultant or firm contracted with to post a suitable and sufficient bond;

(24) To provide management, consulting, and operating services including, but not limited to, administrative, operational, personnel, and maintenance services to another hospital authority, hospital, health care facility, as said term is defined in Chapter 6 of this title, person, firm, corporation, or any other entity or any group or groups of the foregoing; to enter into contracts alone or in conjunction with others to provide such services without regard to the location of the parties to such transactions; to receive management, consulting, and operating services including, but not limited to, administrative, operational, personnel, and maintenance services from another such hospital authority, hospital, health care facility, person, firm, corporation, or any other entity or any group or groups of the foregoing; and to enter into contracts alone or in conjunction with others to receive such services without regard to the location of the parties to such transactions;

(25) To provide financial assistance to individuals for the purpose of obtaining educational training in nursing or another health care field if such individuals are employed by, or are on an authorized leave of absence from, such authority or have committed to be employed by such authority upon completion of such educational training; to provide grants, scholarships, loans or other assistance to such individuals and to students and parents of students for programs of study in fields in which critical shortages exist in the authority's service area, whether or not they are employees of the authority; to provide for the assumption, purchase, or cancellation of repayment of any loans, together with interest and charges thereon, made for educational purposes to students, postgraduate trainees, or the parents of such students or postgraduate trainees who have

completed a program of study in a field in which critical shortages exist in the authority's service area; and to provide services and financial assistance to private not for profit organizations in the form of grants and loans, with or without interest and secured or unsecured at the discretion of such authority, for any purpose related to the provision of health or medical services or related social services to citizens;

(26) To exercise the same powers granted to joint authorities in subsection (f) of Code Section 31-7-72; and

(27) To form and operate, either directly or indirectly, one or more networks of hospitals, physicians, and other health care providers and to arrange for the provision of health care services through such networks; to contract, either directly or through such networks, with the Department of Community Health to provide services to Medicaid beneficiaries to provide health care services in an efficient and cost-effective manner on a prepaid, capitation, or other reimbursement basis; and to undertake other managed health care activities; provided, however, that for purposes of this paragraph only and notwithstanding the provisions of Code Section 33-3-3, as now or hereafter amended, a hospital authority shall be permitted to and shall comply with the requirements of Chapter 21 of Title 33 to the extent that such requirements apply to the activities undertaken by the hospital authority pursuant to this paragraph. No hospital authority, whether or not it exercises the powers authorized by this paragraph, shall be relieved of compliance with Article 4 of Chapter 18 of Title 50, relating to inspection of public records unless otherwise authorized by law. Any health care provider licensed under Chapter 30 of Title 43 shall be eligible to apply to become a participating provider under such a hospital plan or network which provides coverage for health care services which are within the lawful scope of his or her practice, provided that nothing contained in this Code section shall be construed to require any such hospital plan or network to provide coverage for any specific health care service.

History. — Ga. L. 1941, p. 241, § 5; Ga. L. 1945, p. 349, § 1; Ga. L. 1957, p. 116, § 1; Code 1933, § 88-1805, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1964, Ex. Sess., p. 15, § 1; Ga. L. 1969, p. 103, § 2; Ga. L. 1969, p. 805, § 1; Ga. L. 1978, p. 1970, § 1; Ga. L. 1980, p. 1140, § 1; Ga. L. 1982, p. 712, §§ 1, 2; Ga. L. 1983, p. 3, § 22; Ga. L. 1983, p. 1566, § 2; Ga. L. 1990, p. 310, § 1; Ga. L. 1991, p. 1391, § 3; Ga. L. 1995, p. 901, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2003, p. 569, § 2.

Cross references. — Certificate of need required for offering of health care facilities and services, § 31-6-40.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "not for profit" was substituted for "not-for-profit" in paragraph (25).

Law reviews. — For survey article on local government law, see 34 Mercer L. Rev. 225 (1982). For annual survey of local government law, see 35 Mercer L. Rev. 233 (1983).

JUDICIAL DECISIONS

Hospital authorities have unlimited and unqualified right to sue and be sued, just as any private corporation. Hipp v. Hospital Auth., 104 Ga. App. 174, 121 S.E.2d 273 (1961).

Hospital authorities are subject to suits for negligently inflicted injuries. — Phrase to sue and be sued subjects a hospital authority corporation to suits for damages for personal injuries the hospital negligently inflicts on one of the hospital's patients. Hospital Auth. v. Shubert, 96 Ga. App. 222, 99 S.E.2d 708 (1957).

Hospital authorities not entitled to sovereign immunity. — Hospital authorities, because the authorities are neither the state nor a department or agency of the state, are not entitled to the defense of sovereign immunity. Thomas v. Hospital Auth., 264 Ga. 40, 440 S.E.2d 195 (1994); Randolph County Hosp. Auth. v. Johnson, 215 Ga. App. 283, 450 S.E.2d 318 (1994).

Attack by authority upon state statute on state constitutional grounds. — Hospital authority has standing by statute to attack state law on grounds that the law violates due process and equal protection clauses of Georgia Constitution. Caldwell v. Hospital Auth., 248 Ga. 887, 287 S.E.2d 15 (1982).

Paragraph (1) not construed as waiver of sovereign immunity. — Ga. Const. 1983, Art. I, Sec. II, Para. IX does not require courts to construe the "sue and be sued" language of paragraph (1) of O.C.G.A. § 31-7-75 as a waiver of sovereign immunity. Howard v. Liberty Mem. Hosp., 752 F. Supp. 1074 (S.D. Ga. 1990).

State action immunity. — Hospital authority was an instrumentality, agency, or "political subdivision" of the state for purposes of the state action immunity doctrine and, thus, was immune from an antitrust action brought by a doctor who was denied staff privileges. Crosby v. Hospital Auth., 93 F.3d 1515 (11th Cir. 1996), cert. denied, 520 U.S. 1116, 117 S. Ct. 1246, 137 L. Ed. 2d 328 (1997).

In O.C.G.A. §§ 31-7-71 and 31-7-75, the Georgia legislature authorized hospital authorities (HA) power to acquire and lease hospitals to others, and must have anticipated that HA's could reduce competition, so state-action immunity applied to defendant HA's acquisition of a second hospital and the HA's lease to another defendant, an entity the HA created, and plaintiff Federal Trade Commission's complaint under 15 U.S.C. § 18 properly failed. FTC v. Phoebe Putney Health Sys., 663 F.3d 1369 (11th Cir. 2011) (Unpublished).

Hospital was entitled to sovereign immunity for any judgment in a medical malpractice action in excess of the hospital's liability insurance. Howard v. Liberty Mem. Hosp., 752 F. Supp. 1074 (S.D. Ga. 1990).

Discharge of governmental obligation to provide for health of people. — Under the Hospital Authorities Law, the governmental obligation to provide for the health of people can be discharged by acquisition of existing hospital facilities, by construction of completely new hospitals, and by sale or lease of hospital to others (as well as by the hospital authority's operation thereof). Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

Suitable private corporation could properly operate a hospital, either as lessee or as owner, so as to promote the public health functions of government. Richmond County Hosp. Auth. v. Richmond County, 255 Ga. 183, 336 S.E.2d 562 (1985).

Hospitals are intended to discharge identical governmental obligation. — Hospitals, whether owned directly by a county or city, or by an authority, are designed and intended to serve identical purposes of discharging the governmental obligation to provide for the health of the people. Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

Lease between related corporations. — Since corporations are separate and distinct entities in the eyes of the law, notwithstanding even common ownership of two corporations and the relationship of one corporation as the wholly-owned subsidiary of another, the requirement that there be a lease to others is fully satisfied

by a lease between two such related corporations. Richmond County Hosp. Auth. v. Richmond County, 255 Ga. 183, 336 S.E.2d 562 (1985).

Funding of project not for purely charitable purpose not unconstitutional. — Even assuming a purely charitable purpose is not involved in a project, the project's funding by a hospital authority does not violate Ga. Const. 1976, Art. IX, Sec. IV, Para. III (see now Ga. Const. 1983, Art. IX, Sec. II, Para. VIII), because a hospital authority is not a county, municipal corporation, or political subdivision of this state. Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

Language of O.C.G.A. § 31-7-75 does not require an "investment"; the language simply indicates that if an investment is made in connection with a lease, the rate of return will be limited to that which is reasonable. Richmond County Hosp. Auth. v. Richmond County, 255 Ga. 183, 336 S.E.2d 562 (1985).

Cash and accounts receivable are "personal property" under paragraph (14) of O.C.G.A. § 31-7-75. Richmond County Hosp. Auth. v. Richmond County, 255 Ga. 183, 336 S.E.2d 562 (1985).

Hospital authority members' action on corporations' boards did not breach their fiduciary duties or create a conflict of interest. Richmond County Hosp. Auth. v. Richmond County, 255 Ga. 183, 336 S.E.2d 562 (1985).

Hospital authority was engaging in ultra vires activity by renting and selling durable medical equipment to general public since there is no legislative authorization for such activity. Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985).

Limitation on delegation of functions of hospital authority. — Hospital authority did not have the statutory authority to create a trust and delegate to the trust the power and discretion to carry out the authority's functions, missions, and responsibilities. Kendall v. Griffin-Spalding County Hosp. Auth., 242 Ga. App. 821, 531 S.E.2d 396 (2000).

Liability for punitive damages. — Under appropriate circumstances, a hospital authority may be held liable for punitive damages. Hodges v. Effingham County Hosp. Auth., 182 Ga. App. 173, 355 S.E.2d 104 (1987).

Requirement that physician use hospital facilities and services is valid. — Hospital authority's resolution requiring a physician to use in-house facilities and services for hospital patients, where offered, does not invade a physician's province. Although the physician is required to use the facilities and equipment provided within the hospital complex for testing rather than similar facilities and equipment outside, the physician is nevertheless free to interpret the results of such tests and free to diagnose and prescribe treatment for all the physician's patients. Cobb County-Kennestone Hosp. Auth. v. Prince, 242 Ga. 139, 249 S.E.2d 581 (1978).

Hospital authority did not violate Clayton Act. — Whether the hospital authority authorized the purchase of the hospital without considering, among other factors, the anticompetitive adverse effect of the acquisition on healthcare in the community and alternatives to leasing the hospital to the defendants were irrelevant. The state put the ultimate say-so for the provision and management of healthcare in the hands of the healthcare authorities. FTC v. Phoebe Putney Health Sys., 793 F. Supp. 2d 1356 (M.D. Ga. 2011), aff'd, 663 F.3d 1369 (11th Cir. 2011).

Private corporation's records were public. — Private corporation's operation of a hospital and other facilities leased from a county hospital authority under O.C.G.A. § 31-7-75(7) was a service it performed "on behalf of" a county agency, so records related to that operation were public records under O.C.G.A. § 50-18-70(b)(2) of the Open Records Act, O.C.G.A. § 50-18-70 et seq.; whether other records were public required a factual determination as to how closely the records were related to this operation. Smith v. Northside Hosp., Inc., 302 Ga. 517, 807 S.E.2d 909 (2017).

Cited in Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU, 240 Ga. 444, 241 S.E.2d 196 (1978); Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981); Medical Ctr. Hosp. Auth. v. Andrews, 162 Ga.

App. 687, 292 S.E.2d 197 (1982); United States v. Wingo, 723 F. Supp. 798 (N.D. Ga. 1989); Colquitt County Hosp. Auth. v. Health Star, Inc., 262 Ga. 285, 417 S.E.2d 147 (1992); United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

OPINIONS OF THE ATTORNEY GENERAL

County hospital authority is authorized to make term loans. 1969 Op. Att'y Gen. No. 69-9.

Hospital authority can lease unimproved land to third party subject to prohibition against gratuities contained in Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. VI). 1971 Op. Att'y Gen. No. 71-190.

Authority's right to operate and charge for ambulance service. — Hospital authority has right to operate ambulance service for transportation of patients to and from the authority's hospital and may make charges for such service. 1965-66 Op. Att'y Gen. No. 66-176.

Authority may contract with private ambulance service for back-up service. — Hospital authority may enter into contract with private ambulance service, on trip by trip basis, to provide for back-up ambulance service for the authority. 1970 Op. Att'y Gen. No. 70-200.

Agreement to subsidize hospital authority ambulance service not violative of state Constitution. — Agreement by county with hospital authority in nature of contract in which county agrees to subsidize ambulance service operated by hospital authority does not violate any provisions of state Constitution and county would be authorized to pay sums of money to hospital authority for this service. 1968 Op. Att'y Gen. No. 68-280.

Unemployment compensation coverage for authority employees. — Inasmuch as creation and continued operation of a hospital authority is a joint venture of a hospital authority and the authority's supporting political subdivision or subdivisions, a determination as to whether the hospital authority's employees will be covered by unemployment compensation should be a joint determination made by both the hospital authority and the supporting political subdivision or subdivisions. 1971 Op. Att'y Gen. No. 71-55.

Open meetings and records provisions apply to hospital authorities. — Provisions for open meetings and records apply to hospital authorities. 1980 Op. Att'y Gen. No. U80-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.

C.J.S. — 41 C.J.S., Hospitals, § 12 et seq.

ALR. — Hospital's liability for personal injury or death of doctor, nurse, or attendant, 1 A.L.R.3d 1036.

31-7-75.1. Proceeds of sale of hospital held in trust to fund indigent health care.

(a) The proceeds from any sale or lease of a hospital owned by a hospital authority or political subdivision of this state, which proceeds shall not include funds required to pay off the bonded indebtedness of the sold hospital or any expense of the authority or political subdivision attributable to the sale or lease, shall be held by the authority or political subdivision in an irrevocable trust fund. Such proceeds in that fund may be invested in the same way that public moneys may be invested generally pursuant to general law and as permitted under

Code Section 31-7-83, but money in that trust fund shall be used exclusively for funding the provision of health care for the indigent residents of the political subdivision which owned the hospital or by which the authority was activated or for which the authority was created. If the funds available for a political subdivision in that irrevocable trust fund are less than $100,000.00, the principal amount may be used to fund the provision of indigent health care; otherwise, only the income from that fund may be used for that care. Such funding or reimbursement for indigent care shall not exceed the diagnosis related group rate for that hospital in each individual case.

(b) In the event a hospital authority which sold or leased a hospital was activated by or created for more than one political subdivision or in the event a hospital having as owner more than one political subdivision is sold or leased by those political subdivisions, each such constituent political subdivision's portion of the irrevocable trust fund for indigent health care shall be determined by multiplying the amount of that fund by a figure having a numerator which is the population of that political subdivision and a denominator which is the combined population of all the political subdivisions which owned the hospital or by which or for which the authority was activated or created.

(c) For purposes of health care for the indigent under this Code section, the standard of indigency shall be that determined under Code Section 31-8-43, relating to standards of indigency for emergency care of pregnant women, based upon 125 percent of the federal poverty level.

(d) This Code section shall not apply to the following actions:

(1) A reorganization or restructuring;

(2) Any sale of a hospital, or the proceeds from that sale, made prior to April 2, 1986; and

(3) Any sale or lease of a hospital when the purchaser or lessee pledges, by written contract entered into concurrently with such purchase or lease, to provide an amount of health care equal to that which would have otherwise been available pursuant to subsections (a), (b), and (c) of this Code section for the indigent residents of the political subdivisions which owned the hospital, by which the hospital authority was activated, or for which the authority was created. However, the exception to this Code section provided by this paragraph shall only apply to:

(A) Hospital authorities that operate a licensed hospital pursuant to a lease from the county which created the appropriate authority;

(B) Hospitals that have a bed capacity of more than 150 beds;

(C) Hospitals located in a county in which no other medical-surgical licensed hospital is located;

(D) Hospitals located in a county having a population of less than 45,000 according to the United States decennial census of 1990; and

(E) Hospitals operated by a hospital authority that entered into a lease-purchase agreement between such hospital and a private corporation prior to July 1, 1997.

History. — Code 1981, § 31-7-75.1, enacted by Ga. L. 1986, p. 744, § 2; Ga. L. 1996, p. 739, § 1; Ga. L. 2019, p. 148, § 3-1/HB 186.

The 2019 amendment, effective July 1, 2019, substituted "health care" for "hospital care" throughout this Code section; inserted "and as permitted under Code Section 31-7-83" near the middle of the second sentence of subsection (a); and deleted "and" at the end of subparagraphs (d)(3)(A) through (d)(3)(C).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a hyphen was deleted from between "diagnosis" and "related" in the last sentence of subsection (a).

31-7-75.2. Exemption from disclosure for potentially commercially valuable plan, proposal, or strategy.

Notwithstanding any other provision of law to the contrary, no Georgia nonprofit corporation in its operation of a hospital or other medical facility for the benefit of a governmental entity in this state and no hospital authority shall be required by Chapter 14 of Title 50 or Article 4 of Chapter 18 of Title 50 to disclose or make public any potentially commercially valuable plan, proposal, or strategy that may be of competitive advantage in the operation of the corporation or authority or its medical facilities and which has not been made public. This exemption shall terminate at such time as such plan, proposal, or strategy has either been approved or rejected by the governing board of such corporation or hospital authority. Except as provided in this Code section or as otherwise provided by law, hospital authorities shall comply with the provisions of Chapter 14 of Title 50 and Article 4 of Chapter 18 of Title 50.

History. — Code 1981, § 31-7-75.2, enacted by Ga. L. 1989, p. 553, § 1; Ga. L. 1993, p. 1020, § 2; Ga. L. 2001, p. 1172, § 1.

Law reviews. — For note on 1989 enactment of this Code section, see 6 Ga. St. U. L. Rev. 324 (1989). For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 162 (2001).

31-7-75.3. Home health agency services operated by hospitals.

Repealed by Ga. L. 2007, p. 47, § 31(1)/SB 103, effective May 11, 2007.

Editor's notes. — This Code section was based on Code 1981, § 31-7-75.3, enacted by Ga. L. 1998, p. 900, § 4.

31-7-76. Procedure in event of failure of authority to perform minimum functions; determination of removal from office; appointments to fill vacancies created by removal.

(a) The General Assembly declares that it is the intent of this article to provide a mechanism for the operation and maintenance of needed health care facilities in the several counties and municipalities of this state. It is the further intent of the General Assembly that, whenever an authority ceases to perform the minimum functions required for the continued operation and maintenance of needed health care facilities in the county or municipality, a procedure be made available to recognize the failure of the authority to perform these minimum functions and to provide for the orderly and responsible reorganization of the authority.

(b) Whenever it appears that an authority has ceased to perform the minimum functions required for the continued operation and maintenance of needed health care facilities in the county or municipality in which the authority is authorized to function, a petition may be filed in the superior court in the county requesting that the members of the authority be removed from office and that any vacancy created by a removal be filled as provided in Code Section 31-7-72 for the initial appointment of members of an authority. Each such petition shall be filed by one or more residents of the county in which the authority is authorized to function, or by the county governing authority, and shall be supported by petition of a number of residents of the county equal to 5 percent or more of the number of electors registered to vote in the general election last held in the county. In the case of an authority authorized to function solely within a municipality, the petition shall be filed by one or more residents of the municipality in which the authority is authorized to function, or by the municipal governing authority, and shall be supported by petition of a number of residents of the municipality equal to 5 percent or more of the number of electors registered to vote in the general election last held in the municipality.

(c) Upon the filing of any petition as provided in subsection (b) of this Code section, the judge of the superior court shall set a hearing to inquire into the merits of the petition not sooner than ten days nor later than 30 days from the date of filing of the petition. The hearing may be continued, in the discretion of the judge, on motion of any party.

(d) At each hearing held as provided in subsection (c) of this Code section, the judge, sitting without a jury, shall inquire into and determine the question of whether the authority has ceased to perform

the minimum functions required for the continued operation and maintenance of needed health care facilities in the county or municipality. In making his determination the judge shall consider, but shall not be limited by, whether the authority has:

(1) Failed to establish and enforce rates and charges as provided in Code Section 31-7-77;

(2) Failed to take any reasonable action when the failure has the effect of jeopardizing repayment of principal or interest, when due, on revenue anticipation certificates issued by the authority;

(3) Failed to take any reasonable action when the failure has the effect of breaching a contract providing for continued maintenance and use of the authority's facilities and entered into with a county or municipality as provided in Code Section 31-7-85;

(4) Failed to make plans for unmet needs of the community as authorized by paragraph (22) of Code Section 31-7-75;

(5) Failed to make and file its annual report as provided in Code Section 31-7-90;

(6) Failed to adopt an annual budget as provided in Code Section 31-7-90;

(7) Failed to conduct the annual audit as provided in Code Section 31-7-91;

(8) Failed to report or publish the annual audit as provided in Code Section 31-7-92;

(9) Failed to hold at least one meeting in the preceding calendar quarter; or

(10) Failed to take any other action required pursuant to this article.

(e) After giving all parties an opportunity to be heard, the judge shall determine, based on the evidence presented, whether the clear and convincing weight of the evidence is that the authority has ceased to perform the minimum functions required for the continued operation and maintenance of needed health care facilities in the county or municipality. In the event the judge so decides, he shall order the immediate removal from office of the members of the authority, except that no member shall be removed who demonstrates to the satisfaction of the judge his good faith attempt to fulfill his duties as a member of the authority. In the event the court denies the petition, the petition shall be dismissed.

(f) Vacancies created pursuant to this Code section shall be filled in the same manner as provided in Code Section 31-7-72 for the initial

appointment of members of an authority. Vacancies created by the expiration of the term or the resignation or disability of a member appointed pursuant to this Code section shall be filled as provided in Code Section 31-7-72 for the filling of vacancies.

History. — Code 1933, § 88-1804.1, enacted by Ga. L. 1978, p. 2009, § 1; Ga. L. 1984, p. 22, § 31.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 15.

C.J.S. — 41 C.J.S., Hospitals, §§ 8, 12, 13.

31-7-77. Prohibition on for-profit projects; rates and charges; utilization of revenues to pay certain obligations.

(a) No authority shall operate or construct any project for profit. It shall fix rates and charges consistent with this declaration of policy and such as will produce revenues only in amounts sufficient, together with all other funds of the authority, to pay principal and interest on certificates and obligations of the authority, to provide for maintenance and operation of the project, and to create and maintain a reserve sufficient to meet principal and interest payments due on any certificates in any one year after the issuance thereof. The authority may provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services.

(b) Notwithstanding subsection (a) of this Code section or any other provisions to the contrary, a joint hospital authority established pursuant to Code Section 31-7-72 which operates a hospital containing more than 900 licensed beds shall only utilize revenues to pay principal and interest on certificates and obligations of the authority, to pay pension plan obligations of the authority existing as of January 1, 2013, and for funding projects leased by the authority to a lessee pursuant to a contract entered into in accordance with paragraph (7) of Code Section 31-7-75; provided, however, that no more than 1 percent of revenues shall be utilized to pay for personnel costs for employees or contractors of the authority.

History. — Ga. L. 1941, p. 241, § 6; Code 1933, § 88-1806, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2013, p. 1037, § 1/SB 62.

JUDICIAL DECISIONS

Cited in Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970); Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981); United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

OPINIONS OF THE ATTORNEY GENERAL

Authority's right to operate and charge for ambulance service. — Hospital authority has right to operate ambulance service for transportation of patients to and from the authority's hospital and may make charges for such service. 1965-66 Op. Att'y Gen. No. 66-176.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 3.

C.J.S. — 41 C.J.S., Hospitals, § 21 et seq.

31-7-78. Issuance and sale of negotiable revenue anticipation certificates.

(a) Every authority is authorized to provide by resolution for the issuance and sale of negotiable revenue anticipation certificates for the purpose of:

(1) Paying all or any part of the cost of the acquisition, construction, alteration, repair, modernization, and other charges incident thereto in connection with any facilities or project;

(2) Paying all or any part of the cost of paying off or refinancing any outstanding debt or obligation of any nature owed by such authority or by persons who in furtherance of the authority's public purposes lease facilities from such authority pursuant to this article, provided that such outstanding debt or obligation was incurred in connection with the acquisition or construction of facilities of the authority or any such lessee; and

(3) Refunding outstanding certificates.

(b) In addition to paying from the proceeds of any revenue anticipation certificate issue interest accrued during the construction period of any project and other incidental and customary expenses such as those for engineering, inspections, and fiscal and legal services, the authority may fund as a part of such issue and set aside from the proceeds thereof an amount of money not exceeding 15 percent of the principal amount of such issue for the purpose of establishing a debt service reserve with respect to the principal and interest requirements of such issue. The authority may issue such types of certificates as it determines appropriate, including certificates on which principal and interest are payable:

(1) Exclusively from income or revenues of the operation of the authority financed with the proceeds of such certificates or together with such proceeds and grants from the federal government, or any instrumentality, or other person or corporation in aid of such projects;

(2) Exclusively from income and revenues of certain designated projects; or

(3) From revenues of the authority generally, including any debt service reserve established with a portion of the certificate proceeds.

Any such certificate may be additionally secured by the hypothecation of any revenues received from participating units or subdivisions and by mortgage of the project or any part thereof constituting real or personal property of the authority, except as prohibited by law.

History. — Ga. L. 1941, p. 241, § 7; Ga. L. 1955, p. 618, § 1; Code 1933, § 88-1807, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1980, p. 1140, § 2.

JUDICIAL DECISIONS

Cited in Hospital Auth. v. Stewart, 226 Ga. 530, 175 S.E.2d 857 (1970); Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981).

OPINIONS OF THE ATTORNEY GENERAL

County hospital authority is authorized to make term loans. 1969 Op. Att'y Gen. No. 69-9.

31-7-79. Liability on revenue certificates; tax exemption.

Neither the members of an authority nor any person executing certificates on behalf of an authority shall be personally liable thereon by reason of the issuance thereof. The certificates and other obligations of an authority shall not be, and shall so state on the face thereof, a debt of the city, the county, the state or any political subdivision thereof, or any combination of subdivisions acting jointly as provided in this article. Certificates of any authority are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all taxes.

History. — Ga. L. 1941, p. 241, § 7; Ga. L. 1955, p. 618, § 1; Code 1933, § 88-1808, enacted by Ga. L. 1964, p. 499, § 1.

Law reviews. — For article, "Hospital Liability for Physician Negligence in Georgia: A Realistic Approach," see 37 Mercer L. Rev. 701 (1986).

JUDICIAL DECISIONS

Code section constitutional. — This section does not violate provisions of Ga. Const. 1976, Art. VII, Sec. III, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. IV, Para. VIII) since revenue anticipation certificates issued by a hospital authority are not obligations or debts of the state, nor a pledge of the state's credit, but are a corporate debt of the authority. Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

Cited in Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981); United States v. Hosp.

Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

31-7-80. Form and contents of revenue certificates; validity of signatures thereon.

Certificates of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates; mature at such time or times; bear interest at such rate or rates not exceeding 9 percent per annum; be in such denomination or denominations; be in such form, either coupon or registered; carry such conversion or registration privileges; have such rank or priority; be executed in such manner; be payable in such medium of payment, at such place or places; and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide. In the event that any of the members or officers of the authority whose signatures appear on any certificates or coupons shall cease to be such members or officers before the delivery of such certificates, such signatures shall nevertheless be valid and sufficient for all purposes.

History. — Ga. L. 1941, p. 241, § 8; Ga. L. 1957, p. 485, § 1; Code 1933, § 88-1809, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1968, p. 1097, § 1; Ga. L. 1970, p. 144, § 1.

Cross references. — Repeal of interest rate limitations, § 36-82-123.

31-7-81. Confirmation and validation of revenue certificates.

(a) Certificates of an authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36; and, when validated, the judgment of validation shall be final and conclusive with respect to such certificates and against the authority issuing the same.

(b) In the event that the payments to be made by any city or county, under contract entered into between the authority and the subdivision, are pledged to the security or payment of revenue certificates sought to be validated, the hospital authority, as an integral part of the validation proceedings, shall have a right of action against the contracting subdivision or subdivisions for a declaratory adjudication of the validity and binding effect of the contract, the actual controversy therein being whether or not the contract is in all respects valid and binding upon the subdivision or subdivisions. The subdivision or subdivisions shall be made a party or parties to the action, and it shall be incumbent on the subdivisions to defend against an adjudication of the validity of such contract or be forever bound. Notice of the proceedings shall be included in the notice of validation hearing required to be issued and published

by the clerk of the superior court in which such validation proceeding is pending. Any citizen resident in any subdivision which is a party to the contract may intervene in the validation proceedings at or before the time set for the validation hearing by order of the superior court and assert any ground or objection to the validity and binding effect of the contract on his own behalf and on behalf of the subdivision and all citizens, residents, and property owners thereof. An adjudication as to the validity of the contract, unexcepted to within the time provided for exceptions in Article 3 of Chapter 82 of Title 36, shall be conclusive and binding upon the subdivision or subdivisions and the resident citizens and property owners thereof.

History. — Ga. L. 1941, p. 241, § 12; Ga. L. 1955, p. 618, § 3; Code 1933, § 88-1810, enacted by Ga. L. 1964, p. 499, § 1.

Cross references. — Venue for proceedings to confirm and validate revenue bonds issued by hospital authority, § 36-82-83.

JUDICIAL DECISIONS

Right of private citizen intervention does not create class action. — Statutory right, created in O.C.G.A. § 31-7-81(b), of private citizens to intervene in actions to validate and confirm hospital revenue anticipation certificates does not create a statutory class action. Cheely v. State, 165 Ga. App. 755, 302 S.E.2d 435 (1983).

31-7-82. Enforcement of rights of revenue certificate holders; procedure in event of default.

Obligations of an authority evidenced by certificates and trust indentures and mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the authority. The authority may in such instruments provide for pledging of all or any part of its gross or net fees, tolls, charges, revenues, and incomes and for mortgaging of all or any part of its real or personal property and may covenant against pledging any or all of its income, revenues, tolls, charges, or fees; and the authority may further provide for the disposition of proceeds realized from the sale of any mutilated certificates and necessary provisions as to payment and redemption of such certificates. Undertakings of an authority may likewise prescribe the procedure by which certificate holders may enforce rights against the authority and provide for such rights upon breach of any covenant, condition, or obligation of the authority. Trust indentures, mortgages, or deeds to secure debt executed by an authority may provide that, in the event of default by the authority in the payment of principal and interest on certificates or obligations or breach of any covenant, a trustee or trustees appointed under the terms of the indenture, mortgage, or deed to secure debt, which shall be a bank or trust company authorized to exercise trust powers, may take

possession of and use, operate, and manage any project mortgaged as security for the repayment of any indebtedness of the authority and provide the terms and conditions upon which the trustee or trustees or holders of certificates may enforce any right relating to such certificates. Such trust indentures, mortgages, and deeds to secure debt may contain such provisions, not inconsistent with law, as may be deemed necessary or desirable by the authority.

History. — Ga. L. 1941, p. 241, § 9; Code 1933, § 88-1811, enacted by Ga. L. 1964, p. 499, § 1.

31-7-83. Investment of surplus moneys and moneys received through issuance of revenue certificates.

(a) Pending use for the purpose for which received, each hospital authority created by and under this article is authorized and empowered to invest all moneys or any part thereof received through the issuance and sale of revenue certificates of the authority in any securities which are legal investments or which are provided for in the trust indenture securing such certificates or other legal investments; provided, however, that such investments shall be used at all times while held, or upon sale, for the purposes for which the money was originally received and no other. Contributions or gifts received by any authority shall be invested as provided by the terms of the contribution or gift or in the absence thereof as determined by the authority.

(b) In addition to the authorized investments in subsection (a) of this Code section and in Code Section 36-83-4, hospital authorities that have ceased to own or operate medical facilities for a minimum of seven years, have paid off all bonded indebtedness and outstanding short-term or long-term debt obligations, and hold more than $20 million in funds for charitable health care purposes may invest a maximum of 30 percent of their funds in the following:

(1) Shares of mutual funds registered with the Securities and Exchange Commission of the United States under the Investment Company Act of 1940, as amended; and

(2) Commingled funds and collective investment funds maintained by state chartered banks or trust companies or regulated by the Office of the Comptroller of the Currency of the United States Department of the Treasury, including common and group trusts, and, to the extent the funds are invested in such collective investment funds, the funds shall adopt the terms of the instruments establishing any group trust in accordance with applicable United States Internal Revenue Service Revenue Rulings.

History. — Ga. L. 1947, p. 1138, § 1; Code 1933, § 88-1820, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 805, § 2; Ga. L. 2019, p. 148, § 3-2/HB 186.

The 2019 amendment, effective July 1, 2019, designated the existing provisions as subsection (a); substituted "shall" for "will" in the proviso of the first sentence of subsection (a); and added subsection (b).

JUDICIAL DECISIONS

Cited in Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

OPINIONS OF THE ATTORNEY GENERAL

Deposits in state chartered banks are legal investments to extent insured by F.D.I.C. — Deposit of funds by hospital authority at interest in any chartered state bank is authorized legal investment to extent the deposits are insured by the Federal Deposit Insurance Corporation. 1969 Op. Att'y Gen. No. 69-500.

Authority may deposit funds exceeding F.D.I.C. insurance if depository gives bond. — Collecting officer or officer holding funds of hospital authority may deposit those funds in local bank or banks notwithstanding the fact that amount so deposited may exceed Federal Deposit Insurance Corporation insurance on account, if authority required depository to give bond or make deposit of securities in trust to secure such deposits, pursuant to former Code 1933, §§ 89-810 and 89-812. 1969 Op. Att'y Gen. No. 69-500.

31-7-84. Payment for authority's services and facilities; levy of tax by political subdivisions; compliance by authority with county budgetary procedures.

(a) An authority shall have no power to tax, but upon the adoption of the resolution by the governing body or bodies of participating units or subdivisions as provided in this article and the execution of a contract for the use of facilities and services of the authority by political subdivisions or participating units as authorized in Code Section 31-7-85, provision shall be made annually by such participating units or political subdivisions contracting with an authority for the payment for the services and facilities of the authority used by the participating units or subdivisions or the residents thereof out of general funds of the participating units or subdivisions or out of tax revenues realized for the purpose of providing medical care or hospitalization for the indigent sick and others entitled to the use of the services and facilities of the authority.

(b) For the purpose of providing such tax revenues as specified above, there is authorized to be levied an ad valorem tax not exceeding seven mills, exclusive of all other taxes which may be levied by counties or by cities or by towns, from which revenues when realized there shall be appropriated annually sums sufficient to pay for the cost of the use of the services and facilities of authorities by participating subdivisions or the residents thereof pursuant to the provisions and covenants of the

contract between such participating units and subdivisions and authorities. In determining the cost of such services and facilities furnished pursuant to such contract, there may be included, but without limiting same, the following:

(1) The cost of acquiring, constructing, altering, repairing, renovating, improving, and equipping projects; and

(2) Principal, interest, and sinking fund and other reserve requirements in connection with the issuance of revenue certificates, bonds, or obligations by authorities to finance, in whole or in part, the cost of projects and the payment of expenses incident thereto; the cost of operating, maintaining, and repairing such projects; and the cost of retiring, refinancing, or refunding any outstanding debt or other obligation of any nature incurred by such authorities.

(c) Whenever the fiscal operations of any county falling within the classification of this chapter are governed by any statutory budget law applicable to the fiscal affairs and budget of such county, the governing authorities of such county shall have full power and authority hereunder to require the hospital authority to conform, in whole or in part, to the same budgetary procedures as are made binding by statute upon the county government itself.

History. — Ga. L. 1941, p. 241, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 103, § 1; Ga. L. 1955, p. 618, § 2; Code 1933, § 88-1812, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1967, p. 552, § 1; Ga. L. 1968, p. 1098, § 1.

JUDICIAL DECISIONS

Cited in United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

County authority may provide for funding of the operation and maintenance of a hospital during renovation, a reserve fund for hospital operations, payment of currently outstanding hospital authority obligations, and such amounts as may be necessary to assure the continued operation and maintenance of the hospital during the term of the contract. Cheely v. State, 251 Ga. 685, 309 S.E.2d 128 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.

C.J.S. — 41 C.J.S., Hospitals, §§ 5 et seq., 11.

31-7-85. Contracts with political subdivisions.

(a) For the purpose of using such facilities, any city or county is authorized by action of its governing body to enter into contracts with an authority for such periods of time not exceeding 40 years as shall be necessary to provide for the continued maintenance and use of the facilities of an authority. Sums due and payable under such contract

shall be determined from year to year during the period of such contract and no sums shall be paid for the services in excess of the amounts necessary to provide for the maintenance and operation of projects of authorities and such sums as shall be necessary to provide adequate and necessary facilities for medical care and hospitalization of the indigent sick, including reasonable reserves necessary for expansion and necessary for the payment of the cost of facilities of the projects, provided that any such contract may obligate a city or county or any combination thereof to pay for such services a fixed and definite minimum sum each year based or calculated upon the anticipated cost of such services including the cost and expense of making the facilities of the authority available for the furnishing and performance of such services. The contracts authorized under this Code section to be entered into between cities or counties or any combination thereof and an authority may provide for the conveyance or lease of any existing hospital facilities or projects to an authority created by any such cities or counties for a nominal consideration only, provided that such conveyance shall contain a clause providing that, upon dissolution of the authority, such hospital facilities or projects shall revert to the city or county conveying the same to the authority and provided, further, that no property so conveyed may be mortgaged or in any way given as security for an indebtedness of the authority; this limitation is not to be construed as limiting the right of the authority to pledge or hypothecate revenues which may be realized by the authority from the operation of any property so conveyed to the authority.

(b) When, in accordance with this article, any county shall activate a hospital authority for such county and such authority shall acquire or construct or shall make preparations to acquire or construct a hospital in the county, any municipality in the county shall be authorized to contract with the hospital authority for the care in such hospital of indigent sick or injured persons who are residents of the municipality either on a per-patient-per-day basis or for a fixed amount of money payable at such time as the contracting parties may agree upon; and any such contract may, at the election of such municipality, be binding upon it for a period of not exceeding 40 years. Such contract and the amount to be received by the hospital authority thereunder may be pledged by the hospital authority as security for the payment of the principal and interest of any bonds or revenue anticipation certificates which it may issue in order to acquire or construct the hospital.

History. — Ga. L. 1941, p. 241, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 103, § 1; Ga. L. 1955, p. 618, § 2; Code 1933, § 88-1813, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1964, Ex. Sess., p. 15, § 2.

JUDICIAL DECISIONS

Promotion of public health constitutes public purpose for which powers of taxation can be exercised lawfully by state under Ga. Const. 1976, Art. VII, Sec. II, Para. I (see now Ga. Const. 1983, Art. VII, Sec. III, Para. I) and by counties under Ga. Const. 1976, Art. IX, Sec. V, Para. I (see now Ga. Const. 1983, Art. IX, Sec. IV, Para. I). Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

Provision of funds under general taxing power for care of indigents. — Under general taxing power, county can for purpose of public health provide the county's indigent sick the funds with which to obtain treatment, even if not by contract with hospital. Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

General funds or special tax for care of indigents authorized. — County or county's cities or towns are authorized to provide for care for indigents by use of their general funds or by levying a special ad valorem tax for this purpose. Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

Use of public funds for treatment of indigent patients in private hospital not unconstitutional. Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

County authority may provide for funding of the operation and maintenance of a hospital during renovation, a reserve fund for hospital operations, payment of currently outstanding hospital authority obligations, and such amounts as may be necessary to assure the continued operation and maintenance of the hospital during the term of the contract. Cheely v. State, 251 Ga. 685, 309 S.E.2d 128 (1983).

Cited in Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981); United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

OPINIONS OF THE ATTORNEY GENERAL

Hospital authority not within provisions of Constitution authorizing temporary loans. — County hospital authority is not either a county, municipality, political subdivision of the state authorized to levy taxes, or county board of education so as to come within provisions of Ga. Const. 1976, Art. IX, Sec. VII, Para. IV (see now Ga. Const. 1983, Art. IX, Sec. V, Para. V). 1969 Op. Att'y Gen. No. 69-9.

Unemployment compensation coverage for authority employees. — Inasmuch as creation and continued operation of a hospital authority is a joint venture of a hospital authority and the authority's supporting political subdivision or subdivisions, determination as to whether hospital authority's employees will be covered by unemployment compensation should be a joint determination made by both the hospital authority and the supporting political subdivision or subdivisions. 1971 Op. Att'y Gen. No. 71-55.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.

C.J.S. — 41 C.J.S., Hospitals, §§ 6 et seq., 12.

31-7-86. Manner of operating property conveyed or leased to authority.

Any property conveyed or leased to an authority by cities or counties shall be operated by the authority to which the same is conveyed, together with other facilities of the authority, in accordance with this

article and the resolution of the governing body or bodies or participating units.

History. — Ga. L. 1941, p. 241, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 103, § 1; Ga. L. 1955, p. 618, § 2; Code 1933, § 88-1814, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Cited in Richmond County Hosp. Auth. v. Richmond County, 255 Ga. 183, 336 S.E.2d 562 (1985).

31-7-87. Hypothecation or mortgaging of purchased hospital facilities.

Should an authority acquire by purchase existing hospital facilities of political subdivisions and pay the reasonable value therefor, nothing in this article shall be construed to prevent the hypothecation or mortgaging of such facilities as security for the repayment of any indebtedness which may be legally incurred by such authority.

History. — Ga. L. 1941, p. 241, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 103, § 1; Ga. L. 1955, p. 618, § 2; Code 1933, § 88-1815, enacted by Ga. L. 1964, p. 499, § 1.

31-7-88. Payment of general obligations.

Obligations of an authority other than certificates shall be payable from general funds of an authority and shall at no time be a charge against any special fund allocated to the payment of certificates except upon payment of current annual maturities and reserves required to be created under Code Section 31-7-77. The maturity of any such obligations shall not extend for more than 40 years.

History. — Ga. L. 1941, p. 241, § 11; Code 1933, § 88-1816, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1974, p. 424, § 1.

31-7-89. Procedure for dissolution; disposition of property.

By joint action of the board of trustees of an authority and the governing bodies of participating units, authorities created under and pursuant to the terms of this article may be dissolved, provided that no such dissolution shall in any way impair the rights of third persons or the contracts of the authority with such third persons. Disposition to be made of the property of the authority upon dissolution shall be covered in any resolution adopted by the participating units and the board of trustees of the authority. At no time, however, shall any authority upon

dissolution convey any of its property, except as may be otherwise authorized by law, to any private person, association, or corporation.

History. — Ga. L. 1941, p. 241, § 13; Code 1933, § 88-1817, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Cited in Cox Enters., Inc. v. Carroll City/County Hosp. Auth., 247 Ga. 39, 273 S.E.2d 841 (1981); United States v. Hosp. Auth. of Charlton County (In re Hosp. Auth. of Charlton County), 56 Bankr. Ct. Dec. (LRP) 220 (Bankr. S.D. Ga. July 3, 2012).

OPINIONS OF THE ATTORNEY GENERAL

Open meetings and records provisions apply to hospital authorities. — Provisions for open meetings and records apply to hospital authorities. 1980 Op. Att'y Gen. No. U80-6.

Upstream of surplus to "participating unit." — It is implicit in the language of O.C.G.A. § 31-7-89, and in the basic nature of the joint creation of an authority formed by two "participating units," that the authority may not upstream surplus to one participating unit without the concurrence of the other. 1987 Op. Att'y Gen. No. U87-19.

31-7-89.1. "Control" defined; sale or lease by hospital authority subject to requirements of Article 15 of this chapter.

(a) As used in this Code section, the term "control" means ownership of 50 percent or more of the assets of the entity in question or the ability to influence significantly the operations or decisions of the entity in question.

(b) The sale or lease of assets of a hospital owned or operated by a hospital authority to an individual, business corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint venture, nonprofit corporation, hospital authority, or any other for profit or not for profit entity shall be subject to the notice, hearing, certification, enforcement, and other requirements of Article 15 of this chapter which are applicable to dispositions of nonprofit hospitals to acquiring entities if the disposition of assets constitutes a sale or lease of 50 percent or more of the assets of a hospital having a permit under this chapter or constitutes a sale or lease which, when combined with one or more transfers between the same or related parties occurring within a period of five years, constitutes a sale or lease of 50 percent or more of the assets of a hospital having a permit under this chapter; provided, however, that the provisions of this Code section shall not apply to the restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in

question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is located outside such county.

(c) Notwithstanding the provisions of subsection (b) of this Code section, the sale or lease of assets of a hospital owned or operated by a hospital authority to another hospital authority whose area of operation is a county contiguous to the county in which is located the hospital whose sale or lease is proposed shall not be subject to the requirements of Article 15 of this chapter.

(d) Notwithstanding any other provision of this article to the contrary, a hospital authority which is located in a county having a population of 50,000 or fewer, according to the United States decennial census of 1990 or any future such census, may locate a project outside that hospital authority's area of operation if such location is in a county which is contiguous to the county of such hospital authority's area of operation.

History. — Code 1981, § 31-7-89.1, enacted by Ga. L. 1997, p. 1091, § 2; Ga. L. 1999, p. 850, § 3.1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "this chapter" was substituted for "Chapter 7 of Title 31" in subsection (b).

JUDICIAL DECISIONS

Cited in Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-90. Annual report; budget.

The board of trustees of each authority created under this article shall file with the governing body or bodies of political subdivisions or participating units, on forms prescribed by the department, an annual report of the activities of the authority and shall annually consider and adopt as a part of such report a budget, which budget shall be filed with the annual report. The board of trustees may hold a public hearing on the budget, and representatives of any governing body within the area of operation of the authority or any other person having an interest in such budget shall have the right to be heard with respect to any matter covered by the report of the board of trustees or by the budget.

History. — Ga. L. 1941, p. 241, § 14; Code 1933, § 88-1818, enacted by Ga. L. 1964, p. 499, § 1.

31-7-90.1. Community benefit report; report disclosing member ownership in entities transacting business with authority.

(a) Each hospital authority created by and under this article shall annually prepare a community benefit report disclosing the cost of indigent and charity care provided by such authority for the preceding year not later than 90 days after the close of the fiscal or calendar year. Such report provided for in this Code section shall include a statement of the cost and type of indigent and charity care provided by the authority, including the number of indigent persons served, categorization of those persons by county of residence, as well as the cost of indigent and charity care provided in dollars. Such community benefit report shall be filed with the clerk of superior court of the county in which the authority's hospital is located, as well as with the governing body or bodies of such authority's participating units.

(b) Each hospital authority created by and under this article shall also annually prepare a report indicating any entity in which a member or member's family has a direct or indirect ownership of assets or stock constituting between 10 percent and 25 percent which transacted business with the authority during the previous year. Such report shall be filed with the clerk of superior court of the county in which the authority's hospital is located, as well as with the governing body or bodies of such authority's participating units.

History. — Code 1981, § 31-7-90.1, enacted by Ga. L. 1997, p. 1404, § 4.

Law reviews. — For article, "Putting the Community Back into the 'Community Benefit' Standard," see 44 Ga. L. Rev. 375 (2010).

31-7-91. Required annual audit.

Each hospital authority created by and under this article shall ensure that an annual audit of the financial affairs, books, and records of such authority is conducted at the end of each fiscal year for the preceding year. Each hospital authority shall obtain either a certified public accountant or a firm of certified public accountants to conduct such audit. The auditor so appointed shall perform the audit in accordance with generally accepted accounting principles and shall submit a complete and final report and audit to the authority not later than 90 days after the close of the fiscal year. All audits provided for in this Code section shall be certified to and shall include, but in no way be limited to, a full and complete audit containing a balance sheet, profit and loss statement, and statement of receipts and disbursements.

History. — Code 1933, § 88-1821, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Cited in Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

31-7-92. Filing of audits.

All final audits provided for in Code Section 31-7-91 shall be reproduced in sufficient number and copies of the audit shall be filed with the clerk of the superior court in the county where any hospital is operated by a hospital authority and in the office of the clerk of the superior court of any county that is a participating unit of the authority. In the event any hospital is operated by a municipal hospital authority, the audit required by this Code section to be filed with the office of the clerk of the superior court shall be filed in the office of city clerk, clerk of council, clerk of the board of aldermen, or clerk of the governing body of the municipality, in lieu of being filed with the clerk of the superior court.

History. — Code 1933, § 88-1822, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1986, p. 489, § 1; Ga. L. 1991, p. 94, § 31.

JUDICIAL DECISIONS

Cited in Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

OPINIONS OF THE ATTORNEY GENERAL

Open meetings and records provisions apply to hospital authorities. — Provisions for open meetings and records apply to hospital authorities. 1980 Op. Att'y Gen. No. U80-6.

31-7-93. Failure to provide for audit.

In the event any hospital authority shall fail or refuse to provide for an annual audit and have such audit prepared and filed as set forth in Code Sections 31-7-91 and 31-7-92, any taxpayer of any participating unit of such authority or the governing authority of such unit may petition the superior court of the county wherein the authority operates a hospital to require the authority to have such audit prepared and filed as provided by the above Code sections. The judge of such court shall set a time for the hearing on such petition and after notice to the authority shall hear and determine the petition. If it is determined that the authority has failed to comply with the requirements for the preparation and filing of the audit, the judge shall pass such orders as are necessary to effectuate compliance with such requirements. In the event the authority fails to have an audit prepared and filed as required

by court order, the members of the authority shall be subject to contempt proceedings by the court as provided by law.

History. — Code 1933, § 88-1823, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Cited in Bradfield v. Hospital Auth., 226 Ga. 575, 176 S.E.2d 92 (1970).

31-7-94. Grants to hospital authorities and rural hospital organizations.

The state is authorized to make grants, as funds are available, to hospital authorities and rural hospital organizations for public health purposes, provided that any funds so granted shall be distributed to and among the various public hospital authorities and rural hospital organizations in the state in proportion to the number of hospital beds operated by each such hospital authority or rural hospital organization at the end of the calendar year preceding the grant. Funds shall be distributed to public hospitals and rural hospital organizations operated by consolidated governments in the same manner as to authority hospitals prescribed in this Code section and rural hospital organizations. Grants made by the state pursuant to this Code section shall be administered by the Department of Community Health in accordance with Code Section 31-7-94.1 and such rules, regulations, and procedures as it shall deem necessary for effective administration of such grants.

History. — Code 1933, § 88-1824, enacted by Ga. L. 1975, p. 777, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2002, p. 1132, § 2; Ga. L. 2017, p. 411, § 1/SB 14.

The 2017 amendment, effective May 8, 2017, throughout this Code section, inserted "and rural hospital organizations"; inserted "or rural hospital organization" near the end of the first sentence; and inserted "Code Section 31-7-94.1 and" in the middle of the third sentence.

31-7-94.1. Rural Hospital Organization Assistance Act; legislative findings; certification of rural hospitals for grant eligibility; rules and regulations.

(a) This Code section shall be known and may be cited as the "Rural Hospital Organization Assistance Act of 2017."

(b) The General Assembly finds that hospital authorities and rural hospital organizations are essential in order to promote public health goals of the state. The General Assembly further finds that many rural hospital organizations are in desperate financial straits. In order to preserve the availability of primary health care services provided by

such hospitals to residents of rural counties, the General Assembly has determined that a program of state grants is necessary and recommends funds be made available to such hospitals. These grants will be conditioned upon those hospitals continuing to furnish essential health care services to residents in their areas of operation as well as engaging in the long-range planning and any restructuring which may be required for those hospitals to survive by devising cost-effective and efficient health care systems for meeting local health care needs.

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

(1) "Hospital" means an institution which has a permit as a hospital issued under this chapter.

(2) "Rural county" means a county having a population of less than 50,000 according to the United States decennial census of 2010 or any future such census; provided, however, that for counties which contain a military base or installation, the military personnel and their dependents living in such county shall be excluded from the total population of such county for purposes of this definition.

(3) "Rural hospital organization" means an acute care hospital licensed by the department pursuant to Article 1 of this chapter that:

(A) Provides inpatient hospital services at a facility located in a rural county or is a critical access hospital;

(B) Participates in both Medicaid and medicare and accepts both Medicaid and medicare patients;

(C) Provides health care services to indigent patients;

(D) Has at least 10 percent of its annual net revenue categorized as indigent care, charity care, or bad debt;

(E) Annually files IRS Form 990, Return of Organization Exempt From Income Tax, with the department, or for any hospital not required to file IRS Form 990, the department will provide a form that collects the same information to be submitted to the department on an annual basis;

(F) Is operated by a county or municipal authority pursuant to this article or is designated as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code; and

(G) Is current with all audits and reports required by law.

(d) A rural hospital organization may apply for a grant available under subsection (e) of this Code section if it has been certified by the department as:

(1) A rural hospital organization; and

(2) Having submitted a grant application which includes:

(A) A problem statement indicating the problem the rural hospital organization proposes to solve with the grant funds;

(B) The goals of the proposed solution;

(C) The organizational structure, financial system, and facilities that are essential to the proposed solution;

(D) The projected longevity of the proposed solution after the grant funds are expended;

(E) Evidence of collaboration with other community health care providers in achieving the proposed solution;

(F) Evidence that funds for the proposed solution are not available from another source;

(G) Evidence that the grant funds would assist in returning the rural hospital organization to an economically stable condition or that any plan for closure or realignment of services involves development of innovative alternatives for the discontinued services;

(H) Evidence of a satisfactory record-keeping system to account for grant fund expenditures within the rural hospital organization and the rural county;

(I) A community health survival plan describing how the plan was developed, the goals of the plan, the links with existing health care providers under the plan, the implementation process including quantification of indicators of the hospital's financial well-being, measurable outcome targets, and the current condition of such hospital; and

(J) Such additional evidence as the department may require to demonstrate the feasibility of the proposed solution for which grant funds are sought.

(e) The department is authorized to make grants to rural hospital organizations certified as meeting the requirements of subsection (d) of this Code section. Grants to rural hospitals owned or operated by hospital authorities or rural hospital organizations may be for any of the following purposes:

(1) Infrastructure development, including, without being limited to, health information technology, facility renovation, or equipment acquisition; provided, however, that the amount granted to any qualified hospital may not exceed the expenditure thresholds that would constitute a new institutional health service requiring a

certificate of need under Chapter 6 of this title and the grant award may be conditioned upon obtaining local matching funds;

(2) Strategic planning, including, without being limited to, strategies for personnel retention or recruitment, development of an emergency medical network, or the development of a collaborative and integrated health care delivery system with other health care providers, and the grant award may be conditioned upon obtaining local matching funds for items such as telemedicine, billing systems, and medical records. For the purposes of this paragraph, the maximum grant to any grantee shall be $500,000.00;

(3) Nontraditional health care delivery systems, excluding operational funds and purposes for which grants may be made under paragraph (1) or (2) of this subsection. For the purposes of this paragraph, the maximum grant to any grantee shall be $2.5 million; or

(4) The provision of 24 hour emergency room services open to the general public.

(f) In awarding grants under this Code section, the department may give priority to any otherwise eligible rural hospital organization which meets the definition of a necessary provider as specified in the state's "Rural Healthcare Plan" of May, 1998.

(g) The maximum grant to any hospital authority or rural hospital organization shall be $4 million per calendar year.

(h) The department shall be authorized to certify rural hospital organizations as provided in subsection (d) of this Code section and shall adopt regulations to implement its powers and duties under this Code section.

History. — Code 1981, § 31-7-94.1, enacted by Ga. L. 2017, p. 411, § 2/SB 14; Ga. L. 2018, p. 1112, § 31/SB 365.

Effective date. — This Code section became effective May 8, 2017.

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, substituted "Having" for "Has" at the beginning of paragraph (d)(2).

Editor's notes. — This Code section formerly pertained to the Rural Hospital Assistance Act. The former Code section was based on Code 1981, § 31-7-94.1, enacted by Ga. L. 1999, p. 469, § 1; Ga. L. 2000, p. 136, § 31; Ga. L. 2002, p. 1132, § 3; Ga. L. 2006, p. 152, § 2D/HB 1178; Ga. L. 2009, p. 453, § 1-8/HB 228 and was repealed by Ga. L. 2017, p. 411, § 2/SB 14, effective May 8, 2017.

31-7-95. Funding of medical education provided by hospital authorities and designated teaching hospitals.

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

(1) "Designated teaching hospital" means a teaching hospital operated by other than a hospital authority, which hospital agrees to

contract with the state to offer or continue to offer a residency program approved by the American Medical Association, which program has at least 50 residents and which hospital operates a 24 hour, seven-day-per-week emergency room open to the public and which hospital files a semiannual statistical report consistent with those filed by other state funded tertiary, neonatal, obstetrical centers with the Department of Community Health.

(2) "Hospital authority" means a hospital authority operating a teaching hospital which offers a residency program approved by the American Medical Association.

(3) "Resident" means a physician receiving medical education and training through a teaching hospital operated by a hospital authority or designated teaching hospital.

(b) The General Assembly finds that the major hospital authorities and designated teaching hospitals in this state provide a valuable service benefiting the entire state by operating teaching hospitals which provide necessary medical education and training for physicians; this service is provided through residency programs offered by these teaching hospitals. By the provision of residency programs operated by state teaching hospitals, the state has recognized its responsibility to fund the cost of training physicians; and it is the purpose of this Code section to recognize that the state has a similar responsibility when the medical education and training are provided by teaching hospitals operated by hospital authorities or by designated teaching hospitals.

(c) For each resident receiving medical education and training through a teaching hospital operated by a hospital authority or designated teaching hospital, the Department of Community Health shall pay no more than $10,000.00 per annum to the hospital authority or designated teaching hospital. Such payments shall be made based upon certifications by the hospital authorities or designated teaching hospitals to the Department of Community Health. The Department of Community Health is authorized to designate the Georgia Board of Health Care Workforce to promulgate rules and regulations specifying procedures for making the certifications provided for in this Code section and to establish a procedure for making payments to hospital authorities and designated teaching hospitals as provided in this Code section.

(d) The funds necessary to carry out this Code section shall derive from funds appropriated for such purpose to the Department of Community Health. In the event the funds appropriated by the General Assembly are insufficient to fund the full amount payable to hospital authorities or designated teaching hospitals under subsection (c) of this Code section, the amount otherwise payable thereunder shall be

reduced pro rata in accordance with the funds actually appropriated for such purpose. The Department of Community Health shall have the authority to promulgate rules and regulations to carry out the provisions of this Code section. No additional teaching hospitals will be added until such funds have been made available for any additional teaching hospitals.

(e) Nothing in this Code section shall be construed to amend, modify, supersede, or repeal Chapter 10 of Title 49.

History. — Code 1933, § 88-1825, enacted by Ga. L. 1980, p. 1040, § 1; Ga. L. 1984, p. 585, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 1998, p. 193, § 1; Ga. L. 2000, p. 1421, § 1; Ga. L. 2009, p. 453, § 1-29/HB 228; Ga. L. 2019, p. 224, § 2/SB 207.

The 2019 amendment, effective July 1, 2019, substituted "Georgia Board of Health Care Workforce" for "Georgia Board for Physician Workforce" in the third sentence of subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, paragraphs (a)(.1), (a)(1), and (a)(2) were redesignated as paragraphs (a)(1), (a)(2), and (a)(3); a hyphen was deleted between "state" and "funded" in the present paragraph (a)(1); and "hospital" was substituted for "hospitals" in the last sentence of subsection (c).

Pursuant to Code Section 28-9-5, in 1998, the name of the Joint Advisory Board of Family Practice was changed to the Georgia Board for Physician Workforce in the second sentence sentence of subsection (c).

Administrative rules and regulations. — Residency Capitation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board for Physician Workforce, Chapter 195-2.

JUDICIAL DECISIONS

Cited in Wilson v. Board of Regents, 246 Ga. 649, 272 S.E.2d 496 (1980).

31-7-96. Construction of article.

This article, being necessary for the welfare of the citizens of the state, shall be liberally construed to effect the purposes hereof; and insofar as this article may be inconsistent with any other law, whether by charter of any political subdivision of the state or otherwise, this article shall be controlling.

History. — Ga. L. 1941, p. 241, § 16; Code 1933, § 88-1819, enacted by Ga. L. 1964, p. 499, § 1.

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

JUDICIAL DECISIONS

Cited in Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985); Kendall v. Griffin-Spalding County Hosp. Auth., 242 Ga. App. 821, 531 S.E.2d 396 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Authority may authorize contract for private back-up ambulance service. — Hospital authority may enter into contract with private ambulance service, on trip by trip basis, to provide for a back-up ambulance service for authority. 1970 Op. Att'y Gen. No. 70-200.

ARTICLE 5

RESIDENTIAL CARE FACILITIES FOR THE ELDERLY AUTHORITIES

Cross references. — Protection of disabled adults and elder persons, T. 30, C. 5. Licensing of nursing home administrators, T. 43, C. 27. Exemptions from law regarding public officials' conflicts of interest relating to Medicaid and Medicare payments, § 45-10-25. Provision by Department of Human Resources (now the Department of Community Health for these purposes) of adult day center services for the aging, T. 49, C. 6.

Administrative rules and regulations. — Nursing homes, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-56.

Law reviews. — For article, "Tax-exempt Financing of Housing for the Elderly in Georgia," see 17 Ga. St. B. J. 41 (1980).

For note, procedural requirements for public approval of tax-exempt industrial development bonds under TEFRA, 19 Ga. St. B. J. 84 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Construction with Hospital Authorities Law. — The Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and the Residential Care Facilities for the Elderly Authorities Act, O.C.G.A. § 31-7-110 et seq., should not be viewed as mutually exclusive and may be harmonized. 1984 Op. Att'y Gen. No. U84-9.

While both the Hospital Authorities Law, O.C.G.A. § 31-7-70 et seq., and the Residential Care Facilities for the Elderly Authorities Act, O.C.G.A. § 31-7-110 et seq., allow either authority to acquire or build a facility, a Residential Care Facilities for the Elderly Authority, as opposed to a Hospital Authority, may not operate a facility. 1984 Op. Att'y Gen. No. U84-9.

31-7-110. Short title.

This article shall be known and may be cited as the "Residential Care Facilities for the Elderly Authorities Act."

History. — Ga. L. 1980, p. 1466, § 1.

31-7-111. Findings; declaration of policy.

(a) It is found, determined, and declared that:

(1) There exists in this state a seriously inadequate supply of and a critical need for facilities which can furnish the comprehensive services required by elderly persons in a single location, including, without limitation, residential care and the types of services provided

in skilled nursing homes, intermediate care homes, assisted living communities, and personal care homes (hereinafter referred to as "residential care facilities for the elderly");

(2) The aforesaid shortage of residential care facilities for the elderly is threatening to the safety, health, convenience, and welfare of certain elderly citizens; and

(3) An adequate supply of residential care facilities for the elderly to provide the special facilities and services needed by elderly persons cannot be provided through the ordinary operation of private enterprise, and therefore the involvement of a public agency, as is contemplated in this article, in such an undertaking would not be competitive with private enterprise.

Accordingly, it is determined that it is a valid public purpose, as a matter of public health, safety, convenience, and welfare, to assist in providing residential care facilities for the elderly.

(b) It is further found and declared that the creation of the authorities, as provided in this article, in the cities and counties of this state and the carrying out by such authorities of the corporate powers conferred in this article in connection with providing an adequate supply of residential care facilities for the elderly are in all respects for the benefit of the people of this state and a public purpose within the meaning of the Constitution of Georgia in that:

(1) Providing an adequate supply of residential care facilities for the elderly for the people of this state is necessary to the public health and welfare; and

(2) The development and stimulation of trade and commerce in this state is vital to the public welfare, creates employment opportunities, and lessens unemployment and underemployment.

History. — Ga. L. 1980, p. 1466, § 2;
Ga. L. 2011, p. 227, § 14/SB 178.

31-7-112. Definitions.

As used in this article, the term:

(1) "Authority" means each public corporation created pursuant to this article.

(2) "Cost of project" includes:

(A) All costs of construction, purchase, or other form of acquisition;

(B) All costs of real or personal property required for the purposes of the project and of all facilities related thereto and the

cost of extinguishing any liens or security interests related to the property so acquired, including land and any rights or undivided interest therein; easements, franchises, water rights, fees, permits, approvals, licenses, and certificates; the securing of such franchises, permits, approvals, licenses, and certificates; and the preparation of applications therefor;

(C) Costs of all machinery, equipment, initial fuel, and other supplies required for the project;

(D) Financing charges, interest prior to and during construction and for six months thereafter;

(E) Costs of engineering, architectural, and legal services;

(F) Fees paid to fiscal agents for financial and other advice or supervision;

(G) Costs of plans and specifications and all expenses necessary or incidental to the construction, purchase, or acquisition of the project or to determining the feasibility or practicability of the project; and

(H) Administrative expenses and such other expenses as may be necessary or incidental to the financing authorized in this article.

There may also be included, as part of the cost of a project, the repayment of any loans made for the advance payment of any part of such cost, including interest thereon at rates to be determined by the authority, which loans are authorized if made payable solely from the proceeds of the authority's bonds or notes or revenues to be received in connection with the leasing, sale, or financing of the project. The cost of a project may also include a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority with respect to the financing and operation of any project and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be paid or reimbursed as a part of the cost of the project out of the proceeds of revenue bonds or notes issued under this article.

(3) "County" means any county of this state.

(4) "Eligible persons" means persons who have reached the age of 62 years and who have need for housing which provides the special facilities and services required by elderly persons and who meet the criteria for eligibility set forth in rules and regulations which are from time to time promulgated by the authority pursuant to the grant

of authority so to do which is contained in subsection (b) of Code Section 31-7-114.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of each municipal corporation and county in this state.

(6) "Municipal corporation" means each city and town in this state.

(7) "Project" or "residential care facility for the elderly" means:

(A) Any one or more buildings or structures to be used in providing at a single location the comprehensive services required by the elderly, including, without limitation, residential care and the types of services provided in skilled nursing homes, intermediate care homes, assisted living communities, and personal care homes supplied with all necessary or useful furnishings, machinery, equipment, parking facilities, landscaping, and facilities for outdoor storage, all as determined by the authority, which determination shall be final and not subject to review; provided, however, that no single project or residential care facility shall be required to render all types of services and levels of care referred to above. There may be included as part of any such project all improvements necessary to the full utilization thereof, including, without limitation, site preparation; roads and streets; sidewalks; water supply; outdoor lighting; belt line railroad; railroad sidings and lead tracks; bridges; causeways; terminals for railroad, automotive, and air transportation; transportation facilities incidental to the project; and the dredging and improving of harbors and waterways. However, none of the aforementioned improvements shall be the primary purpose of any project;

(B) The acquisition, construction, leasing, or equipping of new residential care facilities for the elderly or the improvement, modification, acquisition, expansion, modernization, leasing, equipping, or remodeling of existing residential care facilities for the elderly located or to be located within the area of operation of the authority; and

(C) The acquisition, construction, improvement, or modification of any property, real or personal, which any qualified sponsor might desire to use, acquire, or lease in connection with the operation of any project located or to be located within the area of operation of the authority.

(8) "Qualified sponsor" means any nonprofit corporation which has met criteria established by the authority and which has undertaken to provide residential care facilities for the elderly which will be available for sale or rent to eligible persons.

History. — Ga. L. 1980, p. 1466, § 3; Ga. L. 2011, p. 227, § 15/SB 178.

31-7-113. Creation of Residential Care Facilities for the Elderly Authority in each county and municipality; board of directors.

(a) There is created in and for each county and municipal corporation in this state a public body corporate and politic to be known as the "Residential Care Facilities for the Elderly Authority" of such county or municipal corporation.

(b) Each authority shall consist of a board of seven directors to be appointed by resolution of the governing body of such county or municipal corporation for initial terms of two, four, and six years and thereafter for staggered terms of six years. The governing body of the municipality or county shall initially elect two directors for two years, two directors for four years, and three directors for six years; and thereafter the terms of all directors shall be six years. If at the end of any term of office of any director a successor thereto shall not have been elected, the director whose term of office shall have expired shall continue to hold office until his successor shall be so elected. A majority of the directors shall constitute a quorum but no action may be taken by the board without the affirmative vote of a majority of the full membership of the board.

(c) The directors shall be taxpayers residing in the county or municipal corporation for which the authority is created, and their successors shall be appointed as provided by the resolution described in subsection (b) of this Code section. No director shall be an officer or employee of the county or municipal corporation. The directors shall elect one of their number as chairman and another as vice-chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, any of whom may but need not be a director. The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties.

(d) No authority shall transact any business or exercise any powers under this article until the governing body of the county or municipal corporation shall, by proper resolution, declare that there is a need for an authority to function in such county or municipal corporation. A copy of the resolution shall be filed with the Secretary of State, who shall maintain a record of all authorities activated under this article.

(e) The authority may make bylaws and regulations for its governance and may delegate to one or more of its officers, agents, and employees such powers and duties as may be deemed necessary and proper. The authority shall have perpetual existence.

History. — Ga. L. 1980, p. 1466, §§ 4, 5.

31-7-114. Powers of authorities.

(a) Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend an action;

(2) To adopt and amend a corporate seal;

(3) To make and execute contracts and other instruments necessary to exercise the powers of the authority, any of which contracts may be made with the county in which the authority is located or with any one or more municipal corporations in such county; and each such county and all municipal corporations therein are authorized to enter into contracts with each authority;

(4) To receive and administer gifts, grants, and devises of any property and to administer trusts;

(5) To acquire by purchase, gift, or construction any real or personal property desired to be acquired by the authorities as part of any project or for the purpose of improving, extending, adding to, reconstructing, renovating, or remodeling any project or part thereof already acquired, or for the purpose of demolition to make room for such project or any part thereof;

(6) To purchase, sell, lease, exchange, transfer, assign, pledge, mortgage, or dispose of, or grant options for any such purposes, any real or personal property or interest therein;

(7) To mortgage, convey, pledge, or assign any properties, revenues, income, tolls, charges, or fees owned, received, or to be received by the authority;

(7.1) To invest and reinvest the funds of the authority in any investment which a domestic insurer may lawfully invest in, to determine the allocation of funds among investments, and to purchase, hold, sell, assign, transfer, and dispose of any securities and other investments in which funds of the authority have been invested, any proceeds of any investments, and any money belonging to the authority;

(7.2) To provide grants, scholarships, loans, or other assistance to students pursuing a course of study relating to gerontology with particular emphasis on residential care and housing facilities for the

elderly, subject to such bylaws and regulations as may be made by the authority;

(8) To appoint officers and retain agents, engineers, attorneys, fiscal agents, accountants, and employees and to provide for their compensation and duties;

(9) To extend credit or make loans to any qualified sponsor for the planning, design, construction, acquisition, or carrying out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements, contracts, and all other instruments or fees or charges, upon such terms and conditions as the authority shall determine to be reasonable, including provision for the establishment and maintenance of reserves and insurance funds; and, in the exercise of powers granted by this Code section in connection with a project for a qualified sponsor, to require the inclusion in any contract, loan agreement, security agreement, or other instrument such provisions for guaranty, insurance, construction, use, operation, maintenance, and financing of the project as the authority may deem necessary or desirable;

(10) To acquire, accept, or retain equitable interests, security interests, or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(11) To construct, acquire, own, repair, remodel, maintain, extend, improve, and equip projects located on land owned or leased by the authority or land owned or leased by others and to pay all or part of the cost of any such project from the proceeds of revenue bonds of the authority or from any contribution or loans by a qualified sponsor, all of which the authority is authorized to receive, accept, and use;

(12) To borrow money and to issue its revenue bonds and bond anticipation notes from time to time and use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving such project or for the purpose of refunding or refinancing any such bonds of the authority theretofore issued or any other outstanding obligations of the authority; and otherwise to carry out the purposes of this article and to pay all other costs of the authority incident to, or necessary and appropriate to, such purposes, including the provision of moneys to be paid into any fund or funds to secure such bonds and notes; provided, however, that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in subsections (a) through (h) of Code Section 31-7-116;

(13) To pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property, real or personal, of the authority as security for repayment of authority obligations and to execute any trust agreement, indenture, or security agreement containing any provisions not in conflict with law, which trust agreement, indenture, or security agreement may provide for foreclosure or forced sale of any property of the authority upon default on such obligations either in payment of principal or interest or in the performance of any term or condition contained in the agreement or indenture. The state on behalf of itself and each county, municipal corporation, political subdivision, or taxing district therein waives any right that it or such county, municipal corporation, political subdivision, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority so mortgaged or encumbered; and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof; and

(14) To do all things necessary or convenient to carry out the powers expressly conferred by this article.

(b) The authority shall adopt and promulgate rules and regulations which establish and prescribe criteria for determining eligible persons and qualified sponsors for the purposes of this article.

History. — Ga. L. 1980, p. 1466, § 6; Ga. L. 1985, p. 149, § 31; Ga. L. 1997, p. 1501, § 1.

31-7-115. Lease or sale of projects.

No project acquired under this article shall be operated by an authority, any municipal corporation, county, or other governmental subdivision; but such projects shall be leased or sold to one or more qualified sponsors. If revenue bonds or other obligations are to be issued to pay all or part of the cost of such project, the project must be so leased or the contract for its sale entered into prior to or simultaneously with the issuance of such bonds or obligations unless the proceeds of the revenue bonds or other obligations are to be loaned to a qualified sponsor in connection with the development of a project, in which case an appropriate loan agreement shall be entered into prior to or simultaneously with the issuance of such bonds or obligations. If the project is sold, the purchase price may be paid at one time or in installments falling due over not more than 40 years from the date of transfer of possession. The lessee or purchaser shall be required to pay all costs of operating and maintaining the leased or purchased property and to pay rentals or installments in amounts sufficient to pay the principal of and interest and premium, if any, on all of its bonds and other obligations as the principal and interest become due.

History. — Ga. L. 1980, p. 1466, § 7.

31-7-116. Provisions contained in obligations and security for obligations; procedures for issuance of bonds and bond anticipation notes; interest rates; limitations and conditions.

(a) The obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. Such instruments may provide for the pledging of all or any part of the revenues of the authority and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may covenant against pledging any or all of its revenues, income, or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes and for the payment and redemption of such bonds and notes. Undertakings of an authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and may provide for rights upon breach of any covenant, condition, or obligation of the authority. Bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of any bonds or bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this article, all or part of the cost of any project or for the purpose of refunding any bond anticipation notes issued in accordance with this article or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of such authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, moneys, or other property.

(d) Issuance by any authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude the authority from issuing other bonds or notes in connection with the same project or in connection with any other projects; provided, however, that the proceeding wherein any subsequent bonds or bond anticipation notes shall be issued shall recognize and protect any prior pledge or

mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes unless, in the resolution authorizing such prior issue, the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority shall have been validated as provided in this article, to issue from time to time its notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, an authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of an authority or any issue thereof may contain any provisions which an authority is authorized to include in any resolution or resolutions authorizing bonds of an authority or any issue thereof, and an authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or obligations issued by the authority shall be fixed by the board of directors of the authority and any limitations with respect to interest rates found in Article 3 of Chapter 82 of Title 36 or in the usury laws of this state shall not apply to obligations issued under this article.

(g) All revenue bonds issued by an authority under this article shall be issued and validated under and in accordance with the procedure therefor set forth in Article 3 of Chapter 82 of Title 36, as heretofore and hereafter amended, except as specifically set forth in this subsection:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) The signature of the clerk of the superior court in which any bonds are validated on the certificate of validation of such bonds may be affixed by facsimile or by manual execution; such entry shall be original evidence of the fact of the validation of any bond and shall be received as original evidence in any court in this state;

(3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest specified in such notices or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the notices. Nothing contained in this paragraph shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices; and

(4) The term "cost of project" shall have the meaning prescribed in paragraph (2) of Code Section 31-7-112 whenever referred to in bond resolutions of an authority, bonds and bond anticipation notes issued by an authority, or notices and proceedings to validate such bonds.

(h) Before issuing any bonds to finance any project, the authority shall obtain from the qualified sponsor of the project an undertaking that only eligible persons will be permitted to use or acquire any of the facilities constituting a part of the project or to enjoy or benefit from any of the services to be rendered in connection with any such project.

(i) No bonds or bond anticipation notes except refunding bonds shall be issued by an authority under this article unless its board of directors shall adopt a resolution finding that the project for which such bonds or notes are to be issued will promote the objectives stated in subsection (b) of Code Section 31-7-111 and will increase or maintain employment in the territorial area of such authority. Nothing contained in this Code section shall be construed as permitting any authority created under this article or any qualified sponsor to finance, construct, or operate any project without obtaining any certificate of need or other approval, permit, or license which, under the laws of this state, is required in connection therewith.

History. — Ga. L. 1980, p. 1466, §§ 8, 9.

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

31-7-117. Liability for bonds or other obligations.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the state or any county, municipal corporation, or political subdivision thereof; nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of the state or any such county, municipal corporation, or political subdivision. All such bonds and obligations

shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards. No holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of the state or any county, municipal corporation, or political subdivision thereof nor to enforce the payment thereof against any property of the state or any such county, municipal corporation, or political subdivision.

History. — Ga. L. 1980, p. 1466, § 11.

31-7-118. Exemption from taxation.

(a) Each authority created under this article is created for nonprofit and public purposes, and it is found, determined, and declared that:

(1) The creation of each such authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state;

(2) The authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the powers conferred upon it by this article; and for such reasons, the state covenants with the holders of the bonds issued under this article that the authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and

(3) The bonds of the authority, their transfer, and the income derived therefrom shall at all times be exempt from taxation within the state.

(b) The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority.

History. — Ga. L. 1980, p. 1466, § 12;
Ga. L. 1985, p. 149, § 31.

31-7-119. Holding moneys as trust funds; pledges for payment of bonds.

(a) All moneys received pursuant to the authority of this article, whether as proceeds from the sale of revenue bonds or other obligations,

as grants or other contributions, or as revenues and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this Code section. In the resolution providing for the issuance of revenue bonds or in the trust indenture, the authority shall provide for the payment of the proceeds of the sale of the bonds, earnings, and revenues to be received to any officer who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes of this article, subject to the provisions of this article and the provisions of any such resolution or any trust indenture.

(b) The authority may pledge for the payment of its bonds such assets, funds, and properties as the resolution providing for the issuance of its bonds may provide. Any such pledge made by the authority shall be valid and binding from the time when the pledge is made; the moneys or properties so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind against the authority, irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge is created need be recorded.

History. — Ga. L. 1980, p. 1466, § 13.

31-7-120. Construction of article.

This article shall be liberally construed to effect the purposes hereof, and insofar as this article may be inconsistent with any other law, including the charter of any municipal corporation, this article shall be controlling. The sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10 or any other law. No proceeding or publication not required by this article shall be necessary to the performance of any act authorized in this article, nor shall any such act be subject to referendum.

History. — Ga. L. 1980, p. 1466, § 10; Ga. L. 1985, p. 149, § 31.

ARTICLE 6

PEER REVIEW GROUPS

Law reviews. — For note on 1995 amendments of Code sections in this article, see 12 Ga. St. U. L. Rev. 258 (1995).

RESEARCH REFERENCES

ALR. — Right of voluntary disclosure of privileged proceedings of hospital medical review or doctor evaluation processes, 60 A.L.R.4th 1273.

31-7-130. Legislative intent.

It is the intent of the General Assembly to provide protection for those individuals who are members of peer review groups which evaluate the quality and efficiency of professional health care providers and to protect the confidentiality of their records.

History. — Code 1933, § 84-7601, enacted by Ga. L. 1980, p. 1282, § 1.

Law reviews. — For article, "The Shield Remains: An Overview of the Georgia Peer Review Privilege," see 11 Ga. St. B. J. 16 (2005).

JUDICIAL DECISIONS

Legislative intent. — General Assembly did not intend to eliminate, through peer review immunity, a hospital's responsibility to the hospital's patients to exercise reasonable care in ensuring that medical care providers using the hospital's facilities are qualified. McCall v. Henry Med. Ctr., Inc., 250 Ga. App. 679, 551 S.E.2d 739 (2001).

Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. Patton v. St. Francis Hosp., 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Purpose of hospital medical review committees. — Purpose for establishment of hospital medical review committees is to foster delivery of quality health care services by providing a method for in-house review of clinical work performed in a hospital. Eubanks v. Ferrier, 245 Ga. 763, 267 S.E.2d 230 (1980).

No immunity for negligence when peer review not involved. — Health care organization was not engaging in peer review, and thus, was not immune from liability for the organization's negligence under O.C.G.A. § 31-7-130, when a Medicaid patient died as the result of having been denied an operation based on allegedly negligent precertification review of the patient's case by the organization. Fulton-DeKalb Hosp. Auth. v. Dawson, 270 Ga. 376, 509 S.E.2d 28 (1998).

Cited in Fulton-DeKalb Hosp. Auth. v. Dawson, 270 Ga. 376, 509 S.E.2d 28 (1998); Patton v. St. Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000).

RESEARCH REFERENCES

ALR. — Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action, 69 A.L.R.5th 559.

31-7-131. Definitions.

As used in this article, the term:

(1) "Peer review" means the procedure by which professional health care providers evaluate the quality and efficiency of services ordered or performed by other professional health care providers, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review, underwriting assistance, and the compliance of a hospital, nursing home, convalescent home, or other health care facility operated by a professional health care provider with the standards set by an association of health care providers and with applicable laws, rules, and regulations.

(2) "Professional health care provider" means an individual who is licensed, or an organization which is approved, to practice or operate in the health care field under the laws of Georgia, including, but not limited to, the following individuals or organizations:

(A) A physician;

(B) A dentist;

(C) A podiatrist;

(D) A chiropractor;

(E) An optometrist;

(F) A psychologist;

(G) A pharmacist;

(H) A registered or practical nurse;

(I) A physical therapist;

(J) An administrator of a hospital, a nursing or convalescent home, or other health care facility;

(K) A corporation or other organization operating a hospital, a nursing or convalescent home, or other health care facility, as well as the officers, directors, or employees of such corporation or organization or the members of such corporation's or organization's governing board who are performing a peer review function;

(L) A rehabilitation supplier registered with the State Board of Workers' Compensation; and

(M) An occupational therapist.

(3) "Review organization" means a nationally recognized health care accreditation body or any panel, committee, or organization:

(A) Which:

(i) Is primarily composed of professional health care providers;

(ii) Is an insurer, self-insurer, health maintenance organization, preferred provider organization, provider network, or other organization engaged in managed care; or

(iii) Provides professional liability insurance for health care providers; and

(B) Which engages in or utilizes peer reviews and gathers and reviews information relating to the care and treatment of patients for the purposes of:

(i) Evaluating and improving the quality and efficiency of health care rendered;

(ii) Reducing morbidity or mortality;

(iii) Evaluating claims against health care providers or engaging in underwriting decisions in connection with professional liability insurance coverage for health care providers;

(iv) Compiling aggregate data concerning the procedures and outcomes of hospitals for the purposes of evaluating the quality and efficiency of health care services. Under no circumstances shall any such aggregate data or any other peer review information relating to an individual professional health care provider be disclosed or released to any person or entity without the express prior written consent of such health care provider, but such aggregate data or other peer review information may be released to another review organization upon the written request of such organization if such requesting review organization has specific reason to believe that immediate access to such aggregate data or information is necessary to protect the public health, safety, and welfare. Such aggregate data and other peer review information shall be used for peer review purposes only and in no event shall such aggregate data or any other peer review information be sold or otherwise similarly distributed, but a review organization shall be authorized to utilize the services of and pay a fee to another person or entity to compile or analyze such aggregate data;

(v) Evaluating the quality and efficiency of health care services rendered by a professional health care provider in connection with such provider's participation as or request to participate as a provider in or for an insurer, self-insurer, health maintenance organization, preferred provider organization, pro-

vider network, or other organization engaged in managed care; or

(vi) Performing any of the functions or activities described in Code Section 31-7-15.

History. — Ga. L. 1975, p. 739, § 1; Code 1933, § 84-7602, enacted by Ga. L. 1980, p. 1282, § 1; Ga. L. 1984, p. 699, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1987, p. 656, § 1; Ga. L. 1988, p. 13, § 31; Ga. L. 1991, p. 1016, § 1; Ga. L. 1995, p. 612, § 3; Ga. L. 2001, p. 192, § 2; Ga. L. 2012, p. 337, § 3/SB 361.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "; and" was substituted for ", and" at the end of division (3)(A)(iii).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 88-3201, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Review committee must meet qualifications for article to apply to it. — In order for the information generated or maintained by a committee exercising review functions to be subject to the provisions of confidentiality the committee must meet the qualifications set forth in this section. Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981) (decided under former Code 1933, § 88-3201).

Hospital accreditation organization records not protected. — Hospital accreditation records generated by a nonprofit organization are not protected from disclosure as the records of a confidential review organization under O.C.G.A. § 31-7-133 because the organization is not a "review organization" comprised primarily of "professional health care providers" as those terms are defined by O.C.G.A. § 31-7-131. Georgia Hosp. Ass'n v. Ledbetter, 260 Ga. 477, 396 S.E.2d 488 (1990).

"Peer review." — Nothing in O.C.G.A. § 31-7-131(3)(B)(vi) implies that every part of the review in O.C.G.A. § 31-7-15 constitutes peer review. Hosp. Auth. v. Meeks, 285 Ga. 521, 678 S.E.2d 71 (2009).

Cited in Emory Univ. v. Houston, 185 Ga. App. 289, 364 S.E.2d 70 (1987); Patton v. St. Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000); Hosp. Auth. of Valdosta v. Meeks, 294 Ga. App. 629, 669 S.E.2d 667 (2008); Sewell v. Cancel, 331 Ga. App. 687, 771 S.E.2d 388 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Trauma advisory committee as review organization. — Since the Trauma Advisory Committee for Emergency Medical Services is a review organization consisting of surgeons licensed in the State of Georgia which evaluates care provided by professional health care providers as defined in paragraph (2) of O.C.G.A. § 31-7-131 for the purposes of improving the quality of care rendered and reducing morbidity and mortality due to trauma, it is a review organization within the meaning of paragraph (3) of O.C.G.A. § 31-7-131 and is covered by the immunity and confidentiality provisions of O.C.G.A. §§ 31-7-132 and 31-7-133. 1988 Op. Att'y Gen. No. 88-5.

31-7-132. Immunity from liability for peer review activities; immunity from liability of persons providing information.

(a) No professional health care provider nor any individual who serves as a member or employee of a professional health care provider or review organization nor any individual who furnishes counsel or services to a professional health care provider or review organization shall be held, by reason of the performance of peer review activities, to have violated any criminal law or to be civilly liable under any law unless he was motivated by malice toward any person affected by such activity.

(b) No person, whether as a witness or otherwise, who provides information regarding peer review to a professional health care provider or review organization shall be held, by reason of having provided such information, to have violated any criminal law or to be civilly liable under any law unless such information is false and the person providing it knew that such information was false.

History. — Ga. L. 1975, p. 739, §§ 2, 3; Code 1933, § 84-7603, enacted by Ga. L. 1980, p. 1282, § 1; Ga. L. 1987, p. 1494, § 2; Ga. L. 1995, p. 612, § 3.

Cross references. — Immunity of medical review committee members from civil liability, § 31-7-140 et seq. Nonliability of licensed dentist serving on peer review board for damages for any action taken by such board, § 43-11-16. Receipt of evidence before Georgia Composite Medical Board regarding licensee's or applicant's fitness to practice medicine, § 43-34-8.

JUDICIAL DECISIONS

Immunity from civil or criminal liability. — If an organization meets the definition of review organization and is conducting peer review within the meaning of O.C.G.A. § 31-7-132, a health care provider or member of a review organization is immune from criminal or civil liability, provided the health care provider is acting without malice. Fulton-DeKalb Hosp. Auth. v. Dawson, 270 Ga. 376, 509 S.E.2d 28 (1998).

Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. Patton v. St. Francis Hosp., 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Hospital's immunity following suit by physician. — Grant of summary judgment in favor of the hospital was affirmed because 42 U.S.C. § 11101 et seq. provided the hospital immunity, as a matter of law, from suit brought by a physician suspended of medical staff privileges as the physician failed to overcome, by a preponderance of the evidence, the presumption that the hospital summarily suspended clinical privileges only after a reasonable effort to obtain the facts of the matter occurred, as required under 42

U.S.C. § 11112(a)(2). Kolb v. Northside Hospital, 342 Ga. App. 192, 802 S.E.2d 413 (2017).

Preemption. — To the extent that peer reviewer immunity under O.C.G.A. § 31-7-132(a) was conditioned upon the absence of the hospital's bias in denying the doctor's staff privileges, § 31-7-132(a) was preempted by the Health Care Quality Improvement Act (Act), 42 U.S.C. § 11101 et seq., under which bias was irrelevant; thus, the grant of summary judgment to the hospital on the ground that the hospital was entitled to immunity under the Act was not an error. Patrick v. Floyd Med. Ctr., 255 Ga. App. 435, 565 S.E.2d 491 (2002).

Under O.C.G.A. § 31-7-132(a), a peer reviewer is immune unless the reviewer is motivated by malice toward any person affected by such activity, and under O.C.G.A. § 31-7-141, a medical review committee member is immune if the committee member acts without malice or fraud; to the extent that peer review and medical review immunity are conditioned upon the absence of malice and deception, the statutes are preempted by the Health Care Quality Improvement Act of 1986, specifically 42 U.S.C. § 11111(a), under which bias is irrelevant. Patton v. St. Francis Hosp., 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Federal law does not completely preempt O.C.G.A. § 31-7-132(a) as the Health Care Quality Improvement Act of 1986 (HCQIA), 42 U.S.C. § 11101 et seq., only preempts § 31-7-132(a) to the extent the two statutes conflict; because the HCQIA does not provide immunity against claims for equitable relief, it is not in conflict with that aspect of § 31-7-132(a) that provides immunity for equitable relief claims. Taylor v. Kennestone Hosp., Inc., 266 Ga. App. 14, 596 S.E.2d 179 (2004).

Georgia's peer review statute, O.C.G.A. § 31-7-132(a), was preempted by the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 et seq., in a doctor's suit alleging that defendants initiated a peer review proceeding for the purpose of closing down the doctor's competing dialysis center because the allegations stated that defendants were motivated by malice, and the doctor sought only monetary damages, not equitable relief. Wood v. Archbold Med. Ctr., No. 6:05-CV-53 (HL), 2006 U.S. Dist. LEXIS 44292 (M.D. Ga. June 28, 2006).

O.C.G.A. § 31-7-132 was not intended to provide an absolute shield of immunity protecting utilization review providers from potential liability for the consequences of their administrative acts. Fulton-DeKalb Hosp. Auth. v. Dawson, 270 Ga. 376, 509 S.E.2d 28 (1998).

Evaluation of anesthesiologists for working relationships rather than medical care was not peer review. — In an action by anesthesiologists who were not rehired by a hospital after their group contract was terminated, the hospital defendants were not entitled to immunity under O.C.G.A. § 31-7-132 because the panel was not evaluating the quality and efficiency of actual medical care services by the anesthesiologists but was evaluating their ability to work harmoniously; however, remand was required to determine whether the trial court had concluded that peer review immunity was appropriate. Sewell v. Cancel, 331 Ga. App. 687, 771 S.E.2d 388 (2015).

Credentialing information not covered by civil immunity. — O.C.G.A. § 31-7-15 does not expand the privilege set forth in O.C.G.A. § 31-7-133(a) to those proceedings and records of a peer review committee which involve only the credentialing process and not a peer review function. The same analysis is equally applicable in holding that § 31-7-15 does not expand the civil immunity otherwise afforded to peer review groups under O.C.G.A. § 31-7-132(a) so as to include all aspects of the credentialing process. Hosp. Auth. v. Meeks, 285 Ga. 521, 678 S.E.2d 71 (2009).

Malice allegation is not sufficient to trigger application of confidentiality requirement so as to allow the opportunity for full discovery of peer review material in every case; however, a motion to compel discovery could not be denied in its entirety, even though some of the materials sought were privileged. Freeman v. Piedmont Hosp., 264 Ga. 343, 444 S.E.2d 796 (1994).

Equitable claims covered. — Unlike the Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 et seq., O.C.G.A. § 31-7-132(a) provides immunity from civil liability, not just from monetary damages; consequently, Georgia's peer review statute covers claims for equitable relief. Taylor v. Kennestone Hosp., Inc., 266 Ga. App. 14, 596 S.E.2d 179 (2004).

Hospital immune from liability because malice not established. — Surgeon sued a hospital for revoking the surgeon's medical staff privileges. As the evidence of the surgeon's errors, some of which caused a patient's death, supported the revocation, and as the surgeon did not prove that the hospital acted with malice in revoking the surgeon's medical privileges, the hospital was entitled to summary judgment based on the hospital's immunity from liability under Georgia's peer review statute, O.C.G.A. § 31-7-132. Burrowes v. Northside Hosp., 294 Ga. App. 472, 671 S.E.2d 176 (2008).

Superior court erred in denying a hospital's motion for summary judgment in a doctor's action contending that the denial of an application for renewal of clinical privileges was void because the hospital was entitled to immunity from the doctor's equitable claims pursuant to O.C.G.A. § 31-7-132(a); the superior court erred in finding that there was evidence from which the jury could infer that the peer review process was motivated by malice. DeKalb Med. Ctr. v. Obekpa, 315 Ga. App. 739, 728 S.E.2d 265 (2012).

In a suit by doctors against a hospital where the doctors had served as anesthesiologists alleging that the hospital's failure to rehire the doctors was motivated by malice, summary judgment to the hospital was proper based on peer review immunity under O.C.G.A. § 31-7-132(a); the doctors failed to show malice. Cancel v. Medical Center of Central Ga., Inc., 345 Ga. App. 215, 812 S.E.2d 592 (2018), cert. denied, 2018 Ga. LEXIS 769 (Ga. 2018).

Cited in Patton v. St. Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Member of peer review panel for rehabilitation suppliers not protected. — Person who is a private rehabilitation supplier serving on a peer review panel for the State Board of Workers' Compensation would not be afforded the statutory protection provided in O.C.G.A. § 31-7-130 et seq., regardless of whether that peer review committee conformed to the model promulgated by the National Association of Rehabilitation Professionals. 1987 Op. Att'y Gen. 87-4.

Applicability to trauma advisory committee. — Since the Trauma Advisory Committee for Emergency Medical Services is a review organization consisting of surgeons licensed in the State of Georgia which evaluates care provided by professional health care providers as defined in O.C.G.A. § 31-7-131(2) for the purposes of improving the quality of care rendered and reducing morbidity and mortality due to trauma, it is a review organization within the meaning of § 31-7-131(3) and is covered by the immunity and confidentiality provisions of O.C.G.A. §§ 31-7-132 and 31-7-133. 1988 Op. Att'y Gen. No. 88-5.

RESEARCH REFERENCES

ALR. — Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner, 72 A.L.R.4th 1148.

31-7-133. Confidentiality of review organization's records.

(a) Except in proceedings alleging violation of this article, the proceedings and records of a review organization shall be held in

confidence and shall not be subject to discovery or introduction into evidence in any civil action; and no person who was in attendance at a meeting of such organization shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of such organization or as to any findings, recommendations, evaluations, opinions, or other actions of such organization or any members thereof. The confidentiality provisions of this article shall also apply to any proceedings, records, actions, activities, evidence, findings, recommendations, evaluations, opinions, data, or other information shared between review organizations which are performing a peer review function or disclosed to a governmental agency as required by law. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such organization, nor should any person who testifies before such organization or who is a member of such organization be prevented from testifying as to matters within such person's knowledge; but such witness cannot be asked about such witness's testimony before such organization or about opinions formed by such witness as a result of the organization hearings. Notwithstanding the foregoing, the Department of Community Health may inspect and copy peer review materials maintained by certain providers when it is determined by the department to be necessary in the performance of the department's licensure and certification responsibilities under Code Section 31-7-15; provided, however, such inspection and copying shall not waive or abrogate the confidentiality of such peer review materials as set forth in this Code section and in Code Section 31-7-15.

(b) This Code section shall not apply to prevent:

(1) The disclosure under Article 4 of Chapter 18 of Title 50 of those documents in the department's custody which are records, reports, or recommendations of a nationally recognized health care accreditation body and which are provided by an institution to the department for licensure purposes under subsection (b) of Code Section 31-7-3;

(2) The use of peer review documents in any proceeding involving the permitting or licensing of an institution pursuant to this chapter to the extent necessary to challenge the effectiveness of the institution's peer review system; provided, however, such use shall not waive or abrogate the confidentiality of such documents as set forth in this Code section and in Code Section 31-7-15; or

(3) A health care provider from obtaining the specific reasons and the records and proceedings related to such provider's exclusion or termination as a participating provider in a health maintenance organization, provider network, or other organization which engages

in managed care if such provider has brought a civil action against such health maintenance organization, provider network, or other organization for wrongful exclusion or termination.

History. — Ga. L. 1975, p. 739, § 4; Code 1933, § 84-7604, enacted by Ga. L. 1980, p. 1282, § 1; Ga. L. 1984, p. 699, § 2; Ga. L. 1985, p. 149, § 31; Ga. L. 1991, p. 1016, § 2; Ga. L. 1995, p. 612, § 3; Ga. L. 2001, p. 192, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2012, p. 337, § 4/SB 361.

Cross references. — Privileges generally, § 24-5-501 et seq. Privilege of state officers and employees to refuse to disclose identity of persons furnishing information pursuant to medical or public health investigation by Department of Human Resources (now the Department of Community Health for these purposes), § 50-18-72.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 249 (2001).

JUDICIAL DECISIONS

Legislative intent. — Georgia General Assembly has concluded that confidentiality of proceedings involving review and investigation of an individual physician's standard of care in treatment of the physician's patients should be preserved. Scott v. McDonald, 70 F.R.D. 568 (N.D. Ga. 1976).

Purpose of Code section. — Purpose for enactment of O.C.G.A. § 31-7-133 is to foster delivery of quality medical services by preserving the candor necessary for effective functioning of hospital medical review committees (now organizations). Eubanks v. Ferrier, 245 Ga. 763, 267 S.E.2d 230 (1980); Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

Rationale for this section is apparently to afford hospitals and similar institutions rendering medical care to examine, in the first instance, the propriety of procedures used within their institutions, in order to take curative action to remedy questionable procedures or to prevent stigmatization of certain physicians under investigation that would necessarily follow from disclosure of such proceedings, whether the medical review committee's (now organization's) disposition is favorable or unfavorable to the physician under investigation, and injury to hospital's ability to make in-house examination of adequacy of treatment afforded its patients is sufficiently great to warrant its confidentiality. Scott v. McDonald, 70 F.R.D. 568 (N.D. Ga. 1976).

O.C.G.A. § 31-7-15 does not expand the privilege set forth in O.C.G.A. § 31-7-133(a) to those proceedings and records of a peer review committee which involve only the credentialing process and not a peer review function. The same analysis is equally applicable in holding that § 31-7-15 does not expand the civil immunity otherwise afforded to peer review groups under O.C.G.A. § 31-7-132(a) so as to include all aspects of the credentialing process. Hosp. Auth. v. Meeks, 285 Ga. 521, 678 S.E.2d 71 (2009).

Relationship to other privileges. — Georgia law did not allow for a self-critical analysis privilege; the fact that the peer review privilege is limited to review organizations within the healthcare field weighs heavily against extending such privilege to a corporate organization. Lara v. Tri-State Drilling, 504 F. Supp. 2d 1323 (N.D. Ga. 2007).

Not applicable in federal civil rights action. — Plaintiffs in a 42 U.S.C. § 1983 action for a death of an inmate were granted a motion to compel disclosure under Fed. R. Civ. P. 26 and 37 of a morbidity and mortality report generated by jail medical official and related correspondence and documents because the court refused under Fed. R. Evid. 501 to recognize the medical peer review privilege of O.C.G.A. §§ 31-7-133 and 31-7-143 in that the need for probative evidence in a civil rights action outweighed the need for privilege. Jenkins v. Dekalb County, 242 F.R.D. 652 (N.D. Ga. 2007).

Embargo on use of information in civil litigation. — O.C.G.A. § 31-7-133

legislatively approves the view that constructive professional criticism cannot occur in an atmosphere of apprehension that one doctor's suggestion will be used as a denunciation of a colleague's conduct in a malpractice suit and it embraces the goal of medical staff candor at the cost of impairing plaintiff's access to evidence. Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

General Assembly has placed an absolute embargo upon the discovery and use of all proceedings, records, findings, and recommendations of peer review groups and medical review committees in civil litigation. The source of peer review information is irrelevant. Emory Clinic v. Houston, 258 Ga. 434, 369 S.E.2d 913 (1988).

In a case involving the Georgia medical review and peer review statutes, O.C.G.A. §§ 31-7-133(a) and 31-7-143, the trial court erred in creating additional discovery exceptions not allowed by the statutes because the Georgia General Assembly placed an absolute embargo upon the discovery and use of all proceedings, records, findings, and recommendations of peer review groups and medical review committees in civil litigation. Hosp. Auth. of Valdosta v. Meeks, 294 Ga. App. 629, 669 S.E.2d 667 (2008), aff'd, 285 Ga. 521, 678 S.E.2d 71 (2009).

O.C.G.A. § 31-7-133 is in derogation of general policy in favor of discovery and admissibility of probative evidence. Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

Term "proceedings and records" in O.C.G.A. § 31-7-133 includes records of the medical review committee (now organization) relating to care of patients other than plaintiff or the decedent whose estate or interests are represented by the plaintiff; such a broad range exclusion is necessary to promote the underlying purpose of the section and is clearly authorized by the statutory language because it is apparent that a candid evaluation of a physician's performance will likely necessitate a discussion of services rendered to patients other than the plaintiff or the decedent. Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

Scope of immunity provided. — This section does not immunize production of documents from original sources that might have fortuitously been considered during hearing, nor does the statute prevent some participant from medical review proceedings from giving testimony as to matters within the participant's knowledge or as to an applicable standard of care; it merely prohibits requiring a member of the committee (now organization) to testify as to what the member or another person might have said during the course of proceedings. Scott v. McDonald, 70 F.R.D. 568 (N.D. Ga. 1976).

Even though physician, denied privileges by a peer review committee, contended that false information motivated by malice was the basis for the denial, the privilege nevertheless applied. Baldwin County Hosp. Auth. v. Wright, 202 Ga. App. 9, 413 S.E.2d 484 (1991), cert. denied, 202 Ga. App. 905, 413 S.E.2d 484 (1992).

Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. Patton v. St. Francis Hosp., 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Use of peer review privilege was not willful tort under § 51-12-6. — In an abusive litigation action under O.C.G.A. § 51-7-80 et seq., a plaintiff could not recover for damages to the plaintiff's peace, happiness, or feelings under O.C.G.A. § 51-12-6, as there was no allegation of a physical injury, and the plaintiff did not allege a willful tort; there was no support in the record that the assertion of the peer review privilege under O.C.G.A. § 31-7-133(a) constituted a willful tort. Freeman v. Wheeler, 277 Ga. App. 753, 627 S.E.2d 86 (2006).

Malice exception does not apply to the discovery privileges set forth in O.C.G.A. §§ 31-7-133 and 31-7-143. Patton v. St. Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Malice allegation is not sufficient to trigger application of confidentiality requirement so as to allow the opportunity for full discovery of peer review material in every case; however, a motion to compel discovery could not be denied in its entirety, even though some of the materials sought were privileged. Freeman v. Piedmont Hosp., 264 Ga. 343, 444 S.E.2d 796 (1994).

Hospital accreditation records not immune. — Hospital accreditation records generated by a nonprofit organization are not protected from disclosure as the records of a confidential review organization under O.C.G.A. § 31-7-133 because the organization is not a "review organization" comprised primarily of "professional health care providers" as those terms are defined by O.C.G.A. § 31-7-131. Georgia Hosp. Ass'n v. Ledbetter, 260 Ga. 477, 396 S.E.2d 488 (1990).

Information as to hospital's infection rate. — O.C.G.A. §§ 31-7-133 and 31-7-143 did not prevent discovery of recorded data pertaining to hospital's infection incidence because it was factual data from the original hospital records which the infection rate nurse had used to compile the information the nurse presented to the peer review committee. Cobb County Kennestone Hosp. Auth. v. Martin, 208 Ga. App. 326, 430 S.E.2d 604 (1993).

Doctors had access to notes. — In a suit by doctors against a hospital where the doctors had served as anesthesiologists, any error by the trial court in limiting discovery of notes of an investigating psychologist's interviews with the anesthesiologists and nurses under O.C.G.A. § 31-7-133 was not harmful because the doctors had access to the notes and deposed the psychologist regarding the notes. Cancel v. Medical Center of Central Ga., Inc., 345 Ga. App. 215, 812 S.E.2d 592 (2018), cert. denied, 2018 Ga. LEXIS 769 (Ga. 2018).

Incident reporting forms. — Hospital's incident reporting forms, termed "notification forms" and "occurrence reports," were exactly the type of documents protected from discovery by the peer review privilege. Ussery v. Children's Healthcare of Atlanta, Inc., 289 Ga. App. 255, 656 S.E.2d 882 (2008).

Information encompassed by Code section. — O.C.G.A. § 31-7-133 applies to information generated in the course of medical review committee (now organization) proceedings which relates to physician's general competence, the physician's competence to treat the condition from which the decedent suffered as evidenced by the physician's treatment of other similarly afflicted patients and the physician's competence to perform medical procedures other than those specifically involved in the subject litigation. Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

There are two kinds of privileged information covered by the peer review statute: (1) material that relates directly to the peer review investigation, which is always nondiscoverable, despite its source; and (2) information that would have existed regardless of the institution's investigation, but is sought from the peer review body itself. Doe v. Unum Life Ins. Co. of Am., 891 F. Supp. 607 (N.D. Ga. 1995).

In a case involving the Georgia medical review and peer review statutes, O.C.G.A. §§ 31-7-133(a) and 31-7-143, the trial court erred in determining that nothing in a medical center's credentialing files was subject to discovery because, to the extent that the credentialing process involved a peer review committee's evaluation of a doctor's performance of medical procedures, the information was not discoverable; however, to the extent that there was information in the doctor's credentialing files that did not involve evaluations of the doctor's performance of these procedures, that information was discoverable. Hosp. Auth. of Valdosta v. Meeks, 294 Ga. App. 629, 669 S.E.2d 667 (2008), aff'd, 285 Ga. 521, 678 S.E.2d 71 (2009).

Information obtainable from "original sources," that is, hospital medical records and information within the knowledge of an infection rate nurse, under O.C.G.A. §§ 31-7-133 and 31-7-143, is discoverable. Cobb County Kennestone Hosp.

Auth. v. Martin, 208 Ga. App. 326, 430 S.E.2d 604 (1993).

Code section not applicable to activity prior to section's effective date. — Legislature did not intend that O.C.G.A. § 31-7-133 should apply to medical review committee (now organization) activity engaged in before effective date of that section even though a discovery request is made after such time; therefore, the legislation relating to records of medical review committees (now organizations) contained in O.C.G.A. Art. 6, Ch. 7, T. 31 does not apply to records of medical review committee (now organization) activity engaged in before that article was enacted. Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

Information as to whether or not organization meetings held is nondiscoverable. — Since the discovery of whether any medical review committee (now organization) meetings relating to the care of the decedent were held and who attended the meetings necessitate an intrusion into the "proceedings" of the committee (now organization), such information is nondiscoverable under O.C.G.A. § 31-7-133. Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

Hospital information regarding decisions to suspend physician's privileges. — In an action involving plaintiff physician's alleged drug usage prior to applying for disability insurance from defendant, information in the possession of hospitals regarding decisions to suspend plaintiff's privileges was shielded from discovery by peer review and medical review statutes. Doe v. Unum Life Ins. Co. of Am., 891 F. Supp. 607 (N.D. Ga. 1995).

Suits challenging the peer review process itself are not exempt from the discovery privileges set forth in O.C.G.A. §§ 31-7-133 and 31-7-143. Patton v. St. Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Limited peer review materials were discoverable by a doctor who was reviewed because the Georgia peer review privilege, O.C.G.A. §§ 31-7-133 and 31-7-143, could not be used under Fed. R. Evid. 501 to prevent the doctor from discovering peer review materials that could be relevant to rebut a claimed immunity defense by a clinic and the clinic's doctors. Adeduntan v. Hosp. Auth. of Clarke County, No. 3:04-CV-65 (CDL), 2005 U.S. Dist. LEXIS 18281 (M.D. Ga. Aug. 25, 2005).

Section does not infringe rights to due process, equal protection, and access to courts. Eubanks v. Ferrier, 245 Ga. 763, 267 S.E.2d 230 (1980).

Use of privilege was proper and did not support award of attorney's fees. — Claim by a plaintiff, who had unsuccessfully asserted in a claim for attorney fees and costs under O.C.G.A. § 9-15-14 that the peer review privilege under O.C.G.A. § 31-7-133(a) was improperly applied, and who then asserted the same claim against the same parties in an abusive litigation action under O.C.G.A. § 51-7-80 et seq., was barred by collateral estoppel. Freeman v. Wheeler, 277 Ga. App. 753, 627 S.E.2d 86 (2006).

Credentialing information not within privilege. — Unless the credentialing information involves the evaluation of the quality and efficiency of actual medical services, the information does not come within the peer review and medical review privileges of O.C.G.A. §§ 31-7-133(a) and 31-7-143. Accordingly, information in a physician's credentialing files was discoverable to the extent that the information did not involve a peer review or medical review committee's evaluation of actual medical services provided by the physician. Hosp. Auth. v. Meeks, 285 Ga. 521, 678 S.E.2d 71 (2009).

Cited in Campbell v. Wilson, 143 Ga. App. 656, 239 S.E.2d 546 (1977); Hollowell v. Jove, 628 F.2d 513 (5th Cir. 1980).

OPINIONS OF THE ATTORNEY GENERAL

Applicability to trauma advisory committee. — Since the Trauma Advisory Committee for Emergency Medical Services is a review organization consisting of surgeons licensed in the State of Georgia which evaluates care provided by professional health care providers as defined in O.C.G.A. § 31-7-131(2) for the purposes of improving the quality of care rendered and reducing morbidity and

mortality due to trauma, it is a review organization within the meaning of § 31-7-131(3) and is covered by the immunity and confidentiality provisions of O.C.G.A. §§ 31-7-132 and 31-7-133. 1988 Op. Att'y Gen. No. 88-5.

RESEARCH REFERENCES

ALR. — Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action, 69 A.L.R.5th 559.

ARTICLE 6A

MEDICAL REVIEW COMMITTEES

Editor's notes. — The provisions contained in Code Sections 31-7-140 through 31-7-143, as enacted by Ga. L. 1983, p. 3, were previously enacted in substantially similar form by Ga. L. 1975, p. 739 but were not included as part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Protected Communication Between Physician and Patient, 45 POF2d 595.

31-7-140. "Medical review committee" defined.

As used in this article, the term "medical review committee" means a committee of a state or local professional society or of a medical staff or a licensed hospital, nursing home, medical foundation, or peer review committee, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital or nursing home, which committee is formed to evaluate and improve the quality of health care rendered by providers of health service or to determine that health services rendered were professionally indicated or were performed in compliance with the applicable standard of care or that the cost of health care rendered was considered reasonable by the providers of professional health services in the area.

History. — Ga. L. 1975, p. 739, § 1; Code 1981, § 31-7-140, enacted by Ga. L. 1983, p. 3, § 22.

JUDICIAL DECISIONS

"Medical review committee" means a "grass roots" committee formed to make in-house examinations of the adequacy of the treatment afforded patients. Davenport v. Kutner, 182 Ga. App. 467, 356 S.E.2d 67, rev'd on other grounds, 257 Ga. 456, 360 S.E.2d 586 (1987).

Composite state board of medical examiners is not a "medical review committee" within the meaning of O.C.G.A. § 31-7-140. Davenport v. Kutner, 182 Ga. App. 467, 356 S.E.2d 67, rev'd on other grounds, 257 Ga. 456, 360 S.E.2d 586 (1987).

Failure of a medical review committee to strictly adhere to bylaws does not strip the committee of the protection of confidentiality otherwise afforded by O.C.G.A. § 31-7-143. Patton v. St. Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Surgical conference organized by a hospital's chief of staff pursuant to written bylaws for the purpose, in part, to evaluate and improve the quality of health care rendered by members of the vascular surgery staff and to otherwise critique the performance of individual doctors in cases involving that area of medicine, which functioned as an initial, rather than determinative, step in the hospital's peer review process, was a medical review committee entitled to the confidentiality and privileges of O.C.G.A. § 31-7-143. Poulnott v. Surgical Assocs., 179 Ga. App. 138, 345 S.E.2d 639 (1986).

Cited in Emory Univ. v. Houston, 185 Ga. App. 289, 364 S.E.2d 70 (1987).

31-7-141. Committee members immune from liability.

There shall be no monetary liability on the part of and no cause of action for damages shall arise against any member of a duly appointed medical review committee for any act or proceeding undertaken or performed within the scope of the functions of any such committee if the committee member acts without malice or fraud. This immunity shall apply only to actions by providers of health services, and in no way shall this Code section render any medical review committee immune from any action in tort or contract brought by a patient or his successors or assigns. This Code section shall not affect the immunity of an officer or an employee of a public corporation.

History. — Ga. L. 1975, p. 739, § 2; Code 1981, § 31-7-141, enacted by Ga. L. 1983, p. 3, § 22.

Cross references. — Immunity of persons furnishing information to peer review groups from civil liability, § 31-7-130 et seq.

JUDICIAL DECISIONS

Preemption. — Under O.C.G.A. § 31-7-132(a), a peer reviewer is immune unless the reviewer is motivated by malice toward any person affected by such activity, and under O.C.G.A. § 31-7-141, a medical review committee member is immune if the committee member acts without malice or fraud; to the extent that peer review and medical review immunity are conditioned upon the absence of malice and deception, the statutes are preempted by the Health Care Quality Improvement Act of 1986, specifically 42 U.S.C. § 11111(a), under which bias is irrelevant. Patton v. St. Francis Hosp., 260 Ga. App. 202, 581 S.E.2d 551 (2003).

To the extent that peer review and medical review immunity under O.C.G.A. §§ 31-7-132(a) and 31-7-141 are conditioned upon the absence of malice and deception, the statutes are preempted by the federal Health Care Quality Improvement Act of 1986 (HCQIA), 42 U.S.C. § 11101 et seq., under which bias is irrelevant. Cancel v. Medical Center of Central Ga., Inc., 345 Ga. App. 215, 812 S.E.2d 592 (2018), cert. denied, 2018 Ga. LEXIS 769 (Ga. 2018).

Immunity from claims filed by health care providers. — Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer

review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. Patton v. St. Francis Hosp., 260 Ga. App. 202, 581 S.E.2d 551 (2003).

RESEARCH REFERENCES

ALR. — Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner, 72 A.L.R.4th 1148.

31-7-142. Liability of those providing health care facilities or services.

Code Section 31-7-141 shall not be construed to confer immunity from liability on any professional society or hospital or upon any health professional while performing services other than as a member of a medical review committee. In any case in which, except for this article, a cause of action would arise against a hospital, professional society, or any individual health professional, such cause of action shall exist as if this article had not been enacted.

History. — Ga. L. 1975, p. 739, § 3; Code 1981, § 31-7-142, enacted by Ga. L. 1983, p. 3, § 22.

31-7-143. Committee proceedings and records immune from discovery or use as evidence in civil actions.

The proceedings and records of medical review committees shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of the matters which are the subject of evaluation and review by such committee; and no person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof. However, information, documents, or records otherwise available from original sources shall not be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee; nor shall any person who testifies before such committee or who is a member of such committee be prevented from testifying as to matters within his knowledge, provided that such witness may not be questioned regarding his testimony before such a committee or opinions formed by him as a result of such committee hearings.

History. — Ga. L. 1975, p. 739, § 4; Code 1981, § 31-7-143, enacted by Ga. L. 1983, p. 3, § 22.

JUDICIAL DECISIONS

Georgia peer review and medical review statutes, which establish the privilege for the proceedings and records of peer review organizations and medical review committees, also provide for immunity to participants and witnesses in such proceedings under: (1) O.C.G.A. § 31-7-130, which sets forth the intent of the Georgia General Assembly; (2) O.C.G.A. § 31-7-132(a), which provides immunity from liability for peer review; (3) O.C.G.A. §§ 31-7-133(a) and 31-7-141, which provide immunity for medical review committee members from claims for damages filed by health care providers; and (4) O.C.G.A. § 31-7-143, which provides that peer review and medical review proceedings are both absolutely privileged. Patton v. St. Francis Hosp., 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Limited peer review materials were discoverable by a doctor who was reviewed because the Georgia peer review privilege, O.C.G.A. §§ 31-7-133 and 31-7-143, could not be used under Fed. R. Evid. 501 to prevent the doctor from discovering peer review materials that could be relevant to rebut a claimed immunity defense by a clinic and the clinic's doctors. Adeduntan v. Hosp. Auth. of Clarke County, No. 3:04-CV-65 (CDL), 2005 U.S. Dist. LEXIS 18281 (M.D. Ga. Aug. 25, 2005).

In a case involving the Georgia medical review and peer review statutes, O.C.G.A. §§ 31-7-133(a) and 31-7-143, the trial court erred in determining that nothing in a medical center's credentialing files was subject to discovery because, to the extent that the credentialing process involved a peer review committee's evaluation of a doctor's performance of medical procedures, the information was not discoverable; however, to the extent that there was information in the doctor's credentialing files that did not involve evaluations of the doctor's performance of these procedures, that information was discoverable. Hosp. Auth. of Valdosta v. Meeks, 294 Ga. App. 629, 669 S.E.2d 667 (2008), aff'd, 285 Ga. 521, 678 S.E.2d 71 (2009).

Relationship to other privileges. — Georgia law did not allow for a self-critical analysis privilege; the fact that the peer review privilege is limited to review organizations within the healthcare field weighs heavily against extending such privilege to a corporate organization. Lara v. Tri-State Drilling, 504 F. Supp. 2d 1323 (N.D. Ga. 2007).

Plaintiffs in a 42 U.S.C. § 1983 action for a death of an inmate were granted a motion to compel disclosure of a morbidity and mortality report generated by a jail medical official and related correspondence and documents under Fed. R. Civ. P. 26 and 37 because the court refused under Fed. R. Evid. 501 to recognize the medical peer review privilege of O.C.G.A. §§ 31-7-133 and 31-7-143 in that the need for probative evidence in a civil rights action outweighed the need for privilege. Jenkins v. Dekalb County, 242 F.R.D. 652 (N.D. Ga. 2007).

Malice exception does not apply to the discovery privileges set forth in O.C.G.A. §§ 31-7-133 and 31-7-143. Patton v. St. Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Embargo on use of peer review information. — General Assembly has placed an absolute embargo upon the discovery and use of all proceedings, records, findings, and recommendations of peer review groups and medical review committees in civil litigation. The source of peer review information is irrelevant. Emory Clinic v. Houston, 258 Ga. 434, 369 S.E.2d 913 (1988).

In a case involving the Georgia medical review and peer review statutes, O.C.G.A. §§ 31-7-133(a) and 31-7-143, the trial court erred in creating additional discovery exceptions not allowed by the statutes because the Georgia General Assembly placed an absolute embargo upon the discovery and use of all proceedings, records, findings, and recommendations of peer review groups and medical review committees in civil litigation. Hosp. Auth. of

Valdosta v. Meeks, 294 Ga. App. 629, 669 S.E.2d 667 (2008), aff'd, 285 Ga. 521, 678 S.E.2d 71 (2009).

Legislative purpose. — Purpose for the enactment of O.C.G.A. § 31-7-143 is to foster the delivery of quality medical services by preserving the candor necessary for the effective functioning of hospital medical review committees; it embraces the goal of medical staff candor at the cost of impairing litigants' access to evidence. Patton v. St. Francis Hosp., 260 Ga. App. 202, 581 S.E.2d 551 (2003).

Failure of a medical review committee to strictly adhere to bylaws does not strip the committee of the protection of confidentiality otherwise afforded by O.C.G.A. § 31-7-143. Patton v. St. Francis Hosp., 246 Ga. App. 4, 539 S.E.2d 526 (2000).

Surgical conference proceedings held privileged and confidential. — See Poulnott v. Surgical Assocs., 179 Ga. App. 138, 345 S.E.2d 639 (1986).

Information obtainable from "original sources," that is, hospital medical records and information within the knowledge of an infection rate nurse, under O.C.G.A. §§ 31-7-133 and 31-7-143, is discoverable. Cobb County Kennestone Hosp. Auth. v. Martin, 208 Ga. App. 326, 430 S.E.2d 604 (1993).

O.C.G.A. § 31-7-143 does not prevent disclosure of information, documents, or records otherwise available from original sources because those items were presented during medical review committee proceedings. Emory Univ. Hosp. v. Sweeney, 220 Ga. App. 502, 469 S.E.2d 772 (1996).

Information as to hospital's infection rate. — O.C.G.A. §§ 31-7-133 and 31-7-143 did not prevent discovery of recorded data pertaining to hospital's infection incidence because it was factual data from the original hospital records which the infection rate nurse used to compile the information the nurse presented to the peer review committee. Cobb County Kennestone Hosp. Auth. v. Martin, 208 Ga. App. 326, 430 S.E.2d 604 (1993).

Hospital information regarding decisions to suspend physician's privileges. — In an action involving plaintiff physician's alleged drug usage prior to applying for disability insurance from defendant, information in the possession of hospitals regarding decisions to suspend plaintiff's privileges was shielded from discovery by peer review and medical review statutes. Doe v. Unum Life Ins. Co. of Am., 891 F. Supp. 607 (N.D. Ga. 1995).

Credentialing information not within privilege. — Unless the credentialing information involves the evaluation of the quality and efficiency of actual medical services, the information does not come within the peer review and medical review privileges of O.C.G.A. §§ 31-7-133(a) and 31-7-143. Accordingly, information in a physician's credentialing files was discoverable to the extent that the information did not involve a peer review or medical review committee's evaluation of actual medical services provided by the physician. Hosp. Auth. v. Meeks, 285 Ga. 521, 678 S.E.2d 71 (2009).

Information incorporated into report of government agency. — Proceedings and records of medical review committees which are not subject to discovery or introduction into evidence under O.C.G.A. § 31-7-143 do not lose their protected status as the result of being disclosed to an authorized public agency or by virtue of the inclusion into its report by such agency. Emory Univ. Hosp. v. Sweeney, 220 Ga. App. 502, 469 S.E.2d 772 (1996).

Section inapplicable to those giving negligent tax advice. — There is no viable basis for asserting that the privilege created by O.C.G.A. § 31-7-143 can or should be judicially extended to the internally generated personnel records and evaluations of those who have allegedly given negligent tax advice. DeLoitte Haskins & Sells v. Green, 187 Ga. App. 376, 370 S.E.2d 194, cert. denied, 187 Ga. App. 907, 370 S.E.2d 194 (1988).

Section inapplicable to federal civil rights actions. — Medical peer review privilege, such as that in O.C.G.A. § 31-7-143, did not apply in plaintiff physician's 42 U.S.C. §§ 1981, 1983 and 1985 racial discrimination case; thus, summary judgment to defendant hospital after limiting discovery of reviews to only the physician's department was reversed. Adkins v. Christie, 488 F.3d 1324 (11th Cir. 2007),

cert. denied, mot. granted, 552 U.S. 1131, 128 S. Ct. 903, 169 L. Ed. 2d 785 (2008).

Cited in Davenport v. Kutner, 182 Ga. App. 467, 356 S.E.2d 67 (1987).

RESEARCH REFERENCES

ALR. — Scope and extent of protection from disclosure of medical peer review proceedings relating to claim in medical malpractice action, 69 A.L.R.5th 559.

ARTICLE 7

HOME HEALTH AGENCIES

Administrative rules and regulations. — Home health agencies, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-31.

31-7-150. Definitions.

As used in this article, the term:

(1) "Branch office" means a location or site, identified in the application or endorsement thereto, from which a home health agency provides services within a portion of the total geographic area served by the parent agency and which is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the requirements of this article.

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

(2) "Home health agency" means a public, nonprofit, or proprietary organization, whether owned or operated by one or more persons or legal entities, which is engaged in furnishing home health services.

(3) "Home health services" means those items and services furnished to an individual according to a written plan of treatment signed by the patient's physician, by a home health agency, or by others under arrangement with the home health agency, on a visit or hourly basis, in a place of temporary or permanent residence used as the individual's home, as follows:

(A) Part-time or intermittent skilled nursing care as ordered by a physician and provided by or under the supervision of a registered nurse and at least one other service listed in subparagraphs (B) through (D) of this paragraph;

(B) Physical, occupational, or speech therapy;

(C) Medical social services; and

(D) Home health aide services.

(4) "License" means a license issued by the department.

(5) "Licensee" means the individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the home health agency.

(6) "Parent home health agency" means the agency that develops and maintains administrative controls of subunits or branch offices.

(7) "Physician" means an individual currently licensed or authorized to practice medicine, surgery, or osteopathy in this state.

(8) "Plan of treatment" means a plan written, signed, and reviewed at least every two months by the patient's physician prescribing items and services for the patient's condition.

(9) "Registered nurse" means an individual who is currently licensed as a registered professional nurse in this state.

(10) "Subunit" means a semiautonomous organization which serves patients in a geographic area different from that of the parent agency and which, by virtue of the distance between it and the parent agency, is judged incapable of sharing administration, supervision, and services on a daily basis with the parent agency and must, therefore, independently meet the licensing requirements for a home health agency and shall be separately licensed.

History. — Ga. L. 1980, p. 1790, § 2; Ga. L. 2008, p. 12, § 2-15/SB 433.

JUDICIAL DECISIONS

Authority of Department of Medical Assistance (now Department of Community Health) regarding branch office. — Failure of a provider under the Home Health Services Program of the Georgia Medicaid Program to satisfy Department of Medical Assistance (DMA) (now Department of Community Health) regulations governing the geographic location of branch facilities authorized the DMA to disallow reimbursement, even if the federal Health Care Financing Administration and the Department of Human Resources had approved the provider's branch organizational structure. ABC Home Health Servs., Inc. v. Georgia Dep't of Medical Assistance, 211 Ga. App. 496, 439 S.E.2d 696 (1993).

Cited in Tift County Hosp. Auth. v. MRS of Tifton, Ga., Inc., 255 Ga. 164, 335 S.E.2d 546 (1985).

31-7-151. License required; license may not be transferred but may be suspended or revoked.

No person, private or public organization, political subdivision, or other governmental agency may operate a home health agency as defined in Code Section 31-7-150 without first obtaining a license from the department. A license issued under this article is not assignable or transferable and is subject to suspension or revocation at any time for failure to comply with this article.

History. — Ga. L. 1980, p. 1790, § 3.

31-7-152. Application for license.

Any person, organization, or agency desiring to operate a home health agency shall file with the department an application on a form prescribed, prepared, and furnished by the department. The application shall contain such information as the department may require which is reasonably related to the department's licensure purpose and function.

History. — Ga. L. 1980, p. 1790, § 4.

31-7-153. Standards for patient care and agency operation; regulations as to issuance, denial, suspension, or revocation of licenses; hearings.

The department shall promulgate regulations which define standards for the care, treatment, health, safety, welfare, and comfort of patients served by home health agencies and for the maintenance and operation of home health agencies which will promote safe and adequate care and treatment of the patients. These regulations shall be no less stringent than those required for participation of home health agencies in the Title XVIII medicare program and shall include, but not be limited to, a provision requiring the agency to have policies established by a professional group which includes at least one physician and one registered nurse and appropriate representation from other professional disciplines; provisions governing the services the agency provides; provisions for the supervision of services by a physician or registered nurse, as appropriate, and maintenance of clinical records on all patients, including a plan of treatment prescribed by a physician. The department is authorized to issue, deny, suspend, or revoke licenses in accordance with regulations promulgated pursuant to this Code section. Such regulations shall also include hearing procedures related to denial, suspension, or revocation of licenses.

History. — Ga. L. 1980, p. 1790, § 5; Ga. L. 1985, p. 149, § 31.

U.S. Code. — Title XVIII, referred to in this Code section, is Title XVIII of the federal Social Security Act and is codified as 42 U.S.C. § 1395 et seq.

31-7-154. Inspections.

Each home health agency for which a license has been issued shall be periodically inspected by an authorized representative of the department. Such inspections shall be for the purpose of ensuring that this article is being followed. The department is directed to ensure by inspection that the licensee is providing quality care to its patients in accordance with the orders of the patient's physician; provided, however, that an agency shall be exempt from an additional on-site

licensure inspection if certified in a federal program for reimbursement of medicare or Medicaid services.

History. — Ga. L. 1980, p. 1790, § 6.

31-7-155. Certificates of need for new service or extending service area; exemption from certificate.

(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.

History. — Ga. L. 1980, p. 1790, § 8; Ga. L. 1990, p. 378, § 1; Ga. L. 1999, p. 296, § 22; Ga. L. 2008, p. 12, § 2-16/SB 433.

Cross references. — Powers and duties of counties relating to support of paupers, T. 36, C. 12.

U.S. Code. — Titles XVIII and XIX of the federal Social Security Act, referred to in this Code section, are codified as 42 U.S.C. §§ 1395 et seq. and 1396 et seq., respectively.

JUDICIAL DECISIONS

Grandfather status not acquired. — O.C.G.A. § 31-7-155 did not authorize a determination by the State Health Planning Agency (now Department of Community Health) that agencies which had not been servicing the geographic areas at

issue prior to July 1, 1979, had nevertheless acquired grandfather status in such areas because the agencies would have been providing services there prior to such date had it not been for misdirection on the part of certain employees of the Department of Human Resources (now the Department of Community Health for these purposes). Chattahoochee Valley Home Health Care, Inc. v. Healthmaster, Inc., 191 Ga. App. 42, 381 S.E.2d 56, grant of cert. vacated, Healthmaster, Inc. v. Chattahoochee Valley Home Health Care, Inc., 259 Ga. 387, 385 S.E.2d 290 (1989), cert. denied, 493 U.S. 1079, 110 S. Ct. 1132, 107 L. Ed. 2d 1037 (1990).

31-7-156. Fee system for services under this article.

The department is authorized to establish by standards and policies a fee system which will be applied to all services under this article in order to defray the actual expenses which are incurred by discharging the obligations of this article.

History. — Ga. L. 1980, p. 1790, § 9.

31-7-157. Exemptions from article.

This article shall not apply to services which are provided under the following conditions:

(1) Personal or paraprofessional health services provided either with or without compensation when there is no claim that the service is provided as a part of a licensed home health agency;

(2) Professional services provided by persons who are duly licensed for such services under Georgia laws when there is no claim that the service is provided as a part of a licensed home health agency; or

(3) Services provided under any other license issued by the state when there is no claim that the service is provided as a part of a licensed or certified home health agency.

History. — Ga. L. 1980, p. 1790, § 1.

31-7-158. Penalties for unlicensed operation.

Any person who operates a home health agency without first obtaining a license pursuant to this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $500.00 or imprisoned for a period not to exceed six months, or both.

History. — Ga. L. 1980, p. 1790, § 7.

31-7-159. Licensure and regulation of home health agencies transferred to Department of Community Health.

(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 (now known as the Department of Human Services) 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 who are transferred to the department shall retain all

existing rights under such rules. 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.

History. — Code 1981, § 31-7-159, enacted by Ga. L. 2008, p. 12, § 2-17/SB 433; Ga. L. 2009, p. 453, § 1-30/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-38/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

ARTICLE 8

HEALTH SERVICE PROVIDER PSYCHOLOGISTS

Editor's notes. — Ga. L. 1983, p. 1426, § 1, not codified by the General Assembly, provides: "The General Assembly finds and declares that treatment of psychological problems of persons residing within the community would in some cases be advanced by temporary hospitalization. The interests of the people of this state demand that all appropriate resources, including inpatient facilities, be available to assist in the diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders. The General Assembly recognizes that psychology is an independent health profession as set forth and prescribed by the State Board of Examiners of Psychologists and Chapter 39 of Title 43 of the Official Code of Georgia Annotated. It is therefore the intent of the General Assembly, in enacting this Act, to authorize medical facilities and institutions, on local determination, to make psychological services available in an inpatient setting."

31-7-160. Definitions.

As used in this article, the term:

(1) "Health service provider psychologist" means a licensed psychologist who meets the criteria of training and experience as provided in Code Section 31-7-162 in the delivery of direct, preventive, assessment and therapeutic intervention services to individuals whose growth, adjustment, or functioning is actually impaired or is demonstrably at a high risk of impairment.

(2) "Psychologist's order" means an order issued by a health service provider psychologist practicing psychology in accordance

with Chapter 39 of Title 43 for the care and treatment rendered to a person in a medical facility or institution, including admission and discharge. Such care and treatment does not include the ordering or prescribing of medications, nursing assessments or interventions, or medical procedures.

History. — Code 1981, § 31-7-160, enacted by Ga. L. 1983, p. 1426, § 2; Ga. L. 1997, p. 911, § 2.

JUDICIAL DECISIONS

Cited in In the Interest of M.D., 244 Ga. App. 156, 534 S.E.2d 889 (2000).

31-7-161. Appointment to staff of medical facility or institution.

(a) A medical facility or institution may provide for the appointment of health service provider psychologists on such terms and conditions as the medical facility or institution shall establish. Psychologists shall be eligible to hold membership and serve on committees of the medical or professional staff and may possess clinical privileges and carry professional responsibilities consistent with the scope of their licensure and their competence, subject to the reasonable rules of the medical facility or institution. Such privileges and responsibilities may include issuing a psychologist's order. A physician shall be designated to be responsible for the medical aspects of care for a patient admitted by a psychologist.

(b) Notwithstanding any other provision of law:

(1) A health service provider psychologist is authorized to issue a psychologist's order to a registered professional nurse or a licensed practical nurse; and

(2) A registered professional nurse and a licensed practical nurse shall have the authority to execute a psychologist's order, provided that a registered professional nurse or licensed practical nurse may confer with the health service provider psychologist prior to executing the psychologist's order. Nothing contained in this article shall be deemed to alter the standard of care of the registered professional nurse or the licensed practical nurse applicable to the evaluation and execution of orders, including a psychologist's order.

History. — Code 1981, § 31-7-161, enacted by Ga. L. 1983, p. 1426, § 2; Ga. L. 1997, p. 911, § 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "psychologist's" was substituted for "psychologists's" in the second sentence of paragraph (b)(2).

31-7-162. Training and experience requirements.

A health service provider psychologist shall meet the following criteria of training and experience:

(1) The psychologist must be currently licensed by the State Board of Examiners of Psychologists;

(2) The psychologist must be eligible to be listed in the National Register of Health Service Providers of Psychology or have completed not less than two years, with 1,500 hours each year, of supervised experience in health service of which at least one year is post doctoral and one year, which may be the post doctoral year, is in an organized health service training program;

(3) A substantial portion of the supervised experience must be in an inpatient setting; and

(4) Two supportive letters of recommendation from health service providers in psychology who are familiar with the applicant's work must be submitted to the medical facility or institution.

History. — Code 1981, § 31-7-162, enacted by Ga. L. 1983, p. 1426, § 2.

31-7-163. Status of present psychologist staff members.

Nothing in this article shall prohibit a psychologist currently a member of a hospital staff or an employee of a hospital from continuing to work in that capacity.

History. — Code 1981, § 31-7-163, enacted by Ga. L. 1983, p. 1426, § 2.

31-7-164. Limitation or revocation of staff privileges.

Notwithstanding any other provision of this article, the exercise of privileges in any medical facility or institution may be limited, restricted, or revoked for reasons including, but not limited to, the violation of such medical facility's or institution's rules, regulations, or procedures which are applied, in good faith, in a nondiscriminatory manner to all practitioners in such medical facility or institution exercising such privileges or entitled to exercise such privileges.

History. — Code 1981, § 31-7-164, enacted by Ga. L. 1983, p. 1426, § 2.

Cross references. — Peer review groups for psychologists, § 31-7-130 et seq.

31-7-165. Report of denial of staff privileges.

When any health service provider psychologist is denied staff privileges or is removed from the medical or professional staff, such action shall be reported by the facility to the State Board of Examiners of Psychologists.

History. — Code 1981, § 31-7-165, enacted by Ga. L. 1983, p. 1426, § 2.

ARTICLE 9

HOSPICE CARE

Editor's notes. — Ga. L. 1984, p. 22, § 31, effective February 3, 1984, redesignated former Article 8 as present Article 9 to correct a duplication in article designations.

Administrative rules and regulations. — Hospice emergency drug kits, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Pharmacy, Nursing Homes, Long Term Care Facilities and Hospice Emergency Drug Kits, § 480-24-.07.

31-7-170. Short title.

This article shall be known and may be cited as the "Georgia Hospice Law."

History. — Code 1981, § 31-7-170, enacted by Ga. L. 1983, p. 1317, § 2.

31-7-171. Legislative findings and purpose.

(a) The General Assembly finds that there is an interest in and need for hospice care, an alternative form of health care, for terminally ill patients and their families. The General Assembly further finds that hospice care is an important innovation which should be recognized and encouraged.

(b) Recognizing that hospice programs respond to the need for responsible, compassionate, palliative care for terminally ill persons and for their families, extending into the bereavement period, this General Assembly establishes definitions, standards, and provisions for licensure and regulation for hospice programs in this state.

History. — Code 1981, § 31-7-171, enacted by Ga. L. 1983, p. 1317, § 2.

31-7-172. Definitions.

As used in this article, the term:

(1) "Advanced and progressive disease" means a serious life-threatening medical condition which is irreversible and which will continue indefinitely, where there is no reasonable hope of recovery, but where the patient's medical prognosis is one in which there is a life expectancy of up to two years. This term does not include terminally ill patients as defined in paragraph (12) of this Code section.

(2) "Bereavement services" means the supportive services provided to the family unit to assist it in coping with the patient's death, including follow-up assessment and assistance through the first year after death.

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

(4) "Health care facility" means hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; assisted living communities; personal care homes; ambulatory surgical or obstetrical facilities; health maintenance organizations; home health agencies; and diagnostic, treatment, or rehabilitation centers.

(5) "Hospice" means a public agency or private organization or unit of either providing to persons terminally ill and to their families, regardless of ability to pay, a centrally administered and autonomous continuum of palliative and supportive care, directed and coordinated by the hospice care team primarily in the patient's home but also on an outpatient and short-term inpatient basis and which is classified as hospice by the department. In addition, such public agency or private organization or unit of either may also provide palliative care to persons with advanced and progressive diseases and to their families, directed and coordinated by the hospice care team.

(6) "Hospice care" means both regularly scheduled care and care available on a 24 hour on-call basis, consisting of medical, nursing, social, spiritual, volunteer, and bereavement services substantially all of which are provided to the patient and to the patient's family regardless of ability to pay under a written care plan established and periodically reviewed by the patient's attending physician, by the medical director of the hospice program, and by the hospice care team.

(7) "Hospice care team" means an interdisciplinary working unit composed of members of the various helping professions (who may donate their professional services), including but not limited to: a physician licensed or authorized to practice in this state, a registered professional nurse, a social worker, a member of the clergy or other counselor, and volunteers who provide hospice care.

(8) "Hospice patient family unit" means the terminally ill person or person with an advanced and progressive disease and his or her

family, which may include spouse, children, siblings, parents, and other relatives with significant personal ties to the patient.

(9) "License" means a license issued by the department.

(10) "Palliative care" means those interventions by the hospice care team which are intended to alleviate suffering and to achieve relief from, reduction of, or elimination of pain and of other physical, emotional, social, or spiritual symptoms of distress to achieve the best quality of life for the patients and their families.

(11) "Patient" means a terminally ill individual receiving the hospice continuum of services, regardless of ability to pay, and also means an individual with an advanced and progressive disease.

(12) "Terminally ill" means that the individual is experiencing an illness for which therapeutic intervention directed toward cure of the disease is no longer appropriate, and the patient's medical prognosis is one in which there is a life expectancy of six months or less.

History. — Code 1981, § 31-7-172, enacted by Ga. L. 1983, p. 1317, § 2; Ga. L. 2006, p. 1055, § 1/HB 1008; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 227, § 16/SB 178.

Editor's notes. — Ga. L. 2006, p. 1055, § 2A/HB 1008, not codified by the General Assembly, provides: "This Act shall become effective only if funds are specifically appropriated for purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure." Funds were appropriated in the 2006 session of the General Assembly and became available for expenditure on July 1, 2006.

31-7-173. License required.

No person, private or public organization, political subdivision, or other governmental agency may operate a hospice as defined in Code Section 31-7-172 without first obtaining license from the department. A license issued under this article is not assignable or transferable and must be separate from any existing license and is subject to suspension or revocation at any time for failure to comply with the provisions of this article or with the appropriate regulations promulgated by the department.

History. — Code 1981, § 31-7-173, enacted by Ga. L. 1983, p. 1317, § 2.

31-7-174. Application for license.

Any person, organization, or agency desiring to operate a hospice shall file with the department an application on a form prescribed and furnished by the department. The application shall contain such

reasonable information as the department may require related to the department's licensure purpose and function.

History. — Code 1981, § 31-7-174, enacted by Ga. L. 1983, p. 1317, § 2.

31-7-175. Administration of article.

(a) The administration of this article is vested in the Department of Community Health 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.

History. — Code 1981, § 31-7-175, enacted by Ga. L. 1983, p. 1317, § 2; Ga. L. 2008, p. 12, § 2-18/SB 433; Ga. L. 2009, p. 453, § 1-4/HB 228.

31-7-176. Responsibilities of provider of hospice care.

(a) The hospice care program shall coordinate its services with those of the patient's primary or attending physicians, and may contract out for elements of services rendered to the patient and family unit, but not

for the basic hospice care services, provided by physicians, attending nurses, and counselors. The hospice care team shall be responsible for coordination of inpatient, outpatient, and home care aspects of care.

(b) Hospice services must meet all applicable definitions provided for in Code Section 31-7-172.

(c) A hospice program of care shall not impose the dictates of any value or belief system on its patients and their family units.

(d)(1) Notwithstanding any inconsistent provision of this article to the contrary, a hospice may, in addition to providing care to terminally ill individuals, also provide palliative care for patients with advanced and progressive diseases and for their families. Such care may be provided by a hospice acting alone or under contract with a health care facility.

(2) Nothing in this subsection shall prevent the provision of palliative care for patients with advanced and progressive diseases and for their families by any other health care provider otherwise authorized to provide such care.

History. — Code 1981, § 31-7-176, enacted by Ga. L. 1983, p. 1317, § 2; Ga. L. 2006, p. 1055, § 2/HB 1008.

Editor's notes. — Ga. L. 2006, p. 1055, § 2A/HB 1008, not codified by the General Assembly, provides: "This Act shall become effective only if funds are specifically appropriated for purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure." Funds were appropriated in the 2006 session of the General Assembly and became available for expenditure on July 1, 2006.

31-7-176.1. Determination or pronouncement of death.

When a patient who is terminally ill or whose death is anticipated and who is receiving hospice care from a licensed hospice dies, a physician assistant, a nurse practitioner, or a registered professional nurse licensed in this state and employed by such hospice at the time of apparent death of such person, in the absence of an attending physician, may make the determination and pronouncement of the death of said patient. Such determination or pronouncement shall be made in writing on a form approved by the commissioner of community health.

History. — Code 1981, § 31-7-176.1, enacted by Ga. L. 1992, p. 1392, § 2; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2017, p. 625, § 2/SB 96.

The 2017 amendment, effective July 1, 2017, in the first sentence, inserted "a physician assistant, a nurse practitioner, or" near the beginning and deleted "; provided, however, that, when a hospice patient is a registered organ donor, only a physician may make the determination or pronouncement of death" following "said patient" at the end.

Law reviews. — For note on the 1992 enactment of this Code section, see 9 Ga. St. U. L. Rev. 265 (1992).

31-7-177. Inpatient beds.

Since hospice care is primarily provided at home, licensure shall not be determined solely on the number of inpatient beds needed for service. Inpatient beds under contract to a hospice program may be used by the hospice when needed but may remain otherwise available to the inpatient unit at other times without a change in licensing.

History. — Code 1981, § 31-7-177, enacted by Ga. L. 1983, p. 1317, § 2.

31-7-178. Inspection.

The department shall periodically inspect each hospice for which a license has been issued to ensure that the licensee is providing quality care to its patients; provided, however, that a hospice shall be exempt from additional on-site licensure inspection if certified in accordance with federal regulations governing hospices.

History. — Code 1981, § 31-7-178, enacted by Ga. L. 1983, p. 1317, § 2; Ga. L. 1991, p. 94, § 31.

31-7-179. Certificate of need not required.

Where a hospice has obtained a license from the department, there shall be no requirement that the hospice obtain a certificate of need in order to provide any hospice care.

History. — Code 1981, § 31-7-179, enacted by Ga. L. 1983, p. 1317, § 2.

ARTICLE 10

PATIENT CENTERED AND FAMILY FOCUSED PALLIATIVE CARE

Editor's notes. — Ga. L. 1993, p. 738, § 19, effective April 9, 1993, repealed the Code sections formerly codified at this article. The former article consisted of Code Sections 31-7-190 through 31-7-208, relating to the Hospital Financing Authority, and was based on Ga. L. 1984, p. 1654, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1986, p. 1519, §§ 1-5; Ga. L. 1987, p. 3, § 31; Ga. L. 1990, p. 894, §§ 1-11; Ga. L. 1991, p. 94, § 31; and Ga. L. 1992, p. 1323, §§ 1, 1.5, 2.

31-7-190. Legislative intent.

The intent of the General Assembly in enacting this article is to improve quality and delivery of patient centered and family focused palliative care in this state.

History. — Code 1981, § 31-7-190, enacted by Ga. L. 2016, p. 155, § 1/HB 509.

31-7-191. Definitions.

As used in this article, the term:

(1) "Commissioner" means the commissioner of community health.

(2) "Department" means the Department of Community Health.

(3) "Georgia Palliative Care and Quality of Life Advisory Council" or "council" means the advisory council created pursuant to Code Section 31-7-192.

(4) "Health care facility" means hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; assisted living communities; personal care homes; ambulatory surgical or obstetrical facilities; health maintenance organizations; home health agencies; and diagnostic, treatment, or rehabilitation centers.

(5) "Palliative care" means those interventions which are intended to alleviate suffering and to achieve relief from, reduction of, or elimination of pain and of other physical, emotional, social, or spiritual symptoms of distress to achieve the best quality of life for the patients and their families.

History. — Code 1981, § 31-7-191, enacted by Ga. L. 2016, p. 155, § 1/HB 509.

31-7-192. Georgia Palliative Care and Quality of Life Advisory Council.

(a) There is hereby created the Georgia Palliative Care and Quality of Life Advisory Council within the department. The council shall be composed of nine members, as follows:

(1) The chairperson of the House Committee on Health and Human Services, or his or her designee;

(2) The chairperson of the Senate Health and Human Services Committee, or his or her designee;

(3) Two members appointed by the Speaker of the House of Representatives;

(4) Two members appointed by the President of the Senate; and

(5) Three members appointed by the Governor.

The appointing authorities are encouraged to coordinate their appointments so that the council includes interdisciplinary palliative care

medical, nursing, social work, pharmacy, and spiritual professional expertise; patient and family caregiver advocate representation; and any relevant appointees from the department or other state entities or councils. Membership should include health professionals who have palliative care work experience or expertise in palliative care delivery models in a variety of inpatient, outpatient, and community settings, such as acute care, long-term care, or hospice, and with a variety of populations, including pediatric, youth, and adult patients. It is preferable that at least two councilmembers are board certified hospice and palliative medicine physicians or nurses.

(b) Appointed councilmembers shall serve for a period of three years. The members shall elect a chairperson and vice chairperson from among their membership whose duties shall be established by the council.

(c) The department shall fix a time and place for regular meetings of the council, which shall meet at least twice yearly.

(d) Councilmembers shall receive no compensation for their services but shall be allowed actual and necessary expenses in the performance of their duties. Any legislative members of the council shall receive the allowances provided for in Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees. If any members selected to serve on the council are state officials, other than legislative members, or are state employees, they shall receive no compensation for their services on the council but shall be reimbursed for expenses incurred in the performance of their duties as members of the council in the same manner as reimbursements are made in their capacity as state officials or state employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available to their respective departments.

(e) The council shall consult with and advise the department on matters related to the establishment, maintenance, operation, and outcomes evaluation of palliative care initiatives in this state.

(f) The council, no later than October 1, 2019, and annually thereafter, shall submit to the Office of Health Strategy and Coordination a report of its findings and recommendations.

History. — Code 1981, § 31-7-192, enacted by Ga. L. 2016, p. 155, § 1/HB 509; Ga. L. 2017, p. 774, § 31/HB 323; Ga. L. 2019, p. 148, § 2-7/HB 186.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised punctuation in the fourth sentence of subsection (d).

The 2019 amendment, effective July 1, 2019, substituted "October 1, 2019, and annually thereafter, shall submit to the

Office of Health Strategy and Coordination" for "June 30, 2017, and annually thereafter, shall submit to the Governor and the General Assembly" in subsection (f).

Editor's notes. — Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

31-7-193. Palliative Care Consumer and Professional Information and Education Program.

(a) There is established a state-wide Palliative Care Consumer and Professional Information and Education Program within the department.

(b) The purpose of the Palliative Care Consumer and Professional Information and Education Program shall be to maximize the effectiveness of palliative care initiatives in this state by ensuring that comprehensive and accurate information and education about palliative care is available to the public, health care providers, and health care facilities.

(c) The department shall publish on its website information and resources, including links to external resources, about palliative care for the public, health care providers, and health care facilities. This shall include, but not be limited to, continuing educational opportunities for health care providers; information about palliative care delivery in the home, primary, secondary, and tertiary environments; best practices for palliative care delivery; and consumer educational materials and referral information for palliative care, including hospice.

(d) The department shall consult with the Georgia Palliative Care and Quality of Life Advisory Council in implementing this Code section.

History. — Code 1981, § 31-7-193, enacted by Ga. L. 2016, p. 155, § 1/HB 509.

ARTICLE 11

FACILITY LICENSING AND EMPLOYEE RECORDS CHECKS

Cross references. — Records check requirements for licensing of personal care homes, private home care providers, community living arrangements, and child welfare agencies, § 49-2-14.1.

Editor's notes. — Ga. L. 2018, p. 611, § 1-3/SB 406 provides for the repeal of this article effective October 1, 2019.

Administrative rules and regulations. — Schedule of fees for fingerprint records check, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Administration, Chapter 290-1-5.

Enforcement of licensing requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Administration, Chapter 290-1-6.

31-7-250. (Repealed effective October 1, 2019) Definitions.

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of any of the following offenses:

(A) A violation of Code Section 16-5-21, relating to aggravated assault;

(B) A violation of Code Section 16-5-24, relating to aggravated battery;

(C) A violation of Code Section 16-6-1, relating to rape;

(D) A felony violation of Code Section 16-8-2, relating to theft by taking;

(E) A felony violation of Code Section 16-8-3, relating to theft by deception;

(F) A felony violation of Code Section 16-8-4, relating to theft by conversion;

(G) A felony violation of Code Section 16-9-1;

(H) A violation of Code Section 16-5-1;

(I) A violation of Code Section 16-4-1, relating to criminal attempt as it concerns attempted murder;

(J) A violation of Code Section 16-8-40, relating to robbery;

(K) A violation of Code Section 16-8-41, relating to armed robbery;

(L) A violation of Chapter 13 of Title 16, relating to controlled substances;

(M) A violation of Code Section 16-5-23.1, relating to battery;

(N) A violation of Code Section 16-6-5.1;

(O) A violation of Article 8 of Chapter 5 of Title 16;

(P) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere; or

(Q) Any other criminal offense as determined by the department and established by rule adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," that would indicate

the unfitness of an individual to provide care to or be in contact with persons residing in a facility.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(3.1) "Department" means the Department of Community Health.

(4) "Director" means the chief administrative or executive officer or manager.

(5) "Employee" means any person, other than a director, utilized by a personal care home to provide personal services to any resident on behalf of the personal care home or to perform at any facilities of the personal care home any duties which involve personal contact between that person and any paying resident of the personal care home.

(6) "Facility" means real property of a personal care home where residents reside.

(7) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(8) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(9) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(10) "License" means the permit or document issued by the department to authorize the personal care home to which it is issued to operate a facility under this chapter.

(11) "Personal care home" or "home" means a home required to be licensed or permitted under Code Section 31-7-12 or an assisted living community as defined in Code Section 31-7-12.2.

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

(12) "Preliminary records check application" means an application for a preliminary records check determination on forms provided by the department.

(13) "Preliminary records check determination" means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(14) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this article, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(15) "Regular license" means a permit which will remain in effect for the personal care home, until and unless the facility ceases to operate or revocation proceedings are commenced.

(16) "Satisfactory determination" means a written determination that a person for whom a records check was performed was found to have no criminal record.

(17) "Temporary license" means a provisional permit which expires six months or 12 months from the date of issuance, unless extended for good cause by the department.

(18) "Unsatisfactory determination" means a written determination that a person for whom a records check was performed has a criminal record.

History. — Code 1981, § 31-7-250, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1986, p. 822, § 1; Ga. L. 1994, p. 1359, § 1; Ga. L. 2002, p. 942, § 1; Ga. L. 2008, p. 12, § 2-19/SB 433; Ga. L. 2011, p. 227, § 17/SB 178; Ga. L. 2012, p. 351, § 4/HB 1110; Ga. L. 2012, p. 899, § 8-12/HB 1176; Ga. L. 2013, p. 524, § 3-3/HB 78; Ga. L. 2014, p. 444, § 2-9/HB 271.

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a

subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

See the Editor's note following the article heading as to the repeal of this Code section.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 290 (2012).

For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

31-7-251. (Repealed effective October 1, 2019) New facility licensing; facility directors.

On and after July 1, 1985, an applicant for a new license shall have a separate license for each new facility in this state owned or operated by that applicant and shall have a separate director for each such facility.

History. — Code 1981, § 31-7-251, enacted by Ga. L. 1985, p. 952, § 2.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

31-7-252. (Repealed effective October 1, 2019) Director records check applications and employee preliminary records check applications; satisfactory alternative evidence; contracts for records check determinations.

Accompanying any application for a new license for a facility, the applicant shall furnish to the department a records check application and a preliminary records check application for the director of such facility. In lieu of such records check applications, the applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the director received a satisfactory fingerprint records check determination. The department shall contract either with GCIC or other appropriate law enforcement agencies which have access to GCIC information to perform itself or have those agencies perform for the department a preliminary records check for each records check application submitted thereto by the department; and the department shall make a written determination based upon that records check.

History. — Code 1981, § 31-7-252, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 2002, p. 942, § 2.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

31-7-253. (Repealed effective October 1, 2019) Written notification as to department's preliminary records check determinations; effect of unsatisfactory determinations; issuance of temporary licenses.

After being furnished the required records check applications under Code Section 31-7-252, the department shall notify in writing the license applicant as to each person for whom an application was received regarding whether the department's determination as to that person's preliminary records check was satisfactory or unsatisfactory. If the preliminary records check determination was satisfactory as to the director of the facility, that applicant may be issued a temporary license for that facility if the applicant otherwise qualifies for a license under Article 1 of this chapter. If the determination was unsatisfactory as to the director of the facility, the applicant shall designate another director for that facility after receiving notification of the determination and proceed under Code Section 31-7-252 and this Code section to obtain a preliminary records check for that newly designated director. The applicant may not be issued a temporary license for that facility until the department has determined under the procedures of Code Section 31-7-252 and this Code section that the director has a satisfactory preliminary records check determination.

History. — Code 1981, § 31-7-253, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2002, p. 942, § 3.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

31-7-254. (Repealed effective October 1, 2019) Transmission of director's fingerprints to Georgia Crime Information Center for review; notification to department of findings; retention of fingerprints.

After issuing a temporary license based upon a preliminary records check determination of the director that is satisfactory under Code Section 31-7-253, the department shall transmit to GCIC both sets of fingerprints and the records search fee from that director's records check application. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its records and records to which it has access. Within 75 days after receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record, of the fingerprint records check or if there is no such finding. If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall

be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention.

History. — Code 1981, § 31-7-254, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 2002, p. 942, § 4; Ga. L. 2018, p. 507, § 2-8/SB 336.

The 2018 amendment, effective July 1, 2018, in this Code section, in the first sentence, deleted "satisfactory" preceding "preliminary records check" near the middle and inserted "that is satisfactory" in the middle; and added the fourth sentence.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 119 (2018).

31-7-255. (Repealed effective October 1, 2019) Issuance of regular licenses.

After receiving a GCIC notification regarding a director's fingerprint records check under Code Section 31-7-254, the department shall make a determination based thereon and notify in writing the license applicant as to whether that records check was satisfactory or unsatisfactory. If the fingerprint records check determination was satisfactory as to the director of the facility, that applicant may be issued a regular license for that facility. If the fingerprint records check determination was unsatisfactory as to the director of the facility, after receiving notification of that determination, that applicant shall designate another director for such facility, for which director the applicant has not received or made an unsatisfactory preliminary or fingerprint records check determination, and proceed under the requirements of Code Sections 31-7-252 through 31-7-254 and this Code section to obtain a preliminary records check and fingerprint records check determination for the newly designated director. The applicant may not be issued a regular license for that facility until the director has a satisfactory fingerprint records check determination.

History. — Code 1981, § 31-7-255, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2002, p. 942, § 5.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

31-7-256. Expiration of facility licenses issued prior to July 1, 1985; issuance of temporary or regular licenses.

Reserved. Repealed by Ga. L. 2002, p. 942, § 6, effective July 1, 2002.

Editor's notes. — This Code section was based on Code 1981, § 31-7-256, enacted by Ga. L. 1985, p. 952, § 2.

31-7-257. Procedure upon issuance of temporary licenses.

Reserved. Repealed by Ga. L. 2002, p. 942, § 7, effective July 1, 2002.

Editor's notes. — This Code section was based on Code 1981, § 31-7-257, enacted by Ga. L. 1985, p. 952, § 2.

31-7-258. (Repealed effective October 1, 2019) Change of facility director; notification to department; effect of department determination.

(a) If the director of a facility which has been issued a regular license ceases to be the director of that facility, the licensee shall thereupon designate a new director. After such change, the licensee of that facility shall notify the department of such change and of any additional information the department may require regarding the newly designated director of that facility. Such information shall include but not be limited to any information the licensee may have regarding preliminary or fingerprint records check determinations regarding that director. After receiving a change of director notification, the department shall make a written determination from the information furnished with such notification and the department's own records as to whether a satisfactory or unsatisfactory preliminary or fingerprint records check determination has ever been made for the newly designated director. If the department determines that such director within 12 months prior thereto has had a fingerprint records check determination that is satisfactory, such determination shall be deemed to be a satisfactory fingerprint records check determination as to that director. The license of that facility shall not be adversely affected by that change in director and the licensee shall be so notified. The time frames set forth in this subsection shall not apply when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33.

(b) If the department determines under subsection (a) of this Code section that there has ever been a preliminary or fingerprint records check determination of the newly designated director that was unsatisfactory, the personal care home and that director shall be notified thereof. The license for that director's facility shall be indefinitely suspended unless the personal care home designates another director for whom it has not received or made an unsatisfactory determination and proceeds pursuant to the provisions of this Code section relating to a change of director.

(c) If the department determines under subsection (a) of this Code section that there has been no fingerprint records check determination regarding the newly designated director within the immediately preceding 12 months, the department shall so notify the personal care home. The personal care home shall furnish to the department the

records check application of the newly designated director or the license of that facility shall be indefinitely suspended. If that records check application is so received, unless the department has within the immediately preceding 12 months made a preliminary records check determination that is satisfactory regarding the newly designated director, the department shall perform a preliminary records check and determination of the newly designated director; and the applicant and that director shall be notified thereof. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section regarding procedures after notification shall apply. If that determination is satisfactory, the department shall perform a fingerprint records check and determination for that director as provided in Code Sections 31-7-254 and 31-7-255. If that determination is satisfactory, the personal care home and director for whom the determination was made shall be so notified, and the license for the facility at which that person is the newly designated director shall not be adversely affected by that change of director. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section shall apply. The time frames set forth in this subsection shall not apply when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33.

History. — Code 1981, § 31-7-258, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 2018, p. 507, § 2-9/SB 336.

The 2018 amendment, effective July 1, 2018, in subsection (a), deleted "satisfactory" preceding "fingerprint records" and inserted "that is satisfactory" in the fifth sentence and added the last sentence in subsection (b), substituted "a preliminary" for "an unsatisfactory preliminary" and inserted "that was unsatisfactory" in the first sentence and deleted "preliminary or fingerprint records check" following "unsatisfactory" in the middle of the second sentence; and in subsection (c), deleted "satisfactory" preceding "preliminary records" and inserted "that is satisfactory" preceding "regarding" in the third sentence and added the last sentence.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 119 (2018).

31-7-259. (Repealed effective October 1, 2019) Preliminary records check determination; suspension or revocation of license; refusal to issue regular license; fingerprint check; employment history; director's criminal liability; exempt employees; mitigating factors in criminal records check; civil penalty.

(a) Before a person may become a director of any facility that has received either a temporary or regular license, that facility shall require that person to furnish to the department a preliminary records check application and a records check application and the department shall, under the procedures of Code Sections 31-7-252 and 31-7-253, make a preliminary records check determination and send notice thereof to the

facility and director prior to the director beginning work. If the preliminary records check is unsatisfactory, the facility shall not hire the director. If the subsequent fingerprint records check determination is unsatisfactory, the facility shall take such steps as are necessary so that such person is no longer the director of the facility.

(b) Before a person may become an employee of a facility, each potential employee of a facility shall request a criminal record check from a local law enforcement agency and submit the results of the criminal record check to the facility. The personal care home shall be authorized to rely on written information received from a local law enforcement agency, GCIC, or other official agency to determine whether the applicant for employment has a criminal record. A personal care home shall not employ a person with an unsatisfactory determination.

(c) In addition, where an applicant for employment at a personal care home has not been a resident of the state for a period of three years preceding the date of application for employment, the personal care home shall attempt to obtain a criminal record check from the local law enforcement agency of the applicant's previous state of residence. If the local criminal record check from either the applicant's previous state of residence or this state indicates multistate offender status, the personal care home shall not employ the applicant until a determination is made as to whether the applicant has a criminal record. If the personal care home elects to determine the nature of the criminal activity, the personal care home shall transmit the preliminary records check application and the records check application on behalf of the potential employee to the department for processing through the GCIC. A personal care home shall not employ a person with an unsatisfactory determination.

(d) If the personal care home is unable to obtain a criminal record check from the local law enforcement agency of the applicant's previous state of residence, it shall transmit a records check application to the department which shall process the application through the GCIC. A personal care home shall not employ a person with an unsatisfactory determination.

(e) The fee for a criminal records check under this Code section shall be no greater than the actual cost of processing the request and shall be paid by the personal care home or by the applicant for employment. The law enforcement agency of this state receiving the request shall perform a criminal record check for a personal care home within a reasonable time but in any event within a period not to exceed three days of receiving the request.

(f) Each application form provided by the employer to the applicant for employment shall conspicuously state the following: "FOR THIS

TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(g) Both temporary and regular licenses are subject to suspension or revocation or the department may refuse to issue a regular license if a person becomes a director or employee subsequent to the granting of a license and that person does not undergo the records checks applicable to that director or employee and receive a satisfactory determination.

(h) After the issuance of a regular or temporary license, the department may require a fingerprint records check on any director or employee to confirm identification for records search purposes, or when subsequent to a preliminary records check, the department has reason to believe that the director or employee has a criminal record. The department may require a fingerprints record check on any director or employee during the course of an abuse investigation involving the director or employee. In such instances, the department shall require the director or employee to furnish two full sets of fingerprints which the department shall submit to the GCIC together with appropriate fees collected from the director or employee or personal care home. Upon receipt thereof, the GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and retain the other set and promptly conduct a search of its records and records to which it has access. The GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record obtained through the fingerprint record check or if there is no such finding. Where the department determines that the director or employee has a criminal record, the department shall notify the facility of the unsatisfactory determination and the facility shall take such steps as are necessary so that such person is no longer the director or an employee of the facility.

(i) No personal care home may have any person as an employee after July 1, 2002, unless there is on file in the personal care home an employment history for that person and a satisfactory determination that the person does not have a criminal record.

(j) Except as provided in subsection (l) of this Code section, a director of a facility having an employee whom that director knows or should reasonably know to have a criminal record, as defined in Code Section 31-7-250, shall be guilty of a misdemeanor.

(k) The provisions of this Code section shall not apply to a member of the administrative staff or an applicant for an administrative staff position of a personal care home whose duties do not include management of resident funds or personal contact between that person and any paying resident of the home.

(l) Where a personal care home determines that an applicant for employment has a criminal record but there are matters in mitigation of the criminal record, no physical harm was done to the victim, and the personal care home would like to hire the applicant, the personal care home may submit an application for a preliminary records check to the department on behalf of the potential employee on forms provided by the department. The personal care home shall not hire the potential employee to work in the home until the personal care home receives notification from the department that the applicant either has a satisfactory criminal record check or an administrative law judge has determined that the applicant is authorized to work in a personal care home.

(m) Except as provided in subsection (l) of this Code section, a personal care home that hires an applicant for employment with a criminal record is in violation of licensing requirements, and the department is authorized to impose a civil penalty pursuant to the authority granted it under the rules and regulations for the enforcement of licensing requirements.

(n) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention.

History. — Code 1981, § 31-7-259, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 2002, p. 942, § 8; Ga. L. 2018, p. 507, § 2-10/SB 336; Ga. L. 2019, p. 1056, § 31/SB 52.

The 2018 amendment, effective July 1, 2018, added subsection (n).

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (m).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, a comma was deleted following "processing the request" in the first sentence in subsection (e).

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

Law reviews. — For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 119 (2018).

31-7-260. (Repealed effective October 1, 2019) Cooperation of Georgia Crime Information Center and law enforcement agencies with department; liability for misuse or attempted misuse of information.

(a) GCIC and law enforcement agencies which have access to GCIC information shall cooperate with the department in performing preliminary and fingerprint records checks required under this chapter and shall provide such information so required for such records checks

notwithstanding any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized to be obtained pursuant to this chapter, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than $5,000.00, imprisoned for not more than two years, or both.

History. — Code 1981, § 31-7-260, enacted by Ga. L. 1985, p. 952, § 2.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

31-7-261. (Repealed effective October 1, 2019) Liability for claims in connection with dissemination of information or determination based thereon.

(a) Neither GCIC, the department, any county board of health, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A facility, its director, and its employees shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the requirements of this article.

History. — Code 1981, § 31-7-261, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1986, p. 509, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "or" was substituted for "nor" following "accuracy of information" in subsection (a).

Pursuant to Code Section 28-9-5, in 1996, the hyphen was deleted from "good faith" in subsection (b).

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

31-7-262. (Repealed effective October 1, 2019) Supplemental nature of requirements of this article.

The requirements of this article are supplemental to any requirements for a license imposed by Article 1 of this chapter.

History. — Code 1981, § 31-7-262, enacted by Ga. L. 1985, p. 952, § 2.

Editor's notes. — See the Editor's note following the article heading as to the

repeal of this Code section.

31-7-263. (Repealed effective October 1, 2019) Contested cases for purposes of the "Georgia Administrative Procedure Act."

A determination by the department regarding preliminary or fingerprint records checks under this article or any action by the department revoking, suspending, or refusing to grant or renew a license based upon such determination shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department. It is expressly provided that upon motion from any party, the hearing officer may, in his discretion, consider matters in mitigation of any conviction, provided the hearing officer examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpitude on the part of the person making a motion for an exception to sanctions normally imposed. If the hearing officer deems a hearing to be appropriate, he will also notify at least 30 days prior to such hearing the office of the prosecuting attorney who initiated the prosecution of the case in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license or employment as contemplated within this title. If objections are made, the hearing officer will take such objections into consideration in considering the case. If the hearing officer determines that no hearing in mitigation is justified, or, if after the hearing, rules against the party seeking mitigation, then in either of those events the hearing officer's determinations shall be conclusive and final and not subject to further review.

History. — Code 1981, § 31-7-263, enacted by Ga. L. 1985, p. 952, § 2; Ga. L. 1991, p. 721, § 1.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U. L. Rev. 74 (1992).

31-7-264. (Repealed effective October 1, 2019) Regulatory power of department.

The department is authorized to provide by regulation for the administration of this article.

History. — Code 1981, § 31-7-264, enacted by Ga. L. 1985, p. 952, § 2.

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

31-7-265. (Repealed effective October 1, 2019) Facility licensing and employee records checks for personal care homes transferred to Department of Community Health.

(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 (now known as the Department of Human Services) 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 who are transferred to the department shall retain all existing rights under such rules. 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.

History. — Code 1981, § 31-7-265, enacted by Ga. L. 2008, p. 12, § 2-20/SB 433; Ga. L. 2009, p. 453, § 1-31/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-39/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

See the Editor's note following the article heading as to the repeal of this Code section.

ARTICLE 12

HEALTH CARE DATA COLLECTION

31-7-280. Health care provider annual reports; form.

(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, or health care plans, but does not mean a specified disease or supplemental hospital indemnity payor.

(b) There shall be required from each health care provider in this state 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.

(c) The report required under subsection (b) 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) Amounts of 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 sources, including the proportion of any such funding dedicated to the care of indigent persons;

(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 total number of patients categorized by county of residence;

(E) The indigent care costs incurred by the health care provider by county of residence;

(9) The public, profit, or nonprofit status of the health care provider and whether or not the provider is a teaching hospital;

(10) The number of board certified physicians, by specialty, on the staff of the health care provider;

(11) The number of nursing hours per day for each hospital and per patient visit for each ambulatory surgical or obstetrical facility;

(12) For ambulatory surgical or obstetrical facilities, the types of surgery performed and emergency back-up systems available for that surgery;

(13) For hospitals:

(A) The availability of emergency services, trauma centers, intensive care units, and neonatal intensive care units;

(B) Procedures hospitals specialize in and the number of such procedures performed annually; and

(C) Cesarean section rates by number and as a percentage of deliveries; and

(14) Data available on a recognized uniform billing statement or substantially similar form generally used by health care providers which reflect, but are not limited to, the following type of data obtained during a 12 month period during each reporting period: unique longitudinal nonidentifying patient code, the patient's birth date, sex, race, geopolitical subdivision code, ZIP Code, county of residence, type of bill, beginning and ending service dates, date of admission, discharge date, disposition of the patient, medical or health record number, principal and secondary diagnoses, principal and secondary procedures and procedure dates, external cause of injury codes, diagnostic related group number (DRG), DRG procedure coding used, revenue codes, total charges and summary of charges by revenue code, payor or plan identification, or both, place of service code such as the uniform hospital identification number and hospital name, attending physician and other ordering, referring, or performing physician identification number, and specialty code.

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

(e) The department shall, within a period of one year following July 1, 1989, in cooperation with representatives of such consumer groups and associations and health care providers as it shall designate, study and determine such quality indicators and such additional or alternative information related to the intent and purpose of this article as the department shall determine are in the best interests of the residents of this state.

(f) In the event that the department does not receive from a health care provider an annual report containing the data and information required by this article within 30 days following the date such report was due or receives a timely but incomplete report, the department shall notify the health care provider regarding the deficiencies, by certified mail or statutory overnight delivery, return receipt requested. In the event such deficiency continues for 15 days after said notification has been given, the health care provider shall be liable for a penalty in the amount of $1,000.00 for such violation and an additional penalty of $500.00 for each day during which such violation continues and be

subject to appropriate sanctions otherwise authorized by law, including, but not limited to, suspension or revocation of that provider's permit or license.

History. — Code 1981, § 31-7-280, enacted by Ga. L. 1988, p. 991, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1995, p. 745, § 2.1; Ga. L. 1996, p. 1201, § 2.1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2008, p. 12, § 2-21/SB 433; Ga. L. 2017, p. 164, § 55/HB 127.

The 2017 amendment, effective July 1, 2017, substituted "or health care plans," for "hospital service nonprofit corporation plans, health care plans, or nonprofit medical service corporation plans," in the middle of paragraph (a)(4).

31-7-281. Data system established; departmental authority.

(a) The department shall be required to establish and operate a state-wide health care data system to collect, compile, analyze, and disseminate data collected pursuant to this article from health care providers and other specified entities.

(b) The department shall be authorized to execute contracts or establish written agreements for the purpose of avoiding duplication of data collected pursuant to this article.

(c) Where an existing data collection system meets the collection requirements of the department pursuant to this article, the department shall utilize such existing system when the significant elements of such data are collected, provided that such system meets the requirements of the department pursuant to this article and is available, without undue restrictions, to the department. For purposes of this subsection, reimbursement from the department for the costs incurred by such existing system in collecting this data shall not be considered an undue restriction.

(d) The department shall have complete authority over any data collection functions performed pursuant to this article and shall be authorized to perform such data analyses as shall, in its discretion, be required.

(e) The department shall establish a system to review and audit selected report data which contain the information listed in subsection (c) of Code Section 31-7-280 and which are collected other than by the department.

History. — Code 1981, § 31-7-281, enacted by Ga. L. 1988, p. 991, § 1.

31-7-282. Collection and submission of data.

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 Services;

(3) The Commissioner of Insurance;

(4) Reserved;

(5) Third-party payors;

(6) A nationally recognized health care accreditation body; and

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

Any entity specified in paragraphs (1) through (3) 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) or (3) of this Code section shall not be required to be provided to the department by that health care provider.

History. — Code 1981, § 31-7-282, enacted by Ga. L. 1988, p. 991, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 1999, p. 296, §§ 22, 24; Ga. L. 2000, p. 136, § 31; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2008, p. 12, § 2-22/SB 433; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2012, p. 337, § 5/SB 361.

31-7-283. Compilation and dissemination of information; rules and regulations.

(a) The department shall compile, direct the compilation of, and disseminate comparative information provided in the annual reports under Code Section 31-7-280 on a health care provider specific basis.

(b) Any data collected by the department may be included in department reports pursuant to this article as deemed appropriate to offer full information to the public. Prior to any release or dissemination of the data, the department shall permit the reporting entity a 30 day opportunity to verify the accuracy of any information pertaining to its data. The reporting entity may submit to the department any corrections of errors in the compilations of the data with any supporting evidence and comments. The department shall correct for the report such data which, in its judgment, are found to be in error. Any information, evidence, or comments submitted to the department in writing by the reporting entity shall be included as a part of the department's release or dissemination.

(c) If the data required by the department are available from the reporting entity by acceptably formatted, computer readable means, such method for reporting shall be preferred.

(d) The reporting of any data required by this article by specified types of health care providers shall include health care providers operated by state, county, municipality, public or private entities, or any combination thereof.

(e) The department shall be authorized to promulgate such rules and regulations as are necessary to effectuate and carry out its authority and duties under this article.

History. — Code 1981, § 31-7-283, enacted by Ga. L. 1988, p. 991, § 1.

31-7-284. Public disclosure; updating of data base; publication; fees.

(a) Subject to the procedures specified in subsection (b) of Code Section 31-7-283, the department shall be authorized to disclose nonpatient-specific data required under this article. Dissemination of such data to the public shall be made in clear and understandable language and in such form as to facilitate appropriate planning and choices on the part of consumers, providers, and payors.

(b) The department data base established pursuant to this article shall be updated no less frequently than on an annual basis. Public reports from that data shall be published no less frequently than annually.

(c) The costs to the state associated with the data collection system provided for in this article shall be paid through the department budget. The department shall, at its discretion and funds permitting, begin collection and dissemination of data immediately. The department is authorized to charge fees for reports, data, and information related to the data system; provided, however, no fees shall be imposed upon health care providers which submit data to the department pursuant to this article. The department shall implement a fee scale for such information that will result in fee collections not to exceed the costs of the data collection system. All such fees shall be remitted to the general fund of the state.

History. — Code 1981, § 31-7-284, enacted by Ga. L. 1988, p. 991, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "payors" was substituted for "payers" in the second sentence of subsection (a).

31-7-285. Confidentiality; liability.

(a) Notwithstanding any provision of law to the contrary, it shall not be unlawful for any entity which may be requested or required to provide data to the department under this article so to provide that information or for the department or its designees to provide such information as authorized or required by this article or any other law.

(b) Information provided to the department pursuant to this article or information released by the department shall not identify a patient by name or specific address. Any person, firm, corporation, association, or other entity who violates this subsection shall be guilty of a misdemeanor.

(c) A person shall not be civilly liable as a result of the person's acts, omissions, or decisions as an officer or employee or agent in connection with the person's duties for the department under this article.

(d) Unless otherwise provided in this article, the data collected by and furnished to the department pursuant to this article shall not be public records under Article 4 of Chapter 18 of Title 50 or any other law governing the maintenance, inspection, or dissemination of data collected by the state. The reports prepared for release or dissemination from the data collected shall be public records under Article 4 of Chapter 18 of Title 50. The confidentiality of patients shall be protected and no provision of this article shall affect any provision of law relating to patient confidentiality.

(e) No cause of action shall arise against a person, entity, or health care provider for disclosing or reporting information in accordance with this article; provided, however, that this Code section shall not provide immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

History. — Code 1981, § 31-7-285, enacted by Ga. L. 1988, p. 991, § 1; Ga. L. 1991, p. 94, § 31.

ARTICLE 13

PRIVATE HOME CARE PROVIDERS

Administrative rules and regulations. — Rules and regulations for private home care providers, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-65.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 2 et seq.

31-7-300. Definitions.

As used in this article, the term:

(1) "Companion or sitter tasks" means the following tasks which are provided to elderly, handicapped, or convalescing individuals: transport and escort services; meal preparation and serving; and household tasks essential to cleanliness and safety. These tasks do not include assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating.

(2) "Department" means the Department of Community Health.

(3) "Personal care tasks" means assistance with bathing, toileting, grooming, shaving, dental care, dressing, and eating; and may include but are not limited to proper nutrition, home management, housekeeping tasks, ambulation and transfer, and medically related activities, including the taking of vital signs only in conjunction with the above tasks.

(4) "Private home care provider" means any person, business entity, corporation, or association, whether operated for profit or not for profit, that directly provides or makes provision for private home care services through:

(A) Its own employees who provide nursing services, personal care tasks, or companion or sitter tasks;

(B) Contractual arrangements with independent contractors who are health care professionals licensed pursuant to Title 43; or

(C) Referral of other persons to render home care services, when the individual making the referral has ownership or financial interest in the delivery of those services by those other persons who would deliver those services.

(5) "Private home care services" means those items and services provided at a patient's residence that involve direct care to that patient and includes, without limitation, any or all of the following:

(A) Nursing services, provided that such services can only be provided by a person licensed under Chapter 26 of Title 43;

(B) Personal care tasks; and

(C) Companion or sitter tasks.

Private home care services shall not include physical, speech, or occupational therapy; medical nutrition therapy; medical social services; or home health aide services provided by a home health agency.

(6) "Residence" means the place where an individual makes that person's permanent or temporary home, whether that person's own apartment or house, a friend or relative's home, or a personal care home, but shall not include a hospital, nursing home, hospice, or other health care facility licensed under Article 1 of this chapter.

History. — Code 1981, § 31-7-300, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 2008, p. 12, § 2-23/SB 433; Ga. L. 2015, p. 336, § 2/HB 183.

Editor's notes. — Ga. L. 2015, p. 336, § 1/HB 183, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Home Care Patient Protection Act.'"

31-7-301. License requirement; license not assignable or transferable.

Except as otherwise provided in this article, on and after July 1, 1996, no person, business entity, corporation, or association, whether operated for profit or not for profit, may operate as a private home care provider without first obtaining a license or provisional license from the department. A license issued under this article is not assignable or transferable.

History. — Code 1981, § 31-7-301, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 1996, p. 6, § 31.

31-7-302. Rules and regulations; authority of department to issue, suspend, or revoke licenses.

The department is authorized to promulgate rules and regulations to implement this article. The department is authorized to issue, deny, suspend, or revoke licenses or take other disciplinary actions against licensees as provided in Code Section 31-2-8.

History. — Code 1981, § 31-7-302, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-7-303. Inspections; requirements for exemption.

Each private home care provider for which a license has been issued shall be inspected by the department periodically; provided, however, the department may exempt a provider from inspections if it is certified or accredited by a certification or accreditation entity recognized and

approved by the department. A provider seeking exemption from inspection shall be required to submit to the department documentation of certification or accreditation, including a copy of its most recent certification or accreditation report.

History. — Code 1981, § 31-7-303, enacted by Ga. L. 1994, p. 959, § 1.

31-7-304. Fees.

The department is authorized to charge an application fee, a license fee, a license renewal fee, or a similar fee; and the amount of such fees shall be established by the Board of Community Health. Each fee so established shall be reasonable and shall be determined in such a manner that the total of the fees charged shall approximate the total of the direct and the indirect costs to the state of the operation of the licensing program. Fees may be refunded for good cause as determined by the department.

History. — Code 1981, § 31-7-304, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-5/HB 228.

31-7-305. Exempt services.

This article shall not apply to private home care services which are provided under the following conditions:

(1) When those services are provided directly by an individual, either with or without compensation, and not by agents or employees of the individual and not through independent contractors or referral arrangements made by an individual who has ownership or financial interest in the delivery of those services by others who would deliver those services;

(2) When those services are home infusion therapy services and the intermittent skilled nursing care is provided only as an integral part of the delivery and infusion of pharmaceuticals, but such skilled nursing care, whether hourly or intermittent, which provides care licensed by this article beyond the basic delivery and infusion of pharmaceuticals is not exempt;

(3) When those services are provided through the temporary placement of professionals and paraprofessionals to perform those services in places other than a person's residence;

(4) When those services are provided by home health agencies which are licensed under Article 7 of this chapter;

(5) When those services are provided in a personal care home by the staff of the personal care home;

(6) When those services are services within the scope of practice of pharmacy and provided by persons licensed to practice pharmacy; and

(7) When those services are provided directly by an individual on a volunteer basis through a senior volunteer program, which includes the foster grandparent program, the senior companion program, and the retired and senior volunteer program. In no case shall there be remuneration to any person, firm, corporation, or volunteer for services rendered or coordination of services in conjunction with the senior volunteer program or the foster grandparent program.

History. — Code 1981, § 31-7-305, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 1997, p. 586, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "article" was substituted for "Act" in paragraph (2).

31-7-306. Applications received prior to effective date of article.

A person, business entity, corporation, or association which has applied for a license pursuant to this article prior to July 1, 1996, but which has not been granted such license within 180 days after rules implementing this article have become effective shall be authorized to continue to operate without such license until 90 days after the application for license has been denied.

History. — Code 1981, § 31-7-306, enacted by Ga. L. 1994, p. 959, § 1; Ga. L. 1996, p. 6, § 31.

31-7-307. Certificate of need not required of licensees; operation of licensee as home health agency not authorized.

(a) A certificate of need issued pursuant to Chapter 6 of this title is not required for any person, business entity, corporation, or association, whether operated for profit or not for profit, which is operating as a private home care provider as long as such operation does not also constitute such person, entity, or organization operating as a home health agency or personal care home under this chapter.

(b) A license issued under this article shall not entitle the licensee to operate as a home health agency, as defined in Code Section 31-7-150, under medicare or Medicaid guidelines.

History. — Code 1981, § 31-7-307, enacted by Ga. L. 1994, p. 959, § 1.

31-7-308. Licensure and regulation of private home care providers transferred to Department of Community Health.

(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 (now known as the Department of Human Services) 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 who are transferred to the department shall retain all

existing rights under such rules. 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.

History. — Code 1981, § 31-7-308, enacted by Ga. L. 2008, p. 12, § 2-24/SB 433; Ga. L. 2009, p. 453, § 1-32/HB 228; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-40/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

ARTICLE 14

NURSING HOMES EMPLOYEE RECORDS CHECKS (EFFECTIVE UNTIL OCTOBER 1, 2019)

Editor's notes. — Article 14 is set out twice in this Code. The first version is effective until October 1, 2019, and the second version becomes effective on that date.

Administrative rules and regulations. — Schedule of fees for fingerprint records check, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Administration, Chapter 290-1-5.

Law reviews. — For note on the 1995 enactment of this article, see 12 Ga. St. U. L. Rev. 252 (1995).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 15.

31-7-350. Definitions.

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) "Crime" means commission of an offense which constitutes a felony with respect to the following:

(A) A violation of Code Section 16-5-21;

(B) A violation of Code Section 16-5-24;

(C) A violation of Code Section 16-6-1;

(D) A violation of Code Section 16-8-2;

(E) A violation of Code Section 16-8-3;

(F) A violation of Code Section 16-8-4;

(G) A violation of Code Section 16-5-1;

(H) A violation of Code Section 16-4-1;

(I) A violation of Code Section 16-8-40;

(J) A violation of Code Section 16-8-41;

(K) A felony violation of Code Section 16-9-1;

(L) A violation of Article 8 of Chapter 5 of Title 16;

(M) A violation of Chapter 13 of Title 16; or

(N) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere.

(3) "Criminal record" means any of the following which have reached final disposition within ten years of the date the criminal record check is conducted:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and charges for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Employment applicant" means any person seeking employment by a nursing home. This term shall not include persons employed by the nursing home prior to July 1, 1995.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "Nursing home" or "home" means a home required to be licensed or permitted as a nursing home under the provisions of this chapter.

(7) "Satisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have no criminal record.

(8) "Unsatisfactory determination" means a written determination by a nursing home that a person for whom a record check was performed was found to have a criminal record.

History. — Code 1981, § 31-7-350, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 1; Ga. L. 2012, p. 899, § 8-13/HB 1176; Ga. L. 2013, p. 524, § 3-4/HB 78.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "July 1, 1995" was substituted for "the effective date of this article" in paragraph (4) and "this chapter" was substituted for "Chapter 7 of Title 31" in paragraph (6).

Editor's notes. — See the Editor's note following the article heading as to the delayed amendment of this Code section.

Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 290 (2012).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 153 (2001). For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

31-7-351. Request for criminal record check; employment application form notice.

(a) Prior to hiring an employment applicant, each nursing home shall request a criminal record check from GCIC to determine whether the applicant has a criminal record. A nursing home shall make a written determination for each applicant for whom a criminal record check is performed. A nursing home shall not employ a person with an unsatisfactory determination.

(b) Any request for a criminal record check under this Code section shall be on a form approved by GCIC and submitted in person, by mail, or by facsimile request to any county sheriff or municipal law enforcement agency having access to GCIC information. The fee shall be no greater than the actual cost of processing the request. The law enforcement agency receiving the request shall perform a criminal record check for a nursing home within a reasonable time but in any event within a period not to exceed three days of receiving the request.

(c) Each application form provided by the employer to the employment applicant shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

History. — Code 1981, § 31-7-351, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 2.

Editor's notes. — See the Editor's note following the article heading as to the delayed amendment of this Code section.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 153 (2001).

31-7-352. Immunity from liability.

(a) Neither GCIC nor any law enforcement agency providing GCIC information pursuant to this article shall be responsible for the accuracy of information or have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A nursing home, its administrator, and its employees shall have no liability for wrongful discharge, unemployment security benefits, or any other claim based upon:

(1) Refusal to employ any person with a criminal record;

(2) Termination of employment of persons with a criminal record already employed by the home; or

(3) Other action taken in good faith reliance upon GCIC information received pursuant to this article.

History. — Code 1981, § 31-7-352, enacted by Ga. L. 1995, p. 570, § 1.

Editor's notes. — See the Editor's note following the article heading as to the delayed amendment of this Code section.

31-7-353. Penalty for hiring applicant with criminal record.

A nursing home that hires an applicant for employment with a criminal record shall be liable for a civil monetary penalty in the amount of the lesser of $2,500.00 or $500.00 for each day that a violation of subsection (a) of Code Section 31-7-351 occurs. The daily civil monetary penalty shall be imposed only from the time the nursing home administrator knew or should have known that the nursing home has in its employ an individual with a criminal record and until the date such individual is terminated.

History. — Code 1981, § 31-7-353, enacted by Ga. L. 2001, p. 806, § 3.

Cross references. — Equal protection, U.S. Const., amend. 14 and Ga. Const. 1983, Art. I, Sec. I, Para. II.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "$2,500.00" was substituted for "$2500.00" in the first sentence.

Editor's notes. — See the Editor's note following the article heading as to the delayed amendment of this Code section.

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 153 (2001).

31-7-354. Authority to enforce article; rules and regulations.

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.

History. — Code 1981, § 31-7-354, enacted by Ga. L. 2008, p. 12, § 2-25/SB 433.
Editor's notes. — See the Editor's note following the article heading as to the delayed amendment of this Code section.

ARTICLE 14

GEORGIA LONG-TERM CARE BACKGROUND CHECK PROGRAM (EFFECTIVE OCTOBER 1, 2019)

Editor's notes. — Article 14 is set out twice in this Code. The first version is effective until October 1, 2019, and the second version becomes effective on that date.

31-7-350. Short title; purpose.

(a) This article shall be known and may be cited as the "Georgia Long-term Care Background Check Program."

(b) The purpose of this article is to establish the minimum standards for the Georgia Long-term Care Background Check Program for conducting criminal background checks of owners, applicants for employment, and direct access employees at certain facilities.

History. — Code 1981, § 31-7-350, enacted by Ga. L. 2018, p. 611, § 1-4/SB 406.
Effective date. — This Code section becomes effective October 1, 2019.

31-7-351. Definitions.

As used in this article, the term:

(1) "Applicant" means an individual applying to be a direct access employee at a facility.

(2) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(3) "Crime" means commission of:

(A) Any of the following offenses:

(i) A violation of Code Section 16-5-70;

(ii) A violation of Code Section 16-5-101;

(iii) A violation of Code Section 16-5-102;

(iv) A violation of Code Section 16-6-4;

(v) A violation of Code Section 16-6-5;

(vi) A violation of Code Section 16-6-5.1; or

(vii) A violation of Code Section 30-5-8;

(B) A felony violation of:

(i) Chapter 5, 6, 8, 9, or 13 of Title 16;

(ii) Code Section 16-4-1;

(iii) Code Section 16-7-2; or

(iv) Subsection (f) of Code Section 31-7-12.1; or

(C) Any other offense committed in another jurisdiction which, if committed in this state, would be deemed to constitute an offense identified in this paragraph without regard to its designation elsewhere.

(4) "Criminal background check" means a search of the criminal records maintained by GCIC and the Federal Bureau of Investigation to determine whether an owner, applicant, or employee has a criminal record.

(5)(A) "Criminal record" means any of the following:

(i) Conviction of a crime;

(ii) Arrest, charge, and sentencing for a crime when:

(I) A plea of nolo contendere was entered to the crime;

(II) First offender treatment without adjudication of guilt was granted to the crime; or

(III) Adjudication or sentence was otherwise withheld or not entered for the crime; or

(iii) Arrest and charges for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(B) Such term shall not include an owner, applicant, or employee for which at least ten years have elapsed from the date of his or her criminal background check since the completion of all of the terms of his or her sentence; provided, however, that such ten-year period or exemption shall never apply to any crime identified in subsection (j) of Code Section 42-8-60.

(6) "Direct access" means having, or expecting to have, duties that involve routine personal contact with a patient, resident, or client, including face-to-face contact, hands-on physical assistance, verbal cuing, reminding, standing by or monitoring or activities that require the person to be routinely alone with the patient's, resident's, or client's property or access to such property or financial information such as the patient's, resident's, or client's checkbook, debit and credit cards, resident trust funds, banking records, stock accounts, or brokerage accounts.

(7) "Employee" means any individual who has direct access and who is hired by a facility through employment, or through a contract with such facility, including, but not limited to, housekeepers, maintenance personnel, dieticians, and any volunteer who has duties that are equivalent to the duties of an employee providing such services. Such term shall not include an individual who contracts with the facility, whether personally or through a company, to provide utility, construction, communications, accounting, quality assurance, human resource management, information technology, legal, or other services if the contracted services are not directly related to providing services to a patient, resident, or client of the facility. Such term shall not include any health care provider, including, but not limited to, physicians, dentists, nurses, and pharmacists who are licensed by the Georgia Composite Medical Board, the Georgia Board of Dentistry, the Georgia Board of Nursing, or the State Board of Pharmacy.

(8) "Facility" means:

(A) A personal care home required to be licensed or permitted under Code Section 31-7-12;

(B) An assisted living community required to be licensed under Code Section 31-7-12.2;

(C) A private home care provider required to be licensed under Article 13 of this chapter;

(D) A home health agency as licensed pursuant to Code Section 31-7-151;

(E) A provider of hospice care as licensed pursuant to Code Section 31-7-173;

(F) A nursing home, skilled nursing facility, or intermediate care home licensed pursuant to rules of the department; or

(G) An adult day care facility licensed pursuant to rules of the department.

(9) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department based upon fingerprint based national criminal history information.

(10) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(11) "License" means the document issued by the department to authorize a facility to operate.

(12) "Owner" in the context of a nursing home or intermediate care home means an individual who is not an "excluded party" as such term is defined in Code Section 31-7-3.3, otherwise such term means an individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in a facility who performs one or more of the following:

(A) Purports to or exercises authority of a facility;

(B) Applies to operate or operates a facility;

(C) Maintains an office on the premises of a facility;

(D) Resides at a facility;

(E) Has direct access at a facility;

(F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction when such facility services are being provided; or

(G) Enters into a contract to acquire ownership of a facility.

(13) "Records check application" means fingerprints in such form and of such quality as prescribed by GCIC under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining a criminal background check.

(14) "Registry check" means a review of the nurse aide registry provided for in Code Section 31-2-14, the state sexual offender registry, and the List of Excluded Individuals and Entities as authorized in Sections 1128 and 1156 of the federal Social Security Act, as it existed on February 1, 2018, or any other registry useful for the administration of this article as specified by rules of the department.

(15) "Satisfactory determination" means a written determination that an individual for whom a criminal background check was performed was found to have no criminal record.

(16) "Unsatisfactory determination" means a written determination that an individual for whom a criminal background check was performed was found to have a criminal record.

History. — Code 1981, § 31-7-350, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 1; Ga. L. 2012, p. 899, § 8-13/HB 1176; Ga. L. 2013, p. 524,

§ 3-4/HB 78; Code 1981, § 31-7-351, as redesignated by Ga. L. 2018, p. 611, § 1-4/SB 406.

The 2018 amendment, effective October 1, 2019, redesignated former Code Section 31-7-350 as present Code Section 31-7-351, and rewrote this Code section.

Editor's notes. — Ga. L. 2012, p. 899, § 9-1(a)/HB 1176, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2012, and shall apply to offenses which occur on or after that date. Any offense occurring before July 1, 2012, shall be governed by the statute in effect at the time of such offense and shall be considered a prior conviction for the purpose of imposing a sentence that provides for a different penalty for a subsequent conviction for the same type of offense, of whatever degree or level, pursuant to this Act."

This Code section formerly pertained to a request for criminal record check and employment application form notice. This Code section was based on Ga. L. 1995, p. 570, § 1; Ga. L. 2001, p. 806, § 2 and was repealed by Ga. L. 2018, p. 611, § 1-4/SB 406, effective October 1, 2019.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 290 (2012).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 153 (2001). For note, "Give It to Me, I'm Worth It: The Need to Amend Georgia's Record Restriction Statute to Provide Ex-Offenders with a Second Chance in the Employment Sector," see 52 Ga. L. Rev. 267 (2017).

31-7-352. Registry check required; validation of licensing.

(a) A registry check of an owner, applicant, or employee shall be required prior to a criminal background check and shall be initiated by the applicable facility. A registry check shall be performed by such facility and may include reviewing registries of any other states in which the applicant previously resided. If an applicant has not resided in this state for at least two years, the facility shall conduct registry checks of each state in which the applicant resided for the previous two years, as represented by such applicant or as otherwise determined by the applicable facility.

(b) If applicable to an owner, applicant, or employee, a query of available information maintained by the Georgia Composite Medical Board, the Secretary of State, or other applicable licensing boards shall be conducted prior to a criminal background check to validate that such individual's professional license is in good standing.

(c) Except as provided in subsection (c) of Code Section 31-7-359, nothing in this Code section shall be construed to limit the responsibility or ability of a facility to screen owners, applicants, or employees through additional methods.

History. — Code 1981, § 31-7-352, enacted by Ga. L. 1995, p. 570, § 1; Ga. L. 2018, p. 611, § 1-4/SB 406.

The 2018 amendment, effective October 1, 2019, rewrote this Code section.

Editor's notes. — This Code section formerly pertained to a request for criminal record check and employment application form notice. This Code section was based on Ga. L. 1995, p. 570, § 1 and was repealed by Ga. L. 2018, p. 611, § 1-4/SB 406, effective October 1, 2019.

31-7-353. Records check application; transmittal of fingerprints; penalties for unauthorized release or disclosure of information.

(a) Accompanying any application for a new license, the candidate facility shall furnish to the department a records check application for each owner and each applicant and employee. In lieu of such records check application, such facility may submit evidence, satisfactory to the department, that within the immediately preceding 12 months each owner and each applicant or employee received a satisfactory determination that includes a records check clearance date that is no more than 12 months old, or that any owner, applicant, or employee whose fingerprint records check determination revealed a criminal record of any kind has subsequently received a satisfactory determination. The time frames set forth in this subsection shall not apply when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33.

(b) On or before January 1, 2021, each owner and employee of a currently licensed facility shall furnish to the department a records check application. In lieu of such records check application, a facility may submit evidence, satisfactory to the department, that within the immediately preceding 12 months each owner and employee received a satisfactory determination. The time frames set forth in this subsection shall not apply when fingerprints have been retained by the department due to its participation in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33.

(c) Upon receipt of fingerprints submitted pursuant to a records check application, GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and shall promptly conduct a search of its own records and records to which it has access. Within ten days after receiving fingerprints acceptable to GCIC, it shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's, applicant's, or employee's criminal record.

(d) Neither GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(e) All information received from the Federal Bureau of Investigation or GCIC shall be used exclusively for employment or licensure

purposes and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and GCIC, as is applicable.

(f) If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention.

History. — Code 1981, § 31-7-353, enacted by Ga. L. 2001, p. 806, § 3; Ga. L. 2018, p. 611, § 1-4/SB 406; Ga. L. 2019, p. 308, § 1/HB 91; Ga. L. 2019, p. 1056, § 31/SB 52.

The 2018 amendment, effective October 1, 2019, rewrote this Code section.

The 2019 amendments. — The first 2019 amendment, effective October 1, 2019, in subsection (a), substituted "owner and each applicant" for "owner, applicant," near the middle of the second sentence and added the third sentence; added the third sentence in subsection (b); substituted "records" for "record" near the middle of the first sentence in subsection (c); and added subsection (f). The second 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "records check application" for "record check application" in the first sentence of subsection (c).

Cross references. — Equal protection, U.S. Const., amend. 14 and Ga. Const. 1983, Art. I, Sec. I, Para. II.

Editor's notes. — This Code section formerly pertained to a request for criminal record check and employment application form notice. This Code section was based on Ga. L. 1995, p. 570, § 1 and was repealed by Ga. L. 2018, p. 611, § 1-4/SB 406, effective October 1, 2019.

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 153 (2001).

31-7-354. Consent to background checks; certain results of background check barring employment; rights of owner, applicant, or employee.

(a) An applicant seeking employment with a facility or a current employee at such facility shall consent to a national and state background check that includes a registry check, a check of information maintained by a professional licensing board, if applicable, and a criminal background check.

(b)(1) An individual required to submit to a registry check and criminal background check shall not be employed by, contracted with, or allowed to work as an employee at a facility if:

(A) The individual appears on a registry check;

(B) There is a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 U.S.C. Section 1395i-3 or 1396r as it existed on February 1, 2018;

(C) The individual's professional license, if applicable, is not in good standing; or

(D) The facility receives notice from the department that the individual has been found to have an unsatisfactory determination.

(2) An individual whose professional license is not in good standing may be employed by a facility in a position wherein his or her duties do not require professional licensure, provided that he or she provides a fingerprint record check determination in the same manner as an applicant.

(c) An owner, applicant, or employee may:

(1) Obtain information concerning the accuracy of his or her criminal record, and the department shall refer such individual to the appropriate state or federal law enforcement agency that was involved in the arrest or conviction;

(2) Challenge the finding that he or she is the true subject of the results from a registry check, and the department shall refer such individual to the agency responsible for maintaining such registry; and

(3) Appeal his or her disqualifying unsatisfactory determination pursuant to Code Section 31-7-358.

History. — Code 1981, § 31-7-354, enacted by Ga. L. 2018, p. 611, § 1-4/SB 406. **Effective date.** — This Code section becomes effective October 1, 2019.

31-7-355. Personnel files; when department may require background check; result of unsatisfactory determination.

(a) A personnel file for each employee shall be maintained by the applicable facility. Such files shall be available for inspection by the appropriate enforcement authorities but shall otherwise be maintained to protect the confidentiality of the information contained therein and shall include, but not be limited to, evidence of each employee's satisfactory determination, registry check, and licensure check, if applicable.

(b)(1) As used in this subsection, the term:

(A) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Such term includes the deprivation

by an individual of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Such term includes verbal abuse, sexual abuse, physical abuse, and mental abuse, including abuse facilitated or enabled through the use of technology.

(B) "Willful" means acting deliberately, not that there is an intention to inflict injury or harm.

(2) The department may require a criminal background check on any owner of or employee at a facility during the course of an abuse investigation involving such owner or employee or if the department receives information that such owner or employee was arrested for a crime. In such instances, the department shall require the owner or employee to furnish two full sets of fingerprints which the department shall submit to GCIC together with appropriate fees collected from the owner or employee. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. GCIC shall notify the department in writing of any unsatisfactory finding, including but not limited to any criminal record obtained through the fingerprint records check determination or if there is no such finding. If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention.

(3) When the department determines that an applicant or employee has an unsatisfactory determination, the department shall notify the facility that such applicant or employee is ineligible to hire or employ and the facility shall take the necessary steps so that such employee is no longer employed at the facility; provided, however, that a facility may retain a current employee during the period of his or her administrative appeal.

(4) When the department determines that an owner has an unsatisfactory determination, the department shall notify such owner of the ineligible status for ownership and shall take the necessary steps to revoke the facility's license.

(5) An owner, applicant, or employee may appeal his or her disqualifying unsatisfactory determination pursuant to Code Section 31-7-358.

History. — Code 1981, § 31-7-355, enacted by Ga. L. 2018, p. 611, § 1-4/SB 406; Ga. L. 2019, p. 308, § 2/HB 91; Ga. L. 2019, p. 1056, § 31/SB 52.

Effective date. — This Code section becomes effective October 1, 2019.

The 2019 amendments. — The first 2019 amendment, effective October 1, 2019, added the last sentence in paragraph (b)(2). The second 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "subsection" for "paragraph" in paragraph (b)(1), revised punctuation in subparagraph (b)(1)(A), and substituted "his or her" for "their" in paragraph (b)(5).

31-7-356. Facility's failure to comply with provisions; penalty.

A facility that does not terminate an employee who has been found to have an unsatisfactory determination or failed a registry check shall be liable for a civil monetary penalty in the amount of the lesser of $10,000.00 or $500.00 for each day that a violation occurs. The daily civil monetary penalty shall be imposed only from the time the facility knew or should have known that it employed an individual with a criminal record and until the date such individual's employment is terminated.

History. — Code 1981, § 31-7-356, enacted by Ga. L. 2018, p. 611, § 1-4/SB 406.

Effective date. — This Code section becomes effective October 1, 2019.

31-7-357. Required notice on application form.

Each application form provided by a facility to an applicant shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."

History. — Code 1981, § 31-7-357, enacted by Ga. L. 2018, p. 611, § 1-4/SB 406.

Effective date. — This Code section becomes effective October 1, 2019.

31-7-358. License revocation or withholding; additional requirements.

(a)(1) An owner of a facility with an unsatisfactory determination or whose name appears on a registry check shall not operate or hold a license, and the department shall revoke the license of any owner operating such facility or refuse to issue a license to any owner operating such facility if such owner has an unsatisfactory determination or is on a registry check.

(2) Prior to approving any license for a facility and periodically as established by the department by rule, the department shall require each owner and employee to submit to a registry check and criminal background check pursuant to Code Sections 31-7-352 and 31-7-353.

(3)(A) An employee or applicant who received an unsatisfactory determination or whose name appears on a registry check shall be eligible to appeal such determination pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, and other indicia of rehabilitation.

(4)(A) The department's determination regarding an owner's unsatisfactory criminal background check, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. When a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecuting attorney to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration.

(b) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 1 of this chapter.

History. — Code 1981, § 31-7-358, enacted by Ga. L. 2018, p. 611, § 1-4/SB 406.

Effective date. — This Code section becomes effective October 1, 2019.

31-7-359. Liability for civil damages; sovereign immunity not waived.

(a) No person, including the department, a facility, or an individual acting on behalf of such entities, shall be liable for civil damages or be subject to any claim, demand, cause of action, or proceeding of any

nature as a result of actions taken in good faith to comply with this article, including the disqualification of an applicant from employment on the basis of a disqualifying crime.

(b)(1) A facility that has obtained a satisfactory determination on an owner, applicant, or employee in accordance with this article, or confirmation that such owner, applicant, or employee has obtained a favorable final appeal decision under Code Section 31-7-358, shall be immune from liability for claims of negligent hiring when such claims are based upon the criminal record of such owner, applicant, or employee, even when the information contained in the criminal background check used by the department is later determined to have been incomplete or inaccurate; provided, however, that such immunity shall not preclude the liability of a facility concerning claims based on information beyond the scope of the criminal record and satisfactory determination about the owner, applicant, or employee which the facility knew or should have known.

(2) When a facility has obtained a satisfactory determination on an owner, applicant, or employee, there shall be a rebuttable presumption of due care for claims of negligent hiring, negligent retention, or other similar claims to the extent such claims are based upon an owner's, applicant's, or employee's criminal record.

(c) Nothing in this article shall require a facility to conduct any other type of criminal history check of an owner, applicant, or employee, and a facility shall not be held liable for claims of negligent hiring, negligent retention, or other similar claims based solely or in part on its failure to conduct other types of criminal history checks.

(d) Nothing in this article shall be construed to waive the sovereign immunity of the state, the department, or any other entity of the state.

History. — Code 1981, § 31-7-359, enacted by Ga. L. 2018, p. 611, § 1-4/SB 406.

Effective date. — This Code section becomes effective October 1, 2019.

31-7-360. Rules and regulations.

The department shall promulgate written rules and regulations related to the requirements and implementation of this article.

History. — Code 1981, § 31-7-354, enacted by Ga. L. 2008, p. 12, § 2-25/SB 433; Code 1981, § 31-7-360, as redesignated by Ga. L. 2018, p. 611, § 1-4/SB 406.

The 2018 amendment, effective October 1, 2019, redesignated former Code Section 31-7-354 as present Code Section 31-7-360; substituted "department shall promulgate written rules" for "Department of Community Health shall be authorized to enforce this article and to promulgate rules" near the beginning; and inserted "and implementation" near the end.

31-7-361. Transfer of responsibilities, rights, and personnel between departments.

(a) Effective July 1, 2009, all matters relating to facility licensing and employee criminal background checks for personal care homes pursuant to Article 11 of this chapter as it existed on June 30, 2009, shall be transferred from the Department of Human Services to the department.

(b) 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 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. In all such instances, the department shall be substituted for the Department of Human Resources, and the department shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(c) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the department pursuant to this Code section on June 30, 2009, shall, on July 1, 2009, become employees of the department 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 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 who are transferred to the department shall retain all existing rights under such rules. 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.

History. — Code 1981, § 31-7-361, enacted by Ga. L. 2018, p. 611, § 1-4/SB 406.

Effective date. — This Code section becomes effective October 1, 2019.

ARTICLE 14A

CENTRAL CAREGIVER REGISTRY

Effective date. — This article becomes effective October 1, 2019.

31-7-380. (Effective October 1, 2019) Purpose and intent.

The purpose of this article is to enable employers who are family members or guardians of elderly persons to obtain an employment eligibility determination from the department for applicants who are seeking to provide and employees who are providing personal care services to their family members or wards. It is the intent of the General Assembly to allow the department to establish and maintain a caregiver registry so as to provide such employers with access to employment eligibility determinations conducted by the department in a similar manner as licensed facilities receive employment determinations as provided in Article 14 of this chapter.

History. — Code 1981, § 31-7-380, enacted by Ga. L. 2018, p. 611, § 1-5/SB 406.

31-7-381. (Effective October 1, 2019) Definitions.

As used in this article, the term:

(1) "Applicant" means an individual applying to provide personal care services to an elderly person in a residence or location not licensed by the department.

(2) "Criminal background check" means a search of the criminal records maintained by Georgia Crime Information Center and the Federal Bureau of Investigation to determine whether an applicant or employee has a criminal record.

(3) "Elderly person" means an individual who is 65 years of age or older.

(4) "Employee" means any individual who is providing personal care services to an elderly person in a residence or location not licensed by the department.

(5) "Employer" means an individual who is considering an applicant or has hired an employee for a family member or ward.

(6) "Family member" means an individual with a close familial relationship, including, but not limited to, a spouse, parent, sibling, or grandparent.

(7) "Personal care services" means home care, health care, companionship, or transportation and includes, but is not limited to, providing assistance with bathing, eating, dressing, walking, shopping, fixing meals, and housework.

(8) "Registry check" means a review of the nurse aide registry provided for in Code Section 31-2-14, the state sexual offender

registry, and the List of Excluded Individuals and Entities as authorized in Sections 1128 and 1156 of the federal Social Security Act, as it existed on February 1, 2018, or any other registry useful for the administration of this article as specified by rules of the department.

(9) "Ward" means an elder person for whom a guardian has been appointed pursuant to Title 29.

History. — Code 1981, § 31-7-381, enacted by Ga. L. 2018, p. 611, § 1-5/SB 406.

31-7-382. (Effective October 1, 2019) Establishment of central caregiver registry.

The department may establish and maintain a central caregiver registry which shall be accessible to employers as a data base operated by the department that contains information on eligible and ineligible applicants and employees as determined by the department from criminal background checks and registry checks conducted on behalf of facilities as provided in Article 14 of this chapter and criminal background checks and registry checks conducted on behalf of employers as provided in this article. If the department is participating in the program described in subparagraph (a)(1)(F) of Code Section 35-3-33, the Georgia Bureau of Investigation and the Federal Bureau of Investigation shall be authorized to retain fingerprints obtained pursuant to this Code section for such program and the department shall notify the individual whose fingerprints were taken of the parameters of such retention.

History. — Code 1981, § 31-7-382, enacted by Ga. L. 2018, p. 611, § 1-5/SB 406; Ga. L. 2019, p. 308, § 3/HB 91.

The 2019 amendment, effective October 1, 2019, added the second sentence.

31-7-383. (Effective October 1, 2019) Private employer's inquiry with department on eligibility of employee; employer responsible for decisions.

(a) The department shall allow an employer to inquire with the department about the eligibility or ineligibility for employment as if the applicant or employee were applying to work or working in one of the facilities licensed under Article 14 of this chapter so long as the applicant or employee agrees to such request, provides his or her fingerprints as set forth in Article 14 of this chapter, and consents to the inclusion of the results in the caregiver registry. Any fees associated with such check shall be paid by the employer, applicant, or employee.

(b) An employer shall be responsible for all employment decisions made based on the eligible or ineligible employment determination provided to the employer from the department.

History. — Code 1981, § 31-7-383, enacted by Ga. L. 2018, p. 611, § 1-5/SB 406.

31-7-384. (Effective October 1, 2019) Appeal of ineligibility determination.

An applicant or employee who receives a determination of ineligibility for employment from the department shall be eligible to appeal such determination by requesting, in writing, an administrative review by the department. The department shall promulgate rules and regulations in order to implement this Code section. The department shall maintain the specifics of the employment determination in the same manner as required by subsection (e) of Code Section 31-7-353.

History. — Code 1981, § 31-7-384, enacted by Ga. L. 2018, p. 611, § 1-5/SB 406.

31-7-385. (Effective October 1, 2019) Immunity from liability.

No person, including the department, an employer, or an individual acting on behalf of such entities, shall be liable for civil damages or be subject to any claim, demand, cause of action, or proceeding of any nature as a result of actions taken in good faith to comply with this article, including the disqualification of an applicant or employee from employment on the basis of the results of a criminal background check or registry check.

History. — Code 1981, § 31-7-385, enacted by Ga. L. 2018, p. 611, § 1-5/SB 406.

31-7-386. (Effective October 1, 2019) Rules and regulations.

Except as provided in Code Section 31-7-384, the department shall promulgate rules and regulations related to the requirements and implementation of this article.

History. — Code 1981, § 31-7-386, enacted by Ga. L. 2018, p. 611, § 1-5/SB 406.

ARTICLE 15

HOSPITAL ACQUISITION

31-7-400. Definitions.

As used in this article the term:

(1) "Acquiring entity" means an individual, business corporation, general partnership, limited partnership, limited liability company,

limited liability partnership, joint venture, nonprofit corporation, hospital authority, or any other for profit or not for profit entity which is a purchaser or lessee of an acquisition.

(2) "Acquisition" means a purchase or lease by an acquiring entity of the assets of a hospital which is owned, controlled, or operated by a nonprofit corporation and which meets one or more of the following conditions:

(A) Constitutes a purchase or lease of 50 percent or more of the assets of a hospital having a permit under this chapter; or

(B) Constitutes a purchase or lease which, when combined with one or more transfers between the same or related parties occurring within a five-year period, constitutes a purchase or lease of 50 percent or more of the assets of a hospital having a permit under this chapter;

provided, however, that an acquisition does not include the restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is located outside such county; provided, further, that an acquisition does not include a restructuring of a nonprofit health system involving the purchase or lease of the assets of a hospital controlled as of March 1, 1999, by the health system's nonprofit parent corporation by another nonprofit entity which is both exempt from federal income taxation and controlled by the same nonprofit parent corporation.

(3) "Attorney General" means the Attorney General of the State of Georgia or some other attorney employed in the Attorney General's office and designated to perform the functions required by this article.

(4) "Control" or "controlling interest" means ownership of 50 percent or more of the assets of the entity in question or the ability to influence significantly the operations or decisions of the entity in question.

(5) "Disposition" means a sale or lease of the assets of a hospital which is owned, controlled, or operated by a nonprofit corporation to an acquiring entity which meets one or more of the following conditions:

(A) Constitutes a sale or lease of 50 percent or more of the assets of a hospital having a permit under this chapter; or

(B) Constitutes a sale or lease which, when combined with one or more transfers between the same or related parties occurring

within a five-year period, constitutes a sale or lease of 50 percent or more of the assets of a hospital having a permit under this chapter;

provided, however, that a disposition does not include the restructuring of a hospital owned by a hospital authority involving a lease of assets to any not for profit or for profit entity which has a principal place of business located in the same county where the main campus of the hospital in question is located and which is not owned, in whole or in part, or controlled by any other for profit or not for profit entity whose principal place of business is located outside such county; provided, further, that a disposition does not include a restructuring of a nonprofit health system involving the sale or lease of the assets of a hospital controlled as of March 1, 1999, by the health system's nonprofit parent corporation to another nonprofit entity which is both exempt from federal income taxation and controlled by the same nonprofit parent corporation.

(6) "Family" means a spouse, child, or sibling.

(7) "Financial interest" means the direct or indirect ownership of any assets or stock of any business.

(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.

(9) "Related party" means an individual, business corporation, general partnership, limited partnership, limited liability company, limited liability partnership, joint venture, nonprofit corporation, 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 party in question.

(10) "Transaction" means an acquisition and disposition.

History. — Code 1981, § 31-7-400, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 1999, p. 850, § 1; Ga. L. 2008, p. 12, § 2-26/SB 433.

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000). For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

"Acquiring entity." — County is included under the broad catch-all provision: "any other for profit or not for profit entity which is a purchaser or lessee of an acquisition." Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

"Hospital." — Paragraph (8) of O.C.G.A. § 31-7-400 cannot be construed to mean that a nonprofit corporation with a hospital permit as of the date of an agreement to sell or as of the date of the original notice provided under the Hospital Acquisition Act, § 31-7-400 et seq., may simply turn in its permit to avoid application of the Act. For the remainder of the life of the proposed transaction or the public review process provided by the

Act, a hospital is a hospital for the purposes of the Act. Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

Cited in Cobb Hospital, Inc. v. Department of Community Health, 825 S.E.2d 886, No. A18A2009, 2019 Ga. App. LEXIS 183 (2019).

31-7-401. Notice to Attorney General of acquisition.

No acquiring entity shall engage in an acquisition without first notifying the Attorney General pursuant to this article. No nonprofit corporation which owns, controls, or operates, directly or indirectly, a hospital having a permit under this chapter shall engage in a disposition without first notifying the Attorney General pursuant to this article. The parties to the transaction shall provide the Attorney General with at least 90 days' notice of the proposed transaction prior to its consummation.

History. — Code 1981, § 31-7-401, enacted by Ga. L. 1997, p. 1091, § 1.

JUDICIAL DECISIONS

Notice and hearing requirements mandatory. — Lease and transfer agreement of a hospital was invalid since the agreement was consummated before notice was given to the Attorney General and the holding of a public hearing. Sparks v. Hospital Auth., 241 Ga. App. 485, 526 S.E.2d 593 (1999).

Date of notice. — Critical date from which the 90 days for giving notice must be calculated is the date any part of the sale or lease effectively transfers ownership, operation, or control of the hospital to the acquiring entity. Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

Authority of Attorney General. — After a meaningful public hearing has been properly held on a proposed agreement, the Attorney General is authorized to determine whether a transaction is in the public interest and, thus, whether to approve or reject the agreement. Sparks v. Hospital Auth., 241 Ga. App. 485, 526 S.E.2d 593 (1999).

Promissory estoppel did not apply. — When a facilities owner did not sign an asset sale agreement, a hospital's promissory estoppel claim failed because the parties' letter of intent coupled with the hospital's representation in a premerger notification that the parties would not execute a "binding asset sale agreement" until the Georgia Attorney General approved the agreement established as a matter of law that the hospital could not reasonably rely on the facilities owner's "promise" to purchase the hospital assets. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

Breach of contract. — When a facilities owner did not sign an asset sale agreement, a hospital's breach of contract claim failed because, inter alia, the parties' letter of intent did not incorporate the terms of the asset sale agreement and made clear that those terms were provisional, there was no evidence that the parties agreed to be bound by the terms of the asset sale agreement and, by filing premerger notifications, the parties represented as true that the asset sale agreement would not become a binding, enforceable contract until signed by the parties, and that the letter of intent superseded any written or oral agreements that may have existed. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

31-7-402. Content and form of notice to Attorney General; retention of experts; payment of costs and expenses.

(a) Notice to the Attorney General required by this article shall include the name of the seller or lessor; the name of the acquiring entity and other parties to the acquisition; the county in which the main campus of the hospital is located; the terms of the proposed agreement and any related agreements including leases, management contracts, and service contracts; the acquisition price; a copy of the acquisition agreement and any related agreements including leases, management contracts, and service contracts; any valuations of the hospital's assets prepared in the three years immediately preceding the proposed transaction date; a financial and economic analysis and report from any expert or consultant retained by the seller or lessor which addresses each of the criteria set forth in Code Section 31-7-406; articles of incorporation and bylaws of the nonprofit corporation and related entities and foundations; all donative documents reflecting the purposes of prior gifts of more than $100,000.00 in value by donors to the nonprofit corporation or any related entities or foundations for or on behalf of the hospital; and all documents pertaining to the disposition of assets, including those documents which are included as schedules or exhibits to the acquisition agreement and any related agreements.

(b) The Attorney General may prescribe a form of notice to be utilized by the seller or lessor and the acquiring entity and may require information in addition to that specified in this article if the disclosure of such information is determined by the Attorney General to be in the public interest. The notice to the Attorney General required by this article and all documents related thereto shall be considered public records pursuant to Article 4 of Chapter 18 of Title 50.

(c) The Attorney General shall be authorized to retain financial, economic, health planning, or other experts or consultants to assist in addressing each of the criteria set forth in Code Section 31-7-406. Within 30 days after notice from the Attorney General, the actual and reasonable cost and expense incurred in connection with the retention of such experts or consultants shall be paid directly to such experts and consultants by the parties to the proposed transaction in such proportionate amounts as the parties may agree or otherwise as determined by the Attorney General.

History. — Code 1981, § 31-7-402, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 2009, p. 711, § 1/HB 667; Ga. L. 2012, p. 218, § 6/HB 397.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 139 (2012).

JUDICIAL DECISIONS

Cited in Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-403. Certification of interest in acquiring entity; certification of financial interest in business associated with party to disposition; statement of fair dealing; opposing board members exempt.

(a) Except as provided in subsection (c) of this Code section, notice to the Attorney General required by this article shall also include a separate certification from each member of the governing board and the chief executive officer of the nonprofit corporation which is a party to the proposed disposition, and from each member of the governing board and the chief executive officer of any nonprofit corporation that holds a membership, stock, or controlling interest therein, executed under oath, stating whether that director or officer of the nonprofit corporation is then or may become within the three-year period following the completion of the transaction a member or shareholder in, or officer, employee, agent, or consultant of, or will otherwise derive any compensation or benefits, directly or indirectly, from the acquiring entity or any related party in connection with or as a result of the disposition.

(b) Except as provided in subsection (c) of this Code section, notice to the Attorney General required by this article shall also include a certification from each member of the governing board and the chief executive officer of the nonprofit corporation which is a party to the proposed disposition, and from each member of the governing board and the chief executive officer of any nonprofit corporation that holds a membership, stock, or controlling interest therein, executed under oath:

(1) Disclosing any financial interest held by that individual or that individual's family, or held by any business in which such individual or the individual's family owns a financial interest, in any business which:

(A) Within the immediately preceding 12 month period sold products, property interests, or services to the nonprofit corporation engaged in the disposition; or

(B) Within the immediately preceding 12 month period sold or within the three-year period after the completion of the transaction may sell products, property interests, or services to the acquiring entity;

(2) Disclosing any contract pursuant to which a sale was made or may be made of those products, property interests, or services

regarding financial interests which are disclosed pursuant to paragraph (1) of this subsection;

(3) Stating that the nonprofit corporation has received fair market value for its assets or, in the case of a proposed disposition to a not for profit entity or a hospital authority, stating that the nonprofit corporation has received an enforceable commitment of fair and reasonable community benefits for its assets;

(4) Stating that the market value of the hospital's assets has not been manipulated to decrease their value;

(5) Stating that the terms of the transaction are fair and reasonable to the nonprofit corporation;

(6) Stating that the transaction is authorized by the nonprofit corporation's governing documents and is consistent with the intent of any major donors who have contributed over $100,000.00;

(7) Stating that the proceeds of the transaction will be used solely in a manner consistent with the charitable purposes of the nonprofit corporation and will not be used, directly or indirectly, to benefit the acquiring entity; and

(8) Stating that the transaction will not adversely affect the availability or accessibility of health care services in the county in which the main campus of the hospital is located.

(c) The certification requirements of subsections (a) and (b) of this Code section shall not apply to any governing board members who vote to oppose the proposed disposition.

History. — Code 1981, § 31-7-403, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 1998, p. 128, § 31.

JUDICIAL DECISIONS

Cited in Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-404. Publication of notice.

Within ten working days after receipt of notice under this article, the Attorney General shall publish notice of the proposed transaction in a newspaper of general circulation in the county where the main campus of the hospital is located and shall notify in writing the governing authority of such county. The published notice required by this Code section shall state that the Attorney General has received notice of a proposed transaction, the names of the parties to the proposed trans-

action, the date, time, and place of the public hearing regarding the transaction, and the means by which a person may submit written comments about the proposed transaction to the Attorney General.

History. — Code 1981, § 31-7-404, enacted by Ga. L. 1997, p. 1091, § 1.

JUDICIAL DECISIONS

Cited in Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-405. Public hearing; expert or consultant required to testify; testimony; representative of acquiring entity to testify.

(a) Within 60 days after receipt of the notice under this article, the Attorney General shall conduct a public hearing regarding the proposed transaction in the county in which the main campus of the hospital is located. At such hearing, the Attorney General shall provide an opportunity for those persons in favor of the transaction, those persons opposed to the transaction, and other interested persons to be heard. The Attorney General shall also receive written comments regarding the transaction from any interested person, and such written comments shall be considered public records pursuant to Article 4 of Chapter 18 of Title 50.

(b) Any expert or consultant retained by the nonprofit corporation to prepare the financial and economic analysis of the proposed transaction shall be required to appear and testify at the public hearing regarding his or her report if requested to do so by the Attorney General and may be questioned by the Attorney General. Such expert or consultant shall make the same disclosure required by members and officers under paragraphs (1) and (2) of subsection (b) of Code Section 31-7-403. The independent expert or consultant retained by the Attorney General to review the proposed transaction shall also appear and testify at the public hearing regarding his or her findings and analysis.

(c) At least one member of the governing board of the seller or lessor shall be designated by the seller or lessor, and at least one representative of the acquiring entity shall be designated by the acquiring entity, which designees shall appear and testify under oath at the public hearing and shall be subject to questioning by the Attorney General.

History. — Code 1981, § 31-7-405, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 2012, p. 218, § 7/HB 397.

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 139 (2012).

JUDICIAL DECISIONS

Notice and hearing requirements mandatory. — Lease and transfer agreement of a hospital was invalid since the agreement was consummated before notice was given to the Attorney General and the holding of a public hearing. Sparks v. Hospital Auth., 241 Ga. App. 485, 526 S.E.2d 593 (1999).

Breach of contract. — When a facilities owner did not sign an asset sale agreement, a hospital's breach of contract claim failed because, inter alia, the parties' letter of intent did not incorporate the terms of the asset sale agreement and made clear that those terms were provisional, there was no evidence that the parties agreed to be bound by the terms of the asset sale agreement and, by filing premerger notifications, the parties represented as true that the asset sale agreement would not become a binding, enforceable contract until signed by the parties, and that the letter of intent superseded any written or oral agreements that may have existed. St. Joseph Hosp., Augusta, Ga., Inc. v. Health Mgmt. Assocs., 705 F.3d 1289 (11th Cir. 2013).

31-7-406. Purpose of public hearing; factors to be addressed in disclosure.

The purpose of the public hearing shall be to ensure that the public's interest is protected when the assets of a nonprofit hospital are acquired by an acquiring entity by requiring full disclosure of the purpose and terms of the transaction and providing an opportunity for local public input. The disposition of a nonprofit hospital to an acquiring entity shall not be in the public interest unless there has been adequate disclosure that appropriate steps have been taken to ensure that the transaction is authorized, to safeguard the value of charitable assets, and to ensure that any proceeds of the transaction are used for appropriate charitable health care purposes. Such disclosure shall address, at a minimum, the following factors:

(1) Whether the disposition is permitted under Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and other laws of Georgia governing nonprofit entities, trusts, or charities;

(2) Whether the disposition is consistent with the directives of major donors who have contributed over $100,000.00;

(3) Whether the governing body of the nonprofit corporation exercised due diligence in deciding to dispose of hospital assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;

(4) The procedures used by the nonprofit corporation in making its decision to dispose of its assets, including whether appropriate expert assistance was used;

(5) Whether any conflict of interest was disclosed, including, but not limited to, conflicts of interest related to directors or officers of the nonprofit corporation and experts retained by the parties to the transaction;

(6) Whether the seller or lessor will receive fair value for its assets, including an appropriate control premium for any relinquishment of control or, in the case of a proposed disposition to a not for profit entity, will receive an enforceable commitment for fair and reasonable community benefits for its assets;

(7) Whether charitable assets are placed at unreasonable risk if the transaction is financed in part by the seller or lessor;

(8) Whether the terms of any management or services contract negotiated in conjunction with the transaction are reasonable;

(9) Whether any disposition proceeds will be used for appropriate charitable health care purposes consistent with the nonprofit corporation's original purpose or for the support and promotion of health care in the affected community;

(10) Whether a meaningful right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the acquiring entity subsequently proposes to sell, lease, or transfer the hospital to yet another entity;

(11) Whether sufficient safeguards are included to assure the affected community continued access to affordable care and to the range of services historically provided by the nonprofit corporation;

(12) Whether the acquiring entity has made an enforceable commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care; and

(13) Whether health care providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid conflict of interest in patient referrals.

History. — Code 1981, § 31-7-406, enacted by Ga. L. 1997, p. 1091, § 1.

JUDICIAL DECISIONS

Cited in Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-407. Attorney General to ensure compliance with article; other persons not precluded from instituting judicial proceedings.

The Attorney General shall have the authority to ensure compliance with any and all notices, certifications, obligations, and commitments

which are required to be made in connection with a transaction under this article and may institute proceedings to enforce such compliance in the superior court of the county in which the main campus of the hospital is located. This provision shall not preclude any other person with standing from instituting judicial proceedings regarding the proposed disposition.

History. — Code 1981, § 31-7-407, enacted by Ga. L. 1997, p. 1091, § 1.

31-7-407.1. Report of findings.

The Attorney General shall issue a report of findings addressing the issues outlined in Code Section 31-7-406 within 30 days of the public hearing; provided, however, the time for issuing said report may be extended for an additional 30 days if the Attorney General finds there has been a failure by the entities involved in the transaction under review or any of them, to comply with disclosures required by this article or to respond to subpoenas or other process authorized by this article, and additional extensions may be ordered upon a continuation of a failure to so comply.

History. — Code 1981, § 31-7-407.1, enacted by Ga. L. 1997, p. 1091, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as 31-4-407.1, was redesignated as Code Section 31-7-407.1.

31-7-408. Notice required prior to issuance or renewal of permit to operate hospital; permit subject to revocation or suspension for failure to comply.

No permit to operate a hospital may be issued or renewed under this chapter or any other applicable statute or regulation and a permit which has been issued shall be subject to revocation or suspension if there is a disposition or acquisition of hospital assets as defined in this article without notice first having been provided to the Attorney General as required by this article.

History. — Code 1981, § 31-7-408, enacted by Ga. L. 1997, p. 1091, § 1.

JUDICIAL DECISIONS

Cited in Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

31-7-409. Prospective operation of article.

(a) Any transaction completed before October 31, 1997, or any transaction that is subject to a pending definitive agreement as of October 31, 1997, and which is either conditioned only upon receipt of regulatory approval, or is subject to a pending judicial proceeding as of April 1, 1997, is not subject to the requirements of this article.

(b) Any lease which is exempted from the operation of this article pursuant to subsection (a) of this Code section and which contained, on October 31, 1997, an option to renew that lease upon its expiration shall not be subject to this article upon any renewal on or after April 28, 1999.

History. — Code 1981, § 31-7-409, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 1999, p. 850, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "October 31, 1997," was substituted for "the effective date of this article" in two places.

Pursuant to Code Section 28-9-5, in 1999, "April 28," was substituted for "the date this subsection becomes effective in" in subsection (b).

31-7-410. Authority of Attorney General unaffected.

No provision of this article shall derogate from the common law or statutory authority of the Attorney General.

History. — Code 1981, § 31-7-410, enacted by Ga. L. 1997, p. 1091, § 1.

31-7-411. Attorney General's power under article same as under Code Section 45-15-17.

In connection with the Attorney General's responsibilities under this article and in connection with the public hearing required by this article, the Attorney General shall have the same power to investigate and issue subpoenas as the Attorney General has with respect to investigations authorized under Code Section 45-15-17.

History. — Code 1981, § 31-7-411, enacted by Ga. L. 1997, p. 1091, § 1.

31-7-412. Disposition or acquisition made in violation of requirements of article null and void; violators subject to fine; Attorney General to instigate proceedings to impose fine within one year.

(a) Any disposition or acquisition of assets made in violation of the notice, disclosure, and certification requirements of this article shall be null and void, and each nonprofit entity and acquiring entity engaging

in such disposition or acquisition shall be subject to a fine of up to $50,000.00, the amount of which shall be determined by the superior court in the county in which the main campus of the hospital is located. The Attorney General shall institute proceedings to impose such fine within one year of the unlawful disposition or acquisition.

(b) Any person knowingly and willfully making a false statement in a certification under Code Section 31-7-403 or subsection (b) of Code Section 31-7-405, in addition to any criminal penalty which may be imposed pursuant to Code Section 16-10-71, shall be subject to a civil fine of up to $50,000.00, the amount of which shall be determined by the superior court in the county in which the main campus of the hospital is located. The Attorney General shall institute proceedings to impose such fine within one year of the date of the certification.

History. — Code 1981, § 31-7-412, enacted by Ga. L. 1997, p. 1091, § 1; Ga. L. 1999, p. 850, § 3.

JUDICIAL DECISIONS

Transaction held null and void. — Agreement by a county for the lease and operation of a nonprofit hospital pending the closing of a separate contract for the purchase of the assets of the hospital violated the Hospital Acquisition Act, O.C.G.A. § 31-7-400 et seq., because the agreement went into effect as of the day the agreement was signed and notice had not been provided under the Act. Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

CHAPTER 8

CARE AND PROTECTION OF INDIGENT AND ELDERLY PATIENTS

Article 1

Hospital Care for the Indigent Generally

Sec.

31-8-1. Establishment and purpose of program; administration.
31-8-2. Definitions.
31-8-3. Disbursement of state funds to counties.
31-8-4. Qualification of counties for participation in program.
31-8-5. Submission of budget by county.
31-8-6. Credit for expenditures by county.
31-8-7. Qualifications for assistance under program; waiver of residence requirements in emergencies.
31-8-8. Agreements between department and other governmental agencies or private organizations to obtain funds.
31-8-9. Use of gifts and donations.
31-8-9.1. Eligibility to receive tax credits; obligations of rural hospitals after receipt of funds; posting information on website.
31-8-10. Rules and regulations.
31-8-11. Construction of article.

Article 2

Hospital Care for Nonresident Indigents

31-8-30. Findings; purpose of article.
31-8-31. Definitions.
31-8-32. Determination of indigency.
31-8-33. Creation of fund.
31-8-34. Maintenance of records; certification of cost of care; determination of amount of fund.
31-8-35. Payments from fund to hospitals.
31-8-36. State appropriations to fund.
31-8-37. Compliance with this article contingent upon appropriation.

Article 2A

Hospital Care for Pregnant Women

31-8-40. Legislative findings and purpose.
31-8-41. Definitions.
31-8-42. Requirement of hospitals with emergency services to provide care to pregnant women in labor.
31-8-43. Determination of indigency; payment of services provided under Code Section 31-8-42 for indigent patients by county; records; administration.
31-8-43.1. Extent of patient's liability for costs; required cooperation of patient with county; liability of father for costs; action by county to recover costs or challenge determination of liability.
31-8-44. Immunity of hospital or health care provider from liability.
31-8-45. Availability of cause of action for patient wrongfully denied care.
31-8-46. Investigation; penalties; rules and regulations.

Article 3

Long-term Care Ombudsman Program

31-8-50. Declaration of policy.
31-8-51. Definitions.
31-8-52. Establishment of long-term care ombudsman program.
31-8-53. Duties of state ombudsman.
31-8-54. Duties of community ombudsmen.
31-8-55. Entry and investigative authority; cooperation of govern-

Sec.
ment agencies; communication with residents.
31-8-56. Resolution of complaints.
31-8-57. Reporting abuse.
31-8-58. Confidentiality.
31-8-59. Notice to residents.
31-8-60. Retaliation against resident and interference with ombudsman prohibited; provisions applicable to violations.
31-8-61. Liability for provision of information.
31-8-62. Liability arising from complaints.
31-8-63. Rules and regulations.

Article 4

Reporting Abuse or Exploitation of Residents in Long-term Care Facilities

31-8-80. Short title.
31-8-81. Definitions.
31-8-82. Persons required to report abuse or exploitation; time for making report; contents of report; records; privileged communications.
31-8-83. Investigations.
31-8-84. Evaluation of results of investigation; protection of resident.
31-8-85. Immunity from liability.
31-8-86. Confidentiality.
31-8-87. Retaliation prohibited.
31-8-88. Notice of requirements of article.

Article 5

Bill of Rights for Residents of Long-term Care Facilities

31-8-100. Short title.
31-8-101. Legislative intent.
31-8-102. Definitions.
31-8-103. Rights of residents generally.
31-8-104. Explanation of rights; acknowledgment of explanation; posting of rights at facilities.
31-8-105. Giving certain notices to persons who became residents before July 1, 1981.
31-8-106. Information to be provided residents upon admission; list of current rates and services; bill for charges; access to nonmedical records.
31-8-107. Refusal of admission or continued residence on the basis of history or condition of mental or physical disease or disability.
31-8-108. Required care, treatment, and services; rights in regard thereto; experimental research or treatment.
31-8-109. Use or threat of physical restraints, isolation, or restrictions on mobility.
31-8-110. Right to select pharmacy or pharmacist; charges for pharmaceutical supplies and services; information as to purpose and effects of drugs.
31-8-111. Rights as citizen.
31-8-112. Freedom from duty to perform services for facility; right to rise and retire at times of resident's choice; tobacco and alcoholic beverages; freedom to enter and leave facility.
31-8-113. Right to retain and use personal property at facility; provision of secure storage space for such property; records of stored property; investigation of complaints of theft.
31-8-114. Right to privacy.
31-8-115. Use of payments made to or on behalf of a resident; right of resident or his guardian to manage the resident's financial affairs; assistance by facility in such management.
31-8-116. Involuntary transfer of residents discharged from facility; return to facility after transfer.
31-8-117. Suspension of certain rights where exercise poses danger to self or other residents; notice of suspension; duration.
31-8-118. Freedom from interference in exercise of rights and pursuit of interests; accommodation of conflicting rights; voicing of

Sec.
complaints and recommendation of changes.
31-8-119. Obtaining contributions by coercion; use of contributions designated for a restricted purpose; receipts and records of contributions.
31-8-120. Visitors; right of access.
31-8-121. Formation of residents' council; space for meetings; assistance in attending meetings; compelling of attendance or participation.
31-8-122. Compliance with this article by facilities; establishment by facilities of written policies and procedures; familiarization of facility staff with this article.
31-8-123. Use of state or community ombudsman to resolve residents' complaints.
31-8-124. Grievances.
31-8-125. Administrative hearings.
31-8-126. Cause of action against facility for violation of rights under this article; civil penalties; applicability of Code Section 31-5-8.
31-8-127. Rules and regulations.

Article 5A

Remedies for Residents of Personal Care Homes

31-8-130. Short title.
31-8-131. Legislative findings and intent.
31-8-132. Definitions.
31-8-133. Residents' rights.
31-8-134. Grievance procedure.
31-8-135. Hearing; transfer of resident.
31-8-136. Action for damages.
31-8-137. Temporary restraining order; injunctions.
31-8-138. Failure to validly license as defense.
31-8-139. Mandamus.

Article 6

Indigent Care Trust Fund

31-8-150. Constitutional authority for passage of article.
31-8-151. Definitions.
Sec.
31-8-152. Creation of Indigent Care Trust Fund.
31-8-152.1. State sales and use taxation of certain health care services [Repealed].
31-8-153. Contributions to trust fund.
31-8-153.1. Irrevocable transfer of funds to trust fund; provision for indigent patients.
31-8-153.2. Revenues raised from specified sources.
31-8-153.3. No lapse of contributions to the general fund.
31-8-154. Authorized expenditure of contributed funds.
31-8-155. Promulgation of rules for funding expansions of eligibility and indigent care programs.
31-8-156. Appropriation of state funds by General Assembly.
31-8-157. Refunding contributed funds; penalties not refunded.
31-8-158. Refunding funds not appropriated or determined void or ineligible.
31-8-159. Reporting requirements.
31-8-160. Applicability of Article 7 of Chapter 4 of Title 49.

Article 6A

Nursing Home Provider Fee

31-8-161. Legislative authority.
31-8-162. Definitions.
31-8-163. Segregated account of revenues raised through provider fees.
31-8-164. Provider fee based on patient day; quarterly payment required.
31-8-165. Use of segregated account funds; form for reporting provider fee; maintenance of records; inaccurate payments; penalty for failing to pay.
31-8-166. General Assembly appropriations of segregated funds; match to federal funds; no lapsing at end of fiscal year.
31-8-167. Annual report by department to General Assembly.
31-8-168. Request for waiver from

Sec.
United States Department of Health and Human Services.
31-8-169. Application of the Medical Assistance Act of 1977.

Article 6B

Quality Assessment Fees on Care Management Organizations

31-8-170. Legislative authority.
31-8-171. Definitions.
31-8-172. Segregated account for the deposit of fees.
31-8-173. Assessment, calculation, and payment of fees.
31-8-174. Collection and disposition of fees; authority of department to inspect records of care management organizations; overpayment or underpayment; penalty for failure to pay fee.
31-8-175. Appropriation of revenues to the department.
31-8-176. Annual report by the department.
31-8-177. Applicability of the Georgia Medical Assistance Act of 1977.

Article 6C

Hospital Medicaid Financing Program

31-8-179. (Repealed effective June 30, 2025) Short title.
31-8-179.1. (Repealed effective June 30, 2025) Definitions.
31-8-179.2. (Repealed effective June 30, 2025) Department of Community Health authorized to assess one or more provider payments on hospitals for the purpose of obtaining federal financial participation for Medicaid.
31-8-179.3. (Repealed effective June 30, 2025) Provider payments assessed to be deposited in segregated accounts within Indigent Care Trust Fund; sole purpose of funds to obtain federal financial participation for medical assistance payments for Medicaid recipients; retention and inspection of records; penalties.
31-8-179.4. (Repealed effective June 30, 2025) Authorized use of appropriated funds.
31-8-179.5. (Repealed effective June 30, 2025) Applicability of Georgia Medical Assistance Act.
31-8-179.6. (Repealed effective June 30, 2025) Automatic repeal.

Article 7

Disclosure of Treatment of Alzheimer's Disease or Alzheimer's Related Dementia

31-8-180. Definitions.
31-8-181. Individuals and hospitals excluded from application of article.
31-8-182. Disclosure of care, treatment, or therapeutic activities required; disclosure form.
31-8-183. Areas covered by disclosure requirements.
31-8-184. Failure to provide disclosure; review and verification of disclosure form.

Article 8

"Health Share" Volunteers in Medicine

31-8-190. Short title.
31-8-191. Legislative findings and intent.
31-8-192. Definitions.
31-8-193. Establishment of program; contracts with health care providers.
31-8-194. Notice to patients required.
31-8-195. Volunteers to provide services.
31-8-195.1. Sovereign immunity protection for health care professionals in safety net clinics.
31-8-196. Exemption from employment regulations.
31-8-197. Annual report of claims statistics.
31-8-198. Annual report by the department summarizing the efficiency of access and treatment outcomes.

Sec.
31-8-199. Department's responsibilities regarding liability insurance.
31-8-200. Adoption of rules and regulations.
31-8-201. Applicability; preservation of the state's rights under the Tort Claims Act.

Article 9

Federal and State Funded Health Care Financing Programs Overview Committee

31-8-210. Committee established; composition; officers; terms of office; duties and responsibilities; assistance from other state officers and agencies; compensation, per diem, and expense allowances; funding [Repealed].

Article 10

Drug Repository Program

31-8-300. Definitions.
31-8-301. Drug repository program established; criteria and requirements for unused over-the-counter and prescription drugs.
31-8-302. Procedures for donation and dispensing of unused over-the-counter and prescription drugs.
31-8-303. Limited liability.
31-8-304. Rules and regulations; waiver.

Cross references. — Unfair or deceptive practices toward the elderly, § 10-1-850 et seq. Rights of persons residing in long-term care facilities generally, § 31-8-100 et seq. Determination of responsibility of patients, counties, departments, and others to pay costs of treatment for mental illness, mental retardation, alcoholism, §§ 37-3-121, 37-4-81, 37-7-121 and T. 37, C. 9. Medical assistance generally, § 49-4-140 et seq. Liability of voluntary health care providers and sponsoring organizations, cumulative immunity, application, § 51-1-29.4.

Editor's notes. — By resolution (Ga. L. 1986, p. 526), the General Assembly requested the Governor to create the Task Force on Funding of Indigent Health Care Programs to review laws and programs regarding indigent health care.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — False Imprisonment in Connection with Confinement in Nursing Home or Hospital, 40 POF2d 81.

Discrimination in Provision of Medical Services on Basis of Disability, 49 POF3d 1.

Am. Jur. Trials. — Medical and Legal Aspects of Chemical and Physical Restraint in the Nursing Home, 75 Am. Jur. Trials 1.

ALR. — Licensing and regulation of nursing or rest homes, 53 A.L.R.4th 689.

ARTICLE 1

HOSPITAL CARE FOR THE INDIGENT GENERALLY

Cross references. — Powers and duties of counties relating to support of paupers, T. 36, C. 12.

Administrative rules and regulations. — Hospital care for the indigent, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Public Health, Chapter 290-5-5.

31-8-1. Establishment and purpose of program; administration.

In order to promote and preserve the health of the people of this state, there is established a Hospital Care for the Indigent Program to be administered by the Department of Community Health. The purpose of this program is to assist counties in the purchase of hospital care for persons who are ill or injured and who can be helped by treatment in a hospital but are financially unable to meet the full cost of hospital care from their own resources or from the resources of those upon whom they are legally dependent. The purchase of such hospital care shall be limited to the nonprofit basic cost of hospital care needed for the treatment of the ill or injured, as deemed necessary and ordered by the physician in charge of the case in accordance with this article and the rules, regulations, and standards adopted and promulgated pursuant to this article.

History. — Ga. L. 1957, p. 470, § 1; Code 1933, § 88-2301, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228.

Law reviews. — For article, "Privatization of Rural Public Hospitals: Implications for Access and Indigent Care," see 47 Mercer L. Rev. 991 (1996). For article, "Rural Health Care and State Antitrust Reform," see 47 Mercer L. Rev. 1045 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 110.

31-8-2. Definitions.

As used in this article, the term:

(0.5) "Department" means the Department of Community Health.

(1) "Indigent person" means any resident who is ill or injured and who from his own resources or from the resources of those upon whom he is legally dependent is financially unable to meet the full cost of hospital care as prescribed or ordered by a physician. An allegedly indigent person shall not be considered an "indigent person" for the purposes of this article until and unless he shall be certified as an "indigent person" by the governing authority of his county of residence. If the governing authority shall fail or refuse to certify a person as an "indigent person" within five days after the next regular or special meeting of the governing authority receiving notice as to such person's being admitted to a participating hospital, neither the county nor the hospital shall be responsible for any medical costs incurred by such person, but the person himself shall be responsible for all such costs.

(2) "Participating county" means a county whose governing authority, by appropriate action, has agreed to participate in the program, is current with regard to its pro rata share of funds necessary for hospital care for its indigent persons, and is in compliance with this article.

(3) "Participating hospital" means a publicly or privately owned hospital which holds a valid permit issued pursuant to Article 1 of Chapter 7 of this title, which has a physician as chief of staff, and whose governing authority has elected to participate in the program in accordance with this article.

(4) "Physician" means a doctor of medicine duly licensed to practice medicine in this state in accordance with Chapter 34 of Title 43.

(5) "Program" means the Hospital Care for the Indigent Program.

(6) "Resident" means a person who receives health care from a hospital in the county in which he resides and who is in this state for other than temporary or transitory purposes and has lived continuously in the state for a period of not less than six months.

History. — Ga. L. 1957, p. 470, § 2; Code 1933, § 88-2302, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 649, § 1; Ga. L. 1983, p. 3, § 22; Ga. L. 2011, p. 705, § 4-8/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-3. Disbursement of state funds to counties.

State funds appropriated to the department for the purpose of carrying out this article shall be expended by the department so as to provide for the administration of this article as it deems necessary and proper and to assist counties in providing hospital care for indigent residents. The department shall establish a graduated matching formula for the disbursement of state funds to assist counties as provided in this article; provided, however, the state share of any participating county budget shall not exceed $1.00 per capita based on the latest official decennial population count of the United States Bureau of the Census. The department may establish an amount of state funds of the total state and county participating budget to provide hospital care for indigent resident patients who may be hospitalized outside of the county of residency; provided, however, that any unexpended state funds budgeted to provide hospital care for the indigent patient who may be hospitalized outside the county of residency may be reallocated by the department according to the matching formula.

History. — Ga. L. 1957, p. 470, § 4; Code 1933, § 88-2304, enacted by Ga. L. 1964, p. 499, § 1.

31-8-4. Qualification of counties for participation in program.

In order for a county to qualify for assistance under the program, the governing authority of said county shall have certified that:

(1) The county elects to participate in the program;

(2) A local budget providing the funds required by the graduated matching formula has been approved;

(3) A local administrative agency or officer has been appointed; and

(4) A screening committee or agency has been appointed to make determinations and certifications relative to indigency of persons applying for assistance as provided for in this article.

History. — Ga. L. 1957, p. 470, § 9; Code 1933, § 88-2309, enacted by Ga. L. 1964, p. 499, § 1.

31-8-5. Submission of budget by county.

After the implementation of this article, the governing authority of each participating county shall, on or before April 1 of each year, submit to the department a program budget containing an estimate and supporting data setting forth the amount of moneys needed to provide hospital care for the indigent residents for said county.

History. — Ga. L. 1957, p. 470, § 5; Code 1933, § 88-2305, enacted by Ga. L. 1964, p. 499, § 1.

31-8-6. Credit for expenditures by county.

Upon certification approved by the department, any participating county may receive credit for direct expenditures made during the period covered by the budget by the county to a hospital or hospitals when such expenditures can be shown to have been made for the care of indigent residents as defined in this Code section.

History. — Ga. L. 1957, p. 470, § 6; Code 1933, § 88-2306, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.

31-8-7. Qualifications for assistance under program; waiver of residence requirements in emergencies.

In order to qualify for assistance under this program, a person must be an indigent resident of this state and must be a person for whom hospital care is not available under any other program. The six-months' residency requirement may be waived if a physician certifies that the illness or injury constitutes an emergency which requires immediate hospital care.

History. — Ga. L. 1957, p. 470, § 8; Code 1933, § 88-2308, enacted by Ga. L. 1964, p. 499, § 1.

31-8-8. Agreements between department and other governmental agencies or private organizations to obtain funds.

The department is authorized and empowered to enter into agreements with other state departments and boards, agencies of the United States government, local governmental agencies, and voluntary organizations to obtain funds for hospital care that may be available for needy persons; and the department is authorized to administer any funds received under such agreements in conformity with this article; provided, however, that the authority granted in this article shall not prevent the department from complying with 42 U.S.C.A. Section 701, et seq.

History. — Ga. L. 1957, p. 470, § 10; Code 1933, § 88-2310, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.

31-8-9. Use of gifts and donations.

The department is authorized and empowered to accept and expend any and all gifts and donations that may be available to it for the purposes of this article.

History. — Ga. L. 1957, p. 470, § 11; Code 1933, § 88-2311, enacted by Ga. L. 1964, p. 499, § 1.

31-8-9.1. Eligibility to receive tax credits; obligations of rural hospitals after receipt of funds; posting information on website.

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

(1) "Critical access hospital" means a hospital that meets the requirements of the federal Centers for Medicare and Medicaid Services to be designated as a critical access hospital and that is

recognized by the department as a critical access hospital for purposes of Medicaid.

(2) "Rural county" means a county having a population of less than 50,000 according to the United States decennial census of 2010 or any future such census; provided, however, that for counties which contain a military base or installation, the military personnel and their dependents living in such county shall be excluded from the total population of such county for purposes of this definition.

(3) "Rural hospital organization" means an acute care hospital licensed by the department pursuant to Article 1 of Chapter 7 of this title that:

(A) Provides inpatient hospital services at a facility located in a rural county or is a critical access hospital;

(B) Participates in both Medicaid and medicare and accepts both Medicaid and medicare patients;

(C) Provides health care services to indigent patients;

(D) Has at least 10 percent of its annual net revenue categorized as indigent care, charity care, or bad debt;

(E) Annually files IRS Form 990, Return of Organization Exempt From Income Tax, with the department, or for any hospital not required to file IRS Form 990, the department will provide a form that collects the same information to be submitted to the department on an annual basis;

(F) Is operated by a county or municipal authority pursuant to Article 4 of Chapter 7 of this title or is designated as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(G) Is current with all audits and reports required by law; and

(H) Has a three-year average patient margin, as a percent of expense, less than one standard deviation above the state-wide three-year average of organizations defined in subparagraphs (A) through (G) of this paragraph, as calculated by the department. For purposes of this subparagraph, the term "patient margin" means gross patient revenues less contractual adjustments, bad debt, indigent and charity care, other uncompensated care, and total expenses.

(b)(1) By December 1 of each year, the department shall approve a list of rural hospital organizations eligible to receive contributions from the tax credit provided pursuant to Code Section 48-7-29.20 and transmit such list to the Department of Revenue.

(2) Before any rural hospital organization is included on the list as eligible to receive contributions from the tax credit provided pursuant

to Code Section 48-7-29.20, it shall submit to the department a five-year plan detailing the financial viability and stability of the rural hospital organization. The criteria to be included in the five-year plan shall be established by the department.

(3) The department shall create an operations manual for identifying rural hospital organizations and ranking such rural hospital organizations in order of financial need. Such manual shall include:

(A) All deadlines for submitting required information to the department;

(B) The criteria to be included in the five-year plan submitted pursuant to paragraph (2) of this subsection; and

(C) The formula applied to rank the rural hospital organizations in order of financial need.

(c)(1) A rural hospital organization that receives donations pursuant to Code Section 48-7-29.20 shall:

(A) Utilize such donations for the provision of health care related services for residents of a rural county or for residents of the area served by a critical access hospital; and

(B) Report on a form provided by the department:

(i) All contributions received from individual and corporate donors pursuant to Code Section 48-7-29.20 detailing the manner in which the contributions received were expended by the rural hospital organization; and

(ii) Any payments made to a third party to solicit, administer, or manage the donations received by the rural hospital organization pursuant to this Code section or Code Section 48-7-29.20. In no event shall payments made to a third party to solicit, administer, or manage the donations received pursuant to this Code section exceed 3 percent of the total amount of the donations.

(2) The department shall annually prepare a report compiling the information received pursuant to paragraph (1) of this subsection for the chairpersons of the House Committee on Ways and Means and the Senate Health and Human Services Committee.

(d) The department shall post the following information in a prominent location on its website:

(1) The list of rural hospital organizations eligible to receive contributions established pursuant to paragraph (1) of subsection (b) of this Code section;

(2) The operations manual created pursuant to paragraph (3) of subsection (b) of this Code section;

(3) The annual report prepared pursuant to paragraph (2) of subsection (c) of this Code section;

(4) The total amount received by each third party that participated in soliciting, administering, or managing donations; and

(5) A link to the Department of Revenue's website containing the information included in subsection (d) of Code Section 48-7-29.20.

History. — Code 1981, § 31-8-9.1, enacted by Ga. L. 2017, p. 511, § 1/SB 180; Ga. L. 2017, p. 774, § 31/HB 323; Ga. L. 2019, p. 148, § 1-14/HB 186; Ga. L. 2019, p. 183, § 3/HB 321.

Effective date. — This Code section became effective May 8, 2017.

The 2019 amendments. — The first 2019 amendment, effective July 1, 2019, added paragraph (b)(3) and subsection (d). The second 2019 amendment, effective April 25, 2019, deleted "and" at the end of subparagraph (a)(3)(F); substituted "; and" for a period at the end of subparagraph (a)(3)(G); and added subparagraph (a)(3)(H), paragraph (b)(3), and subsection (d).

Editor's notes. — Ga. L. 2017, p. 774, § 54(e)/HB 323, not codified by the General Assembly, provides: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2017 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to subparagraph (c)(1)(A) of this Code section by Ga. L. 2017, p. 774, § 31(7)/HB 323, was not given effect.

Ga. L. 2017, p. 511, § 1/SB 180, effective May 8, 2017, repealed former Code Section 31-8-9.1, pertaining to eligibility to receive tax credits and obligations of rural hospitals after receipt of those funds, and enacted the present Code section. The former Code section was based on Code 1981, § 31-8-9.1, enacted by Ga. L. 2016, p. 166, § 1/SB 258.

Ga. L. 2017, p. 511, § 3/SB 180, not codified by the General Assembly, provides that this Code section "shall be applicable to all taxable years beginning on or after January 1, 2017."

31-8-10. Rules and regulations.

The department shall adopt and promulgate such rules and regulations as it deems necessary to carry out this article.

History. — Ga. L. 1957, p. 470, § 7; Code 1933, § 88-2307, enacted by Ga. L. 1964, p. 499, § 1.

31-8-11. Construction of article.

This article shall not be construed as replacing federal, state, or local programs for the indigent but may supplement such programs for hospital care of the indigent.

History. — Ga. L. 1957, p. 470, § 14; Code 1933, § 88-2312, enacted by Ga. L. 1964, p. 499, § 1.

ARTICLE 2

HOSPITAL CARE FOR NONRESIDENT INDIGENTS

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 8 et seq.

31-8-30. Findings; purpose of article.

The General Assembly finds that there is an inequitable distribution of the public costs incurred in providing health care for indigent persons who receive such care outside their counties of residence. The publicly supported hospitals providing such health care are frequently not reimbursed for the costs thereby incurred, which either increases the tax burden of citizens supporting such hospitals or increases the charges made to paying patients or causes a combination of both types of such increases. It is the purpose of this article to recognize and provide for the state's responsibility to assist in the payment of cost of care for nonresident indigent patients by providing procedures for the reimbursement of such costs from state funds.

History. — Code 1933, § 88-2301a, enacted by Ga. L. 1979, p. 1234, § 1.

31-8-31. Definitions.

As used in this article, the term:

(1) "Area of operation" shall, for the purpose of hospital authorities, have the same meaning as defined in paragraph (1) of Code Section 31-7-71 and, for purposes of all other hospitals, shall be the county in which the hospital is located.

(2) "Cost of care" means the cost of services rendered by a hospital at the reimbursement rate currently in effect for the hospital under the medical assistance program for the needy under Title XIX of the Social Security Act (42 U.S.C.A. Section 1396, et seq.), as amended, but shall not include any portion of such cost which is paid by the indigent patient, by the spouse or a relative of the indigent patient, by insurance, or by any governmental or other public agency pursuant to any federal, state, or local program paying cost of health care for indigent patients, other than the program established by this article.

(2.1) "Department" means the Department of Community Health.

(3) "Fiscal year" means the period beginning on July 1 of each year and ending on June 30 of the immediately following year.

(4) "Fund" means the Nonresident Indigent Health Care Fund created by Code Section 31-8-33.

(5) "Health care" means the following services for nonresident inpatients and outpatients:

(A) Emergency care or treatment;

(B) Treatment for conditions of pregnancy and treatment of the newborn infant from the time of birth until the time of discharge from the hospital;

(C) Treatment for a potentially disabling illness or injury when treatment for such illness or injury is not available for indigent patients in the county of residence of the patient; and

(D) Treatment for any combination of the foregoing.

(6) "Hospital" means a hospital which is permitted to operate by the department pursuant to Article 1 of Chapter 7 of this title.

(7) "Hospital authority" means a hospital authority created pursuant to Article 4 of Chapter 7 of this title.

(8) "Indigent patient" means a nonresident patient who is certified as an indigent pursuant to Code Section 31-8-32.

(9) "Nonresident patient" means a person who receives health care from a hospital and who is a resident of this state but who is not a resident of the area of operation of the hospital providing such health care.

History. — Code 1933, § 88-2302a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2011, p. 705, § 4-9/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-32. Determination of indigency.

(a) The commissioner of community health shall adopt state-wide standards to determine indigency for the purposes of this article. To the extent practicable, such standards shall be based on similar standards adopted for the purpose of determining the ability to pay of patients receiving services in state hospitals as authorized by state law, as now or hereafter enacted, governing responsibility for payment of cost of care for health care services rendered by state hospitals.

(b) Within 30 days after receiving the standards provided by the commissioner pursuant to subsection (a) of this Code section, the governing authority of each county, by resolution, shall designate a person, to be known as the health care advisory officer of the county, to make a determination of indigency for the residents of the county in accordance with the standards promulgated pursuant to subsection (a) of this Code section. The health care advisory officer shall carry out such additional duties as may be assigned to him by the governing authority of the county. It shall be the duty of the governing authority of each county to mail a copy of such resolution to the chief administrative officer of each hospital within 15 days after its adoption. The governing authority of any county may change the person designated as the health care advisory officer, but any such change shall be accomplished by resolution of the governing authority, and a copy of the resolution making such change shall be mailed to the chief administrative officer of each hospital within 15 days after its adoption.

(c) When a nonresident patient receives health care from a hospital and when such patient claims inability to pay cost of care because of indigency, the chief administrative officer of the hospital shall notify, in writing, the health care advisory officer of the county of residence of the patient. Such notification shall request a determination of indigency of the patient. As soon as practicable after receiving such notification but not later than 30 days thereafter, the health care advisory officer of the county shall notify the chief administrative officer of the hospital of his determination. If the health care advisory officer determines that the patient is indigent, such notification shall constitute a certification of such indigency, and the expenditures for cost of care of such nonresident indigent patient shall be maintained on the records of the hospital for the purposes of Code Section 31-8-34.

(d) If the health care advisory officer of a county fails to respond to a request for a determination of indigency from a hospital providing health care for such patient within the time limitation provided by subsection (c) of this Code section, the county of residence of the patient shall be liable for the payment of cost of care of such patient. In such event, the hospital providing health care for the nonresident patient may bill the county of residence of the patient for the amount of his cost of care, and it shall be the duty of the governing authority of such county to pay the hospital the amount billed.

(e) To the end that the certifications of indigency required by subsection (c) of this Code section may be expedited, it shall be the duty of each county health care advisory officer to establish and maintain files showing the names of county residents determined to be indigent.

(f) It shall be the duty of the commissioner to devise such standard forms as may be necessary or desirable to administer this Code section

uniformly. It shall be the duty of counties, health care advisory officers, and hospitals to use the forms promulgated by the commissioner pursuant to this subsection.

History. — Code 1933, § 88-2303a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 2009, p. 453, § 1-6/HB 228.

31-8-33. Creation of fund.

There is created the Nonresident Indigent Health Care Fund for the purpose of making payments therefrom to hospitals to reimburse such hospitals for the cost of care of nonresident indigent patients. Such fund shall be made up of appropriations made thereto by the General Assembly, as provided in this article.

History. — Code 1933, § 88-2304a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 1991, p. 94, § 31.

31-8-34. Maintenance of records; certification of cost of care; determination of amount of fund.

(a) Each hospital shall maintain accurate records of its cost of care for providing health care services for nonresident indigent patients. As soon as practicable after the close of each quarter of each fiscal year and within not more than 30 days after the close thereof, the chief administrative officer of each hospital shall certify to the commissioner the total cost of care incurred by the hospital in providing health care to nonresident indigent patients for the immediately preceding quarter.

(b) For the 1980-81 fiscal year, the commissioner shall estimate the state-wide cost of care for nonresident indigent patients by annualizing the total amount shown on the first quarterly submissions to him under subsection (a) of this Code section of cost of care for nonresident indigent patients and by adjusting the annualized amount by a factor, not to exceed 10 percent of such amount, which the commissioner determines to be a reasonable estimate of anticipated increases in the cost of care for nonresident indigent patients.

(c) For the 1981-82 fiscal year and for each fiscal year thereafter, the commissioner shall estimate the state-wide cost of care for nonresident indigent patients by annualizing the total payments, as provided by Code Section 31-8-35, to hospitals from the fund during the first quarter of the immediately preceding fiscal year, adjusted by a factor which, based on the experience of the fund, the commissioner determines to be a reasonable estimate of anticipated increases or decreases in the cost of care for nonresident indigent patients; but no estimated increase in such cost shall exceed 10 percent of the annualized amount.

History. — Code 1933, § 88-2305a, enacted by Ga. L. 1979, p. 1234, § 1.

31-8-35. Payments from fund to hospitals.

For each fiscal year, beginning with the 1980-81 fiscal year, payments to hospitals for cost of care of nonresident indigent patients shall be made from the fund. Beginning with the certifications made after the close of the first quarter of the 1980-81 fiscal year, the quarterly certifications of cost of care for nonresident indigent patients made by hospitals pursuant to subsection (a) of Code Section 31-8-34 shall constitute requests for payments from the fund to reimburse such hospitals for the cost of care. Within 30 days after receiving any such request, the commissioner shall authorize the state treasurer to issue a check to the hospital submitting the request for the payment from the fund of the amount requested.

History. — Code 1933, § 88-2307a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.

31-8-36. State appropriations to fund.

(a) For each fiscal year, beginning with the 1980-81 fiscal year, the commissioner shall make a request for appropriation of the amount determined under Code Section 31-8-34 as the state-wide cost of care for nonresident indigent patients in the budget of the Department of Community Health under the category: "Nonresident Indigent Health Care Fund." The budget shall cite this article as the authority for such request and shall make such additional explanation of the request as the commissioner deems appropriate.

(b) In the event the General Assembly fails to appropriate funds in accordance with the budget request made pursuant to subsection (a) of this Code section or fails to appropriate the full amount requested, the payments to hospitals under Code Section 31-8-35 shall be reduced pro rata in accordance with the amount actually available to the fund.

History. — Code 1933, § 88-2306a, enacted by Ga. L. 1979, p. 1234, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

31-8-37. Compliance with this article contingent upon appropriation.

On and after July 1, 1987, hospitals shall not be required to comply with the provisions of this article unless the General Assembly appropriates funds in an amount determined as the state-wide cost of care for nonresident indigent patients as provided for in Code Section 31-8-36.

History. — Code 1981, § 31-8-37, enacted by Ga. L. 1987, p. 1494, § 3.

ARTICLE 2A

HOSPITAL CARE FOR PREGNANT WOMEN

Cross references. — Newborn Baby and Mother Protection Act, § 33-24-58.

Administrative rules and regulations. — Emergency medical services to pregnant women, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Family and Children Services, Chapter 290-2-26.

Law reviews. — For article, "State of Emergency: Why Georgia's Standard of Care in Emergency Rooms is Harmful to Your Health," see 45 Ga. L. Rev. 275 (2010).

JUDICIAL DECISIONS

Constitutionality of article. — An attack on O.C.G.A. Art. 2A, Ch. 8, T. 31, as special legislation fails since the statute operates statewide and is applicable to all hospitals authorized to operate as provided in the statute. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

When a county argued that O.C.G.A. Art. 2A, Ch. 8, T. 31 was violative of Ga. Const. 1983, Art. IX, Sec. II, Para. III (b)(1), which prohibits a county from exercising certain enumerated powers inside the boundaries of any municipality or other county except by contract with the entity affected, since the county had no contract with the political subdivision within which a hospital seeking reimbursement under O.C.G.A. § 31-8-43(c) was located, it could not constitutionally pay the claims of the hospital, it was held that the words "unless otherwise provided by law," prefacing the constitutional prohibition apply to a general law such as O.C.G.A. § 31-8-43. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

31-8-40. Legislative findings and purpose.

The General Assembly finds that Georgia's high rates of infant mortality and morbidity are costly to the state in terms of human suffering and of expenditures for long-term institutionalization, special education, and medical care. It is well documented that appropriate care during pregnancy and delivery can prevent many of the expensive, disabling problems our children experience. The State of Georgia is making progress in improving services and funding. However, the General Assembly is concerned that some women continue to be refused service for financial reasons at hospitals when they request admission after labor has begun. It is the purpose of this article to assure that:

(1) No hospital denies available, appropriate emergency services to a woman who has not made prior arrangements for the payment of the delivery and who seeks hospital care for the safe delivery of her child;

(2) Counties assume a share of the responsibility in meeting this critical need for their residents who receive such care when no other source of payment from public or private sources is available; and

(3) Women receiving such care and other persons specified in this article assume certain responsibilities with regard to payment for such care after it is rendered, but it is not the purpose of this article to establish a general health insurance program for all pregnant indigent women.

History. — Code 1981, § 31-8-40, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3.

Cross references. — Safe place for newborns, T. 19, C. 10A.

Law reviews. — For article, "State of Emergency: Why Georgia's Standard of Care in Emergency Rooms is Harmful to Your Health," see 45 Ga. L. Rev. 275 (2010). For annual survey of law on trial practice and procedure, see 62 Mercer L. Rev. 339 (2010).

JUDICIAL DECISIONS

Cited in Gliemmo v. Cousineau, 287 Ga. 7, 694 S.E.2d 75 (2010).

31-8-41. Definitions.

As used in this article, the term:

(1) "Cost of care" means the cost of services rendered by a hospital for care required to be provided thereby under this article, and for services rendered by a physician in connection therewith, at the lesser of the actual charges or the reimbursement rate currently in effect for the hospital and physician under the medical assistance program for the needy under Title XIX of the Social Security Act (42 U.S.C.A. Section 1396, et seq.), as amended, but shall not include any portion of such cost which is paid by the indigent patient, by the spouse or a relative of the indigent patient, by the father of the child, by insurance, or by any governmental or other public agency pursuant to any federal, state, or local program paying cost of health care for indigent patients, other than the program established by this article. The Medicaid reimbursement rate for services under this article shall not be adjusted for outlier payment. Payments actually received by a hospital or physician, when made by the patient, the patient's spouse, family member, father of the patient's child, or by insurance, the medical assistance program for the needy, any similar federal, state, or local program, or any other third-party payor other than a county, shall constitute payment to the hospital or physician, respectively, of the payment amount so received and exclude that amount from the definition of "cost of care." When a hospital renders care to a woman who is not a resident of the county in which that hospital is located and that care is required to be provided under this article but there is within the county of residence of that woman a hospital which usually and customarily provides that care, "cost of care" means the lesser of the actual charges for the care actually

rendered or the Medicaid reimbursement rate currently in effect for such care, which Medicaid reimbursement rate shall be that Medicaid rate for such care in the hospital of the woman's county of residence, unless there is more than one such hospital, in which event the rate shall be the average Medicaid rate for such care in all hospitals of the woman's county of residence.

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

(2) "Hospital" means a hospital which is permitted to operate by the department pursuant to Article 1 of Chapter 7 of this title.

(3) "Indigency" means the inability of a patient or other person to pay the entire cost of care determined in accordance with subsection (a) of Code Section 31-8-43.

(4) "Patient" means a pregnant woman who receives services under this article.

(5) "Resident of the county" means a person who is domiciled in the county as determined pursuant to Chapter 2 of Title 19.

History. — Code 1981, § 31-8-41, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3; Ga. L. 2011, p. 705, § 4-10/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-42. Requirement of hospitals with emergency services to provide care to pregnant women in labor.

Any hospital which operates an emergency service shall be required to provide the appropriate, necessary emergency services to any pregnant woman who is a resident of this state and who presents herself in active labor to the hospital, if those services are usually and customarily provided in that facility, which services shall be provided within the scope of generally accepted practice based upon the information furnished the hospital by the pregnant woman, including such information as the pregnant woman reveals concerning her prenatal care, diet, allergies, previous births, general health information, and other such information as the pregnant woman may furnish the hospital. If, in the medical judgment of the physician responsible for the emergency service, the hospital must transfer the patient because the hospital is unable to provide appropriate treatment, the hospital where the patient has presented herself shall:

(1) Within the capabilities of the hospital provide such emergency services as the circumstances require, which services shall be provided within the scope of generally accepted practice based upon the information furnished the hospital by the pregnant woman, including such information as the pregnant woman reveals concerning her

prenatal care, diet, allergies, previous births, general health information, and other such information as the pregnant woman may furnish the hospital;

(2) Contact an appropriate receiving hospital and notify such hospital that the patient is in transit;

(3) Arrange suitable transportation for the patient if necessary; and

(4) Send to the receiving hospital any available information on the patient's history and condition.

The transfer shall not be authorized until the physician considers the patient sufficiently stabilized for transport.

History. — Code 1981, § 31-8-42, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3.

JUDICIAL DECISIONS

Cited in Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

31-8-43. Determination of indigency; payment of services provided under Code Section 31-8-42 for indigent patients by county; records; administration.

(a) The commissioner of community health shall adopt state-wide standards to determine indigency for the purposes of this article, which standards shall be based upon and consistent with 125 percent of the federal poverty level as it exists on May 1, 1985. These standards shall further provide for legal liability, based upon ability to pay some reasonable percentage of cost of care, for patients and other persons legally liable for the patients' cost of care if those patients or other persons do not meet the indigency standards based upon less than 100 percent of the federal poverty level but do meet those standards based upon between 100 and 125 percent of the federal poverty level, as such level exists on May 1, 1985.

(b) Within 30 days after receiving the standards provided by the commissioner pursuant to subsection (a) of this Code section, the governing authority of each county, by resolution, shall designate a person, to be known as the health care advisory officer of the county, to make a determination of indigency for the residents of the county in accordance with the standards promulgated pursuant to subsection (a) of this Code section. The health care advisory officer shall carry out such additional duties as may be assigned to him by the governing

authority of the county. It shall be the duty of the governing authority of each county to mail a copy of such resolution to the commissioner or the commissioner's designee within 15 days after its adoption. The governing authority of any county may change the person designated as the health care advisory officer, but any such change shall be accomplished by resolution of the governing authority, and a copy of the resolution making such change shall be mailed to the commissioner or the commissioner's designee within 15 days after its adoption. If a county fails or refuses either to designate a health care advisory officer or to provide to the commissioner or the commissioner's designee the required notification of the county's designation of such officer, the county governing authority shall be deemed to be such officer for purposes of this article.

(c) When a patient receives health care from a hospital or physician, which care that hospital is required to provide the patient under Code Section 31-8-42, and when such patient claims indigency, the chief administrative officer of the hospital shall determine whether any portion of the cost of services may be paid by the medical assistance program for the needy under Title XIX of the Social Security Act, by insurance, or by any other governmental or public agency pursuant to any federal, state, or local program and provide written notification of such determination to the health care advisory officer of the county of residence of the patient. Such notification shall include a certification by the chief administrative officer of the hospital that an appropriate investigation has been made and that it has been determined that no portion of the cost of services may be paid by the medical assistance program for the needy under Title XIX of the Social Security Act, by insurance, or by any other governmental or public agency pursuant to any federal, state, or local program or a certification that an appropriate investigation has been made and that a portion of the cost of services may be paid from such sources. If it is determined that a portion of the cost of services may be paid from such sources, then the notification shall include a certification of the amount which may be so paid. Such notification shall also request a determination of indigency of the patient. As soon as practicable after receiving such notification but not later than 60 days thereafter, the health care advisory officer of the county shall notify the chief administrative officer of the hospital of his determination. If the health care advisory officer determines that the patient meets the indigency standards or if the health care advisory officer of a county fails to respond to a request for a determination of indigency from a hospital providing health care for such patient within the time limitation provided by this subsection, the county of residence of the patient shall be liable for the payment of cost of care of such patient in each hospital rendering the emergency services. In such event, each hospital and physician providing the emergency health care

for the patient may bill the county of residence of the patient for the amount of the patient's cost of care. It shall be the duty of the governing authority of such county to pay the hospital and physician that billed amount plus, if that billed amount is not paid by the county within 120 days after the mailing of a request for a determination of indigency, interest on the billed amount at the rate specified in Code Section 48-2-40 for unpaid taxes.

(d) To the end that the certifications of indigency required by subsection (c) of this Code section may be expedited, it shall be the duty of each county health care advisory officer to establish and maintain files showing the names of county residents whom that officer has determined to be indigent.

(e) It shall be the duty of the commissioner to devise such standard forms as may be necessary or desirable to administer this Code section uniformly. It shall be the duty of counties, health care advisory officers, and hospitals to use the forms promulgated by the commissioner pursuant to this subsection.

(f) To the extent practicable and consistent with appropriate health care, the commissioner and the health care advisory officer shall encourage the use of hospitals located in the county of residence of the pregnant woman.

History. — Code 1981, § 31-8-43, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3; Ga. L. 1991, p. 94, § 31; Ga. L. 1992, p. 6, § 31; Ga. L. 2009, p. 453, § 1-6/HB 228.

JUDICIAL DECISIONS

Constitutionality. — When a county argued that O.C.G.A. § 31-8-43 was violative of Ga. Const. 1983, Art. IX, Sec. II, Para. III(b)(1), which prohibits a county from exercising certain enumerated powers inside the boundaries of any municipality or other county except by contract with the entity affected, since the county had no contract with the political subdivision within which a hospital seeking reimbursement under subsection (c) of O.C.G.A. § 31-8-43 was located, it could not constitutionally pay the claims of the hospital, it was held that the words "unless otherwise provided by law," prefacing the constitutional prohibition apply to a general law such as O.C.G.A. § 31-8-43. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

Claims presentation requirements of § 36-11-1 inapplicable. — Requirements of O.C.G.A. § 36-11-1 on presenting claims against a county apply to claims arising from contract and do not apply to a claim when the right to and amount of the claim is fixed by law as when a hospital furnishes emergency services to pregnant indigent residents of the county under O.C.G.A. T. 31, Ch. 8, Art. 2A. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

Reasonableness of indigency standards. — Statewide standards of indigency adopted by the Commissioner of Human Resources are not arbitrary, capricious, or otherwise unreasonable. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

Indigency not waived by patients' execution of promissory notes. — Although patients signed and delivered

promissory notes to the hospital, the execution of the notes by the patients did not amount to a waiver of indigency on the patients' part nor indirectly amount to a waiver on the part of the hospital nor did the execution of the notes in any way satisfy the obligation of the county to provide medical service for indigent persons. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

Validity of rules and regulations. — Argument that the regulations adopted by the Commissioner of Human Resources under O.C.G.A. § 31-8-43 are invalid because the Commissioner expanded the scope of the act by including intra partum and post partum care of the mother and a pediatric examination of the newborn is invalid. The General Assembly may delegate to administrative offices or agencies the authority to make rules and regulations necessary to effectuate statutes of the General Assembly. Terrell County v. Albany/Dougherty Hosp. Auth., 256 Ga. 627, 352 S.E.2d 378 (1987).

31-8-43.1. Extent of patient's liability for costs; required cooperation of patient with county; liability of father for costs; action by county to recover costs or challenge determination of liability.

(a) A patient who receives services under this article shall, by accepting such services, be deemed to have agreed to:

(1) Be liable to any county which pays all or any part of that patient's cost of care for the entire amount so paid by that county, except that a patient who meets the indigency standards based upon 100 to 125 percent of the federal poverty level shall be liable for an amount which is the greater of $100.00 or the reasonable percentage of costs for which the patient is liable under subsection (a) of Code Section 31-8-43 and a patient who meets the indigency standards based upon less than 100 percent of the federal poverty level shall be liable for $100.00 of those costs, but liability under this subsection shall never exceed the county's payments for cost of care;

(2) Have made an assignment to that county paying any part of that patient's cost of care for any benefits for such care for which the patient is eligible from a third party up to the amount actually paid and cooperate with the county in obtaining any such benefits to repay the county;

(3) Cooperate with any county paying any part of that patient's cost of care in identifying the father of a child delivered to the patient by a hospital acting in compliance with this article and in seeking to obtain from such father repayment of that portion of the county's payment which, under the indigency standards, that father is able to repay; and

(4) Cooperate with any county paying any part of that patient's cost of care in applying and qualifying for the medical assistance program for the needy under Title XIX of the Social Security Act or any other federal, state, or local governmental program for which the patient may be eligible.

(b) The failure of a patient to cooperate as required by paragraphs (2), (3), and (4) of subsection (a) of this Code section shall render the patient and any person liable for other expenses of the patient, including but not limited to the parents of a minor patient and the spouse of a patient, liable to the county for all payments which that county makes for the patient's cost of care. Failure of a patient to cooperate as required by paragraphs (2), (3), and (4) of subsection (a) of this Code section shall not be a valid ground to deny the patient services otherwise required to be provided under this article unless the patient at the time of admission refuses to sign a document, in such form as the commissioner shall prescribe and provide, acknowledging notification that the patient's receiving services shall constitute an agreement to the terms of paragraphs (1) through (4) of subsection (a) of this Code section unless waived by the county health care advisory officer.

(c) Except as provided in subsection (b) of this Code section, the father of a patient's child who is delivered by a hospital as required by this article and any other person legally responsible for other expenses of the patient shall be liable to the county which pays the patient's cost of care to the same extent the patient is liable therefor under paragraph (1) of subsection (a) of this Code section. This obligation to make repayment shall be in addition to any other obligation imposed by law.

(d) The county may bring a civil action to recover, from any person liable therefor under this Code section, those payments which the county has made for a patient's cost of care to the extent of the liability imposed by this Code section but in no event may recover more than the county paid for such costs of care.

(e) A county or any person aggrieved by any determination under this article that such county or person is liable for a patient's cost of care may bring a de novo civil action in superior court challenging that determination.

History. — Code 1981, § 31-8-43.1, enacted by Ga. L. 1985, p. 829, § 3; Ga. L. 1991, p. 94, § 31.

31-8-44. Immunity of hospital or health care provider from liability.

No physician, nurse, or other such medical assistant, nor the hospital or any of its agents or employees shall be guilty of malpractice or civilly liable therefor for treatment rendered under this article unless the physician, nurse, or other medical assistant, or the hospital, its agent, or employee has been grossly negligent in the provision of such services or has willfully failed to comply with the provisions of this article. No action shall be brought in connection with treatment rendered under

this article without a specific allegation of gross negligence or willful failure to comply.

History. — Code 1981, § 31-8-44, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3.

Cross references. — Actions for medical malpractice generally, § 51-1-27.

31-8-45. Availability of cause of action for patient wrongfully denied care.

If a hospital fails or refuses to provide treatment or services pursuant to the provisions of Code Section 31-8-42, a person aggrieved by such failure or refusal shall have a cause of action against the hospital for damages and for such other relief as the court having jurisdiction of the action deems proper. No person shall be prohibited from maintaining such an action for failure to exhaust any rights to administrative relief.

History. — Code 1981, § 31-8-45, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3.

31-8-46. Investigation; penalties; rules and regulations.

(a) If the department receives notice that a violation by a hospital of Code Section 31-8-42 is in progress, the department shall immediately order an investigation to determine whether or not there has been a violation and upon finding that a violation has occurred shall immediately order the hospital to comply with that Code section.

(b) If a hospital violates Code Section 31-8-42, the department shall assess a civil penalty of $500.00 for each such violation. Any such civil penalty shall be imposed by the department only after notice and hearing as provided in Article 1 of Chapter 5 of this title. Any person or facility subject to a civil penalty under this Code section is entitled to judicial review in accordance with Article 1 of Chapter 5 of this title. All civil penalties recovered by the department under this Code section shall be paid into the general fund of the state treasury.

(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.

(d) The Department of Community Health is authorized and directed to promulgate appropriate rules and regulations for the enforcement of this article.

(e) Nothing in this article shall be construed to preempt any other law or to deny to any individual any rights or remedies which are provided by or under any other law.

History. — Code 1981, § 31-8-46, enacted by Ga. L. 1984, p. 1389, § 1; Ga. L. 1985, p. 829, § 3; Ga. L. 2008, p. 12, § 2-27/SB 433; Ga. L. 2009, p. 453, § 1-4/HB 228.

ARTICLE 3

LONG-TERM CARE OMBUDSMAN PROGRAM

Cross references. — Protective services for abused, neglected, or exploited disabled adults, T. 30, C. 5. Further provisions regarding reporting of abuse or exploitation of residents of long-term care facilities, § 31-8-80 et seq. Public assistance for the elderly generally, § 49-4-30 et seq.

Law reviews. — For note on 1995 amendments of Code sections in this article, see 12 Ga. St. U. L. Rev. 241 (1995).

31-8-50. Declaration of policy.

The General Assembly finds that a significant number of older citizens of this state reside in long-term care facilities in this state and, because of their isolated and vulnerable condition, are more dependent on others for their protection and care. It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the promotion of community involvement in long-term care facilities and by the establishment of a process to resolve complaints and problems of residents. It is the further intent of the General Assembly that the department, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, ensure that the quality of care and life for such residents is maintained, that necessary reports are made and that, where necessary, corrective action is taken at the departmental level.

History. — Code 1933, § 88-1902a, enacted by Ga. L. 1979, p. 1240, § 1.

U.S. Code. — The Older Americans Act of 1965, as amended, referred to in this Code section, is codified as 42 U.S.C. § 3001 et seq.

JUDICIAL DECISIONS

Cited in Brogdon v. National Healthcare Corp., 103 F. Supp. 2d 1322 (N.D. Ga. 2000).

31-8-51. Definitions.

As used in this article, the term:

(1) "Community ombudsman" means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

(1.1) "Department" means the Department of Human Services.

(2) "Long-term care facility" means any skilled nursing home, intermediate care home, private home care provider, assisted living

community, or personal care home now or hereafter subject to regulation and licensure by the Department of Community Health.

(3) "Resident" means any person who is receiving treatment or care in any long-term care facility who seeks admission to such facility or who has been discharged or transferred from such facility.

(4) "State ombudsman" means the state ombudsman established under Code Section 31-8-52.

History. — Code 1933, § 88-1901a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 2009, p. 453, § 2-16/HB 228; Ga. L. 2011, p. 227, § 18/SB 178; Ga. L. 2014, p. 477, § 1/SB 207.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "Department of Community Health" was substituted for "department" in paragraph (2).

31-8-52. Establishment of long-term care ombudsman program.

Pursuant to the Older Americans Act of 1965 (P.L. 89-73, 79 Stat. 219), as amended, and as a condition of receiving funds under that act for various programs for older citizens of this state, the Department of Human Services has been required to establish and operate a long-term care ombudsman program. In order to receive such funds, the department has already established a position of state ombudsman within the state Office of Special Programs. The state ombudsman shall be under the direct supervision of the commissioner of human services or his or her designee and shall be given the powers and duties hereafter provided by this article. The state ombudsman shall be a person qualified by training and experience in the field of aging or long-term care, or both. The state ombudsman shall promote the well-being and quality of life of residents in long-term care facilities and encourage the development of community ombudsman activities at the local level. The state ombudsman may certify community ombudsmen and such certified ombudsmen shall have the powers and duties set forth in Code Sections 31-8-54 and 31-8-55. The state ombudsman shall require such community ombudsmen to receive appropriate training as determined and approved by the department prior to certification. Such training shall include an internship of at least seven working days in a nursing home and at least three working days in a personal care home. Upon certification, the state ombudsman shall issue an identification card which shall be presented upon request by community ombudsmen whenever needed to carry out the purposes of this article. Two years after first being certified and every two years thereafter, each such community ombudsman, in order to carry out his or her duties under this article, shall be recertified by the state ombudsman as continuing to meet the department's standards as community ombudsman.

History. — Code 1933, § 88-1903a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1995, p. 1239, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2011, p. 705, § 5-13/HB 214.

U.S. Code. — The Older Americans Act of 1965, as amended, referred to in this Code section, is codified as 42 U.S.C. § 3001 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-53. Duties of state ombudsman.

The state ombudsman shall:

(1) Establish policies and procedures, subject to approval by the commissioner of human services, for receiving, investigating, referring, and attempting to resolve complaints made by or on behalf of residents of long-term care facilities concerning any act, omission to act, practice, policy, or procedure that may adversely affect the health, safety, or welfare of any resident;

(2) Investigate and make reports and recommendations to the department and other appropriate agencies concerning any act or failure to act by any government agency with respect to its responsibilities and duties in connection with long-term care or residents of long-term care facilities;

(3) Establish a uniform state-wide reporting system to record data about complaints and conditions in long-term care facilities and shall collect and analyze such data in order to identify significant problems affecting the residents of such facilities;

(4) Promote the development of community ombudsmen activities and provide technical assistance as necessary; and

(5) Make an annual written report, documenting the types of complaints and problems reported by residents, to the director of the Office of Special Programs for his recommendations to the commissioner concerning needed policy and regulatory and legislative changes.

History. — Code 1933, § 88-1904a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 2009, p. 453, § 2-4/HB 228.

31-8-54. Duties of community ombudsmen.

Pursuant to policies and procedures established by the state ombudsman, the community ombudsmen shall:

(1) Learn about the general conditions affecting residents of long-term care facilities and work for the best interest of these residents;

(2) Receive, investigate, and attempt to resolve complaints made by or on behalf of residents of long-term care facilities;

(3) Collect data about the number and types of complaints handled; and

(4) Report regularly to the state ombudsman about the data collected and the activities of the community ombudsmen.

History. — Code 1933, § 88-1905a, enacted by Ga. L. 1979, p. 1240, § 1.

31-8-55. Entry and investigative authority; cooperation of government agencies; communication with residents.

(a) The state ombudsman or community ombudsman, on his or her initiative or in response to complaints made by or on behalf of residents of long-term care facilities, may conduct investigations in matters within his or her powers and duties as provided by this article.

(b) The state ombudsman or community ombudsman shall have the authority to enter any long-term care facility and shall use his or her best efforts to enter such facility during normal visiting hours. Upon entering the long-term care facility, the ombudsman shall notify the administrator or, in the absence of the administrator, the person in charge of the facility, before speaking to any residents. After notifying the administrator or the person in charge of the facility, the ombudsman may communicate privately and confidentially with residents of the facility, individually or in groups. The ombudsman shall have access to the medical and social records of any resident if:

(1) The ombudsman has the permission of the resident or the legal representative or guardian of the resident;

(2) The resident is unable to consent to the review and has no legal representative or guardian; or

(3) There is a guardian of the person of the resident and that guardian refuses to permit access to the records necessary to investigate a complaint, and:

(A) There is reasonable cause to believe that the guardian is not acting in the best interests of the resident; and

(B) A community ombudsman obtains the approval of the state ombudsman.

As used in this Code section, the term "legal representative" means an agent under a valid power of attorney, provided that the agent is acting within the scope of his or her agency; an agent under a durable power of attorney for health care or health care agent under an advance directive for health care; or an executor, executrix, administrator, or administratrix of the estate of a deceased resident. The ombudsman

shall have the authority to inspect the physical plant and have access to the administrative records, policies, and documents of the facility to which the residents have or the general public has access. Entry and investigation provided by this Code section shall be conducted in a manner which will not significantly disrupt the provision of nursing or other care to residents.

(c) The state ombudsman or community ombudsman shall identify himself or herself as such to the resident, and the resident shall have the right to communicate or refuse to communicate with the ombudsman.

(d) The resident shall have the right to participate in planning any course of action to be taken on his or her behalf by the state ombudsman or community ombudsman, and the resident shall have the right to approve or disapprove any proposed action to be taken on his or her behalf by such ombudsman.

(e) The state ombudsman and community ombudsman shall have authority to obtain from any government agency, and such agency shall provide, such cooperation and assistance, services, data, and access to files and records as will enable the ombudsman properly to perform his or her duties and exercise his or her powers, provided such information is not privileged under any law.

(f) Where the subject of the investigation involves suspected abuse, neglect, or exploitation of a resident by his or her guardian, the state ombudsman or community ombudsman shall have the authority to communicate with the resident in a private and confidential setting notwithstanding any objection by the guardian to such meeting and communication.

History. — Code 1933, § 88-1906a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1995, p. 1239, § 1.1; Ga. L. 2007, p. 133, § 11/HB 24.

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and ev-

eryday language in order to encourage more citizens of this state to execute advance directives for health care.

"(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care."

31-8-56. Resolution of complaints.

(a) Following an investigation, the state ombudsman or community ombudsman shall report his opinions or recommendations to the party or parties affected thereby and shall attempt to resolve the complaint using, whenever possible, informal techniques of mediation, conciliation, and persuasion. With respect to a complaint against the long-term care facility, the ombudsman shall first notify the administrator of the facility in writing and give such administrator a reasonable opportunity to correct any alleged defect. If the administrator fails to take corrective action after a reasonable amount of time or if the defect seriously threatens the safety or well-being of the residents, the state ombudsman or community ombudsman may refer the complaint to an appropriate agency.

(b) Complaints or conditions adversely affecting residents of long-term care facilities which cannot be resolved in the manner described in subsection (a) of this Code section shall, whenever possible, be referred by the state ombudsman or community ombudsman to an appropriate agency.

(c) The community ombudsman shall not disclose to the public, either directly or indirectly, the identity of any long-term care facility which is the subject of an investigation unless and until the matter has been reviewed by the office of the state ombudsman and the matter has been referred to an appropriate governmental agency for action.

History. — Code 1933, § 88-1907a, enacted by Ga. L. 1979, p. 1240, § 1.

31-8-57. Reporting abuse.

Any person who has reasonable cause to believe that a resident of a long-term care facility is being, or has been, abused, neglected, exploited, or abandoned or is in a condition which is the result of abuse, neglect, exploitation, or abandonment may report such information or cause a report to be made in any reasonable manner to the state ombudsman or community ombudsman, if any.

History. — Code 1933, § 88-1909a, enacted by Ga. L. 1979, p. 1240, § 1.

31-8-58. Confidentiality.

The identity of any complainant, resident on whose behalf a complaint is made, or individual providing information on behalf of the resident or complainant relevant to the investigation of a complaint shall be confidential and may be disclosed only with the express permission of such person. The information produced by an investigation may be disclosed by the state ombudsman or community ombudsman only if the identity of any such person is not disclosed by name or inference. If the identity of any such person is disclosed by name or inference in such information, the information may be disclosed only with his express permission. If the complaint becomes the subject of a judicial proceeding, such investigative information may be disclosed for the purpose of the proceeding.

History. — Code 1933, § 88-1908a, enacted by Ga. L. 1979, p. 1240, § 1.

JUDICIAL DECISIONS

Disclosure in judicial proceeding. — O.C.G.A. § 31-8-58 merely removes the problem of confidentiality in allowing disclosure of ombudsman's report concerning investigation as to injuries and treatment of an elderly patient of a nursing home in a judicial proceeding, and does not eliminate application of the regular rules of evidence. Coastal Health Servs., Inc. v. Rozier, 176 Ga. App. 240, 335 S.E.2d 712 (1985).

31-8-59. Notice to residents.

The state ombudsman shall prepare and distribute to each long-term care facility in the state a written notice describing the long-term care ombudsman program and the procedure to follow in making a complaint, including the address and telephone number of the state ombudsman and community ombudsman, if any. The administrator shall give the written notice required by this Code section to each resident and his legally appointed guardian, if any, upon admission. The administrator shall also post such written notice in conspicuous public places in the facility in accordance with procedures provided by the state ombudsman and shall give such notice to any resident and his legally appointed guardian, if any, who did not receive it upon admission. The failure to provide the notices required by this Code section shall be a ground upon which the department may revoke any permit issued to a long-term care facility under Code Section 31-7-1.

History. — Code 1933, § 88-1910a, enacted by Ga. L. 1979, p. 1240, § 1.

Administrative rules and regulations. — Long-term care facilities: residents' bill of rights, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-50.

31-8-60. Retaliation against resident and interference with ombudsman prohibited; provisions applicable to violations.

No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing of information in good faith to the state ombudsman or community ombudsman. No person shall willfully interfere with the state ombudsman or community ombudsman in the performance of his or her official duties. Code Sections 31-2-8 and 31-5-8 shall apply fully to any violation of this article.

History. — Code 1933, § 88-1911a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1995, p. 1239, § 2; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-61. Liability for provision of information.

Notwithstanding any other provision of law, no person providing information, including, but not limited to, patient records, to the state ombudsman or a community ombudsman shall be held, by reason of having provided such information, to have violated any criminal law or to be civilly liable under any law unless such information is false and the person providing such information knew or had reason to believe that it was false.

History. — Code 1933, § 88-1913a, enacted by Ga. L. 1979, p. 1240, § 1.

31-8-62. Liability arising from complaints.

Any person who, in good faith, makes a complaint or provides information as authorized in this article shall incur no civil or criminal liability therefor. Any state or community ombudsman who, in good faith, performs his or her official duties, including but not limited to, making a statement or communication relevant to a complaint received or an investigative activity conducted pursuant to this article shall incur no civil or criminal liability therefor.

History. — Code 1933, § 88-1912a, enacted by Ga. L. 1979, p. 1240, § 1; Ga. L. 1995, p. 1239, § 3.

31-8-63. Rules and regulations.

The department is authorized to adopt and promulgate rules and regulations to implement this article.

History. — Code 1933, § 88-1914a, enacted by Ga. L. 1979, p. 1240, § 1.

ARTICLE 4

REPORTING ABUSE OR EXPLOITATION OF RESIDENTS IN LONG-TERM CARE FACILITIES

Cross references. — Protective services for abused, neglected, or exploited disabled adults, T. 30, C. 5. Further provisions regarding reporting of abuse of residents of long-term care facility, § 31-8-57 et seq. Public assistance for the elderly generally, § 49-4-30 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 57A Am. Jur. 2d, Negligence, § 173.

C.J.S. — 65 C.J.S. 2d, Negligence, §§ 9, 14, 15.

ALR. — Criminal liability under statutes penalizing abuse or neglect of the institutionalized infirm, 60 A.L.R.4th 1153.

31-8-80. Short title.

This article shall be known as the "Long-term Care Facility Resident Abuse Reporting Act."

History. — Code 1933, § 88-1901c, enacted by Ga. L. 1980, p. 1261, § 1.

JUDICIAL DECISIONS

Cited in Brogdon v. National Healthcare Corp., 103 F. Supp. 2d 1322 (N.D. Ga. 2000).

31-8-81. Definitions.

As used in this article, the term:

(1) "Abuse" means any intentional or grossly negligent act or series of acts or intentional or grossly negligent omission to act which causes injury to a resident, including, but not limited to, assault or

battery, failure to provide treatment or care, or sexual harassment of the resident.

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

(2) "Exploitation" means the illegal or improper use of a resident or the resident's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for one's own or another's profit or advantage.

(3) "Long-term care facility" or "facility" means any skilled nursing home, intermediate care home, assisted living community, personal care home, or community living arrangement now or hereafter subject to regulation and licensure by the department.

(4) "Resident" means any person receiving treatment or care in a long-term care facility.

History. — Code 1933, § 88-1902c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2003, p. 558, § 4; Ga. L. 2007, p. 219, § 3/HB 233; Ga. L. 2011, p. 227, § 19/SB 178; Ga. L. 2011, p. 705, § 4-11/HB 214; Ga. L. 2013, p. 524, § 1-11/HB 78.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-82. Persons required to report abuse or exploitation; time for making report; contents of report; records; privileged communications.

(a) Any of the following people who have reasonable cause to believe that any resident or former resident has been abused or exploited while residing in a long-term care facility shall immediately make a report as described in subsection (d) of this Code section by telephone or in person to the department and shall make the report to the appropriate law enforcement agency or prosecuting attorney:

(1) Any person required to report child abuse as provided in subsection (c) of Code Section 19-7-5;

(2) Administrators, managers, or other employees of hospitals or long-term care facilities;

(3) Physical therapists;

(4) Occupational therapists;

(5) Day-care personnel;

(6) Coroners;

(7) Medical examiners;

(8) Emergency medical services personnel, as defined in Code Section 31-11-49;

(9) Any person who has been certified as an emergency medical technician, cardiac technician, paramedic, or first responder pursuant to Chapter 11 of Title 31;

(10) Employees of a public or private agency engaged in professional health related services to residents; and

(11) Clergy members.

(b) Persons required to make a report pursuant to subsection (a) of this Code section shall also make a written report to the department within 24 hours after making the initial report.

(c) Any other person who has knowledge that a resident or former resident has been abused or exploited while residing in a long-term care facility may report or cause a report to be made to the department or the appropriate law enforcement agency.

(d) A report of suspected abuse or exploitation shall include the following:

(1) The name and address of the person making the report unless such person is not required to make a report;

(2) The name and address of the resident or former resident;

(3) The name and address of the long-term care facility;

(4) The nature and extent of any injuries or the condition resulting from the suspected abuse or exploitation;

(5) The suspected cause of the abuse or exploitation; and

(6) Any other information which the reporter believes might be helpful in determining the cause of the resident's injuries or condition and in determining the identity of the person or persons responsible for the abuse or exploitation.

(e) The department shall maintain accurate records which shall include all reports of abuse or exploitation, the results of all investigations and administrative or judicial proceedings, and a summary of actions taken to assist the resident.

(f) Any suspected abuse or exploitation which is required to be reported by any person pursuant to this Code section shall be reported notwithstanding that the reasonable cause to believe such abuse or exploitation has occurred or is occurring is based in whole or in part upon any communication to that person which is otherwise made privileged or confidential by law; provided, however, that a member of the clergy shall not be required to report such matters confided to him or her solely within the context of confession or other similar communication required to be kept confidential under church doctrine or

practice. When a clergy member receives information about abuse or exploitation from any other source, the clergy member shall comply with the reporting requirements of this Code section, even though the clergy member may have also received a report of such matters from the confession of the perpetrator.

History. — Code 1933, § 88-1903c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 2009, p. 453, § 1-33/HB 228; Ga. L. 2013, p. 524, § 1-12/HB 78.

31-8-83. Investigations.

(a) The department shall immediately initiate an investigation after the receipt of any report. The department shall direct and conduct all investigations; however, it may delegate the conduct of investigations to local police authorities or other appropriate agencies. If such delegation occurs, the agency to which authority has been delegated must report the results of its investigation to the department immediately upon completion.

(b) The investigation shall determine the nature, cause, and extent of the reported abuse or exploitation, an assessment of the current condition of the resident, and an assessment of needed action and services. Where appropriate, the investigation shall include a prompt visit to the resident.

(c) The investigating agency shall collect and preserve all evidence relating to the suspected abuse or exploitation.

(d) All state, county, and municipal law enforcement agencies, employees of long-term care facilities, and other appropriate persons shall cooperate with the department or investigating agency in the administration of this article.

History. — Code 1933, § 88-1904c, enacted by Ga. L. 1980, p. 1261, § 1.

31-8-84. Evaluation of results of investigation; protection of resident.

(a) Upon the receipt of the results of an investigation, the department, in cooperation with the investigating agency, shall immediately evaluate such results to determine what actions shall be taken to assist the resident.

(b) The department or an agency designated by the department shall assist and prevent further harm to a resident who has been abused or exploited. The department may also take appropriate legal actions to assure the safety and welfare of all other residents of the facility where necessary.

(c) Within a reasonable time not to exceed 30 days after it has initiated action to assist a resident, the department shall determine the current condition of the resident, whether the abuse or exploitation has been abated, and whether continued assistance is necessary.

(d) If as a result of an investigation a determination is made that a resident has been abused or exploited, the department shall contact the appropriate prosecuting authority and provide all information and evidence to such prosecuting authority.

History. — Code 1933, §§ 88-1905c, 88-1906c, enacted by Ga. L. 1980, p. 1261, § 1.

31-8-85. Immunity from liability.

(a) Any agency or person who in good faith makes a report or provides information or evidence pursuant to this article shall be immune from liability for such actions.

(b) Neither the department nor its employees, when acting in good faith and with reasonable diligence, shall have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the collection or release of information pursuant to this article and neither shall be subject to suit based upon any such claims.

History. — Code 1933, § 88-1907c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 1991, p. 1601, § 1.

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U. L. Rev. 74 (1992).

31-8-86. Confidentiality.

The identities of the resident, the alleged perpetrator, and persons making a report or providing information or evidence shall not be disclosed to the public unless required to be revealed in court proceedings or upon the written consent of the person whose identity is to be revealed or as otherwise required by law. Upon the resident's or his or her representative's request, the department shall make information obtained in an abuse report or complaint and an investigation available to an allegedly abused or exploited resident or his or her representative for inspection or duplication, except that such disclosure shall be made without revealing the identity of any other resident, the person making the report, or persons providing information by name or inference. For the purpose of this Code section, the term "representative" shall include any person authorized in writing by the resident or appointed by an appropriate court to act upon the resident's behalf. The term "representative" also shall include a family member of a deceased or physically or mentally impaired resident unable to grant authorization; provided, however, that such family members who do not have written

or court authorization shall not be authorized by this Code section to receive the resident's health records as defined in Code Section 31-33-1. Nothing in this Code section shall be construed to deny agencies participating in joint investigations at the request of and with the department, or conducting separate investigations of abuse or exploitation within an agency's scope of authority, or law enforcement personnel who are conducting an investigation into any criminal offense in which a resident is a victim from having access to such records.

History. — Code 1933, § 88-1908c, enacted by Ga. L. 1980, p. 1261, § 1; Ga. L. 1991, p. 1601, § 2; Ga. L. 2013, p. 524, § 1-13/HB 78.

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U. L. Rev. 74 (1992).

31-8-87. Retaliation prohibited.

No person or facility shall discriminate or retaliate in any manner against any person for making a report or providing information pursuant to this article or against any resident who is the subject of a report. Nothing in this Code section shall be construed to prohibit the termination of the relationship between the facility and the resident for reasons other than that the facility has been made the subject of a report, that such a report has been made, or that information has been provided pursuant to this article.

History. — Code 1933, § 88-1909c, enacted by Ga. L. 1980, p. 1261, § 1.

31-8-88. Notice of requirements of article.

The department shall prepare a written notice describing the reporting requirements set forth in this article. Such notice shall be distributed to all long-term care facilities and hospitals in the state and copies thereof shall be posted in conspicuous locations within facilities and hospitals.

History. — Code 1933, § 88-1910c, enacted by Ga. L. 1980, p. 1261, § 1.

ARTICLE 5

BILL OF RIGHTS FOR RESIDENTS OF LONG-TERM CARE FACILITIES

Cross references. — Rights and privileges of patients undergoing treatment for mental illness, § 37-3-140 et seq. Rights and privileges of persons undergoing habilitation for intellectual or developmental disability, § 37-4-100 et seq.

RESEARCH REFERENCES

ALR. — Criminal liability under statutes penalizing abuse or neglect of the institutionalized infirm, 60 A.L.R.4th 1153.

Liability of nursing home for violating statutory duty to notify third party concerning patient's medical condition, 46 A.L.R.5th 821.

Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 USCS §§ 1997 — 1997j, 93 A.L.R. Fed. 706.

31-8-100. Short title.

This article shall be known and may be cited as the "Bill of Rights for Residents of Long-term Care Facilities."

History. — Code 1933, § 88-1901B, enacted by Ga. L. 1981, p. 149, § 1.

JUDICIAL DECISIONS

Choice of psychologist. — Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. § 31-8-100 et seq., does not give nursing home residents the right to choose a psychologist — it only gives the residents the right to choose a physician and a pharmacist. Pruitt Corp. v. Strahley, 270 Ga. 430, 510 S.E.2d 821 (1999).

Federal question jurisdiction. — In a wrongful death action alleging violations of Georgia's Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. § 31-8-100 et seq., and 42 C.F.R. § 482.25, remand was properly granted as there was no federal question jurisdiction; whether a failure to comply with the requirements of § 482.25 constituted negligence per se under Georgia law was a matter of state law. Burney v. 4373 Houston, LLC, No. 5:05-cv-255 (CAR), 2005 U.S. Dist. LEXIS 34686 (M.D. Ga. Oct. 24, 2005).

Long-arm personal jurisdiction over out-of-state parent company not established. — Trial court erred by denying an out-of-state company's motion to dismiss based on lack of personal jurisdiction because the company met the company's burden of showing a lack of minimum contacts needed to support the exercise of personal jurisdiction, and that conclusion was consistent with other jurisdictional authority holding that ownership of a resident nursing home subsidiary by an out-of-state parent corporation without more is insufficient to obtain jurisdiction of the parent corporation. Drumm Corp. v. Wright, 326 Ga. App. 41, 755 S.E.2d 850 (2014).

RESEARCH REFERENCES

ALR. — Construction and application of state patient bill of rights statutes, 87 A.L.R.5th 277.

31-8-101. Legislative intent.

The General Assembly finds that persons residing within long-term care facilities are isolated from the community and often lack the means to assert fully their rights as individual citizens. The General Assembly further recognizes the need for these persons to live within

the least restrictive environment possible in order to retain their individuality and personal freedom. It is therefore the intent of the General Assembly to preserve the dignity and personal integrity of residents of long-term care facilities through the recognition and declaration of rights safeguarding against encroachments upon each resident's need for self-determination. It is the further intent of the General Assembly that this article complement and not duplicate or substitute for other survey and inspection programs regarding long-term care facilities.

History. — Code 1933, § 88-1903B, enacted by Ga. L. 1981, p. 149, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 1 et seq., 57, 75, 82.

C.J.S. — 39A C.J.S., Health and Environment, §§ 1, 4 et seq., 74 et seq.

31-8-102. Definitions.

As used in this article, the term:

(1) "Administrator" means a person, duly licensed as a nursing home administrator under Chapter 27 of Title 43, who operates or manages or is in charge of a long-term care facility.

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

(2) "Guardian" means a resident's legal guardian or conservator, or the parent of a minor representative who does not have a duly appointed guardian.

(3) "Long-term care facility" or "facility" means any intermediate care home, skilled nursing home, or intermingled home subject to regulation and licensure by the department.

(4) "Representative" means a person authorized by a resident or his guardian to act for the resident as an official delegate or agent.

(5) "Resident" means any person who is receiving treatment or care in any long-term care facility. Such resident shall be entitled to exercise all rights provided under this article except as limited by a court of competent jurisdiction or by applicable law.

History. — Code 1933, § 88-1902B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 2011, p. 705, § 4-12/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-103. Rights of residents generally.

Residents' rights shall include, but not be limited to, the rights provided in Code Sections 31-8-104 through 31-8-121.

History. — Code 1933, § 88-1905B, enacted by Ga. L. 1981, p. 149, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 12 et seq.
C.J.S. — 14A C.J.S., Civil Rights, § 743 et seq.
41 C.J.S., Hospitals, §§ 14, 16.

31-8-104. Explanation of rights; acknowledgment of explanation; posting of rights at facilities.

Each resident and his guardian or representative, if the resident does not have a guardian, shall be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions provided for by this article before or at the time of admission to a long-term care facility. Written acknowledgment of the receipt of such explanation by the resident and his guardian or representative shall be made a part of the resident's file. In addition, each facility shall post written notices of such rights in conspicuous locations in the facility. Such written notices shall be prepared by the department. The notices shall be prepared in type and format which is easily readable by residents and shall describe residents' rights, grievance procedures, and enforcement provisions provided for by this article.

History. — Code 1933, § 88-1906B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-105. Giving certain notices to persons who became residents before July 1, 1981.

Any person who became a resident before July 1, 1981, shall receive the notices required under Code Section 31-8-104; paragraphs (2), (3), and (4) of subsection (a) of Code Section 31-8-106; subsection (a) of Code Section 31-8-110; and paragraph (4) of subsection (b) of Code Section 31-8-115 no later than September 30, 1981.

History. — Code 1933, § 88-1919B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-106. Information to be provided residents upon admission; list of current rates and services; bill for charges; access to nonmedical records.

(a) At the time of admission, the facility must provide the resident with:

(1) A written notice of the facility's basic daily or monthly rates;

(2) A written statement of all facility services, including those offered on a needed basis, and related charges, including any extra charges for services not covered under medicare or Medicaid or by the facility's basic daily or monthly rate;

(3) A statement disclosing the facility's name and business address and the name and business address of the administrator of the facility. Upon request an applicant or resident shall be furnished with a copy of the annual disclosure statement filed with the Department of Community Health; and

(4) Notice of the right of access to the written policies and procedures of the facilities. Access to these policies and procedures shall be permitted during ordinary business hours.

(b) Upon a resident's request, the facility must provide that resident with a current list of all services and charges. Current charges must be posted in a conspicuous location.

(c) The facility must inform each resident in writing, at least 30 days in advance of the effective date, of any changes in rates or the services that these rates cover.

(d) A facility must bill for charges at least once a month unless otherwise agreed. Each bill must itemize charges for:

(1) The daily or monthly rate; and

(2) All extra charges.

(e) Each resident or guardian shall be permitted to inspect and receive a copy of the resident's nonmedical records kept by the facility. The facility may charge a reasonable fee for duplication, which fee shall not exceed actual cost.

History. — Code 1933, § 88-1913B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1999, p. 296, § 24.

31-8-107. Refusal of admission or continued residence on the basis of history or condition of mental or physical disease or disability.

Each resident or person requesting admission to a facility shall be free from discrimination by the facility through its refusing admission or continued residency on the basis of the resident's or applicant's history or condition of mental or physical disease or disability, unless such admission would cause the facility or any resident to lose eligibility for any state or federal program of financial assistance or unless the facility cannot provide adequate and appropriate care, treatment, and services to the resident due to such disease or disability.

History. — Code 1933, § 88-1910B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-108. Required care, treatment, and services; rights in regard thereto; experimental research or treatment.

(a) Each resident shall receive care, treatment, and services which are adequate and appropriate. Care, treatment, and services shall be provided as follows:

(1) With reasonable care and skill;

(2) In compliance with applicable laws and regulations;

(3) Without discrimination in the quality of a service based on the source of payment for the service;

(4) With respect for the resident's personal dignity and privacy; and

(5) With the goal of the resident's return home or to another environment less restrictive than the facility.

(b) In the provision of care, treatment, and services to the resident by the facility, each resident or guardian shall be entitled to the following:

(1) To choose the resident's physician. The physician so chosen shall inform the resident in advance whether or not the physician's fees can be paid from public or private benefits to which the resident is entitled and shall provide such documentation as may be required by law or regulation;

(2) To participate in the overall planning of the resident's care and treatment. The resident or guardian shall be informed of this right each time a substantial change in the treatment plan is made;

(3) To refuse medical treatment, dietary restrictions, and medications for the resident. The resident or guardian shall be informed of

the probable consequences of such refusal, the refusal shall be noted in the resident's medical records, and the resident's attending physician shall be notified as soon as practical. If such refusal apparently would be seriously harmful to the health or safety of the resident, the facility shall either refer the resident to a hospital or notify a responsible family member or, if such a family member is not readily available, the county department of family and children services. If such refusal would be harmful to the health or safety of others, as documented in the resident's medical records by the resident's physician, this subsection shall not apply. Any facility or employee of such facility which complies with this paragraph shall not be liable for any damages resulting from such refusal;

(4) To receive from the facility upon the request of the resident, guardian, or representative the name, address, and telephone number of the resident's physician;

(5) To have any significant change in the resident's health status reported to persons of his choice by the facility within a reasonable time; and

(6) To obtain from the resident's physician or the physician attached to the facility a complete and current explanation concerning the resident's medical diagnosis, treatment, and prognosis in language the resident can understand. Each resident shall have access to all information in the medical records of the resident and shall be permitted to inspect and receive a copy of such records unless medically contraindicated. The facility may charge a reasonable fee for duplication, which fee shall not exceed actual cost.

(c) Each resident shall be free from experimental research or treatment unless the informed, written consent of the resident or guardian is first obtained.

History. — Code 1933, § 88-1914B, enacted by Ga. L. 1981, p. 149, § 1.

Cross references. — Consent for surgical or medical treatment generally, T. 31, C. 9.

JUDICIAL DECISIONS

Duty to protect residents from harm caused by other residents. — Not only does a nursing home owe the contractual and statutory duty of care and protection to the nursing home's residents to prevent harm to the residents, the nursing home owes the duty of supervision over any known resident whose propensity to cause harm to others is known or should have been known to the management. Associated Health Sys. v. Jones, 185 Ga. App. 798, 366 S.E.2d 147 (1988).

Mere fact that a doctor, psychologist, or psychiatrist has not volunteered to authorize the forms of restraints of O.C.G.A. § 31-8-109 does not discharge the duty of a nursing home to exercise reasonable care and skill for the care and protection of the nursing home's residents from a physically aggressive resident. Associated

Health Sys. v. Jones, 185 Ga. App. 798, 366 S.E.2d 147 (1988).

Limitations on duty. — Although a nursing home had an obligation to provide adequate and appropriate care to the residents under O.C.G.A. § 31-8-108, this obligation did not necessarily entitle the nursing home to interfere with the autonomous contractual relationships of the nursing home's residents. Atlanta Mkt. Ctr. Mgt. Co. v. McLane, 269 Ga. 604, 503 S.E.2d 278 (1998).

Choice of psychologist. — The Bill of Rights for Residents of Long-term Care Facilities, O.C.G.A. § 31-8-100 et seq., does not give nursing home residents the right to choose a psychologist — it only gives the residents the right to choose a physician and a pharmacist. Pruitt Corp. v. Strahley, 270 Ga. 430, 510 S.E.2d 821 (1999).

Expert affidavit not required for sufficient pleading. — Trial court erred in dismissing a wrongful death claim by children of a deceased nursing home resident based on their allegation that the nursing home violated O.C.G.A. § 31-8-108(a)(2) of the Bill of Rights for Residents of Long-Term Care Facilities by not documenting the resident's complaints of chest pain as the claim was based on the nonprofessional, administrative aspects of running the facility and, accordingly, it was not subject to the pleading requirement of an expert affidavit pursuant to O.C.G.A. § 9-11-9.1. Williams v. Alvista Healthcare Ctr., Inc., 283 Ga. App. 613, 642 S.E.2d 232 (2007).

Cited in Carr v. Kindred Healthcare Operating, Inc., 293 Ga. App. 80, 666 S.E.2d 401 (2008).

RESEARCH REFERENCES

ALR. — Judicial power to order discontinuance of life-sustaining treatment, 48 A.L.R.4th 67.

31-8-109. Use or threat of physical restraints, isolation, or restrictions on mobility.

(a) Each resident shall be free from actual or threatened physical restraints, isolation, or restrictions on mobility within or outside the facility grounds, including the use of drugs to limit mobility, except to the minimum extent necessary to protect the resident from immediate injury to the resident or to others. In no event shall restraints, restrictions, or isolation be used for punishment, incentive, behavior conditioning or modification, or for the convenience of the facility.

(b) Restraints, restrictions, or isolation shall be used only subject to the following conditions:

(1) Prior to authorizing restraints, restrictions, or isolation, the attending physician shall make a personal examination and individualized determination of the need to use such restraints, restriction, or isolation on that resident and shall specify a reasonable time for such use. No restraint, restriction, or isolation shall be used by the facility longer than 65 days for intermediate care residents and longer than 35 days for skilled nursing residents, except by reorder of the attending physician after personal examination of the resident. Irrespective of such time period specified, restraints, restrictions, or isolation shall not be used beyond the period of actual need;

(2) In an emergency situation, restraints, restrictions, or isolation shall be authorized by the person in charge only to protect the resident from immediate injury to the resident or others and shall not be continued for more than 12 hours after the onset of the emergency without personal examination and authorization by the attending physician;

(3) The resident and a person designated by the resident, if any, shall be informed immediately of the need for the use of restraint, restriction, or isolation, the reasons for such use, and the time the physician has specified for such use. Such information shall be recorded in the resident's file;

(4) A restrained or isolated resident shall be monitored by the staff at least every hour and released and exercised at least every two hours, except during normal sleeping hours; and

(5) When a restraint, restriction, or isolation is used under this Code section, the resident shall retain all rights enumerated in this article.

History. — Code 1933, § 88-1916B, enacted by Ga. L. 1981, p. 149, § 1.

JUDICIAL DECISIONS

Restriction to a designated area is a restraint on mobility of the resident and in effect isolates the resident. This is prohibited. A restriction from an area where friction between the residents tends to develop, i.e., the TV room, exercise room, or even the dining room, may be used by management as necessary as an aid in behavioral control, since it does not isolate or restrain the mobility of the resident from other areas of the grounds and is not a form of physical restraint. Associated Health Sys. v. Jones, 185 Ga. App. 798, 366 S.E.2d 147 (1988).

Duty to exercise reasonable care and skill. — Mere fact that a doctor, psychologist, or psychiatrist has not volunteered to authorize the forms of restraints of O.C.G.A. § 31-8-109 does not discharge the duty of a nursing home to exercise reasonable care and skill for the care and protection of the nursing home's residents from a physically aggressive resident. Associated Health Sys. v. Jones, 185 Ga. App. 798, 366 S.E.2d 147 (1988).

31-8-110. Right to select pharmacy or pharmacist; charges for pharmaceutical supplies and services; information as to purpose and effects of drugs.

(a) Each resident or guardian shall be permitted to select the pharmacy or pharmacist of his choice for those pharmaceutical supplies and services not provided by the facility as a part of the basic rate. However, if the facility under its policies or procedures utilizes a specific type of unit dose system, such pharmacy or pharmacist must provide pharmaceuticals under such system. The resident or guardian shall be

informed in writing at the time of admission of the resident as to which pharmaceutical supplies and services are not so provided.

(b) No person shall be discriminated against as to admission or continued residency on the basis of the person's choice of pharmacy, pharmacist, or both.

(c) Subject to the resident's choice of pharmacy or pharmacist, each resident shall receive pharmaceutical supplies and services at reasonable prices not exceeding applicable and normally accepted prices for comparably packaged pharmaceutical supplies and services within the community.

(d) Each resident or guardian shall, on his request, be informed of the identity, purpose, and possible reactions to each drug to be administered.

History. — Code 1933, § 88-1915B, enacted by Ga. L. 1981, p. 149, § 1.

Cross references. — Pharmacists and pharmacies generally, T. 26, C. 4.

31-8-111. Rights as citizen.

Each resident shall be encouraged and assisted by the facility to exercise all rights, benefits, and privileges as a citizen including, but not limited to, the following:

(1) The right to vote. Residents who are eligible to vote shall have the right to vote in primary, special, and general elections and in referendums. The facility shall permit and reasonably assist residents to obtain voter registration forms, applications for absentee ballots, and absentee ballots and to comply with other requirements which are prerequisites for voting;

(2) The right to free exercise of religion as well as freedom from imposition of religious beliefs or practices;

(3) The right to associate, meet, and communicate privately with persons of the resident's choice; and

(4) The right to participate, inside and outside the facility, in social, family, religious, and community group activities.

History. — Code 1933, § 88-1907B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 2012, p. 775, § 31/HB 942.

Cross references. — Registration of voters, § 21-2-210 et seq.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Interference with Right to Free Exercise of Religion, 63 POF3d 195.

C.J.S. — 29 C.J.S., Elections, § 201.

ALR. — Power of court or other public agency to order medical treatment over

parental religious objections for child whose life is not immediately endangered, 21 A.L.R.5th 248.

31-8-112. Freedom from duty to perform services for facility; right to rise and retire at times of resident's choice; tobacco and alcoholic beverages; freedom to enter and leave facility.

(a) Each resident shall be free from a duty to perform services for the facility.

(b) Each resident shall be permitted to rise and retire at times of his choice, if the resident does not interfere with the rights of others.

(c) Unless contradictory to written admission policies of which the resident, guardian, or representative is informed prior to admission, each resident shall be permitted to use tobacco and to consume alcoholic beverages, subject to the facility's policies and safety rules and applicable state law, if the resident does not interfere with the rights of others.

(d) Each resident shall be free to enter and leave the facility as the resident chooses.

History. — Code 1933, § 88-1908B, enacted by Ga. L. 1981, p. 149, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 15.

31-8-113. Right to retain and use personal property at facility; provision of secure storage space for such property; records of stored property; investigation of complaints of theft.

(a) Each resident shall be permitted to retain and use his personal property, including funds and clothing, in his immediate living quarters as space permits.

(b) Upon request, the facility shall provide a means of securing the resident's property in his room or in any other secured part of the facility so long as the resident has access to such property on weekdays and, where facility policy allows, on weekends and holidays. Each facility shall keep a record of all personal property deposited within a secured part of the facility.

(c) The facility shall develop procedures for investigating complaints concerning thefts of residents' property and shall promptly investigate

all such complaints and report the results of its investigation to the complainant.

History. — Code 1933, § 88-1909B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-114. Right to privacy.

Each resident shall enjoy the right of privacy including, but not limited to, the following:

(1) The right to privacy in the resident's room or the resident's portion of the room. The staff may not enter a resident's room without making their presence known, except when the resident is asleep, in an emergency threatening the health or safety of the resident, or as required by the resident's care plan;

(2) The right to a private room and a personal sitter if the resident pays the difference between the facility's charge for such a room and sitter and the amount reimbursed through medicare or Medicaid;

(3) The right to private visits with the resident's spouse. Spouses shall be permitted to share a room when available where both are residents of the facility;

(4) The right to have unimpeded, private, and uncensored communication with anyone of the resident's choice by mail, public telephone, and visitation, provided that such visitation does not disturb other residents. The administrator shall provide that mail is received and mailed on regular postal delivery days, that telephones are accessible for confidential and private communications, and that at least one private place per facility is available for visits during normal visitation hours, which shall be for at least 12 continuous hours per day;

(5) The right to refuse acceptance of correspondence, telephone calls, or visitation by anyone;

(6) The right to respect and privacy in his medical, personal, and bodily care program. Each resident's case discussion, consultation, examination, treatment, and care shall be confidential and shall be conducted in privacy. Those persons not directly involved in the resident's care must have the resident's permission to be present; and

(7) The right to receive confidential treatment of the resident's personal and medical records. Only the resident or guardian may approve the release or disclosure of such records to any individual outside the facility, except in case of (A) the resident's transfer to another health care facility, (B) during a medicare, Medicaid, licensure, medical care foundation, or peer review survey, or (C) as otherwise provided by law or third-party payment contract.

History. — Code 1933, § 88-1911B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31.

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 14 et seq.

31-8-115. Use of payments made to or on behalf of a resident; right of resident or his guardian to manage the resident's financial affairs; assistance by facility in such management.

(a) Any payments made to or on behalf of a resident, regardless of the payee, shall be used exclusively for the resident's benefit, unless otherwise required by law.

(b) Each resident or his guardian shall be permitted to manage the financial affairs of the resident and to withdraw and use funds from any personal account established for him at the facility. The resident or his guardian may authorize the administrator or other person employed by the facility to assist in the management of such resident's financial affairs, either wholly or partially, subject to the following conditions:

(1) Such authorization must be in writing and maintained in the resident's files;

(2) Resident's funds shall be expended by the facility only with prior written consent or upon the immediate request of the resident or guardian;

(3) The resident, his guardian, or representative shall be given any portion or all of the resident's funds upon the request of the resident or guardian;

(4) A current written record of all financial arrangements and transactions involving the resident's funds shall be maintained and made available to the resident or guardian for inspection and copying upon request. A written statement showing the current balance and an itemized listing of all transactions shall be provided to each resident or guardian at least quarterly and prior to any change in ownership of the facility;

(5) Funds received from a resident or on his behalf may be deposited in an interest-bearing account, but in any event all funds not needed for ordinary use by residents on a daily basis shall be deposited in an account insured by agencies of or corporations chartered by the state or federal government and in a form which clearly indicates that the facility has only a fiduciary interest in the

funds. Any interest earned on such account shall accrue to the resident; and

(6) Each facility shall obtain an irrevocable letter of credit from a bank or savings and loan association, as defined in Code Section 7-1-4, or purchase a surety bond at least in the amount of the funds to guarantee the security of residents' funds.

History. — Code 1933, § 88-1912B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1991, p. 1129, § 1.

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U. L. Rev. 74 (1992).

31-8-116. Involuntary transfer of residents discharged from facility; return to facility after transfer.

(a) Except in an emergency, where the resident or other residents are subject to an imminent and substantial danger that only immediate transfer or discharge will relieve or reduce, a facility may involuntarily transfer a resident only in the following situations and after other reasonable alternatives to transfer have been exhausted:

(1) A physician determines that failure to transfer the resident will threaten the health or safety of the resident or others and documents that determination in the resident's medical record. If the physician determines that the facility cannot provide care, treatment, and services which are adequate and appropriate, it shall be conclusively presumed that the failure to transfer will threaten the health or safety of the resident. If the basis for the transfer or discharge is the safety of the resident himself, the resident shall not be involuntarily transferred or discharged unless a physician determines that such transfer or discharge is not reasonably expected to endanger the resident to a greater extent than remaining in the facility and documents that determination in the resident's medical records;

(2) The facility does not participate in or voluntarily or involuntarily ceases to operate or participate in the program which reimburses the cost of the resident's care;

(3) Nonpayment of allowable fees has occurred. The conversion of a resident from private pay status to Medicaid eligibility due to exhaustion of personal financial resources or from medicare to Medicaid does not constitute nonpayment of fees under this paragraph; or

(4) When the findings of a medicare or Medicaid medical necessity review determine that the resident no longer requires the level of care provided at the facility.

(b) If the facility voluntarily or involuntarily ceases to operate or participate in the program which reimburses the costs of the resident's

care, the facility must cooperate fully with the state Medicaid agency and the Centers for Medicare and Medicaid Services regional office in the implementation of any transfer planning and transfer counseling conducted by these agencies.

(c) The facility shall assist the resident and guardian in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge. The plan for such transfer or discharge shall be designed to mitigate the effects of transfer stress to the resident. Such plan shall include counseling the resident, guardian, or representative regarding available community resources and informing the appropriate state or social service organization.

(d) The facility must notify the resident, guardian or representative, and attending physician at least 30 days before any involuntary transfer, except a transfer pursuant to paragraph (4) of subsection (a) of this Code section. This notice must be in writing and must contain:

(1) The reasons for the proposed transfer;

(2) The effective date of the proposed transfer;

(3) Notice of the right to a hearing pursuant to Code Section 31-8-125 and of the right to representation by legal counsel; and

(4) The location to which the facility proposes to transfer the resident.

(e) The resident shall receive at least 15 days' notice prior to an involuntary intrafacility transfer.

(f) If two residents in a facility are married and the facility proposes to transfer involuntarily one spouse to another facility at a similar level of care, the facility must give the other spouse notice of his or her right to be transferred to the same facility. If the spouse notifies a facility in writing that he wishes to be transferred, the facility must transfer both spouses on the same day, pending availability of accommodations.

(g) Each resident shall be discharged from a facility after the resident or guardian gives the administrator or person in charge of the facility notice of the resident's desire to be discharged and the date of the expected departure. Where the resident appears to be incapable of living independently of the facility, the facility shall notify the Department of Human Services in order to obtain social or protective assistance for the resident immediately. The notice of the discharge by the resident or guardian, the expected and actual date thereof, and notice to the department, where required, shall be documented in the resident's records. Upon such discharge and, if required, notice to the department, the facility is relieved from any further responsibility for the resident's care, safety, or well-being.

(h) Whenever allowed by the resident's health condition, a resident shall be provided treatment and care, rehabilitative services, and assistance by the facility to prepare the resident to return to the resident's home or other living situation less restrictive than the facility. Upon the request of the resident, guardian, or representative, the facility shall provide him with information regarding available resources and inform him of the appropriate state or social service organizations.

(i) Each resident transferred from a facility to a hospital, other health care facility, or trial alternative living placement shall have the right to return to the facility immediately upon discharge from the hospital or other health care facility or upon termination of the trial living placement, provided that the resident has continued to pay the facility or third-party payment is provided for the period of the resident's absence. In cases of nonpayment to the facility during such absence, a resident who requests to return to a facility from a hospital shall be admitted by the facility to the first bed available after discharge from the hospital.

History. — Code 1933, § 88-1917B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2002, p. 415, § 31; Ga. L. 2005, p. 509, § 8/HB 394; Ga. L. 2009, p. 453, § 2-2/HB 228.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, an extra "the" was deleted preceding "Centers for Medicare and Medicaid Services" in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 14.

31-8-117. Suspension of certain rights where exercise poses danger to self or other residents; notice of suspension; duration.

Only the rights enumerated in paragraph (6) of subsection (b) of Code Section 31-8-108 and subsections (b), (c), and (d) of Code Section 31-8-112 may be suspended as a result of medical contraindication, as determined by the resident's physician, and then only under the following conditions:

(1) The physician has personally examined the resident and the physician documents that the exercise of such right or rights pose a danger to other residents or an immediate and substantial danger to the resident himself. If the threatened danger is only to the resident, the resident's rights shall not be suspended pursuant to this Code section, provided the resident or guardian understands the danger and insists on the exercise of the right;

(2) Prior to or at the time of a suspension of a right or rights due to a medical contraindication, the resident and his guardian or representative shall be notified of such suspension, its duration, and the resident's legal right to meet with legal counsel, the ombudsman provided for in Article 3 of this chapter, members of his family, his guardian, or others of his choice; and

(3) Suspension of a right or rights shall be for a reasonable time period, which period shall not exceed 35 days for skilled nursing residents and not to exceed 65 days for intermediate care residents. Every additional period, which periods shall also not exceed the same maximum time periods, shall be considered a new suspension, subject to the conditions of paragraphs (1) and (2) of this Code section.

History. — Code 1933, § 88-1918B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-118. Freedom from interference in exercise of rights and pursuit of interests; accommodation of conflicting rights; voicing of complaints and recommendation of changes.

(a) The facility must permit each resident to exercise the rights and pursue the interests described in this chapter without restraint, interference, coercion, discrimination, or reprisal from the facility.

(b) The facility must exercise judgment in situations which pose a threat to the health or safety of a resident, and when necessary, must achieve a reasonable accommodation of conflicting rights of residents.

(c) Each resident shall be permitted to voice complaints and recommend changes in policies, procedures, and services to the administrator, his designee, or the residents' council.

History. — Code 1933, § 88-1919B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-119. Obtaining contributions by coercion; use of contributions designated for a restricted purpose; receipts and records of contributions.

No resident nor any resident's family, guardian, or representative shall be coerced by any means into giving contributions. When contributions are freely made by the resident or resident's family, guardian, or representative for a restricted purpose, such contribution must be used for the purpose so designated. A receipt shall be provided for all contributions and a central record of such receipts shall be maintained at the facility.

History. — Code 1933, § 88-1919B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1982, p. 3, § 31.

31-8-120. Visitors; right of access.

(a) Visitors must be granted access to residents, who have the right to refuse or terminate any visit. The facility must permit the resident's representatives and representatives of any federally mandated ombudsman or advocacy program to have access to the resident. Access under this Code section shall be allowed during normal visitation hours.

(b) Each person entering a facility shall promptly disclose his presence and identity to the person in charge and shall enter the immediate living quarters of a resident only after identifying himself and receiving permission to enter. Such person shall leave immediately upon the resident's request. The rights of other residents in the room and in the facility shall be respected.

(c) The administrator or person in charge of a facility may refuse access as described in this Code section or require a person to leave a facility only if he has reason to believe that the presence of the person seeking access would result in severe harm to any resident's health, safety, or property; if the access is sought for financial solicitation or for commercial purposes; or if such access is refused by the resident.

(d) This Code section shall not limit the power of any public agency, ombudsman under Article 3 of this chapter, or other person permitted or required by law to enter and inspect a facility.

History. — Code 1933, § 88-1920B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-121. Formation of residents' council; space for meetings; assistance in attending meetings; compelling of attendance or participation.

The facility must permit the formation of a residents' council by interested residents, provide space for meetings, and provide assistance in attending meetings to those residents who require it. The facility may not compel attendance at or participation in residents' council meetings.

History. — Code 1933, § 88-1920B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-122. Compliance with this article by facilities; establishment by facilities of written policies and procedures; familiarization of facility staff with this article.

(a) Each facility shall establish written policies and procedures in accordance with this article and shall provide for the implementation and continuing compliance with this article. In addition, each facility must comply with all other applicable state laws and regulations.

(b) Each facility shall conduct training for all staff on a quarterly basis to provide that its staff is familiar with this article and understands the obligation to provide care for residents consistent with this article at all times.

History. — Code 1933, § 88-1904B, enacted by Ga. L. 1981, p. 149, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 74 et seq. 41 C.J.S., Hospitals, §§ 26, 35.

31-8-123. Use of state or community ombudsman to resolve residents' complaints.

Every effort shall be made to use the state ombudsman or community ombudsman, as provided for in Article 3 of this chapter, to resolve complaints related to residents' rights.

History. — Code 1933, § 88-1903B, enacted by Ga. L. 1981, p. 149, § 1.

31-8-124. Grievances.

(a) Any resident, guardian, or representative who believes his rights under this article have been violated by a facility shall be permitted to file a grievance under this Code section.

(b) To initiate the grievance, the resident, guardian, or representative may submit an oral or written complaint to the administrator or his designee. The administrator or his designee shall act to resolve the complaint or shall respond to the complaint within three business days, including in the response a description of the review and appeal rights set forth in this Code section.

(c) If the person filing the complaint is not satisfied by the action taken by the administrator or his designee, the complainant shall submit an oral or written complaint to the state or community ombudsman, pursuant to Article 3 of this chapter.

(d) If the ombudsman does not resolve the grievance to the complainant's satisfaction within ten days, the complainant may submit the grievance to an impartial referee, jointly chosen by the administrator or his designee and the complainant, who will conduct a hearing.

(e) The referee's hearing shall be held at the facility within 14 days after submission of the grievance to him, at a time convenient to the referee, the complainant, and the administrator. The complainant and the administrator may review relevant records and documents, present evidence, call witnesses, cross-examine witnesses, make oral arguments, and be represented by any person of their choice. The referee may ask questions of any person, review relevant records and documents, call witnesses, and receive other evidence as appropriate. The referee shall keep a record of the proceedings, which record may be a sound recording. Within 72 hours after the grievance review, the referee shall render a decision and shall give to the complainant and to the administrator a written statement of the decision and reasons therefor, which statement shall also describe the appeal rights set forth in Code Section 31-8-125. Such decision shall be binding on the parties unless reversed upon appeal.

(f) The facility shall maintain a central file of documents pertaining to grievances, such file to be confidential, except that any resident, guardian, or representative may review any document pertaining to the resident and all documents shall be available to the department for inspection. This subsection shall not apply to any documents protected by the attorney-client privilege.

(g) If a resident or complainant is unable for any reason to understand any writing or communication pertinent to this Code section, such information shall be communicated to him in a manner that takes into account any communication impairment he may have.

(h) A resident, guardian, or representative who elects not to proceed under this Code section shall not be prohibited from proceeding under Code Section 31-8-125 or 31-8-126.

History. — Code 1933, § 88-1921B, enacted by Ga. L. 1981, p. 149, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 15 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 743 et seq.

31-8-125. Administrative hearings.

(a) Any resident, guardian, or representative who believes his rights under Code Section 31-8-107, paragraph (3) of subsection (b) of Code

Section 31-8-108, Code Section 31-8-109, paragraphs (3) and (4) of Code Section 31-8-111, subsection (d) of Code Section 31-8-112, Code Section 31-8-116, Code Section 31-8-117, or Code Section 31-8-120 have been violated or any complainant or facility dissatisfied with a decision of a referee shall have the right to request a hearing from the department pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The department is authorized to hold such hearings and, in the case of an appeal of a decision of a referee, the department may hold such hearings by review of the record.

(b) The hearing shall be conducted within 45 days of the receipt by the department of the request for a hearing. Except where the state or community ombudsman has already been involved in the matter at issue, the department may refer the complaint to the state or community ombudsman for informal resolution pending the hearing.

(c) Except in the event of an emergency situation in which the resident or other residents are subject to imminent and substantial danger that only immediate transfer will relieve or reduce or except in case of nonpayment, no transfer shall take place until all appeal rights are exhausted.

(d) The department shall hold such hearings at the facility upon the resident's request or as necessary due to the resident's medical condition. Where residents of a facility allege a common complaint, the department may at the residents' request schedule a single hearing.

(e) If the department finds no violations of this article, the resident and facility will be so informed. If a violation has occurred, the department shall order the facility to correct such violation; and, upon failure to correct such violation within a reasonable time, the department may impose appropriate civil penalties as provided for in Code Section 31-8-126.

History. — Code 1933, § 88-1922B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31.

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 15 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 750 et seq.

31-8-126. Cause of action against facility for violation of rights under this article; civil penalties; applicability of Code Section 31-5-8.

(a) Any person or persons aggrieved because a long-term care facility has violated or failed to provide any right granted under this article shall have a cause of action against such facility for damages and such

other relief as the court having jurisdiction of the action deems proper. No person shall be prohibited from maintaining such an action for failure to exhaust any rights to administrative or other relief granted under this article.

(b) In addition to other penalties or remedies that may be imposed by this article or other law, the department is authorized to impose civil penalties as follows:

(1) If a violation has occurred, the department shall order the facility to correct such violation. Upon failure to correct such violation within a reasonable period of time, the department may order the facility to discontinue admitting residents until such violation is corrected; and

(2) In cases of violations repeated by a facility under the same license within a 12 month period, the department shall be authorized to assess a civil penalty not to exceed $75.00 per violation for each day in which the violation continues, except that the maximum civil penalty for each violation shall not exceed $2,500.00. In imposing such civil penalties the department shall consider all relevant factors including, but not limited to:

(A) The amount of assessment necessary to ensure immediate and continued compliance;

(B) The character and degree of impact of the violation of the health, safety, and welfare of any resident in the nursing home;

(C) The conduct of the person or facility against whom the citation is issued in taking all feasible steps or procedures necessary or appropriate to comply or to correct the violations; and

(D) Any prior violations by the facility of statutes, regulations, or orders administered, adopted, or issued by the department.

(c) Any such civil penalty shall be imposed by the department only after notice and hearing as provided in Article 1 of Chapter 5 of this title.

(d) Any person or facility subject to a civil penalty under this Code section is entitled to judicial review in accordance with Article 1 of Chapter 5 of this title.

(e) All civil penalties recovered by the department under this Code section shall be paid into the state treasury.

(f) Nothing in this Code section shall be construed to preempt any other law or to deny to any individual any rights or remedies which are provided by or under any other law.

(g) Code Section 31-5-8 shall apply fully to any willful violation of this chapter.

History. — Code 1933, § 88-1923B, enacted by Ga. L. 1981, p. 149, § 1; Ga. L. 1985, p. 149, § 31.

JUDICIAL DECISIONS

Cited in Thurman v. Pruitt Corp., 212 Ga. App. 766, 442 S.E.2d 849 (1994); Brogdon v. National Healthcare Corp., 103 F. Supp. 2d 1322 (N.D. Ga. 2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 15 et seq.

C.J.S. — 14A C.J.S., Civil Rights, §§ 752, 761 et seq., 772, 807.

31-8-127. Rules and regulations.

The department is authorized to promulgate rules and regulations to implement this article.

History. — Code 1933, § 88-1924B, enacted by Ga. L. 1981, p. 149, § 1.

ARTICLE 5A

REMEDIES FOR RESIDENTS OF PERSONAL CARE HOMES

RESEARCH REFERENCES

ALR. — Liability of nursing home for violating statutory duty to notify third party concerning patient's medical condition, 46 A.L.R.5th 821.

31-8-130. Short title.

This article shall be known and may be cited as the "Remedies for Residents of Personal Care Homes Act."

History. — Code 1981, § 31-8-130, enacted by Ga. L. 1994, p. 461, § 2.

31-8-131. Legislative findings and intent.

The General Assembly finds that persons residing within personal care homes are often isolated from the community and often lack the means to assert fully their rights as individual citizens. The General Assembly also recognizes that in order for the rights of residents of personal care homes to be fully protected, residents must be afforded a means of recourse when such rights have been denied. It is therefore the intent of the General Assembly to preserve the dignity and personal integrity of residents of personal care homes by providing access to a

legal process to hear and redress the grievances of such residents regarding their individual rights.

History. — Code 1981, § 31-8-131, enacted by Ga. L. 1994, p. 461, § 2.

31-8-132. Definitions.

As used in this article, the term:

(1) "Administrator" means the manager designated by the governing body of a personal care home as responsible for the day-to-day management, administration, and supervision of the personal care home, who may also serve as on-site manager and responsible staff person except during periods of his or her own absence.

(2) "Community ombudsman" means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

(2.1) "Department" means the Department of Community Health.

(3) "Governing body" means the board of trustees, the partnership, the corporation, the association, or the person or group of persons who maintain and control a personal care home and who are legally responsible for the operation of the home.

(4) "Legal surrogate" means a duly appointed person who is authorized to act, within the scope of the authority granted under the legal surrogate's appointment, on behalf of a resident who is adjudicated or certified incapacitated. No member of the governing body, administration, or staff of a personal care home or any affiliated personal care home or their family members may serve as the legal surrogate for a resident.

(5) "Personal care home" or "home" means a facility as defined in Code Section 31-7-12 and shall include any assisted living community as defined in paragraph (3) of subsection (b) of Code Section 31-7-12.2 that is subject to regulation and licensure by the department.

(6) "Representative" means a person who voluntarily, with the resident's written authorization, may act upon the resident's direction with regard to matters concerning the health and welfare of the resident, including being able to access personal records contained in the resident's file and receive information and notices pertaining to the resident's overall care and condition. No member of the governing body, administration, or staff of a personal care home or any affiliated personal care home or their family members may serve as the representative for a resident.

(7) "Resident" means a person who resides in a personal care home.

(8) "State ombudsman" means the state ombudsman established under Code Section 31-8-52.

History. — Code 1981, § 31-8-132, enacted by Ga. L. 1994, p. 461, § 2; Ga. L. 2011, p. 227, § 20/SB 178; Ga. L. 2011, p. 705, § 4-13/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-133. Residents' rights.

Residents' rights shall include all rights enumerated in the rules and regulations of the Department of Community Health, including, but not limited to, procedural protections relating to admission, transfer, or discharge of residents.

History. — Code 1981, § 31-8-133, enacted by Ga. L. 1994, p. 461, § 2; Ga. L. 2010, p. 878, § 31/HB 1387.

31-8-134. Grievance procedure.

(a) Any resident, or the representative or legal surrogate of the resident, if any, who believes his or her rights under this article have been violated by a personal care home or its governing body, administrator, or employee shall be permitted to file a grievance under this Code section.

(b) In order to file the grievance provided for in subsection (a) of this Code section, the resident, or representative or legal surrogate of the resident, if any, may submit an oral or written grievance to the administrator or the administrator's designee. The administrator or designee, within five business days, shall either resolve the grievance to the grievant's satisfaction or respond in writing to the grievance, including in the response a description of the review and appeal rights set forth in this article.

(c) If the person filing the grievance is not satisfied by the action or failure to act of the administrator or designee, the grievant may submit an oral or written complaint to the state or community ombudsman.

History. — Code 1981, § 31-8-134, enacted by Ga. L. 1994, p. 461, § 2.

31-8-135. Hearing; transfer of resident.

(a) Any resident, the representative or legal surrogate of the resident, if any, or the state or community ombudsman, who believes the resident's rights have been violated by a personal care home, its governing body, administrator, or employee, shall have the right to

request a hearing from the department pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) No person shall be prohibited from requesting a hearing pursuant to subsection (a) of this Code section for failure to exhaust any rights to other relief granted under this article.

(c)(1) Except as provided in paragraph (2) of this subsection, the hearing provided for in subsection (a) of this Code section shall be conducted within 45 days of the receipt by the department of the request for a hearing. Where the state or community ombudsman has not already been involved in the matter at issue, the department may refer the request for a hearing to the state or community ombudsman for informal resolution pending the hearing. Such referral shall not extend the 45 day period in which the department shall conduct such hearing.

(2) If a resident or a resident's legal surrogate or representative, if any, alleges that an action or failure to act by a personal care home or its governing body, administrator, or employee is in retaliation for the exercise by that resident or his or her representative or legal surrogate, if any, of a right conferred by state or federal law or court order, the hearing provided for in subsection (a) of this Code section shall be conducted within 15 days of the receipt of the department of the request for a hearing. For such hearing, all pending requests for hearing by the resident or his or her legal surrogate or representative, if any, relating to such resident shall be consolidated.

(d) No transfer of a resident shall take place until all appeal rights are exhausted, unless:

(1) An immediate transfer is necessary because the resident develops a physical or mental condition requiring continuous medical or nursing care; or

(2) The resident's continuing behavior or condition directly and substantially threatens the health, safety, and welfare of the resident or any other resident.

(e) The department shall hold any hearing provided for in subsection (a) of this Code section at the personal care home upon the resident's request or as necessary due to the resident's physical condition. Where two or more residents of a personal care home allege a common complaint, the department may at the residents' request schedule a single hearing.

(f) If the department finds no violations of this article, the resident and personal care home will be so informed. If a violation has occurred:

(1) The hearing officer shall so notify the staff within the department responsible for the licensure of personal care homes;

(2) The department shall order the personal care home to correct such violation; and

(3) Upon failure of the personal care home to correct such violation within a reasonable time, the department may impose appropriate civil penalties as provided for in Code Section 31-2-8.

History. — Code 1981, § 31-8-135, enacted by Ga. L. 1994, p. 461, § 2; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-136. Action for damages.

(a) Any resident or the representative or legal surrogate of the resident, if any, may bring an action in a court of competent jurisdiction to recover actual and punitive damages against a personal care home or its governing body, administrator, or employee for any violation of the rights of a resident granted under this article. Upon referral and request by the department, the Attorney General may bring such an action. Where a violation of a resident's rights has been found, the resident shall be awarded the actual damages or $1,000.00, whichever is greater, and may be awarded punitive damages.

(b) No person shall be prohibited from maintaining an action pursuant to this Code section for failure to exhaust any rights to administrative or other relief granted under this article.

(c) The right of a resident to bring an action pursuant to this Code section is in addition to any and all other rights, remedies, or causes of action the resident may have by statute or at common law.

(d) Any resident or the representative or legal surrogate of the resident, if any, may bring an action to recover damages for any action of a personal care home or its governing body, administrator, or employee that adversely affects the resident's rights, privileges, or living arrangement in retaliation for that resident or his or her representative or legal surrogate, if any, having exercised a right conferred by state or federal law or court order. Upon referral and request by the department, the Attorney General may bring such an action. In any action brought under this Code section alleging retaliation, there shall be a presumption of retaliatory conduct, rebuttable by a showing of clear and convincing evidence, if an owner, licensee, administrator, or employee attempts to discharge, transfer, or relocate a resident involuntarily within six months after that resident or his or her representative or legal surrogate, if any, files an action for relief under this Code section, exercises a right to a hearing under this article, or makes an oral or written grievance against the personal care home or its governing body, administrator, or employee to the personal

care home, a state or community ombudsman, or a state government official or employee.

(e) Code Section 31-5-8 shall apply fully to any willful violation of this article.

History. — Code 1981, § 31-8-136, enacted by Ga. L. 1994, p. 461, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 22 Am. Jur. 2d, Damages, § 409 et seq.

31-8-137. Temporary restraining order; injunctions.

A resident, the representative or legal surrogate of the resident, if any, or the Attorney General may bring an action in a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or permanent injunction to enjoin a personal care home from violating the rights of a resident.

History. — Code 1981, § 31-8-137, enacted by Ga. L. 1994, p. 461, § 2.

31-8-138. Failure to validly license as defense.

The failure of the governing body to obtain or maintain a valid license to operate a personal care home shall not constitute a defense to any action brought pursuant to this article where the facility at issue is subject to licensure as a personal care home.

History. — Code 1981, § 31-8-138, enacted by Ga. L. 1994, p. 461, § 2.

31-8-139. Mandamus.

A resident, the representative or legal surrogate of the resident, if any, the community ombudsman, the governing body of the personal care home, or any other interested party may bring an action in court for mandamus pursuant to Article 2 of Chapter 6 of Title 9 to order the department to comply with any state or federal law relevant to the operation of a personal care home or the care of its residents.

History. — Code 1981, § 31-8-139, enacted by Ga. L. 1994, p. 461, § 2.

ARTICLE 6

INDIGENT CARE TRUST FUND

Administrative rules and regulations. — Hospital care for the indigent, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Public Health, Chapter 290-5-5.

Indigent care trust fund-nursing home provider fee, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Medical Assistance, Chapter 350-7.

31-8-150. Constitutional authority for passage of article.

This article is passed pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution.

History. — Code 1981, § 31-8-150, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1993, p. 1014, § 1.

31-8-151. Definitions.

As used in this article, the term:

(1) "Department" means the Department of Community Health created by Chapter 2 of this title.

(2) "Medically indigent" means a person who meets the state-wide standards of indigency adopted by the department for the purposes of this article.

(3) "Trust fund" means the Indigent Care Trust Fund created by Code Section 31-8-152.

History. — Code 1981, § 31-8-151, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 1999, p. 296, § 9; Ga. L. 2009, p. 453, § 1-8/HB 228.

31-8-152. Creation of Indigent Care Trust Fund.

There is created the Indigent Care Trust Fund as a separate fund in the state treasury. The state treasurer shall credit to the trust fund all amounts dedicated, transferred, or contributed to such trust fund and shall invest the trust fund moneys in the same manner as authorized for investing other moneys in the state treasury.

History. — Code 1981, § 31-8-152, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296.

31-8-152.1. State sales and use taxation of certain health care services.

Repealed by Ga. L. 2011, p. 674, § 1-1/HB 117, effective June 30, 2014.

Editor's notes. — This Code section was based on Code 1981, § 31-8-152.1, enacted by Ga. L. 2011, p. 674, § 1-1/HB 117 and was repealed by its own terms effective June 30, 2014.

31-8-153. Contributions to trust fund.

After June 30, 1990, any hospital, hospital authority, county, municipality, or other person or entity is authorized to contribute to the trust fund. The contribution of public funds to the trust fund shall be a valid public purpose for which those funds may be expended. Contributions to the trust fund shall be irrevocable and shall not include any limitation upon the use of such contributions except as permitted in this article or by the department.

History. — Code 1981, § 31-8-153, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1.

31-8-153.1. Irrevocable transfer of funds to trust fund; provision for indigent patients.

After June 30, 1993, any hospital authority, county, municipality, or other state or local public or governmental entity is authorized to transfer moneys to the trust fund. Transfer of funds under the control of a hospital authority, county, municipality, or other state or local public or governmental entity shall be a valid public purpose for which those funds may be expended. The department is authorized to transfer to the trust fund moneys paid to the state by a health care facility as a monetary penalty for the violation of an agreement to provide a specified amount of clinical health services to indigent patients pursuant to a certificate of need held by such facility. Such transfers shall be irrevocable and shall be used only for the purposes contained in Code Section 31-8-154.

History. — Code 1981, § 31-8-153.1, enacted by Ga. L. 1993, p. 1014, § 1; Ga. L. 2001, p. 1240, § 3.

31-8-153.2. Revenues raised from specified sources.

The General Assembly may provide for the dedication and deposit of revenues raised from specified sources into the trust fund.

History. — Code 1981, § 31-8-153.2, enacted by Ga. L. 1993, p. 1014, § 1.

31-8-153.3. No lapse of contributions to the general fund.

Contributions and revenues deposited and transferred to the trust fund shall not lapse to the general fund at the end of the fiscal year.

History. — Code 1981, § 31-8-153.3, enacted by Ga. L. 1993, p. 1014, § 1.

31-8-154. Authorized expenditure of contributed funds.

All moneys contributed and revenues deposited and transferred to the trust fund pursuant to this article and any interest earned on such moneys shall be appropriated to the department for only the following purposes:

(1) To expand Medicaid eligibility and services;

(2) For programs to support rural and other health care providers, primarily hospitals, who serve the medically indigent;

(3) For primary health care programs for medically indigent citizens and children of this state; or

(4) Any combination of purposes specified in paragraphs (1) through (3) of this Code section.

History. — Code 1981, § 31-8-154, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 2016, p. 214, § 3/SB 308; Ga. L. 2017, p. 764, § 2-6/SB 193.

The 2017 amendment, effective July 1, 2017, added "or" at the end of paragraph (3); deleted former paragraph (4), which read: "For the Positive Alternatives for Pregnancy and Parenting Grant Program established under Article 2 of Chapter 2A of this title; or"; redesignated former paragraph (5) as present paragraph (4); and substituted "(3)" for "(4)" near the end of present paragraph (4).

31-8-155. Promulgation of rules for funding expansions of eligibility and indigent care programs.

(a) The department shall establish by rules the purposes for which contributions and transfers to the trust fund may be made. Such purposes shall be consistent with the purposes contained in Code Section 31-8-154. Those rules shall be promulgated by the Board of Community Health pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," notwithstanding any exclusion or exemption otherwise provided in that chapter.

(b) Contributions to the trust fund shall be made within such time periods as the department establishes by rule pursuant to subsection (a) of this Code section.

(c) The department may make and execute contracts, agreements, and other instruments for the purpose of facilitating transfers to the trust fund.

(d) The department shall establish the manner of disbursement of any funds appropriated to it pursuant to this article.

History. — Code 1981, § 31-8-155, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1991, p. 388, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 1999, p. 296, § 24.

Administrative rules and regulations. — Indigent Care Trust Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Medical Assistance, Chapter 111-3-6.

31-8-156. Appropriation of state funds by General Assembly.

(a) The General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year not less than all of the moneys contributed and revenues deposited and transferred to the fund and interest earned thereon. Such appropriation shall be made only for those purposes specified in Code Section 31-8-154, and any other appropriation from the trust fund shall be void.

(b) An appropriation pursuant to subsection (a) of this Code section shall specify each purpose, if any, as specified in paragraphs (1) through (4) of Code Section 31-8-154, for which the trust funds are appropriated thereby.

(c) Funds appropriated to the department pursuant to this Code section shall be used to match federal funds or any other funds from a public source or charitable organization which are available for the purposes for which those trust funds have been appropriated.

(d) Appropriations from the trust fund to the department shall be used to supplement and not replace any other state funds appropriated to the department.

(e) Appropriations from the trust fund to the department, except as provided in Code Sections 31-8-157 and 31-8-158, shall not lapse to the general fund at the end of the fiscal year.

History. — Code 1981, § 31-8-156, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 2001, p. 1240, § 4; Ga. L. 2016, p. 214, § 4/SB 308; Ga. L. 2017, p. 764, § 2-7/SB 193.

The 2017 amendment, effective July 1, 2017, substituted "(4)" for "(5)" in the middle of subsection (b).

31-8-157. Refunding contributed funds; penalties not refunded.

All contributions to the trust fund and interest earned thereon which have been appropriated but which:

(1) Were void because of having been appropriated in violation of Code Section 31-8-156;

(2) Remain unexpended and not contractually obligated at the end of the fiscal year for which they were appropriated; or

(3) Are determined by the department to be ineligible for anticipated federal matching funds or other matching funds from a public source or charitable organization

shall be returned to the trust fund and shall not lapse but shall be refunded pro rata to the contributors thereof, except that penalties so transferred to the fund shall not be refunded. The Office of Planning and Budget shall determine the amount required to be refunded and the pro rata distribution thereof within 60 days following the end of each fiscal year or, when the department has made a determination pursuant to paragraph (3) of this Code section, within 60 days after that determination. The amount so determined shall be refunded by the state treasurer within 60 days following that determination.

History. — Code 1981, § 31-8-157, enacted by Ga. L. 1990, p. 139, § 1; Ga. L. 1993, p. 1014, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2001, p. 1240, § 5; Ga. L. 2010, p. 863, § 3/SB 296.

31-8-158. Refunding funds not appropriated or determined void or ineligible.

Moneys transferred to the trust fund and interest earned thereon which have not been appropriated by the end of the fiscal year or which have been appropriated but have been determined to be:

(1) Void because of having been appropriated in violation of Code Section 31-8-156;

(2) Ineligible for anticipated federal matching funds;

(3) Subject to return pursuant to any rule promulgated under Code Section 31-8-155; or

(4) Void because of violation of the terms of a contract, agreement, or other instrument executed pursuant to subsection (c) of Code Section 31-8-155

shall be returned to the trust fund and refunded pro rata to the entities responsible for transfer. The refund shall be made by the state treasurer no less than 30 days following the end of the fiscal year or such a determination by the department, as applicable.

History. — Code 1981, § 31-8-158, enacted by Ga. L. 1993, p. 1014, § 1; Ga. L. 2010, p. 863, § 3/SB 296.

Editor's notes. — Ga. L. 1993, p. 1014, § 1, effective April 13, 1993, renumbered former Code Section 31-8-158 as present Code Section 31-8-159.

31-8-159. Reporting requirements.

(a) The department shall annually report to the General Assembly on its use of trust funds appropriated to the department pursuant to this article.

(b) The department shall also provide an annual report no later than September 30 of each year which shall provide the following information for the immediately preceding fiscal year:

(1) The amount of ambulance service license fees received by the department pursuant to Code Section 31-11-31.1;

(2) The amount of federal funds received as matching funds to the corresponding ambulance service license fees received; and

(3) The total amount of funds disbursed to emergency ambulance services from the Indigent Care Trust Fund.

The report required by this subsection shall be made available to the public free of charge by electronic means and in such other manner as the department deems appropriate.

History. — Code 1981, § 31-8-158, enacted by Ga. L. 1990, p. 139, § 1; Code 1981, § 31-8-159, as redesignated by Ga. L. 1993, p. 1014, § 1; Ga. L. 2008, p. 266, § 1/SB 479.

31-8-160. Applicability of Article 7 of Chapter 4 of Title 49.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall apply to the department in carrying out the purposes of this article.

History. — Code 1981, § 31-8-159, enacted by Ga. L. 1990, p. 139, § 1; Code 1981, § 31-8-160, as redesignated by Ga. L. 1993, p. 1014, § 1.

ARTICLE 6A

NURSING HOME PROVIDER FEE

Editor's notes. — Ga. L. 2003, p. 435, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Nursing Home Provider Fee Act.'"

Administrative rules and regulations. — Indigent care trust fund-nursing home provider fee, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Medical Assistance, Chapter 350-7.

31-8-161. Legislative authority.

This article is passed pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution.

History. — Code 1981, § 31-8-161, enacted by Ga. L. 2003, p. 435, § 2.

31-8-162. Definitions.

As used in this article, the term:

(1) "Department" means the Department of Community Health created by Chapter 2 of this title.

(2) "Medically indigent" means a person who meets the state-wide standards of indigency adopted by the department.

(3) "Nursing home" means a freestanding facility or distinct part or unit of a hospital required to be licensed or permitted as a nursing home under the provisions of Chapter 7 of this title which is not owned or operated by the state or federal government.

(4) "Nursing home that disproportionately serves the medically indigent" means a nursing home for which the patient days attributable to medically indigent residents account for more than 15 percent of the nursing home's total patient days during a 12 month period. For purposes of this computation, medicare program patient days shall not be included in the nursing home's total patient days.

(5) "Patient day" means a day of care provided to an individual resident of a nursing home by the nursing home. A patient day includes the date of admission but does not include the date of discharge, unless the dates of admission and discharge occur on the same day.

(6) "Provider fee" means the fee imposed pursuant to this article for the privilege of operating a nursing home.

(7) "Segregated account" means an account for the dedication and deposit of provider fees which is established within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(8) "State plan" means all documentation submitted by the commissioner of the Department of Community Health on behalf of the department to and for approval by the United States secretary of health and human services, pursuant to Title XIX of the federal Social Security Act.

(9) "Trust fund" means the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(10) "Waiver" means a waiver of the uniform tax requirement for permissible health care related taxes, as provided in 42 C.F.R. Section 433.68(e)(2)(i) and (ii).

History. — Code 1981, § 31-8-162, enacted by Ga. L. 2003, p. 435, § 2; Ga. L. 2009, p. 453, § 1-8/HB 228.

U.S. Code. — Title XIX of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

31-8-163. Segregated account of revenues raised through provider fees.

There is established within the trust fund a segregated account for revenues raised through the imposition of the provider fee. All revenues raised through provider fees shall be credited to the segregated account within the trust fund and shall be invested in the same manner as authorized for investing other moneys in the state treasury. Contributions and transfers to the trust fund pursuant to Code Sections 31-8-153 and 31-8-153.1 shall not be deposited into the segregated account.

History. — Code 1981, § 31-8-163, enacted by Ga. L. 2003, p. 435, § 2.

31-8-164. Provider fee based on patient day; quarterly payment required.

(a) Each nursing home shall be assessed a provider fee with respect to each patient day for the preceding quarter, excluding medicare program patient days. The provider fee shall be assessed uniformly upon all nursing homes, except as provided in Code Section 31-8-168. The aggregate provider fees imposed under this article shall not exceed the maximum amount that may be assessed pursuant to the percentage limitation of the first prong of the test for an indirect guarantee set out in 42 C.F.R. Section 433.68(f)(3)(i).

(b) The provider fee shall be paid quarterly by each nursing home to the department. A nursing home shall calculate and report the provider fee due upon a form prepared by the department and submit therewith payment of the provider fee no later than the thirtieth day following the end of each calendar quarter. The initial provider fee report shall be filed and the initial payment of the provider fee shall be submitted no later than July 30, 2003. A nursing home shall calculate and report the initial provider fee using information about its patient days for the quarter ending June 30, 2003.

History. — Code 1981, § 31-8-164, enacted by Ga. L. 2003, p. 435, § 2; Ga. L. 2006, p. 204, § 1/HB 1308.

31-8-165. Use of segregated account funds; form for reporting provider fee; maintenance of records; inaccurate payments; penalty for failing to pay.

(a) The department shall collect the provider fees imposed pursuant to Code Section 31-8-164. All revenues raised pursuant to this article shall be deposited into the segregated account. Such funds shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to nursing homes that disproportionately serve the medically indigent.

(b) The department shall prepare and distribute a form upon which a nursing home shall calculate and report to the department the provider fee.

(c) Each nursing home shall keep and preserve for a period of three years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a nursing home for purposes of auditing the calculation of the provider fee. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record.

(d) In the event that the department determines that a nursing home has underpaid or overpaid the provider fee, the department shall notify the nursing home of the balance of the provider fee or refund that is due. Such payment or refund shall be due within 30 days of the department's notice.

(e) Any nursing home that fails to pay the provider fee pursuant to this article within the time required by this article shall pay, in addition to the outstanding provider fee, a 6 percent penalty for each month or fraction thereof that the payment is overdue. If a provider fee has not been received by the department by the last day of the month, the department shall withhold an amount equal to the provider fee and penalty owed from any medical assistance payment due such nursing home under the Medicaid program. The provider fee levied by this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the segregated account.

History. — Code 1981, § 31-8-165, enacted by Ga. L. 2003, p. 435, § 2.

31-8-166. General Assembly appropriations of segregated funds; match to federal funds; no lapsing at end of fiscal year.

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into the segregated account. Such appropriations shall be made for the sole purpose of obtaining federal financial participation in the provision of support to nursing homes that disproportionately serve the medically indigent. Any appropriation from the segregated account for any purpose other than medical assistance payments to nursing homes shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such trust funds have been appropriated.

(c) Appropriations from the segregated account to the department shall not lapse to the general fund at the end of the fiscal year.

History. — Code 1981, § 31-8-166, enacted by Ga. L. 2003, p. 435, § 2.

31-8-167. Annual report by department to General Assembly.

The department shall report annually to the General Assembly on its use of revenues deposited into the segregated account and appropriated to the department pursuant to this article.

History. — Code 1981, § 31-8-167, enacted by Ga. L. 2003, p. 435, § 2.

31-8-168. Request for waiver from United States Department of Health and Human Services.

No later than July 1, 2003, the department shall prepare and submit to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services a request for approval of a waiver pursuant to 42 C.F.R. Section 433.68(e) of the uniform fee requirement. Upon approval of such waiver, the department shall take action to reduce the provider fee imposed pursuant to Code Section 31-8-164 allowed by such waiver for those providers who qualify for such reduction.

History. — Code 1981, § 31-8-168, enacted by Ga. L. 2003, p. 435, § 2.

31-8-169. Application of the Medical Assistance Act of 1977.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall apply to the department in carrying out the purposes of this article.

History. — Code 1981, § 31-8-169, enacted by Ga. L. 2003, p. 435, § 2.

ARTICLE 6B

QUALITY ASSESSMENT FEES ON CARE MANAGEMENT ORGANIZATIONS

31-8-170. Legislative authority.

This article is passed pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution.

History. — Code 1981, § 31-8-170, enacted by Ga. L. 2005, p. 505, § 1/HB 392.

31-8-171. Definitions.

As used in this article, the term:

(1) "Care management organization" means an entity granted a certificate of authority under Chapter 21 of Title 33 of the Official Code of Georgia Annotated and which meets the definition found in 42 U.S.C. Sec. 1396b(w)(7)(A)(viii) as it now exists or as it may be amended in the future.

(2) "Department" means the Department of Community Health created by Chapter 2 of this title.

(3) "Gross direct premium" shall have the meaning that the term has in Chapter 8 of Title 33 of the Official Code of Georgia Annotated.

(4) "Quality assessment fee" means the fee imposed pursuant to this article for the privilege of operating a care management organization.

(5) "Segregated account" means an account for the dedication and deposit of provider fees which is established within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

(6) "Trust fund" means the Indigent Care Trust Fund created pursuant to Code Section 31-8-152.

History. — Code 1981, § 31-8-171, enacted by Ga. L. 2005, p. 505, § 1/HB 392; Ga. L. 2009, p. 453, § 1-8/HB 228.

31-8-172. Segregated account for the deposit of fees.

There is established within the trust fund a segregated account for revenues raised through the imposition of the quality assessment fee. All revenues raised through such fees shall be credited to the segregated account within the trust fund and shall be invested in the same manner as authorized for investing other moneys in the state treasury. Contributions and transfers to the trust fund pursuant to Code Sections 31-8-153 and 31-8-153.1 shall not be deposited into the segregated account.

History. — Code 1981, § 31-8-172, enacted by Ga. L. 2005, p. 505, § 1/HB 392.

31-8-173. Assessment, calculation, and payment of fees.

(a) Each care management organization shall be assessed a quality assessment fee, in an amount to be determined by the department based on anticipated revenue estimates included in the state budget report, with respect to its gross direct premiums. The quality assessment fee shall be assessed uniformly upon all care management organizations. The aggregate quality assessment fees imposed under this article shall not exceed the maximum amount that may be assessed pursuant to 42 C.F.R. Section 433.68(f)(3)(i).

(b) The quality assessment fee shall be paid monthly by each care management organization to the department. A care management organization shall calculate and report its gross direct premiums upon a form prepared by the department and submit therewith payment of the quality assessment fee no later than the tenth day of each calendar month, or in the discretion of the department and upon agreement of the care management organization, said amount may be calculated and withheld by the department from the current month's premium payment. Unless the department withholds the fee from the premium payment, the initial quality assessment fee report shall be filed and the initial payment of the quality assessment fee shall be submitted no later than the tenth day of the first month in which premiums are paid to the care management organizations for medical assistance to recipients. Unless the department withholds the fee from the premium payment, a care management organization shall calculate and report the initial quality assessment fee using information about its gross direct premiums for the first month in which premiums are paid to the care management organizations for medical assistance to recipients.

History. — Code 1981, § 31-8-173, enacted by Ga. L. 2005, p. 505, § 1/HB 392; Ga. L. 2006, p. 204, § 2/HB 1308.

31-8-174. Collection and disposition of fees; authority of department to inspect records of care management organizations; overpayment or underpayment; penalty for failure to pay fee.

(a) The department shall collect the quality assessment fees imposed pursuant to Code Section 31-8-173. All revenues raised pursuant to this article shall be deposited into the segregated account. Such funds shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to one or more providers pursuant to Article 7 of Chapter 4 of Title 49 or for purposes as authorized for expenditures from the trust fund.

(b) The department shall prepare and distribute a form upon which a care management organization shall calculate and report to the department the quality assessment fee.

(c) Each care management organization shall keep and preserve for a period of five years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a care management organization for purposes of auditing the calculation of the quality assessment fee. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record; provided, however, that information otherwise available to the public shall not become confidential solely because it has been obtained by the department.

(d) In the event that the department determines that a care management organization has underpaid or overpaid the quality assessment fee, the department shall notify the care management organization of the balance of the quality assessment fee or refund that is due. Such payment or refund shall be due within 30 days of the department's notice.

(e) Any care management organization that fails to pay the quality assessment fee pursuant to this article within the time required by this article shall pay, in addition to the outstanding quality assessment fee, a 6 percent penalty for each month or fraction thereof that the payment is overdue. If a quality assessment fee has not been received by the department by the last day of the month, the department shall withhold an amount equal to the quality assessment fee and penalty owed from any medical assistance or other payment due such care management organization under the Medicaid program. The quality assessment fee

levied by this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the segregated account.

History. — Code 1981, § 31-8-174, enacted by Ga. L. 2005, p. 505, § 1/HB 392.

31-8-175. Appropriation of revenues to the department.

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into the segregated account. Such appropriations shall be made for the sole purpose of obtaining federal financial participation in the provision of health care services pursuant to Article 7 of Chapter 4 of Title 49 or for purposes as authorized for expenditures from the trust fund. Any appropriation from the segregated account for any purpose other than medical assistance payments shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such trust funds have been appropriated.

(c) Appropriations from the segregated account to the department shall not lapse to the general fund at the end of the fiscal year.

History. — Code 1981, § 31-8-175, enacted by Ga. L. 2005, p. 505, § 1/HB 392.

31-8-176. Annual report by the department.

The department shall report annually to the General Assembly on its use of revenues deposited into the segregated account and appropriated to the department pursuant to this article.

History. — Code 1981, § 31-8-176, enacted by Ga. L. 2005, p. 505, § 1/HB 392.

31-8-177. Applicability of the Georgia Medical Assistance Act of 1977.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall apply to the department in carrying out the purposes of this article.

History. — Code 1981, § 31-8-177, enacted by Ga. L. 2005, p. 505, § 1/HB 392.

ARTICLE 6C

HOSPITAL MEDICAID FINANCING PROGRAM

Editor's notes. — Ga. L. 2010, p. 9, § 2-1/HB 1055, effective June 30, 2013, repealed the Code sections formerly codified at this article. The former article consisted of Code Sections 31-8-179 and 31-8-179.1 through 31-8-179.8, relating to provider payment agreements, and was based on Code 1981, §§ 31-8-179—31-8-179.8, enacted by Ga. L. 2010, p. 9, § 2-1/HB 1055; Ga. L. 2011, p. 752, § 31/HB 142.

Code Section 31-8-179.6 provides for the repeal of this article effective June 30, 2025.

31-8-179. (Repealed effective June 30, 2025) Short title.

This article is enacted pursuant to the authority of Article III, Section IX, Paragraph VI(i) of the Constitution and shall be known and may be cited as the "Hospital Medicaid Financing Program Act."

History. — Code 1981, § 31-8-179, enacted by Ga. L. 2013, p. 1, § 1/SB 24.

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 153 (2013).

31-8-179.1. (Repealed effective June 30, 2025) Definitions.

As used in this article, the term:

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

(2) "Department" means the Department of Community Health.

(3) "Hospital" means an institution licensed pursuant to Chapter 7 of this title 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, rehabilitative, geriatric, osteopathic, and other specialty hospitals but shall not include psychiatric hospitals which shall have the same meaning as facilities as defined in paragraph (7) of Code Section 37-3-1, critical access hospitals as defined in paragraph (3) of Code Section 33-21A-2, or any state owned or state operated hospitals.

(4) "Provider payment" means a payment assessed by the department pursuant to this article for the privilege of operating a hospital.

History. — Code 1981, § 31-8-179.1, enacted by Ga. L. 2013, p. 1, § 1/SB 24.

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U. L. Rev. 153 (2013).

31-8-179.2. (Repealed effective June 30, 2025) Department of Community Health authorized to assess one or more provider payments on hospitals for the purpose of obtaining federal financial participation for Medicaid.

(a) The board shall be authorized to establish and assess, by board rule, one or more provider payments on hospitals, or a subclass of hospitals, as defined by the board; provided, however, that if any such provider payment is established and assessed, the provider payment shall comply with the requirements of 42 C.F.R. 433.68. Any provider payment assessed pursuant to this article shall not exceed the amount necessary to obtain federal financial participation allowable under Title XIX of the federal Social Security Act. The aggregate amount of any fees established and assessed pursuant to this subsection shall not exceed those percentages of net patient revenues set forth in the General Appropriations Act. The board shall be authorized to discontinue any provider payment assessed pursuant to this article. The board shall cease to impose any such provider payment if:

(1) The provider payments are not eligible for federal matching funds under Title XIX of the federal Social Security Act; or

(2) The department reduces Medicaid payment rates to hospitals as are in effect on June 30, 2012, or reduces the provider payment rate adjustment factors utilized in developing the state Fiscal Year 2013 capitated rates for Medicaid managed care organizations.

(a.1) The General Assembly shall have the authority to override any provider payment assessed by the board pursuant to this Code section in accordance with the procedures contained in subsection (f) of Code Section 50-13-4.

(b) The board shall be authorized to establish rules and regulations to assess and collect any such provider payments, including, but not limited to, payment frequency and schedules, required information to be submitted, record retention, and whether any such provider payment shall be credited toward any indigent or charity care requirements or considered a community benefit.

History. — Code 1981, § 31-8-179.2, enacted by Ga. L. 2013, p. 1, § 1/SB 24; Ga. L. 2013, p. 1037, § 2/SB 62; Ga. L. 2014, p. 866, § 31/SB 340.

U.S. Code. — Title XIX of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U. L. Rev. 153 (2013).

31-8-179.3. (Repealed effective June 30, 2025) Provider payments assessed to be deposited in segregated accounts within Indigent Care Trust Fund; sole purpose of funds to obtain federal financial participation for medical assistance payments for Medicaid recipients; retention and inspection of records; penalties.

(a) Any provider payments assessed pursuant to this article shall be deposited into a segregated account for each payment program within the Indigent Care Trust Fund created pursuant to Code Section 31-8-152. No other funds shall be deposited into any such segregated account or accounts. All funds in any such segregated account or accounts shall be invested in the same manner as authorized for investing other moneys in the state treasury. Any funds deposited into a segregated account pursuant to this article shall be subject to appropriation by the General Assembly.

(b) Any provider payments assessed pursuant to this article shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49.

(c) Each hospital shall keep and preserve for a period of seven years such books and records as may be necessary to determine the amount for which it is liable under this article. The department shall have the authority to inspect and copy the records of a hospital for purposes of auditing the calculation of the provider payment. All information obtained by the department pursuant to this article shall be confidential and shall not constitute a public record.

(d) The department shall be authorized to impose a penalty of up to 6 percent for any hospital that fails to pay a provider payment within the time required by the department for each month or fraction thereof that the provider payment is overdue. If a required provider payment has not been received by the department in accordance with department timelines, the department shall withhold an amount equal to the provider payment and penalty owed from any medical assistance payment due such hospital under the Medicaid program. Any provider payment assessed pursuant to this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for in this article. Any penalty that accrues pursuant to this subsection shall be credited to the applicable segregated account.

History. — Code 1981, § 31-8-179.3, enacted by Ga. L. 2013, p. 1, § 1/SB 24.

Law reviews. — For article on the 2013 enactment of this Code section, see

30 Ga. St. U. L. Rev. 153 (2013).

31-8-179.4. (Repealed effective June 30, 2025) Authorized use of appropriated funds.

(a) Notwithstanding any other provision of this chapter, the General Assembly is authorized to appropriate as state funds to the department for use in any fiscal year all revenues dedicated and deposited into one or more segregated accounts. Such appropriations shall be authorized to be made for the sole purpose of obtaining federal financial participation for medical assistance payments to providers on behalf of Medicaid recipients pursuant to Article 7 of Chapter 4 of Title 49. Any appropriation from a segregated account for any purpose other than such medical assistance payments shall be void.

(b) Revenues appropriated to the department pursuant to this Code section shall be used to match federal funds that are available for the purpose for which such funds have been appropriated.

(c) Appropriations from a segregated account to the department shall not lapse to the general fund at the end of the fiscal year.

History. — Code 1981, § 31-8-179.4, enacted by Ga. L. 2013, p. 1, § 1/SB 24.

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U. L. Rev. 153 (2013).

31-8-179.5. (Repealed effective June 30, 2025) Applicability of Georgia Medical Assistance Act.

Except where inconsistent with this article, the provisions of Article 7 of Chapter 4 of Title 49, the "Georgia Medical Assistance Act of 1977," shall apply to the department in carrying out the purposes of this article.

History. — Code 1981, § 31-8-179.5, enacted by Ga. L. 2013, p. 1, § 1/SB 24.

Law reviews. — For article on the 2013 enactment of this Code section, see 30 Ga. St. U. L. Rev. 153 (2013).

31-8-179.6. (Repealed effective June 30, 2025) Automatic repeal.

This article shall stand repealed on June 30, 2025, unless reauthorized by the General Assembly prior to that date.

History. — Code 1981, § 31-8-179.6, enacted by Ga. L. 2013, p. 1, § 1/SB 24; Ga. L. 2017, p. 1, § 1/SB 70; Ga. L. 2019, p. 183, § 4/HB 321.

The 2017 amendment, effective February 13, 2017, substituted "June 30, 2020" for "June 30, 2017".

The 2019 amendment, effective April 25, 2019, substituted "June 30, 2025" for "June 30, 2020" in this Code section.

ARTICLE 7

DISCLOSURE OF TREATMENT OF ALZHEIMER'S DISEASE OR ALZHEIMER'S RELATED DEMENTIA

Cross references. — Immediate investigation for missing person with Alzheimer's disease, § 35-1-8. Georgia family caregiver support, T. 49, C. 6, A. 6.

Editor's notes. — By resolution (Ga. L. 2009, p. 400), the General Assembly established the Alzheimer's Disease and Other Dementias Task Force, which was abolished on June 30, 2010 by the terms of such resolution.

Law reviews. — For note on the 1995 enactment of this article, see 12 Ga. St. U. L. Rev. 234 (1995).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Alzheimer's and Multi-Infarct Dementia — Proceedings to Appoint Guardian Based on Incapacity, 18 POF3d 185.

31-8-180. Definitions.

As used in this article, the term:

(1) "Alzheimer's disease" or "Alzheimer's related dementia" means a progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior.

(2) "Care," "treatment," and "therapeutic activities" shall not include the sole activity of marketing, selling, manufacturing, or dispensing medication which is approved by the United States Food and Drug Administration and prescribed by a person licensed to practice medicine in accordance with Chapter 34 of Title 43 and informational or support services related to the use of such medication.

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

History. — Code 1981, § 31-8-180, enacted by Ga. L. 1995, p. 841, § 1; Ga. L. 2011, p. 705, § 4-14/HB 214.

Cross references. — Alzheimer's and Related Dementias State Plan, T. 49, C. 6, Art. 8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was deleted between "Alzheimer's" and "related" in paragraph (1).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-181. Individuals and hospitals excluded from application of article.

This article shall not apply to the following:

(1) An individual licensed to practice medicine under the provisions of Chapter 34 of Title 43, and persons employed by such an individual, provided that any nursing home, personal care home as

defined by Code Section 31-6-2, hospice as defined by Code Section 31-7-172, respite care service as defined by Code Section 49-6-72, adult day program, or home health agency owned, operated, managed, or controlled by a person licensed to practice medicine under the provisions of Chapter 34 of Title 43 shall be subject to the provisions of this article; or

(2) A hospital. However, to the extent that a hospital's nursing home, personal care home as defined by Code Section 31-6-2, hospice as defined by Code Section 31-7-172, respite care service as defined by Code Section 49-6-72, adult day program, or home health agency holds itself out as providing care, treatment, or therapeutic activities for persons with Alzheimer's disease or Alzheimer's related dementia as part of a specialty unit, such nursing home, personal care home, hospice, respite care service, adult day program, or home health agency shall be subject to the provisions of this article.

History. — Code 1981, § 31-8-181, enacted by Ga. L. 1995, p. 841, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was deleted from between "Alzheimer's" and "related" in paragraph (2).

31-8-182. Disclosure of care, treatment, or therapeutic activities required; disclosure form.

(a) Any entity, facility, program, or any instrumentality of the state or political subdivision of the state other than those excluded by Code Section 31-8-181 which advertises, markets, or offers to provide specialized care, treatment, or therapeutic activities for one or more persons with a probable diagnosis of Alzheimer's disease or Alzheimer's related dementia shall disclose the form of care, treatment, or therapeutic activities provided beyond that care, treatment, or therapeutic activities provided to persons who do not have a probable diagnosis of Alzheimer's disease or Alzheimer's related dementia.

(b) The disclosure required by subsection (a) of this Code section shall be made in writing on the disclosure form provided for by subsection (c) of this Code section and provided to any person seeking information concerning placement in or care, treatment, or therapeutic activities from the entity, facility, program, or the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181.

(c) With input from persons and organizations with experience or expertise regarding care, treatment, or therapeutic activities for persons who have Alzheimer's disease or Alzheimer's related dementia, the department shall develop a standard disclosure form. The disclosure shall be made on such form. The entity, facility, program, or the instrumentality of the state or a political subdivision of the state other

than those excluded by Code Section 31-8-181 shall revise the disclosure form whenever significant changes are made.

History. — Code 1981, § 31-8-182, enacted by Ga. L. 1995, p. 841, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was deleted from between "Alzheimer's" and "related" in subsections (a) and (c).

31-8-183. Areas covered by disclosure requirements.

The disclosure required by Code Section 31-8-182 shall explain the specialized care, treatment, or therapeutic activities provided to patients, residents, or participants with Alzheimer's disease or Alzheimer's related dementia in each of the following areas:

(1) The overall philosophy and mission of the entity, facility, program, or of the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181 which reflects the needs of patients or residents with Alzheimer's disease or Alzheimer's related dementia;

(2) The processes for accepting patients, residents, or participants into the entity, facility, program, or into the instrumentality of the state or of a political subdivision of the state; for discharging patients, residents, or participants from the entity, facility, program, or from the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181; and for handling emergency situations;

(3) The processes used for defining the programs of services of that entity, facility, program, or of that instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181, including the method by which the program of services responds to changes in the patient's, resident's, or participant's needs;

(4) Staffing, staff training, and continuing education practices;

(5) Description of the physical environment including safety and security features;

(6) The frequency and types of activities for patients, residents, or participants;

(7) The involvement of the entity, facility, program, or of the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181 with families and family support programs; and

(8) The charge structure of the specialized care, treatment, or therapeutic activities, including any additional fees.

History. — Code 1981, § 31-8-183, enacted by Ga. L. 1995, p. 841, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was deleted from between "Alzheimer's" and "related" in paragraph (1).

31-8-184. Failure to provide disclosure; review and verification of disclosure form.

(a) Failure to provide disclosure as required by this article shall be considered a violation of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975," and all public and private remedies available under such part shall be available with regard to a violation of this article.

(b) Within existing procedures, the department may examine the disclosure form required by this article to verify its accuracy. If determined to be inaccurate, the department shall require the entity, facility, program, or the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181 either to:

(1) Provide the specialized care, treatment, or therapeutic activities listed on the disclosure form; or

(2) Modify the disclosure form to reflect the specialized care, treatment, or therapeutic activities actually being offered.

The entity, facility, program, or the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181 will make the decision of which alternative listed in paragraph (1) or (2) of this subsection to pursue. Action by the department in pursuit of this subsection shall not affect the licensing process for any entity, facility, program, or the instrumentality of the state or of a political subdivision of the state other than those excluded by Code Section 31-8-181.

(c) For the purposes of the review and verification referred to in subsection (b) of this Code section, the disclosure form being provided to the public at the time of the review and verification shall be used.

History. — Code 1981, § 31-8-184, enacted by Ga. L. 1995, p. 841, § 1.

ARTICLE 8

"HEALTH SHARE" VOLUNTEERS IN MEDICINE

Cross references. — Volunteers in health care specialties, § 43-1-28. Georgia Volunteers in Medicine Health Care Act, § 43-34-41. Liability of voluntary health care providers and sponsoring organizations, § 51-1-29.4.

Administrative rules and regulations. — Georgia Volunteer Health Pro-

gram, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Volunteer Programs, Subject 511-7-1.

31-8-190. Short title.

This article shall be known and may be cited as the "'Health Share' Volunteers in Medicine Act."

History. — Code 1981, § 31-8-190, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

31-8-191. Legislative findings and intent.

The General Assembly finds that a significant proportion of the residents of this state who are uninsured or Medicaid recipients are unable to access needed health care because health care providers fear the increased risk of medical negligence liability. It is the intent of the General Assembly that access to medical care for indigent residents be improved by providing governmental protection to health care providers who offer free quality medical services to underserved populations of the state. Therefore, it is the intent of the General Assembly to ensure that health care professionals who contract to provide such services as agents of the state are provided sovereign immunity.

History. — Code 1981, § 31-8-191, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

31-8-192. Definitions.

As used in this article, the term:

(1) "Contract" means an agreement executed in compliance with this article between a health care provider and a governmental contractor. This contract shall allow the health care provider to deliver health care services to low-income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. Payments made to a health care provider from the Indigent Care Trust Fund shall not constitute compensation under this article.

(2) "Department" means the Department of Public Health.

(3) "Disciplinary action" means any action taken by a licensing board to reprimand a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section for inappropriate or impermissible behavior.

(4) "Governmental contractor" means the department or its designee or designees.

(5) "Health care provider" or "provider" means:

(A) An ambulatory surgical center licensed under Article 1 of Chapter 7 of this title;

(B) A hospital or nursing home licensed under Article 1 of Chapter 7 of this title;

(C) A physician or physician assistant licensed under Article 2 of Chapter 34 of Title 43;

(D) An osteopathic physician or osteopathic physician assistant licensed under Article 2 of Chapter 34 of Title 43;

(E) A chiropractic physician licensed under Chapter 9 of Title 43;

(F) A podiatric physician licensed under Chapter 35 of Title 43;

(F.1) A physical therapist licensed under Chapter 33 of Title 43;

(G) A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under Chapter 26 of Title 43 or any facility which employs nurses licensed or registered under Chapter 26 of Title 43 to supply all or part of the care delivered under this article;

(H) A midwife certified under Chapter 26 of this title;

(I) A speech-language pathologist or audiologist licensed under Chapter 44 of Title 43;

(J) An optometrist certified under Chapter 30 of Title 43;

(K) A professional counselor, social worker, or marriage and family therapist licensed under Chapter 10A of Title 43;

(L) An occupational therapist licensed under Chapter 28 of Title 43;

(M) A psychologist licensed under Chapter 39 of Title 43;

(N) A dietitian licensed under Chapter 11A of Title 43;

(O) A pharmacist licensed under Chapter 4 of Title 26;

(P) A health maintenance organization certificated under Chapter 21 of Title 33;

(Q) A professional association, professional corporation, limited liability company, limited liability partnership, or other entity which provides or has members which provide health care services;

(R) A safety net clinic, which includes any other medical facility the primary purpose of which is to deliver human dental or medical diagnostic services or which delivers nonsurgical human medical

treatment and which may include an office maintained by a provider;

(S) A dentist or dental hygienist licensed under Chapter 11 of Title 43; or

(T) Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as any one of the professionals listed in subparagraphs (C) through (O) of this paragraph.

The term includes any nonprofit corporation qualified as exempt from federal income taxation under Section 501(c) of the Internal Revenue Code which delivers health care services provided by licensed professionals listed in this paragraph, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

(6) "Low-income" means:

(A) A person who is Medicaid eligible under the laws of this state;

(B) A person:

(i) Who is without health insurance; or

(ii) Who has health insurance that does not cover the injury, illness, or condition for which treatment is sought; and

whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget;

(C) A person:

(i) Who is without dental insurance; or

(ii) Who has dental insurance that does not cover the injury, illness, or condition for which treatment is sought; and

whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget; or

(D) Any client or beneficiary of the department, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities who voluntarily chooses to participate in a program offered or approved by the department, the Department of Human Services, or the Department of Behavioral Health and Developmental Disabilities and meets the program eligibility guidelines of the department, the Department of Human Services,

or the Department of Behavioral Health and Developmental Disabilities whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget.

(7) "Occasional-service volunteer" means a volunteer who provides one-time or occasional volunteer service.

(8) "Regular-service volunteer" means a volunteer engaged in specific voluntary service activities on an ongoing or continuous basis.

(9) "Restriction" means any limitation imposed by a licensing board on a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section.

(10) "Sanction" means any penalty imposed by a licensing board or other regulatory entity on a medical practitioner included as a health care provider pursuant to paragraph (5) of this Code section.

(11) "Volunteer" means any person who, of his or her own free will, and in support of or in assistance to the program of health care services provided pursuant to this article to any governmental contractor, provides goods or clerical services, computer services, or administrative support services, with or without monetary or material compensation. This term shall not include a health care provider.

History. — Code 1981, § 31-8-192, enacted by Ga. L. 2005, p. 1493, § 1/HB 166; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2006, p. 215, § 1/HB 1224; Ga. L. 2008, p. 354, § 1/HB 1222; Ga. L. 2009, p. 453, § 1-34/HB 228; Ga. L. 2009, p. 613, § 1/SB 133; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-193. Establishment of program; contracts with health care providers.

(a) The department is authorized and directed to establish a program pursuant to this article to provide for health care services to low-income recipients. The department shall enter into contracts to effectuate the purposes of this article. The department shall make reasonable efforts to promote the program to ensure awareness and participation by low-income recipients. It is the intent of the General Assembly that this program be established as soon as is practicable after July 1, 2005, and that the program be implemented state wide at the earliest possible date, subject to available funding.

(b) A health care provider that executes a contract with a governmental contractor to deliver health care services on or after July 1, 2005, as an agent of the governmental contractor shall be considered a

state officer or employee for purposes of Article 2 of Chapter 21 of Title 50, while acting within the scope of duties pursuant to the contract, if the contract complies with the requirements of this article and regardless of whether the individual treated is later found to be ineligible. A health care provider acting under the terms of a contract with a governmental contractor may not be named as a defendant in any action arising out of the medical care or treatment provided on or after July 1, 2005, pursuant to contracts entered into under this article. The contract must provide that:

(1) The right of dismissal or termination of any health care provider delivering services pursuant to the contract is retained by the governmental contractor;

(2) The governmental contractor has access to the patient records of patients provided services pursuant to this article of any health care provider delivering services pursuant to the contract;

(3) Adverse incidents and information on treatment outcomes, as defined by the department and in accordance with the rules and regulations of the department, must be reported by any health care provider to the governmental contractor if such incidents and information pertain to a patient treated pursuant to the contract. If an incident involves a licensed professional or a licensed facility, the governmental contractor shall submit such incident reports to the appropriate department, agency, or board, which shall review each incident and determine whether it involves conduct by the licensee that is subject to disciplinary action. All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities pursuant to this paragraph are confidential and exempt from the provisions of Article 4 of Chapter 18 of Title 50;

(4) The health care provider shall provide services to patients on a walk-in and referral basis, in accordance with the terms of the contract. The provider must accept all referred patients; provided, however, that the number of patients that must be accepted may be limited under the terms of the contract;

(5) The health care provider shall not provide services to a patient unless such patient has received and signed the notice required in Code Section 31-8-194; provided, however, in cases of emergency care, the patient's legal representative shall be required to receive and sign the notice, or if such individual is unavailable, such patient shall receive and sign the notice within 48 hours after the patient has the mental capacity to consent to treatment;

(6) Patient care and health care services shall be provided in accordance with the terms of the contract and with rules and

regulations as established by the department pursuant to this article. Experimental procedures and clinically unproven procedures shall not be provided or performed pursuant to this article. The governmental contractor may reserve the right to approve through written protocols any specialty care services and hospitalization, except emergency care as provided for in paragraph (5) of this subsection; and

(7) The provider is subject to supervision and regular inspection by the governmental contractor.

(c) In order to enter into a contract under this Code section, a health care provider shall:

(1) Have a current valid Georgia health professional license;

(2) Not be under probation or suspension by the applicable licensing board or subject to other restrictions, sanctions, or disciplinary actions imposed by the applicable licensing board. The department, in its discretion, shall determine if a past restriction, sanction, or disciplinary action imposed by the applicable licensing board is of such a grave and offensive nature with respect to patient safety concerns as to warrant refusal to enter into a contract with such health care provider pursuant to this subsection;

(3) Not be subject to intermediate sanction by the Centers for Medicare and Medicaid Services for medicare or Medicaid violations or be subject to sanctions with regard to other federally funded health care programs; and

(4) Submit to a credentialing process to determine acceptability of participation.

(d) The provider shall not subcontract for the provision of services under this chapter.

(e) A contract entered into pursuant to this Code section shall be effective for all services provided by the health care provider pursuant to this chapter, without regard to when the services are performed.

History. — Code 1981, § 31-8-193, enacted by Ga. L. 2005, p. 1493, § 1/HB 166; Ga. L. 2008, p. 354, § 2/HB 1222; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2012, p. 775, § 31/HB 942.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "July 1, 2005," was substituted for "the effective date of this article" in the last sentence of subsection (a); a semicolon was substituted for a period at the end of paragraphs (b)(4) and (b)(5); and "; and" was substituted for a period at the end of paragraph (b)(6).

Administrative rules and regulations. — Georgia Volunteer Health Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Volunteer Programs, Subject 511-7-1.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-8-194. Notice to patients required.

The governmental contractor or the health care provider if designated in the contract must provide written notice to each patient or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is a state employee or officer for purposes of this article and that the exclusive remedy for injury or damage suffered as the result of any act or omission of a provider acting within the scope of duties pursuant to a contract is by commencement of an action pursuant to the provisions of Article 2 of Chapter 21 of Title 50 and that a remedy or remedies for injury or damage suffered as the result of any act or omission of a provider acting outside the scope of duties shall be as provided for under general tort law or other applicable law.

History. — Code 1981, § 31-8-194, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

31-8-195. Volunteers to provide services.

(a) Every governmental contractor is authorized to recruit, train, and accept the services of volunteers, including regular-service volunteers and occasional-service volunteers in support of or in assistance to the program of health care services provided pursuant to this article to provide services, including but not limited to clerical, computer, and administrative support.

(b) Prior to providing any services, a volunteer shall enter into a written agreement with the governmental contractor in a form as prescribed by the department.

(c) Each governmental contractor utilizing the services of volunteers pursuant to this Code section shall:

(1) Take such actions as are necessary to ensure that volunteers understand their duties and responsibilities;

(2) Take such actions as are necessary to ensure that volunteers are made aware of and follow all applicable health and safety rules, regulations, and procedures;

(3) Take such actions as are necessary to ensure that volunteers are provided appropriate oversight and guidance in the performance of their volunteer service; and

(4) Ensure that each volunteer enters into a written agreement with the governmental contractor in accordance with subsection (b) of this Code section.

(d) A volunteer shall be considered a state employee or officer for purposes of Article 2 of Chapter 21 of Title 50 while performing services pursuant to and in accordance with this Code section.

History. — Code 1981, § 31-8-195, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

Administrative rules and regulations. — Georgia Volunteer Health Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Volunteer Programs, Subject 511-7-1.

31-8-195.1. Sovereign immunity protection for health care professionals in safety net clinics.

(a) A registered professional nurse, nurse midwife, licensed practical nurse, or advanced practice registered nurse licensed or registered under Chapter 26 of Title 43 or a physician assistant licensed pursuant to Article 4 of Chapter 34 of Title 43 who is employed by a safety net clinic that executes a contract with a governmental contractor pursuant to this article shall be considered a state officer or employee for purposes of Article 2 of Chapter 21 of Title 50 while providing health care services pursuant to such contract, so long as such nurse or physician assistant provides nonemergent care and such nurse's or physician assistant's total compensation, including all cash and noncash remunerations, does not fluctuate in relation to:

(1) The number of patients served in the clinic;

(2) The number of patient visits to the clinic;

(3) Treatments in the clinic; or

(4) Any other fact relating to the number of patient contacts or services rendered

pursuant to a contract under this article.

(b) A physician licensed pursuant to Chapter 34 of Title 43 or medical resident who provides nonemergent medical care and treatment in a safety net clinic that executes a contract with a governmental contractor pursuant to this article shall be considered a state officer or employee for purposes of Article 2 of Chapter 21 of Title 50 while providing health care services pursuant to such contract, so long as the physician is practicing pursuant to a license issued under Code Section 43-34-41 or the physician or resident receives no compensation from the safety net clinic and is on staff at a local or regional hospital and provided that the physician's total compensation, including all cash and noncash remunerations, does not fluctuate in relation to:

(1) The number of patients served in the clinic;

(2) The number of patient visits to the clinic;

(3) Treatments in the clinic; or

(4) Any other fact relating to the number of patient contacts or services rendered

pursuant to a contract under this article.

(c) No hospital shall require a physician to provide services at a safety net clinic as a condition for granting of staff privileges or for retaining staff privileges at such hospital.

(d) This Code section shall be supplemental to all other provisions of law that provide defenses to health care providers. This Code section shall not create any new cause of action against a health care provider or additional liability to health care providers.

History. — Code 1981, § 31-8-195.1, enacted by Ga. L. 2009, p. 613, § 2/SB 133; Ga. L. 2010, p. 209, § 1/SB 344.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "43-34-41" was substituted for "43-34-45.1" in subsection (b).

Law reviews. — For annual survey of law on trial practice and procedure, see 62 Mercer L. Rev. 339 (2010).

31-8-196. Exemption from employment regulations.

Health care providers and volunteers recruited, trained, or accepted under this article shall not be subject to any provisions of the laws of this state relating to state employment, collective bargaining, hours of work, rates of compensation, leave time, or employee benefits. However, all health care providers and volunteers shall comply with applicable department or agency rules and regulations. Health care providers who are individuals and volunteers shall be considered as unpaid independent volunteers and shall not be entitled to unemployment compensation.

History. — Code 1981, § 31-8-196, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

31-8-197. Annual report of claims statistics.

The Department of Administrative Services shall annually compile a report of all claims statistics which shall include the number and total of all claims pending and paid, and defense and handling costs associated with all claims brought against contract providers under this article. This report shall be forwarded to the department and included in the annual report submitted to the General Assembly pursuant to Code Section 31-8-198.

History. — Code 1981, § 31-8-197, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

31-8-198. Annual report by the department summarizing the efficiency of access and treatment outcomes.

Annually, the department shall report to the President of the Senate, the Speaker of the House of Representatives, the minority leaders of each house, and chairpersons of the House Health and Human Services Committee and the Senate Health and Human Services Committee, summarizing the efficacy of access and treatment outcomes with respect to providing health care services for low-income persons pursuant to this article.

History. — Code 1981, § 31-8-198, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

31-8-199. Department's responsibilities regarding liability insurance.

The department shall be responsible for and shall pay such amounts as determined by the Department of Administrative Services for insurance premiums for liability coverage for the cost of claims and defense against litigation arising out of health care services delivered pursuant to this article. The department shall be responsible for submitting to the Department of Administrative Services all underwriting information requested by and all insurance premiums assessed by the Department of Administrative Services. The department shall annually report to the Department of Administrative Services the number and type of providers who have entered into a contract pursuant to this article.

History. — Code 1981, § 31-8-199, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

31-8-200. Adoption of rules and regulations.

The department shall adopt rules and regulations to administer this article in a manner consistent with its purpose to provide and facilitate access to appropriate, safe, and cost-effective health care services and to maintain health care quality. All providers and volunteers shall be subject to such rules and regulations. The rules may include services to be provided and authorized procedures.

History. — Code 1981, § 31-8-200, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

31-8-201. Applicability; preservation of the state's rights under the Tort Claims Act.

This article applies to incidents occurring on or after July 1, 2005. Nothing in this article in any way reduces or limits the rights of the state or any of its agencies or subdivisions to any benefit currently provided under Article 2 of Chapter 21 of Title 50.

History. — Code 1981, § 31-8-201, enacted by Ga. L. 2005, p. 1493, § 1/HB 166.

ARTICLE 9

FEDERAL AND STATE FUNDED HEALTH CARE FINANCING PROGRAMS OVERVIEW COMMITTEE

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, Article 9 of Chapter 8 of Title 31 as enacted by Ga. L. 2013, p. 586, § 1/SB 14, was redesignated as Article 10 of Chapter 8 of Title 31.

31-8-210. Committee established; composition; officers; terms of office; duties and responsibilities; assistance from other state officers and agencies; compensation, per diem, and expense allowances; funding.

Reserved. Repealed by Ga. L. 2019, p. 148, § 2-8/HB 186, effective July 1, 2019, and by Ga. L. 2019, p. 919, § 9-1/HB 553, effective July 1, 2019.

Editor's notes. — This article consisted of Code Section 31-8-210, relating to federal and state funded health care financing programs overview committee, and was based on Code 1981, § 31-8-210, enacted by Ga. L. 2013, p. 1037, § 3/SB 62.

Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

Ga. L. 2019, p. 919, § 9-2/HB 553, not codified by the General Assembly, provides: "Any assets of the Federal and State Funded Health Care Financing Programs Overview Committee existing as of June 30, 2019, shall devolve by operation of law and without further action to the State of Georgia on July 1, 2019. Any liabilities and obligations of the Federal and State Funded Health Care Financing Programs Overview Committee existing as of June 30, 2019, shall be transferred to and assumed by the State of Georgia, by such instruments as may be required to maintain the same."

ARTICLE 10

DRUG REPOSITORY PROGRAM

Editor's notes. — Ga. L. 2014, p. 866, § 31/SB 340, effective April 29, 2014, repealed the Code sections formerly codified at this article. The former article consisted of Code Sections 31-8-301 through 31-8-306, relating to the Georgia Alzheimer's and Related Dementias State Plan Task Force, and was based on Ga. L. 2013,

p. 586, § 1/SB 14.

31-8-300. Definitions.

As used in this article, the term:

(1) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29 and Schedules I through V of 21 C.F.R. Part 1308.

(2) "Eligible patient" means an individual who is indigent, uninsured, underinsured, or enrolled in a public assistance health benefits program, in accordance with criteria established by the Department of Public Health pursuant to Code Section 31-8-304. Other individuals may be considered eligible patients if the need for donated drugs for indigent, uninsured, underinsured, and public assistance health benefits program patients is less than the supply of donated drugs.

(3) "Eligible recipient" means a pharmacy, hospital, federally qualified health center, nonprofit clinic, or other entity meeting the criteria established by the Department of Public Health pursuant to Code Section 31-8-304.

(4) "Health care facility" means a:

(A) Nursing home licensed pursuant to Article 1 of Chapter 7 of this title;

(B) Personal care home licensed pursuant to Code Section 31-7-12;

(C) Assisted living community licensed pursuant to Code Section 31-7-12.2;

(D) Hospice licensed pursuant to Article 9 of Chapter 7 of this title; and

(E) Home health agency licensed pursuant to Article 7 of Chapter 7 of this title.

(5) "Health care professional" means any of the following who provide medical, dental, or other health related diagnosis, care, or treatment:

(A) Physicians licensed to practice medicine under Chapter 34 of Title 43;

(B) Registered nurses and licensed practical nurses licensed under Chapter 26 of Title 43;

(C) Physician assistants licensed under Chapter 34 of Title 43;

(D) Dentists and dental hygienists licensed under Chapter 11 of Title 43;

(E) Optometrists licensed under Chapter 30 of Title 43; and

(F) Pharmacists licensed under Chapter 4 of Title 26.

(6) "Hospital" means a facility licensed pursuant to Chapter 7 of this title.

(7) "Program" means the drug repository program established pursuant to Code Section 31-8-301.

History. — Code 1981, § 31-8-300, enacted by Ga. L. 2016, p. 524, § 1/HB 897.

31-8-301. Drug repository program established; criteria and requirements for unused over-the-counter and prescription drugs.

(a) The Department of Public Health shall establish a drug repository program to accept and dispense over-the-counter and prescription drugs donated for the purpose of being dispensed to eligible patients.

(b) Drugs shall only be dispensed pursuant to the program if:

(1) For prescription drugs, they do not expire before the completion of the medication by the eligible patient based on the prescribing health care professional's directions for use and, for over-the-counter drugs, they do not expire before use by the eligible patient based on the directions for use on the manufacturer's label; and

(2) The drugs were donated in unopened tamper-evident packaging as defined by United States Pharmacopeia General Chapter 659, Packaging and Storage Requirements, including but not limited to unopened unit-dose and multiple-dose packaging.

(c) The following drugs shall not be donated to the program:

(1) Controlled substances;

(2) Drugs subject to a federal Food and Drug Administration managed risk evaluation and mitigation strategy pursuant to Section 355-1 of Title 21 of the United States Code if inventory transfer is prohibited by such strategy; or

(3) Drugs that there is reason to believe are adulterated pursuant to Code Section 26-3-7.

History. — Code 1981, § 31-8-301, enacted by Ga. L. 2016, p. 524, § 1/HB 897.

31-8-302. Procedures for donation and dispensing of unused over-the-counter and prescription drugs.

(a) Any person, including a drug manufacturer, wholesaler, reverse distributor pharmacy, third-party logistics provider, government entity, hospital, or health care facility, may donate over-the-counter and prescription drugs to the program. The drugs shall be donated to an eligible recipient that voluntarily elects to participate in the program. Nothing in this or any other Code section shall require an eligible recipient to participate in the program.

(b) An eligible recipient may do any of the following:

(1) Accept and dispense donated drugs to eligible patients. Prescription drugs shall only be dispensed pursuant to a valid prescription drug order. Eligible patients who are indigent, uninsured, underinsured, or enrolled in a public assistance health benefits program in accordance with criteria established by the Department of Public Health pursuant to Code Section 31-8-304 shall be prioritized over other individuals;

(2) Transfer donated drugs to another eligible recipient participating in the program or to a drug repository program operated by another state;

(3) Repackage donated drugs as necessary for dispensing, administration, or transfers; and

(4) Replenish drugs previously dispensed or administered to eligible patients.

(c) An eligible recipient that accepts donated drugs shall comply with all applicable federal laws and laws of this state dealing with storage and distribution of dangerous drugs and shall inspect all drugs prior to dispensing them to determine that they are not adulterated.

(d) An eligible recipient may charge a handling fee established in accordance with rules and regulations adopted by the Department of Public Health pursuant to Code Section 31-8-304; provided, however, that any such fee shall not exceed the reasonable costs of participating in the program.

(e) Drugs donated to the program shall not be resold; provided, however, that reimbursement for any fee charged as authorized pursuant to this article by a health plan or pharmacy benefits manager for donated drugs shall not constitute reselling. Nothing in this article shall require a health plan or pharmacy benefits manager to be reimbursed for donated drugs.

History. — Code 1981, § 31-8-302, enacted by Ga. L. 2016, p. 524, § 1/HB 897.

31-8-303. Limited liability.

When complying with the provisions of this article and the rules and regulations adopted pursuant to this chapter, unless an action or omission constitutes willful or wanton misconduct, the following persons or entities shall not be subject to criminal or civil prosecution, criminal or civil liability for injury, death, or loss to person or property, other criminal or civil action, or disciplinary actions by licensing, professional, or regulatory agencies:

(1) A person that donates or gives drugs to an eligible recipient, including a drug manufacturer, wholesaler, reverse distributor pharmacy, third-party logistics provider, government entity, hospital, or health care facility;

(2) An eligible recipient;

(3) A health care professional who prescribes or dispenses a donated drug;

(4) The Department of Public Health and State Board of Pharmacy;

(5) An intermediary that helps administer the program by facilitating the donation or transfer of drugs to eligible recipients;

(6) A manufacturer or repackager of a donated drug; and

(7) Any employee, volunteer, trainee, or other staff of individuals and entities listed in paragraphs (1) through (6) of this Code section.

History. — Code 1981, § 31-8-303, enacted by Ga. L. 2016, p. 524, § 1/HB 897.

31-8-304. Rules and regulations; waiver.

(a) No later than January 1, 2017, the Department of Public Health shall establish rules and regulations to implement the program according to the provisions of this article for criteria for eligible recipients; standards and procedures for safely storing and dispensing donated drugs; criteria for eligible patients to receive donated drugs, including priority for patients who are indigent, uninsured, underinsured, or enrolled in a public assistance health benefits program; and handling fees that may be charged by eligible recipients to eligible patients to cover restocking, marketing, administrative, and dispensing costs.

(b) The Department of Public Health may waive any provision of this article if it determines that the waiver is in the interest of public health and safety.

History. — Code 1981, § 31-8-304, enacted by Ga. L. 2016, p. 524, § 1/HB 897.

CHAPTER 9

CONSENT FOR SURGICAL OR MEDICAL TREATMENT

Sec.
31-9-1. Short title.
31-9-2. Persons authorized to consent to surgical or medical treatment.
31-9-3. Emergencies.
31-9-4. Applicability of chapter to care and treatment of mentally ill.
31-9-5. Applicability of chapter to abortion and sterilization procedures.
31-9-6. Construction of chapter; requirements of valid consent.
31-9-6.1. Disclosure of certain information to persons undergoing certain surgical or diagnostic procedures; failure to comply; exceptions; regulations establishing standards for implementation.
31-9-7. Right of persons who are at least 18 years of age to refuse to consent to treatment.

Cross references. — Adult's reliance on prayer or religious nonmedical means of treatment of dependent, § 15-11-107.

Administrative rules and regulations. — Professional services, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, § 111-8-4-.09.

Informed consent, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Medical Board, Chapter 360-14.

Law reviews. — For article, "Informed Consent: New Georgia Guidelines," discussing law of medical consent in Georgia, in light of Young v. Yarn, 136 Ga. App. 737, 222 S.E.2d 113 (1975), see 12 Ga. St. B. J. 197 (1976). For article, "Res Ipsa Loquitur and Medical Malpractice in Georgia: A Reassessment," see 17 Ga. L. Rev. 33 (1982). For article, "Baby Doe Cases: Compromise and Moral Dilemma," see 34 Emory L.J. 545 (1986).

For note, "The Evolution of the Doctrine of Informed Consent," see 12 Ga. L. Rev. 581 (1978).

JUDICIAL DECISIONS

Cited in Watson v. Worthy, 151 Ga. App. 131, 259 S.E.2d 138 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 148, 149, 150, 154.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 103 et seq., 112 et seq., 138.

ALR. — Consent as condition of right to perform surgical operation, 76 A.L.R. 562; 139 A.L.R. 1370.

Mental competency of patient to consent to surgical operation or medical treatment, 25 A.L.R.3d 1439.

Necessity and sufficiency of expert evidence to establish existence and extent of physician's duty to inform patient of risks of proposed treatment, 52 A.L.R.3d 1084.

Power of court or other public agency to order medical treatment for child over parental objections not based on religious grounds, 97 A.L.R.3d 421.

Medical practitioner's liability for treatment given child without parent's consent, 67 A.L.R.4th 511.

Power of court or other public agency to

order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 A.L.R.5th 248.

31-9-1. Short title.

This chapter shall be known and may be cited as the "Georgia Medical Consent Law."

History. — Code 1933, § 88-2901, enacted by Ga. L. 1971, p. 438, § 1.

31-9-2. Persons authorized to consent to surgical or medical treatment.

(a) In addition to such other persons as may be authorized and empowered, any one of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures not prohibited by law which may be suggested, recommended, prescribed, or directed by a duly licensed physician:

(1) Any adult, for himself or herself, whether by living will, advance directive for health care, or otherwise;

(1.1) Any person authorized to give such consent for the adult under an advance directive for health care or durable power of attorney for health care under Chapter 32 of this title;

(2) In the absence or unavailability of a person authorized pursuant to paragraph (1.1) of this subsection, any married person for his or her spouse;

(3) In the absence or unavailability of a living spouse, any parent, whether an adult or a minor, for his or her minor child;

(4) Any person temporarily standing in loco parentis, whether formally serving or not, for the minor under his or her care; and any guardian, for his or her ward;

(5) Any female, regardless of age or marital status, for herself when given in connection with pregnancy, or the prevention thereof, or childbirth;

(6) Upon the inability of any adult to consent for himself or herself and in the absence of any person to consent under paragraphs (1.1) through (5) of this subsection, the following persons in the following order of priority:

(A) Any adult child for his or her parents;

(B) Any parent for his or her adult child;

(C) Any adult for his or her brother or sister;

(D) Any grandparent for his or her grandchild;

(E) Any adult grandchild for his or her grandparent; or

(F) Any adult niece, nephew, aunt, or uncle of the patient who is related to the patient in the first degree; or

(7) Upon the inability of any adult to consent for himself or herself and in the absence of any person to consent under paragraphs (1.1) through (6) of this subsection, an adult friend of the patient. For purposes of this paragraph, "adult friend" means an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient's health care views and desires, and who is willing and able to become involved in the patient's health care decisions and to act in the patient's best interest. The adult friend shall sign and date an acknowledgment form provided by the hospital or other health care facility in which the patient is located for placement in the patient's records certifying that he or she meets such criteria.

(a.1) In the absence, after reasonable inquiry, of any person authorized in subsection (a) of this Code section to consent for the patient, a hospital or other health care facility or any interested person may initiate proceedings for expedited judicial intervention to appoint a temporary medical consent guardian pursuant to Code Section 29-4-18.

(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to surgical or medical treatment or procedures which the patient would have wanted had the patient understood the circumstances under which such treatment or procedures are provided. The person who consents on behalf of the patient in accordance with subsection (a) of this Code section shall have the right to visit the patient in accordance with the hospital or health care facility's visitation policy.

(c) For purposes of this Code section, the term "inability of any adult to consent for himself or herself" means a determination in the medical record by a licensed physician after the physician has personally examined the adult that the adult "lacks sufficient understanding or capacity to make significant responsible decisions" regarding his or her medical treatment or the ability to communicate by any means such decisions.

(d)(1) No hospital or other health care facility, health care provider, or other person or entity shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for relying in good faith on any direction or decision by any person reasonably believed to be authorized and empowered to consent under subsection (a) of this

Code section even if death or injury to the patient ensues. Each hospital or other health care facility, health care provider, and any other person or entity who acts in good faith reliance on any such direction or decision shall be protected and released to the same extent as though such person had interacted directly with the patient as a fully competent person.

(2) No person authorized and empowered to consent under subsection (a) of this Code section who, in good faith, acts with due care for the benefit of the patient, or who fails to act, shall be subject to civil or criminal liability for such action or inaction.

History. — Code 1933, § 88-2904, enacted by Ga. L. 1971, p. 438, § 1; Ga. L. 1972, p. 688, § 1; Ga. L. 1975, p. 704, § 2; Ga. L. 1991, p. 335, § 1; Ga. L. 2001, p. 4, § 31; Ga. L. 2007, p. 133, § 12/HB 24; Ga. L. 2010, p. 852, § 1/SB 367.

Cross references. — Temporary medical consent guardianship, § 29-4-18. Right of minor to obtain medical services for treatment of venereal disease on minor's consent alone, § 31-17-7. Effect of consent by husband and wife to performance of artificial insemination procedure, § 43-34-37. Consent of parent or guardian to blood donation by person 17 years of age or over, § 44-5-89.

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

"(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care."

Law reviews. — For article, "Marriage, Death and Taxes: The Estate Planning Impact of Windsor and Obergefell on Georgia's Same Sex Spouses," see 21 Ga. St. B. J. 9 (Oct. 2015).

JUDICIAL DECISIONS

Consent may be manifest by acts and conduct. — Consent to medical or surgical treatment may be manifest by acts and conduct, and need not necessarily be shown by writing or by express words. It may be implied from voluntary submission to treatment with full knowledge of what is going on. Smith v. Luckett, 155 Ga. App. 640, 271 S.E.2d 891 (1980).

Minors may not refuse unwanted care. — Georgia provides no "mature minor" exception to the state's general rule that only adults may refuse unwanted medical care. Novak v. Cobb County-Kennestone Hosp. Auth., 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd, 74 F.3d 1173 (11th Cir. 1996).

Parent signed as agent for adult son, not in personal capacity. — Trial court erred in granting summary judgment to a medical center and denying it to a patient's parent because the parent signed the form on behalf of the adult son as an agent, not in a personal capacity; thus, the parent was not personally liable for any unpaid medical bills. Winterboer v. Floyd Healthcare Mgmt., 334 Ga. App. 97, 778 S.E.2d 354 (2015).

Cited in In re Doe, 262 Ga. 389, 418 S.E.2d 3 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Practice of acupuncture constitutes practice of medicine under laws of Georgia. 1973 Op. Att'y Gen. No. 73-131.

Minor unmarried female's right to consent limited. — Whether minor, unmarried female under age of 18 years, can consent to medical treatment for herself when offered in conjunction with family planning services would depend in each instance on a determination of whether medical treatment was given in connection with pregnancy or childbirth. 1971 Op. Att'y Gen. No. 71-177.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, §§ 65, 70. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 155 et seq., 178, 316 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 103 et seq., 112 et seq., 138.

ALR. — Consent as condition of right to perform surgical operation, 76 A.L.R. 562; 139 A.L.R. 1370.

Mental competency of patient to consent to surgical operation or medical treatment, 25 A.L.R.3d 1439.

Necessity and sufficiency of expert evidence to establish existence and extent of physician's duty to inform patient of risks of proposed treatment, 52 A.L.R.3d 1084.

Malpractice: questions of consent in connection with treatment of genital or urinary organs, 89 A.L.R.3d 32.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 A.L.R.5th 248.

31-9-3. Emergencies.

(a) As used in this Code section, the term "emergency" means a situation wherein (1) according to competent medical judgment, the proposed surgical or medical treatment or procedures are reasonably necessary and (2) a person authorized to consent under Code Section 31-9-2 is not readily available and any delay in treatment could reasonably be expected to jeopardize the life or health of the person

affected or could reasonably result in disfigurement or impaired faculties.

(b) In addition to any instances in which a consent is excused or implied at law, a consent to surgical or medical treatment or procedures suggested, recommended, prescribed, or directed by a duly licensed physician will be implied where an emergency exists.

History. — Code 1933, § 88-2905, enacted by Ga. L. 1971, p. 438, § 1.

Cross references. — Further provisions regarding liability for rendering of emergency care, §§ 31-11-8, 51-1-29.

JUDICIAL DECISIONS

Cited in Winfrey v. Citizens & S. Nat'l Bank, 149 Ga. App. 488, 254 S.E.2d 725 (1979); Davis v. Charter By-The-Sea, Inc., 183 Ga. App. 213, 358 S.E.2d 865 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 65. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 156.

C.J.S. — 67A C.J.S., Parent and Child, §§ 38, 40, 41, 46 et seq. 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 103 et seq., 112 et seq.

ALR. — Consent as condition of right to perform surgical operation, 76 A.L.R. 562; 139 A.L.R. 1370.

Liability of physician or surgeon for extending operation or treatment beyond that expressly authorized, 56 A.L.R.2d 695.

Malpractice: questions of consent in connection with treatment of genital or urinary organs, 89 A.L.R.3d 32.

Malpractice in connection with electroshock treatment, 94 A.L.R.3d 317.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 A.L.R.5th 248.

31-9-4. Applicability of chapter to care and treatment of mentally ill.

This chapter shall be applicable to the care and treatment of patients in facilities for the mentally ill as defined in paragraph (7) of Code Section 37-3-1.

History. — Code 1933, § 88-2903, enacted by Ga. L. 1971, p. 438, § 1; Ga. L. 1975, p. 704, § 1.

RESEARCH REFERENCES

ALR. — Mental competency of patient to consent to surgical operation or medical treatment, 25 A.L.R.3d 1439.

Right of state prison authorities to administer neuroleptic or antipsychotic drugs to prisoner without his or her consent — state cases, 75 A.L.R.4th 1124.

31-9-5. Applicability of chapter to abortion and sterilization procedures.

This chapter shall not apply in any manner whatsoever to abortion and sterilization procedures, which procedures shall continue to be governed by existing law independently of the terms and provisions of this chapter.

History. — Code 1933, § 88-2902, enacted by Ga. L. 1971, p. 438, § 1.

Cross references. — Abortion generally, § 16-12-140 et seq. Performance of sterilization procedure, T. 31, C. 20.

JUDICIAL DECISIONS

Chapter specifically excludes sterilization procedures which are governed by Voluntary Sterilization Act, O.C.G.A. § 31-20-2. Robinson v. Parrish, 251 Ga. 496, 306 S.E.2d 922 (1983).

Cited in Robinson v. Parrish, 720 F.2d 1548 (11th Cir. 1983).

RESEARCH REFERENCES

ALR. — Right of minor to have abortion performed without parental consent, 42 A.L.R.3d 1406.

Woman's right to have abortion without consent of, or against objections of, child's father, 62 A.L.R.3d 1097.

Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information, 119 A.L.R.5th 315.

Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme Court cases, 20 A.L.R. Fed. 2d 1.

31-9-6. Construction of chapter; requirements of valid consent.

(a) This chapter shall be liberally construed, and all relationships set forth in this chapter shall include the adoptive, foster, and step relations as well as blood relations and the relationship by common-law marriage as well as ceremonial marriage.

(b) A consent by one person authorized and empowered to consent to surgical or medical treatment shall be sufficient.

(c) Any person acting in good faith shall be justified in relying on the representations of any person purporting to give consent, including, but not limited to, his identity, his age, his marital status, his emancipation, and his relationship to any other person for whom the consent is purportedly given.

(d) A consent to surgical or medical treatment which discloses in general terms the treatment or course of treatment in connection with which it is given and which is duly evidenced in writing and signed by the patient or other person or persons authorized to consent pursuant

to the terms of this chapter shall be conclusively presumed to be a valid consent in the absence of fraudulent misrepresentations of material facts in obtaining the same.

History. — Code 1933, § 88-2906, enacted by Ga. L. 1971, p. 438, § 1; Ga. L. 1991, p. 94, § 31.

Law reviews. — For article, "Informed Consent: New Georgia Guidelines," discussing law of medical consent in Georgia, in light of Young v. Yarn, 136 Ga. App. 737, 222 S.E.2d 113 (1975), see 12 Ga. St. B. J. 197 (1976). For article, "Georgia's Medical Consent Law," see 21 Ga. St. B. J. 138 (1985). For article, "Doreika v. Blotner: Affirming Ketchup against Judicial Mustard," see 60 Mercer L. Rev. 807 (2009).

For note, "Informed Confusion: The Doctrine of Informed Consent in Georgia," see 37 Ga. L. Rev. 1129 (2003).

For comment on Young v. Yarn, 136 Ga. App. 737, 222 S.E.2d 113 (1975), see 28 Mercer L. Rev. 377 (1976).

JUDICIAL DECISIONS

Physician's duty to disclose risks. — To the extent there is a duty in Georgia pursuant to O.C.G.A. § 31-9-6 to disclose risks associated with a procedure performed by a doctor, that duty rests squarely upon the doctor. Butler v. South Fulton Medical Ctr., Inc., 215 Ga. App. 809, 452 S.E.2d 768 (1994).

Failure to disclose material facts. — Consent based upon failure to disclose material facts which a patient has a right to know is not valid and cannot satisfy subsection (d) of O.C.G.A. § 31-9-6. Gillis v. Cardio TVP Surgical Assocs., P.C., 239 Ga. App. 350, 520 S.E.2d 767 (1999).

Though the doctor never informed the patient that steroid injections were an alternative to surgery, there was no evidence that this omission was fraudulent; thus, the patient was bound by the consent form signed, and the trial court correctly directed a verdict on the patient's battery claim. Bowling v. Foster, 254 Ga. App. 374, 562 S.E.2d 776 (2002).

Physician's duty of disclosure does not include disclosure of risks of treatment. McMullen v. Vaughan, 138 Ga. App. 718, 227 S.E.2d 440 (1976).

No requirement of disclosure for risks of treatment. — Requirement of disclosure in general terms, the treatment or terms of treatment, cannot be interpreted as including a requirement for disclosure of risks of treatment. Young v. Yarn, 136 Ga. App. 737, 222 S.E.2d 113 (1975); Simpson v. Dickson, 167 Ga. App. 344, 306 S.E.2d 404 (1983).

While attending physician is required to inform patient of general terms of treatment, this duty does not require disclosure of risks of treatment. Fox v. Cohen, 160 Ga. App. 270, 287 S.E.2d 272 (1981).

Physician must inform the patient of the general terms of treatment. This duty does not include a disclosure of "risks of treatment." Robinson v. Parrish, 251 Ga. 496, 306 S.E.2d 922 (1983).

Physician must inform a patient of the general terms of treatment, but a disclosure of the "risks of treatment" need not be given. Sikorski v. Bell, 167 Ga. App. 803, 307 S.E.2d 701 (1983).

Informed consent doctrine is not a viable principle of law in this state. McMullen v. Vaughan, 138 Ga. App. 718, 227 S.E.2d 440 (1976).

Traditional doctrine of informed consent has been specifically rejected and whatever information must be disclosed as to general course of treatment does not include legally specified risks. Parr v. Palmyra Park Hosp., 139 Ga. App. 457, 228 S.E.2d 596 (1976).

Claims arising out of failure to disclose physician's limitations. — Patient's complaint could be read to adequately plead claims for fraud, battery, and negligent misrepresentation by alleging that the doctor failed to inform the patient of the doctor's known disabilities prior to the surgery; the known physical limitations caused the doctor to perform the surgery in a deficient manner; and the patient experienced complications as a

direct result of the surgery. Holmes v. Lyons, 346 Ga. App. 99, 815 S.E.2d 252 (2018).

Disclosure of general course of treatment to patient precludes any action based on lack of consent to treatment undertaken. Holbrook v. Schatten, 165 Ga. App. 217, 299 S.E.2d 128 (1983).

Since appellant signed a consent form authorizing surgery, and the record clearly established that appellant understood the general course of proposed treatment, the appellant was precluded from maintaining an action alleging that defendant/physician breached the physician's duty in failing to warn of risks of treatment or that appellant's consent was thereby rendered invalid absent a showing of fraudulent misrepresentations of material fact. Holbrook v. Schatten, 165 Ga. App. 217, 299 S.E.2d 128 (1983).

No action for failure to warn of risks. — As duty under O.C.G.A. § 31-9-6 does not include a disclosure of risks of treatment, plaintiff-patient cannot sustain an action alleging that the defendant breached the defendant's duty in failing to warn of the risks of treatment or that the plaintiff's consent was thereby rendered invalid. Blount v. Moore, 159 Ga. App. 80, 282 S.E.2d 720 (1981).

Physician must respond to questions truthfully. — When the doctor responds to a specific question posed by a patient concerning the risks of the contemplated treatment, a duty arises to speak truthfully. Spikes v. Heath, 175 Ga. App. 187, 332 S.E.2d 889 (1985); Smith v. Wilfong, 218 Ga. App. 503, 462 S.E.2d 163 (1995); Campbell v. Breedlove, 244 Ga. App. 819, 535 S.E.2d 308 (2000).

When there is no evidence of fraudulent misrepresentations by a doctor in obtaining the consent of a patient for a laparoscopy and the evidence is undisputed that a dilation and curettage surgical procedure is often performed as a preliminary to a laparoscopy, the consent of the patient to both operations is conclusively presumed to be a valid consent. Cole v. Jordan, 161 Ga. App. 409, 288 S.E.2d 260 (1982).

Good faith in accepting authority to consent held question of fact. — Question of fact precluding summary judgment existed as to whether physician acted in good faith when accepting the authority of county Department of Family and Children Services to consent to heart catheter procedure of child after hearing father's objection to procedure. Bendiburg v. Dempsey, 707 F. Supp. 1318 (N.D. Ga. 1989), modified on other grounds, 909 F.2d 463 (11th Cir. 1990), cert. denied, 500 U.S. 932, 111 S. Ct. 2053, 114 L. Ed. 2d 459 (1991).

Presumption of valid consent is created when such consent is in writing. Fox v. Cohen, 160 Ga. App. 270, 287 S.E.2d 272 (1981).

Effect of inadequacy of consent form when patient knew general course of treatment. — If the consent form is inadequate, or if there is no written consent shown, summary judgment for physician may be obtained by establishing that plaintiff-patient knew, from any source, the general course of treatment to be undertaken. Parr v. Palmyra Park Hosp., 139 Ga. App. 457, 228 S.E.2d 596 (1976).

Ambiguous terms in consent form construed against physicians. — When language in a consent form was ambiguous as to whether consent was given only to additional procedures which were both necessary and appropriate or which were either necessary or appropriate, and, whether if two different classes of additional procedures existed, within which class the procedure performed on plaintiff existed, because of the inequality of the bargaining position between defendant physicians and plaintiff, the ambiguity was construed against the defendants as encompassing only additional procedures which were both necessary and appropriate when rendered. Harris v. Tatum, 216 Ga. App. 607, 455 S.E.2d 124 (1995).

Doctrine of res ipsa loquitur inapplicable in malpractice suits. Young v. Yarn, 136 Ga. App. 737, 222 S.E.2d 113 (1975).

Consent to "excision biopsy" of lesion. — Patient's consent to a general course of treatment does not preclude an action for battery for the treatment actually undertaken. Specifically, pursuant to

the terms of the consent form at issue, the patient's consent to an "excision biopsy" of a lesion on the patient's face did not grant the doctor general authority for any other surgical treatment of the lesion. Johnson v. Srivastava, 199 Ga. App. 696, 405 S.E.2d 725 (1991).

Alteration of medical records after surgery. — Even if evidence existed that a doctor altered medical records pertaining to a surgical procedure after the procedure was completed, that evidence could not support a claim that the patient was fraudulently induced to sign the consent form before the surgery. Long v. Natarajan, 291 Ga. App. 814, 662 S.E.2d 876 (2008).

Notice of use of physician's assistant. — Although O.C.G.A. § 43-34-106 does not require a physician to include notice of the use of a physician's assistant on a surgical consent form, it is not unreasonable to expect that this type of information would be included. Gillis v. Cardio TVP Surgical Assocs., P.C., 239 Ga. App. 350, 520 S.E.2d 767 (1999).

Motion for summary judgment. — Court denied a patient's motion for reconsideration of the denial of a motion for summary judgment as to a battery claim that the patient asserted against a doctor because, by the patient's own admission, the evidence that the patient asserted upon reconsideration, as well as the patient's argument that under O.C.G.A. § 31-9-6(d) the patient could not consent to an unlawful surgery, could and should have been asserted in the patient's summary judgment motion. Otero v. Vito, 144 Fed. Appx. 762 (M.D. Ga. Nov. 13, 2006).

Cited in Kenney v. Piedmont Hosp., 136 Ga. App. 660, 222 S.E.2d 162 (1975); Winfrey v. Citizens & S. Nat'l Bank, 149 Ga. App. 488, 254 S.E.2d 725 (1979); Butler v. Brown, 162 Ga. App. 376, 290 S.E.2d 293 (1982); Hyles v. Cockrill, 169 Ga. App. 132, 312 S.E.2d 124 (1983); Verre v. Allen, 175 Ga. App. 749, 334 S.E.2d 350 (1985); Anglin v. Grisamore, 192 Ga. App. 704, 386 S.E.2d 52 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 65.

C.J.S. — 67A C.J.S., Parent and Child, §§ 38, 40, 41, 46 et seq.

ALR. — Mental competency of patient to consent to surgical operation or medical treatment, 25 A.L.R.3d 1439.

Necessity and sufficiency of expert evidence to establish existence and extent of physician's duty to inform patient of risks of proposed treatment, 52 A.L.R.3d 1084.

Malpractice: physician's duty to inform patient of nature and hazards of radiation or x-ray treatments under the doctrine of informed consent, 69 A.L.R.3d 1223.

Modern status of views as to general measure of physician's duty to inform patient of risks of proposed treatment, 88 A.L.R.3d 1008.

Malpractice: questions of consent in connection with treatment of genital or urinary organs, 89 A.L.R.3d 32.

Malpractice: physician's duty, under informed consent doctrine, to obtain patient's consent to treatment in pregnancy or childbirth cases, 89 A.L.R.4th 799.

Liability of dentist for extraction of teeth — Lack of informed consent, 125 A.L.R.5th 403.

31-9-6.1. Disclosure of certain information to persons undergoing certain surgical or diagnostic procedures; failure to comply; exceptions; regulations establishing standards for implementation.

(a) Except as otherwise provided in this Code section, any person who undergoes any surgical procedure under general anesthesia, spinal anesthesia, or major regional anesthesia or any person who undergoes an amniocentesis diagnostic procedure or a diagnostic procedure which

involves the intravenous or intraductal injection of a contrast material must consent to such procedure and shall be informed in general terms of the following:

(1) A diagnosis of the patient's condition requiring such proposed surgical or diagnostic procedure;

(2) The nature and purpose of such proposed surgical or diagnostic procedure;

(3) The material risks generally recognized and accepted by reasonably prudent physicians of infection, allergic reaction, severe loss of blood, loss or loss of function of any limb or organ, paralysis or partial paralysis, paraplegia or quadriplegia, disfiguring scar, brain damage, cardiac arrest, or death involved in such proposed surgical or diagnostic procedure which, if disclosed to a reasonably prudent person in the patient's position, could reasonably be expected to cause such prudent person to decline such proposed surgical or diagnostic procedure on the basis of the material risk of injury that could result from such proposed surgical or diagnostic procedure;

(4) The likelihood of success of such proposed surgical or diagnostic procedure;

(5) The practical alternatives to such proposed surgical or diagnostic procedure which are generally recognized and accepted by reasonably prudent physicians; and

(6) The prognosis of the patient's condition if such proposed surgical or diagnostic procedure is rejected.

(b)(1) If a consent to a surgical or diagnostic procedure is required to be obtained under this Code section and such consent is not obtained in writing in accordance with the requirements of this Code section, then no presumption shall arise as to the validity of such consent.

(2) If a consent to a diagnostic or surgical procedure is required to be obtained under this Code section and such consent discloses in general terms the information required in subsection (a) of this Code section, is duly evidenced in writing, and is signed by the patient or other person or persons authorized to consent pursuant to the terms of this chapter, then such consent shall be rebuttably presumed to be a valid consent.

(c) In situations where a consent to a surgical or diagnostic procedure is required under this Code section, it shall be the responsibility of the responsible physician to ensure that the information required by subsection (a) of this Code section is disclosed and that the consent provided for in this Code section is obtained. The information provided for in this Code section may be disclosed through the use of video tapes,

audio tapes, pamphlets, booklets, or other means of communication or through conversations with nurses, physician assistants, trained counselors, patient educators, or other similar persons known by the responsible physician to be knowledgeable and capable of communicating such information; provided, however, that for the purposes of this Code section only, if any employee of a hospital or ambulatory surgical treatment center participates in any such conversations at the request of the responsible physician, such employee shall be considered for such purposes to be solely the agent of the responsible physician.

(d) A failure to comply with the requirements of this Code section shall not constitute a separate cause of action but may give rise to an action for medical malpractice as defined in Code Section 9-3-70 and as governed by other provisions of this Code relating to such actions; and any such action shall be brought against the responsible physician or any hospital, ambulatory surgical treatment center, professional corporation, or partnership of which the responsible physician is an employee or partner and which is responsible for such physician's acts, or both, upon a showing:

(1) That the patient suffered an injury which was proximately caused by the surgical or diagnostic procedure;

(2) That information concerning the injury suffered was not disclosed as required by this Code section; and

(3) That a reasonably prudent patient would have refused the surgical or diagnostic procedure or would have chosen a practical alternative to such proposed surgical or diagnostic procedure if such information had been disclosed;

provided, however, that, as to an allegation of negligence for failure to comply with the requirements of this Code section, the expert's affidavit required by Code Section 9-11-9.1 shall set forth that the patient suffered an injury which was proximately caused by the surgical or diagnostic procedure and that such injury was a material risk required to be disclosed under this Code section.

(e) The disclosure of information and the consent provided for in this Code section shall not be required if:

(1) An emergency exists as defined in Code Section 31-9-3;

(2) The surgical or diagnostic procedure is generally recognized by reasonably prudent physicians to be a procedure which does not involve a material risk to the patient involved;

(3) A patient or other person or persons authorized to give consent pursuant to this chapter make a request in writing that the information provided for in this Code section not be disclosed;

(4) A prior consent, within 30 days of the surgical or diagnostic procedure, complying with the requirements of this Code section to the surgical or diagnostic procedure has been obtained as a part of a course of treatment for the patient's condition; provided, however, that if such consent is obtained in conjunction with the admission of the patient to a hospital for the performance of such procedure, the consent shall be valid for a period of 30 days from the date of admission or for the period of time the person is confined in the hospital for that purpose, whichever is greater; or

(5) The surgical or diagnostic procedure was unforeseen or was not known to be needed at the time consent was obtained, and the patient has consented to allow the responsible physician to make the decision concerning such procedure.

(f) A prior consent to surgical or diagnostic procedures obtained pursuant to the provisions of this Code section shall be deemed to be valid consent for the responsible physician and all medical personnel under the direct supervision and control of the responsible physician in the performance of such surgical or diagnostic procedure and for all other medical personnel otherwise involved in the course of treatment of the patient's condition.

(g) The Georgia Composite Medical Board shall be required to adopt and have the authority to promulgate rules and regulations governing and establishing the standards necessary to implement this chapter specifically including but not limited to the disciplining of a physician who fails to comply with this Code section.

(h) As used in this Code section, the term "responsible physician" means the physician who performs the procedure or the physician under whose direct orders the procedure is performed by a nonphysician.

History. — Code 1981, § 31-9-6.1, enacted by Ga. L. 1988, p. 1443, § 1; Ga. L. 1989, p. 178, § 1; Ga. L. 1990, p. 1400, § 1; Ga. L. 2001, p. 4, § 31; Ga. L. 2009, p. 859, §§ 2, 3/HB 509.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a comma was inserted following "spinal anesthesia" in the introductory paragraph of subsection (a).

Pursuant to Code Section 28-9-5, in 1990, "that" was deleted following "showing" at the end of the introductory language in subsection (d).

Editor's notes. — Ga. L. 1988, p. 1443, § 3, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 1989, and shall apply to all such surgical or diagnostic procedures performed on or after January 1, 1989."

Law reviews. — For annual survey on law of torts, see 42 Mercer L. Rev. 431 (1990). For article, "Albany Urology Clinic, P.C. v. Cleveland: Why You Should Always Ask Your Urologist if He Is a Cocaine Addict," see 52 Mercer L. Rev. 1159 (2001). For article, "Doreika v. Blotner: Affirming Ketchup against Judicial Mustard," see 60 Mercer L. Rev. 807 (2009). For article, "Eleventh Circuit Survey: January 1, 2008 — December 31, 2008: Casenote: Shots, Shoes, and Self-Representation: Indiana v. Edwards and the New Limitation on the Sixth

Amendment Right of Self-Representation," see 60 Mercer L. Rev. 1509 (2009). For annual survey of law on appellate practice and procedure, see 62 Mercer L. Rev. 25 (2010). For annual survey of law on trial practice and procedure, see 62 Mercer L. Rev. 339 (2010). For annual survey on trial practice and procedure, see 64 Mercer L. Rev. 305 (2012).

For note, "Informed Confusion: The Doctrine of Informed Consent in Georgia," see 37 Ga. L. Rev. 1129 (2003). For note, "An Advance Directive: The Elective, Effective Way to be Protective of Your Rights," see 68 Mercer L. Rev. 521 (2017).

JUDICIAL DECISIONS

Requisite disclosure defined. — Georgia's informed consent law does not require physicians to inform patients of all alternatives to surgery; it requires disclosure of only those alternatives that are "generally recognized and accepted by reasonably prudent physicians." Accordingly, a doctor was not liable for failing to inform a heart patient of a relatively unknown therapy treatment as an alternative to open heart surgery. Moore v. Baker, 989 F.2d 1129 (11th Cir. 1993).

Chiropractic treatment is not included among the matters for which informed consent is required by O.C.G.A. § 31-9-6.1. Blotner v. Doreika, 285 Ga. 481, 678 S.E.2d 80 (2009).

Physician's duty to disclose risks. — To the extent there is a duty in Georgia pursuant to O.C.G.A. § 31-9-6.1 to disclose risks associated with a procedure performed by a doctor, that duty rests squarely upon the doctor. Butler v. South Fulton Medical Ctr., Inc., 215 Ga. App. 809, 452 S.E.2d 768 (1994).

Physician was not under an affirmative obligation, either under statute or common law, to disclose drug use to patients prior to rendering services, and a physician's failure to make such disclosure could not be the basis for an independent cause of action against the physician. Albany Urology Clinic, P.C. v. Cleveland, 272 Ga. 296, 528 S.E.2d 777 (2000), reversing Cleveland v. Albany Urology Clinic, 235 Ga. App. 838, 509 S.E.2d 664 (1998).

Claims arising out of failure to disclose physician's limitations. — Patient's complaint could be read to adequately plead claims for fraud, battery, and negligent misrepresentation by alleging that the doctor failed to inform the patient of the doctor's known disabilities prior to the surgery; the known physical limitations caused the doctor to perform the surgery in a deficient manner; and the patient experienced complications as a direct result of the surgery. Holmes v. Lyons, 346 Ga. App. 99, 815 S.E.2d 252 (2018).

Statute of repose. — Five year statute of repose contained in O.C.G.A. § 9-3-71 applied to a battery claim based on the defendant's alleged failure to obtain the plaintiff's consent to the injection pursuant to O.C.G.A. § 31-9-6.1. Blackwell v. Goodwin, 236 Ga. App. 861, 513 S.E.2d 542 (1999).

Action not within scope of Code section. — Georgia's implied consent statute, O.C.G.A. § 31-9-6.1(d), did not require a patient to file an expert affidavit with a complaint for fraud, misrepresentation, and deceit against a physician that alleged that the physician knowingly and intentionally misrepresented the nature and quality of a local hospital's equipment; the patient's allegations fell outside the scope of § 31-9-6.1 because the claim that the physician affirmatively and intentionally misled the patient with respect to the local hospital's equipment for the purpose of inducing the patient to have heart surgery performed at the local hospital alleged intentional misrepresentation and not merely a failure to disclose a known risk. Murrah v. Fender, 282 Ga. App. 634, 639 S.E.2d 595 (2006).

Cause of action. — O.C.G.A. § 31-9-6.1 does not itself provide a cause of action but imposes disclosure requirements upon physicians before performing certain procedures. Campbell v. United States, 795 F. Supp. 1127 (N.D. Ga. 1991), aff'd, 962 F.2d 1579 (11th Cir. 1992), cert. denied, 507 U.S. 909, 113 S. Ct. 1254, 122 L. Ed. 2d 653 (1993).

While breach of the statute's requirements may support a cause of action under the medical malpractice statutes, the statute presupposes that one of the identified procedures was performed. Thus, there is no cause of action if none of the named procedures were performed. Campbell v. United States, 795 F. Supp. 1127 (N.D. Ga. 1991), aff'd, 962 F.2d 1579 (11th Cir. 1992), cert. denied, 507 U.S. 909, 113 S. Ct. 1254, 122 L. Ed. 2d 653 (1993).

Even if the informed consent statute applied to the patient's action against the dentist for damage the dentist allegedly caused when the dentist gave the patient an injection to numb pain, as the patient requested, the statute explicitly provided that violation of the statute did not give rise to a separate cause of action, but instead may give rise to a medical malpractice action; accordingly, the trial court did not err in granting partial summary judgment to the dentist on the patient's allegation that the informed consent statute was violated. Additionally, the injection was neither a surgical procedure nor one of the diagnostic procedures specified in the statute regarding the situations in which a healthcare provider had to obtain a patient's informed consent. Pope v. Davis, 261 Ga. App. 308, 582 S.E.2d 460 (2003).

Strictly construing O.C.G.A. § 31-9-6.1(d) of Georgia's informed consent statute, the statute contemplates a cause of action based on an injury resulting from an undisclosed material risk of the procedure. This is apparent from reading § 31-9-6.1(d)(2), requiring an injury resulting from information that was not disclosed, with the requirement that an expert testify that such injury was caused by a material risk required to be disclosed pursuant to § 31-9-6.1(a)(3). Callaway v. O'Connell, 44 F. Supp. 3d 1316 (M.D. Ga. Aug. 29, 2014).

Personal reasons for limitations on medical practice not subject to mandatory disclosure. — In a medical malpractice suit, a breach of fiduciary duty claim based on a doctor's failure to disclose why the doctor no longer delivered babies failed as a matter of law because the personal reasons why a doctor limited the doctor's practice area was not among the mandatory disclosures under the informed consent statute, O.C.G.A. § 31-9-6.1(a). Hooks v. Humphries, 303 Ga. App. 264, 692 S.E.2d 845 (2010).

Procedures not within scope of section. — O.C.G.A. § 31-9-6.1 did not apply to a thoracic sympathetic neurolytic block to relieve pain. Butler v. South Fulton Medical Ctr., Inc., 215 Ga. App. 809, 452 S.E.2d 768 (1994).

Summary judgment was properly granted dismissing a patient's claim under O.C.G.A. § 31-9-6.1, seeking to hold doctors liable for failure to obtain informed consent to the administration of anesthesia during cataract surgery because the surgery was not performed under any of the three types of anesthesia specified. Murphy v. Berger, 273 Ga. App. 798, 616 S.E.2d 132 (2005).

Because Georgia did not recognize a common law action for lack of informed consent, and because neither the mouth nor the jaw was considered a major region under O.C.G.A. § 31-9-6.1(a), the trial court did not err in granting partial summary judgment to a dentist on a patient's informed consent claim. Roberts v. Connell, 312 Ga. App. 515, 718 S.E.2d 862 (2011), cert. denied, No. S12C0488, 2012 Ga. LEXIS 654 (Ga. 2012).

Consent form created a rebuttable presumption that the plaintiff gave consent to the defendant doctor to perform an esophageal dilation because the procedure was not known to be needed at the time consent was obtained. Tuten v. Costrini, 238 Ga. App. 350, 518 S.E.2d 751 (1999).

Consent valid for medical personnel and physicians. — A valid consent obtained from plaintiff prior to plaintiff's surgery constituted a valid consent both as to the responsible physician and for all medical personnel, whether or not named, involved in the performance of the surgery under the responsible physician's direct supervision and control. Cardio TVP Surgical Assocs., P.C. v. Gillis, 272 Ga. 404, 528 S.E.2d 785 (2000), reversing Gillis v. Cardio TVP Surgical Assocs., P.C., 239 Ga. App. 350, 520 S.E.2d 767 (1999).

Nothing in O.C.G.A. § 31-9-6.1 renders a consent invalid when the names of the nonphysicians participating in the surgi-

cal procedure are not included in the consent form. Cardio TVP Surgical Assocs., P.C. v. Gillis, 272 Ga. 404, 528 S.E.2d 785 (2000), reversing Gillis v. Cardio TVP Surgical Assocs., P.C., 239 Ga. App. 350, 520 S.E.2d 767 (1999).

No battery claim. — Trial court erred in denying summary judgment to the medical defendant on the plaintiff's battery claim based on the surgical procedure because the uncontroverted evidence of record reflected that there was basic consent for the surgical procedure and allegations that the doctor did not fully disclose the nature of the procedure reflected on an informed consent, not a battery, claim. Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015), aff'd, 299 Ga. 315, 788 S.E.2d 392 (2016).

Cited in Albany Urology Clinic, P.C. v. Cleveland, 272 Ga. 296, 528 S.E.2d 777 (2000); Bethea v. Coralli, 248 Ga. App. 853, 546 S.E.2d 542 (2001).

RESEARCH REFERENCES

ALR. — Propriety of "hindsight" charge in medical malpractice actions, 124 A.L.R.5th 623.

Liability of dentist for extraction of teeth — Lack of informed consent, 125 A.L.R.5th 403.

31-9-7. Right of persons who are at least 18 years of age to refuse to consent to treatment.

Nothing contained in this chapter shall be construed to abridge any right of a person 18 years of age or over to refuse to consent to medical and surgical treatment as to his own person.

History. — Code 1933, § 88-2907, enacted by Ga. L. 1971, p. 438, § 1.

JUDICIAL DECISIONS

Lucid adult has right to withhold consent to suggested and recommended medical procedures and, absent such consent, a physician owes no further duty to the patient in that regard other than to honor the decision. Kirby v. Spivey, 167 Ga. App. 751, 307 S.E.2d 538 (1983).

Minors may not refuse unwanted care. — Georgia provides no "mature minor" exception to the state's general rule that only adults may refuse unwanted medical care. Novak v. Cobb County-Kennestone Hosp. Auth., 849 F. Supp. 1559 (N.D. Ga. 1994), aff'd, 74 F.3d 1173 (11th Cir. 1996).

No battery claim. — Trial court erred in denying summary judgment to the medical defendant on the plaintiff's battery claim based on the surgical procedure because the uncontroverted evidence of record reflected that there was basic consent for the surgical procedure and allegations that the doctor did not fully disclose the nature of the procedure reflected on an informed consent, not a battery, claim. Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015), aff'd, 299 Ga. 315, 788 S.E.2d 392 (2016).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 65.

C.J.S. — 67A C.J.S., Parent and Child, §§ 38, 40, 41, 46 et seq.

ALR. — Consent as condition of right to perform surgical operation, 76 A.L.R. 562; 139 A.L.R. 1370.

Patient's right to refuse treatment al-

legedly necessary to sustain life, 93 A.L.R.3d 67.

Judicial power to order discontinuance of life-sustaining treatment, 48 A.L.R.4th 67.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 A.L.R.5th 248.

CHAPTER 9A

WOMAN'S RIGHT TO KNOW

Sec.
31-9A-1. Short title.
31-9A-2. Definitions.
31-9A-3. (For effective date, see note.) Voluntary and informed consent to abortion; availability of ultrasound.
31-9A-4. (For effective date, see note.) Information to be made available by the Department of Public Health; format requirements; availability; requirements for website.
31-9A-5. Requirements in case of medical emergency.
31-9A-6. Reporting requirements.
31-9A-6.1. (Repealed effective January 1, 2020) Civil and professional penalties for violations; prerequisites for seeking penalties.
31-9A-7. Preservation of patient anonymity in civil proceedings.
31-9A-8. Severability.

Cross references. — Abortions not to be performed by physician assistants, § 43-34-110.

Law reviews. — For article on 2005 enactment of this chapter, see 22 Ga. St. U. L. Rev. 147 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, § 15 et seq.

C.J.S. — 1 C.J.S., Abortion and Birth Control, §§ 1 et seq., 11 et seq.

31-9A-1. Short title.

This chapter shall be known and may be cited as the "Woman's Right to Know Act."

History. — Code 1981, § 31-9A-1, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.

RESEARCH REFERENCES

ALR. — Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme Court cases, 20 A.L.R. Fed. 2d 1.

31-9A-2. Definitions.

As used in this chapter, the term:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a female known to be pregnant. The term "abortion" shall not include the use or prescription of any instrument, medicine, drug, or any other substance or device employed solely to

increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion. The term "abortion" also shall not include the prescription or use of contraceptives.

(2) "Medical emergency" means any condition which, in reasonable medical judgment, so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial or irreversible impairment of a major bodily function of the pregnant woman or death of the unborn child. No such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant woman or that the pregnant woman will purposefully engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(3) "Physician" means a person licensed to practice medicine under Article 2 of Chapter 34 of Title 43.

(4) "Probable gestational age of the unborn child" means the physician's best professional estimate of the probable gestational age of the unborn child at the time an abortion is to be performed.

(5) "Qualified agent" means the agent of the physician who is a patient educator, licensed psychologist, licensed social worker, licensed professional counselor, licensed physician assistant, registered nurse, or physician.

(6) "Secure Internet website" means a website that is safeguarded from having its content altered other than by the commissioner of public health.

(7) "Unborn child" or "fetus" means a member of the species homo sapiens from fertilization until birth.

History. — Code 1981, § 31-9A-2, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2012, p. 575, § 5/HB 954.

Cross references. — Coverage of certain abortions through certain qualified health plans prohibited, § 33-24-59.17.

Editor's notes. — Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to

painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 253 (2012).

31-9A-3. (For effective date, see note.) Voluntary and informed consent to abortion; availability of ultrasound.

No abortion shall be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Notwithstanding any provision of law to the contrary, except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) (For effective date, see note.) The female is told the following, by telephone or in person, by the physician who is to perform the abortion, by a qualified agent of the physician who is to perform the abortion, by a qualified agent of a referring physician, or by a referring physician, at least 24 hours before the abortion:

(A) The particular medical risks to the individual patient associated with the particular abortion procedure to be employed, when medically accurate;

(B) The probable gestational age and presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1, of an unborn child at the time the abortion would be performed; and

(C) The medical risks associated with carrying an unborn child to term.

The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and whatever other relevant information is reasonably available to the physician. Such information may not be provided by a tape recording but must be provided during a consultation in which the physician or a qualified agent of the physician is able to ask questions of the female and the female is able to ask questions of the physician or the physician's qualified agent. If in the medical judgment of the physician any physical examination, tests, or other information subsequently provided to the physician requires a revision of the information previously supplied to the patient, that revised information shall

be communicated to the patient prior to the performance of the abortion. Nothing in this Code section may be construed to preclude provision of required information in a language understood by the patient through a translator;

(2) The female is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by a qualified agent of the physician who is to perform the abortion at least 24 hours before the abortion:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) That the father will be liable pursuant to subsection (a) of Code Section 19-7-49 to assist in the support of her child;

(C) How to obtain a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge; such list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each listed entity; and

(D) That she has the right to review the printed materials described in Code Section 31-9A-4 and that these materials are available on a state sponsored website at a stated website address. The physician or the physician's qualified agent shall orally inform the female that materials have been provided by the State of Georgia and that they describe the unborn child, list agencies that offer alternatives to abortion, and contain information on fetal pain. If the female chooses to view the materials other than on the website, they shall either be given to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to review the printed materials other than on the website;

(3) The female certifies in writing, prior to the abortion, that the information described in paragraphs (1) and (2) of this Code section has been furnished her and that she has been informed of her opportunity to review the information referred to in subparagraph (D) of paragraph (2) of this Code section;

(4) For all cases in which an ultrasound is performed prior to conducting an abortion or a pre-abortion screen:

(A) The woman shall at the conclusion of the ultrasound be offered the opportunity to view the fetal image and hear the fetal

heartbeat. The active ultrasound image shall be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including but not limited to the heartbeat, if present or viewable, of the unborn child. The auscultation of fetal heart tone shall be of a quality consistent with standard medical practice in the community; and

(B) At the conclusion of these actions and prior to the abortion, the female certifies in writing that:

(i) She was provided the opportunity described in subparagraph (A) of this paragraph;

(ii) Whether or not she elected to view the sonogram; and

(iii) Whether or not she elected to listen to the fetal heartbeat, if present; and

(5) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's qualified agent receives a copy of the written certifications prescribed by paragraphs (3) and (4) of this Code section and retains them on file with the female's medical record for at least three years following the date of receipt.

History. — Code 1981, § 31-9A-3, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 3/HB 147; Ga. L. 2019, p. 711, § 7/HB 481.

Delayed effective date. — Subparagraphs (1)(B) and (1)(C), as set out above, become effective January 1, 2020. For versions of subparagraphs (1)(B) and (1)(C) in effect until January 1, 2020, see the 2019 amendment note.

The 2019 amendment, effective January 1, 2020, substituted "an unborn child" for "the unborn child" in subparagraphs (1)(B) and (1)(C); and inserted "and presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1," in subparagraph (1)(B).

Editor's notes. — Ga. L. 2007, p. 299, § 1/HB 147, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Woman's Ultrasound Right to Know Act.'"

Ga. L. 2007, p. 299, § 2/HB 147, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on the reality and status of her pregnancy and of her unborn child;

"(2) The decision to abort 'is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.' *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

"(3) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

"(b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

"(1) Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

"(2) Protect unborn children from a woman's uninformed decision to have an abortion;

"(3) Reduce 'the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed' *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

"(4) Adopt the construction of the term 'medical emergency' accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)."

Ga. L. 2007, p. 299, § 7/HB 147, not codified by the General Assembly, provides: "Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful."

Ga. L. 2007, p. 299, § 8/HB 147, not codified by the General Assembly, provides for severability.

Ga. L. 2019, p. 711, § 1/HB 481, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Living Infants Fairness and Equality (LIFE) Act.'"

Ga. L. 2019, p. 711, § 2/HB 481, not codified by the General Assembly, provides: "The General Assembly of Georgia makes the following findings:"

"(1) In the founding of the United States of America, the State of Georgia and the several states affirmed that: 'We hold these Truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — that to secure these Rights, Governments are instituted among men;'

"(2) To protect the fundamental rights of all persons, and specifically to protect the fundamental rights of particular classes of persons who had not previously been recognized under law, the 14th Amendment to the United States Constitution was ratified, providing that, 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws';

"(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

"(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

"(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that '[n]o person shall be deprived of life, liberty, or property except by due process of law'; and that '[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws'; and

"(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons."

Ga. L. 2019, p. 711, § 13/HB 481, not codified by the General Assembly, provides: "Any citizen of this state shall have standing and the right to intervene and defend in any action challenging the constitutionality of any portion of this Act."

Ga. L. 2019, p. 711, § 14/HB 481, not codified by the General Assembly, provides: "All provisions of this Act shall be severable in accordance with Code Section 1-1-3."

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U. L. Rev. 209 (2011).

For note on 2007 amendment of this Code section, see 24 Ga. St. U. L. Rev. 161 (2007).

31-9A-4. (For effective date, see note.) Information to be made available by the Department of Public Health; format requirements; availability; requirements for website.

(a) The Department of Public Health shall cause to be published in English and in each language which is the primary language of 2

percent or more of the state's population and shall cause to be available on the state website provided for in subsection (d) of this Code section the following printed materials in such a way as to ensure that the information is easily comprehensible:

(1) Geographically indexed materials designed to inform the female of public and private agencies and services available to assist a female through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and website addresses, in which they might be contacted or, at the option of such department, printed materials including a toll-free, 24 hour telephone number which may be called to obtain, orally or by a tape recorded message tailored to the ZIP Code entered by the caller, such a list and description of agencies in the locality of the caller and of the services they offer;

(1.1) Geographically indexed materials designed to inform the female of public and private facilities and services available to assist a female with obtaining an ultrasound which shall include a comprehensive list of the facilities available, a description of the services they offer, and a description of the manner, including telephone numbers and website addresses, in which they might be contacted or, at the option of such department, printed materials including a toll-free, 24 hour telephone number which may be called to obtain, orally or by a tape recorded message tailored to the ZIP Code entered by the caller, such a list and description of facilities in the locality of the caller and of the services they offer;

(2) Materials designed to inform the female of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a female can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival and pictures representing the development of unborn children at two-week gestational increments, provided that any such pictures must contain the dimensions of the fetus and must be factually accurate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only factually accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term; and

(3) (For effective date, see note.) Materials with the following statement concerning unborn children with a detectable human

heartbeat, as such term is defined in Code Section 1-2-1, and of 20 weeks' or more gestational age:

> "As early as six weeks' gestation, an unborn child may have a detectable human heartbeat. By 20 weeks' gestation, an unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks' gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks' gestational age or older who undergo prenatal surgery."

The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about an unborn child at the various gestational ages.

(b) The materials referred to in subsection (a) of this Code section shall be printed in a typeface large enough to be clearly legible. All pictures and print appearing on the website shall be clearly legible. All information and pictures shall be accessible with an industry standard browser, requiring no additional plug-ins.

(c) The materials required under this Code section shall be available at no cost from the Department of Public Health upon request and in a reasonably appropriate number to any person, facility, or hospital.

(d) The Department of Public Health shall develop and maintain a secure Internet website to provide the information described in this Code section. No information regarding who uses the website shall be collected or maintained. The Department of Public Health shall monitor the website on a weekly basis to prevent and correct tampering.

History. — Code 1981, § 31-9A-4, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 4/HB 147; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2019, p. 711, § 8/HB 481.

Delayed effective date. — Paragraph (a)(3), as set out above, becomes effective January 1, 2020. For version of paragraph (a)(3) in effect until January 1, 2020, see the 2019 amendment note.

The 2019 amendment, effective January 1, 2020, inserted "with a detectable human heartbeat, as such term is defined in Code Section 1-2-1, and" in paragraph (a)(3); in the ending undesignated paragraphs following paragraph (a)(3), substituted "an unborn child" for "the unborn child" in the second sentence of the statement and near the end of the second undesignated paragraph; and added the first sentence in the statement paragraph.

Editor's notes. — Ga. L. 2007, p. 299, § 1/HB 147, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Woman's Ultrasound Right to Know Act.'"

Ga. L. 2007, p. 299, § 2/HB 147, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on the reality and status of her pregnancy and of her unborn child;

"(2) The decision to abort 'is an important and often a stressful one, and it is desirable and imperative that it be made

with full knowledge of its nature and consequences.' *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

"(3) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

"(b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

"(1) Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

"(2) Protect unborn children from a woman's uninformed decision to have an abortion;

"(3) Reduce 'the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed' *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

"(4) Adopt the construction of the term 'medical emergency' accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)."

Ga. L. 2007, p. 299, § 7/HB 147, not codified by the General Assembly, provides: "Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful."

Ga. L. 2007, p. 299, § 8/HB 147, not codified by the General Assembly, provides for severability.

Ga. L. 2019, p. 711, § 1/HB 481, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Living Infants Fairness and Equality (LIFE) Act.'"

Ga. L. 2019, p. 711, § 2/HB 481, not codified by the General Assembly, provides: "The General Assembly of Georgia makes the following findings:"

"(1) In the founding of the United States of America, the State of Georgia and the several states affirmed that: 'We hold these Truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — that to secure these Rights, Governments are instituted among men;'

"(2) To protect the fundamental rights of all persons, and specifically to protect the fundamental rights of particular classes of persons who had not previously been recognized under law, the 14th Amendment to the United States Constitution was ratified, providing that, 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws';

"(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

"(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

"(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that '[n]o person shall be deprived of life, liberty, or property except by due process of law'; and that '[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws'; and

"(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons."

Ga. L. 2019, p. 711, § 13/HB 481, not codified by the General Assembly, provides: "Any citizen of this state shall have standing and the right to intervene and defend in any action challenging the constitutionality of any portion of this Act."

Ga. L. 2019, p. 711, § 14/HB 481, not codified by the General Assembly, provides: "All provisions of this Act shall be severable in accordance with Code Section 1-1-3."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

For note on 2007 amendment of this Code section, see 24 Ga. St. U. L. Rev. 161 (2007).

31-9A-5. Requirements in case of medical emergency.

(a) When a medical emergency compels the performance of an abortion, the physician shall inform the female prior to the abortion, if medically reasonable and prudent, of the medical indications supporting the physician's judgment that an abortion is medically necessary to avert her death or that a 24 hour delay will create serious risk of substantial or irreversible impairment of a major bodily function.

(b) Any physician who complies with subsection (a) of this Code section shall not be held civilly liable to a patient for failure to obtain informed consent to an abortion.

History. — Code 1981, § 31-9A-5, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, §§ 30, 36.

C.J.S. — 1 C.J.S., Abortion and Birth Control, § 8 et seq.

31-9A-6. Reporting requirements.

(a) The Department of Public Health shall prepare a reporting form for physicians performing abortions in a health facility licensed as an abortion facility by the Department of Community Health containing a reprint of this chapter and listing:

(1) The number of females to whom the physician provided the information described in paragraph (1) of Code Section 31-9A-3; of that number, the number to whom the information was provided by telephone and the number to whom the information was provided in person; and of each of those numbers, the number to whom the information was provided by a referring physician and the number to whom the information was provided by a physician who is to perform the abortion;

(2) The number of females to whom the physician or a qualified agent of the physician provided the information described in paragraph (2) of Code Section 31-9A-3; of that number, the number to whom the information was provided by telephone and the number to whom the information was provided in person; of each of those numbers, the number to whom the information was provided by a referring physician and the number to whom the information was provided by a physician who is to perform the abortion; and of each of

those numbers, the number to whom the information was provided by the physician and the number to whom the information was provided by a qualified agent of the physician;

(3) The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Code Section 31-9A-4, other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

(4) The number of females who were provided the opportunity to view the fetal image and hear the fetal heartbeat; of that number, the number who elected to view the sonogram and the number who elected to listen to the fetal heartbeat, if present.

(b) The Department of Public Health shall ensure that copies of the reporting forms described in subsection (a) of this Code section are provided:

(1) Not later than September 7, 2005, to all health facilities licensed as an abortion facility by the Department of Community Health;

(2) To each physician licensed or who subsequently becomes licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

(3) By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph (1) of this subsection, to all health facilities licensed as an abortion facility by the Department of Community Health.

(c) By February 28 of each year following a calendar year in any part of which this chapter was in effect, each physician who provided, or whose qualified agent provided, information to one or more females in accordance with Code Section 31-9A-3 during the previous calendar year shall submit to the Department of Public Health a copy of the form described in subsection (a) of this Code section with the requested data entered accurately and completely.

(d) Nothing in this Code section shall be construed to preclude the voluntary or required submission of other reports or forms regarding abortions.

(e) Reports that are not submitted within a grace period of 30 days following the due date shall be subject to a late fee of $500.00 for that period and the same fee for each additional 30 day period or portion of a 30 day period the reports are overdue. Any physician required to submit a report in accordance with this Code section who submits an

incomplete report or fails to submit a report for more than one year following the due date may, in an action brought by the Department of Public Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or may be subject to sanctions for civil contempt.

(f) By June 30 of each year, the Department of Public Health shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (a) of this Code section. Each report shall also provide the statistics for all previous calendar years adjusted to reflect any additional information from late or corrected reports. The Department of Public Health shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual who provided information in accordance with Code Section 31-9A-3 or 31-9A-4.

(g) The Department of Public Health may, by regulation, alter the dates established by subsection (c) or (e) of this Code section or paragraph (3) of subsection (b) of this Code section or may consolidate the forms or reports described in this Code section with other forms or reports for reasons including, but not limited to, achieving administrative convenience or fiscal savings or reducing the burden of reporting requirements, so long as reporting forms are sent to all facilities licensed as an abortion facility by the Department of Community Health at least once every year and the report described in subsection (f) of this Code section is issued at least once every year.

(h) The Department of Public Health shall ensure that the names and identities of the physicians filing reports under this chapter shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50.

History. — Code 1981, § 31-9A-6, enacted by Ga. L. 2005, p. 1450, § 6/HB 197; Ga. L. 2007, p. 299, § 5/HB 147; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 5-14/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "Not later than September 7, 2005," was substituted for "Within 120 days after this chapter first becomes effective," in paragraph (b)(1).

Editor's notes. — Ga. L. 2007, p. 299, § 1/HB 147, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Woman's Ultrasound Right to Know Act.'"

Ga. L. 2007, p. 299, § 2/HB 147, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on the reality and status of her pregnancy and of her unborn child;

"(2) The decision to abort 'is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.' *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

"(3) The knowledgeable exercise of a woman's decision to have an abortion de-

pends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

"(b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

"(1) Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

"(2) Protect unborn children from a woman's uninformed decision to have an abortion;

"(3) Reduce 'the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed' *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

"(4) Adopt the construction of the term 'medical emergency' accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)."

Ga. L. 2007, p. 299, § 7/HB 147, not codified by the General Assembly, provides: "Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful."

Ga. L. 2007, p. 299, § 8/HB 147, not codified by the General Assembly, provides for severability.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

For note on 2007 amendment of this Code section, see 24 Ga. St. U. L. Rev. 161 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, § 76 et seq.

31-9A-6.1. (Repealed effective January 1, 2020) Civil and professional penalties for violations; prerequisites for seeking penalties.

(a) In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this chapter shall be reported to the Georgia Composite Medical Board for disciplinary action.

(b) Any plaintiff seeking relief in the form of civil remedies for a violation of Code Section 31-9B-2 shall produce clear and convincing evidence that the physician determining the probable gestational age of the fetus or the physician whose determination was relied upon was negligent in his or her determination.

(c) Any female who solicits or conspires to solicit an abortion who makes a false representation of her age or name shall not have standing to state a claim against any party pursuant to this chapter or Chapter 9B of this title nor shall any agency or instrumentality of the state consider any action related to such claim.

History. — Code 1981, § 31-9A-6.1, enacted by Ga. L. 2007, p. 299, § 6/HB 147; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2012, p. 575, § 4/HB 954.

Editor's notes. — Ga. L. 2007, p. 299, § 1/HB 147, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Woman's Ultrasound Right to Know Act.'"

Ga. L. 2007, p. 299, § 2/HB 147, not codified by the General Assembly, provides: "(a) The General Assembly finds that:

"(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on the reality and status of her pregnancy and of her unborn child;

"(2) The decision to abort 'is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences.' *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

"(3) The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: giving birth or having an abortion.

"(b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

"(1) Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

"(2) Protect unborn children from a woman's uninformed decision to have an abortion;

"(3) Reduce 'the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed' *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

"(4) Adopt the construction of the term 'medical emergency' accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)."

Ga. L. 2007, p. 299, § 7/HB 147, not codified by the General Assembly, provides: "Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful."

Ga. L. 2007, p. 299, § 8/HB 147, not codified by the General Assembly, provides for severability.

Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Ga. L. 2019, p. 711, § 1/HB 481, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Living Infants Fairness and Equality (LIFE) Act.'"

Ga. L. 2019, p. 711, § 2/HB 481, not codified by the General Assembly, provides: "The General Assembly of Georgia makes the following findings:"

"(1) In the founding of the United States of America, the State of Georgia and the several states affirmed that: 'We hold these Truths to be self evident, that all

Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — that to secure these Rights, Governments are instituted among men;'

"(2) To protect the fundamental rights of all persons, and specifically to protect the fundamental rights of particular classes of persons who had not previously been recognized under law, the 14th Amendment to the United States Constitution was ratified, providing that, 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws';

"(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

"(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

"(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that '[n]o person shall be deprived of life, liberty, or property except by due process of law'; and that '[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws'; and

"(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons."

Ga. L. 2019, p. 711, § 9/HB 481 provides for the repeal of this Code section effective January 1, 2020.

Ga. L. 2019, p. 711, § 13/HB 481, not codified by the General Assembly, provides: "Any citizen of this state shall have standing and the right to intervene and defend in any action challenging the constitutionality of any portion of this Act."

Ga. L. 2019, p. 711, § 14/HB 481, not codified by the General Assembly, provides: "All provisions of this Act shall be severable in accordance with Code Section 1-1-3."

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 253 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, §§ 106 et seq., 119 et seq.

C.J.S. — 1 C.J.S., Abortion and Birth Control, § 33 et seq.

31-9A-7. Preservation of patient anonymity in civil proceedings.

In any civil proceeding or action relating to this chapter or a breach of duty under this chapter, the court shall rule whether the anonymity of any female upon whom an abortion has been performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end,

how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. This Code section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

History. — Code 1981, § 31-9A-7, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abortion and Birth Control, § 41.

31-9A-8. Severability.

If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or words of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is declared to be severable, and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The General Assembly declares that it would have enacted this chapter and each Code section, subsection, sentence, clause, phrase, or word thereof irrespective of the fact that any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or words would be declared unconstitutional.

History. — Code 1981, § 31-9A-8, enacted by Ga. L. 2005, p. 1450, § 6/HB 197.

CHAPTER 9B

PHYSICIAN'S OBLIGATION IN PERFORMANCE OF ABORTIONS

Sec.
31-9B-1. Definitions.
31-9B-2. (For effective date, see note.) Requirement to determine presence of detectable human heartbeat of unborn child.
31-9B-3. (For effective date, see note.) Required reporting of physicians and departments; confidentiality; failure to comply.

Editor's notes. — Ga. L. 2012, p. 575, § 1/HB 954, not codified by the General Assembly, provides that: "The General Assembly makes the following findings:

"(1) At least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

"(2) There is substantial evidence that, by 20 weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

"(3) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery;

"(4) Even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children;

"(4.1) Probable gestational age is an estimate made to assume the closest time to which the fertilization of a human ovum occurred and does not purport to be an exact diagnosis of when such fertilization occurred; and

"(5) It is the purpose of the State of Georgia to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain."

Law reviews. — For article on the 2012 enactment of this chapter, see 29 Ga. St. U. L. Rev. 253 (2012).

31-9B-1. Definitions.

As used in this chapter, the term:

(1) "Abortion" has the meaning provided by Code Section 31-9A-2.

(2) "Medical emergency" has the meaning provided by Code Section 31-9A-2.

(3) "Medically futile" means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth.

(4) "Physician" has the meaning provided by Code Section 31-9A-2.

(5) "Probable gestational age of the unborn child" means what will, in reasonable medical judgment and with reasonable probability, be

the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced, as dated from the time of fertilization of the human ovum.

(6) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(7) "Unborn child" has the meaning provided by Code Section 31-9A-2.

History. — Code 1981, § 31-9B-1, enacted by Ga. L. 2012, p. 575, § 3/HB 954.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, the subsection (a) designation was removed as there was not a subsection (b).

JUDICIAL DECISIONS

Sovereign immunity barred suit. — Suit by physicians against state officials alleging that O.C.G.A. § 31-9B-1 et seq., regulating abortions, violated the state constitution in several respects, was barred by sovereign immunity under Ga. Const. 1983, Art. I, Sec. II, Para. IX, because there was no consent to such a suit in any statute or in the state constitution. Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

31-9B-2. (For effective date, see note.) Requirement to determine presence of detectable human heartbeat of unborn child.

(a) Except in the case of a medical emergency or when a pregnancy is diagnosed as medically futile, no abortion shall be performed or attempted to be performed unless the physician performing such procedure has first made a determination of the presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1, of an unborn child.

(b) In addition to any criminal or civil penalties provided by law, failure by any physician to conform to any requirement of this Code section constitutes unprofessional conduct for purposes of paragraph (7) of subsection (a) of Code Section 43-34-8 relating to medical licensing sanctions.

History. — Code 1981, § 31-9B-2, enacted by Ga. L. 2012, p. 575, § 3/HB 954; Ga. L. 2019, p. 711, § 10/HB 481.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2020. For version of this Code section in effect until January 1, 2020, see the 2019 amendment note.

The 2019 amendment, effective January 1, 2020, substituted "performing such procedure has first made a determination of the presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1, of an unborn child" for "performing it has first made a determination of the probable gestational age of the unborn child or relied upon such a determination made by another physician" in

subsection (a); and substituted "In addition to any criminal or civil penalties provided by law, failure" for "Failure" at the beginning of subsection (b).

Editor's notes. — Ga. L. 2019, p. 711, § 1/HB 481, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Living Infants Fairness and Equality (LIFE) Act.'"

Ga. L. 2019, p. 711, § 2/HB 481, not codified by the General Assembly, provides: "The General Assembly of Georgia makes the following findings:"

"(1) In the founding of the United States of America, the State of Georgia and the several states affirmed that: 'We hold these Truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — that to secure these Rights, Governments are instituted among men;'

"(2) To protect the fundamental rights of all persons, and specifically to protect the fundamental rights of particular classes of persons who had not previously been recognized under law, the 14th Amendment to the United States Constitution was ratified, providing that, 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws';

"(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

"(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

"(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that '[n]o person shall be deprived of life, liberty, or property except by due process of law'; and that '[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws'; and

"(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons."

Ga. L. 2019, p. 711, § 13/HB 481, not codified by the General Assembly, provides: "Any citizen of this state shall have standing and the right to intervene and defend in any action challenging the constitutionality of any portion of this Act."

Ga. L. 2019, p. 711, § 14/HB 481, not codified by the General Assembly, provides: "All provisions of this Act shall be severable in accordance with Code Section 1-1-3."

JUDICIAL DECISIONS

Cited in Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

31-9B-3. (For effective date, see note.) Required reporting of physicians and departments; confidentiality; failure to comply.

(a) (For effective date, see note.) Any physician who performs or attempts to perform an abortion shall report to the department, in conjunction with the reports required under Code Section 31-9A-6 and in accordance with forms and rules and regulations adopted and promulgated by the department:

(1) If a detectable human heartbeat, as such term is defined in Code Section 1-2-1, exists, the probable gestational age, and the method and basis of the determination;

(2) If a detectable human heartbeat, as such term is defined in Code Section 1-2-1, exists, the basis of the determination that the pregnant woman had a medically futile pregnancy, that a medical emergency existed, or that the pregnancy was the result of rape or incest; and

(3) The method used for the abortion.

(b) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (a) of this Code section. Each such report shall also provide the statistics for all previous calendar years during which this Code section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(c) The department shall ensure that the names and identities of the physicians filing reports under this chapter shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50.

(d) Any physician who fails to submit a report by the end of the grace period of 30 days following the due date shall be subject to sanctions as specified in subsection (e) of Code Section 31-9A-6.

(e) The department shall adopt such rules and regulations as are reasonable and necessary to implement the provisions of this Code section.

History. — Code 1981, § 31-9B-3, enacted by Ga. L. 2012, p. 575, § 3/HB 954; Ga. L. 2019, p. 711, § 11/HB 481.

Delayed effective date. — Subsection (a), as set out above, becomes effective January 1, 2020. For version of subsection (a) in effect until January 1, 2020, see the 2019 amendment note.

The 2019 amendment, effective January 1, 2020, substituted the present provisions of paragraph (a)(1) for the former provisions, which read: "If a determination of probable gestational age was made, the probable gestational age determined and the method and basis of the determination;"; deleted former paragraph (a)(2), which read: "If a determination of probable gestational age was not made, the basis of the determination that a medical emergency existed or that a pregnancy was diagnosed as medically futile;"; redesignated former paragraphs (a)(3) and (a)(4) as present paragraphs (a)(2) and (a)(3), respectively; substituted the present provisions of paragraph (a)(2) for the former provisions of paragraph (a)(3), which read: "If the probable gestational age was determined to be 20 or more weeks, the basis of the determination that the pregnant woman had a medically fu-

tile pregnancy or had a condition which so complicated her medical condition as to necessitate the termination of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, or the basis of the determination that it was necessary to preserve the life of an unborn child; and"; and substituted the present provisions of paragraph (a)(3) for the former provisions of paragraph (a)(4), which read: "The method used for the abortion and, in the case of an abortion performed when the probable gestational age was determined to be 20 or more weeks, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that the pregnancy was medically futile or that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the pregnant woman than would other available methods."

Editor's notes. — Ga. L. 2019, p. 711, § 1/HB 481, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Living Infants Fairness and Equality (LIFE) Act.'"

Ga. L. 2019, p. 711, § 2/HB 481, not codified by the General Assembly, provides: "The General Assembly of Georgia makes the following findings:"

"(1) In the founding of the United States of America, the State of Georgia and the several states affirmed that: 'We hold these Truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — that to secure these Rights, Governments are instituted among men;'

"(2) To protect the fundamental rights of all persons, and specifically to protect the fundamental rights of particular classes of persons who had not previously been recognized under law, the 14th Amendment to the United States Constitution was ratified, providing that, 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws';

"(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

"(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

"(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that '[n]o person shall be deprived of life, liberty, or property except by due process of law'; and that '[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws'; and

"(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons."

Ga. L. 2019, p. 711, § 13/HB 481, not codified by the General Assembly, provides: "Any citizen of this state shall have standing and the right to intervene and defend in any action challenging the constitutionality of any portion of this Act."

Ga. L. 2019, p. 711, § 14/HB 481, not codified by the General Assembly, provides: "All provisions of this Act shall be severable in accordance with Code Section 1-1-3."

JUDICIAL DECISIONS

Cited in Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

CHAPTER 10

VITAL RECORDS

Sec.
31-10-1. Definitions.
31-10-2. Maintenance and operation of vital records registration system.
31-10-3. Rules and regulations.
31-10-4. Appointment of state registrar of vital records.
31-10-5. Duties and powers of state registrar; delegation of functions and duties.
31-10-6. Local registrars, local custodians, special abstracting agents, and deputies; appointment; duties.
31-10-7. Form of certificates and reports; date received for registration required; filing or registration of information by photographic, electronic, or other means.
31-10-8. Certification to county treasurers of birth and death certificates and spontaneous fetal death reports filed; fees.
31-10-9. Registration of births.
31-10-9.1. Social security account information of parents.
31-10-10. Registration of live born infants of unknown parentage.
31-10-11. Registration of delayed certificate of birth.
31-10-12. Judicial procedure to establish facts of birth.
31-10-13. Certificates of adoption.
31-10-13.1. Certified copies of orders and registration of legitimations and paternity orders.
31-10-13.2. Provision of copies of legitimation and paternity orders to state registrar.
31-10-14. Issuance of new certificate of birth following adoption and legitimation or paternity determination.
31-10-15. Death certificate; filing; medical certification; forwarding death certificate to decedent's county of residence; purging voter registration list.
Sec.
31-10-16. Criteria for pronouncing death; immunity from liability.
31-10-17. State registration of death certificates; certified copies; certificates of record.
31-10-18. Registration of spontaneous fetal deaths.
31-10-19. Reporting of induced termination of pregnancy.
31-10-20. Permits for disposition, disinterment, and reinterment.
31-10-21. Record of marriage licenses.
31-10-22. Record of divorces, dissolutions, and annulments.
31-10-23. Amendment of certificates or reports.
31-10-24. Preservation or disposition of vital records; certified reproductions; preserved originals and authorized reproductions as property of department.
31-10-25. Disclosure of information contained in vital records; transfer of records to State Archives.
31-10-26. Issuance of certified copies of vital records, voluntary acknowledgments of paternity, voluntary acknowledgments of legitimation; certificates; use for statistical purposes; transmittal of records out of state; use for commercial or speculative purposes.
31-10-27. Fees for copies or services.
31-10-28. Institutions to keep vital records.
31-10-29. Privileged nature of disclosures; notification of local registrar of institutional deaths and fetal deaths; notification of board of voting registrars of adult deaths.
31-10-30. Posting facts of death to birth certificates.
31-10-31. Penalties.
31-10-32. Extension of periods for filing of certificates or reports.

Sec.
31-10-33. Procedure for stillbirth.

Cross references. — Replacement of licenses, state identification cards, and other documents during periods of natural disaster, § 50-1-9.

Editor's notes. — Ga. L. 1982, p. 723, § 2, effective November 1, 1982, rewrote this chapter, amending, renumbering, and repealing the Code sections therein. See the history lines to determine, where applicable, the former Code section numbers.

The former chapter consisted of Code Sections 31-10-1 through 31-10-75. Those Code sections which were repealed were based on Ga. L. 1914, p. 157, §§ 3, 4; Ga. L. 1927, p. 353, §§ 3, 4; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Ga. L. 1945, p. 236, §§ 1, 5, 6; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 2; Ga. L. 1964, p. 499, § 1 and Ga. L. 1981, p. 1456, § 1.

Administrative rules and regulations. — Vital records, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Administration, Subject 511-1-3.

Law reviews. — For note on 1991 amendments to this chapter, see 8 Ga. St. U. L. Rev. 81 (1992). For note, "Big Brother is Watching: When Should Georgia Get Involved in Issues of Family Privacy to Protect Children's Liberties?," see 34 Ga. St. U. L. Rev. 819 (2018).

JUDICIAL DECISIONS

It was never intended that former Code 1933, § 88-1202 should repeal provisions of former Code 1933, § 38-303. Stewart v. State, 72 Ga. App. 308, 33 S.E.2d 744 (1945).

Law was not intended to preclude parents from testifying as to ages of their children. Stewart v. State, 72 Ga. App. 308, 33 S.E.2d 744 (1945).

Cited in Evans v. DeKalb County Hosp. Auth., 154 Ga. App. 17, 267 S.E.2d 319 (1980); Porter v. Calhoun County, 162 Ga. App. 839, 293 S.E.2d 4 (1982).

OPINIONS OF THE ATTORNEY GENERAL

For discussion of new and corrected birth certificates for children adopted or legitimated outside of Georgia, see 1980 Op. Att'y Gen. No. 80-58.

Naturopath is not authorized to sign a death certificate. 1957 Op. Att'y Gen. p. 339.

31-10-1. Definitions.

As used in this chapter, the term:

(1) "Commissioner" means the commissioner of public health.

(2) "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred.

(3) "Department" means the Department of Public Health.

(4) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irre-

spective of the duration of pregnancy; the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

(5) "File" means the presentation of a vital record provided for in this chapter for registration by the State Office of Vital Records.

(6) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(7) "Induced termination of pregnancy" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant or to remove a dead fetus and which does not result in a live birth.

(8) "Institution" means any establishment, public or private, which provides in-patient or out-patient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care, or to which persons are committed by law.

(9) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(10) "Local custodian" means the person appointed by the state registrar to maintain and certify the local records of birth and death.

(11) "Local registrar" means the person appointed by the state registrar to collect and transmit to the department certificates of birth, death, fetal death, and any other reports required by this chapter.

(12) "Physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to Chapter 34 of Title 43.

(13) "Registration" means the acceptance by the State Office of Vital Records and the incorporation of vital records provided for in this chapter into the vital records registration system.

(14) "Special abstracting agent" means the person appointed by the state registrar to examine and abstract evidence and submit such information to the department in order to file delayed certificates of birth or amend certificates of birth.

(15) "Spontaneous fetal death" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an induced termination of pregnancy.

(16) "State registrar" means the person responsible for the State Office of Vital Records and the state vital records registration system.

(17) "Stillbirth" or "stillborn" means an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks or of a fetus with a weight of 350 grams or more.

(18) "Vital records" means certificates or reports of birth, death, marriage, divorce, dissolution of marriage, or annulment and data related thereto.

(19) "Vital records registration system" means the registration, collection, preservation, amendment, and certification of vital records; the collection of other reports required by this chapter; and activities related thereto including the tabulation, analysis, and print or electronic publication of vital statistics.

(20) "Vital statistics" means the data derived from certificates and reports of birth, death, spontaneous fetal death, induced termination of pregnancy, marriage, divorce, dissolution of marriage, or annulment and related reports.

History. — Ga. L. 1945, p. 236, § 2; Ga. L. 1952, p. 208, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 1; Code 1933, § 88-1702, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1701, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-2; Code 1981, § 31-10-1, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 1; Ga. L. 2008, p. 585, § 2/SB 381; Ga. L. 2009, p. 453, §§ 1-4, 1-6/HB 228; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214.

Editor's notes. — Ga. L. 2008, p. 585, § 1/SB 381, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'No Heartbeat Act.'"

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Who is a physician or surgeon within statute in relation to vital statistics, 8 A.L.R. 1070.

31-10-2. Maintenance and operation of vital records registration system.

There is hereby established within the department the State Office of Vital Records which shall maintain and operate the state's official vital records registration system. The system shall be in effect in all areas of the state, and the State Office of Vital Records shall provide for proper administration of the system and preservation of its records.

History. — Code 1933, § 88-1702, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-2, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 2.

31-10-3. Rules and regulations.

The department is authorized to adopt, amend, and repeal rules and regulations for the purpose of carrying out the provisions of this chapter.

History. — Code 1933, § 88-1703, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-3, enacted by Ga. L. 1982, p. 723, § 2.

31-10-4. Appointment of state registrar of vital records.

The commissioner shall appoint the state registrar of vital records, hereinafter referred to as "state registrar," subject to the rules and regulations of the State Personnel Board, classified service.

History. — Code 1933, § 88-1704, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-4, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-41/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

Cited in Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

31-10-5. Duties and powers of state registrar; delegation of functions and duties.

(a) The state registrar shall:

(1) Administer and enforce the provisions of this chapter and the rules and regulations issued under this chapter and issue instructions for the efficient administration of the State Office of Vital Records;

(2) Direct and supervise the State Office of Vital Records and be custodian of its records;

(3) Direct, supervise, and control the activities of all persons when they are engaged in activities pertaining to the operation of the State Office of Vital Records;

(4) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the State Office of Vital Records;

(5) Prescribe, furnish, and distribute such forms as are required by this chapter and the rules and regulations issued under this chapter or prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate reporting and registration;

(6) Prepare and publish in print or electronically reports of vital statistics of this state and such other reports as may be required by the department; and

(7) Provide to local health agencies copies of or data derived from certificates and reports required under this chapter, as the state registrar shall determine are necessary for local health planning and program activities. The state registrar shall establish a schedule with each local health agency for transmittal of the copies or data. The copies or data shall remain the property of the department, and the uses which may be made of them shall be governed by the state registrar.

(b) The state registrar may establish or designate offices in the state to aid in the efficient administration of the State Office of Vital Records.

(c) The state registrar may delegate such functions and duties vested in the state registrar to employees of the State Office of Vital Records and to employees of any office established or designated under subsection (b) of this Code section.

History. — Code 1933, § 88-1703, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1705, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-3; Code 1981, § 31-10-5, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2004, p. 477, § 3; Ga. L. 2010, p. 838, § 10/SB 388.

OPINIONS OF THE ATTORNEY GENERAL

Validity of racial designations on birth certificates and other official documents. — State of the law is such as not only to permit use of racial designations on birth certificates and other official documents but federal law affirmatively mandates use of racial designations in certain areas. 1971 Op. Att'y Gen. No. 71-135.

31-10-6. Local registrars, local custodians, special abstracting agents, and deputies; appointment; duties.

(a) The state registrar may appoint a local registrar and local custodian for each county and a special abstracting agent as necessary. Appointees must meet the qualifications and perform the duties required by this chapter and regulations of the department. The state

registrar may appoint local deputy registrars as necessary. A local registrar, subject to the approval of the state registrar, may appoint a deputy or deputies. A local custodian, subject to the approval of the state registrar, may appoint a clerk or clerks of records.

(b) Local registrars shall collect and receive vital records, review them for accuracy and completeness, and keep and submit other reports as may be required by the department.

(c) Local custodians shall file, record, and preserve copies of vital records and issue certified copies provided for by law.

(d) Special abstracting agents shall examine evidence, abstract evidence onto prescribed forms, and submit such completed forms to the State Office of Vital Records for the filing of delayed certificates of birth or the amendment of certificates of live birth.

History. — Ga. L. 1914, p. 157, § 18; Ga. L. 1927, p. 353, § 18; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Code 1933, § 88-1210; Code 1933, § 88-1706, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-10-6; Ga. L. 1982, p. 723, §§ 1, 2; Ga. L. 2004, p. 477, §§ 4, 11.

JUDICIAL DECISIONS

Cited in Ward v. Ward, 115 Ga. App. 778, 156 S.E.2d 210 (1967); Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 69, 70.

31-10-7. Form of certificates and reports; date received for registration required; filing or registration of information by photographic, electronic, or other means.

(a) In order to promote and maintain nation-wide uniformity in the system of vital records, the forms of certificates and reports required by this chapter, or by regulations adopted under this chapter, shall include as a minimum the items recommended by the federal agency responsible for national vital records and statistics.

(b) Each certificate, report, and other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(c) All vital records shall contain the date received for registration.

(d) Information required in certificates or reports authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar.

History. — Ga. L. 1914, p. 157, § 17; Ga. L. 1927, p. 353, § 17; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Code 1933, § 88-1207; Code 1933, § 88-1708, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1707, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-8; Code 1981, § 31-10-7, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31.

OPINIONS OF THE ATTORNEY GENERAL

Validity of racial designations on birth certificates and other official documents. — State of the law is such as not only to permit use of racial designations on birth certificates and other official documents but federal law affirmatively mandates use of racial designations in certain areas. 1971 Op. Att'y Gen. No. 71-135.

31-10-8. Certification to county treasurers of birth and death certificates and spontaneous fetal death reports filed; fees.

(a) The local registrar shall certify to the treasurer of the county each month the number of birth and death certificates and spontaneous fetal death reports filed with the State Office of Vital Records with respect to the treasurer's county and the amount due. Upon certification, any fees due shall be paid by the county treasurer out of the general fund of the county.

(b) Each local registrar shall receive from the county treasurer the sum of $2.00 for each complete certificate of birth, death, or spontaneous fetal death report which occurred in that local registrar's county and is personally signed by that local registrar within the time prescribed by this chapter. A fee of 50¢ shall be paid for certificates or reports filed after the limits shown in this chapter except as noted by regulations adopted by the department.

(c) The local custodian of vital records shall be paid a fee of $1.00 for each birth and death certificate properly recorded and indexed. Said fee shall be paid from county funds by the county treasurer.

(d) Special abstractors shall be paid a fee of $2.00 for the complete filing of an abstract of evidence for a delayed certificate of birth or an amendment to a certificate of live birth which originates in the abstractor's county. Said fee shall be paid from county funds by the county treasurer.

(e) Notwithstanding any other provision of this Code section, in counties where the local registrar or local custodian of vital records or special abstracting agent are employees of the county board of health, fees payable under this subsection shall be paid to the county health department monthly.

History. — Ga. L. 1914, p. 157, § 19; Ga. L. 1927, p. 353, § 19; Code 1933, § 88-1211; Ga. L. 1945, p. 236, § 32; Code 1933, § 88-1707, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1975, p. 1179, § 1; Code 1933, § 88-1708, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-7; Code 1981, § 31-10-8, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 669, § 1.

Code Commission notes. — Pursuant to Code Section § 28-9-5, in 2019, "State Office of Vital Records" was substituted for "state office of vital records" in subsection (a).

JUDICIAL DECISIONS

Employees of county board of health sole exception to general rule. — Sole exception for employees of the county board of health from the general rule that local custodians shall keep their fees clearly infers that the General Assembly meant to include other custodians in the general rule, notwithstanding any other offices the employees might have held. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983) (construing former similar provisions).

Retention of fees by judge and custodian. — One who is both the probate judge and custodian of vital records of a county is entitled to keep fees paid to the person as custodian of vital records, and the county is not entitled to such fees. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983) (construing former similar provisions).

31-10-9. Registration of births.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the State Office of Vital Records within five days after such birth and filed in accordance with this Code section and regulations of the department.

(b) When a birth occurs in an institution or en route thereto, the person in charge of such institution or that person's designated representative shall obtain the personal data, prepare the birth certificate, certify, either by signature or by an electronic process established or approved by the State Office of Vital Records, that the child was born alive at the place and time and on the date stated and file the certificate with the State Office of Vital Records. The physician or other person in attendance shall provide the medical information required by the certificate within 72 hours after the birth occurs.

(c) Except as provided in subsection (b) of this Code section, when a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician or certified nurse midwife in attendance at or immediately after the birth; or in the absence of such person:

(2) Any other person in attendance at or immediately after the birth; or in the absence of such a person:

(3) The father or the mother; or in the absence of the father and inability of the mother:

(4) The person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or airspace or in a foreign country or its airspace and the child is first removed from the conveyance in this state, the birth shall be registered in this state but the certificate shall show the actual place of birth insofar as can be determined.

(e) The name of the natural father or putative father shall be entered on the certificate of live birth as follows:

(1) If the mother was married either at the time of conception or at the time of birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court having jurisdiction, in which case the name of the father as determined by the court shall be entered;

(2) If the mother is not married at either the time of conception or at the time of birth, the name of the putative father shall not be entered on the certificate of birth without the written consent of the mother and the person to be named as father;

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father and the surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court;

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate; or

(5) Except as provided in paragraph (3) of this subsection, in all other cases, the surname of the child shall be the legal surname of the mother at the time of the birth entered on the certificate as designated by the mother. When a paternity acknowledgment is completed, the surname of the child shall be entered as designated by both parents.

(f) The birth certificate of a child born to a married woman as a result of artificial insemination, with consent of her husband, shall be completed in accordance with the provisions of subsection (e) of this Code section.

(g) Either of the parents of the child, or other informant, shall verify the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within the time period prescribed in subsection (a) of this Code section.

(h) All birth certificates filed and registered must identify the recorded person by name and the name of each legal parent of such person and the name of all other persons required by this Code section or by regulation. No obscenities, numbers, symbols, or other such nonidentifying name information will be accepted. If a legal parent has not decided upon a first or middle name for the child before the time limits established in this Code section, the birth record shall be registered without the child's first or middle name, or both, unless a court order provides otherwise.

History. — Ga. L. 1914, p. 157, §§ 12, 13; Ga. L. 1927, p. 353, §§ 12, 13; Code 1933, §§ 88-1201, 88-1202; Ga. L. 1945, p. 236, §§ 8, 11; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 4; Code 1933, § 88-1709, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-10-30; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-9, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1984, p. 22, § 31; Ga. L. 1991, p. 669, § 2; Ga. L. 2004, p. 477, § 5; Ga. L. 2005, p. 60, § 31/HB 95.

Law reviews. — For annual survey on domestic relations, see 69 Mercer L. Rev. 83 (2017).

JUDICIAL DECISIONS

Cited in Quilloin v. Walcott, 434 U.S. 246, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978); Jones v. Sullivan, 953 F.2d 1291 (11th Cir. 1992); Ray v. Hann, 323 Ga. App. 45, 746 S.E.2d 600 (2013).

OPINIONS OF THE ATTORNEY GENERAL

When a putative father's name has been removed from a child's birth certificate, after the presentation of competent evidence to an appropriate court, the child's name on that certificate should be changed so as to give the child the legal surname of the mother, the child's only legally acknowledged parent. 1982 Op. Att'y Gen. No. U82-42.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 52.

C.J.S. — 39A C.J.S., Health and Environment, §§ 69, 70.

ALR. — Inclusion or exclusion of the day of birth in computing one's age, 5 A.L.R.2d 1143.

31-10-9.1. Social security account information of parents.

(a) Social security account information of the mother and father, if paternity is acknowledged by the father, of a child born within this state shall be entered in the medical and health statistics section of the certificate of live birth at the time of filing the certificate of birth as provided in Code Section 31-10-9.

(b) The state registrar shall make available the records of an individual's name and social security number to the entity within the Department of Human Services authorized to enforce support orders for

its use in the establishment of paternity or the enforcement of child support orders.

(c) Information obtained pursuant to this Code section by the entity within the Department of Human Services authorized to enforce support orders may be used in an action or proceeding before any court, administrative tribunal, or other body for the purpose of establishing a child support obligation, collecting child support, or locating individuals owing the obligation.

History. — Code 1981, § 31-10-9.1, enacted by Ga. L. 1992, p. 1270, § 1; Ga. L. 1997, p. 1613, § 35; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2017, p. 646, § 2-4/SB 137.

The 2017 amendment, effective July 1, 2017, substituted "entity within" for "Child Support Enforcement Agency of" in subsections (b) and (c); in subsection (b), substituted "an individual's" for "parent" near the beginning and inserted "authorized to enforce support orders" in the middle; and, in subsection (c), inserted "pursuant to this Code section" in the beginning and substituted "authorized to enforce support orders" for "pursuant to this Code section" in the middle.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. L. Rev. 121 (1997).

31-10-10. Registration of live born infants of unknown parentage.

(a) Whoever assumes the custody of a live born infant of unknown parentage shall report on a form and in a manner prescribed by the state registrar within ten days to the State Office of Vital Records the following information:

(1) The date and place of finding;

(2) Sex, color or race, and approximate birth date or age of child;

(3) Name and address of the person or institution with whom the child has been placed for care;

(4) Name given to the child by the custodian of the child; and

(5) Other data required by the state registrar.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this Code section shall constitute the certificate of birth for the child.

(d) If the child is subsequently identified and a certificate of birth is found or obtained, the report registered under this Code section shall be placed in a special file and shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation.

History. — Ga. L. 1945, p. 236, § 13; Code 1933, § 88-1710, enacted by Ga. L. 1964, p. 499, § 1; Code 1981, § 31-10-35; Ga. L. 1982, p. 723, § 1; Code 1981,

§ 31-10-10, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 11.

31-10-11. Registration of delayed certificate of birth.

(a) When a certificate of birth of a person born in this state has not been filed before that person's first birthday, a delayed certificate of birth may be filed in accordance with regulations of the department. The certificate shall be registered subject to such evidentiary requirements as the department shall by regulation prescribe to substantiate the alleged facts of birth.

(b) Delayed certificates of birth filed after the first birthday shall be made on forms prescribed by the state registrar, marked "Delayed," and shall show on their face the date of the delayed registration.

(c) A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the delayed certificate of birth.

(d) When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statement or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not register the delayed certificate of birth and shall advise the applicant in writing of the reasons for this action and shall further advise the applicant of the applicant's right of judicial appeal.

(e) The department may by regulation provide for the dismissal of an application which is not actively prosecuted.

(f) No delayed certificate of birth shall be registered for a deceased person.

History. — Code 1933, § 88-1711, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1975, p. 1179, § 2; Code 1981, § 31-10-31; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-11, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1983, p. 732, § 1; Ga. L. 1991, p. 669, § 3.

31-10-12. Judicial procedure to establish facts of birth.

(a) If a delayed certificate of birth is rejected under the provisions of Code Section 31-10-11, a petition signed and sworn to by the petitioner may be filed in either the superior court or the probate court in the county of residence of the person for whom a delayed certificate of birth is sought for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered and shall allege:

(1) That the person for whom a delayed certificate of birth is sought was born in this state;

(2) That no certificate of birth of such person can be found in the files of the State Office of Vital Records or the office of any local custodian of vital records;

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with Code Section 31-10-11 and regulations adopted pursuant thereto;

(4) That the state registrar has refused to register a delayed certificate of birth; and

(5) Such other allegations as may be required.

(b) The petition shall be accompanied by a statement of the state registrar made in accordance with Code Section 31-10-11 and all documentary evidence which was submitted to the state registrar in support of such registration.

(c) The superior court or probate court, as the case may be, shall fix a time and place for hearing the petition and shall give the state registrar not less than ten days' notice of said hearing. The state registrar or his authorized representative may appear and testify in the proceeding.

(d) If the superior court or probate court finds, from the evidence presented, that the person from whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and such other findings as may be required and shall issue an order, on a form prescribed and furnished by the state registrar, to establish a delayed certificate of birth. This order shall include the birth data to be registered, a description of the evidence presented as prescribed by Code Section 31-10-11, and the date of the court's action.

(e) The clerk of superior court or the probate court, as the case may be, shall forward each such order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. Such order shall be registered by the state registrar and shall constitute the certificate of birth from which certified copies may be issued in accordance with this chapter.

History. — Ga. L. 1943, p. 424, §§ 1-7; Ga. L. 1949, p. 384, § 1; Ga. L. 1956, p. 791, §§ 1, 2; Code 1933, § 88-1712, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 3, § 31; Code 1981, § 31-10-32; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-12, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 11; Ga. L. 2008, p. 119, § 1/HB 111.

31-10-13. Certificates of adoption.

(a) For each adoption decreed by a court of competent jurisdiction in this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the state registrar. The report shall include such facts as are necessary to locate and identify the original certificate of birth of the person adopted; shall provide information necessary to establish a new certificate of birth of the person adopted; and shall identify the order of adoption and be certified by the clerk of court.

(b) Information necessary to prepare the report of adoption shall be furnished by the petitioner for adoption or the petitioner's attorney. The appropriate agency or any person having knowledge of the facts shall supply the court with such additional information as may be necessary to complete the report. The provision of such information shall be prerequisite to the issuance of a final decree in the matter by the court.

(c) Whenever an adoption decree is amended or annulled, the clerk of the court shall prepare a report thereof, which shall include such facts as are necessary to identify the original adoption report and the facts amended in the adoption decree as shall be necessary to amend the birth record properly.

(d) Not later than the fifteenth day of each calendar month or more frequently, as directed by the state registrar, the clerk of the court shall forward to the state registrar reports of decrees of adoption, annulment of adoption, and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the state registrar shall require.

(e) When the state registrar shall receive a certificate of adoption, report of annulment of adoption, or amendment of a decree of adoption of a person born outside this state, the state registrar shall forward such certificate or report to the state registrar in the indicated state of birth.

(f) The following shall apply to certificates of birth of adopted persons born in a foreign country:

(1) If a person was born in a foreign country, is not a citizen of the United States, and does not meet the requirements of the federal Child Citizenship Act of 2000, P.L. 106-395, 114 Stat. 1631, but was adopted through a court in this state, the state registrar shall prepare and register a certificate in this state. The certificate shall be established upon receipt of a report of adoption from the court decreeing the adoption and proof of the date and place of birth of the child. The certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual country of birth. A statement shall also be

included on the certificate indicating that it is not evidence of United States citizenship for the person for whom it is issued. After registration of the birth certificate in the new name of the adopted person, the state registrar shall seal and file the report of adoption which shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by statute;

(2) If a person was born in a foreign country and was not a citizen of the United States at the time of birth but meets the requirements of the federal Child Citizenship Act of 2000, P.L. 106-395, 114 Stat. 1631, and was adopted through a court in this state, the state registrar shall prepare and register a certificate in this state. The certificate shall be established upon receipt of a report of adoption from the court decreeing the adoption and proof of the date and place of birth of the child. The certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual country of birth. After registration of the birth certificate in the new name of the adopted person, the state registrar shall seal and file the report of adoption which shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by statute; and

(3) If a person was born in a foreign country and was a citizen of the United States at the time of birth, the state registrar shall not prepare a "Certificate of Foreign Birth" and shall notify the adoptive parents of the procedure for obtaining a revised birth certificate for their child through the United States Department of State.

History. — Ga. L. 1945, p. 236, § 10; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 3; Ga. L. 1955, p. 208, § 1; Ga. L. 1959, p. 304, § 1; Ga. L. 1961, p. 120, § 1; Code 1933, § 88-1713, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 546, § 1; Ga. L. 1965, p. 651, § 1; Code 1981, § 31-10-33; Ga. L. 1982, p. 723, § 15; Code 1981, § 31-10-13, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1984, p. 1015, § 1; Ga. L. 1991, p. 669, § 4; Ga. L. 1992, p. 2410, § 1; Ga. L. 2003, p. 503, § 9.

Cross references. — Adoption, T. 19, C. 8. Form of certificate of adoption, § 19-8-20.

31-10-13.1. Certified copies of orders and registration of legitimations and paternity orders.

(a) For each legitimation, annulment of legitimation, and amendment of an order of legitimation decreed by a court of competent jurisdiction in this state, the clerk of the court shall not later than the fifteenth day of each calendar month or more frequently, as directed by the state registrar, forward to the state registrar a certified copy of each order of legitimation, annulment of legitimation, and amendment of an order of legitimation which was entered in the preceding month. Each order of legitimation, annulment of legitimation, and amendment of an order of legitimation shall comply with paragraph (2) of subsection (c) of Code Section 31-10-23.

(b) When the state registrar receives a certified copy of the order of legitimation, annulment of legitimation, or amendment of an order of legitimation of a person born outside this state, the state registrar shall forward such certified copy of the order to the state registrar in the indicated state of birth.

History. — Code 1981, § 31-10-13.1, enacted by Ga. L. 2004, p. 915, § 1.

31-10-13.2. Provision of copies of legitimation and paternity orders to state registrar.

(a) In each case in which an order declaring paternity is entered by a court of competent jurisdiction in this state or by the Office of State Administrative Hearings, the clerk of the court or the Office of State Administrative Hearings shall not later than the fifteenth day of each calendar month or more frequently, as directed by the state registrar, forward to the state registrar a certified copy of each order of paternity, annulment of paternity, and amendment of an order of paternity which was entered in the preceding month. The order of paternity, annulment of paternity, and amendment of an order of paternity shall comply with paragraph (2) of subsection (c) of Code Section 31-10-23.

(b) When the state registrar receives a certified copy of an order of paternity, annulment of paternity, or amendment of an order of paternity of a person born outside this state, the state registrar shall forward such certified copy of the order to the state registrar in the indicated state of birth.

History. — Code 1981, § 31-10-13.2, enacted by Ga. L. 2004, p. 915, § 2.

31-10-14. Issuance of new certificate of birth following adoption and legitimation or paternity determination.

(a) The state registrar shall establish a new certificate of birth for a person born in this state when the state registrar receives the following:

(1) A report of adoption as provided in Code Section 31-10-13 or a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth. A new certificate of birth shall not be established if the court decreeing the adoption directs that a new birth certificate not be issued;

(2) A certified copy of an order of legitimation, annulment of legitimation, or amendment of an order of legitimation as provided in

Code Section 31-10-13.1 that requires the establishment of a new certificate of birth;

(3) A certified copy of an order of paternity, annulment of paternity, or amendment of an order of paternity as provided in Code Section 31-10-13.2 that requires the establishment of a new certificate of birth; or

(4) A request that a new certificate be established as prescribed by regulation and such evidence as required by regulation proving that both parents married to each other have acknowledged the paternity of such person and request that the surname be changed to that of the father.

(b) When a new certificate of birth is established pursuant to this Code section for a person born in this state, the date of birth contained on the original certificate shall be shown. The true place of birth shall be shown if the adoptee is the natural child of the spouse of the adoptive parent in the case of step-parent adoptions. The true place of birth shall be shown for all legitimations. For full adoptions, where neither parent is the natural parent of the adoptee, the place of birth shall be, at the election of the adoptive parents, either the true place of birth of the adoptee or the residence of the adoptive parents at the time of the adoptee's birth. The place of birth indicated must be located in Georgia.

(c) Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided by regulation.

(d) Upon receipt of a report or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation.

(e) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this Code section and the date and place of birth have not been determined in the adoption, legitimation, or paternity proceedings, a delayed certificate of birth shall be filed with the state registrar as provided in Code Section 31-10-11 or 31-10-12 before a new certificate of birth is established. The new birth certificate shall be prepared on the delayed birth certificate form.

(f) When a new certificate of birth is established by the state registrar, the original birth certificate shall not be subject to inspection except as provided in this Code section. All copies of the original certificate of birth in the custody of any other custodian of vital records in this state shall be sealed from inspection and forwarded to the state registrar, as the state registrar shall direct.

(g) The new certificate shall be substituted for the original certificate of birth in the files and the original certificate of birth and the evidence of adoption, legitimation, or paternity determination shall not be subject to inspection except upon order of a court of competent jurisdiction or as provided by statute.

History. — Ga. L. 1945, p. 236, § 25; Code 1933, § 88-1714, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 546, § 1; Code 1981, § 31-10-34; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-14, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 1992, p. 2410, § 2; Ga. L. 2003, p. 503, § 10; Ga. L. 2004, p. 915, § 3.

Cross references. — Legitimation generally, § 19-7-20 et seq. Determination of paternity generally, § 19-7-40 et seq. Amendments of certificates or reports, § 31-10-23.

JUDICIAL DECISIONS

Department to be made party to proceedings for alteration of birth certificate. — Alteration of birth certificate as regards paternity is obtained by Department of Public Health (now Department of Human Resources) which should be made a party to such proceedings. This is true even if the petition is construed as an action to have the superior court determine the party's paternity. Ward v. Ward, 115 Ga. App. 778, 156 S.E.2d 210 (1967).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 69, 70.

31-10-15. Death certificate; filing; medical certification; forwarding death certificate to decedent's county of residence; purging voter registration list.

(a) A certificate of death for each death which occurs in this state shall be filed with the local registrar of the county in which the death occurred or the body was found within ten days after the death as follows:

(1) If the place of death is unknown but the dead body is found in this state, the certificate of death shall be completed and filed in accordance with this Code section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be the date the body was found and the certificate marked as such; or

(2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or airspace or in a foreign country or its airspace and the body is first

removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined.

(b) The funeral director or person acting as such who first assumes custody of the dead body shall file the certificate of death within 72 hours. Such director or person shall obtain the personal data from the next of kin or the best qualified person or source available and shall obtain the medical certification from the person responsible therefor.

(c)(1) The medical certification as to the cause and circumstances of death shall be completed, signed, and returned to the funeral director or person acting as such within 72 hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act." In the absence of said physician or with that physician's approval the certificate may be completed and signed by an associate physician, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided that such individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes. If, 30 days after a death, the physician in charge of the patient's care for the illness or condition which resulted in death has failed to complete, sign, and return the medical certification as to the cause and circumstances of death to the funeral director or person acting as such, the funeral director or person acting as such shall be authorized to report such physician to the Georgia Composite Medical Board for discipline pursuant to Code Section 43-34-8.

(2) In any area in this state which is in a state of emergency as declared by the Governor due to an influenza pandemic, in addition to any other person authorized by law to complete and sign a death certificate, any registered professional nurse employed by a long-term care facility, advanced practice nurse, physician assistant, registered nurse employed by a home health agency, or nursing supervisor employed by a hospital shall be authorized to complete and sign the death certificate, provided that such person has access to the medical history of the case, such person views the deceased at or after death, the death is due to natural causes, and an inquiry is not required under Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act." In such a state of emergency, the death certificate shall be filed by the funeral director in accordance with subsection (b) of this Code section; or, if the certificate is not completed and signed by an appropriate physician or coroner, the public health director of preparedness shall cause the death certificate to be completed, signed, and filed by some other authorized person within ten days after death.

(d) When death occurs without medical attendance as set forth in subsection (c) of this Code section or when inquiry is required by Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act," the proper person shall investigate the cause of death and shall complete and sign the medical certification portion of the death certificate within 30 days after being notified of the death.

(e) If the cause of death cannot be determined within 48 hours after death, the medical certification shall be completed as provided by regulation. The attending physician or coroner shall give the funeral director or person acting as such notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician, coroner, or medical examiner.

(f) When death occurs on or after July 1, 1985, in a county other than the county of the residence of the deceased person, a copy of such person's death certificate shall be forwarded as soon as practicable by the department to the custodian of records of the county of the residence of such deceased person. The custodian of records shall file such death certificate as a part of the permanent records of such office.

(g) Any other provision of this chapter or Chapter 16 of Title 45 notwithstanding, when the death of a nonresident burn victim occurs in a treatment facility following the transportation of such victim from an incident occurring in another state, only the attending physician shall be required to complete and sign the death certificate.

(h) On or before the tenth day of each month, the state registrar shall furnish to the Secretary of State's office, in a format prescribed by the Secretary's office, a list of those persons for whom death certificates have been filed during the preceding month. Such list shall be used by the Secretary of State to notify local registration officers for the purpose of purging the voter registration list of each county.

History. — Ga. L. 1914, p. 157, § 7; Ga. L. 1927, p. 353, § 7; Code 1933, § 88-1214; Ga. L. 1945, p. 236, § 16; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 8; Code 1933, § 88-1715, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1967, p. 617, § 1; Code 1981, § 31-10-71; Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-15, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1983, p. 3, § 22; Ga. L. 1985, p. 1417, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 1991, p. 669, § 5; Ga. L. 1992, p. 2758, § 1; Ga. L. 1996, p. 1201, § 1; Ga. L. 2004, p. 477, § 6; Ga. L. 2009, p. 81, § 1/HB 64; Ga. L. 2010, p. 752, § 1/SB 493; Ga. L. 2010, p. 878, § 31/HB 1387; Ga. L. 2010, p. 914, § 36/HB 540.

Cross references. — Criminal penalty for concealing death of person, § 16-10-31. "Georgia Death Investigation Act," § 45-16-20 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, in paragraph (c)(1), "Georgia Composite Medical Board" was substituted for "Composite State Board of Medical Examiners" and "43-34-38" was substituted for "43-34-37" in the last sentence, and in paragraph (c)(2), "physician assistant" was substituted for "physician's assistant" in the first sentence.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 88-1212, and Ga. L. 1945, p. 236, § 18, subsequently codified as former Code 1933, § 88-1118, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Evidentiary effect of death certificate. — Certified copy of death certificate properly filed is no longer prima facie evidence of facts stated therein, and when facts stated therein are shown to result from statements made by others, such facts amount to hearsay. Under present law a certified copy of a duly filed death certificate is allowed in evidence only for purpose for which it was intended, that is, to show that person named therein is no longer in life. Interstate Life & Accident Ins. Co. v. Wilmont, 123 Ga. App. 337, 180 S.E.2d 913 (1971), criticized in Allstate Ins. Co. v. Holcombe, 132 Ga. App. 111, 207 S.E.2d 537 (1974).

Death certificate is prima facie evidence of facts therein stated, but presumption raised is rebuttable. Allstate Ins. Co. v. Holcombe, 132 Ga. App. 111, 207 S.E.2d 537 (1974).

Death certificate serves as prima facie evidence only of death and immediate agency of death, and other conclusions, such as those regarding events leading up to death or whether cause of death was intentional or accidental, are not admissible. King v. State, 151 Ga. App. 762, 261 S.E.2d 485 (1979).

Death certificate raises rebuttable presumption as to cause of death. — Death certificate is prima facie evidence of cause of death, and though its introduction raises presumption as to cause of death it is a rebuttable presumption, and it is a question solely for decision by a fact finding body as to whether conflicting evidence is sufficient to rebut such presumption. Ingraham v. Atlantic Co., 97 Ga. App. 359, 103 S.E.2d 58 (1958) (decided under former Ga. L. 1945, p. 236, § 18, subsequently codified as former Code 1933, § 88-1118).

Statement in death certificate stating cause of death is rebuttable. McWaters v. Employers Liab. Assurance Corp., 73 Ga. App. 586, 37 S.E.2d 430 (1946) (decided under former Code 1933, § 88-1212).

Death certificate establishing prima facie case for collection under double indemnity policy. — Introduction of death certificate in which coroner assigned accidental suffocation as cause of death made out prima facie case on behalf of insured's beneficiary in action to recover under double indemnity policy. Family Fund Life Ins. Co. v. Wiley, 91 Ga. App. 225, 85 S.E.2d 448 (1954) (decided under former Code 1933, §§ 88-1212 and 88-1118).

Certificate not made or filed as required not prima facie evidence of statements therein. — Certificate not made or filed as required is not prima facie evidence of statements therein contained, though admitted in evidence without objection. Davison v. National Life & Accident Ins. Co., 106 Ga. App. 187, 126 S.E.2d 811 (1962) (decided under former Ga. L. 1945, p. 236, § 18, subsequently codified as former Code 1933, § 88-1118).

Presumption of discharge of duties by one performing required autopsy. — Medical examiner acting under the Post Mortem Examinations Act (see Georgia Death Investigations Act, O.C.G.A. Art. 2, Ch. 16, T. 45) is a public officer and all public officers are presumed to discharge properly the duties of their office. Thus, in the absence of any allegations or evidence to the contrary, having shown that an autopsy was requested, it must be presumed that a full and proper autopsy was performed, that the medical officer properly signed and filed the death certificate, and that it was done within a reasonable time as required by subsection (d) of this section. National Life & Accident Ins. Co. v. Fender, 146 Ga. App. 545, 247 S.E.2d 195 (1978).

Failure to file death certificates within 72-hour period did not render certificates inadmissible as hearsay when certified copies of the certificates were issued in accordance with O.C.G.A. § 31-10-26(a), although such copies constituted prima-facie evidence which

raised a rebuttable presumption of truth of the facts stated therein. Sherrer v. Lynn, 172 Ga. App. 745, 324 S.E.2d 500 (1984).

Cited in Smith v. State, 143 Ga. App. 347, 238 S.E.2d 698 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Funeral director's duty regarding medical certification of death. — It is the duty of the funeral director who first assumes custody of a dead body to obtain medical certification of cause of death; that medical certification should be completed and signed within 48 hours after death by a physician or the osteopath in charge of the patient's care for an illness or condition which resulted in death except when inquiry is required by the Post Mortem Examination Act (see now Georgia Death Investigations Act, O.C.G.A. Art. 2, Ch. 16, T. 45). 1968 Op. Att'y Gen. No. 68-294.

Death certificate should be signed within reasonable time when no medical attendance. — If a post-mortem examination is not required under the circumstances and a person dies without medical attendance, medical certification of death should be signed within a reasonable time by a proper person (physician, osteopath, or medical examiner, as the case may be) who shall investigate the cause of death. 1968 Op. Att'y Gen. No. 68-294 (rendered prior to 1982 amendment).

When post-mortem or autopsy unnecessary. — Correlating Ga. L. 1953, Jan.-Feb. Sess., p. 602, §§ 5 and 8, former Code 1933, § 88-1715, no post-mortem or autopsy need be performed if the deceased was under the care of a physician and there was no evidence of violence or suicide; if the deceased was under the care of a physician it was not essential that the physician be present at instant of death to avoid the necessity of notifying the coroner. 1973 Op. Att'y Gen. No. U73-65.

Release of information on death certificates. — Federal Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d, does not prevent the release of information on copies of death certificates about the cause of death of an individual, as well as conditions leading to the person's death and information regarding surgical proceedings conducted on the deceased, if any, that are released under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq. 2007 Op. Att'y Gen. No. 2007-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 16. 39 Am. Jur. 2d, Health, § 108.

C.J.S. — 39A C.J.S., Health and Environment, §§ 69, 70, 71.

ALR. — Death certificate as evidence, 96 A.L.R. 324.

Presumption against suicide as overcome by death certificate, coroner's verdict, or similar documentary evidence, 159 A.L.R. 181.

Official death certificate as evidence of cause of death in civil or criminal action, 21 A.L.R.3d 418.

Civil liability in conjunction with autopsy, 97 A.L.R.5th 419.

31-10-16. Criteria for pronouncing death; immunity from liability.

(a) A person may be pronounced dead by a qualified physician, by a registered professional nurse or nurse practitioner authorized to make a pronouncement of death under Code Section 31-7-16 or 31-7-176.1, by an advanced practice registered nurse authorized to make a pronouncement of death under subsection (o) of Code Section 43-34-25, or by a

physician assistant authorized to make a pronouncement of death under Code Section 31-7-16 or 31-7-176.1 or subsection (j) of Code Section 43-34-103, if it is determined that the individual has sustained either (1) irreversible cessation of circulatory and respiratory function or (2) irreversible cessation of all functions of the entire brain, including the brain stem.

(b) A person who acts in good faith in accordance with the provisions of subsection (a) of this Code section shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for such act.

(c) The criteria for determining death authorized in subsection (a) of this Code section shall be cumulative to and shall not prohibit the use of other medically recognized criteria for determining death.

History. — Code 1933, § 88-1715.1, enacted by Ga. L. 1975, p. 1629, § 1; Code 1933, § 88-1716, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-70; Code 1981, § 31-10-16, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1992, p. 1392, § 3; Ga. L. 2009, p. 859, § 9/HB 509; Ga. L. 2017, p. 625, § 3/SB 96.

The 2017 amendment, effective July 1, 2017, in subsection (a), inserted "or nurse practitioner", inserted "31-7-16 or", inserted "by an advanced practice registered nurse authorized to make a pronouncement of death under subsection (o) of Code Section 43-34-25,", and inserted "Code Section 31-7-16 or 31-7-176.1 or".

Law reviews. — For article, "Baby Doe Cases: Compromise and Moral Dilemma," see 34 Emory L.J. 545 (1986).

For note, "Incubating for the State: The Precarious Autonomy of Persistently Vegetative and Brain-Dead Pregnant Women," 22 Ga. L. Rev. 1103 (1988).

JUDICIAL DECISIONS

Cited in State v. Williams, 247 Ga. 200, 275 S.E.2d 62 (1981); Clay v. State, 256 Ga. 797, 353 S.E.2d 517 (1987).

RESEARCH REFERENCES

ALR. — Tests of death for organ transplant purposes, 76 A.L.R.3d 913.

31-10-17. State registration of death certificates; certified copies; certificates of record.

(a) When a death certificate is filed with a local registrar, it shall be transmitted to the State Office of Vital Records for state registration immediately upon receipt. After registration and the assignment of a state file number, an authorized copy of the death certificate shall be returned to the local custodian. Certified copies of such death certificates may then be issued from the authorized copy by the local custodian.

(b) After a death certificate is filed with a local registrar, but before the death certificate has been registered by the State Office of Vital Records, the local custodian shall be authorized to issue copies of the death certificate to be known as a "certificate of record." Each certificate of record shall have printed thereon the following: "This is an exact copy of the death certificate received for filing in _____ County." Such certificate of record shall be signed by the local custodian and have the correct seal affixed thereto.

History. — Code 1933, § 88-1715.1, enacted by Ga. L. 1976, p. 677, § 1; Code 1933, § 88-1717, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-72; Code 1981, § 31-10-17, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 7.

JUDICIAL DECISIONS

Special legislation regarding salary for probate judges does not prohibit a probate judge from receiving compensation for serving as the custodian of vital records. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

RESEARCH REFERENCES

ALR. — Official death certificate as evidence of cause of death in civil or criminal action, 21 A.L.R.3d 418.

31-10-18. Registration of spontaneous fetal deaths.

(a) A report of spontaneous fetal death for each spontaneous fetal death which occurs in this state shall be filed with the local registrar of the county in which the delivery occurred within 72 hours after such delivery in accordance with this Code section unless the place of fetal death is unknown, in which case a fetal death certificate shall be filed in the county in which the dead fetus was found within 72 hours after such occurrence. All induced terminations of pregnancy shall be reported in the manner prescribed in Code Section 31-10-19. Preparation and filing of reports of spontaneous fetal death shall be as follows:

(1) When a dead fetus is delivered in an institution, the person in charge of the institution or that person's designated representative shall prepare and file the report;

(2) When a dead fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the report;

(3) When a spontaneous fetal death required to be reported by this Code section occurs without medical attendance at or immediately after the delivery or when inquiry is required by Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act," the proper

investigating official shall investigate the cause of fetal death and shall prepare and file the report within 30 days; and

(4) When a spontaneous fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state or when a dead fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state. The place where the fetus was first removed from the conveyance or the dead fetus was found shall be considered the place of fetal death.

(b) The medical certification portion of the fetal death report shall be completed and signed within 48 hours after delivery by the physician in attendance at or after delivery except when inquiry or investigation is required by Article 2 of Chapter 16 of Title 45, the "Georgia Death Investigation Act."

(c) The name of the father shall be entered on the spontaneous fetal death report in accordance with the provisions of Code Section 31-10-9.

History. — Ga. L. 1945, p. 236, § 17; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 9; Code 1933, § 88-1716, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1718, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-74; Code 1981, § 31-10-18, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2005, p. 60, § 31/HB 95.

OPINIONS OF THE ATTORNEY GENERAL

Certificate of legal abortion will not replace fetal death certificate. 1973 Op. Att'y Gen. No. 73-71.

Fetal death occurs when abortion is performed. — When a doctor has induced an abortion by any currently used abortion procedure, a fetal death occurs; therefore, both a fetal death certificate and a certificate of abortion must be filed; however, if fetal death is caused by a spontaneous abortion or miscarriage, it would only be necessary to file a fetal death certificate. 1973 Op. Att'y Gen. No. 73-71.

RESEARCH REFERENCES

ALR. — Official death certificate as evidence of cause of death in civil or criminal action, 21 A.L.R.3d 418.

31-10-19. Reporting of induced termination of pregnancy.

Each induced termination of pregnancy which occurs in this state, regardless of the length of gestation or weight, shall be reported directly to the department within ten days by the person in charge of the institution or clinic, or designated representative, in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution or clinic, the attending physician shall prepare and file the report within the time specified by this Code section.

History. — Code 1933, § 88-1719, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-19, enacted by Ga. L. 1982, p. 723, § 2.

Administrative rules and regulations. — Performance of abortions after the first trimester of pregnancy and reporting requirements for all abortions, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Public Health, Chapter 290-5-32.

31-10-20. Permits for disposition, disinterment, and reinterment.

(a) The funeral director or person acting as such or other person who first assumes custody of a dead body or fetus shall obtain a disposition permit for cremation or removal from the state. A disposition permit may be required within the state by local authorities.

(b) Such disposition permit shall be made available by the local registrar of the county where the death or fetal death occurred, or body or fetus was found, 24 hours a day, seven days a week. The registrar will issue a disposition permit immediately upon request from the licensed funeral director or his agent in charge of the body or fetus. The request for a disposition permit may be received by the registrar either orally or in writing. The registrar may respond to the request by any means utilized in the normal course of transacting business including, but not limited to, transmission by facsimile machine.

(c) A disposition permit issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(d) Prior to final disposition of a dead fetus, irrespective of the duration of pregnancy, the funeral director or person acting as such, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from the parent(s) authorization for final disposition.

(e) Disposition permits shall not be required where disposition of fetal remains is within the institution of occurrence and a registry of such events is maintained by the institution.

(f) Authorization for disinterment and reinterment shall be required prior to disinterment of a dead body or fetus. Such authorization shall be issued by the local registrar to a licensed funeral director or other person acting as such, upon proper application, in the county in which the dead body or dead fetus was originally interred and a local registrar who issues such authorization shall not be civilly or criminally liable therefor if it is issued in good faith. A permit shall not be required when disinterment and reinterment are in the same cemetery.

(g) The department shall prescribe rules and regulations so that the local registrars may permit hospitals, funeral homes, or others in their respective counties to issue disposition permits.

History. — Ga. L. 1927, p. 353, § 5; Code 1933, § 88-1213; Ga. L. 1945, p. 236, § 27; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 13; Ga. L. 1960, p. 1130, § 1; Code 1933, § 88-1717, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1975, p. 1179, § 3; Ga. L. 1976, p. 677, § 2; Code 1933, § 88-1720, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-75; Code 1981, § 31-10-20, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1983, p. 732, § 2; Ga. L. 1991, p. 669, § 6; Ga. L. 1992, p. 2758, § 2.

JUDICIAL DECISIONS

Code section applies to all disinterments and reinterments. — This section contains no express exceptions. In its terms, the statute applies to all disinterments and reinterments, subject only to such reasonable rules and regulations as may be promulgated. Westview Cem. v. Blanchard, 234 Ga. 540, 216 S.E.2d 776 (1975).

Procuring permit held not ground for trespass action. — Funeral establishment's assistance to a next-of-kin in procuring a disinterment permit did not subject the establishment to liability for trespass or intentional infliction of emotional distress in an action brought by relatives of the deceased. Edwards v. A.S. Turner & Sons, 181 Ga. App. 105, 351 S.E.2d 505 (1986).

Executor's authority. — If an executor has any duty or authority relating to burial or disposition of a body, that duty or authority terminates after initially discharging any such obligation in accordance with the testamentary direction, and, thereafter, disinterment and reburial may be sought by the surviving spouse, or by the next of kin in the absence of a surviving spouse under O.C.G.A. § 31-10-20. Welch v. Welch, 269 Ga. 742, 505 S.E.2d 470 (1998).

Cited in Blanchard v. Westview Cem., 133 Ga. App. 262, 211 S.E.2d 135 (1974); Welch v. Welch, 244 Ga. App. 685, 536 S.E.2d 583 (2000).

RESEARCH REFERENCES

ALR. — Removal and reinterment of remains, 21 A.L.R.2d 472.

Dead bodies: liability for improper manner of reinterment, 53 A.L.R.4th 394.

31-10-21. Record of marriage licenses.

(a) A record of each marriage performed in this state shall be filed with the department and shall be registered if it has been completed and filed in accordance with this Code section.

(b) The official who issues the marriage license shall cause to be prepared the record on the application supplement-marriage report form, including at a minimum the information set out in subsection (b) of Code Section 19-3-33, upon the basis of information obtained from both of the parties to be married.

(c) A person who performs a marriage shall certify the fact of marriage and return the license to the official who issued the license within ten days after the ceremony. The license shall be completed as prescribed by regulations of the department.

(d) Every official issuing marriage licenses shall complete and forward to the department on or before the tenth day of each calendar

month an application supplement-marriage report form for each marriage license returned to such official during the preceding calendar month. Such forms may be transmitted in the form of paper or electronically.

(e) The official issuing a marriage license shall keep the original of the application and license for the county records from which the official may issue certified copies but need not retain the prepared application supplement-marriage report forms except to the extent necessary for transmission of such forms to the registrar and confirmation of transmission or receipt.

(f) In addition to the fee provided by Code Section 15-9-60, the official shall be entitled to a filing fee of $1.00 to be paid by the applicant upon application for the marriage license.

History. — Ga. L. 1945, p. 236, §§ 34, 35; Ga. L. 1952, p. 103, §§ 5, 6; Code 1933, § 88-1719, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 959, § 1; Code 1933, § 88-1721, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-50; Code 1981, § 31-10-21, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1997, p. 1592, § 4; Ga. L. 1998, p. 128, § 31.

Cross references. — Issuance of marriage licenses generally, § 19-3-30 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 1313 et seq. 39 Am. Jur. 2d, Health, § 52. 52 Am. Jur. 2d, Marriage, § 37.

31-10-22. Record of divorces, dissolutions, and annulments.

(a) A record of each divorce, dissolution of marriage, or annulment granted by any court of competent jurisdiction in this state shall be filed by the clerk of the court with the department and shall be registered if it has been completed and filed in accordance with this Code section. The record shall be prepared by the petitioner or the petitioner's legal representative on a form prescribed and furnished by the state registrar and shall be presented to the clerk of the court with the petition. In all cases, the completed record shall be a prerequisite to the granting of the final decree.

(b) The clerk of the superior court shall complete and forward to the department on or before the tenth day of each calendar month the records of each divorce, dissolution of marriage, or annulment decree granted during the preceding calendar month.

History. — Ga. L. 1945, p. 236, § 36; Ga. L. 1952, p. 103, § 8; Ga. L. 1953, Jan.-Feb. Sess., p. 534, §§ 1, 2; Code 1933, § 88-1720, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1722, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-51; Code 1981, § 31-10-22, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1996, p. 6, § 31.

Cross references. — Annulment of

marriage generally, T. 19, C. 4. Divorce generally, T. 19, C. 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 24 Am. Jur. 2d, Divorce and Separation, § 361. 52 Am. Jur. 2d, Marriage, § 107.

C.J.S. — 27A C.J.S., Divorce, § 228 et seq.

31-10-23. Amendment of certificates or reports.

(a) Unless otherwise specified by law, a certificate or report registered under this chapter may be amended in accordance with this chapter and regulations adopted by the department to protect the integrity and accuracy of vital records. Such regulations shall specify the minimum evidence required for a change in any certificate or report. Amendments to birth certificates, death certificates, and application supplement-marriage reports shall be completed by the department and a copy mailed to the proper local custodian, if any. Amendments to applications for a marriage license or the license shall be completed by the judge of the probate court of the county in which the license was issued. An amendment to divorce reports shall be completed by the clerk of the superior court of the county in which the decree was granted.

(b) A certificate or report that is amended under this Code section shall be marked "amended," except as otherwise provided in this Code section. The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year after the date of the event without the certificate or record being marked "amended."

(c)(1) Upon receipt of a certified copy of an order to legitimate a child, or an affidavit signed by the natural parents whose marriage had legitimated a child, the director shall register a new birth certificate if paternity was not shown on the original certificate. Such certificate shall not be marked "amended."

(2) If paternity was shown on the original certificate, the record can be changed only by an order from a court of competent jurisdiction or the Office of State Administrative Hearings to remove the name of the person shown on the certificate as the father and to add the name of the natural father and to show the child as the legitimate child of the person so named. The order must specify the name to be removed and the name to be added.

(d) Upon receipt of a certified copy of an order from a superior court, probate court, or other court of competent jurisdiction changing the

name of a person born in this state and upon request of such person or such person's parents, guardian, temporary guardian, or legal representative, the state registrar shall amend the certificate of birth to show the new name. When the names of the parent or parents and the child are changed, the state registrar may register a new certificate if requested by the parents, guardian, temporary guardian, or legal representative. Such new certificate shall be marked "amended."

(e) Upon receipt of a certified copy of a court order indicating the sex of an individual born in this state has been changed by surgical procedure and that such individual's name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.

(f) An order from a superior court or probate court shall be required to change the year of birth shown on the original birth certificate by more than one year or to correct any item on a delayed birth certificate, or to remove the name of a father from a birth certificate on file. The person seeking such change, correction, or removal shall institute the proceeding by filing a petition with the appropriate court in the county of residence for an order changing the year of birth, correcting a delayed birth certificate, or removing the name of the father from a birth certificate on file. Such petition shall set forth the reasons therefor and shall be accompanied by all available documentary evidence. The court shall set a date for hearing the petition and shall give the state registrar at least ten days' notice of said hearing. The state registrar or the authorized representative thereof may appear and testify in the proceeding. If the court from the evidence presented finds that such change, correction, or removal should be made, the judge shall issue an order setting out the change to be made and the date of the court's action. The clerk of such court shall forward the petition and order to the state registrar not later than the tenth day of the calendar month following the month in which said order was entered. Such order shall be registered by the state registrar and the change so ordered shall be made.

(g) When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right of judicial appeal.

(h) When a certificate or report is amended under this Code section, the state registrar shall report the amendment to the proper local custodian and their record shall be amended accordingly.

History. — Code 1933, § 88-1721, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 715, § 1; Ga. L. 1975, p. 855, § 1; Ga. L. 1975, p. 1179, § 4; Ga. L. 1976, p. 1062, § 1; Code 1933, § 88-1723, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-12; Code 1981, § 31-10-23, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 1991, p. 669, § 7; Ga. L. 1997, p. 1592, § 5; Ga. L. 2004, p. 477, § 8; Ga. L. 2004, p. 915, § 4.

Cross references. — Legitimacy proceedings, § 19-7-20 et seq. Proceedings for determination of paternity of child, § 19-7-40 et seq. Form of certificate of change of name, § 19-12-3. Issuance of new birth certificate, § 31-10-14.

OPINIONS OF THE ATTORNEY GENERAL

Authority of probate judge. — Although a probate judge clearly has the authority to remove the name of the father from a birth certificate on file, this section does not authorize the probate court to substitute the name of the actual father on the certificate of birth. 1978 Op. Att'y Gen. No. U78-12.

When a putative father's name has been removed from a child's birth certificate, after the presentation of competent evidence to an appropriate court, the child's name on that certificate should be changed so as to give the child the legal surname of the child's mother, the only legally acknowledged parent. 1982 Op. Att'y Gen. No. U82-42.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 65.

C.J.S. — 76 C.J.S., Records, §§ 24 et seq., 98.

31-10-24. Preservation or disposition of vital records; certified reproductions; preserved originals and authorized reproductions as property of department.

(a) The department is responsible for the preservation or disposition of all vital records at state or county offices. To preserve vital records, the state registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports in the State Office of Vital Records. Such reproductions when certified by the state registrar or the local custodian shall be accepted as the original records for all purposes. The documents from which permanent reproductions have been made and verified may be preserved or disposed of as provided by regulation.

(b) All preserved original or authorized reproductions by the state and local custodians remain the property of the department. Such original or authorized reproductions shall be surrendered to the department when so ordered.

History. — Ga. L. 1945, p. 236, § 20; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 10; Code 1933, § 88-1722, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1724, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-11; Code 1981, § 31-10-24, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 11.

JUDICIAL DECISIONS

Death certificate established unavailability of witness. — Copy of a deceased witness's death certificate signed and certified by the county custodian and the state vital records registrar, pursuant to O.C.G.A. § 31-10-24, constituted prima facie evidence of the fact that the witness was no longer alive, and admission of the deceased witness's statement was proper. Brite v. State, 278 Ga. 893, 608 S.E.2d 204 (2005).

31-10-25. Disclosure of information contained in vital records; transfer of records to State Archives.

(a) To protect the integrity of vital records, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital records, it shall be unlawful for any person to permit inspection of, or to disclose information contained in, vital records or to copy or issue a copy of all or part of any such record except as authorized by this chapter, Code Section 19-7-46.1, and regulation or by order of a court of competent jurisdiction. Regulations adopted under this Code section shall provide for adequate standards of security and confidentiality of vital records. The provisions of this subsection shall not apply to court records or indexes of marriage licenses, divorces, and annulments of marriages filed as provided by law.

(b) The department shall authorize by regulation the disclosure of information contained in vital records for research purposes.

(c) Appeals from decisions of custodians of vital records, as designated under authority of Code Section 31-10-6, who refuse to disclose information or to permit inspection or copying of records as prescribed by this Code section and regulations issued under this Code section shall be made to the state registrar whose decisions shall be binding upon such custodians.

(d) Information in vital records indicating that a birth occurred out of wedlock shall not be disclosed except as authorized by this chapter, Code Section 19-7-46.1, and regulation or by order of a court of competent jurisdiction.

(e) When 100 years have elapsed after the date of birth or 75 years have elapsed after the date of death or application for marriage, or divorce, dissolution of marriage, or annulment, the records of these events in the custody of the state registrar shall be transferred to the State Archives and such information shall be made available in accordance with regulations which shall provide for the continued safekeeping of the records.

(f) Official copies of records of deaths, applications for marriages and marriage certificates, divorces, dissolutions of marriages, and annulments located in the counties shall remain accessible to the public.

While in the temporary custody of the probate court before transmission to the state registrar or confirmation of transmission or receipt, application supplement-marriage report forms shall not be available for public inspection or copying or admissible in any court of law.

History. — Ga. L. 1945, p. 236, § 24; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 12; Code 1933, § 88-1723, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 651, § 2; Code 1933, § 88-1725, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-13; Code 1981, § 31-10-25, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1997, p. 1592, § 6; Ga. L. 2016, p. 304, § 16/SB 64.

Cross references. — Opening of public records to inspection by members of public, § 50-18-70 et seq.

Editor's notes. — Ga. L. 2016, p. 304, § 18/SB 64, not codified by the General Assembly, provides that: "This Act shall not be construed to affect a voluntary acknowledgment of legitimation that was valid under the former provisions of Code Section 19-7-21.1, nor any of the rights or responsibilities flowing therefrom, if it was executed on or before June 30, 2016."

OPINIONS OF THE ATTORNEY GENERAL

Copies of marriage applications open to public. — Official copies of marriage applications kept on file in the office of the probate court must remain accessible to the public, including credit exchanges. 1983 Op. Att'y Gen. No. U83-17.

Access to department's vital records files should not be denied to newspaper representatives. 1970 Op. Att'y Gen. No. 70-1.

Providing information from death certificates to newspapers. — Local custodians of vital records may, upon request, provide information to newspapers from death certificates retained in the local custodian's office. 1984 Op. Att'y Gen. No. 84-3.

Department may prescribe fees to cover cost of furnishing information. — Department of Public Health (now Department of Human Resources) may prescribe fees to cover the cost of supervising inspections or furnishing lists of births and deaths to news reporters. 1970 Op. Att'y Gen. 70-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 17 et seq.

C.J.S. — 76 C.J.S., Records, §§ 44 et seq., 112 et seq., 123 et seq., 126 et seq.

31-10-26. Issuance of certified copies of vital records, voluntary acknowledgments of paternity, voluntary acknowledgments of legitimation; certificates; use for statistical purposes; transmittal of records out of state; use for commercial or speculative purposes.

(a) In accordance with Code Section 31-10-25 and the regulations adopted pursuant thereto:

(1) The state registrar or local custodian, upon receipt of a written application, shall issue:

(A) A certified copy of a vital record in that registrar's or custodian's custody or abstract thereof to any applicant having a direct and tangible interest in the vital record;

(B) Certified copies of voluntary acknowledgments of paternity as provided in subsection (e) of Code Section 19-7-46.1;

(C) Certified copies of voluntary acknowledgments of legitimation executed on or before June 30, 2015, to the same individuals and entities specified in subsection (e) of Code Section 19-7-46.1; and

(D) Certified copies of certificates to:

(i) The person whose record of birth is registered;

(ii) Either parent, guardian, or temporary guardian of the person whose record of birth or death is registered;

(iii) The living legal spouse or next of kin, the legal representative, or the person who in good faith has applied and produced a record of such application to become the legal representative of the person whose record of birth or death is registered;

(iv) A court of competent jurisdiction upon its order or subpoena; or

(v) Any governmental agency, state or federal, provided that such certificate shall be needed for official purposes; and

(2) Each certified copy issued shall show the date of registration and duplicates issued from records marked "delayed" or "amended" shall be similarly marked and show the effective date. The documentary evidence used to establish a delayed certificate of birth shall be shown on all duplicates issued. All forms and procedures used in the issuance of certified copies of vital records in this state shall be provided or approved by the state registrar.

(b) The federal agency responsible for national vital statistics may be furnished such duplicates or data from the system of vital records as it may require for national statistics, provided such federal agency shares in the cost of collecting, processing, and transmitting such data and provided further that such data shall not be used for other than statistical purposes by the federal agency unless so authorized by the state registrar.

(c) The state registrar may, by agreement, transmit duplicates of records and other reports required by this chapter to offices of vital records outside this state when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall require that the duplicates be used for statistical

and administrative purposes only and the agreement shall further provide for the retention and disposition of such duplicates. Duplicates received by the department from offices of vital statistics in other states shall be handled in the same manner as prescribed in this Code section.

(d) No person shall prepare or issue any certificate which purports to be an original, certified copy or duplicate of a vital record except as authorized in this chapter or regulations adopted under this chapter.

(e) No duplicates or parts thereof of a vital record shall be reproduced or information copied for commercial or speculative purposes. This subsection shall not apply to published results of research.

History. — Ga. L. 1914, p. 157, § 20; Ga. L. 1927, p. 353, § 20; Ga. L. 1931, p. 7, §§ 16, 17; Ga. L. 1933, p. 7, § 1; Code 1933, § 88-1212; Code 1933, § 88-1724, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 651, § 3; Ga. L. 1969, p. 715, § 2; Code 1933, § 88-1726, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-14; Code 1981, § 31-10-26, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1991, p. 94, § 31; Ga. L. 2004, p. 477, § 9; Ga. L. 2011, p. 99, § 43/HB 24; Ga. L. 2016, p. 304, § 17/SB 64.

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Ga. L. 2016, p. 304, § 18/SB 64, not codified by the General Assembly, provides that: "This Act shall not be construed to affect a voluntary acknowledgment of legitimation that was valid under the former provisions of Code Section 19-7-21.1, nor any of the rights or responsibilities flowing therefrom, if it was executed on or before June 30, 2016."

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

JUDICIAL DECISIONS

Death certificate not inadmissible even though not filed within statutory time period. — Failure to file death certificates within 72-hour period required by O.C.G.A. § 31-10-15(a) did not render certificates inadmissible as hearsay when certified copies of the certificates were issued in accordance with subsection (a) of O.C.G.A. § 31-10-26, although such copies constituted prima-facie evidence which raised a rebuttable presumption of truth of the facts stated therein. Sherrer v. Lynn, 172 Ga. App. 745, 324 S.E.2d 500 (1984).

Evidentiary effect of death certificate. — Death certificate is prima facie evidence of facts therein stated but presumption raised is rebuttable. Allstate Ins. Co. v. Holcombe, 132 Ga. App. 111, 207 S.E.2d 537 (1974).

Death certificate serves as prima facie evidence only of death and immediate agency of death, and other conclusions, such as those regarding events leading up to death or whether cause of death was intentional or accidental, are not admissible. King v. State, 151 Ga. App. 762, 261 S.E.2d 485 (1979).

Certified copy of death certificate properly filed is no longer prima facie evidence of facts stated therein, and when facts stated therein are shown to result from statements made by others, such facts amount to hearsay. Under present law, a certified copy of a duly filed death certificate is allowed in evidence only for the purpose for which it was intended, that is, to show that the person named therein is no longer in life. Interstate Life & Accident Ins. Co. v. Wilmont, 123 Ga. App. 337, 180 S.E.2d 913 (1971), criticized in Allstate Ins. Co. v. Holcombe, 132 Ga. App. 111, 207 S.E.2d 537 (1974).

Certified copy of birth certificate

shall be prima facie evidence only of facts therein contained and such evidence may be rebutted. It was therefore competent for the state to introduce a birth certificate to prove that a witness was under 14 years of age, and to further prove by parol evidence that the record contained an error as to the witness' race and that of the witness' parents. Cunningham v. State, 85 Ga. App. 216, 68 S.E.2d 614 (1952).

Introduction of death certificate appropriate. — Introduction of a death certificate in which the coroner assigned accidental suffocation as the cause of death made out a prima facie case on behalf of the insured's beneficiary in an action to recover under a double indemnity policy. Family Fund Life Ins. Co. v. Wiley, 91 Ga. App. 225, 85 S.E.2d 448 (1954).

Statement in death certificate stating cause of death is rebuttable. McWaters v. Employers Liab. Assurance Corp., 73 Ga. App. 586, 37 S.E.2d 430 (1946).

Certificate not completed in accordance with requirements not prima facie evidence of facts stated therein. — Being in derogation of common law, this statute must be strictly construed. When certificate is not completed in accordance with statutory requirements, it is not prima facie evidence of facts stated therein. Liberty Nat'l Life Ins. Co. v. Power, 112 Ga. App. 547, 145 S.E.2d 801 (1965).

Matters for which death certificate not admissible to prove. — Under rule of strict construction that must be applied to this section, a death certificate is not admissible to prove particular matters stated in the certificate: (1) if the statement is based on hearsay and not upon personal knowledge of a physician or official completing certificate; or (2) if the statement is one of opinion to which a physician or official would not be qualified to testify personally. In these instances, statements contained in the certificate are not statements of fact within the meaning of the statute and an exception to the hearsay rule is inapplicable. Liberty Nat'l Life Ins. Co. v. Power, 112 Ga. App. 547, 145 S.E.2d 801 (1965).

Cited in Branton v. Independent Life & Accident Ins. Co., 136 Ga. App. 414, 221 S.E.2d 217 (1975); Huskins v. State, 245 Ga. 541, 266 S.E.2d 163 (1980).

RESEARCH REFERENCES

C.J.S. — 76 C.J.S., Records, §§ 74 et seq., 112 et seq.

ALR. — Official death certificate as evidence of cause of death in civil or criminal action, 21 A.L.R.3d 418.

31-10-27. Fees for copies or services.

(a) The department shall prescribe uniform fees to be paid to the State Office of Vital Records, local registrars, and local custodians for certified copies of certificates or records, for a search of the files or records, for copies or information provided for research, statistical, or administrative purposes, or for other services. The fee for each search or service, certified copy, or record shall be determined by the board.

(b) Fees collected by the department under this Code section shall be deposited in the general funds of the state.

(c) Fees for copies or searches by local custodians of vital records shall be retained by them whether the local custodian is paid on a fee basis, a salary basis, or a combination of both, except in counties where the local custodian of vital records is an employee of the county board of

health, in which case said fees shall be remitted monthly to the county health department.

History. — Ga. L. 1945, p. 236, §§ 21, 22; Ga. L. 1953, Jan.-Feb. Sess., p. 140, § 11; Code 1933, § 88-1725, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1967, p. 541, § 1; Code 1933, § 88-1727, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-15; Code 1981, § 31-10-27, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 2004, p. 477, § 10.

Cross references. — Providing of marital, birth, divorce, or death records free of charge to veterans, Veterans' Administration, and others, § 38-1-1.

JUDICIAL DECISIONS

Sole exception for employees of the county board of health from the general rule that local custodians shall keep their fees clearly infers that the General Assembly meant to include other custodians in the general rule, notwithstanding any other offices the employees might have held. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

Fees paid to custodian of vital records. — One who is both the probate judge and custodian of vital records of a county is entitled to keep fees paid to the person as custodian of vital records and the county is not entitled to such fees. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Fees for acting passport agents. — Salaried clerks of superior court may retain execution fees for acting as passport agents. 1983 Op. Att'y Gen. No. U83-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 20, 59.
C.J.S. — 76 C.J.S., Records, §§ 81, 144.

31-10-28. Institutions to keep vital records.

(a) Every person in charge of an institution shall keep a record of personal data concerning each person admitted or confined to such institution. This record shall include such information as required for the certificates of birth and death and the reports of spontaneous fetal death and induced termination of pregnancy required by this chapter. The record shall be made at the time of admission from information provided by the person being admitted or confined but, when it cannot be so obtained, the information shall be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information shall be a part of the record.

(b) When a dead body or dead fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent or parents of the fetus, date of death, name and address of the person to whom the body or fetus is released, and the date of removal from the institution. If final disposition is made

by the institution, the date, place, and manner of disposition shall also be recorded.

(c) A funeral director, embalmer, sexton, or other person who removes from the place of death, transports, or makes final disposition of a dead body or fetus, in addition to filing any certificate or other report required by this chapter or regulations promulgated hereunder, shall keep a record which shall identify the body and such information pertaining to receipt, removal, delivery, burial, or cremation of such body as may be required by regulations adopted by the department.

(d) Records maintained under this Code section shall be retained for a period of not less than three years and shall be made available for inspection by the state registrar or the state registrar's representative upon demand.

History. — Ga. L. 1927, p. 353, § 11; Code 1933, § 88-1220; Ga. L. 1945, p. 236, § 26; Code 1933, § 88-1726, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1728, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-10; Code 1981, § 31-10-28, enacted by Ga. L. 1982, p. 723, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a comma was inserted following "institution" near the beginning of subsection (b).

31-10-29. Privileged nature of disclosures; notification of local registrar of institutional deaths and fetal deaths; notification of board of voting registrars of adult deaths.

(a) Any person having knowledge or facts concerning any birth, death, spontaneous fetal death, marriage, induced termination of pregnancy, divorce, dissolution of marriage, or annulment may disclose such facts to the state registrar, and such disclosure shall be absolutely privileged and no cause or action may be brought or maintained against such person for such disclosure.

(b) Not later than the tenth day of the month following the month of occurrence, the administrator of each institution or that administrator's designated representative shall send to the local vital records registrar a list showing all deaths and fetal deaths occurring in that institution during the preceding month.

(c) Upon receipt of a death certificate by any local vital records registrar of any person 18 years of age or older, the local registrar shall notify the board of voting registrars in the county of the decedent's residence of the name and address of such decedent. If the records of the local registrar reflect that the decedent was a resident of another or other counties within the five years preceding the decedent's death, the local registrar shall also send such information to the board of voting registrars of such county or counties.

History. — Code 1933, § 88-1729, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-29, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1984, p. 22, § 31; Ga. L. 1991, p. 669, § 8.

31-10-30. Posting facts of death to birth certificates.

(a) To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the state registrar is authorized to match birth and death certificates, in accordance with written standards promulgated by the state registrar to prove beyond a reasonable doubt the fact of death and to post the facts of death to the appropriate birth certificate and index. Copies issued from birth certificates marked deceased shall be similarly marked.

(b) When a death occurs in this state for which a death certificate must be filed in accordance with Code Section 31-10-15, and the decedent's birth certificate is on file at the State Office of Vital Records, the state registrar shall mark that deceased person's birth certificate with the word "Deceased." The state registrar shall notify the custodian of vital records of the county where the decedent was born that the deceased individual's birth certificate has been marked "Deceased."

History. — Code 1933, § 88-1730, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-30, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1996, p. 1201, § 2.

Code Commission notes. — Pursuant to Code Section § 28-9-5, in 2019, "State Office of Vital Records" was substituted for "state office of vital records" in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 13 et seq.

C.J.S. — 76 C.J.S., Records, § 29.

31-10-31. Penalties.

(a) A fine of not more than $10,000.00 or imprisonment of not more than five years, or both, shall be imposed on:

(1) Any person who willfully and knowingly makes any false statement in a certificate, record, or report required by this chapter, or in an application for an amendment thereof, or in an application for a certified copy of a vital record or who willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof;

(2) Any person who without lawful authority and with the intent to deceive makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required by this chapter or a certified copy of such certificate, record, or report;

(3) Any person who willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, or report required by this chapter or certified copy thereof so made, counterfeited, altered, amended, or mutilated or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

(4) Any employee of the State Office of Vital Records, or appointed local registrar or local custodian or special abstracting agent who willfully and knowingly furnishes or processes a certificate of birth, or certified copy of a certificate of birth, with the knowledge or intention that it be used for the purposes of deception; or

(5) Any person who without lawful authority possesses any certificate, record, or report required by this chapter or a copy or certified copy of such certificate, record, or report knowing same to have been stolen or otherwise unlawfully obtained.

(b) A fine not more than $1,000.00 or imprisonment of not more than one year, or both, shall be imposed on:

(1) Any person who willfully and knowingly refuses to provide information required by this chapter or regulations adopted hereunder;

(2) Any person who willfully and knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided in this chapter;

(3) Any person who willfully and knowingly neglects or violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon such person by this chapter.

History. — Ga. L. 1927, p. 353, § 21; Code 1933, § 88-9929; Ga. L. 1945, p. 236, § 38; Code 1933, § 88-1727, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1731, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-16; Code 1981, § 31-10-31, enacted by Ga. L. 1982, p. 723, § 2; Ga. L. 1992, p. 6, § 31; Ga. L. 2004, p. 477, § 11.

31-10-32. Extension of periods for filing of certificates or reports.

The department may, by regulation and upon such conditions as it may prescribe to assure compliance with the purposes of this chapter, provide for the extension of the periods for the filing of certificates or reports.

History. — Code 1933, § 88-1718, enacted by Ga. L. 1964, p. 499, § 1; Code 1933, § 88-1732, enacted by Ga. L. 1982, p. 723, § 1; Code 1981, § 31-10-9; Code

1981, § 31-10-32, enacted by Ga. L. 1982, p. 723, § 2.

31-10-33. Procedure for stillbirth.

(a) For any stillborn child in this state, the State Office of Vital Records shall, within 60 days of a request by a parent named on a fetal death certificate or other eligible person as provided for in subsection (h) of this Code section, issue a certificate of birth resulting in stillbirth.

(b) The person who is required to file a fetal death certificate under Code Section 31-10-18 shall advise the parent of a stillborn child:

(1) That the parent may request the preparation of a certificate of birth resulting in stillbirth in addition to the fetal death certificate;

(2) That the parent may obtain a certificate of birth resulting in stillbirth by contacting the State Office of Vital Records;

(3) How the parent may contact the State Office of Vital Records to request a certificate of birth resulting in stillbirth; and

(4) That a copy of the original certificate of birth resulting in stillbirth is a document that is available as a vital record when held by the state registrar system.

(c) The request for a certificate of birth resulting in stillbirth shall be on a form prescribed by the state registrar pursuant to Code Section 31-10-7.

(d) The certificate of birth resulting in stillbirth shall contain:

(1) The date of the stillbirth;

(2) The county in which the stillbirth occurred;

(3) The name of the stillborn child as provided on the original or amended certificate of the fetal death certificate. If a name does not appear on the original or amended fetal death certificate and the requesting parent does not wish to provide a name, the State Office of Vital Records shall fill in the certificate of birth resulting in stillbirth with the name "baby boy" or "baby girl" and the last name of the parents;

(4) The state file number of the corresponding fetal death certificate; and

(5) The following statement: "This certificate is not proof of live birth."

(e) The certificate of birth resulting in stillbirth shall also contain:

(1) Gender;

(2) Place of delivery;

(3) Residence of mother;

(4) The attendant at delivery;

(5) Gestational age at delivery;

(6) Weight at delivery;

(7) Mother's name;

(8) Father's name;

(9) Time of delivery; and

(10) Type of delivery, including but not limited to single, twin, or triplet.

(f) A certificate of birth resulting in stillbirth shall be a vital record when held by the state registrar system. The State Office of Vital Records shall inform any parent who requests a certificate of birth resulting in stillbirth that a copy of the document is available as a vital record.

(g) A parent may request that the State Office of Vital Records issue a certificate of birth resulting in stillbirth regardless of the date on which the certificate of fetal death was issued.

(h) Those individuals who are entitled to request a certificate of birth resulting in stillbirth are:

(1) Either parent of the stillborn child listed on the vital record;

(2) A grandparent of the stillborn child;

(3) An adult brother or sister of the stillborn child;

(4) A legal representative of the parent; and

(5) A court of competent jurisdiction.

(i) The State Office of Vital Records shall not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(j) This Code section shall not be used to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a stillbirth.

(k) The state registrar shall prescribe by rules pursuant to Code Section 31-10-5 the form, content, and process for the certificate of birth resulting in stillbirth.

History. — Code 1981, § 31-10-33, enacted by Ga. L. 2008, p. 585, § 3/SB 381.

Editor's notes. — Ga. L. 2008, p. 585, § 1/SB 381, not codified by the General

Assembly, provides that: "This Act shall be known and may be cited as the 'No Heartbeat Act.'"

CHAPTER 11

EMERGENCY MEDICAL SERVICES

Article 1

General Provisions

Sec.
31-11-1. Findings; declaration of policy.
31-11-2. Definitions.
31-11-3. Recommendations by local coordinating entity as to administration of EMSC Program; hearing and appeal.
31-11-4. Supervision and modifications of EMSC Program.
31-11-5. Rules and regulations.
31-11-6. Records.
31-11-7. Exercise of emergency vehicle privileges by ambulance drivers.
31-11-8. Liability of persons rendering emergency care; liability of physicians advising ambulance service pursuant to Code Section 31-11-50; limitation to gratuitous services.
31-11-9. Enforcement; inspections.
31-11-10. Establishment of fees and regulations by municipalities.
31-11-11. Applicability of chapter.
31-11-12. Contracts between emergency service providers and pharmacies for furnishing dangerous drugs and controlled substances.

Article 2

Licenses

31-11-30. License requirement.
31-11-31. Application for license.
31-11-31.1. License fee.
31-11-32. Duties of license officer.
31-11-33. Insurance coverage as condition of licensing.
31-11-34. Standards for ambulances.
31-11-35. Renewal of license; change of ownership of ambulance service.
31-11-36. Suspension or revocation of license; appeal to superior court.

Article 3

Personnel

Sec.
31-11-49. Definitions.
31-11-50. Medical adviser.
31-11-51. Certification and recertification of emergency medical technicians; rules and regulations; use of conviction data in licensing decisions.
31-11-52. Certification and recertification of, and training for, paramedics and cardiac technicians.
31-11-53. Services which may be rendered by certified emergency medical technicians and trainees.
31-11-53.1. Automated external defibrillator program; establishment; regulations; liability.
31-11-53.2. "Lay rescuer" defined; use of automated external defibrillators.
31-11-54. Services which may be rendered by paramedics and paramedic trainees.
31-11-55. Services which may be rendered by certified cardiac technicians and trainees.
31-11-55.1. Opioid antagonists administered by first responder to save life of person experiencing opioid related overdose.
31-11-56. Revocation of certificates issued to emergency medical technicians.
31-11-57. Revocation of certificates issued to paramedics and cardiac technicians.
31-11-58. Recertification of emergency medical technicians; continuing education requirements.
31-11-58.1. Recertification of paramedics and cardiac technicians; continuing education requirements.
31-11-59. Services of emergency medical technicians, paramedics,

Sec.
and cardiac technicians in hospitals.
31-11-60. Obtaining and administering drugs by certified employees of counties or municipalities.
31-11-60.1. Program for physician control over emergency medical services to nonhospital patients.
31-11-61. Penalty.

Article 4

Emergency Services

31-11-80. Short title.
31-11-81. Definitions.
31-11-82. Evaluation of person with emergency condition; initiation of intervention without prospective authorization; insurer may not deny payment after prospective authorization given.

Article 5

Georgia Trauma Care Network Commission

31-11-100. Definitions.
31-11-101. Creation of Georgia Trauma Care Network Commission; composition; membership; meetings; vacancies; compensation.
31-11-102. Duties and responsibilities.
31-11-103. Georgia Trauma Trust Fund.

Article 6

System of Certified Stroke Centers

31-11-110. Legislative findings.
31-11-111. "Department" defined.
Sec.
31-11-112. Identification of stroke centers.
31-11-113. Certification; application process; inspections.
31-11-114. Grants; report.
31-11-115. Distribution of list of state identified stroke centers to emergency medical services providers; development of a model stroke triage assessment tool; assessment, treatment, and transport of stroke patients.
31-11-116. Annual reports.
31-11-117. Statutory construction.
31-11-118. Advertising.
31-11-119. Rules and regulations.

Article 7

Emergency Cardiac Care Centers

31-11-130. Legislative findings.
31-11-131. Definitions.
31-11-132. Office of Cardiac Care; level designations and requirements.
31-11-133. Designation as emergency cardiac care center; suspension or revocation.
31-11-134. Data reporting system.
31-11-135. Grants to hospitals; reporting.
31-11-136. Listing of emergency cardiac care centers; emergency cardiac care triage assessment tool; protocols.
31-11-137. Statutory construction.
31-11-138. Advertisement as emergency cardiac care center.
31-11-139. Rules and regulations.

Cross references. — Aggravated assault on emergency health workers, § 16-5-21. Aggravated battery upon an emergency health worker, § 16-5-24.

Administrative rules and regulations. — Emergency Medical Services, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Emergency Preparedness, Subject 511-9-2.

Paramedics and cardiac technicians, Georgia Professional Health Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Composite Medical Board, Chapter 360-11.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

JUDICIAL DECISIONS

Law sets high standards for licensing providers of ambulance service and provides for enforcement and regulation of those standards through administrative action. Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 251 S.E.2d 250 (1978).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Negligent Operation of Emergency Vehicle, 10 POF3d 203.

ALR. — Liability for personal injury or property damage from operation of ambulance, 84 A.L.R.2d 121.

Liability for injury or death allegedly caused by activities of hospital "rescue team", 64 A.L.R.4th 1200.

Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Criminal penalty for knowingly requesting ambulance service when no reasonable need exists, § 16-10-29. Required equipment for emergency vehicles, § 40-8-90 et seq.

31-11-1. Findings; declaration of policy.

(a) The General Assembly finds and determines:

(1) That the furnishing of emergency medical services is a matter of substantial importance to the people of this state;

(2) That the cost and quality of emergency medical services are matters within the public interest;

(3) That it is highly desirable for the state to participate in emergency medical systems communications programs established pursuant to Public Law 93-154, entitled the Emergency Medical Services Systems Act of 1973;

(4) That the administration of an emergency medical systems communications program should be the responsibility of the Department of Public Health, acting upon the recommendations of the local entity which coordinates the program; all ambulance services shall be a part of this system even if this system is the 9-1-1 emergency telephone number;

(5) That an emergency medical systems communications program in a health district should be operated as economically and efficiently as possible to serve the public welfare and, to achieve this goal, should involve the designation of geographical territories to be serviced by participating ambulance providers and should involve an economic and efficient procedure to distribute emergency calls among

participating ambulance providers serving the same health district; and

(6) Any first responder falls under the department's rules and regulations governing ambulances and can transport only in life-threatening situations or by orders of a licensed physician or when a licensed ambulance cannot respond.

(b) The General Assembly therefore declares that, in the exercise of the sovereign powers of the state to safeguard and protect the public health and general well-being of its citizens, it is the public policy of this state to encourage, foster, and promote emergency medical systems communications programs and that such programs shall be accomplished in a manner that is coordinated, orderly, economical, and without unnecessary duplication of services and facilities.

History. — Code 1933, § 88-3100, enacted by Ga. L. 1978, p. 1068, § 1; Ga. L. 2005, p. 660, § 3/HB 470; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — Emergency telephone number "9-1-1" system, § 46-5-120 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, the subsection (a) designation preceding paragraph (a)(4) was deleted.

Editor's notes. — The Emergency Medical Services Systems Act of 1973, P.L. 93-154, referred to in paragraph (a)(3), was repealed by P.L. 99-117 and P.L. 99-129. The Georgia Emergency Medical Systems Communication Program, however, was established pursuant to that Act prior to its repeal. Therefore, the reference in this Code section to that Act is being retained for historical purposes.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-11-2. Definitions.

As used in this chapter, the term:

(1) "Air ambulance" means any rotary-wing aircraft used or intended to be used for hire for transportation of sick or injured persons who may need medical attention during transport.

(1.1) "Air ambulance service" means the for-hire providing of emergency care and transportation by means of an air ambulance for an injured or sick person to or from a place where medical or hospital care is furnished.

(1.2) "Ambulance" means a motor vehicle that is specially constructed and equipped or an air ambulance and is intended to be used for the emergency transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with the provisions of this chapter.

(2) "Ambulance attendant" means a person responsible for the care of patients being transported in an ambulance.

(3) "Ambulance provider" means an agency or company providing ambulance service which is operating under a valid license from the Emergency Health Section of the Department of Public Health.

(4) "Ambulance service" means:

(A) The providing of emergency care and transportation on the public streets and highways of this state for a wounded, injured, sick, invalid, or incapacitated human being to or from a place where medical or hospital care is furnished;

(B) The provision of any air ambulance service; or

(C) The provision of services specified in subparagraphs (A) and (B) of this paragraph.

(5) "Cardiac technician" means a person who, having been trained and certified as an emergency medical technician and having completed additional training in advanced cardiac life support techniques in a training course approved by the department, is so certified by the Composite State Board of Medical Examiners, now known as the Georgia Composite Medical Board, prior to January 1, 2002, or the Department of Human Resources (now known as the Department of Public Health for these purposes) on and after January 1, 2002.

(6) "Composite board" means the Georgia Composite Medical Board.

(6.1) "Department" means the Department of Public Health.

(7) "Emergency medical services system" means a system which provides for the arrangement of personnel, facilities, and equipment for the effective and coordinated delivery in an appropriate geographical area of health care services under emergency conditions, occurring either as a result of the patient's condition or as a result of natural disasters or similar situations, and which is administered by a public or nonprofit private entity which has the authority and the resources to provide effective administration of the system.

(8) "Emergency Medical Systems Communications Program" (EMSC Program) means any program established pursuant to Public Law 93-154, entitled the Emergency Medical Services Systems Act of 1973, which serves as a central communications system to coordinate the personnel, facilities, and equipment of an emergency medical services system and which:

(A) Utilizes emergency medical telephonic screening;

(B) Utilizes a publicized emergency telephone number; and

(C) Has direct communication connections and interconnections with the personnel, facilities, and equipment of an emergency medical services system.

(9) "Emergency medical technician" means a person who has been certified by the department after having successfully completed an emergency medical care training program approved by the department.

(10) "First responder" means any person or agency who provides on-site care until the arrival of a duly licensed ambulance service.

(11) "Health districts" means the geographical districts designated by the department in accord with Code Section 31-3-15.

(12) "Invalid car" means a motor vehicle not used for emergency purposes but used only to transport persons who are convalescent, sick, or otherwise nonambulatory.

(13) "License" when issued to an ambulance service signifies that its facilities and operations comply with this chapter and the rules and regulations issued by the department hereunder.

(14) "License officer" means the commissioner of public health or his designee.

(15) "Local coordinating entity" means the public or nonprofit private entity designated by the Board of Public Health or its designee to administer and coordinate the EMSC Program in a health district established in accord with Code Section 31-3-15.

(16) "Paramedic" means any person who has been certified by the composite board before January 1, 2002, or by the department on or after January 1, 2002, as having been trained in emergency care techniques in a paramedic training course approved by the department.

(16.1) "Paramedic clinical preceptor" means a Georgia certified paramedic with a minimum of two years of emergency medical services experience who meets the standard requirements for paramedic preceptor training as established by the department.

(17) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(18) "Person" means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including any governmental agency other than of the United States.

(19) "Provisional license" when issued to an ambulance service means a license issued on a conditional basis to allow a newly established ambulance service a period of 30 days to demonstrate that its facilities and operations comply with this chapter and rules and regulations issued by the department under this chapter.

History. — Code 1933, § 88-3101, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1977, p. 281, § 1; Ga. L. 1978, p. 1068, § 2; Ga. L. 1985, p. 149, § 31; Ga. L. 1988, p. 1923, § 1; Ga. L. 1989, p. 1782, § 1; Ga. L. 2001, p. 1145, § 1; Ga. L. 2003, p. 304, § 1; Ga. L. 2009, p. 453, §§ 1-5, 1-6, 1-35/HB 228; Ga. L. 2009, p. 859, § 10/HB 509; Ga. L. 2011, p. 705, §§ 5-15, 6-4, 6-5/HB 214.

Editor's notes. — The Emergency Medical Services Systems Act of 1973, P.L. 93-154, referred to in paragraph (8), was repealed by P.L. 99-117 and P.L. 99-129. The Georgia Emergency Medical Systems Communications Program, however, was established pursuant to that Act prior to its repeal. Therefore, the reference in this Code section to that Act is being retained for historical purposes.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Use of ambulance by Department of Veterans Service. — So long as the Department of Veterans Service operates the Department's ambulance with the intention to transport persons who are convalescent, sick, or otherwise nonambulatory and not for emergency purposes, then provisions of this section would not be applicable; it would not be necessary for the Department to remove support equipment from the ambulance. 1973 Op. Att'y Gen. No. 73-143.

31-11-3. Recommendations by local coordinating entity as to administration of EMSC Program; hearing and appeal.

(a) The Board of Public Health shall have the authority on behalf of the state to designate and contract with a public or nonprofit local entity to coordinate and administer the EMSC Program for each health district designated by the Department of Public Health. The local coordinating entity thus designated shall be responsible for recommending to the board or its designee the manner in which the EMSC Program is to be conducted. In making its recommendations, the local coordinating entity shall give priority to making the EMSC Program function as efficiently and economically as possible. Each licensed ambulance provider in the health district shall have the opportunity to participate in the EMSC Program.

(b) The local coordinating entity shall request from each licensed ambulance provider in its health district a written description of the territory in which it can respond to emergency calls, based upon the provider's average response time from its base location within such territory; and such written description shall be due within ten days of the request by the local coordinating entity.

(c) After receipt of the written descriptions of territory in which the ambulance providers propose to respond to emergency calls, the local coordinating entity shall within ten days recommend in writing to the board or its designee the territories within the health district to be serviced by the ambulance providers; and at this same time the local coordinating entity shall also recommend the method for distributing

emergency calls among the providers, based primarily on the considerations of economy, efficiency, and benefit to the public welfare. The recommendation of the local coordinating entity shall be forwarded immediately to the board or its designee for approval or modification of the territorial zones and method of distributing calls among ambulance providers participating in the EMSC Program in the health district.

(d) The board, or its designee, is empowered to conduct a hearing into the recommendations made by the local coordinating entity, and such hearing shall be conducted according to the procedures set forth in Code Section 31-5-2.

(e) The recommendations of the local coordinating entity shall not be modified unless the board or its designee shall find, after a hearing, that the determination of the district health director is not consistent with operation of the EMSC Program in an efficient, economical manner that benefits the public welfare. The decision of the board or its designee shall be rendered as soon as possible and shall be final and conclusive concerning the operation of the EMSC Program; and appeal from such decision shall be pursuant to Code Section 31-5-3.

(f) The local coordinating entity shall begin administering the EMSC Program in accord with the decision by the board or its designee immediately after the decision by the board or its designee regarding the approval or modification of the recommendations made by the local coordinating entity; and the EMSC Program shall be operated in such manner pending the resolution of any appeals filed pursuant to Code Section 31-5-3.

(g) This Code section shall not apply to air ambulances or air ambulance services.

History. — Code 1933, § 88-3116, enacted by Ga. L. 1978, p. 1068, § 3; Ga. L. 2003, p. 304, § 2; Ga. L. 2009, p. 453, §§ 1-4, 1-5/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-4/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

Summary judgment against board's designee in error. — Since the decision by the designee of the Board of Human Resources to exclude licensed private ambulance service from automatic routing of emergency calls took numerous factors into account and based the board's decision upon hotly contested facts, there were genuine issues of material fact and the trial court erred in awarding summary judgment against the designee. DeKalb County v. Metro Ambulance Servs., Inc., 253 Ga. 561, 322 S.E.2d 881 (1984).

Breadth of standard of review. — Although the language of O.C.G.A. § 31-11-3 is phrased as a mandatory directive to the designee, the statute does not purport to confine the designee to the same limited standard of review to which the judiciary is confined respecting administrative decisions, nor does the stat-

ute overcome the constitutional proscription against plenary judicial review of such decisions. DeKalb County v. Metro Ambulance Servs., Inc., 253 Ga. 561, 322 S.E.2d 881 (1984).

Even though "fairness" is not an enumerated criterion of O.C.G.A. § 31-11-3, the specific factual inquiry made by the Board of Human Resources' designee concerning the double burden of citizens' funding local emergency medical services as well as paying private ambulance service's fees fell within the board's discretion to take into consideration the factors of economy and efficiency so as to benefit local citizens. DeKalb County v. Metro Ambulance Servs., Inc., 253 Ga. 561, 322 S.E.2d 881 (1984).

Term "shall have an opportunity to participate" should be construed in pari materia with the mandatory statutory criteria of efficiency, economy, and public welfare, and the extent of a private ambulance service's participation in the automatic funneling of emergency calls is contingent upon the Board of Human Resources designee's discretionary determination of how best to fulfill the statutory criteria. DeKalb County v. Metro Ambulance Servs., Inc., 253 Ga. 561, 322 S.E.2d 881 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Trauma advisory committee as review organization under § 31-7-131(3). — Since the Trauma Advisory Committee for Emergency Medical Services is a review organization consisting of surgeons licensed in the State of Georgia which evaluates care provided by professional health care providers as defined in O.C.G.A. § 31-7-131(2) for the purposes of improving the quality of care rendered and reducing morbidity and mortality due to trauma, it is a review organization within the meaning of § 31-7-131(3) and is covered by the immunity and confidentiality provisions of O.C.G.A. §§ 31-7-132 and 31-7-133. 1988 Op. Att'y Gen. No. 88-5.

31-11-4. Supervision and modifications of EMSC Program.

The board or its designee shall exercise continuing supervision over the operations of the EMSC Program in each health district and shall make all necessary modifications in accord with the procedures set forth in Code Section 31-11-3.

History. — Code 1933, § 88-3117, enacted by Ga. L. 1978, p. 1068, § 4.

31-11-5. Rules and regulations.

(a) The department is authorized to adopt and promulgate rules and regulations for the protection of the public health:

(1) Prescribing reasonable health, sanitation, and safety standards for transporting patients in ambulances;

(2) Prescribing reasonable conditions under which ambulance attendants are required;

(3) Establishing criteria for the training of ambulance attendants; and

(4) The emergency medical technician course is to be offered at area hospitals and area technical vocational schools in conjunction with their emergency patient care and personnel training programs.

(b) Nothing in this Code section shall authorize the department to adopt and promulgate rules or regulations which shall prevent the continued use of dual purpose funeral coaches or hearses currently being used as ambulances if the vehicles otherwise conform in all respects to the requirements of Code Section 31-11-34, except for their size and shape.

History. — Code 1933, § 88-3112, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 2003, p. 304, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Requiring two emergency medical technicians on ambulance. — Regulation requiring that two emergency medical technicians be present in an ambulance while transporting a patient is consistent with the authority of the Department of Human Resources stated in O.C.G.A. § 31-11-5. 1988 Op. Att'y Gen. No. U88-4.

31-11-6. Records.

Records of each ambulance trip shall be made by the ambulance service in a manner and on such forms as may be prescribed by the department through regulations. Such records shall be available for inspection by the department at any time, and a summary of ambulance service activities shall be prepared on specific cases and furnished to the department upon request.

History. — Code 1933, § 88-3108, enacted by Ga. L. 1972, p. 625, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Disclosure of trip reports to department. — Regulation requiring that copies of ambulance trip reports be furnished to the Department of Human Resources is not violative of O.C.G.A. § 31-11-6 and does not breach the confidentiality of the patient. 1988 Op. Att'y Gen. No. U88-4.

31-11-7. Exercise of emergency vehicle privileges by ambulance drivers.

The driver of an ambulance on the public streets, highways, and private access roads of this state, when responding to an emergency call or while transporting a patient, is authorized to operate the ambulance as an emergency vehicle pursuant to Code Section 40-6-6.

History. — Code 1933, § 88-3109, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 2003, p. 304, § 4.

Cross references. — Yielding of right of way to authorized emergency vehicles, § 40-6-74. Duty of pedestrians to yield right of way to authorized vehicles, § 40-6-99.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 185, 224, 232. 8 Am. Jur. 2d, Automobiles and Highway Traffic, §§ 611, 716, 921 et seq. 40 Am. Jur. 2d, Highways, Streets, and Bridges, § 588 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 35, 52. 60A C.J.S., Motor Vehicles, §§ 606 et seq., 652, 717, 870, 871, 880. 61A C.J.S., Motor Vehicles, § 1646.

31-11-8. Liability of persons rendering emergency care; liability of physicians advising ambulance service pursuant to Code Section 31-11-50; limitation to gratuitous services.

(a) Any person, including agents and employees, who is licensed to furnish ambulance service and who in good faith renders emergency care to a person who is a victim of an accident or emergency shall not be liable for any civil damages to such victim as a result of any act or omission by such person in rendering such emergency care to such victim.

(b) A physician shall not be civilly liable for damages resulting from that physician's acting as medical adviser to an ambulance service, pursuant to Code Section 31-11-50, if those damages are not a result of that physician's willful and wanton negligence.

(c) The immunity provided in this Code section shall apply only to those persons who perform the aforesaid emergency services for no remuneration.

History. — Code 1933, § 88-3114, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1982, p. 692, §§ 1, 2.

Cross references. — Statement of emergency vehicle driver's duty of care with regard to other drivers and pedestrians in operation of vehicle, §§ 40-6-74, 40-6-99. Liability of persons rendering emergency care generally, § 51-1-29.

Law reviews. — For article surveying judicial and legislative developments in Georgia's tort laws, see 31 Mercer L. Rev. 229 (1979). For annual survey on local government law, see 65 Mercer L. Rev. 205 (2013).

For comment, "Good Samaritan Laws—Legal Disarray: An Update," see 38 Mercer L. Rev. 1439 (1987).

JUDICIAL DECISIONS

Legislative intent behind this section, see Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 251 S.E.2d 250 (1978).

This section is definite and certain in the statute's meaning. Men of common intelligence would not differ as to application of the statute's provisions. Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 251 S.E.2d 250 (1978).

Immunity granted only as to acts or omissions in rendering emergency

care. — This section is carefully drawn so as to grant immunity to providers of ambulance service only for their acts and omissions in rendering such emergency care. Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 251 S.E.2d 250 (1978).

Ambulance service was not entitled to emergency care providers' immunity under O.C.G.A. § 31-11-8(a) because the ambulance did not render emergency care, but rather, it was the ambulance's inability to provide prompt emergency care that formed the basis of a lawsuit alleging damage from a delay in emergency transport. Crewey v. Am. Med. Response of Ga., Inc., 303 Ga. App. 258, 692 S.E.2d 851 (2010).

Code section only applies to rendition of health care. — Trial court erred in charging O.C.G.A. § 31-11-8 when liability was not founded upon the rendition of health care but was based upon the intentional torts of assault and robbery because an ambulance attendant removed the passenger/plaintiff's ring. Bricks v. Metro Ambulance Serv., Inc., 177 Ga. App. 62, 338 S.E.2d 438 (1985).

Immunity not extended to negligence causing motor vehicle accident. — Legislature saw fit not to extend immunity to negligence of ambulance driver for injuries resulting from motor vehicle accidents. Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 251 S.E.2d 250 (1978).

Immunity requires that one act in good faith. — Once licensed, providers of ambulance service are granted immunity from civil liability provided, however, emergency care is rendered in good faith. Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 251 S.E.2d 250 (1978).

Because the totality of the paramedics' actions showed that the paramedics acted in good faith with the intent to save the decedent's life, O.C.G.A. § 31-11-8 provided immunity against liability for the paramedics' conduct. Thomas v. DeKalb County, 227 Ga. App. 186, 489 S.E.2d 58 (1997).

Since plaintiff presented no evidence that defendants, emergency medical technicians, believed the defendant's conduct was unconscionable or that the circumstances required further investigation, even if the defendants exercised bad judgment and acted negligently, such conduct did not amount to a lack of good faith and, accordingly, the trial court did not err in granting summary judgment to the defendants. Bixler v. Merritt, 244 Ga. App. 82, 534 S.E.2d 837 (2000).

Paramedic was an employee of the county emergency medical services, which was licensed to provide ambulance services and the administratrix did not present any evidence suggesting that defendants did not act in good faith; viewing the evidence in the light most favorable to the administratrix, the evidence showed, at best, that the defendants exercised bad judgment and acted negligently in caring for the decedent but this was not enough to show a lack of good faith for purposes of statutory immunity. Further, immunity under O.C.G.A. § 31-11-8 applied despite the fact that the defendants charged a fee to defray the administrative costs of patient transportation. Presley v. City of Blackshear, 650 F. Supp. 2d 1307 (S.D. Ga. 2008).

Paramedic who examined an arrestee who appeared ill was entitled to immunity under O.C.G.A. § 31-11-8 as to state law negligence claims asserted by the administratrix of the arrestee's estate after the arrestee died due to ingestion of crack cocaine, of which the paramedic was unaware, because the administratrix alleged mere negligence on the part of the paramedic in failing to conduct a complete examination of the arrestee, which was insufficient to show that the paramedic acted without good faith. Presley v. City of Blackshear, No. 09-10501, 2009 U.S. App. LEXIS 18029 (11th Cir. Aug. 7, 2009) (Unpublished).

Code section treats all recipients of treatment by ambulance service in same way. — This Code section is uniform in that the statute treats all persons who receive emergency medical treatment from providers of a licensed ambulance service in the same way. Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 251 S.E.2d 250 (1978).

No remuneration for performance of emergency cases. — Municipality received no remuneration within the mean-

ing of subsection (c) of O.C.G.A. § 31-11-8 for the performance of emergency services when the municipality levied a transportation charge against those persons transported to a hospital. A fee charged by a governmental organization to assist in defraying the administrative costs of transporting a person to a hospital is not the equivalent of receiving remuneration for providing emergency care. Ramsey v. City of Forest Park, 204 Ga. App. 98, 418 S.E.2d 432 (1992).

There is no requirement under O.C.G.A. § 31-11-8(c) that the "emergency services" rendered specifically denote medical intervention; the immunity provided in § 31-11-8 shall apply only to those persons who perform the aforesaid emergency services for no remuneration. Martin v. Fulton-Dekalb Hosp. Auth., 250 Ga. App. 663, 551 S.E.2d 415 (2001).

Fee charged by a governmental organization to assist in defraying the administrative costs of transporting a person to a hospital is not the equivalent of receiving remuneration for providing stated emergency care within the meaning of O.C.G.A. § 31-11-8(c). Presley v. City of Blackshear, 650 F. Supp. 2d 1307 (S.D. Ga. 2008).

Paramedic who examined an arrestee who appeared ill was entitled to immunity under O.C.G.A. § 31-11-8 as to state law negligence claims asserted by the administratrix of the arrestee's estate after the arrestee died due to ingestion of crack cocaine, of which the paramedic was unaware, because the paramedic acted with good faith and without remuneration; there was no evidence that the arrestee's estate was billed for paramedic services, even if the administratrix was billed for the ambulance transportation and mileage. Presley v. City of Blackshear, No. 09-10501, 2009 U.S. App. LEXIS 18029 (11th Cir. Aug. 7, 2009) (Unpublished).

Remuneration for performance of emergency cases. — In an action for failure to properly and timely address injuries, the trial court erred in granting summary judgment to the ambulance service because there was a rendering of emergency services and the ambulance service received remuneration when the service billed for advanced life support services. Ortega v. Coffey, 348 Ga. App. 794, 824 S.E.2d 690 (2019).

Fees for transportation and mileage do not constitute remuneration under O.C.G.A. § 31-11-8(c). Presley v. City of Blackshear, No. 09-10501, 2009 U.S. App. LEXIS 18029 (11th Cir. Aug. 7, 2009) (Unpublished).

County and ambulance crew members entitled to immunity. — Trial court did not err when the court granted summary judgment to a county and ambulance crew members on the ground that the members were entitled to immunity under O.C.G.A. § 31-11-8 in a wrongful death action because as a "person" licensed to provide "emergency care" the county was entitled to immunity for the alleged misconduct of the county's employees, the county never charged the decedent or the decedent's spouse for the crew's first visit to the house, which was the occasion when the alleged negligence occurred, and the crew members were employed by the county's state-licensed ambulance service; the record provided no evidence to support the suggestion that the crew members acted in bad faith in the course of their response. Beursken v. Gwinnett County, 311 Ga. App. 467, 716 S.E.2d 540 (2011), cert. denied, No. S12C0057, 2012 Ga. LEXIS 62 (Ga. 2012).

When a plaintiff sued a county to recover for injuries that the plaintiff allegedly sustained when a county-operated ambulance was involved in a collision while transporting the plaintiff to a local hospital, the trial court correctly ruled that O.C.G.A. § 31-11-8 was controlling in the case and that the county was entitled to statutory immunity thereunder; the undisputed evidence showed that the emergency medical technicians did not have access to an X-ray machine at the scene and could not accurately exclude the possibility that the plaintiff had internal injuries or fractures that required immediate care. Anderson v. Tattnall County, 318 Ga. App. 877, 734 S.E.2d 843 (2012).

Immunity cannot be waived by persons to whom statute applies. — Unlike sovereign immunity, a claim of immunity under O.C.G.A. § 31-11-8 cannot be waived by those persons to whom the statute applies; and among those persons

to whom the statute applies are municipalities and counties. Presley v. City of Blackshear, 650 F. Supp. 2d 1307 (S.D. Ga. 2008).

Immunity not waived by purchase of insurance. — Immunity under O.C.G.A. § 31-11-8 could not be waived by a county's purchase of insurance. Johnson v. Gwinnett County, 215 Ga. App. 79, 449 S.E.2d 856 (1994).

Cited in Ramsey v. City of Forest Park, 204 Ga. App. 98, 418 S.E.2d 432 (1992); Schulze v. DeKalb County, 230 Ga. App. 305, 496 S.E.2d 273 (1998); Abdel-Samed v. Dailey, 294 Ga. 758, 755 S.E.2d 805 (2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Hospitals and Asylums, § 12.

C.J.S. — 61 C.J.S., Motor Vehicles, §§ 946, 947, 1005.

ALR. — Liability for personal injury or property damage from operation of ambulance, 84 A.L.R.2d 121.

Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

Construction and application of "Good Samaritan" statutes, 68 A.L.R.4th 294.

Rescue doctrine: liability of one who negligently causes motor vehicle accident for injuries to person subsequently attempting to rescue persons or property, 73 A.L.R.4th 737.

Application of "firemen's rule" to bar recovery by emergency medical personnel injured in responding to, or at scene of, emergency, 89 A.L.R.4th 1079.

Liability for negligence of ambulance attendants, emergency medical technicians, and the like, rendering emergency medical care outside hospital, 16 A.L.R.5th 605.

31-11-9. Enforcement; inspections.

The department and its duly authorized agents are authorized to enforce compliance with this chapter and rules and regulations promulgated under this chapter as provided in Article 1 of Chapter 5 of this title and, in connection therewith during the reasonable business hours of the day, to enter upon and inspect in a reasonable manner the premises of persons providing ambulance service. All inspections under this Code section shall be in compliance with the provisions of Article 2 of Chapter 5 of this title. The department is also authorized to enforce compliance with this chapter, including but not limited to compliance with the EMSC Program and furnishing of emergency services within designated territories, by imposing fines in the same manner as provided in paragraph (6) of subsection (c) of Code Section 31-2-8; this enforcement action shall be a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1933, § 88-3110, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1997, p. 454, § 1; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 5-16/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-11-10. Establishment of fees and regulations by municipalities.

Nothing in this chapter shall be construed as prohibiting or preventing a municipality from fixing, charging, or assessing any license fee or registration fee on any business or profession covered by this chapter or upon any related profession or any person engaged in any profession governed by this chapter or collecting any fee so imposed or from establishing additional regulations regarding ambulance service.

History. — Ga. L. 1972, p. 625, § 2.

RESEARCH REFERENCES

C.J.S. — 60 C.J.S., Motor Vehicles, §§ 182, 183, 199, 206.

31-11-11. Applicability of chapter.

This chapter shall not apply to the following:

(1) An ambulance or ambulance service operated by an agency of the United States government;

(2) A vehicle or aircraft that is operated by a person who is not licensed to furnish ambulance service which is rendering assistance temporarily in the case of a major catastrophe or emergency because the licensed ambulance services of the state are insufficient or unable to meet the demands thereof;

(3) An ambulance which is operated from a location outside of the state in order to transport patients from without the state's limits to locations within the state; or

(4) An invalid car or the operator thereof, except as provided in subsection (b) of Code Section 31-11-30.

History. — Code 1933, § 88-3111, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1994, p. 800, § 1; Ga. L. 2003, p. 304, § 5.

31-11-12. Contracts between emergency service providers and pharmacies for furnishing dangerous drugs and controlled substances.

Medical directors of licensed ambulance services, first responders, or neonatal services are authorized to contract with licensed pharmacies to furnish dangerous drugs and controlled substances for the vehicles of their particular services. Such dangerous drugs and controlled sub-

stances shall be furnished, secured, and stored in the manner provided for in Code Section 26-4-116.

History. — Code 1981, § 31-11-12, enacted by Ga. L. 1992, p. 1307, § 2; Ga. L. 1999, p. 81, § 31.

ARTICLE 2

LICENSES

Cross references. — Drivers' licenses generally, T. 40, C. 5.

31-11-30. License requirement.

(a) No person shall operate an ambulance service in this state without having a valid license or provisional license issued by the license officer pursuant to this chapter.

(b) No person shall make use of the word "ambulance" to describe any ground or air transportation or facility or service associated therewith which such person provides or to otherwise hold oneself out to be an ambulance service unless such person has a valid license issued pursuant to the provisions of this chapter or is exempt from licensing under this chapter and is not the operator of an invalid car.

(c) Any person who violates the provisions of this Code section shall be guilty of a misdemeanor.

History. — Code 1933, §§ 88-3102, 88-3113, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1991, p. 597, § 1; Ga. L. 1994, p. 800, § 2; Ga. L. 2003, p. 304, § 6.

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Automobile Insurance, § 251. 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 100 et seq., 113 et seq.

C.J.S. — 60 C.J.S., Motor Vehicles, § 188.

31-11-31. Application for license.

An application for a license or provisional license shall be made to the license officer. The application shall be made upon forms prescribed by the license officer and shall contain the following:

(1) The name and address of the owner of the ambulance service or proposed ambulance service;

(2) The name under which the applicant is doing business or proposes to do business;

(3) The training and experience of the applicant in the transportation and care of patients;

(4) A description or photograph of each ambulance, including the make, model, year of manufacture, and motor and chassis number; and the color scheme, insignia, name, monogram, or other distinguishing characteristics to be used to designate the applicant's ambulance or ambulances;

(4.1) A description or photograph of each air ambulance, including the color scheme, insignia, name, monogram, or other distinguishing characteristics to be used to designate the applicant's air ambulance or air ambulances; and

(5) The location and description of the place or places from which the ambulance service is intended to operate.

History. — Code 1933, § 88-3103, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1981, p. 1898, § 4; Ga. L. 1982, p. 3, § 31; Ga. L. 1993, p. 468, § 1; Ga. L. 1994, p. 97, § 31; Ga. L. 2003, p. 304, § 7.

31-11-31.1. License fee.

(a) Every ambulance service, whether privately operated or operated by any political subdivision of the state or any municipality, as a condition of maintaining a valid license shall pay an annual license fee to the license officer in an amount to be determined by the Board of Public Health. The amount of said license fee may be periodically revised by said board. Said license fee shall become due and payable upon the initial issuance of the license and each year thereafter on the anniversary date of the initial license issuance.

(b) All revenues collected from this annual fee shall be dedicated and deposited into the Indigent Care Trust Fund by the licensing officer.

History. — Code 1981, § 31-11-31.1, enacted by Ga. L. 1993, p. 468, § 2; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2011, p. 705, § 6-4/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, this Code section was renumbered as Code Section 31-11-31.1. Ga. L. 1993, p. 468, § 2, had designated it as Code Section 31-11-33.1.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-11-32. Duties of license officer.

(a) The license officer shall, within ten days after receipt of an application for a license or provisional license as provided for in this article, cause such investigation as he deems necessary to be made to determine that the standards prescribed by this chapter have been met.

(b) The license officer shall issue a license under this article for a period of two years, unless earlier suspended, revoked, or terminated, when he finds that all the requirements of this article have been met.

(c) The license officer shall issue provisional licenses for 30 days for the purpose specified in paragraph (19) of Code Section 31-11-2.

(d) Before issuing a license to a government or governmental agency for a new ambulance service, the license officer shall establish that, due to inadequate private service, the public's convenience and necessity require the proposed ambulance service.

History. — Code 1933, § 88-3104, enacted by Ga. L. 1972, p. 625, § 1.

JUDICIAL DECISIONS

Application of subsection (d). — Private nonprofit corporation which discharged the function of a hospital authority was not a government or governmental agency within the meaning of subsection (d) of O.C.G.A. § 31-11-32. Department of Human Resources v. Northeast Ga. Primary Care, Inc., 228 Ga. App. 130, 491 S.E.2d 01 (1997).

31-11-33. Insurance coverage as condition of licensing.

(a) Every ambulance operated on the streets, highways, and private access roads of this state by persons engaged in providing ambulance service shall have insurance coverage issued by an insurance company licensed to do business in this state providing at least the minimum coverage required for motor vehicles under Chapter 34 of Title 33; provided, however, in the case of ambulances operated by the state, the coverage required shall be the same coverage required for other state vehicles under Chapter 9 of Title 45. Every air ambulance operated by persons engaged in providing air ambulance service in this state shall have insurance coverage as described in Code Section 33-7-9.

(b) No ambulance shall be licensed nor shall any license be renewed unless the ambulance has insurance coverage in force as required by this Code section. A certificate of insurance shall be submitted to the license officer for approval prior to the issuance or renewal of each ambulance license. Satisfactory evidence that such insurance is at all times in force and effect shall be furnished to the license officer, in such

form as he may specify, by all licensees required to provide such insurance under this Code section.

(c) This Code section shall apply to all ambulances, whether privately operated or operated by any political subdivision of the state or any municipality.

(d) This Code section shall not apply to first responders, which do not transport patients, operated by municipalities or counties that have not elected to waive their governmental immunity by purchasing vehicle liability insurance pursuant to Code Section 33-24-51.

History. — Code 1933, § 88-3104.1, enacted by Ga. L. 1975, p. 916, § 1; Ga. L. 1986, p. 1321, § 1; Ga. L. 1987, p. 542, § 4; Ga. L. 2003, p. 304, § 8.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

RESEARCH REFERENCES

ALR. — Liability of operator of ambulance service for personal injuries to person being transported, 68 A.L.R.4th 14.

31-11-34. Standards for ambulances.

Ambulances operated by persons engaged in providing ambulance service shall meet all standards as set forth in the department's rules and regulations.

History. — Code 1933, § 88-3105, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1975, p. 916, § 2; Ga. L. 2003, p. 304, § 9.

31-11-35. Renewal of license; change of ownership of ambulance service.

(a) Renewal of any license issued under this article shall require conformance with the requirements of this article as upon original licensing.

(b) Change of ownership of an ambulance service shall require a new application and a new license issued in conformance with the requirements of this article as upon original licensing.

History. — Code 1933, § 88-3106, enacted by Ga. L. 1972, p. 625, § 1.

31-11-36. Suspension or revocation of license; appeal to superior court.

(a) Any license issued under this article may be suspended or revoked for a failure of a licensee to comply and to maintain compliance with this article or rules and regulations issued under this article, but only after opportunity for a hearing as provided in Article 1 of Chapter 5 of this title.

(b) Any person who has exhausted all administrative remedies available within the department and who is substantially aggrieved by a final order or final action of the license officer is entitled to judicial review in the manner provided by Article 1 of Chapter 5 of this title and, notwithstanding Code Section 31-5-3, shall be entitled to an appeal to superior court as provided in subsection (c) of this Code section.

(c) Appeal to the superior court shall be by petition which shall be filed in the clerk's office of such court within 30 days after the final order or action of the department; the petition shall set forth the names of the parties taking the appeal, the order, rule, regulation, or decision appealed from, and the reason it is claimed to be erroneous. The enforcement of the order or action appealed from shall be automatically stayed upon the filing of such petition unless the commissioner of public health in his final order certifies that his decision if stayed will harm the public health and safety, in which case a reviewing court may order a stay only if the court makes a finding that the public health and safety will not be harmed by the issuance of the stay. Upon the filing of such petition, the petitioner shall serve on the commissioner a copy thereof in the manner prescribed by law for the service of process, unless such service of process is waived. The appeal shall be an appeal de novo to the superior court and the appealing party shall have a right to a jury trial and all rights provided under Chapter 11 of Title 9, the "Georgia Civil Practice Act." The superior court shall render a decision approving, setting aside, or modifying the order or action appealed from.

History. — Code 1933, § 88-3107, enacted by Ga. L. 1972, p. 625, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1988, p. 1923, § 2; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

ARTICLE 3

PERSONNEL

31-11-49. Definitions.

As used in this article, the term:

(1) "Center" means the Georgia Crime Information Center.

(2) "Certify" and "certification" are synonymous with "license" and "licensure."

(3) "Emergency medical services personnel" means all individuals licensed by the department under this article.

History. — Code 1981, § 31-11-49, enacted by Ga. L. 2011, p. 539, § 1/SB 76.

31-11-50. Medical adviser.

(a) To enhance the provision of emergency medical care, each ambulance service shall be required to have a medical adviser. The adviser shall be a physician licensed to practice medicine in this state and subject to approval by the medical consultant of the Emergency Health Section of the Department of Public Health. Ambulance services unable to obtain a medical adviser, due to unavailability or refusal of physicians to act as medical advisers, may request the district health director or his or her designee to act as medical adviser until the services of a physician are available.

(b) The duties of the medical adviser shall be to provide medical direction and training for the ambulance service personnel in conformance with acceptable emergency medical practices and procedures.

(c) This Code section shall not apply to any county having a population under 12,000 according to the United States decennial census of 1970 or any such future census.

History. — Code 1933, § 88-3118, enacted by Ga. L. 1980, p. 1170, § 1A; Ga. L. 2009, p. 453, § 1-36/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214.

Cross references. — Licensing of physicians, § 43-34-20 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-11-51. Certification and recertification of emergency medical technicians; rules and regulations; use of conviction data in licensing decisions.

(a) As used in this Code section, the term "conviction data" means a record of a finding or verdict of guilty or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The board shall, by regulation, authorize the department to establish procedures and standards for the licensing of emergency medical services personnel. The department shall succeed to all rules and regulations, policies, procedures, and administrative orders of the composite board which were in effect on December 31, 2001, and which relate to the functions transferred to the department by this chapter. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law.

(c) In reviewing applicants for initial licensure of emergency medical services personnel, the department shall be authorized pursuant to this Code section to obtain conviction data with respect to such applicants for the purposes of determining the suitability of the applicant for licensure.

(d) The department shall by rule or regulation, consistent with the requirements of this subsection, establish a procedure for requesting a fingerprint based criminal history records check from the center and the Federal Bureau of Investigation. Fingerprints shall be in such form and of such quality as prescribed by the center and under standards adopted by the Federal Bureau of Investigation. Fees may be charged as necessary to cover the cost of the records search. An applicant may request that a criminal history records check be conducted by a state or local law enforcement agency or by a private vendor approved by the department. Fees for criminal history records checks shall be paid by the applicant to the entity processing the request at the time such request is made. The state or local law enforcement agency or private vendor shall remit payment to the center in such amount as required by the center for conducting a criminal history records check. The department shall accept a criminal history records check whether such request is made through a state or local law enforcement agency or through a private vendor approved by the department. Upon receipt of an authorized request, the center shall promptly cause such criminal records search to be conducted. The center shall notify the department in writing of any finding of disqualifying information, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding.

(e) Conviction data received by the department or a state or local law enforcement agency shall be privileged and shall not be a public record or disclosed to any person. Conviction data shall be maintained by the department and the state or local law enforcement pursuant to laws regarding such records and the rules and regulations of the center and the Federal Bureau of Investigation. Penalties for the unauthorized release or disclosure of conviction data shall be as prescribed by law or rule or regulation of the center or Federal Bureau of Investigation.

(f) The center, the department, or any law enforcement agency, or the employees of any such entities, shall neither be responsible for the accuracy of information provided pursuant to this Code section nor be liable for defamation, invasion of privacy, negligence, or any other claim relating to or arising from the dissemination of information pursuant to this Code section.

History. — Code 1933, § 88-3112.1, enacted by Ga. L. 1977, p. 281, § 2; Ga. L. 2001, p. 1145, § 2; Ga. L. 2011, p. 539, § 2/SB 76; Ga. L. 2012, p. 83, § 4/HB 247; Ga. L. 2013, p. 141, § 31/HB 79.

31-11-52. Certification and recertification of, and training for, paramedics and cardiac technicians.

(a) The department shall establish procedures and standards for certifying and recertifying paramedics and cardiac technicians. An applicant for initial certification as a paramedic or a cardiac technician must:

(1) Submit a completed application on a form to be prescribed by the department, which shall include evidence that the applicant is 18 years of age or older and is of good moral character;

(2) Submit from the department a notarized statement that the applicant has completed a training course approved by the department;

(3) Submit to the department a fee as set forth in the regulations of the department; and

(4) Meet such other requirements as are set forth in the rules and regulations of the department.

(b) The department shall also adopt procedures and standards for its approval of paramedic training courses and cardiac technician training courses. The department shall adopt such regulations after consultation with appropriate public and private agencies and organizations concerned with medical education and the practice of medicine. Procedures and standards adopted by the department shall be consistent with the purposes and provisions of this chapter.

History. — Code 1933, §§ 88-3112.1, 88-3112.2, enacted by Ga. L. 1977, p. 281, §§ 2, 3; Ga. L. 1988, p. 1923, § 3; Ga. L. 2001, p. 1145, § 3.

31-11-53. Services which may be rendered by certified emergency medical technicians and trainees.

(a) Upon certification by the department, emergency medical technicians may do any of the following:

(1) Render first-aid and resuscitation services as taught in the United States Department of Transportation basic training courses for emergency medical technicians or an equivalent course approved by the department; and

(2) Upon the order of a duly licensed physician, administer approved intravenous solutions and opioid antagonists.

(b) While in training preparatory to becoming certified, emergency medical technician trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician or a registered nurse.

History. — Code 1933, § 88-3112.3, enacted by Ga. L. 1977, p. 281, § 4; Ga. L. 2014, p. 683, § 2-3/HB 965.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities … without any potential for abuse … [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

JUDICIAL DECISIONS

Cited in Griesel v. Hamlin, 963 F.2d 338 (11th Cir. 1992).

31-11-53.1. Automated external defibrillator program; establishment; regulations; liability.

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

(1) "Automated external defibrillator" means a defibrillator which:

(A) Is capable of cardiac rhythm analysis;

(B) Will charge and be capable of being activated to deliver a countershock after electrically detecting the presence of certain cardiac dysrhythmias; and

(C) Is capable of continuous recording of the cardiac dysrhythmia at the scene with a mechanism for transfer and storage or for printing for review subsequent to use.

(2) "Defibrillation" means to terminate ventricular fibrillation.

(3) "First responder" means any person or agency who provides on-site care until the arrival of a duly licensed ambulance service. This shall include, but not be limited to, persons who routinely respond to calls for assistance through an affiliation with law enforcement agencies, fire suppression agencies, rescue agencies, and others.

(b) It is the intent of the General Assembly that an automated external defibrillator may be used by any person for the purpose of saving the life of another person in cardiac arrest. In order to ensure public health and safety:

(1) It is recommended that all persons who have access to or use an automated external defibrillator obtain appropriate training as set forth in the rules and regulations of the Department of Public Health. It is further recommended that such training include at a minimum the successful completion of:

(A) A nationally recognized health care provider/professional rescuer level cardiopulmonary resuscitation course; and

(B) A department established or approved course which includes demonstrated proficiency in the use of an automated external defibrillator;

(2) All persons and agencies possessing and maintaining an automated external defibrillator shall notify the appropriate emergency medical services system of the existence and location of the automated external defibrillator prior to said defibrillator being placed in use;

(3) All persons who use an automated external defibrillator shall activate the emergency medical services system as soon as reason-

ably possible by calling 9-1-1 or the appropriate emergency telephone number upon use of the automated external defibrillator; and

(4) Within a reasonable period of time, all persons who use an automated external defibrillator shall make available a printed or electronically stored report to the licensed emergency medical services provider which transports the patient.

(c) All persons who provide instruction to others in the use of the automated external defibrillator shall have completed an instructor course established or approved by the department.

(d) The department shall establish an automated external defibrillator program for use by emergency medical technicians. Such program shall be subject to the direct supervision of a medical adviser approved under Code Section 31-11-50. No emergency medical technician shall be authorized to use an automated external defibrillator to defibrillate a person unless that defibrillator is a properly maintained automated external defibrillator and that emergency medical technician:

(1) Submits to and has approved by the department an application for such use, and in considering that application the department may obtain and use the recommendation of the local coordinating entity for the health district in which the applicant will use such defibrillator;

(2) Successfully completes an automated external defibrillator training program established or approved by the department;

(3) Is subject to protocols requiring that both the emergency physician who receives a patient defibrillated by that emergency medical technician and the medical adviser for the defibrillator program review the department required prehospital care report and any other documentation of the defibrillation of any person by that emergency medical technician and send a written report of such review to the district EMS medical director of the health district in which the defibrillation occurred; and

(4) Obtains a passing score on an annual automated external defibrillator proficiency exam given in connection with that program.

(e) It shall not be necessary for a licensed emergency medical service, licensed neonatal transport service, or other services licensed by the department which provide care administered by cardiac technicians or paramedics to obtain department approval for the use of an automated external defibrillator on licensed vehicles.

(f) Any emergency medical technician who violates the provisions of this Code section shall be subject to having revoked by the department that person's authority to use an automated external defibrillator. Such

a violation shall also be grounds for any entity which issues a license or certificate authorizing such emergency medical technician to perform emergency medical services to take disciplinary action against such person, including but not limited to suspension or revocation of that license or certificate. Such a violation shall also be grounds for the employer of such emergency medical technician to impose any sanction available thereto, including but not limited to dismissal.

(g) Any first responder who gratuitously and in good faith renders emergency care or treatment by the use of or provision of an automated external defibrillator, without objection of the injured victim or victims thereof, shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts without gross negligence or intent to harm or as an ordinary reasonably prudent person would have acted under the same or similar circumstances, even if such individual does so without benefit of the appropriate training. This provision includes paid persons who extend care or treatment without expectation of remuneration from the patient or victim for receiving the defibrillation care or treatment.

History. — Code 1981, § 31-11-53.1, enacted by Ga. L. 1988, p. 1918, § 1; Ga. L. 1998, p. 661, § 1; Ga. L. 2005, p. 660, § 4/HB 470; Ga. L. 2009, p. 453, § 1-37/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — Automated external defibrillator required in high schools, § 20-2-775.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, the subsection (b) designation preceding paragraph (b)(3) was deleted.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Liability arising out of availability or use of automated external defibrillator or other defibrillator device, 2 A.L.R.7th 5.

31-11-53.2. "Lay rescuer" defined; use of automated external defibrillators.

(a) As used in this Code section, the term "lay rescuer" means a person trained to provide cardiopulmonary resuscitation and to use an automated external defibrillator, as defined in Code Section 31-11-53.1, and who is participating in a physician or medically authorized automated external defibrillator program.

(b) The following guidelines shall be applicable to the use of automated external defibrillators by lay rescuers:

(1) Any person or entity who acquires an automated external defibrillator shall ensure that:

(A) Expected users of the automated external defibrillator receive American Heart Association or American Red Cross training in cardiopulmonary resuscitation and automated external defibrillator use or complete an equivalent nationally recognized course;

(B) The defibrillator is maintained and tested according to the manufacturer's operational guidelines;

(C) There is involvement of a licensed physician or other person authorized by the composite board in the site's automated external defibrillator program to ensure compliance with requirements for training, notification, and maintenance; and

(D) Any person who renders emergency care or treatment to a person in cardiac arrest by using an automated external defibrillator activates the emergency medical services system as soon as possible and reports any clinical use of the automated external defibrillator to the licensed physician or other person authorized by the composite board who is supervising the program; and

(2) Any person or entity who acquires an automated external defibrillator shall notify an agent of the emergency communications or vehicle dispatch center of the existence, location, and type of automated external defibrillator.

History. — Code 1981, § 31-11-53.2, enacted by Ga. L. 2001, p. 776, § 1; Ga. L. 2002, p. 415, § 31.

Cross references. — Immunity for operators of external defibrillators, § 51-1-29.3.

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 146 (2001).

31-11-54. Services which may be rendered by paramedics and paramedic trainees.

(a) Upon certification by the department, paramedics may perform any service that a cardiac technician is permitted to perform. In addition, upon the order of a duly licensed physician and subject to the conditions set forth in paragraph (2) of subsection (a) of Code Section 31-11-55, paramedics may perform any other procedures which they have been both trained and certified to perform, including, but not limited to:

(1) Administration of parenteral injections of diuretics, anticonvulsants, hypertonic glucose, antihistamines, bronchodilators, emetics, narcotic antagonists, and others, and administration of opioid antagonists;

(2) Cardioversion; and

(3) Endotracheal suction.

(b) While in training preparatory to becoming certified, paramedic trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician, a registered nurse, or an approved paramedic clinical preceptor.

History. — Code 1933, § 88-3112.5, enacted by Ga. L. 1977, p. 281, § 6; Ga. L. 1988, p. 1923, § 4; Ga. L. 1989, p. 1782, § 2; Ga. L. 2001, p. 1145, § 4; Ga. L. 2014, p. 683, § 2-4/HB 965.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities … without any potential for abuse … [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-55. Services which may be rendered by certified cardiac technicians and trainees.

(a) Upon certification by the department, cardiac technicians may do any of the following:

(1) Render first-aid and resuscitation services;

(2) Upon the order of a duly licensed physician and as recommended by the Georgia Emergency Medical Services Advisory Council and approved by the department:

(A) Perform cardiopulmonary resuscitation and defibrillation in a hemodynamically unstable patient;

(B) Administer approved intravenous solutions;

(C) Administer parenteral injections of antiarrhythmic agents, vagolytic agents, chronotropic agents, alkalizing agents, analgesic agents, and vasopressor agents or administer opioid antagonists; and

(D) Perform pulmonary ventilation by esophageal airway and endotracheal intubation.

(b) While in training preparatory to becoming certified, cardiac technician trainees may perform any of the functions specified in this Code section under the direct supervision of a duly licensed physician or a registered nurse.

History. — Code 1933, § 88-3112.4, enacted by Ga. L. 1977, p. 281, § 5; Ga. L. 2001, p. 1145, § 5; Ga. L. 2014, p. 683, § 2-5/HB 965.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical Association supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities … without any potential for abuse … [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-55.1. Opioid antagonists administered by first responder to save life of person experiencing opioid related overdose.

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

(1) "First responder" means any person or agency who provides on-site care until the arrival of a duly licensed ambulance service. This shall include, but not be limited to, persons who routinely respond to calls for assistance through an affiliation with law enforcement agencies, fire departments, and rescue agencies.

(2) "Opioid antagonist" means any drug that binds to opioid receptors and blocks or inhibits the effects of opioids acting on those receptors and that is approved by the federal Food and Drug Administration for the treatment of an opioid related overdose.

(3) "Opioid related overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of

consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or use of an opioid or another substance with which an opioid was combined or that a layperson would reasonably believe to be resulting from the consumption or use of an opioid or another substance with which an opioid was combined.

(b) An opioid antagonist may be administered or provided by any first responder for the purpose of saving the life of a person experiencing an opioid related overdose. In order to ensure public health and safety:

(1) All first responders who have access to or maintain an opioid antagonist obtain appropriate training as set forth in the rules and regulations of the Department of Public Health;

(2) All law enforcement agencies, fire departments, rescue agencies, and other similar entities shall notify the appropriate emergency medical services system of the possession and maintenance of opioid antagonists by its personnel; and

(3) Within a reasonable period of time, all first responders who administer or provide an opioid antagonist shall make available a printed or electronically stored report to the licensed ambulance service which transports the patient.

(c) A pharmacy licensed in this state may issue opioid antagonists to first responders for use pursuant to this Code section in the same manner and subject to the same requirements as provided in Code Section 26-4-116.

(d) Any first responder who gratuitously and in good faith renders emergency care or treatment by administering or providing an opioid antagonist shall not be held liable for any civil damages as a result of such care or treatment or as a result of any act or failure to act in providing or arranging further medical treatment where the person acts without gross negligence or intent to harm or as an ordinary reasonably prudent person would have acted under the same or similar circumstances, even if such individual does so without benefit of the appropriate training. This subsection includes paid persons who extend care or treatment without expectation of remuneration from the patient or victim for receiving the opioid antagonist.

History. — Code 1981, § 31-11-55.1, enacted by Ga. L. 2014, p. 683, § 2-6/HB 965.

Editor's notes. — Ga. L. 2014, p. 683, § 2-1/HB 965, not codified by the General Assembly, provides:

"WHEREAS, Naloxone is an opioid antagonist developed to counter the effects of opiate overdose, specifically the life threatening depression of the central nervous and respiratory systems; and

"WHEREAS, Naloxone is clinically administered via intramuscular, intravenous, or subcutaneous injection; and

"WHEREAS, Naloxone is administered outside of a clinical setting or facility intranasally via nasal atomizer; and

"WHEREAS, the American Medical As-

sociation supported the lay administration of this life saving drug in 2012; and

"WHEREAS, similar Naloxone access laws have reversed more than 10,000 opioid overdoses by lay people in other states; and

"WHEREAS, the American Medical Association acknowledged that 'fatalities caused by opioid overdose can devastate families and communities, and we must do more to prevent these unnecessary deaths'; and

"WHEREAS, the National Institutes of Health found that Naloxone 'lacks any psychoactive or addictive qualities … without any potential for abuse … [and] medical side effects or other problematic unintended consequences associated with Naloxone have not been reported'; and

"WHEREAS, any administration of Naloxone to an individual experiencing an opioid overdose must be followed by professional medical attention and treatment."

Ga. L. 2014, p. 683, § 3-1/HB 965, not codified by the General Assembly, provides, in part, that Parts I and II of this Act shall apply to all acts committed on or after April 24, 2014.

31-11-56. Revocation of certificates issued to emergency medical technicians.

Certificates issued to emergency medical technicians pursuant to this chapter may be revoked for good cause, as set forth in the rules and regulations, by the department after notice to the certificate holder of the charges and an opportunity for hearing. Such proceedings shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1933, § 88-3112.6, enacted by Ga. L. 1977, p. 281, § 7.

31-11-57. Revocation of certificates issued to paramedics and cardiac technicians.

Certificates issued to paramedics and cardiac technicians pursuant to this chapter may be revoked for good cause by the department in accordance with established rules and regulations, after notice to the certificate holder of the charges and an opportunity for hearing. Such proceedings shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The department shall have the authority to conduct investigations and subpoena any documents relating to the fitness of paramedics and cardiac technicians. Such documents may be used in any hearing conducted by the department.

History. — Code 1933, § 88-3112.7, enacted by Ga. L. 1977, p. 281, § 8; Ga. L. 1980, p. 1170, § 1; Ga. L. 1988, p. 1923, § 5; Ga. L. 2001, p. 1145, § 6.

31-11-58. Recertification of emergency medical technicians; continuing education requirements.

(a) The department shall be authorized to require emergency medical technicians seeking recertification under this chapter to complete department approved continuing education. The department shall be authorized to approve courses including but not limited to courses offered by the department, the number of hours required, and the category in which these hours should be earned.

(b) The department shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or under such other circumstances as the department deems appropriate.

(c) The department shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each certification and recertification cycle which begins after the 1992-1993 renewal.

History. — Code 1933, § 88-3112.8, enacted by Ga. L. 1977, p. 281, § 9; Ga. L. 1981, p. 1315, § 1; Ga. L. 1988, p. 1923, § 6; Ga. L. 1991, p. 597, § 2; Ga. L. 1993, p. 1082, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers, § 17 et seq.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 9, 10.

31-11-58.1. Recertification of paramedics and cardiac technicians; continuing education requirements.

(a) The department shall be authorized to require paramedics and cardiac technicians seeking recertification under this chapter to complete department approved continuing education of not less than 40 hours biennially. The department shall be authorized to approve courses including but not limited to courses offered by the department, the number of hours required, and the category in which these hours should be earned.

(b) The department shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or under such other circumstances as the department deems appropriate.

(c) The department shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each recertification cycle which begins after the renewal deadline in 2000.

History. — Code 1981, § 31-11-58.1, enacted by Ga. L. 1993, p. 1082, § 1; Ga. L. 2001, p. 1145, § 7.

31-11-59. Services of emergency medical technicians, paramedics, and cardiac technicians in hospitals.

Emergency medical technicians, paramedics, and cardiac technicians may render any service which they are authorized to render under Code Sections 31-11-53, 31-11-54, and 31-11-55, respectively, in any hospital. Such services shall not be rendered in lieu of the services of a physician or a registered professional nurse and shall only be rendered in a hospital at the discretion of and after the prior approval by the hospital governing authority on the order of a physician or, if a physician or registered professional nurse is present, at the direction of a physician or registered professional nurse, provided that such hospital has a currently valid permit or conditional permit issued by the department pursuant to Article 1 of Chapter 7 of this title. The provisions of this Code section are cumulative and are not intended to limit the rendering of services by emergency medical technicians, cardiac technicians, and paramedics in any area in which they are already authorized to render such services.

History. — Code 1933, § 88-3112.11, enacted by Ga. L. 1979, p. 1017, § 1; Ga. L. 1983, p. 694, § 1; Ga. L. 1988, p. 1923, § 7.

OPINIONS OF THE ATTORNEY GENERAL

Services not to be provided in lieu of other health care providers. — Although O.C.G.A. § 31-11-59 applies only to emergency medical technicians (EMTs) providing services in hospitals, the statute indicates the intent of the legislature that services provided by EMTs are not to be rendered in lieu of services of other health care professionals in other medical facilities where the Department of Human Resources (now the Department of Community Health for these purposes) may also authorize the use of EMTs; e.g., free-standing emergency care clinics. 1984 Op. Att'y Gen. No. 84-27.

31-11-60. Obtaining and administering drugs by certified employees of counties or municipalities.

(a) Any emergency medical technician, paramedic, or cardiac technician who is certified under this article and who works for a county or municipal police department, fire department, or rescue unit is authorized to obtain any substance which such person is authorized to administer by virtue of his certification. Any such unit to which the emergency medical technician, paramedic, or cardiac technician is

attached must be licensed by the department as a medical first responder unit. Such unit may then obtain from a hospital pharmacy those legend drugs listed and legally permitted to be used by paramedics, emergency medical technicians, or cardiac technicians. The first responder unit shall have a signed agreement with the hospital in order for the hospital to furnish such drugs, and a copy of this agreement must be filed with the Georgia Drugs and Narcotics Agency. The requirements for administering, controlling, and storing these drugs shall be the same as the requirements for a standard ward inventory in a hospital.

(b) Any substance obtained under subsection (a) of this Code section shall be used only in connection with the emergency medical technician's, paramedic's, or cardiac technician's employment with the county or municipality, as such, and only while on duty as an emergency medical technician, paramedic, or cardiac technician.

(c) It shall not be necessary for an emergency medical technician, paramedic, or cardiac technician to be assigned to a licensed ambulance service in order to obtain any substance under subsection (a) of this Code section.

History. — Code 1933, § 88-3112.13, enacted by Ga. L. 1980, p. 1758, § 1; Ga. L. 1988, p. 1923, § 8.

31-11-60.1. Program for physician control over emergency medical services to nonhospital patients.

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

(1) "Ambulance service medical director" means a physician licensed to practice in this state and subject to the approval of the local coordinating entity and the department who has agreed, in writing, to provide medical direction to a specific ambulance service.

(2) "Base station facility" means any facility responsible for providing direct physician control of emergency medical services.

(3) "District emergency medical services medical director" means a person who is:

(A) A physician licensed to practice medicine in this state;

(B) Familiar with the design and operation of prehospital emergency services systems;

(C) Experienced in the prehospital emergency care of acutely ill or injured patients; and

(D) Experienced in the administrative processes affecting regional and state prehospital emergency medical services systems.

(4) "Emergency medical services personnel" means any emergency medical technician, paramedic, cardiac technician, or designated first responder who is certified under this article.

(b) The department and the district emergency medical services medical directors shall develop and implement a program to ensure appropriate physician control over the rendering of emergency medical services by emergency medical services personnel to patients who are not in a hospital, which program shall include but not be limited to the following:

(1) Medical protocols regarding permissible and appropriate emergency medical services which may be rendered by emergency medical services personnel to a patient not in a hospital;

(2) Communication protocols regarding which medical situations require direct voice communication between emergency medical services personnel and a physician or a nurse or a paramedic or a physician assistant in direct communication with a physician prior to those emergency medical services personnel's rendering specified emergency medical services to a patient not in a hospital;

(3) Record-keeping and accountability requirements for emergency medical services personnel and base station facility personnel in order to monitor compliance with this subsection; and

(4) Base station facility standards.

(c) The ambulance service medical director shall serve as the medical authority for the ambulance service, performing liaison activities with the medical community, medical facilities, and governmental agencies. The ambulance service medical director shall be responsible for the provision of medical direction and training for the emergency medical services personnel within the ambulance service for which he is responsible in conformance with acceptable emergency medical practices and procedures. These responsibilities shall include the duties set forth in the department's rules and regulations for ambulance services.

(d) The district emergency medical services medical director shall not override those policies or protocols of the ambulance service medical director if that ambulance service medical director is documenting compliance with the department's rules and regulations for ambulance services.

(e) Every base station facility shall comply with the policies, protocols, requirements, and standards provided for in subsection (b) of this Code section.

(f) All emergency medical services personnel shall comply with appropriate policies, protocols, requirements, and standards of the

ambulance service medical director for that service or the policies, protocols, requirements, and standards provided for in subsection (b) of this Code section.

(g) Conduct which would otherwise constitute a violation of subsection (f) of this Code section shall not be such a violation if such conduct was carried out by any emergency medical services personnel pursuant to an order from a physician, the ambulance service medical director for such person, or the protocol of that ambulance service as approved by the ambulance service medical director for such person.

(h) Violation by any base station facility of subsection (e) of this Code section may be grounds for the removal of that base station facility's designation by the department.

(i) Enforcement of subsections (g) and (h) of this Code section shall commence no earlier than 12 months after July 1, 1989.

History. — Code 1981, § 31-11-60.1, enacted by Ga. L. 1989, p. 1782, § 3; Ga. L. 2009, p. 859, § 3/HB 509.

31-11-61. Penalty.

Any person who shall falsely represent himself to be a certified emergency medical technician, certified cardiac technician, or certified paramedic or who shall accept or continue in employment as such and perform the duties thereof without being certified as prescribed by this chapter shall be guilty of a misdemeanor.

History. — Code 1933, § 88-3112.10, enacted by Ga. L. 1977, p. 281, § 11; Ga. L. 1988, p. 1923, § 9.

ARTICLE 4

EMERGENCY SERVICES

Administrative rules and regulations. — Emergency Medical Services, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Emergency Preparedness, Subject 511-9-2.

31-11-80. Short title.

This article shall be known and cited as the "Emergency Services Law."

History. — Code 1981, § 31-11-80, enacted by Ga. L. 1996, p. 668, § 1.

31-11-81. Definitions.

As used in this article, the term:

(1) "Emergency condition" means any medical condition of a recent onset and severity, including but not limited to severe pain that would lead a prudent layperson, possessing an average knowledge of medicine and health, to believe that his or her condition, sickness, or injury is of such a nature that failure to obtain immediate medical care could result in:

(A) Placing the patient's health in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part.

(2) "Emergency medical provider" means any provider of emergency medical transportation licensed or permitted by the Department of Public Health, any hospital licensed or permitted by the Department of Community Health, any hospital based service, or any physician licensed by the Georgia Composite Medical Board who provides emergency services.

(3) "Emergency services" means emergency medical transportation or health care services provided in a hospital emergency facility to evaluate and treat any emergency condition.

(4) "Prospective authorization" means contacting for approval or authorization to evaluate and treat a patient any insurer, health maintenance organization, hospital medical service corporation, or health benefit plan, a representative of which is not physically present in the hospital's emergency department at the time such patient presents for emergency services.

History. — Code 1981, § 31-11-81, enacted by Ga. L. 1996, p. 668, § 1; Ga. L. 2006, p. 652, § 1/HB 1257; Ga. L. 2008, p. 12, § 2-28/SB 433; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2011, p. 705, § 5-17/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Definition of "emergency condition" in paragraph (1) of O.C.G.A. § 31-11-81 governs and controls over any contrary definition in an insurance policy issued in Georgia. 1997 Op. Att'y Gen. No. U97-4.

31-11-82. Evaluation of person with emergency condition; initiation of intervention without prospective authorization; insurer may not deny payment after prospective authorization given.

(a) Once a person with an emergency condition presents himself or herself to an emergency medical provider for emergency services, that person shall be evaluated by medical personnel. This evaluation may include diagnostic testing to assess the extent of the condition, sickness, or injury if such testing is appropriate to stabilize the patient's condition. For purposes of this Code section, the term "emergency medical provider" includes without limitation an emergency services provider.

(b) If in the opinion of the attending physician or licensed ambulance service personnel acting under the medical direction of an ambulance service medical director as defined in Code Section 31-11-60.1 the evaluation provided under subsection (a) of this Code section warrants, he or she may initiate appropriate intervention to stabilize the condition of the patient without seeking or receiving prospective authorization by an insurer, a health maintenance organization, or a private health benefit plan. No insurer, health maintenance organization, or private health benefit plan may subsequently deny payment for an evaluation, diagnostic testing, or treatment provided as part of such intervention for an emergency condition.

(c) No insurer, health maintenance organization, or private health benefit plan which has given prospective authorization after the stabilization of a person's condition as provided in subsection (b) of this Code section for an evaluation, diagnostic testing, or treatment provided for in this article may subsequently deny payment for the provision of such evaluation, diagnostic testing, or treatment. An acknowledgment of an enrollee's eligibility for benefits by the insurer, health maintenance organization, or private health benefit plan shall not, by itself, be construed as a prospective authorization for the purposes of this Code section.

History. — Code 1981, § 31-11-82, enacted by Ga. L. 1996, p. 668, § 1; Ga. L. 1997, p. 908, § 1; Ga. L. 2006, p. 652, § 2/HB 1257.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma was deleted following "attending physician" at the beginning of subsection (b).

ARTICLE 5

GEORGIA TRAUMA CARE NETWORK COMMISSION

31-11-100. Definitions.

As used in this article, the term:

(1) "Burn trauma center" means a facility that has been designated by the Department of Public Health as a burn center and that admits at least 300 patients annually with the burn specific principal diagnosis codes as published by the International Classification of Diseases.

(2) "Trauma burn patient" means a patient admitted to a burn trauma center with a burn specific principal diagnosis code as published by the International Classification of Diseases who has at least one of the following injuries or complications based on criteria developed by the American Burn Association:

(A) Partial-thickness burns over at least 10 percent of the total body surface area;

(B) Burns that involve the face, hands, feet, genitalia, perineum, or major joints;

(C) Third-degree burns in any age group;

(D) Chemical burns;

(E) An inhalation injury;

(F) A burn injury and preexisting medical disorder that could complicate management, prolong recovery, or affect mortality;

(G) Burns and concomitant trauma, such as fractures, in which the burn injury poses the greatest risk of morbidity or mortality; or

(H) Burn injury patients who require special social, emotional, or rehabilitative intervention.

(3) "Trauma center" means a facility designated by the Department of Public Health as a Level I, II, III, or IV or burn trauma center. However, a burn trauma center shall not be considered or treated as a trauma center for purposes of certificate of need requirements under state law or regulations, including exceptions to need and adverse impact standards allowed by the department for trauma centers or for purposes of identifying safety net hospitals.

(4) "Trauma patient" means a patient who is on the State Trauma Registry or the National Trauma Registry of the American College of Surgeons or who is a trauma burn patient.

(5) "Trauma service codes" means the International Classification of Diseases discharge codes designated as trauma service codes by the American College of Surgeons, Committee on Trauma.

(6) "Uncompensated" means care provided by a designated trauma center, emergency medical services provider, or physician to a trauma patient as defined by the Georgia Trauma Care Network Commission who:

(A) Has no medical insurance, including federal Medicare Part B coverage;

(B) Is not eligible for medical assistance coverage;

(C) Has no medical coverage for trauma care through workers' compensation, automobile insurance, or any other third party, including any settlement or judgment resulting from such coverage; and

(D) Has not paid for the trauma care provided by the trauma provider after documented attempts by the trauma care services provider to collect payment.

History. — Code 1981, § 31-11-100, enacted by Ga. L. 2007, p. 36, § 1/SB 60; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 245, § 1/HB 307; Ga. L. 2011, p. 705, § 6-3/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "Department of Public Health" was substituted for "Department of Community Health" in paragraph (1).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 37.

31-11-101. Creation of Georgia Trauma Care Network Commission; composition; membership; meetings; vacancies; compensation.

(a) There is created the Georgia Trauma Care Network Commission which is assigned to the Department of Public Health for administrative purposes only, as prescribed in Code Section 50-4-3. The commission shall consist of nine members who shall be appointed as provided in this Code section. Five members shall be appointed by the Governor. The Governor shall include among his or her appointees a physician who is actively involved in providing emergency trauma care, a representative of a hospital that is a designated trauma center, and a representative of a state 9-1-1 zone licensed emergency medical services provider. Two members shall be appointed by the Lieutenant Governor. Two members shall be appointed by the Speaker of the House of Representatives. In making the initial appointments, the Governor shall appoint three members for a term of four years and two members for a term of two years, the Lieutenant Governor shall appoint one member for a term of four years and one member for a term of two years, and the Speaker of the House of Representatives shall appoint one member for a term of four years and one member for a term of two years. Thereafter, persons appointed to succeed the initial members shall serve four-year terms of office. The Governor shall appoint one of the members to serve as the chairperson of the commission.

(b) The commission shall meet upon the call of the chairperson or upon the request of three members. The commission shall organize itself as it deems appropriate and may elect additional officers from among its members.

(c) Any vacancy on the commission shall be filled for the unexpired term by appointment by the original appointing authority.

(d) Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of such commission, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Such expense and travel allowance shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance.

History. — Code 1981, § 31-11-101, enacted by Ga. L. 2007, p. 36, § 1/SB 60; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-11-102. Duties and responsibilities.

The Georgia Trauma Care Network Commission shall have the following duties and responsibilities:

(1) To apply for, receive, and administer state funds appropriated to the commission and federal funds and grants, private grants and donations, and other funds and donations. The commission's annual distributions shall be capped and limited to funds received from the sources specified in this paragraph. The commission shall ensure that its funds are not used as a supplement or secondary payor to any other third-party payor;

(2) For the first two fiscal years in which funds are appropriated to the commission for distribution, to distribute such funds in the following areas with the priority for distribution to be set by majority vote of the commission:

(A) Physician uncompensated trauma care services provided in designated trauma centers;

(B) Emergency medical service uncompensated trauma care services provided to patients transported to designated trauma centers and to trauma patients transported to out-of-state hospitals as approved by the commission;

(C) Uncompensated trauma care services of designated trauma centers;

(D) Trauma care readiness costs for designated or certified trauma care service providers; and

(E) Trauma care service start-up costs for providers seeking a trauma care designation or certification.

The commission shall adopt a formula that prioritizes the distribution of state appropriated funds that may be implemented during the third state fiscal year in which funds are appropriated to the commission for distribution. Such formula shall be evaluated and modified, if needed, every two years thereafter;

(3) To develop, implement, administer, and maintain a system to compensate designated trauma centers for a portion of their cost of readiness through a semiannual distribution from the Georgia Trauma Trust Fund in a standardized amount determined by the commission. The standardized amounts shall be determined according to designation level and shall be capped at that specific amount. Initially, such standardized amount shall be based upon a three-year average of annual trauma cases, annual amount of uncompensated trauma care services administered, and a three-year annual average cost of readiness. Such criteria may be changed by a majority vote of the commission. Total annual distributions for trauma center and emergency medical service readiness shall be capped at an amount set by the commission. However, the standards developed by the commission for readiness shall include, but are not limited to, the following:

(A) Criteria assuring the trauma fund is a payor of last resort;

(B) Criteria assuring that all other resources must be exhausted before the trauma funds are allocated; and

(C) Criteria assuring that trauma funds must be used to meet a verified need that assists the trauma center to maintain a trauma center designation;

(4) To develop, implement, administer, and maintain a system to provide additional designated trauma center compensation to cover trauma center costs not associated with readiness based upon an application and review based process. These distributions shall be capped and limited to semiannual appropriations received by the commission. Designated trauma centers shall submit an application for trauma funds reimbursement semiannually. The application process developed by the commission for such costs shall include, but is not limited to, the following:

(A) Criteria assuring that the trauma fund is a payor of last resort;

(B) Criteria assuring that trauma funds shall be used for reimbursement for services provided to designated trauma patients;

(C) Criteria assuring that trauma funds shall be used for reimbursement for trauma service codes;

(D) Criteria assuring that trauma funds used for reimbursement for trauma care costs shall be on a fee schedule or grant basis; provided, however, that no reimbursement shall exceed the average rate reimbursed for similar services under the State Health Benefit Plan; and

(E) Criteria that require the trauma center to submit a semiannual report documenting and verifying the use of such funds;

(5) To develop, implement, administer, and maintain a system to compensate physicians who provide uncompensated call and trauma care services. This reimbursement shall be distributed on a semiannual basis and paid on a formula to be set by the commission. The call hours must be documented and verified by the trauma director at the appropriate trauma center in order to receive such funds. The formula developed by the commission for reimbursement shall include, but is not limited to, the following:

(A) Criteria assuring that the trauma fund is a payor of last resort;

(B) Criteria assuring that trauma funds shall be used for reimbursement for services provided to designated trauma patients;

(C) Criteria assuring that trauma funds used for reimbursement for physician costs shall be on a fee schedule or grant basis; provided, however, that no reimbursement shall exceed the average rate reimbursed for similar services under the State Health Benefit Plan; and

(D) Criteria assuring that trauma funds shall be used for reimbursement for trauma service codes;

(6) To reserve and disburse additional moneys to increase the number of participants in the Georgia trauma system. These funds shall be disbursed through an application process to cover partial start-up costs for nondesignated acute care facilities to enter the system as Level II, III, or IV trauma centers. The application process developed by the commission for start-up costs shall include, but is not limited to, the following:

(A) Criteria assuring that the trauma fund is a payor of last resort;

(B) Criteria assuring that all other resources for start-up costs must be exhausted before the trauma funds are allocated;

(C) Criteria assuring that the distribution of trauma funds will result in the applicant's achieving a trauma designation as defined by the commission within the time frame specified on the application;

(D) Criteria assuring and verifying that the Department of Public Health has determined that there is a need for an additional trauma center with the designation that the applicant is seeking; and

(E) Criteria assuring that no more than 15 percent of the total annual distribution from the trauma fund total shall be distributed for new trauma center development;

(7)(A) To develop, implement, administer, and maintain a system to compensate members of the emergency medical service transportation community for readiness and uncompensated trauma care.

(B) The compensation for the cost of readiness shall be through an application process adopted by the commission. The application process developed by the commission for readiness costs shall include, but is not limited to, the following:

(i) Criteria assuring that the trauma fund is a payor of last resort;

(ii) Criteria assuring that all other resources for readiness costs must be exhausted before the trauma funds are allocated;

(iii) Criteria assuring that the distribution of trauma funds will result in the applicant's achieving certification as defined by the commission within the time frame specified on the application; and

(iv) Criteria assuring and verifying that the Department of Public Health has determined that there is a need for additional emergency medical services with the certification that the applicant is seeking.

(C) The commission shall develop a formula for reimbursing emergency medical services uncompensated trauma care services. The formula developed by the commission for reimbursement shall include, but is not limited to, the following:

(i) Criteria assuring that the trauma fund is a payor of last resort;

(ii) Criteria assuring that trauma funds shall be used for reimbursement for services provided to designated trauma patients; and

(iii) Criteria assuring that trauma funds used for reimbursement of emergency medical service costs shall be on a fee schedule or grant basis; provided, however, that no reimbursement shall exceed the average rate reimbursed for similar services under the State Health Benefit Plan;

(8) To appropriate, out of the Georgia Trauma Trust Fund, annual moneys for investment in a system specifically for trauma transportation. The purpose of this system is to provide transport to trauma victims where current options are limited. The commission shall promulgate rules and regulations for such system and shall pursue contracts with existing state transportation structures or create a contractual arrangement with existing transportation organizations. The commission shall also be responsible for creating, maintaining, and overseeing a foundation to raise funds specifically for investment in this system and overall trauma funding;

(9) To act as the accountability mechanism for the entire Georgia trauma system, primarily overseeing the flow of funds from the Georgia Trauma Trust Fund into the system. The State Office of EMS/Trauma shall receive an annual distribution from the commission of not more than 3 percent of the total annual distribution from the fund in the fiscal year. These funds shall be used for the administration of an adequate system for monitoring state-wide trauma care, recruitment of trauma care service providers into the network as needed, and for research as needed to continue to operate and improve the system;

(10) To coordinate its activities with the Department of Public Health;

(11) To employ and manage staff and consultants in order to fulfill its duties and responsibilities under this article;

(12) To establish, maintain, and administer a trauma center network to coordinate the best use of existing trauma facilities in this state and to direct patients to the best available facility for treatment of traumatic injury;

(13) To coordinate, assist, establish, maintain, and administer programs designed to educate the citizens of this state on trauma prevention;

(14) To coordinate and assist in the collection of data to evaluate the provision of trauma care services in this state;

(15) To study the provision of trauma care services in this state to determine the best practices and methods of providing such services, to determine what changes are needed to improve the provision of trauma care services, and to report any proposed legislative changes to the General Assembly each year; and

(16) To employ an executive director and other staff and to establish duties and responsibilities of such persons.

History. — Code 1981, § 31-11-102, enacted by Ga. L. 2007, p. 36, § 1/SB 60; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 539, § 3/SB 76; Ga. L. 2011, p. 705, § 6-3/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, a period was substituted for a comma at the end of subparagraph (2)(E) and "an" was deleted following "is a need for" in division (7)(B)(iv).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-11-103. Georgia Trauma Trust Fund.

(a) There is established the Georgia Trauma Trust Fund. The executive director of the Georgia Trauma Care Network Commission shall serve as the trustee of the Georgia Trauma Trust Fund. The moneys deposited into such fund pursuant to this article may be expended by the executive director with the approval of the Georgia Trauma Care Network Commission for those purposes specified in Code Section 31-11-102.

(b) The Georgia Trauma Care Network Commission shall report annually no later than October 1 to the Office of Health Strategy and Coordination. Such report shall provide an update on state-wide trauma system development and the impact of fund distribution on trauma patient care and outcomes.

History. — Code 1981, § 31-11-103, enacted by Ga. L. 2007, p. 36, § 1/SB 60; Ga. L. 2012, p. 1177, § 1/SB 489; Ga. L. 2019, p. 148, § 2-9/HB 186.

The 2019 amendment, effective July 1, 2019, substituted "no later than October 1 to the Office of Health Strategy and Coordination" for "to the House Committee on Health and Human Services and the Senate Health and Human Services Committee" in the first sentence of subsection (b).

Editor's notes. — Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

ARTICLE 6

SYSTEM OF CERTIFIED STROKE CENTERS

Editor's notes. — Ga. L. 2008, p. 1102, § 1/SB 549, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Coverdell-Murphy Act' in honor of the late Georgia Congressman Paul D. Coverdell and the late Georgia Speaker of the House of Representatives Thomas B. Murphy,

both revered politicians of the great State of Georgia, and victims of massive strokes."

31-11-110. Legislative findings.

The General Assembly finds and declares that:

(1) The rapid identification, diagnosis, and treatment of stroke can save the lives of stroke patients and in some cases can reverse neurological damage such as paralysis and speech and language impairments, leaving stroke patients with few or no neurological deficits;

(2) Despite significant advances in diagnosis, treatment, and prevention, stroke is the fifth leading cause of death and the number one cause of disability in this country; an estimated 800,000 new and recurrent strokes occur each year in this country, and with the aging of the population, the number of persons who have strokes is projected to increase;

(3) Although new treatments are available to improve the clinical outcomes of stroke, many acute care hospitals often face challenges in obtaining staff and equipment required to optimally triage and treat stroke patients, including the provision of optimal, safe, and effective emergency care for these patients;

(4) Although the Georgia Coverdell Acute Stroke Registry currently exists within the Department of Public Health as a program whose purpose is to increase improvement of the quality of acute stroke care through collaborative efforts with participating hospitals in this state, less than one-third of Georgia's hospitals are currently enrolled in the program. Therefore, increased participation in and funding of this program in conjunction with the adherence to the tenets of this article would have profound effects on the quality of care for acute stroke patients in this state;

(5) An effective system to support stroke survival is needed in our communities in order to treat stroke patients in a timely manner and to improve the overall treatment of stroke patients in order to increase survival and decrease the disabilities associated with stroke. There is a public health need for acute care hospitals in this state to establish stroke centers to ensure the rapid triage, diagnostic evaluation, and treatment of patients suffering a stroke;

(6) At least three levels of stroke centers should be established for the treatment of acute stroke:

(A) Comprehensive stroke centers should be established in hospitals to provide complete and specialized care to patients who

experience the most complex strokes, which require specialized testing, highly technical procedures, and other interventions, and to provide education and guidance to primary and remote treatment stroke centers;

(B) Primary stroke centers should be established in as many acute care hospitals as possible to evaluate, stabilize, and provide or arrange for treatment, care, and rehabilitative services to patients diagnosed with acute stroke; and

(C) Remote treatment stroke centers should be established to evaluate, stabilize, and provide treatment to patients diagnosed with acute stroke in rural and other underserved areas of the state, because access to stroke care is limited in these areas due to the limited availability of professional specialists, high-tech imaging equipment, and transportation services;

(7) Coordination between stroke centers should be encouraged through the establishment of coordinated stroke care agreements; and

(8) Therefore, it is in the best interest of the residents of this state to establish a program to identify certified stroke centers throughout the state, to provide specific patient care and support services criteria that stroke centers must meet in order to ensure that stroke patients receive safe and effective care, and to provide financial support to acute care hospitals to encourage them to develop stroke centers in all areas of the state. Further, it is in the best interest of the people of this state to modify the state's emergency medical response system to assure that stroke patients may be quickly identified and transported to and treated in facilities that have specialized programs for providing timely and effective treatment for stroke patients.

History. — Code 1981, § 31-11-110, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2016, p. 438, § 1/HB 853; Ga. L. 2017, p. 774, § 31/HB 323.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (2) and (4) and subparagraph (6)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, in paragraph (5), "a" was deleted following "increase survival and" in the first sentence, and a comma was inserted following "evaluation" in the second sentence.

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-11-111. "Department" defined.

As used in this article, the term "department" means the same state agency or state board which regulates emergency medical services personnel and providers pursuant to this chapter.

History. — Code 1981, § 31-11-111, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2016, p. 438, § 1/HB 853.

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

31-11-112. Identification of stroke centers.

(a) The department shall identify hospitals that meet the criteria set forth in this article as comprehensive, primary, or remote treatment stroke centers. In addition, the department shall be authorized to establish one or more additional levels of stroke centers, in consultation with the Georgia Coverdell Acute Stroke Registry, as necessary based on advancements in medicine and patient care.

(b) A hospital shall apply to the department for such identification and shall demonstrate to the satisfaction of the department that the hospital meets the applicable criteria set forth in or established in accordance with Code Section 31-11-113.

(c) The department shall identify as many hospitals as stroke centers as apply for the identification, provided that each applicant meets the applicable criteria set forth in Code Section 31-11-113 or established by the department.

(d) The department may suspend or revoke a hospital's identification as a stroke center, after notice and hearing, if the department determines that the hospital is not in compliance with the requirements of this article.

History. — Code 1981, § 31-11-112, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2016, p. 438, § 1/HB 853.

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

31-11-113. Certification; application process; inspections.

(a) A hospital identified as a comprehensive or primary stroke center shall be certified as such by a national health care accreditation body recognized by the department. Any hospital wishing to receive official identification under this subsection shall submit a written application to the department, providing adequate documentation of the hospital's

valid certification as a comprehensive or primary stroke center by any such national health care accreditation body.

(b) Remote treatment stroke centers shall be certified and identified by the department either by certification as an acute stroke-ready hospital by a national health care accreditation body recognized by the department or through an application process to be determined by the department. Said application process shall contain, at minimum, the following requirements:

(1) Remote treatment stroke center certifications and identifications by the department are limited to those hospitals that utilize current and acceptable telemedicine protocols relative to acute stroke treatment as defined by the department;

(2) Upon receipt of complete and proper application for certification as a remote treatment stroke center, the department shall schedule and conduct an inspection of the applicant's facility no later than 90 days after receipt of application; and

(3) Any hospital, upon certification by the department as a remote treatment stroke center, shall automatically be identified as a remote treatment stroke center and shall be added to the list of such hospitals maintained pursuant to subsection (a) of Code Section 31-11-115.

(c) Any additional levels of stroke centers established by the department pursuant to subsection (a) of Code Section 31-11-112 shall be certified by the department in accordance with any criteria and guidelines established by the department in rules and regulations.

(d) Comprehensive and primary stroke centers are encouraged to coordinate, through agreement, with remote treatment stroke centers throughout the state to provide appropriate access to care for acute stroke patients. The coordinating stroke care agreements shall be in writing and include at minimum:

(1) Transfer agreements for the transport and acceptance of all stroke patients seen by the remote treatment stroke center for stroke treatment therapies which the remote treatment stroke center is not capable of providing; and

(2) Communication criteria and protocols with the remote treatment stroke centers.

History. — Code 1981, § 31-11-113, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2012, p. 337, § 6/SB 361; Ga. L. 2016, p. 438, § 1/HB 853.

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

31-11-114. Grants; report.

(a) In order to encourage and ensure the establishment of stroke centers throughout the state, the department shall award grants, subject to appropriations from the General Assembly, to hospitals that seek identification as remote treatment stroke centers and demonstrate a need for financial assistance to develop the necessary infrastructure, including personnel and equipment, in order to satisfy the criteria for identification as a remote treatment stroke center pursuant to subsection (b) of Code Section 31-11-113.

(b) A hospital seeking identification as a remote treatment stroke center pursuant to this article may apply to the department for a grant, in a manner and on a form required by the department, and provide such information as the department deems necessary to determine if the hospital is eligible for the grant.

(c) The department may provide grants to as many hospitals as it deems appropriate, subject to appropriations, taking into consideration adequate geographic diversity with respect to locations.

(d) The department shall annually prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Health and Human Services and the Senate Health and Human Services Committee for distribution to its committee members a report indicating the total number of hospitals that have applied for grants pursuant to this Code section, the number of applicants that have been determined by the department to be eligible for such grants, the total number of grants to be awarded, the name and address of each grantee hospital, the amount of the award to each grantee, and the amount of each award to be disbursed to the grantee.

History. — Code 1981, § 31-11-114, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2016, p. 438, § 1/HB 853.

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

31-11-115. Distribution of list of state identified stroke centers to emergency medical services providers; development of a model stroke triage assessment tool; assessment, treatment, and transport of stroke patients.

(a) Beginning June 1, 2009, and each year thereafter, the department shall send a list of comprehensive, primary, remote treatment, and other level stroke centers identified pursuant to Code Section 31-11-113 to the medical director of each licensed emergency medical services provider in this state, shall maintain a copy of the list in the

office designated with the department to oversee emergency medical services, and shall post a list of comprehensive, primary, remote treatment, and other level stroke centers on the department's website.

(b) The department shall adopt or develop a sample stroke triage assessment tool. The department shall post this sample assessment tool on its website and distribute a copy of the sample assessment tool to each licensed emergency medical services provider no later than December 31, 2008. Each licensed emergency medical services provider shall use a stroke triage assessment tool that is substantially similar to the sample stroke triage assessment tool provided by the department.

(c) The office designated within the department to oversee emergency medical services shall establish protocols related to the assessment, treatment, triage, and transport of stroke patients, including transport to the appropriate level stroke centers, by licensed emergency medical services providers in this state.

History. — Code 1981, § 31-11-115, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2016, p. 438, § 1/HB 853.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "to" was inserted preceding "the medical director" in subsection (a).

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

31-11-116. Annual reports.

(a) In order to assure that the patients are receiving the appropriate level of care and treatment at each level of stroke center in the state, each hospital identified as a stroke center shall annually report information, as specified by the department in its rules and regulations, to the department.

(b) The department shall collect the information reported pursuant to subsection (a) of this Code section and shall post such information in the form of a report card annually on the department's website and present such report to the Office of Health Strategy and Coordination. The results of this report card may be used by the department to conduct training with the identified facilities regarding best practices in the treatment of stroke.

(c) In no way shall this article be construed to require disclosure of any confidential information or other data in violation of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

History. — Code 1981, § 31-11-116, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2016, p. 438, § 1/HB 853; Ga. L. 2019, p. 148, § 2-10/HB 186.

The 2019 amendment, effective July 1, 2019, substituted "Office of Health Strategy and Coordination" for "Governor, the President of the Senate, and the Speaker of the House of Representatives" at end of the first sentence of subsection (b).

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

31-11-117. Statutory construction.

This article shall not be construed to be a medical practice guideline and shall not be used to restrict the authority of a hospital to provide services for which it has received a license under state law. The General Assembly intends that all patients be treated individually based on each patient's needs and circumstances.

History. — Code 1981, § 31-11-117, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2016, p. 438, § 1/HB 853.

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

31-11-118. Advertising.

A hospital may not advertise to the public, by way of any medium whatsoever, that it is identified by the state as a comprehensive, primary, remote treatment, or other level stroke center unless the hospital has been identified as such by the department pursuant to this article.

History. — Code 1981, § 31-11-118, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2016, p. 438, § 1/HB 853.

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

31-11-119. Rules and regulations.

The department shall be authorized to promulgate rules and regulations to carry out the purposes of this article.

History. — Code 1981, § 31-11-119, enacted by Ga. L. 2008, p. 1102, § 2/SB 549; Ga. L. 2016, p. 438, § 1/HB 853.

Editor's notes. — Ga. L. 2016, p. 438, § 2/HB 853, not codified by the General Assembly, provides: "The department shall begin the rulemaking process to effect the provisions of this Act no later than June 30, 2016."

ARTICLE 7

EMERGENCY CARDIAC CARE CENTERS

Effective date. — This article became effective July 1, 2017.

31-11-130. Legislative findings.

The General Assembly finds and declares that:

(1) Cardiovascular disease is the number one cause of death in the United States and in Georgia;

(2) Georgia ranks as the thirty-eighth worst in the nation for numbers of deaths from cardiovascular disease;

(3) There were 79,901 deaths in Georgia in 2015, and cardiovascular disease (excluding stroke) accounted for 23.6 percent of such deaths;

(4) Approximately 40 percent of cardiac deaths occur suddenly, the result of a heart attack that is manifested by an out-of-hospital cardiac arrest;

(5) As of 2016, several states, but notably Arizona and Washington, have designated hospitals that are expert in cardiovascular disease care, much in the way that Georgia has stroke and trauma centers; Arizona and Washington have some of the lowest death rates for patients who have heart attacks, in part due to their designated cardiac centers; and

(6) Therefore, it is in the best interest of the residents of this state to establish a program to identify emergency cardiac care centers throughout the state to ensure the rapid triage, assessment, treatment, and transport of patients experiencing out-of-hospital cardiac arrest or heart attack or its complications.

History. — Code 1981, § 31-11-130, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

31-11-131. Definitions.

As used in this article, the term:

(1) "Emergency cardiac care center" means a hospital that has been designated by the office pursuant to this article as meeting the criteria set forth in this article.

(2) "Office" means the Office of Cardiac Care established pursuant to this article.

History. — Code 1981, § 31-11-131, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

31-11-132. Office of Cardiac Care; level designations and requirements.

(a) There shall be established the Office of Cardiac Care within the Department of Public Health. The office shall administer the designation process provided for in this article, including, but not limited to, data collection, analysis and reporting, and site visits.

(b) The office shall designate hospitals that meet the criteria set forth in this article as emergency cardiac care centers. Each emergency cardiac care center shall be further designated as Level I, Level II, or Level III by the office. The criteria for each level designation shall be established by the office and shall include, at a minimum, the following:

(1) Level I shall have:

(A) Cardiac catheterization and angioplasty facilities available 24 hours, seven days per week, 365 days per year;

(B) On-site cardiothoracic surgery capability available 24 hours, seven days per week, 365 days per year;

(C) Established protocols for therapeutic hypothermia for out-of-hospital cardiac arrest patients;

(D) The ability to implant percutaneous left ventricular assist devices for support of hemodynamically unstable patients experiencing out-of-hospital cardiac arrest or heart attack;

(E) Neurologic protocols to measure functional status at hospital discharge; and

(F) The ability to implant automatic implantable cardioverter defibrillators;

(2) Level II shall have:

(A) Cardiac catheterization and angioplasty facilities available 24 hours, seven days per week, 365 days per year, but no on-site cardiothoracic surgery capability;

(B) Established protocols for therapeutic hypothermia for out-of-hospital cardiac arrest patients;

(C) Neurologic protocols to measure functional status at hospital discharge; and

(D) A written transfer plan with one or more Level I emergency cardiac care centers for patients who need left ventricular assist devices or cardiothoracic surgery;

(3) Level III shall have:

(A) Established protocols for therapeutic hypothermia for out-of-hospital cardiac arrest patients; and

(B) A written plan for systematic transfer to a Level I or Level II facility; and

(4) The department shall be authorized to establish one or more additional levels of cardiac care centers as necessary based upon advancements in medicine and patient care.

(c) Emergency cardiac care centers are encouraged to coordinate, through agreement, with other level emergency cardiac care centers throughout the state to provide appropriate access to care for cardiac patients. The coordinating agreements shall be in writing and include at a minimum:

(1) Transfer agreements for the transport and acceptance of:

(A) Cardiac patients seen by a Level I emergency cardiac care center which a Level II or III emergency cardiac care center is not capable of providing; or

(B) Cardiac patients seen by a Level II emergency cardiac care center which a Level III emergency cardiac care center is not capable of providing; and

(2) Communication criteria and protocols between the emergency cardiac care centers.

History. — Code 1981, § 31-11-132, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

31-11-133. Designation as emergency cardiac care center; suspension or revocation.

(a) A hospital shall apply to the office for designation as an emergency cardiac care center through an application process to be determined by the office. A hospital shall demonstrate to the satisfaction of the office that the hospital meets the applicable criteria set forth in this article. The application process may include an on-site inspection of the hospital at the discretion of the office.

(b) The office shall establish requirements for the periodic redesignation of emergency cardiac care centers.

(c) The office may suspend or revoke a hospital's identification as an emergency cardiac care center, after notice and hearing, if the office determines that the hospital is not in compliance with the requirements or criteria of this article.

History. — Code 1981, § 31-11-133, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

31-11-134. Data reporting system.

(a) The office shall establish a data reporting system which may be composed of one or more data bases for the reporting of data on all out-of-hospital cardiac arrest patients and all heart attack patients. The data reporting system may be composed of data bases established or designated by the office, including, but not limited to, data bases newly created and managed by or on behalf of the office, existing state data bases modified to include such additional reporting, existing regional or national data bases, or any combination thereof.

(b) Each emergency cardiac care center shall:

(1) Report to the data base specified by the office data on all out-of-hospital cardiac arrest patients and data on all heart attack patients in accordance with time frame requirements established by the office; and

(2) Have a written system included in the protocols for the hospital for timely submission of all such data required to be submitted pursuant to this Code section and office guidelines.

(c) The office shall, on an ongoing basis, analyze state-wide data collected pursuant to this Code section for out-of-hospital cardiac arrest patients and heart attack patients, with the goal of improving survival rates over the initial three years of the program, and shall improve any processes or adjust any protocols as necessary to implement best practices to improve the cardiac care of patients through emergency cardiac care centers in this state.

(d) The office shall collect the data reported pursuant to this Code section and shall post such information in the form of an annual report card on the office's website and present such report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The results of this report card may be used by the office to conduct training with the identified hospitals regarding best practices in the treatment of emergency cardiac care patients.

(e) In no way shall this article be construed to require disclosure of any confidential information or other data in violation of the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.

History. — Code 1981, § 31-11-134, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

31-11-135. Grants to hospitals; reporting.

(a) In order to encourage and ensure the establishment of emergency cardiac care centers throughout the state, the office shall award grants, subject to appropriations from the General Assembly, to hospitals that seek designation as emergency cardiac care centers and demonstrate a need for financial assistance to develop the necessary infrastructure, including personnel and equipment, in order to satisfy the criteria for designation as an emergency cardiac care center pursuant to this article.

(b) A hospital seeking designation as an emergency cardiac care center pursuant to this article may apply to the office for a grant, in a manner and on a form required by the office, and provide such information as the office deems necessary to determine if the hospital is eligible for such grant.

(c) The office may provide grants to as many hospitals as it deems appropriate, subject to appropriations from the General Assembly, taking into consideration adequate geographic diversity with respect to locations.

(d) The office shall annually prepare and submit to the Office of Health Strategy and Coordination a report indicating the total number of hospitals that have applied for grants pursuant to this Code section, the number of applicants that have been determined by the office to be eligible for such grants, the total number of grants to be awarded, the name and address of each grantee, and the amount of the award to each grantee.

History. — Code 1981, § 31-11-135, enacted by Ga. L. 2017, p. 302, § 1/SB 102; Ga. L. 2019, p. 148, § 2-11/HB 186.

The 2019 amendment, effective July 1, 2019, substituted "Office of Health Strategy and Coordination" for "Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Health and Human Services and the Senate Health and Human Services Committee for distribution to its committee members" in the middle of subsection (d).

Editor's notes. — Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

31-11-136. Listing of emergency cardiac care centers; emergency cardiac care triage assessment tool; protocols.

(a) Beginning June 1, 2018, and each year thereafter, the office shall provide a list of emergency cardiac care centers designated pursuant to this article to the medical director of each licensed emergency medical services provider in this state, shall maintain a copy of such list in the office, and shall post such list on the office's website.

(b) The office shall adopt or develop a sample emergency cardiac care triage assessment tool. The office shall post this sample assessment tool on its website and distribute a copy of the sample assessment tool to each licensed emergency medical services provider no later than December 31, 2017. Each licensed emergency medical services provider shall use an emergency cardiac care triage assessment tool that is substantially similar to the sample emergency cardiac care triage assessment tool provided by the office.

(c) The office shall establish protocols related to the triage, assessment, treatment, and transport of emergency cardiac care patients by licensed emergency medical services providers in this state.

History. — Code 1981, § 31-11-136, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

31-11-137. Statutory construction.

This article shall not be construed to be a medical practice guideline or to establish a standard of care for treatment and shall not be used to restrict the authority of a hospital to provide services for which it has received a license under state law. The General Assembly intends that all patients be treated individually based on each patient's needs and circumstances.

History. — Code 1981, § 31-11-137, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

31-11-138. Advertisement as emergency cardiac care center.

A hospital may not advertise to the public, by way of any medium whatsoever, that it is identified by the state as an emergency cardiac care center unless the hospital has been designated as such by the office pursuant to this article.

History. — Code 1981, § 31-11-138, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

31-11-139. Rules and regulations.

The office shall be authorized to promulgate rules and regulations to carry out the purposes of this article.

History. — Code 1981, § 31-11-139, enacted by Ga. L. 2017, p. 302, § 1/SB 102.

CHAPTER 12

CONTROL OF HAZARDOUS CONDITIONS, PREVENTABLE DISEASES, AND METABOLIC DISORDERS

Sec.

31-12-1. Power to conduct research and studies.
31-12-1.1. "Bioterrorism" and "public health emergency" defined.
31-12-2. Reporting certain diseases and neonatal abstinence syndrome; confidentiality; reporting required of pharmacists; immunity from liability as to information supplied; notification of potential bioterrorism.
31-12-2.1. Investigation of potential bioterrorism activity; regulations and planning for public health emergencies.
31-12-3. Power to require immunization and other preventive measures.
31-12-3.1. Vaccination registry; reporting requirements, maintenance, and use.
31-12-3.2. Meningococcal disease; vaccinations; disclosures.
31-12-4. Isolation and segregation of diseased persons; quarantine.
31-12-4.1. Smallpox vaccination and treatment program.
31-12-5. State-wide network for medical genetics services.
31-12-6. System for prevention of serious illness, severe physical or developmental disability, and death resulting from inherited metabolic and genetic disorders.
31-12-7. Rules and regulations regarding tests for sickle cell anemia, sickle cell trait, and other metabolic and genetic disorders; counseling; fees.
31-12-8. Occupational health and safety.
31-12-9. Importation, sale, and breeding of animals and birds to be kept as pets.
31-12-10. Right of entry to facility.
31-12-11. Abating operation of bathhouses.
31-12-12. Restrictions on sale or dispensing of contact lenses and spectacles; definitions; responsibilities relating to prescriptions; criminal violation; enforcement.
31-12-13. Definitions concerning bloodborne pathogens; standards; funds for research and development.
31-12-14. Cancer research program fund; contributions; accounting.

Administrative rules and regulations. — Notification of disease, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Disease Surveillance and Control, Subject 511-2-1.

Serologic test for syphilis for pregnant women, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Health Promotion, Subject 511-5-4.

Immunization of school children, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Disease Surveillance and Control, Subject 511-2-2.

Tuberculosis control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Disease Surveillance and Control, Subject 511-2-3.

Law reviews. — For article, "Lurching from Complacency to Panic in the Fight Against Dangerous Microbes: A Blueprint for a Common Secure Future," see 67 Emory L.J. 337 (2018). For article, "Lia-

bility for Vaccine Injury: The United States, the European Union, and the Developing World," see 67 Emory L.J. 415 (2018). For article, "Do State Lines Make Public Health Emergencies Worse? Federal Versus State Control of Quarantine," see 67 Emory L.J. 491 (2018).

For comment, "Public Health vs. Patient Rights: Reconciling Informed Consent with HPR Vaccination," see 58 Emory L.J. 761 (2009). For comment, "Test At Your Own Risk: Your Genetic Report Card and the Direct-To-Consumer Duty to Secure Informed Consent," see 59 Emory L.J. 1553 (2010). For comment, "Closing the Gap: Protecting Predictive Neuroscience Information from Health Insurance Discrimination," see 64 Emory L.J. 1433 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Confidential screening for the HTLV-III/LAV (AIDS) virus in convicted prostitutes may be required: (1) as a health measure by the Department of Human Resources; or (2) as a condition of probation by the sentencing court. 1986 Op. Att'y Gen. No. 86-19.

31-12-1. Power to conduct research and studies.

The Department of Public Health and county boards of health are empowered to conduct studies, research, and training appropriate to the prevention of diseases and accidents, the use and control of toxic materials, and the prevention of environmental conditions which, if permitted to develop or continue, would likely endanger the health of individuals or communities.

History. — Code 1933, § 88-1201, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — Hazardous waste management, § 12-8-60 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-12-1.1. "Bioterrorism" and "public health emergency" defined.

As used in this chapter, the term:

(1) "Bioterrorism" means the intentional creation or use of any microorganism, virus, infectious substance, or any component thereof, whether naturally occurring or bioengineered, to cause death, illness, disease, or other biological malfunction in a human, animal, plant, or other living organism in order improperly or illegally to influence the conduct of government, to interfere with or disrupt commerce, or to intimidate or coerce a civilian population.

(2) "Public health emergency" means the occurrence or imminent threat of an illness or health condition that is reasonably believed to be caused by bioterrorism or the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin and poses a high probability of any of the following harms:

(A) A large number of deaths in the affected population;

(B) A large number of serious or long-term disabilities in the affected population; or

(C) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

History. — Code 1981, § 31-12-1.1, enacted by Ga. L. 2002, p. 1386, § 5.

Cross references. — Sedition and subversive activities, T. 16, C. 11, A. 1, P. 2. War on terrorism local assistance, T. 36, C. 75.

31-12-2. Reporting certain diseases and neonatal abstinence syndrome; confidentiality; reporting required of pharmacists; immunity from liability as to information supplied; notification of potential bioterrorism.

(a) The department is empowered to declare certain diseases, injuries, and conditions to be diseases requiring notice and to require the reporting thereof to the county board of health and the department in a manner and at such times as may be prescribed. The department shall require that such data be supplied as are deemed necessary and appropriate for the prevention of certain diseases, injuries, and conditions as are determined by the department. All such reports and data shall be deemed confidential and shall not be open to inspection by the public; provided, however, the department may release such reports and data in statistical form or for valid research purposes.

(a.1)(1) As used in this subsection, the term "neonatal abstinence syndrome" means a group of physical problems that occur in a newborn infant who was exposed to addictive illegal or prescription drugs while in the mother's womb.

(2) The department shall require notice and reporting of incidents of neonatal abstinence syndrome. A health care provider, coroner, or medical examiner, or any other person or entity the department determines has knowledge of diagnosis or health outcomes related, directly or indirectly, to neonatal abstinence syndrome shall report incidents of neonatal abstinence syndrome to the department. The department shall provide an annual report to the President of the Senate, the Speaker of the House of Representatives, the chairperson of the House Committee on Health and Human Services, and the chairperson of the Senate Health and Human Services Committee. Such annual report shall include any department findings and recommendations on how to reduce the number of infants born with neonatal abstinence syndrome.

(b) A health care provider, coroner, or medical examiner shall report to the department and the county board of health all known or

presumptively diagnosed cases of persons harboring any illness or health condition that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency. Reportable illnesses and conditions include, without limitation, diseases caused by biological agents listed at 42 C.F.R. Part 72, app. A (2000) and any illnesses or conditions identified by the department as potential causes of a public health emergency.

(c) A pharmacist shall report to the department and the county board of health any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may reasonably be believed to be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency.

(d) Any person, including but not limited to practitioners of the healing arts, submitting in good faith reports or data to the department or county boards of health in compliance with the provisions of this Code section shall not be liable for any civil damages therefor.

(e) Whenever the department learns of any case of an unusual illness, health condition, or death, or an unusual cluster of such events, or any other suspicious health related event that it reasonably believes has the potential to be caused by bioterrorism, it shall immediately notify the Department of Public Safety and other appropriate public safety authorities.

History. — Code 1933, § 88-1202, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1077, §§ 2, 4; Ga. L. 2002, p. 1386, § 6; Ga. L. 2017, p. 319, § 4-1/HB 249.

The 2017 amendment, effective July 1, 2017, added subsection (a.1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, the hyphen was deleted from "good faith" in subsection (b) (now subsection (d)).

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 1 (2002).

For article on the 2017 amendment of this Code section, see 34 Ga. St. U. L. Rev. 143 (2017).

JUDICIAL DECISIONS

Failure to report. — Reporting required by O.C.G.A. § 31-12-2 is for statistical purposes; thus, a physician's failure to report a patient's genital herpes did not cause the patient any injury. Vance v. T.R.C., 229 Ga. App. 608, 494 S.E.2d 714 (1997).

31-12-2.1. Investigation of potential bioterrorism activity; regulations and planning for public health emergencies.

(a) The department shall ascertain the existence of any illness or health condition that may be caused by bioterrorism, epidemic or

pandemic disease, or novel and highly fatal infectious agents or toxins and that may pose a substantial risk of a public health emergency; investigate all such cases to determine sources of infection and to provide for proper control measures; and define the distribution of the illness or health condition. The department shall:

(1) Identify, interview, and counsel, as appropriate, all individuals reasonably believed to have been exposed to risk;

(2) Develop information relating to the source and spread of the risk; and

(3) Close, evacuate, or decontaminate, as appropriate, any facility and decontaminate or destroy any contaminated materials when the department reasonably suspects that such material or facility may endanger the public health.

(b) The department shall promulgate rules and regulations appropriate for management of any public health emergency declared pursuant to the provisions of Code Section 38-3-51, with particular regard to coordination of the public health emergency response of the state pursuant to subsection (i) of said Code section. Such rules and regulations shall be applicable to the activities of all entities created pursuant to Chapter 3 of this title in such circumstances, notwithstanding any other provisions of law. In developing such rules and regulations, the department shall consult and coordinate as appropriate with the Georgia Emergency Management and Homeland Security Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention. The department is authorized, in the course of management of a declared public health emergency, to adopt and implement emergency rules and regulations pursuant to the provisions of subsection (b) of Code Section 50-13-4. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(c) The department shall promulgate, prepare, and maintain a public health emergency plan and draft executive order for the declaration of a public health emergency pursuant to Code Section 38-3-51 and Chapter 13 of Title 50. In preparation of such public health emergency plan and draft executive order, the department shall consult and coordinate as appropriate with the Georgia Emergency Management and Homeland Security Agency, the Federal Emergency Management Agency, the Georgia Department of Public Safety, the Georgia Department of Agriculture, and the federal Centers for Disease Control and Prevention.

History. — Code 1981, § 31-12-2.1, enacted by Ga. L. 2002, p. 1386, § 7; Ga. L. 2016, p. 91, § 4/SB 416.

31-12-3. Power to require immunization and other preventive measures.

(a) The department and all county boards of health are empowered to require, by appropriate rules and regulations, persons located within their respective jurisdictions to submit to vaccination against contagious or infectious disease where the particular disease may occur, whether or not the disease may be an active threat. The department may, in addition, require such other measures to prevent the conveyance of infectious matter from infected persons to other persons as may be necessary and appropriate. The department shall promulgate appropriate rules and regulations for the implementation of the provisions of this Code section in the case of a declaration of a public health emergency and shall include provisions permitting consideration of the opinion of a person's personal physician as to whether the vaccination is medically appropriate or advisable for such person. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

(b) In the absence of an epidemic or immediate threat thereof, this Code section shall not apply to any person who objects in writing thereto on grounds that such immunization conflicts with his religious beliefs.

History. — Code 1933, § 88-1203, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2002, p. 1386, § 8.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 1 (2002).

JUDICIAL DECISIONS

Right to object to immunization on religious grounds not found. — Right to lodge religious objection to a child's immunization pursuant to O.C.G.A. § 20-2-771(e), O.C.G.A. § 31-12-3(b), or O.C.G.A. § 49-4-183(b)(10)(C) was not a residual right of the child's parents under O.C.G.A. § 15-11-13; thus, the mother of a child found to be deprived could not object to the immunization of the child on religious grounds. In the Interest of C.R., 257 Ga. App. 159, 570 S.E.2d 609 (2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 41 et seq., 53, 66 et seq., 76 et seq.

C.J.S. — 16 C.J.S., Constitutional Law, §§ 357, 380 et seq., 436 et seq. 16A C.J.S., Constitutional Law, §§ 555, 581, 654, 656, 685, 836. 16B C.J.S., Constitutional Law, § 1019. 39A C.J.S., Health and Environment, §§ 20 et seq., 32 et seq. 79 C.J.S., Schools and School Districts, §§ 453, 454, 469.

ALR. — Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 A.L.R.5th 248.

Power of court or other public agency to order vaccination over parental religious objection, 94 A.L.R.5th 613.

31-12-3.1. Vaccination registry; reporting requirements, maintenance, and use.

(a) The department, for purposes of establishing and maintaining a single repository of accurate, complete, and current vaccination records to be used in aiding, coordinating, and promoting effective and cost-efficient disease prevention and control efforts, shall establish and maintain a vaccination registry.

(b) Any person who administers a vaccine or vaccines licensed for use by the United States Food and Drug Administration to a person shall for each such vaccination provide to the department such data as are deemed by the department to be necessary and appropriate for purposes of the vaccination registry established pursuant to subsection (a) of this Code section, including, without limitation:

(1) The name of the person;

(2) The person's date and place of birth, including the name of the hospital where delivered, if applicable;

(3) The names and addresses of the person's parents or guardians if the person is 18 years of age or younger;

(4) The date of the vaccination and the specific type or types of vaccine or vaccines administered to the person on that date; and

(5) Complications or side effects resulting from a vaccination, if any.

Vaccination data reporting requirements, including without limitation the types of data required to be reported and the time and manner of reporting such data, shall begin after the registry has established linkages to vaccine providers and shall be established by the department in consultation with the United States Centers for Disease Control and Prevention, the Georgia chapter of the American Academy of Pediatrics, and the Georgia Academy of Family Physicians.

(c) The department shall utilize the registry to provide notices, whether by mail, telephone, personal contact, or other means, to persons and to parents or guardians regarding their children or wards who are due or overdue for a particular type of vaccination according to recommended vaccination schedules. The department shall consult with medical services providers to determine the most effective and efficient manner of using the registry to provide such notices.

(d) Vaccination records for any person included within the vaccination registry shall be maintained as part of the registry until the person's death.

(e) Individually identifiable vaccination information regarding a person may be provided to the department by, or released by the department to, a local health department, hospital, physician, or other provider of medical services to the person or to a school or child care facility in which the person is enrolled if the person is 18 years of age or younger without the consent of the person or the person's parents or guardians. All persons shall be enrolled unless a specific exemption is requested by the person or the person's parent or guardian if the person is 18 years of age or younger. A parent or guardian may obtain and upon request to the department shall be provided with all individually identifiable vaccination registry information regarding his or her child or ward. Except as provided otherwise by this Code section, individually identifiable vaccination registry information shall be treated as confidential and shall not be released to a third party without consent of the person or the person's parent or guardian if the person is 18 years of age or younger.

(f) Nothing in this Code section shall:

(1) Prohibit the department from providing or publishing registry information in aggregate form for scientific, educational, or public health purposes, provided that such information is published without releasing or identifying individual names contained in the registry;

(2) Prohibit the department or any medical services provider from notifying a person or the person's parent or guardian if the person is 18 years of age or younger of the person's vaccination status or of a vaccination that is due or overdue according to recommended vaccination schedules; or

(3) Diminish a parent's or guardian's responsibility for having a child vaccinated properly.

(g) Any person, including but not limited to practitioners of the healing arts, submitting or obtaining in good faith vaccination reports or data to or from the department in compliance with the provisions of this Code section and any rules or regulations promulgated pursuant to this Code section shall not be liable for any civil damages therefor.

(h) The department is authorized to accept any grants, gifts, awards, and funds from government, public, and private sources to supplement any appropriation made for the purpose of funding the provisions of this Code section.

(i) The department is authorized and directed to promulgate such rules and regulations as are necessary and appropriate to implement the provisions of this Code section.

History. — Code 1981, § 31-12-3.1, enacted by Ga. L. 1996, p. 646, § 1; Ga. L. 2004, p. 439, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 66 et seq.

31-12-3.2. Meningococcal disease; vaccinations; disclosures.

(a) Every public and nonpublic postsecondary educational institution shall provide to each newly admitted freshman or matriculated student residing in campus housing as defined by the postsecondary educational institution or to the student's parent or guardian if the student is a minor, the following information:

(1) Meningococcal disease is a serious disease that can lead to death within only a few hours of onset; one in ten cases is fatal; and one in seven survivors of the disease is left with a severe disability, such as the loss of a limb, developmental disability, paralysis, deafness, or seizures;

(2) Meningococcal disease is contagious but a largely preventable infection of the spinal cord fluid and the fluid that surrounds the brain;

(3) Scientific evidence suggests that college students living in dormitory facilities are at a moderately increased risk of contracting meningococcal disease; and

(4) Immunization against meningococcal disease will decrease the risk of the disease.

(b) In accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, newly admitted students who are 18 years of age or older residing in campus housing as defined by the postsecondary educational institution or residing in sorority or fraternity houses shall be required to sign a document provided by the postsecondary educational institution stating that he or she has received vaccination against meningococcal disease not more than five years prior to such admittance or reviewed the information provided as required by subsection (a) of this Code section. If a student is a minor, only a parent or guardian may sign such document.

(c) Nothing in this Code section shall be construed to require any postsecondary educational institution to provide or pay for vaccinations of students against meningococcal disease.

(d) Any postsecondary educational institution that has made a reasonable effort to comply with this Code section shall not be liable for

damages or injuries sustained by a student by reason of such student's contracting meningococcal disease.

History. — Code 1981, § 31-12-3.2, enacted by Ga. L. 2003, p. 292, § 1; Ga. L. 2009, p. 453, § 3-6/HB 228; Ga. L. 2015, p. 297, § 1/HB 504.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "institution" was substituted for "instutition" in subsection (a).

31-12-4. Isolation and segregation of diseased persons; quarantine.

The department and all county boards of health may, from time to time, require the isolation or segregation of persons with communicable diseases or conditions likely to endanger the health of others. The department may, in addition, require quarantine or surveillance of carriers of disease and persons exposed to, or suspected of being infected with, infectious disease until they are found to be free of the infectious agent or disease in question. The department shall promulgate appropriate rules and regulations for the implementation of the provisions of this Code section in the case of a declaration of a public health emergency. Such rules and regulations shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," but shall be automatically referred by the Office of Legislative Counsel to the House of Representatives and Senate Committees on Judiciary.

History. — Code 1933, § 88-1204, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2002, p. 1386, § 9.

Law reviews. — For article, "Medical Decision-Making in Georgia," see 10 Ga. St. B. J. 50 (2005).

For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 1 (2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 60. 39 Am. Jur. 2d, Health, § 9 et seq. 39 Am. Jur. 2d, Habeas Corpus, § 88.

C.J.S. — 16 C.J.S., Constitutional Law, §§ 459, 466 et seq. 16D C.J.S., Constitutional Law, § 2420 et seq. 29A C.J.S., Eminent Domain, § 47. 39 C.J.S., Habeas Corpus, § 126.

ALR. — Right of one detained pursuant to quarantine to habeas corpus, 2 A.L.R. 1542.

Quarantine of typhoid carrier, 22 A.L.R. 845.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

31-12-4.1. Smallpox vaccination and treatment program.

(a) The Georgia General Assembly makes the following findings: The attacks of September and October, 2001, on the United States have heightened concerns that terrorists may have access to the smallpox

virus and may attempt to use it against the American public. In light of these concerns, and in order to secure public health and national security, the United States government has launched, and the State of Georgia has cooperated in, a smallpox vaccination and treatment program, with a recommendation for initial smallpox vaccinations for certain hospitals, health care workers, and emergency response workers. However, due to the virulent nature of smallpox and its vaccine, participation by hospitals and health care workers in such a program potentially increases their exposure to liability that, without sufficient legal protections, may significantly discourage their participation in the program. The federal government has determined, and the General Assembly agrees, that liability protection for those hospitals and health care workers who participate in such programs are integral to ensuring its maximum success. Accordingly, to achieve a potent and widespread smallpox vaccination and treatment program and maintain an effective defense against possible terrorist attacks, it is critical that hospitals and health care workers participating in such program be protected from potential legal liability absent their gross negligence or willful or wanton misconduct. The General Assembly therefore concludes that certain steps must be taken to encourage participation in the smallpox vaccination and treatment program in order to reserve to Georgia citizens continued access to smallpox vaccination and treatment services in the event of a terrorist attack.

(b) Without waiving or affecting and cumulative of any existing immunity from any source, unless it is established that injuries or death were caused by gross negligence or willful or wanton misconduct:

(1) No licensed hospital which participates in a smallpox vaccination and treatment program authorized by the United States Secretary of Health and Human Services or the United States Public Health Service of the State of Georgia or employees, agents, or health care workers of such hospital; and

(2) No licensed health care provider, health care worker, or other person who participates in such smallpox vaccination and treatment program, whether or not such provider, workers, or person is an agent or employee of said hospital

shall be liable for damages or injuries alleged to have been sustained by any individual by reason of such individual's receipt of a smallpox vaccination or treatment, such individual's exposure to smallpox or its related infections, or any act or omission committed by said hospital, employee, agent, health care provider, health care worker, or other person as a result of such individual's receipt of services from or related to such smallpox vaccination and treatment program.

(c) This Code section shall apply only to causes of action arising on or after June 2, 2003.

History. — Code 1981, § 31-12-4.1, enacted by Ga. L. 2003, p. 569, § 3.

Cross references. — Immunization of students, § 20-2-771.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, "June 2, 2003" was substituted for "the effective date of this Code section" in subsection (c).

31-12-5. State-wide network for medical genetics services.

(a) The department and appropriate medical centers shall cooperate in the development of a state-wide network for medical genetics.

(b) The network shall be available state-wide and will be responsible for training of personnel in genetics, research in inborn errors of metabolism, and quality control of laboratory services for genetics. This system shall also provide counseling regarding genetically caused disorders.

History. — Code 1933, § 88-1203, enacted by Ga. L. 1978, p. 2262, § 2.

Administrative rules and regulations. — Testing for inherited disorders in the newborn, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Health, Health Promotion, Subject 511-5-5.

31-12-6. System for prevention of serious illness, severe physical or developmental disability, and death resulting from inherited metabolic and genetic disorders.

(a) The department shall promulgate rules and regulations creating a system for the prevention of serious illness, severe physical or developmental disability, and death caused by genetic conditions, such as phenylketonuria, galactosemia, homocystinuria, maple syrup urine disease, hypothyroidism, congenital adrenal hyperplasia, Krabbe disease, and such other inherited metabolic and genetic disorders as may be identified in the future to result in serious illness, severe physical or developmental disability, and death if undiagnosed and untreated. The system shall have five components: screening newborns for the disorders; retrieving potentially affected screenees back into the health care system; accomplishing specific diagnoses; initiating and continuing therapy; and assessing the program.

(b) The entire process for screening, retrieval, and diagnosis must occur within time frames established by the department pursuant to rules and regulations, and the system shall be structured to meet this critical need.

(c) The department shall be responsible for the screening of all newborns for the disorders enumerated and in a manner determined by the department pursuant to rules and regulations and shall be responsible for assessment of the program; provided, however, that screening for Krabbe disease shall be conducted separately at the option of the parent or parents.

(d) The department shall, to the extent state or federal funds are available for such purposes, including but not limited to funds provided under Title V of the Social Security Act, the Maternal and Child Health Services Block Grant, provide for retrieving potentially affected screenees back into the health care system; accomplishing specific diagnoses; initiating and continuing therapy; and assessing the program.

(e) The department shall utilize appropriate existing resources whenever possible and shall cause the coordination and cooperation of agencies and organizations having resources necessary for the creation of an effective system.

(f) The department shall be authorized to establish and periodically adjust, by rule and regulation, fees associated with the screening, retrieval, and diagnosis conducted pursuant to this Code section to help defray or meet the costs incurred by the department; provided, however, that the fees for screening for Krabbe disease shall be paid directly by the parents to the laboratory. In no event shall the fees exceed such costs, both direct and indirect, in providing such screenings and related services, provided that no services shall be denied on the basis of inability to pay. All fees paid thereunder shall be paid into the general fund of the State of Georgia.

(g) The department shall allow any laboratory licensed in Georgia and authorized to perform screening testing of newborn infants in any state using normal pediatric reference ranges to conduct the analysis required pursuant to this Code section; provided, however, that the screening for Krabbe disease may be conducted by a laboratory located outside of Georgia if approved by the board. The testing performed by such laboratory must include testing for newborn diseases as required by law or regulation, except for Krabbe disease, and shall provide test results and reports consistent with law and with policies, procedures, and regulations of the department.

(h) No later than January 1, 2007, the Georgia Department of Audits and Accounts shall conduct an assessment evaluating the efficiency and effectiveness of the newborn screenings conducted by the Georgia Public Health Laboratory pursuant to this Code section. If it is determined that private laboratories can provide testing at a lower cost than the Georgia Public Health Laboratory, the department shall issue a request for proposals to qualified vendors including any private laboratory licensed in Georgia as established in subsection (g) of this Code section. The Georgia Public Health Laboratory shall be eligible to respond to such request for proposals.

(i) The requirements of this Code section with regard to screening, retrieval, and diagnosis shall not apply to any infant whose parents

object in writing thereto on the grounds that such tests and treatment conflict with their religious tenets and practices.

History. — Code 1933, § 88-1202, enacted by Ga. L. 1978, p. 2262, § 1; Ga. L. 1989, p. 369, § 1; Ga. L. 1990, p. 8, § 31; Ga. L. 2006, p. 416, § 1/HB 1066; Ga. L. 2017, p. 479, § 2/HB 241.

The 2017 amendment, effective July 1, 2017, inserted "Krabbe disease," in the middle of the first sentence of subsection (a); added "; provided, however, that screening for Krabbe disease shall be conducted separately at the option of the parent or parents" at the end of subsection (c); added "; provided, however, that the fees for screening for Krabbe disease shall be paid directly by the parents to the laboratory" at the end of the first sentence of subsection (f); and, in subsection (g), added "; provided, however, that the screening for Krabbe disease may be conducted by a laboratory located outside of Georgia if approved by the board" at the end of the first sentence, and inserted ", except for Krabbe disease," in the second sentence.

Editor's notes. — Ga. L. 2017, p. 479, § 1/HB 241, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'Cove's Law.'".

U.S. Code. — Title V of the Social Security Act, referred to in subsection (d) of this Code section, is codified as 42 U.S.C. § 701 et seq.

Law reviews. — For article, "Baby Doe Cases: Compromise and Moral Dilemma," see 34 Emory L.J. 545 (1986).

JUDICIAL DECISIONS

No private right of action for failure to notify of sickle cell disease. — Trial court properly granted the motion to dismiss or the motion for summary judgment filed by various defendants in a suit brought by plaintiff child, by and through the child's parent, which asserted negligence and negligence per se for failing to inform the plaintiff and the parent, at the time of the plaintiff's birth, that the plaintiff had sickle cell disease. The trial court properly ruled that no private right of action exists for violation of O.C.G.A. § 31-12-7, and the appellate court clarified that there existed no statutory intent to impose strict liability for violating the notice requirement of § 31-12-7 and substantial compliance with the statute was all that was required, which was shown in that the defendants attempted to contact the plaintiff and the parent but were unable to locate them due to incorrect contact information. In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

31-12-7. Rules and regulations regarding tests for sickle cell anemia, sickle cell trait, and other metabolic and genetic disorders; counseling; fees.

(a) In coordination and association with the system established by the department for the screening, retrieval, and diagnosis of certain metabolic and genetic disorders pursuant to Code Section 31-12-6, the department, or its successor agency or department, shall adopt and promulgate appropriate rules and regulations governing tests for sickle cell anemia, sickle cell trait, and other metabolic and genetic disorders as enumerated by the department pursuant to rules and regulations so that as nearly as possible all newborn infants who are susceptible or likely to have sickle cell anemia, sickle cell trait, or other metabolic and genetic disorders shall receive a test for sickle cell anemia, sickle cell trait, or other metabolic and genetic disorders or all of such conditions

as soon after birth as successful testing and treatment therefor may be initiated; provided, however, that this Code section shall not apply to any infant whose parents object thereto on the grounds that such tests and treatment conflict with their religious tenets and practices.

(b) If any such child is found to have sickle cell anemia or sickle cell trait, it shall be the duty of the examining physician or the department to inform the parents of such child that the child is so afflicted and, if such child has sickle cell anemia or sickle cell trait, that counseling regarding the nature of the disease, its effects, and its treatment is available without cost from the department and the county board of health or county department of health.

(c) It shall be the duty of the department and each county board of health and county department of health, or their successor agencies or departments, to furnish counseling and advice to any persons requesting such counseling regarding sickle cell anemia or sickle cell trait, its characteristics, symptoms, traits, effects, and treatment. Such counseling shall be furnished without cost to the person requesting it.

(d) The department shall be authorized to establish and periodically adjust, by rule and regulation, fees associated with the screening, retrieval, and diagnosis conducted pursuant to this Code section to help defray or meet the costs incurred by the department; provided, however, that in no event shall the total fees associated with such screening, retrieval, and diagnosis exceed $40.00 for the calendar year beginning January 1, 2007. In no event shall the fees exceed such costs, both direct and indirect, in providing such screenings and related services, provided that no services shall be denied on the basis of inability to pay. All fees paid thereunder shall be paid into the general fund of the State of Georgia.

History. — Code 1933, § 88-1201.1, enacted by Ga. L. 1966, p. 140, § 1; Ga. L. 1972, p. 962, § 1; Ga. L. 2006, p. 416, § 2/HB 1066.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B. J. 189 (1969).

JUDICIAL DECISIONS

No private right of action for violation of notice requirement. — Trial court properly granted the motion to dismiss or the motion for summary judgment filed by various defendants in a suit brought by plaintiff child, by and through the child's parent, which asserted negligence and negligence per se for failing to inform the plaintiff and the parent, at the time of the plaintiff's birth, that the plaintiff had sickle cell disease. The trial court properly ruled that no private right of action exists for violation of O.C.G.A. § 31-12-7, and the appellate court clarified that there existed no statutory intent to impose strict liability for violating the notice requirement of § 31-12-7 and substantial compliance with the statute was all that was required, which was shown in that the defendants attempted to contact the plaintiff and the parent but were unable to locate them due to incorrect contact information. In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Department of Human Resources may require examination of all newborn infants for sickle cell anemia and the sickle cell trait under O.C.G.A. § 31-2-7. However, if clearly defined and articulable guidelines are provided, the department may restrict such testing under that statute to "susceptible" persons. 1981 Op. Att'y Gen. No. 81-40.

31-12-8. Occupational health and safety.

For the purpose of safeguarding the health of employees and the general public, the department and the county boards of health are empowered to conduct studies and research pertaining to the operation and maintenance of industrial, commercial, business, or other facilities where people congregate or work. The department may issue such orders and directives in any particular instance as shall be necessary to abate or minimize any practice or any operation or condition that constitutes or may be reasonably deemed to constitute a hazard to the health and safety of the employees or the general public. Administrative hearings and reviews and enforcement of such orders and directives shall be governed by Article 1 of Chapter 5 of this title.

History. — Code 1933, § 88-1206, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 32B Am. Jur. 2d, Federal Employers' Liability and Compensation Acts, § 19 et seq. 39 Am. Jur. 2d, Health, §§ 57, 75, 82. 48 Am. Jur. 2d, Labor and Labor Relations, § 379. 48B Am. Jur. 2d, Labor and Labor Relations, §§ 2607, 2613.

C.J.S. — 16 C.J.S., Constitutional Law, § 310 et seq. 16B C.J.S., Constitutional Law, §§ 983, 984, 1242. 39A C.J.S., Health and Environment, § 61 et seq. 99 C.J.S., Workers' Compensation, §§ 5, 356 et seq.

31-12-9. Importation, sale, and breeding of animals and birds to be kept as pets.

In addition to its other powers in the control of preventable diseases, the department may by rule, regulation, and order provide for the licensing, registration, supervision, and investigation of all firms or persons importing, purchasing, breeding, or selling any birds or animals as pets, or any birds or animals which are customarily kept as pets, and may require all such firms or persons to comply with reporting and record-keeping requirements and marking, banding, or other identification requirements. The department is further empowered to prescribe rules and regulations governing the shipment, transportation, or carriage of such birds or animals and require such other control measures deemed necessary to prevent infectious matter present in

birds, arthropods, and animals from being conveyed to persons unless the responsibility of such control is by law delegated to some other agency.

History. — Code 1933, § 88-1205, enacted by Ga. L. 1964, p. 499, § 1.

Cross references. — Authority of Department of Agriculture to quarantine, seize, and destroy birds carrying exotic or untreatable disease, § 4-10-7.

Administrative rules and regulations. — Animal protection, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Animal Health Division, Subject 40-13-13.

Bird dealers licensing, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Agriculture, Animal Health Division, Subject 40-13-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Animals, §§ 17, 21, 23, 24, 26, 43, 44, 59 et seq. 21A Am. Jur. 2d, Customs Duties and Import Regulations, §§ 24, 37. 67 Am. Jur. 2d, Sales, §§ 236, 237. 67A Am. Jur. 2d, Sales, § 610.

C.J.S. — 3B C.J.S., Animals, § 62 et seq. 39A C.J.S., Health and Environment, § 65.

31-12-10. Right of entry to facility.

In carrying out the provisions of this chapter, it shall be the duty of the person in charge of any industrial, commercial, business, or other facility where people work, live, or congregate, upon reasonable notice and at reasonable times, to grant entry to duly authorized agents of the department and of any county board of health.

History. — Code 1933, § 88-1207, enacted by Ga. L. 1964, p. 499, § 1.

31-12-11. Abating operation of bathhouses.

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

(1) "Bathhouse" means a place of public accommodation having facilities including all or some of the following: baths, whirlpools, saunas, massage areas or rooms, and semiprivate or private areas or rooms; and where entry to such place of public accommodation is contingent upon the payment of money on an hourly, daily, weekly, monthly, annual, or club basis; and where the owners or managers or employees of such place of public accommodation knowingly grant or permit the use of such place for illegal sexual activity.

(2) "Illegal sexual activity" means any illegal sexual act involving the sex organs of a person and the mouth, anus, or sex organs of another person.

(b) The operation of bathhouses in this state is declared to be harmful to the public health, safety, and welfare of the citizens of this state.

(c) The department and the county boards of health are empowered to maintain actions for injunction pursuant to Code Section 31-5-9 to abate the operation of any bathhouse in this state as a public nuisance.

(d) The commissioner or the commissioner's designee or the director of any county board of health is authorized to obtain, pursuant to Article 2 of Chapter 5 of this title, inspection warrants for the search or inspection of any property which is a bathhouse.

(e) Any person, firm, corporation, or other business entity which owns, operates, or is a manager for or employee of a bathhouse shall be guilty of a misdemeanor.

(f) Nothing in this Code section shall be construed so as to repeal Code Section 16-6-10, relating to keeping a place of prostitution.

History. — Code 1981, § 31-12-11, enacted by Ga. L. 1986, p. 1208, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprintable offense. — Operation of a "bath house" is an offense for which persons charged are to be fingerprinted. 1986 Op. Att'y Gen. 86-30.

31-12-12. Restrictions on sale or dispensing of contact lenses and spectacles; definitions; responsibilities relating to prescriptions; criminal violation; enforcement.

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

(1) "Contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect. Contact lens includes, but is not limited to, any cosmetic, therapeutic, or corrective lens.

(2) "Dispense" means the act of furnishing spectacles or contact lenses to an individual.

(3) "Eye examination" means an in-person assessment, which includes telemedicine at a physician's office or optometrist's office or in a hospital setting or hospital health system setting in accordance with the applicable standard of care, of the ocular health and visual status of an individual that does not consist of solely objective refractive data or information generated by an automated testing device, including an autorefractor or kiosk, in order to establish a medical diagnosis or for the establishment of refractive error.

(4) "Kiosk" means automatic equipment or application designed to be used on a telephone, a computer, or an Internet based device that can be used either in person or remotely to conduct an eye examination.

(5) "Over-the-counter spectacles" means eyeglasses or lenses in a frame for the correction of vision that may be sold by any person, firm, or corporation at retail without a prescription; these spectacles shall not exceed +3.25 diopters.

(6) "Prescription" means an optometrist's or ophthalmologist's handwritten or electronic order based on an eye examination that corrects refractive error.

(7) "Spectacles" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as glasses or eyeglasses, including spectacles that may be adjusted by the wearer to achieve different types of visual correction or enhancement. Spectacles does not include an optical instrument or device that is not intended to correct or enhance vision or that is sold without consideration of the visual status of the individual who will use the optical instrument or device. Spectacles does not include over-the-counter spectacles.

(b)(1)(A) No person in this state shall sell, dispense, or serve as a conduit for the sale or dispensing of contact lenses or spectacles to the ultimate user of such contact lenses or spectacles except persons licensed and regulated by Chapter 29, 30, or 34 of Title 43.

(B) No person in this state shall write a prescription for contact lenses or spectacles except persons licensed and regulated by Chapter 30 or 34 of Title 43.

(C) No person in this state shall write a prescription for contact lenses or spectacles unless an eye examination is performed. The prescription shall take into consideration any medical findings and any refractive error discovered during the eye examination.

(2) Any person who violates a subparagraph of paragraph (1) of this subsection one or two times shall upon conviction be guilty of a misdemeanor and punished by imprisonment for up to one year or by a fine not to exceed $1,000.00 or by both such fine and imprisonment. Any person who violates a subparagraph of paragraph (1) of this subsection three or more times shall upon conviction be guilty of a felony and punished by imprisonment for one to five years or by a fine not to exceed $10,000.00 or by both such fine and imprisonment.

(c) All contact lenses used in the determination of a contact lens prescription are considered to be diagnostic lenses. After the diagnostic

period and the contact lenses have been adequately fitted and the patient released from immediate follow-up care by persons licensed and regulated by Chapter 29, 30, or 34 of Title 43, the prescribing optometrist or ophthalmologist shall, upon the request of the patient, at no cost, provide a prescription in writing for replacement contact lenses. A person shall not dispense or adapt contact lenses or spectacles without first receiving authorization to do so by a written prescription, except when authorized orally to do so by a person licensed and regulated by Chapter 30 or 34 of Title 43.

(d) Patients who comply with such fitting and follow-up requirements as may be established by the prescribing optometrist or ophthalmologist may obtain replacement contact lenses until the expiration date listed on the prescription from a person who may lawfully dispense contact lenses under subsection (b) of this Code section.

(e) A prescriber may refuse to give the patient a copy of the patient's prescription until the patient has paid for all services rendered in connection with the prescription.

(f) No replacement contact lenses may be sold or dispensed except pursuant to a prescription which:

(1) Conforms to state and federal regulations governing such forms and includes the name, address, and state licensure number of a prescribing practitioner;

(2) Explicitly states an expiration date of not more than 12 months from the date of the last prescribing contact lens examination, unless a medical or refractive problem affecting vision requires an earlier expiration date;

(3) Explicitly states the number of refills;

(4) Explicitly states that it is for contact lenses and indicates the lens brand name and type, including all specifications necessary for the ordering or fabrication of lenses; and

(5) Is kept on file by the person selling or dispensing the replacement contact lenses for at least 24 months after the prescription is filled.

(g) Anyone who fills a prescription bears the full responsibility of the accuracy of the contact lenses or spectacles provided under the prescription. At no time, without the direction of a prescriber, shall any changes or substitutions be made in the brand or type of lenses the prescription calls for with the exceptions of tint change if requested by the patient. However, if a prescription specifies "only" a specific color or tinted lens, those instructions shall be observed.

(h) All sales of and prescriptions for contact lenses in this state shall conform to the federal Fairness to Contact Lens Consumers Act, P.L.

108-164, 15 U.S.C.A. Section 7601, et seq. The provisions of this Code section shall be construed in aid of and in conformity with said federal act.

(i) Civil proceedings to enforce the provisions of this Code section may be brought by any board created under Chapter 29, 30, or 34 of Title 43 or by any other interested person through injunction or other appropriate remedy.

History. — Code 1981, § 31-12-12, enacted by Ga. L. 1991, p. 1003, § 1; Ga. L. 1992, p. 1475, § 1; Ga. L. 1995, p. 328, § 1; Ga. L. 2004, p. 903, § 1; Ga. L. 2016, p. 846, § 1/HB 775.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required. — Offenses arising under O.C.G.A. § 31-12-12 are designated as offenses for which those charged are to be fingerprinted. 2017 Op. Att'y Gen. No. 17-1.

31-12-13. Definitions concerning bloodborne pathogens; standards; funds for research and development.

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

(1) "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

(2) "Engineered sharps injury protection" means either:

(A) A physical attribute built into or used with a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids, which effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or other effective mechanisms; or

(B) A physical attribute built into or used with any other type of needle device or into a nonneedle sharp, which effectively reduces the risk of an exposure incident.

(3) "Exposure incident" means any sharps injury which may reasonably have exposed the person so injured to another person's blood or other material potentially containing bloodborne pathogens.

(4) "Front-line health care workers" means workers from a variety of occupational classifications and departments, including, but not limited to, registered professional nurses, nurse aids, medical technicians, phlebotomists, and physicians.

(5) "Needleless system" means a device that does not utilize needles for:

(A) The withdrawal of body fluids after initial venous or arterial access is established;

(B) The administration of medication or fluids; or

(C) Any other procedure involving the potential for an exposure incident.

(6) "Public employee" means an employee of a county board of health established in accordance with Chapter 3 of this title or an employee of the state or an agency or authority of the state employed in a public health care facility or other facility providing health care related services, currently not subject to the jurisdiction of the federal Occupational Safety and Health Administration.

(7) "Public employer" means each employer having any public employee with occupational exposure to blood or other material potentially containing bloodborne pathogens.

(8) "Sharp" means any object used or encountered in a health care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including, but not limited to, needle devices, scalpels, lancets, broken glass, and broken capillary tubes, but does not include prefilled syringes or other drugs or biologics prepackaged with an administration system requiring federal Food and Drug Administration approval for changes to packaging, labeling, or product.

(9) "Sharps injury" means any injury caused by a sharp, including, but not limited to, cuts, abrasions, or needlesticks.

(10) "Sharps injury log" means a written or electronic record satisfying the requirements of paragraph (2) of subsection (c) of this Code section.

(b) The department shall, no later than January 1, 2001, adopt a bloodborne pathogen standard governing occupational exposure of public employees to blood and other potentially infectious materials. The standard shall be at least as prescriptive as the standard promulgated by the federal Occupational Safety and Health Administration and shall include, but not be limited to, the following:

(1) A requirement that the most effective available needleless systems and sharps with engineered sharps injury protection be included as engineering and work practice controls in all facilities employing public employees except in cases where:

(A) None are available in the marketplace; or

(B) An evaluation committee, established by the employer, at least half the members of which are front-line health care workers, determines by means of objective product evaluation criteria that use of such devices will jeopardize patient or employee safety with regard to a specific medical procedure;

(2) A requirement that each public employer develop and implement an effective written exposure control plan that includes, but is not limited to, procedures for:

(A) Identifying and selecting needleless systems and sharps with engineered sharps injury protection through the evaluation committee described in subparagraph (B) of paragraph (1) of this subsection; and

(B) Updating the written exposure control plan when necessary to reflect progress in implementing needleless systems and sharps with engineered sharps injury protection as determined by the evaluation committee described in subparagraph (B) of paragraph (1) of this subsection, but in no event less than once every year;

(3) A requirement that information concerning exposure incidents be recorded in a sharps injury log, including, but not limited to:

(A) Date and time of the exposure incident;

(B) Type and brand of sharp involved in the exposure incident; and

(C) Description of the exposure incident which shall include:

(i) Job classification of the exposed employee;

(ii) Department or work area where the exposure incident occurred;

(iii) The procedure that the exposed employee was performing at the time of the incident;

(iv) How the incident occurred;

(v) The body part involved in the exposure incident;

(vi) If the sharp had engineered sharps injury protection, whether the protective mechanism was activated, and whether the injury occurred before the protective mechanism was activated, during activation of the mechanism, or after activation of the mechanism, if applicable;

(vii) If the sharp had no engineered sharps injury protection, the injured employee's opinion as to whether and how such a mechanism could have prevented the injury, as well as the basis for the opinion; and

(viii) The employee's opinion about whether any other engineering, administrative, or work practice control could have prevented the injury, as well as the basis for the opinion;

(4) Ensuring that all front-line health care workers are trained on the use of all engineering controls before they are introduced into the clinical setting; and

(5) Establishing an evaluation committee, at least half the members of which are front-line health care workers, to advise the employer on the implementation of the requirements of this Code section. Members of the committee shall be trained in the proper method of utilizing product evaluation criteria prior to the commencement of any product evaluation.

(c) The department shall consider additional enactments as part of the bloodborne pathogen standard to prevent sharps injuries or bloodborne pathogen exposure incidents including, but not limited to, training and educational requirements, measures to increase vaccinations, strategic placement of sharps containers as close to the work area as practical, and increased use of personal protective equipment.

(d) The department shall compile and maintain a list of existing needleless systems and sharps with engineered sharps injury protection, which shall be available to assist public employers in complying with the requirements of the bloodborne pathogen standard adopted pursuant to this Code section. The list may be developed from existing sources of information, including, but not limited to, the federal Food and Drug Administration, the federal Centers for Disease Control and Prevention, the National Institute of Occupational Safety and Health, and the United States Department of Veterans Affairs.

(e) A fund is established within the department into which moneys may be appropriated to provide for research and development, as well as product evaluations, of needleless systems and sharps with engineered sharps injury protection.

History. — Code 1981, § 31-12-13, enacted by Ga. L. 2000, p. 544, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 31-12-13, as enacted by Ga. L. 2000, p. 927, § 1, was redesignated as Code Section 31-12-14.

Pursuant to Code Section 28-9-5, in 2000, in subsection (a), a comma was added following "(HCV)" in paragraph (a)(1), "this title" was substituted for "Title 31" in paragraph (a)(6), and a comma was added following "labeling" near the end of paragraph (a)(8); in subsection (b), a comma was added preceding "or" in division (b)(3)(C)(vi) and a comma was deleted following "criteria" in the second sentence of paragraph (b)(5); and, in the second sentence of subsection (d), a comma was added following "including" and "and Prevention" was inserted.

Administrative rules and regulations. — Sharps injury prevention, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Georgia Department of Public Health, Health Promotion, Subject 511-5-9.

31-12-14. Cancer research program fund; contributions; accounting.

(a) The General Assembly finds that it is in the best interest of the state to provide for cancer research programs. In addition to and as a supplement to traditional financing mechanisms for such programs, it is the policy of this state to enable and encourage citizens voluntarily to support such programs.

(b) To support programs for cancer research, the department may, without limitation, promote and solicit voluntary contributions through the individual income tax return contribution mechanism established in subsection (e) of this Code section or through any fund raising or other promotional techniques deemed appropriate by the department.

(c) There is established a special fund to be known as the "Cancer Research Program Fund." This fund shall consist of all moneys contributed under subsection (b) of this Code section, all moneys transferred to the department under subsection (e) of this Code section, and any other moneys contributed to this fund. All balances in the fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part thereof may be deposited in the general treasury. The fund shall be administered and the moneys held in the fund shall be expended by the department through contracts for cancer research conducted in Georgia.

(d) Contributions to the fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriated for these purposes. Contributions shall only be used for research and for administrative costs authorized in paragraph (2) of subsection (e) of this Code section and shall not be used for personnel or administrative positions. The department shall prepare, by February 1 of each year, an accounting of the moneys received and expended from the fund and a review and evaluation of all expended moneys of the fund. The report shall be made available to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the members of the Board of Public Health, and, upon request, to members of the public.

(e)(1) Unless an earlier date is deemed feasible and is established by the Governor, each Georgia individual income tax return form for taxable years beginning on or after January 1, 2000, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Cancer Research Program Fund established in subsection (c) of this

Code section by either donating all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the individual income tax return form shall contain a description of the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state individual income tax return who desires to contribute to such fund may designate such contribution as provided in this Code section on the appropriate individual income tax return form.

(2) The Department of Revenue shall determine annually the total amount so contributed, shall withhold therefrom a reasonable amount for administering this voluntary contribution program, and shall transmit the balance to the department for deposit in the fund established in subsection (c) of this Code section; provided, however, that the amount retained for administrative costs, including implementation costs, shall not exceed $50,000.00 per year. If, in any tax year, the administrative costs of the Department of Revenue for collecting contributions pursuant to this Code section exceed the sum of such contributions, the administrative costs which the Department of Revenue is authorized to withhold from such contributions shall not exceed the sum of such contributions.

History. — Code 1981, § 31-12-14, enacted by Ga. L. 2000, p. 927, § 1; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2009, p. 686, § 1/SB 201; Ga. L. 2011, p. 705, § 6-4/HB 214.

Cross references. — Use of marijuana for treatment of cancer and glaucoma, T. 43, C. 34, A. 5.

Administrative rules and regulations. — Cancer state aid program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Health Promotion, Subject 511-5-10.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 12A

SMOKE-FREE AIR

Sec.
31-12A-1. Short title.
31-12A-2. Definitions.
31-12A-3. Smoking prohibited in state and local government buildings.
31-12A-4. Smoking prohibited in enclosed public places.
31-12A-5. Smoking prohibited in enclosed areas within places of employment; required communications.
31-12A-6. Exemptions.
31-12A-7. Smoking prohibited in designated nonsmoking places.
31-12A-8. "No Smoking" signs; ashtrays prohibited in nonsmoking areas.
31-12A-9. Public education program.
31-12A-10. Enforcement by the Department of Public Health and county boards of health.
31-12A-11. Local operating procedures.
31-12A-12. Other laws, rules, regulations, and ordinances not prohibited.
31-12A-13. Construction.

Cross references. — Smoking in public places, § 16-12-2.

Administrative rules and regulations. — Georgia Smokefree Air Act of 2005, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Environmental Health Hazards, Subject 511-3-7.

31-12A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Smoke-free Air Act of 2005."

History. — Code 1981, § 31-12A-1, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

Code Commission notes. — Pursuant to Code Section § 28-9-5, in 2019, "Smoke-free" was substituted for "Smokefree" near the end of this Code section.

31-12A-2. Definitions.

As used in this chapter, the term:

(1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(2) "Business" means any corporation, sole proprietorship, partnership, limited partnership, limited liability corporation, limited liability partnership, professional corporation, enterprise, franchise,

association, trust, joint venture, or other entity, whether for profit or nonprofit.

(3) "Employee" means an individual who is employed by a business in consideration for direct or indirect monetary wages or profit.

(4) "Employer" means an individual or a business that employs one or more individuals.

(5) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

(6) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities. This definition shall not include long-term care facilities as defined in paragraph (3) of Code Section 31-8-81.

(7) "Infiltrate" means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke.

(8) "Local governing authority" means a county or municipal corporation of the state.

(9) "Place of employment" means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a place of employment unless it is used as a licensed child care, adult day-care, or health care facility. This term shall not include vehicles used in the course of employment.

(10) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, adult day-care, or health care facility.

(11) "Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term shall include a bar area within any restaurant.

(12) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(13) "Secondhand smoke" means smoke emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the person smoking.

(14) "Service line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(15) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(16) "Smoking" means inhaling, exhaling, burning, or carrying any lighted tobacco product including cigarettes, cigars, and pipe tobacco.

(17) "Smoking area" means a separately designated enclosed room which need not be entered by an employee in order to conduct business that is designated as a smoking area and, when so designated as a smoking area, shall not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break room.

(18) "Sports arena" means enclosed stadiums and enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

History. — Code 1981, § 31-12A-2, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

31-12A-3. Smoking prohibited in state and local government buildings.

Smoking shall be prohibited in all enclosed facilities of, including buildings owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly or by ordinance or

resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.

History. — Code 1981, § 31-12A-3, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

31-12A-4. Smoking prohibited in enclosed public places.

Except as otherwise specifically authorized in Code Section 31-12A-6, smoking shall be prohibited in all enclosed public places in this state.

History. — Code 1981, § 31-12A-4, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

31-12A-5. Smoking prohibited in enclosed areas within places of employment; required communications.

(a) Except as otherwise specifically provided in Code Section 31-12A-6, smoking shall be prohibited in all enclosed areas within places of employment, including, but not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

(b) Such prohibition on smoking shall be communicated to all current employees by July 1, 2005, and to each prospective employee upon their application for employment.

History. — Code 1981, § 31-12A-5, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

31-12A-6. Exemptions.

(a) Notwithstanding any other provision of this chapter, the following areas shall be exempt from the provisions of Code Sections 31-12A-4 and 31-12A-5:

(1) Private residences, except when used as a licensed child care, adult day-care, or health care facility;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated;

(3) Retail tobacco stores, provided that secondhand smoke from such stores does not infiltrate into areas where smoking is prohibited under the provisions of this chapter;

(4) Long-term care facilities as defined in paragraph (3) of Code Section 31-8-81;

(5) Outdoor areas of places of employment;

(6) Smoking areas in international airports, as designated by the airport operator;

(7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity set forth in Code Section 10-13A-2;

(8) Private and semiprivate rooms in health care facilities licensed under this title that are occupied by one or more persons, all of whom have written authorization by their treating physician to smoke;

(9) Bars and restaurants, as follows:

(A) All bars and restaurants to which access is denied to any person under the age of 18 and that do not employ any individual under the age of 18; or

(B) Private rooms in restaurants and bars if such rooms are enclosed and have an air handling system independent from the main air handling system that serves all other areas of the building and all air within the private room is exhausted directly to the outside by an exhaust fan of sufficient size;

(10) Convention facility meeting rooms and public and private assembly rooms contained within a convention facility not wholly or partially owned, leased, or operated by the State of Georgia, its agencies and authorities, or any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly while these places are being used for private functions and where individuals under the age of 18 are prohibited from attending or working as an employee during the function;

(11) Smoking areas designated by an employer which shall meet the following requirements:

(A) The smoking area shall be located in a nonwork area where no employee, as part of his or her work responsibilities, shall be required to enter, except such work responsibilities shall not include custodial or maintenance work carried out in the smoking area when it is unoccupied;

(B) Air handling systems from the smoking area shall be independent from the main air handling system that serves all other areas of the building and all air within the smoking area shall be

exhausted directly to the outside by an exhaust fan of sufficient size and capacity for the smoking area and no air from the smoking area shall be recirculated through or infiltrate other parts of the building; and

(C) The smoking area shall be for the use of employees only.

The exemption provided for in this paragraph shall not apply to restaurants and bars;

(12) Common work areas, conference and meeting rooms, and private offices in private places of employment, other than medical facilities, that are open to the general public by appointment only; except that smoking shall be prohibited in any public reception area of such place of employment; and

(13) Private clubs, military officer clubs, and noncommissioned officer clubs.

(b) In order to qualify for exempt status under subsection (a) of this Code section, any area described in subsection (a) of this Code section, except for areas described in paragraph (1) of subsection (a) of this Code section, shall post conspicuously at every entrance a sign indicating that smoking is permitted.

History. — Code 1981, § 31-12A-6, enacted by Ga. L. 2005, p. 1184, § 2/SB 90; Ga. L. 2006, p. 72, § 31/SB 465.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "chapter" was substituted for "article" at the end of paragraph (a)(3); "and" was deleted at the end of paragraph (a)(11); "; and" was substituted for a period at the end of paragraph (a)(12); and a comma was inserted following "military officer clubs" in paragraph (a)(13).

31-12A-7. Smoking prohibited in designated nonsmoking places.

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection (a) of Code Section 31-12A-8 is posted.

History. — Code 1981, § 31-12A-7, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

31-12A-8. "No Smoking" signs; ashtrays prohibited in nonsmoking areas.

(a) "No Smoking" signs or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed

in a red circle with a red bar across it may be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment where smoking is prohibited by this chapter.

(b) All ashtrays shall be removed from any area where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of the area, unless such ashtray is permanently affixed to an existing structure.

History. — Code 1981, § 31-12A-8, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "chapter" was substituted for "article" at the end of subsection (a).

31-12A-9. Public education program.

The Department of Public Health and the agency designated by each local governing authority in this state may engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it and to guide owners, operators, and managers in their compliance with it. The program may include print or electronic publication of a brochure for affected businesses and individuals explaining the provisions of this chapter.

History. — Code 1981, § 31-12A-9, enacted by Ga. L. 2005, p. 1184, § 2/SB 90; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 838, § 11/SB 388; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-12A-10. Enforcement by the Department of Public Health and county boards of health.

The Department of Public Health and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of any establishment or business at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title.

History. — Code 1981, § 31-12A-10, enacted by Ga. L. 2005, p. 1184, § 2/SB 90; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-12A-11. Local operating procedures.

The county boards of health may annually request other governmental and educational agencies having facilities within the area of the local government to establish local operating procedures in cooperation and compliance with this chapter.

History. — Code 1981, § 31-12A-11, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

31-12A-12. Other laws, rules, regulations, and ordinances not prohibited.

This chapter shall be cumulative to and shall not prohibit the enactment of any other general or local laws, rules, and regulations of state or local governing authorities or local ordinances prohibiting smoking which are more restrictive than this chapter or are not in direct conflict with this chapter.

History. — Code 1981, § 31-12A-12, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

31-12A-13. Construction.

(a) This chapter shall not be construed to permit smoking where it is otherwise restricted by other applicable laws.

(b) Nothing in this chapter shall be construed as to repeal the provisions of Code Section 16-12-2.

(c) This chapter shall be liberally construed so as to further its purposes.

History. — Code 1981, § 31-12A-13, enacted by Ga. L. 2005, p. 1184, § 2/SB 90.

CHAPTER 13

RADIATION CONTROL

Sec.

31-13-1. Short title.
31-13-2. Declaration of policy.
31-13-3. Definitions.
31-13-4. Administration of state-wide radiation control program for radiation generating equipment.
31-13-4.1. Administration of state-wide radiation control program for radioactive materials.
31-13-5. Powers and duties of Department of Community Health and Department of Natural Resources; enforcement of chapter through inspection; training programs.
31-13-6. Bonding licensees.
31-13-7. Permits for disposal of radioactive waste; bonding of permittees.
31-13-8. Licensing users of by-product, source, and special nuclear materials as sources of ionizing radiation.
31-13-8.1. General or specific licensing for use, manufacture, transport, transactions in, and possession of radioactive material.
31-13-8.2. Licensing of diagnostic and therapeutic medical uses of radioactive materials.
31-13-9. Records of use of radiation sources and exposure of employees to radiation.
31-13-10. Suspension, revocation, and amendment of license or registration; emergency orders; review.
31-13-11. Impounding and condemnation of radiation generating equipment and radioactive materials.
31-13-12. License required.
31-13-13. Penalties.
31-13-14. Inspections and investigations.
31-13-15. Investigation of apparent violations; initiation of legal proceedings.
31-13-16. Authorization to remedy violation by conference, conciliation, or persuasion; order to undertake corrective action.
31-13-17. Declaration of existence of emergency.
31-13-18. Hearing on order or notice of action.
31-13-19. Judicial review.
31-13-20. Filing certified copy of unappealed final order or affirmed order.
31-13-21. Temporary or permanent injunction; restraining order.
31-13-22. Representation of director in actions.
31-13-23. Transfer of powers and duties between Department of Natural Resources and Department of Community Health.
31-13-24. Effect on proceedings commenced before April 4, 1990; continuation of federal aid to agency receiving transfer of functions.
31-13-25. Rules, regulations, agreements, and contracts formerly under Department of Human Resources (now known as the Department of Community Health for these purposes).

Administrative rules and regulations. — X-Ray, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Public Health, Chapter 290-5-22.

Laser radiation, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Services, Public Health, Chapter 290-5-27.

Radioactive materials, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Natural

Resources, Environmental Protection, Chapter 391-3-17.

Law reviews. — For note on 1990 amendment of Code sections within this chapter, see 7 Ga. St. U. L. Rev. 304 (1990).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Radiation Injuries — Ionizing Radiation, 14 POF3d 85.

ALR. — Applicability of doctrine of strict liability in tort to injury resulting from X-ray radiation, 16 A.L.R.4th 1300.

31-13-1. Short title.

This chapter shall be known and may be cited as the "Georgia Radiation Control Act."

History. — Code 1933, § 88-1301, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1990, p. 711, § 1.

31-13-2. Declaration of policy.

It is the policy of this state, in furtherance of its responsibility to protect the environment and the public health and safety of its citizens and, to the extent authorized under Article VI, Section 2 of the Constitution of the United States:

(1) To institute and maintain programs to allow development and utilization of sources of radiation for purposes that are consistent with the protection of the environment and the health and safety of the public; and

(2) To prevent any associated harmful effects of radiation upon the environment or the health and safety of the public through the institution and maintenance of regulatory programs for radiation sources, providing for:

(A) Compatibility with the standards and regulatory programs of the federal government for by-product, source, and special nuclear materials;

(B) An effective system of regulations within the state consistent with this chapter and with any environmental laws, rules, regulations, standards, or limitations; and

(C) A system consonant insofar as possible with those of other states.

History. — Code 1933, § 88-1302, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 920, § 1; Ga. L. 1976, p. 1567, § 1; Ga. L. 1990, p. 711, § 1.

31-13-3. Definitions.

As used in this chapter, the term:

(1) "Accelerator produced radioactive material" means any material made radioactive by a particle accelerator.

(1.1) "By-product material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(1.2) "Department" means the Department of Community Health.

(2) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(3) "General license" means a license effective pursuant to applicable rules and regulations promulgated by the Department of Community Health or the Department of Natural Resources, without the filing of an application, to transfer, acquire, own, possess, or use quantities of by-product, source, or special nuclear materials, or other radioactive material occurring naturally or produced artificially or devices, radiation generating equipment, or equipment utilizing such materials.

(4) "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves or visible, infrared, or ultraviolet light.

(4.1) "Naturally occurring radioactive material" means radioactive material occurring naturally in the environment.

(4.2) "Nonionizing radiation" means:

(A) Any electromagnetic radiation other than ionizing electromagnetic radiation; or

(B) Any sonic, ultrasonic, or infrasonic wave.

(5) "Permissible radiation exposure" means the maximum amount of radiation to which an individual may be exposed, as established in applicable standards adopted by the Department of Community Health or the Department of Natural Resources.

(6) "Person" means any individual, corporation, partnership, association, trust, estate, public or private institution, agency or political subdivision of this state, or any other state or political subdivision or agency thereof.

(7) "Radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear

particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves with frequencies between $1x10^{9}$ hertz and $1x10^{24}$ hertz and wavelengths between $3x10^{-1}$ meters and $3x10^{-16}$ meters.

(8) "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system which during operation can generate or emit radiation, except those which emit radiation only from radioactive material.

(9) "Radioactive material" means any solid, liquid, or gas for any use that emits ionizing radiation spontaneously. It includes accelerator produced, by-product, naturally occurring, source, and special nuclear material.

(9.1) "Registration" means registration with either the Department of Community Health or the Department of Natural Resources in accordance with applicable rules and regulations adopted pursuant to this chapter.

(10) "Source material" means (A) uranium, thorium, and any other material which the Department of Natural Resources declares to be source material after the Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such; or (B) ores containing one or more of the foregoing materials, in such concentration as the Department of Natural Resources declares to be source material after the Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material.

(11) "Special nuclear material" means (A) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department of Natural Resources declares to be special nuclear material after the Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (B) any material artificially enriched by any of the foregoing, but does not include source material.

(12) "Specific license" means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of by-product, source, or special nuclear materials, or other radioactive material occurring naturally or produced artificially, or devices or equipment utilizing such materials.

History. — Code 1933, § 88-1303, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 920, §§ 2, 3; Ga. L. 1976, p. 1567, § 2; Ga. L. 1988, p. 1670, § 1; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 4-15/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a comma

was inserted following "Natural Resources" in paragraph (3).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-13-4. Administration of state-wide radiation control program for radiation generating equipment.

The Department of Community Health is designated the state agency to administer a state-wide radiation control program for radiation generating equipment consistent with this chapter and any environmental laws, rules, regulations, standards, or limitations administered by the Department of Natural Resources. It is declared to be the intent of the General Assembly that no provision of this chapter shall be construed so as to repeal, supersede, or preempt any of the functions, powers, authority, duties, or responsibilities assigned to the Environmental Protection Division of the Department of Natural Resources under this chapter or any other laws or statutes of this state.

History. — Code 1933, § 88-1304, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1976, p. 1567, § 3; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

Cross references. — Powers and duties of director as to hazardous waste, § 12-8-65.

31-13-4.1. Administration of state-wide radiation control program for radioactive materials.

The Department of Natural Resources is designated the state agency to administer a state-wide radiation control program for radioactive materials consistent with this chapter.

History. — Code 1981, § 31-13-4.1, enacted by Ga. L. 1990, p. 711, § 1.

31-13-5. Powers and duties of Department of Community Health and Department of Natural Resources; enforcement of chapter through inspection; training programs.

(a) For the protection of the public health and safety, the Department of Community Health, with regard to radiation generating equipment, and the Department of Natural Resources, with regard to radioactive materials, are empowered to:

(1) Develop comprehensive policies and programs for the evaluation, determination, and amelioration of hazards associated with the use of radiation. Such policies and programs shall be developed with due regard for compatibility with federal programs;

(2) Advise, consult, and cooperate with other public agencies and with affected groups and industries;

(3) Encourage, participate in, or conduct studies, investigations, public hearings, training, research, and demonstrations relating to the control of sources of radiation, the effect upon public health and safety of exposure to radiation, and related problems;

(4) Adopt, promulgate, amend, and repeal such rules, regulations, and standards which may provide for licensing or registration relating to the distribution, assembly, manufacture, production, transportation, use, handling, storage, disposal, sale, lease, or other disposition of radioactive material and radiation generating equipment as may be necessary to carry out this chapter, provided that prior to adoption of any regulation or standard, or amendment or repeal thereof, the Department of Community Health or the Department of Natural Resources, as is appropriate, shall afford interested parties an opportunity, at a public hearing conducted as provided in Article 1 of Chapter 5 of this title, to submit data or views orally or in writing. The recommendations of nationally recognized bodies in the field of radiation protection shall be taken into consideration when formulating standards relative to the permissible dosage of radiation;

(5) Issue, modify, or revoke orders, in connection with proceedings under this chapter, prohibiting or abating the discharge of radiation and radioactive material or waste into the ground, air, or waters of the state, except that the Department of Natural Resources shall not prohibit discharges expressly permitted by the federal Nuclear Regulatory Commission or any successor agency;

(6) Require the submission of plans, specifications, and reports for new construction and material alterations on (A) the design and protective shielding of installations for radioactive material and radiation generating equipment; and (B) systems for the disposal of radioactive waste materials and for the determination of any radiation hazard; and render opinions, approve, or disapprove such plans and specifications;

(7) Require all sources of radiation to be shielded, transported, handled, used, stored, or disposed of in such a manner to provide compliance with this chapter and rules, regulations, and standards adopted pursuant to this chapter;

(8) Collect and disseminate information relating to the control of sources of radiation, including but not limited to (A) maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations; and (B) maintenance of a file of registrants possessing sources of radiation requiring registration under this chapter, regulations promulgated pursuant to this chapter, and any administrative or judicial action pertaining thereto;

(9) Exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this chapter when the Department of Community Health or the Department of Natural Resources, as is applicable, determines that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public;

(10) Adopt and promulgate rules and regulations pursuant to this chapter which may provide for recognition of other state and federal licenses as the Department of Community Health or the Department of Natural Resources shall deem desirable, subject to such registration requirements as may be prescribed by the applicable department; and

(11) Exercise all incidental powers necessary to administer this chapter.

(b) The Department of Community Health and the Department of Natural Resources are authorized to enter upon any public or private property at all reasonable times for the purpose of determining compliance with applicable provisions of this chapter and rules, regulations, and standards adopted pursuant to this chapter.

(c) The Department of Community Health and the Department of Natural Resources are authorized to enter into appropriate agreements with the federal government, other states, or interstate agencies, whereby this state will perform, on a cooperative basis with the federal government, other states, or interstate agencies, inspections and other functions related to the control of radiation.

(d) The Department of Community Health and the Department of Natural Resources are authorized to institute appropriate training programs for the purpose of qualifying personnel to administer applicable provisions of this chapter and may make such personnel available for participation in any programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter.

History. — Code 1933, §§ 88-1306, 88-1308, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1965, p. 365, § 1; Ga. L. 1973, p. 920, § 4; Ga. L. 1976, p. 1567, § 5; Ga. L. 1988, p. 1670, § 2; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

Law reviews. — For article surveying recent legislative and judicial developments in zoning, planning and environmental law, see 31 Mercer L. Rev. 89 (1979).

31-13-6. Bonding licensees.

(a) The Department of Natural Resources may require the posting of a bond not to exceed $5 million by an existing general or specific licensee by amendment to an existing license or by a person making an

application for a new general or specific license, in order to assure the availability of funds to the state in the event of abandonment, insolvency, or other inability of a licensee to meet the requirements of the Department of Natural Resources for the safe collection and disposition of sources of ionizing radiation from radioactive material in the event of an accident, discontinuance of operation, or any circumstance which results in a potential radiation hazard at a site occupied by the licensee or formerly under its possession, ownership, or control. The Department of Natural Resources is authorized to establish, by rule or regulation, the bonding requirements by classes of licensees and by range of monetary amounts not to exceed $5 million. In establishing such requirements, the Department of Natural Resources shall give due consideration to the probable extent of contamination, the amount of possible property damage, the costs of removal and disposal of radioactive material used by the licensee, and the costs of reclamation of the property in the event of abandonment, insolvency, or other inability of the licensee to perform such services to the satisfaction of the Department of Natural Resources; provided, however, that a bond not less than $5 million shall be required for any licensee offering commercial radiation sterilization services, excluding hospitals, blood banks, and physicians' offices.

(b) The Department of Natural Resources shall have authority upon finding that conditions under this Code section have not been met or when it determines that an imminent hazard to the public health and welfare exists to require forfeiture of the bond and use the money therefrom to take any action deemed necessary to protect the public health and welfare.

(c) A licensee who abandons a site or facility without taking the required actions to meet the requirements of the Department of Natural Resources shall be guilty of a misdemeanor.

(d) Any bonding or financial protection requirements established by the Department of Natural Resources pursuant to this Code section shall not apply to the state or any agency of the state.

History. — Ga. L. 1979, p. 1059, § 1; Ga. L. 1990, p. 711, § 1; Ga. L. 1991, p. 1411, § 1.

31-13-7. Permits for disposal of radioactive waste; bonding of permittees.

(a) No person shall construct or operate a site or other facility for the concentration, storage, or burial of radioactive waste without first securing a permit for such construction or operation from the director of the Environmental Protection Division of the Department of Natural Resources. The director, under the conditions he prescribes, may

require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of such permit. The director may issue a permit for the construction or operation of such a site or other facility upon a determination that the construction or operation would be consistent with the purposes and stated policy of this chapter. Any permit which may be issued by the director shall specify the conditions under which the site or facility shall be operated. The director, in specifying such conditions, shall have the power and authority to require a permittee to establish and maintain records; to make reports; to install, maintain, and use monitoring equipment or methods including, but not limited to, biological monitoring methods or emission and ambient monitoring devices; to sample any emission or discharge in accordance with such methods, at such locations, at such intervals, and in such manner as the director shall prescribe; and to provide such other information as he may reasonably require. Any permit issued shall be subject to periodic review; and the director may revoke or modify any permit if the holder fails to comply with any conditions thereof. The director is authorized to adopt, modify, repeal, and promulgate, after due notice and public hearing held in accordance with and established pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," rules and regulations not inconsistent with this Code section, for purposes of administering this Code section.

(b) The director may require the posting of a bond by the proposed permittee or operator, payable to the state, as a condition of any permit, in order to assure the availability of funds to the state in the event of abandonment, insolvency, or other inability of a permittee to meet the requirements of the Environmental Protection Division of the Department of Natural Resources for the safe collection and disposition of sources of ionizing radiation in the event of an accident, discontinuance of operation, or any circumstance which results in a potential radiation hazard at a site or facility for the concentration, storage, or burial of radioactive waste, which site is occupied by the permittee or was formerly under its possession, ownership, or control. The Environmental Protection Division of the Department of Natural Resources is authorized to establish, by rule or regulation, the bonding requirements of permittees by range of monetary amounts. In establishing such requirements, the director of the Environmental Protection Division shall give due consideration to the probable extent of contamination, the amount of possible property damage, the costs of removal and disposal of sources of radiation used by the permittee, and the costs of reclamation of the property in the event of abandonment, insolvency, or other inability of the permittee to perform such services to the satisfaction of the director. The director shall have authority upon finding that conditions under this Code section have not been met or when he

determines that an imminent hazard to the public health and welfare exists to require forfeiture of bond and use the money therefrom to take any action deemed necessary to protect the public health and welfare. A permittee who abandons a site or facility without taking the required actions to meet the requirements of the director of the Environmental Protection Division of the Department of Natural Resources shall be guilty of a misdemeanor. Any bonding or financial protection requirements established by the director pursuant to this Code section shall not apply to the state, or any agency of the state, or to the storage of spent fuel possessed under 10 CFR Part 50 or Part 70, which fuel was generated at an electric generating utilization facility and which is stored at such utilization facility in facilities licensed under 10 CFR Part 50 or at another such in-state utilization facility in facilities licensed under 10 CFR Part 50.

History. — Code 1933, § 88-1306.1, enacted by Ga. L. 1968, p. 1152, § 1; Ga. L. 1976, p. 1567, § 6; Ga. L. 1979, p. 1059, § 2; Ga. L. 1985, p. 149, § 31; Ga. L. 1990, p. 711, § 1.

Cross references. — Hazardous waste management, § 12-8-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, §§ 676, 1469 et seq.

31-13-8. Licensing users of by-product, source, and special nuclear materials as sources of ionizing radiation.

(a) The Governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain responsibilities of the federal government with respect to sources of ionizing radiation and the assumption of such responsibilities by this state.

(b) Upon the signing of the contract as provided in subsection (a) of this Code section, the Department of Natural Resources shall provide by rule or regulation for general or specific licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess by-product, source, or special nuclear materials or devices, installations, or equipment utilizing such materials. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Each application for a specific license shall be in writing on forms prescribed and furnished by the Department of Natural Resources and shall state such information and be accompanied by such documents, including, but not limited to, plans, specifications, and reports for new construction or material alterations, as the Department of Natural Resources may determine to be reasonable and necessary to

decide the qualifications of the applicant to protect the public health and safety. The Department of Natural Resources may require any applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the Department of Natural Resources may deem necessary. No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with this chapter.

History. — Code 1933, § 88-1307, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1976, p. 1567, § 7; Ga. L. 1988, p. 1670, § 3; Ga. L. 1990, p. 711, § 1.

31-13-8.1. General or specific licensing for use, manufacture, transport, transactions in, and possession of radioactive material.

The Department of Natural Resources shall establish, manage, and administer a program for the general or specific licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess radioactive material including by-product, source, or special nuclear materials or devices, installations, or equipment utilizing such materials, including the promulgation of such rules and regulations as the Board of Natural Resources may deem necessary to implement and enforce the program. Such rules or regulations shall provide for amendment, suspension, or revocation of licenses. Each application for a specific license shall be in writing on forms prescribed and furnished by the Department of Natural Resources and shall state such information and be accompanied by such documents, including, but not limited to, plans, specifications, and reports for new construction or material alterations, as the Department of Natural Resources may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The Department of Natural Resources may require any applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the Department of Natural Resources may deem necessary. No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations, or orders issued in accordance with this chapter.

History. — Code 1981, § 31-13-8.1, enacted by Ga. L. 1988, p. 1670, § 4; Ga. L. 1990, p. 711, § 1.

31-13-8.2. Licensing of diagnostic and therapeutic medical uses of radioactive materials.

The Department of Community Health is authorized to provide by rule or regulation for the registration and periodic renewal of registration of persons to sell, distribute, assemble, use, manufacture, produce, transport, transfer, receive, acquire, own, or possess radiation generating equipment. Such rule or regulation shall provide for suspension or revocation of registration. Each application for registration shall be in writing on forms prescribed and furnished by the Department of Community Health and shall state such information and be accompanied by such documents, including, but not limited to, plans, specifications, and reports for new construction or material alterations, as the Department of Community Health may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The Department of Community Health may require any applications or statements to be made under oath or affirmation. No registration issued under the authority of this chapter and no right to possess or utilize radiation generating equipment granted by any registration shall be assigned or in any manner disposed of without prior notification to the Department of Community Health.

History. — Code 1981, § 31-13-8.3, enacted by Ga. L. 1988, p. 1670, § 4; Code 1981, § 31-13-8.2, as redesignated by Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

Editor's notes. — Ga. L. 1990, p. 711, § 1, effective April 4, 1990, repealed former Code Section 31-13-8.2, concerning licensing of diagnostic and therapeutic medical uses of radioactive materials, which was based on Ga. L. 1988, p. 1670, § 4.

31-13-9. Records of use of radiation sources and exposure of employees to radiation.

(a) The Department of Community Health and the Department of Natural Resources are authorized to require, in accordance with applicable provisions of this chapter, each person who possesses or uses a source of radiation (1) to maintain appropriate records relating to its receipt, storage, use, transfer, or disposal and to maintain such other records as the Department of Community Health or the Department of Natural Resources, as is applicable, may require, subject to such exemptions as may be provided by rules and regulations; and (2) to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring may be required by the Department of Community Health or the Department of Natural Resources, as is applicable, subject to such exemptions as may be provided by rules and regulations. Copies of all records required to be kept by this subsection shall be submitted to the Department of Community Health or the Department of Natural Resources, as is

appropriate, or the duly authorized agents of such department upon request.

(b) The Department of Community Health and the Department of Natural Resources are authorized to require, in accordance with applicable provisions of this chapter, any person possessing or using a source of radiation to furnish, at the request of any employee for whom personnel monitoring is required, a copy of such employee's personal exposure record annually, upon termination of employment, and at any time such employee has received excessive exposure.

History. — Code 1933, § 88-1309, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

OPINIONS OF THE ATTORNEY GENERAL

Department authorized to require licensees to notify employees of excessive radiation exposure. — Ample statutory authority exists for Department of Public Health (now Department of Human Resources) to require persons or firms licensed under the Georgia Radiation Control Act to notify an employee in writing when the employee has received radiation exposure in excess of prescribed limits. 1968 Op. Att'y Gen. No. 68-299.

31-13-10. Suspension, revocation, and amendment of license or registration; emergency orders; review.

(a) The Department of Natural Resources may refuse to grant a license as provided in Code Section 31-13-8 or 31-13-8.1 and the Department of Community Health may refuse to register radiation generating equipment as provided in Code Section 31-13-8.2 to any applicant who does not possess the applicable requirements or qualifications which the Department of Natural Resources or the Department of Community Health, as applicable, may prescribe in rules and regulations. The Department of Natural Resources or the Department of Community Health may suspend, revoke, or amend any license or registration, respectively, in the event the person to whom such license or registration was granted violates any of the rules and regulations of the Department of Natural Resources or the Department of Community Health, whichever is applicable, or ceases or fails to have the reasonable facilities prescribed by the Department of Natural Resources or the Department of Community Health, provided that, before any order is entered denying an application for a license or registration or suspending, revoking, or amending a license or registration previously granted, the applicant or person to whom such license or registration was granted shall be given notice and granted a hearing as provided in Article 1 of Chapter 5 of this title.

(b) Whenever the Department of Natural Resources or the Department of Community Health finds that an emergency exists involving

any licensee or registrant requiring immediate action to protect the public health and safety, the Department of Natural Resources or the Department of Community Health, as is appropriate, may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provisions of this chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the Department of Natural Resources or the Department of Community Health, as is appropriate, shall be afforded a hearing within ten days. On the basis of such hearing, the emergency order shall be continued, modified, or revoked within 30 days after such hearing, as the Department of Natural Resources or the Department of Community Health, as is appropriate, may deem appropriate under the evidence.

(c) Any applicant or person to whom a license or registration was granted who is aggrieved by any order of the Department of Natural Resources or the Department of Community Health or the duly authorized agent of such department denying any such application or suspending, revoking, or amending such license or registration may file a hearing request with the appropriate agency to contest such action pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1933, § 88-1310, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1988, p. 1670, § 5; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, punctuation changes were made at the end of subsection (c).

31-13-11. Impounding and condemnation of radiation generating equipment and radioactive materials.

(a) In the event of an emergency, the Department of Community Health shall have the authority to impound or order the impounding of radiation generating equipment in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued pursuant to this chapter.

(b) The Department of Community Health may release such radiation generating equipment to the owner thereof upon terms and conditions in accordance with this chapter and rules and regulations adopted pursuant to this chapter or may bring an action in the appropriate superior court for an order condemning such radiation generating equipment and providing for its destruction or other disposition so as to protect the public health and safety.

(c) In the event of an emergency, the Department of Natural Resources shall have the authority to impound or order the impounding of radioactive materials in the possession of any person who is not

equipped to observe or fails to observe the provisions of this chapter or any rules and regulations issued pursuant to this chapter.

(d) The Department of Natural Resources may release such radioactive materials to the owner thereof upon terms and conditions in accordance with this chapter and rules and regulations adopted pursuant to this chapter or may bring an action in the appropriate superior court for an order condemning such radioactive materials and providing for their destruction or other disposition so as to protect the public health and safety.

History. — Code 1933, § 88-1311, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 920, § 5; Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

31-13-12. License required.

It shall be unlawful for any person to use, manufacture, assemble, distribute, produce, transport, receive, acquire, own, or possess any source of radiation required to be licensed or registered under this chapter unless licensed by or registered with the Department of Natural Resources or the Department of Community Health, respectively, in accordance with this chapter and rules and regulations adopted and promulgated pursuant to this chapter.

History. — Code 1933, § 88-1312, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 920, § 6; Code 1981, § 31-13-14; Ga. L. 1988, p. 1670, § 6; Code 1981, § 31-13-12, as redesignated by Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

Editor's notes. — Ga. L. 1990, p. 711, § 1, repealed former Code Section 31-13-12, concerning prohibited uses of radiation sources, which was based on Ga. L. 1973, p. 920, § 6, and redesignated former Code Section 31-13-14 as present Code Section 31-13-12.

31-13-13. Penalties.

(a) Any person who violates the provisions of Code Section 31-13-7 or any rule or regulation promulgated pursuant to such Code section, or who violates the provisions of Code Section 31-13-12, or who hinders, obstructs, or otherwise interferes with any representative of the Department of Community Health or the Department of Natural Resources in the discharge of his official duties in making inspections as provided in Code Section 31-13-5 or in impounding materials as provided in Code Section 31-13-11 shall be guilty of a misdemeanor.

(b)(1) Any person who:

(A) Violates any licensing or registration provision of this chapter or any rule, regulation, or order issued under this chapter or any term, condition, or limitation of any license or registration certificate under this chapter; or

(B) Commits any violation for which a license or registration certificate may be revoked under rules or regulations issued pursuant to this chapter

may be subject to a civil penalty, to be imposed by the Department of Natural Resources or the Department of Community Health, as is applicable, not to exceed $10,000.00. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(2) Whenever the Department of Community Health proposes to subject a person to the imposition of a civil penalty under this subsection, it shall notify such person in writing:

(A) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(B) Specifically identifying the particular provision or provisions of the Code section, rule, regulation, order, license, or registration certificate involved in the violation; and

(C) Advising of each penalty which the Department of Community Health proposes to impose and its amount.

Such written notice shall be sent by registered or certified mail or statutory overnight delivery by the Department of Community Health to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the Department of Community Health shall by rule or regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that, upon failure to pay the civil penalty, if any, subsequently determined by the Department of Community Health, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may contest such action in an administrative hearing pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) On the request of the Department of Community Health, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this subsection. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to him for collection.

(4) All moneys collected from civil penalties shall be paid to the state for deposit in the general fund.

History. — Code 1933, § 88-1313, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1976, p. 1567, § 8; Code 1981, § 31-13-15; Ga. L. 1984, p. 1428, § 1; Code 1981, § 31-13-13, as redesignated by Ga. L. 1990, p. 711, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228.

Editor's notes. — Ga. L. 1990, p. 711, § 1, repealed former Code Section 31-13-13, concerning penalties, which was

based on Ga. L. 1976, p. 1567, § 8, and redesignated former Code Section 31-13-15 as present Code Section 31-13-13.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that subparagraph (b)(2)(C) of this Code section was applicable to notices delivered on or after July 1, 2000.

31-13-14. Inspections and investigations.

The director or his duly authorized representatives shall have the power to enter at reasonable times upon any private or public property for the purpose of inspection and investigation of conditions relating to the handling of radioactive materials in the state.

History. — Code 1981, § 31-13-14, enacted by Ga. L. 1990, p. 711, § 1.

Editor's notes. — Ga. L. 1990, p. 711, § 1, redesignated former Code Section 31-13-14 as present Code Section 31-13-12.

31-13-15. Investigation of apparent violations; initiation of legal proceedings.

The director shall have the authority to investigate any apparent violation of this chapter and to take any action authorized under this chapter as he deems necessary and may institute proceedings of mandamus or other proper legal proceedings to enforce this chapter.

History. — Code 1981, § 31-13-15, enacted by Ga. L. 1990, p. 711, § 1.

Editor's notes. — Ga. L. 1990, p. 711, § 1, redesignated former Code Section 31-13-15 as present Code Section 31-13-13.

31-13-16. Authorization to remedy violation by conference, conciliation, or persuasion; order to undertake corrective action.

Whenever the director has reason to believe that a violation of any provision of this chapter or any rule or regulation adopted pursuant to this chapter has occurred, he shall attempt to obtain a remedy with the violator or violators by conference, conciliation, or persuasion. In the case of failure of such conference, conciliation, or persuasion to effect a remedy to such violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this chapter or rule or regulation alleged to have been violated and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any order issued by the director under this chapter shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing before the director no later than 30 days after such order is served on such person or persons.

History. — Code 1981, § 31-13-16, enacted by Ga. L. 1990, p. 711, § 1.

31-13-17. Declaration of existence of emergency.

Whenever the director finds that an emergency exists requiring immediate action to protect the public health, safety, or well-being, the director, with the concurrence of the Governor, may issue an order declaring the existence of such an emergency and requiring that such action be taken to meet the emergency as the director specifies. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the director shall be afforded a hearing within 48 hours. On the basis of such hearing, the director may continue such order in effect, revoke it, or modify it.

History. — Code 1981, § 31-13-17, enacted by Ga. L. 1990, p. 711, § 1.

31-13-18. Hearing on order or notice of action.

Whenever a person is aggrieved or adversely affected by any action or by any order or orders of the director, such person may request and obtain a hearing by filing a petition with the director within 30 days after service of the order or notice of action. Such hearing and any other hearing under this chapter shall be conducted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 31-13-18, enacted by Ga. L. 1990, p. 711, § 1.

31-13-19. Judicial review.

Any person who has exhausted all administrative remedies available before the director and who is aggrieved by a final order or action in a contested case is entitled to judicial review under this chapter. In this connection, all proceedings for judicial review shall be conducted in accordance with subsections (b) through (h) of Code Section 50-13-19, and any party to the proceeding may secure a review of the final judgment of the superior court by appeal in the manner and form provided by law for appeals from the superior courts to the appellate courts of this state.

History. — Code 1981, § 31-13-19, enacted by Ga. L. 1990, p. 711, § 1.

31-13-20. Filing certified copy of unappealed final order or affirmed order.

The director may file in the superior court of the county wherein the person under order resides or, if such person is a corporation, in the county wherein the corporation maintains its principal place of business or, in any case, in the county wherein the violation occurred or in which jurisdiction is appropriate a certified copy of an unappealed final order of the director or of a final order of the director affirmed upon appeal whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment had been rendered in an action duly heard and determined by such court.

History. — Code 1981, § 31-13-20, enacted by Ga. L. 1990, p. 711, § 1.

31-13-21. Temporary or permanent injunction; restraining order.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this chapter, the director may apply to the superior court of the county where such person resides or, if such person is a nonresident of the state, to the superior court of the county where such person is engaged in or is about to engage in such act or practice for an order restraining and enjoining such act or practice. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a temporary or permanent injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law.

History. — Code 1981, § 31-13-21, enacted by Ga. L. 1990, p. 711, § 1.

31-13-22. Representation of director in actions.

It shall be the duty of the Attorney General or his representative to represent the director in all actions in connection with this chapter.

History. — Code 1981, § 31-13-22, enacted by Ga. L. 1990, p. 711, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this Code section, which was inadvertently designated as Code Section 33-13-22 in Ga. L. 1990, p. 711, § 1, was renumbered as Code Section 31-13-22.

31-13-23. Transfer of powers and duties between Department of Natural Resources and Department of Community Health.

The Governor shall have the authority to transfer powers and duties enumerated in this chapter between the Department of Natural Resources and the Department of Community Health as he deems appropriate by executive order.

History. — Code 1981, § 31-13-23, enacted by Ga. L. 1990, p. 711, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

31-13-24. Effect on proceedings commenced before April 4, 1990; continuation of federal aid to agency receiving transfer of functions.

This chapter shall not affect the validity of any judicial or administrative proceeding pending or which was commenced before April 4, 1990, and any successor department shall be substituted as the proper party at interest. Furthermore, upon the transfer of any function under this chapter, the agency assuming the transfer and performing the function in the future shall be construed as a continuation of the original agency for the purpose of federal aid and may continue to receive any such funds to carry out or perform such functions.

History. — Code 1981, § 31-13-24, enacted by Ga. L. 1990, p. 711, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "April 4, 1990" was substituted for "the effective date of the applicable provisions of this chapter" in the first sentence.

31-13-25. Rules, regulations, agreements, and contracts formerly under Department of Human Resources (now known as the Department of Community Health for these purposes).

All rules and regulations, agreements, contracts, or other instruments which involve radioactive materials heretofore under the jurisdiction of the Department of Human Resources (now known as the Department of Community Health for these purposes) will, by operation of law, be assumed by the Department of Natural Resources on April 4, 1990.

History. — Code 1981, § 31-13-25, enacted by Ga. L. 1990, p. 711, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 2009, p. 453, § 1-38/HB 228.

CHAPTER 14

HOSPITALIZATION FOR TUBERCULOSIS

Sec.
31-14-1. "Active tuberculosis" defined; declaration of policy.
31-14-2. Petition for commitment.
31-14-3. Hearing on petition; notice; physical examination; court costs; attorney's fee; conduct of hearing.
31-14-4. Service of copy of petition and order; penalty for failure to comply.
31-14-5. Circumstances allowing custody pending hearing.
31-14-6. Report of persons making examination; service of copies.
31-14-7. Results of hearing; commitment to hospital or facility; dismissal of petition and release from custody; costs of transportation; review of commitment order.
31-14-8. Period of confinement of patients committed under chapter.
31-14-8.1. Continuation of confinement of patient; report required; hearing.
31-14-8.2. Appeal from orders of superior court or hearing examiner; costs; right to counsel.
31-14-9. Procedure for securing discharge; petition for habeas corpus.
31-14-10. Enforcement of rules and regulations by county boards of health.
31-14-11. Unauthorized leave of committed person from hospital or facility.
31-14-12. Applicability of commitment provisions to persons who obey rules and regulations of department.
31-14-13. Order directing compliance with plan of evaluation or outpatient treatment; contempt.
31-14-14. Immunity from liability.

Cross references. — Designation of department as agency responsible for supervision and administrative control of state hospitals, § 37-1-21.

Administrative rules and regulations. — Certificate of immunization for a child immunized outside of Georgia, Official Compilation of the Rules and Regulations of the State of Georgia, Disease Survellance and Control, Immunization of School Children, § 511-2-2-.06.

Tuberculosis control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Disease Surveillance and Control, Subject 511-2-3.

Law reviews. — For note on 1995 amendments and enactments of Code sections in this chapter, see 12 Ga. St. U. L. Rev. 247 (1995).

31-14-1. "Active tuberculosis" defined; declaration of policy.

(a) As used in this chapter, the term "active tuberculosis" means a diagnosis demonstrated by clinical, bacteriologic, or diagnostic imaging evidence, or a combination thereof. Persons who have been diagnosed as having active tuberculosis and have not completed a course of antituberculosis treatment are still considered to have active tuberculosis and may be infectious.

(b) Active tuberculosis is declared to be dangerous to the public health.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 1; Code 1933, § 88-701, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2005, p. 1513, § 1/SB 56.

31-14-2. Petition for commitment.

When the county board of health or the Department of Public Health has evidence that any person has active tuberculosis and is violating the rules and regulations promulgated by the department or the orders issued by the county board of health and thereby presents a substantial risk of exposing other persons to an imminent danger of infection, after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, the county board of health or the department shall institute proceedings by petition for commitment, returnable to the superior court of the county wherein such person resides or, if such person is a nonresident or has no fixed place of abode, in the county wherein such person may be found. The petition executed under oath shall state the specific evidence supporting the allegations, that the evidence has existed within the preceding 30 days, that the person named therein has active tuberculosis and is violating the rules and regulations of the department or the orders of the county board of health and presents a substantial risk of exposing other persons to an imminent danger of infection, after having been directed by the county board of health or department to comply with such rules, regulations, or orders, and that the public health requires commitment of the person named therein. The petition must be accompanied by a certificate of a physician stating that the physician knows or suspects that the person named therein may have active tuberculosis, the evidence which forms the basis of this opinion, and whether a full evaluation of the person is necessary.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 4; Code 1933, § 88-704, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1995, p. 1231, § 1; Ga. L. 2005, p. 1513, § 1/SB 56; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Involuntary commitment of one with infectious tuberculosis who becomes intoxicated. — If a person with infectious tuberculosis becomes intoxicated it is possible that the person's behavior might subject the person to involuntary commitment, but only if the person is conducting oneself so as to expose other persons. 1972 Op. Att'y Gen. No. U72-106.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 53 et seq., 64 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 28 et seq., 43.

31-14-3. Hearing on petition; notice; physical examination; court costs; attorney's fee; conduct of hearing.

(a) Immediately upon the filing of a petition pursuant to Code Section 31-14-2, the judge of the superior court shall set the matter for a full and fair hearing on the petition. Such hearing shall be held no sooner than seven days and no later than 12 days, excluding Saturdays, Sundays, and holidays, subsequent to the time of filing of the petition. The court shall serve personal notice of the hearing upon the person named in the petition and upon the petitioner. The notice required by this Code section shall include the time and place of the hearing; notice of the person's right to counsel, that the person may apply for court appointed counsel if the person cannot afford counsel, and that the court will appoint counsel unless the person indicates in writing that he or she does not wish to be represented by counsel; and notice that the person may waive his or her rights to a hearing under this Code section. A copy of the petition and physician's certificate filed under Code Section 31-14-2 shall be attached to the notice. The judge shall, where prayed for in the petition, provide for the examination of the person named therein by a physician licensed under Chapter 34 of Title 43, which examination shall include sputum examinations by a laboratory approved by the department and a recent chest X-ray of good diagnostic quality interpreted by a physician licensed to practice under Chapter 34 of Title 43, as a part of the order setting the matter for hearing; the order shall require the person or persons named therein to make such examination. Any X-ray and accompanying report or any written report as to a sputum examination shall be admissible as evidence without the necessity of the personal testimony of the person or persons making such examination and report. A physician may rely upon this evidence as the basis for the diagnosis of active tuberculosis and the defendant may offer opposing evidence on this issue by testimony or otherwise. All court costs incurred in proceedings under this chapter, including costs of examinations required by order of court but excluding any examinations procured by the person named in the petition, shall be borne by the county wherein the proceedings are brought. The fee to be paid to an attorney appointed under this Code section to represent a person who cannot afford counsel shall be paid by the county board of health instituting proceedings for commitment.

(b) A full and fair hearing shall mean a proceeding before a hearing examiner under Code Section 31-14-8.1 or before the superior court in a proceeding under subsection (a) of this Code section. The hearing may

be held in a regular court room or in an informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The person named as defendant shall be provided with the opportunity for the assistance of counsel. If the defendant cannot afford counsel, the court shall appoint counsel for the defendant or the hearing examiner shall request that the court appoint such counsel; provided, however, that the defendant shall have the right to refuse in writing appointment of counsel. Both parties shall have the right to confront and cross-examine witnesses, to offer evidence, and to subpoena witnesses. Both parties shall have the right to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases, except as otherwise provided for in this chapter. The burden of proof shall be upon the party seeking commitment of the defendant. The standard of proof shall be by clear and convincing evidence. At the request of the defendant, the public may be excluded from the hearing. The defendant may waive his or her right to be present at the hearing. The reason for the action of the court or the hearing examiner in excluding the public or permitting the hearing to proceed in the defendant's absence shall be reflected in the record.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 5; Code 1933, § 88-705, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 1; Ga. L. 1995, p. 1231, § 1; Ga. L. 2005, p. 1513, § 1/SB 56.

31-14-4. Service of copy of petition and order; penalty for failure to comply.

A copy of the petition and order shall be served on the person named in the petition. Any failure of such person to comply with the order or with the notice by the persons appointed therein to make examination shall be enforceable by attachment for contempt.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 7; Code 1933, § 88-707, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2005, p. 1513, § 1/SB 56.

31-14-5. Circumstances allowing custody pending hearing.

Where a danger exists that the person named in the petition may abscond or conceal himself or herself or where the person is conducting himself or herself so as to present a substantial risk of exposing other persons to an imminent danger of infection, the court may, as a part of the order made pursuant to Code Section 31-14-3, direct the sheriff or the sheriff's deputies to take such person into custody pending hearing and impose such confinement as will not endanger other persons. An

affidavit shall be attached to the petition containing the specific facts supporting the need for custody pending hearing.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 6; Code 1933, § 88-706, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.

31-14-6. Report of persons making examination; service of copies.

The person or persons appointed by the order to make the examination shall file a report thereof, in triplicate, in the court wherein the proceeding is pending. The clerk of the superior court shall forthwith make service of one copy on the agency instituting the proceeding and one copy on the party named as defendant therein and the defendant's attorney, which service shall be personal or by certified mail or statutory overnight delivery.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 8; Code 1933, § 88-708, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1995, p. 1231, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 1513, § 1/SB 56.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

31-14-7. Results of hearing; commitment to hospital or facility; dismissal of petition and release from custody; costs of transportation; review of commitment order.

(a) Upon the hearing set in the order, if the court finds that the person has active tuberculosis, is violating the rules and regulations promulgated by the department or the orders issued by the county board of health after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, presents a substantial risk of exposing other persons to an imminent danger of infection, and there is no less restrictive available alternative to involuntary treatment at a hospital or facility approved by the department for the care of tubercular patients, then the court shall issue an order committing the defendant to the custody of the sheriff of the county or the sheriff's deputies to be delivered to the designated hospital or facility, where the defendant shall be admitted for care and treatment not to exceed two years. If the court does not find that the above standards are met, then the court shall dismiss the petition and the defendant shall be released from custody if taken into custody pursuant to Code Section 31-14-5. The costs of transporting such person to the hospital or facility shall be paid out of county funds.

(b) An order for commitment shall be subject to review at the instance of either party by appeal.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, §§ 9, 10; Code 1933, §§ 88-709, 88-710, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 2; Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a comma was inserted following "regulations" near the middle of the first sentence of subsection (a).

31-14-8. Period of confinement of patients committed under chapter.

Upon commitment the patient shall be confined in a hospital or facility approved by the department for the care of tubercular patients for a period not to exceed two years unless, before the expiration of such two-year period, the designated responsible physician of the tuberculosis inpatient unit determines that the following conditions no longer exist:

(1) The patient has active tuberculosis; or

(2) The patient has active tuberculosis and there is a substantial likelihood of future noncompliance with a proposed treatment plan which will predictably lead to the development of infectious drug-resistant tuberculosis. The likelihood of noncompliance must be based upon a history of noncompliance with treatment; provided, however, that short emergency leaves in the event of death or critical illness in the family or short therapeutic leaves may be granted under conditions which would not adversely affect the public health and in accordance with rules and regulations established by the department.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 11; Ga. L. 1957, p. 271, § 1; Code 1933, § 88-711, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 3; Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 53 et seq., 64 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 28 et seq., 43.

31-14-8.1. Continuation of confinement of patient; report required; hearing.

(a) If it is necessary to continue confinement of a committed patient beyond a period of two years ordered by a court or hearing examiner or authorized under subsection (d) of this Code section, the designated responsible physician of the tuberculosis inpatient unit shall review and update the patient's treatment plan and shall prepare a report giving evidence of the necessity of such continued confinement. The report shall be prepared so as to allow sufficient time for the hearing authorized by this Code section to be conducted before the expiration of

the two-year period of confinement. The report shall specify that, based upon clinical or X-ray evidence:

(1) The patient is a person having active tuberculosis requiring continued commitment; or

(2) The patient is a person having active tuberculosis with a substantial likelihood of future noncompliance with a proposed treatment plan which will predictably lead to the development of infectious drug-resistant tuberculosis. The likelihood of noncompliance must be based upon a history of noncompliance with treatment.

(b) Such report shall be filed in the patient's medical record. A copy of the report shall be personally served on the patient along with a statement that the patient may, within 15 days after service of the report, file a request for a hearing to be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except as otherwise provided in this chapter, that the patient has a right to counsel at the hearing, that the patient may apply immediately to the superior court in the county where the committed patient is confined to have counsel appointed if the patient cannot afford counsel, and that the court will appoint counsel for the patient unless the patient indicates in writing that he or she does not desire to be represented by counsel or has made his or her own arrangements for counsel. Payment for such court appointed representation shall be made by the department. The hearing may be continued as necessary to allow the appointment of counsel.

(c) If a hearing is requested within 15 days of service of the report on the patient, the hearing examiner shall set a time and place for the hearing to be held within 15 days of the time the hearing examiner receives the request. The hearing examiner may set a hearing if a request is made later than 15 days after service of the report if good cause is shown for the delay in making the request. Notice of the hearing shall be personally served on the patient, the hospital or facility, and, when appropriate, on counsel for the patient. Such hearing shall be a full and fair hearing, as described in Code Section 31-14-3, before a hearing examiner. After such hearing, the hearing examiner may issue any order which the court is authorized to issue under Code Section 31-14-7.

(d) If a hearing is not requested within 15 days of service of the report on the patient, the department shall be authorized to continue confinement of the patient for an additional period not to exceed six months.

History. — Code 1981, § 31-14-8.1, enacted by Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56.

31-14-8.2. Appeal from orders of superior court or hearing examiner; costs; right to counsel.

Either party may appeal any order of the superior court or hearing examiner in a proceeding under this chapter. An order of the superior court may be appealed to the Court of Appeals or the Supreme Court as provided by law but shall be heard as expeditiously as possible. The appeal of an order of a hearing examiner shall be to the superior court of the county in which the proceeding was held. The review shall be conducted by the superior court without a jury and shall be confined to the record. The court, upon request, may hear oral argument and receive written briefs. The patient must pay his or her costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The parties shall retain all rights of review of any order of the superior court, the Court of Appeals, and the Supreme Court, as provided by law. The patient shall have a right to counsel on appeal or, if unable to afford counsel, shall have counsel appointed for the patient by the court. The appeal rights provided in this Code section are in addition to any other appeal rights which the parties may have.

History. — Code 1981, § 31-14-8.2, enacted by Ga. L. 1995, p. 1231, § 2; Ga. L. 2005, p. 1513, § 1/SB 56; Ga. L. 2016, p. 883, § 3-13/HB 927.

Editor's notes. — Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1(c)/HB 927, not codified by the General Assembly, provides that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Law reviews. — For article on the 2016 amendment of this Code section, see 33 Georgia St. U. L. Rev. 205 (2016).

31-14-9. Procedure for securing discharge; petition for habeas corpus.

(a) At any time after commitment and not more often than once every six months, the patient or any friend or relative having reason to believe that the patient no longer has active tuberculosis or that the patient's discharge will not endanger the public health may institute proceedings by petition in the superior court of the county wherein the confinement exists, whereupon the judge shall set the matter for a hearing to occur within 15 days requiring the person or persons to whose care the patient was committed, or their duly authorized agents, to show cause on a day certain why the patient should not be discharged. The judge shall also require that the patient be allowed the right to be examined prior to the hearing by a licensed physician of the patient's own choice and at the patient's own personal expense. There-

after all proceedings shall be conducted in the same manner as are proceedings for commitment.

(b) In addition to the above procedure for securing discharge, the patient or a friend or relative on behalf of such person may petition, as provided by law, for a writ of habeas corpus to question the cause and legality of detention and to request a court of competent jurisdiction to issue a writ for release, provided that a copy of the petition along with the proper certificate of service shall also be served upon the presiding judge of the court ordering such detention and upon the county board of health or the Department of Public Health which initiated the petition for commitment pursuant to Code Section 31-14-2, which service shall be made by certified mail or statutory overnight delivery.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 12; Code 1933, § 88-712, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1995, p. 1231, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 1513, § 1/SB 56; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable to notices delivered on or after July 1, 2000.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-14-10. Enforcement of rules and regulations by county boards of health.

The county boards of health or their duly authorized agents shall, within their respective limits, enforce rules and regulations adopted by the department for the protection of the public against active tuberculosis.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 3; Code 1933, § 88-703, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 4; Ga. L. 2005, p. 1513, § 1/SB 56.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 56 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

31-14-11. Unauthorized leave of committed person from hospital or facility.

Any person who leaves a hospital or facility approved by the department for the treatment of tuberculosis to which he or she has been committed by court order, without having been discharged by the medical staff of the tuberculosis inpatient unit or the community tuberculosis control unit, shall be taken into custody and returned thereto by the sheriff of any county where such person may be found, upon affidavit being filed with the sheriff by the designated responsible

official of the hospital or facility to which such person has been committed.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 14; Code 1933, § 88-714, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 5; Ga. L. 2005, p. 1513, § 1/SB 56.

31-14-12. Applicability of commitment provisions to persons who obey rules and regulations of department.

No person having active tuberculosis who, in his or her home or other place, obeys the rules and regulations of the department and county boards of health for the control of active tuberculosis or who voluntarily accepts care in a hospital or facility operated for the care of tuberculosis, in his or her home, or in another place and who obeys the rules and regulations of the department and completes the prescribed course of therapy for the control of active tuberculosis shall be committed as prescribed in this chapter.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 348, § 13; Code 1933, § 88-713, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 620, § 6; Ga. L. 2005, p. 1513, § 1/SB 56.

31-14-13. Order directing compliance with plan of evaluation or outpatient treatment; contempt.

(a) In lieu of the petition for commitment as authorized by Code Section 31-14-2, the county board of health or the department may petition the court for an order directing the person to comply with a plan of evaluation or outpatient treatment. The department may also petition the court for an order directing the parents, guardians, or custodians of persons under the age of 18 who have been exposed to tuberculosis to allow screening for tuberculosis by public health authorities or to provide evidence of such screening by a licensed physician. Proceedings, evidence, and hearings thereon will be in the same manner as with commitment petitions, and upon the hearing the court may dismiss the petition or order the person to comply with the screening, evaluation, or outpatient treatment plan. The court may also modify the plan prior to ordering compliance.

(b) A petition for outpatient treatment as authorized by subsection (a) of this Code section may also be initiated by a county board of health or the department where a previously hospitalized, diagnosed, or committed patient's condition no longer requires hospitalization or commitment but where protection of the public health requires continued treatment on an outpatient basis of said patient.

(c) Any person known or suspected to have tuberculosis who fails to comply with a plan of evaluation or outpatient treatment ordered

pursuant to this Code section, or any parent, guardian, or custodian of a person under the age of 18 who fails to comply with screening ordered pursuant to this Code section or who aids or abets such failure may be punished as for contempt. Contempt proceedings may be initiated by the filing of a petition by the county board of health or by the department with the superior court of the county of the patient's residence or the county where the patient may be found if a nonresident or without a fixed place of abode.

History. — Code 1981, § 31-14-13, enacted by Ga. L. 1985, p. 620, § 7; Ga. L. 2005, p. 1513, § 1/SB 56.

Editor's notes. — Former Code Section 31-14-13, relating to unlawful acts upon hospital grounds, including possession and use of alcohol and drugs, trespass, and escape was repealed by Ga. L. 1985, p. 149, § 31. The former Code section was based on Ga. L. 1964, p. 499, § 1.

31-14-14. Immunity from liability.

Any physician, peace officer, attorney, or health official, or any hospital or facility official, agent, or other person employed by a private hospital or facility or at a hospital or facility operated by the state, by a political subdivision of the state, by a county board of health, or by a hospital authority created pursuant to Article 4 of Chapter 7 of Title 31, who acts in good faith in compliance with the admission and discharge provisions of this chapter shall be immune from civil or criminal liability for his or her actions in connection with the admission of a patient to or the discharge of a patient from a hospital or facility approved by the department for the care of tubercular patients.

History. — Code 1981, § 31-14-14, enacted by Ga. L. 1995, p. 1231, § 3; Ga. L. 2005, p. 1513, § 1/SB 56.

JUDICIAL DECISIONS

Cited in Turpen v. Rabun County Bd. of Comm'rs, 245 Ga. App. 190, 537 S.E.2d 435 (2000).

CHAPTER 15

CARE AND TREATMENT OF CANCER PATIENTS

Sec.
31-15-1. Findings; declaration of purpose.
31-15-2. Establishment of program.
31-15-3. Functions of the Cancer Advisory Committee; membership; terms of office; vacancies.
31-15-4. Cancer control officer.
31-15-5. Duties of commissioner.
31-15-6. Right to benefits under other programs.

Cross references. — Cancer research program fund, § 31-12-14. Use of marijuana for treatment of cancer, § 43-34-120 et seq.

Administrative rules and regulations. — Cancer state aid program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Health Promotion, Subject 511-5-10.

RESEARCH REFERENCES

ALR. — Cancer as compensable under workers' compensation acts, 19 A.L.R.4th 639.

31-15-1. Findings; declaration of purpose.

(a) It is declared and found that one of the most serious and tragic problems facing the public health and welfare is the death of thousands of persons in this state every year from cancer, although the present state of medical arts and technology could return many of these persons to a socially productive life. Advances and discoveries in the treatment of patients suffering from cancer now allow not mere survival, but rehabilitation of these patients to their normal occupations and activities. Presently, many of these patients are dying for lack of personal financial resources to pay for the care which they need.

(b) The state recognizes its responsibilities to allow its citizens to keep their health without being pauperized and to use its resources and organization to aid in gathering and disseminating information on the treatment of cancer.

History. — Code 1933, § 88-2501a, enacted by Ga. L. 1977, p. 753, § 1.

31-15-2. Establishment of program.

The Department of Public Health shall establish a program for prevention, control, and treatment of cancer which shall include the

care of cancer patients who require lifesaving therapy but are unable to pay for such services.

History. — Code 1933, § 2502a, enacted by Ga. L. 1977, p. 753, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-15-3. Functions of the Cancer Advisory Committee; membership; terms of office; vacancies.

(a) The Governor shall appoint a Cancer Advisory Committee to advise the department in the administration of this chapter. The committee shall establish priorities and recommend relative budgets for the various purposes of this chapter as described below.

(b) The Cancer Advisory Committee shall consist of 18 members appointed by the Governor as follows:

(1) Four members representing medical schools as follows: The term of office of those two members appointed from a list of names submitted to the Governor by the deans of the medical schools located within this state, which members are serving as such on June 30, 1985, shall expire on that date and upon the appointment and qualification of the first two members appointed by the Governor in 1985 pursuant to this paragraph. On and after July 1, 1985, four membership positions on the committee shall represent the four medical schools, whether public or private, located within this state. The deans of those schools shall each submit to the Governor a list of three names and the Governor shall appoint one member from each of those four lists;

(2) Two members shall be appointed by the Governor from a list of six names submitted to him by the chief executive officers of the hospitals or cancer clinics located within Georgia which are equipped to provide modern treatment for patients suffering from cancer;

(3) Two members shall be appointed by the Governor from a list of six names submitted to him by the Medical Association of Georgia;

(4) Two members shall be appointed by the Governor from a list of six names submitted to him by the American Cancer Society, Georgia Division;

(5) The term of office of the two members appointed from the list of names submitted to the Governor by the Georgia Cancer Management Network, Inc., shall expire upon July 1, 1985, and such two membership positions shall thereafter be abolished;

(6) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia Claims Association and the Georgia Chapter of the Health Insurance Association of America;

(7) One member shall be appointed by the Governor from a list of three names submitted to him by the director of the Georgia Vocational Rehabilitation Agency;

(8) Two members shall be selected by the Governor from the general public;

(9) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia Nurses Association;

(10) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia Association of Pathologists;

(11) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia State Medical Association; and

(12) One member shall be appointed by the Governor from a list of three names submitted to him by the Georgia Pharmaceutical Association.

(c) The persons whose names are submitted to the Governor by the medical colleges, the hospitals, the Medical Association of Georgia, the Georgia State Medical Association, and the Georgia Association of Pathologists shall all be physicians licensed to practice medicine under the laws of Georgia, and the persons whose names are submitted by the Medical Association of Georgia and the Georgia State Medical Association shall all be actively engaged in the practice of medicine. The persons whose names are submitted to the Governor by the Georgia Nurses Association shall all be registered professional nurses licensed to practice nursing under the laws of Georgia. All persons whose names are submitted to the Governor by the Georgia Pharmaceutical Association shall be registered pharmacists licensed to practice pharmacy under the laws of Georgia.

(d) The Governor shall appoint the initial members for staggered terms as follows: three shall be appointed for terms to expire on December 31, 1977; three shall be appointed for terms to expire on December 31, 1978; three shall be appointed for terms to expire on December 31, 1979; and six shall be appointed for terms to expire on December 31, 1980. Thereafter, their successors shall be appointed for terms of four years, and until their successors are appointed and qualified, to begin on the expiration of the respective terms of office. In the event of a vacancy for any reason, the Governor shall fill said vacancy for the unexpired term in the same manner that other appointments are made. Those initial members added to the committee in 1985 shall be appointed for initial terms beginning July 1, 1985, and expiring December 31, 1989, and upon the appointment and qualifica-

tion of their respective successors. Thereafter, their successors shall be appointed for terms of four years and until their respective successors are appointed and qualified, such terms to begin on the expiration of the respective terms of office.

(e) The Cancer Advisory Committee shall meet as often as the commissioner deems necessary but not less than twice each year.

History. — Code 1933, § 88-2503a, enacted by Ga. L. 1977, p. 753, § 1; Ga. L. 1982, p. 833, § 2; Ga. L. 1985, p. 1186, § 1; Ga. L. 2000, p. 1137, § 3; Ga. L. 2012, p. 303, § 3/HB 1146.

31-15-4. Cancer control officer.

The commissioner shall appoint a cancer control officer. The cancer control officer shall be a physician licensed to practice medicine under Chapter 34 of Title 43 and shall be knowledgeable in the field of medicine covered by this chapter. He or she shall administer the cancer program for the Department of Public Health in compliance with this chapter. He or she shall be provided an office with clerical and administrative assistance to carry out this program.

History. — Code 1933, § 88-2504a, enacted by Ga. L. 1977, p. 753, § 1; Ga. L. 2009, p. 453, § 1-39/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-15-5. Duties of commissioner.

The commissioner, with the advice of the Cancer Advisory Committee, shall:

(1) Develop standards for determining eligibility of patients for care and treatment under this program, set standards for the equipping and staffing of cancer clinics located strategically throughout the state and so placed that patients requiring treatment will not have to travel more than 75 miles to secure such treatment. When the clinics meet such standards, they shall be certified by the department. Patients treated at uncertified cancer clinics shall not be eligible for state aid for reimbursement;

(2) In the event that federal grant programs become available for patient care, the commissioner may allocate state matching funds in whatever department of state government they may be administered so as to maximize the total funds available and to obtain funding needed by the specific patient population which is declared eligible. These programs include but are not restricted to Medicaid, crippled children's services, and vocational rehabilitation;

(3) Extend financial aid to persons suffering from cancer to enable them to obtain the medical, nursing, pharmaceutical, and technical services necessary in caring for such disease. Criteria and procedures for financial aid will be developed by the Division of Physical Health in accordance with the principle that pauperization of a functional family unit will subvert the rehabilitative purposes of this program and will be more costly to the state in the long run;

(4) Assist in the development and expansion, by grant or by contract, of programs for the care and treatment of persons suffering from cancer so that the most efficient and effective treatment may be offered to the patients certified as eligible;

(5) Assist in the development of programs for the prevention of cancer;

(6) Assist in the development and execution of programs for the early detection of cancer, such as breast self-examination for breast cancer and the Papanicolaou test for cancer of the cervix;

(7) Institute and support, directly or through health organizations such as the American Cancer Society and the Georgia Cancer Management Network, educational programs for physicians, providers of health care, and the public concerning cancer, including the dissemination of information regarding prevention, early detection, and treatment; and

(8) Support a state-wide registry of all patients treated in certified cancer clinics in order to evaluate the nature and extent of the incidence of cancer and the effectiveness of treatment.

History. — Code 1933, § 88-2505a, enacted by Ga. L. 1977, p. 753, § 1.

31-15-6. Right to benefits under other programs.

Nothing in this chapter shall be construed to exclude patients with cancer from the benefits of any program of state or federal aid for which they might otherwise qualify.

History. — Code 1933, § 88-2506a, enacted by Ga. L. 1977, p. 753, § 1.

CHAPTER 15A

BONE MASS MEASUREMENT COVERAGE

Sec.
31-15A-1. Short title.
31-15A-2. Definitions.
31-15A-3. Insurance benefit plan shall provide coverage for bone mass measurement; education.

Editor's notes. — Ga. L. 1998, p. 877, § 1, not codified by the General Assembly, provides that: "(1) Osteoporosis affects 28 million Americans and each year results in 1.5 million fractures of the hip, spine, wrist, and other bones, costing the nation $14 billion annually; (2) Osteoporosis progresses silently, in many cases undiagnosed until a fracture occurs, and once a fracture occurs, the disease is already advanced, and the likelihood is high that another fracture will occur; (3) One in two women and one in eight men 50 years of age and over will suffer a fracture due to osteoporosis; (4) Since osteoporosis progresses silently and currently has no cure, prevention, early diagnosis, and treatment are key to reducing the prevalence and devastation of this disease; (5) Medical experts agree that osteoporosis is preventable and treatable; however, once the disease progresses to the point of fracture, its associated consequences may lead to disability and institutionalization and may exact a heavy toll on quality of life; (6) Given the current focus on reducing unnecessary health care expenditures through the use of health promotion and disease prevention programs, it is cost effective to make available coverage of services such as bone mass measurement, which will lead to early diagnosis, prevention of fracture, and timely treatment of osteoporosis; (7) Bone mass measurement is a reliable way to detect the presence of low bone mass and to ascertain the extent of bone loss to help assess the individual's risk for fracture, which aids in selecting appropriate therapies and interventions, while ordinary X-rays are not sensitive enough to detect osteoporosis until 25-40 percent of bone mass has been lost and the disease is advanced; (8) Current available technologies for measuring bone mass or bone loss include single and dual energy X-ray absorptiometry, computed tomography, radiographic absorptiometry, and biochemical markers, and other technologies for determining bone mass or bone loss are under investigation and may become scientifically proven technologies in the future; and (9) Scientifically proven technologies for detecting bone loss and other services related to the prevention, diagnosis, and treatment of osteoporosis can be used effectively to reduce the pain and financial burden that osteoporosis inflicts upon its victims."

31-15A-1. Short title.

This chapter shall be known and may be cited as the "Bone Mass Measurement Coverage Act."

History. — Code 1981, § 31-15A-1, enacted by Ga. L. 1998, p. 877, § 2.

31-15A-2. Definitions.

As used in this chapter, the term:

(1) "Accident and sickness insurance benefit plan, policy, or contract" has the meaning provided by paragraph (1) of subsection (a) of Code Section 33-24-28.1, provided that such term shall not include a limited benefit insurance policy as defined in paragraph (4) of subsection (f) of Code Section 33-30-12.

(2) "Bone mass measurement" means a radiologic or radioisotopic procedure or other technologies approved by the United States Food and Drug Administration and performed on an individual for the purpose of identifying bone mass or detecting bone loss.

(3) "Qualified individual" means an:

(A) Estrogen-deficient woman or individual at clinical risk of osteoporosis as determined directly or indirectly by a physician and who is considering treatment;

(B) Individual with osteoporotic vertebral abnormalities;

(C) Individual receiving long-term glucocorticoid (steroid) therapy;

(D) Individual with primary hyperparathyroidism; or

(E) Individual being monitored directly or indirectly by a physician to assess the response to or efficacy of approved osteoporosis drug therapies.

History. — Code 1981, § 31-15A-2, enacted by Ga. L. 1998, p. 877, § 2.

31-15A-3. Insurance benefit plan shall provide coverage for bone mass measurement; education.

(a) Every group or individual accident or sickness insurance benefit plan, policy, or contract that provides hospital, medical, or surgical coverage that is issued, amended, delivered, or renewed in this state on or after July 1, 1998, shall make available as a part of the plan, policy, or contract or as an optional endorsement to the plan, policy, or contract coverage for qualified individuals for reimbursement for scientifically proven bone mass measurement (bone density testing) for the prevention, diagnosis, and treatment of osteoporosis.

(b) Every person or entity providing an accident or sickness insurance benefit plan, policy, or contract which is subject to the provisions of subsection (a) of this Code section shall identify and use scientifically accurate educational materials to increase patient awareness and knowledge of osteoporosis and encourage the prevention and treatment of osteoporosis.

History. — Code 1981, § 31-15A-3, enacted by Ga. L. 1998, p. 877, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, commas were inserted preceding the phrase "or contract" in two places in subsection (a).

CHAPTER 16

CARE AND TREATMENT OF CHRONIC RENAL DISEASE PATIENTS

Sec.
31-16-1. Findings; declaration of purpose.
31-16-2. Establishment of program.
31-16-3. Functions of the Kidney Disease Advisory Committee; membership; terms of office; vacancies; compensation and reimbursement of expenses; annual reporting.
31-16-4. Staff.
31-16-5. Duties of commissioner.
31-16-6. Right to benefits under other programs.
31-16-7. Reuse of kidney dialyzer; limitation; authority; failure to comply.
31-16-8. Task force on kidney dialysis centers; establishment; membership; meetings; report; abolition [Repealed].

31-16-1. Findings; declaration of purpose.

(a) It is declared and found that one of the most serious and tragic problems facing the public health and welfare is the death of hundreds of persons in this state every year from chronic renal disease, although the present state of medical arts and technology could return these persons to a socially productive life. Advances and discoveries in the treatment of patients suffering from chronic renal disease now allow not mere survival but rehabilitation of these patients to their normal occupations and activities. Presently, these patients are dying for lack of personal financial resources to pay for the expensive equipment and care which they need.

(b) The state recognizes its responsibilities to allow its citizens to keep their health without being pauperized and to use its resources and organization to aid in gathering and disseminating information on the treatment of chronic renal disease. It is believed that these programs will, by making treatment of chronic renal disease easily available, steadily lower the cost of such treatment.

History. — Code 1933, § 88-3001, enacted by Ga. L. 1972, p. 708, § 1.

31-16-2. Establishment of program.

The Department of Public Health shall establish a program for the prevention, control, and treatment of kidney disease which shall include the care of patients suffering from chronic kidney failure who require lifesaving therapy but are unable to pay for such services on a continuing basis.

History. — Code 1933, § 88-3002, enacted by Ga. L. 1972, p. 708, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-16-3. Functions of the Kidney Disease Advisory Committee; membership; terms of office; vacancies; compensation and reimbursement of expenses; annual reporting.

(a) The commissioner of public health shall appoint a Kidney Disease Advisory Committee, hereinafter referred to as KDAC, to advise the department in the administration of this chapter. The KDAC shall recommend priorities and relative budgets for the various purposes of this chapter as described below.

(b) The KDAC shall consist of 15 members appointed by the commissioner as follows:

(1) Four members shall be appointed by the commissioner from a list of eight names submitted to him by the presidents of the medical colleges located within Georgia, both public and private, and at least one such member shall be appointed from each of the medical colleges located within Georgia;

(2) Two members shall be appointed by the commissioner from a list of four names submitted to him by the chief executive officers of the hospitals located within Georgia which provide chronic dialysis and kidney transplantation services;

(3) One member shall be appointed by the commissioner from a list of two names submitted to him by the Medical Association of Georgia, and one member shall be appointed by the commissioner from a list of two names submitted to him by the Georgia State Medical Association;

(4) One member shall be appointed by the commissioner from a list of two names submitted to him by the Kidney Foundation of Georgia;

(5) One member shall be appointed by the commissioner from a list of two names submitted to him by the Georgia Claims Association and the Health Insurance Council;

(6) One member shall be appointed by the commissioner from a list of two names submitted to him by the director of the Georgia Vocational Rehabilitation Agency; and

(7) Four members shall be selected by the commissioner from the general public.

(c) The persons whose names are submitted to the commissioner by the medical colleges, the hospitals, the Medical Association of Georgia,

and the Georgia State Medical Association shall all be physicians licensed to practice medicine under the laws of Georgia, and the persons whose names are submitted by the Medical Association of Georgia shall be actively engaged in the practice of medicine.

(d) The commissioner shall appoint members for terms such that the terms of four members shall expire each year, except that every fourth year the terms of three members shall expire, in such manner that after the initial terms all members will serve for terms of four years and until their successors are elected and qualified. In making initial appointments, the commissioner shall adjust initial terms so as to achieve the staggered terms specified by the preceding sentence. In the event of a vacancy for any reason, the commissioner shall fill said vacancy for the unexpired term in the same manner that other appointments are made.

(e) The KDAC shall meet as often as the commissioner deems necessary but not less than twice each year. The members of the KDAC shall receive no compensation for their services but shall be reimbursed for actual and necessary expenses incurred by them in carrying out their duties as members thereof.

(f) The KDAC shall prepare and submit a complete and detailed report no later than October 1, 2019, and annually thereafter, to the Office of Health Strategy and Coordination concerning the impact of the program established pursuant to Code Section 31-16-2 on the treatment of chronic renal disease and the cost of such treatment.

History. — Code 1933, § 88-3003, enacted by Ga. L. 1972, p. 708, § 1; Ga. L. 1982, p. 833, § 2; Ga. L. 1985, p. 1413, § 1; Ga. L. 2000, p. 1137, § 3; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2012, p. 303, § 3/HB 1146; Ga. L. 2019, p. 148, § 2-12/HB 186.

The 2019 amendment, effective July 1, 2019, added subsection (f).

Editor's notes. — Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-16-4. Staff.

The commissioner shall provide staff to carry out administration of this program including, but not limited to, consultant physicians, administrative assistants, and clerical support.

History. — Code 1981, § 31-16-4, enacted by Ga. L. 1985, p. 1413, § 1.

Editor's notes. — Ga. L. 1985, p. 1413, § 1, effective April 10, 1985, repealed the former version of this Code section, relating to the appointment of a kidney disease control officer, and enacted the present Code section. The former Code section was based on Ga. L. 1972, p. 708, § 1.

31-16-5. Duties of commissioner.

The commissioner, with the advice of the KDAC, shall:

(1) Develop standards for determining eligibility of patients for care and treatment under this program and set physical and medical standards for the operation of dialysis and kidney transplantation centers. When such centers meet the standards, they shall be certified by the department. Patients treated at uncertified centers shall not be eligible for state aid for their treatment; and

(2) Extend financial aid to persons suffering from chronic renal diseases to enable them to obtain the medical, nursing, pharmaceutical, and technical services necessary in caring for such diseases, including the provision of home dialysis equipment or expenses in obtaining organs for transplantation, or both. Criteria and procedures for financial aid will be developed by the department.

History. — Code 1933, § 88-3005, enacted by Ga. L. 1972, p. 708, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 1985, p. 1413, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 70A Am. Jur. 2d, Social Security and Medicare, §§ 450, 451.

31-16-6. Right to benefits under other programs.

Nothing in this chapter shall be construed to exclude patients with kidney disease from the benefits of any program of state or federal aid for which they might otherwise qualify.

History. — Code 1933, § 88-3006, enacted by Ga. L. 1972, p. 708, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 70A Am. Jur. 2d, Social Security and Medicare, §§ 450, 451.

31-16-7. Reuse of kidney dialyzer; limitation; authority; failure to comply.

(a) The physician and that physician's patient retain the discretion to determine whether or not a kidney dialyzer should be reused. No licensed kidney dialysis clinic or provider of kidney dialysis services which is certificated by the state Department of Community Health may interfere with the exercise of that discretion by:

(1) Requiring the reuse of such dialyzer over the objection of that physician and patient; or

(2) Discriminating against a physician specializing in the practice of nephrology by prohibiting that physician from practicing in such clinic or performing dialysis services for such provider if that discrimination is based upon that physician's refusal to reuse a dialyzer and that refusal is based on the patient's informed consent.

(b) A provider of kidney dialysis services who is required to comply with subsection (a) of this Code section but who does not so comply shall have no claim or cause of action for reimbursement for those services which were rendered without that compliance.

History. — Code 1981, § 31-16-7, enacted by Ga. L. 1988, p. 1515, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 1999, p. 296, § 22.

31-16-8. Task force on kidney dialysis centers; establishment; membership; meetings; report; abolition.

Repealed by Ga. L. 1988, p. 1515, § 2, effective December 31, 1988.

Editor's notes. — This Code section was enacted by Ga. L. 1988, p. 1515, § 2, and was repealed by its own terms effective December 31, 1988.

CHAPTER 17

CONTROL OF VENEREAL DISEASE

Sec.
31-17-1. Enumeration of diseases deemed dangerous to public health.
31-17-2. Report of diagnosis or treatment to health authorities.
31-17-3. Examination and treatment by health authorities.
31-17-4. Serologic tests of pregnant women.
31-17-4.1. Chlamydia screening test.
31-17-4.2. HIV and Syphilis Pregnancy Screening.
31-17-5. Prophylactic treatment at childbirth.
31-17-6. Regulation of laboratories.
31-17-7. Consent of minor to medical or surgical care or services; informing spouse, parent, custodian, or guardian.
31-17-7.1. Expedited partner therapy.
31-17-8. Penalty.

Administrative rules and regulations. — Reporting of venereal diseases, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Disease Surveillance and Control, Subject 511-2-4.

Serologic test for syphilis for pregnant women, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Health Promotion, Subject 511-5-4.

Law reviews. — For note, "'Rabbit' Hunting in the Supreme Court: The Constitutionality of State Prohibitions of Sex Toy Sales Following Lawrence v. Texas," see 44 Ga. L. Rev. 245 (2009).

For comment, "The Pursuit of Happiness (and Sexual Freedom): Lawrence v. Texas, Morality Legislation & the Sandy Springs Obscenity Statute," see 66 Mercer L. Rev. 1087 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Screening of convicted prostitutes for HTLV-III/LAV (AIDS) virus. See 1986 Op. Att'y Gen. No. 86-19.

RESEARCH REFERENCES

ALR. — Compulsory examination for venereal disease, 22 A.L.R. 1189.

Tort liability for infliction of venereal disease, 40 A.L.R.4th 1089.

31-17-1. Enumeration of diseases deemed dangerous to public health.

Syphilis, gonorrhea, and chancroid, hereinafter referred to as venereal diseases, are declared to be contagious, infectious, communicable, and dangerous to the public health.

History. — Ga. L. 1918, p. 275, § 1; Code 1933, § 88-501; Code 1933, § 88-1601, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Genital herpes. — Genital herpes is a contagious venereal disease even though it is not included in O.C.G.A. § 31-17-1. Long v. Adams, 175 Ga. App. 538, 333 S.E.2d 852 (1985).

Cited in State v. Morrow, 175 Ga. App. 743, 334 S.E.2d 344 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 24.

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 A.L.R. 421.

31-17-2. Report of diagnosis or treatment to health authorities.

Any physician or other person who makes a diagnosis of or treats a case of venereal disease and any superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is discovered a case of venereal disease shall make report of such case to the health authorities in such form and manner as the Department of Public Health shall direct.

History. — Ga. L. 1918, p. 275, § 2; Code 1933, § 88-502; Code 1933, § 88-1602, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 25.

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 A.L.R. 421.

31-17-3. Examination and treatment by health authorities.

The authorized agent or agents of the Department of Public Health and county boards of health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examination of persons infected or suspected of being infected with venereal disease; to require persons infected with venereal disease to report for treatment to a physician licensed to practice medicine under Chapter 34 of Title 43 and to continue treatment until cured, or to submit to treatment provided at public expense; and to isolate persons infected or reasonably suspected of being infected with venereal disease. Law enforcement authorities of the jurisdiction wherein any such person so

infected or suspected of being infected is located shall offer such assistance, including restraint and arrest, as shall be necessary to assure examination and treatment in accordance with this chapter.

History. — Ga. L. 1918, p. 275, § 3; Code 1933, § 88-503; Code 1933, § 88-1604, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — Blood test recommendation for persons applying for marriage license, § 19-3-40.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

Cited in State v. Morrow, 175 Ga. App. 743, 334 S.E.2d 344 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Habeas Corpus and Postconviction Remedies, § 70. 39 Am. Jur. 2d, Health, § 63.

C.J.S. — 16D C.J.S., Constitutional Law, § 2074. 39A C.J.S., Health and Environment, § 29 et seq.

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 A.L.R. 421.

31-17-4. Serologic tests of pregnant women.

The department may require every pregnant woman to submit to a standard serologic test, as defined by the department, and may require any person attending or giving prenatal care to such woman to take or cause to be taken a blood specimen for use in such test. Such specimens shall be submitted for laboratory testing in the manner prescribed by the department; and all laboratories conducting such tests shall comply with the rules, regulations, and reporting requirements prescribed therefor by the department.

History. — Ga. L. 1943, p. 599, §§ 1, 2; Code 1933, § 88-1606, enacted by Ga. L. 1964, p. 499, § 1.

Administrative rules and regulations. — Serologic test for syphilis for pregnant women, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Health Promotion, Subject 511-5-4.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 A.L.R. 421.

31-17-4.1. Chlamydia screening test.

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

(1) "Chlamydia screening test" means any laboratory test of the urogenital tract which specifically detects for infection by one or more agents of chlamydia trachomatis and which test is approved for such purposes by the federal Food and Drug Administration.

(2) "Policy" means any benefit plan, contract, or policy except a disability income policy, specified disease policy, or hospital indemnity policy.

(b)(1) Every insurer authorized to issue an individual or group accident and sickness insurance policy in this state which includes coverage for any female shall include as part of or as a required endorsement to each such policy which is issued, delivered, issued for delivery, or renewed on or after July 1, 1998, coverage for one annual chlamydia screening test for those covered females who are not more than 29 years old.

(2) The coverage required under paragraph (1) of this subsection may be subject to such exclusions, reductions, or other limitations as to coverages, deductibles, or coinsurance provisions as may be approved by the Commissioner of Insurance.

(3) Nothing in this subsection shall be construed to prohibit the issuance of accident and sickness insurance policies which provide benefits greater than or more favorable to the insured than those required by paragraph (1) of this subsection.

(4) The provisions of this subsection shall apply to accident and sickness insurance policies issued by a fraternal benefit society, a health care plan, a health maintenance organization, or any similar entity.

(5) Nothing contained in this Code section shall be deemed to prohibit the payment of different levels of benefits or having differences in coinsurance percentages applicable to benefit levels for services provided by preferred and nonpreferred providers as otherwise authorized under the provisions of Article 2 of Chapter 30 of Title 33, relating to preferred provider arrangements.

(c)(1) A contract executed or renewed on or after July 1, 1998, which provides for financing and delivery of health care services through a managed care plan, other than a dental plan, shall provide coverage for one annual chlamydia screening test for each female who is covered under such contract and who is not more than 29 years of age. Such coverage may be subject to such exclusions, reductions, or other

limitations as to coverages, deductibles, or copayment provisions as may be approved by the Commissioner of Insurance.

(2) Nothing in this subsection shall be construed to prohibit any managed care plan contract from providing benefits greater than or more favorable to the covered females than those required by paragraph (1) of this subsection.

(d) Code Section 31-17-8 shall not apply to this Code section.

(e) This Code section shall be subject to rules and regulations which shall be promulgated by the Commissioner of Insurance regarding notice and enforcement.

History. — Code 1981, § 31-17-4.1, enacted by Ga. L. 1998, p. 867, § 2; Ga. L. 2017, p. 164, § 56/HB 127.

The 2017 amendment, effective July 1, 2017, in paragraph (b)(4), substituted "this subsection" for "subsection (b) of this Code section" near the beginning and deleted "a nonprofit hospital service corporation, a nonprofit medical service corporation," preceding "a health care" near the end.

Editor's notes. — Ga. L. 1998, p. 867, § 1, not codified by the General Assembly, provides that: "The General Assembly finds that chlamydia is a sexually transmitted disease which may cause serious complications in persons infected with it, including pelvic inflammatory disease, infertility, and ectopic pregnancy. Pregnant women infected with chlamydia may suffer from symptoms such as stillbirths, low birth weight babies, and other serious physical and mental complications for their infants. Chlamydia is often asymptomatic in women and cannot be detected except with special, though inexpensive, screening tests. Cure of chlamydia is usually both easy and inexpensive. The General Assembly further finds that requiring health care insurance and managed care plan coverage of annual chlamydia screening tests for females in the age group most likely to be infected with chlamydia will encourage the testing and treatment needed to detect and cure this destructive disease and result in a marked improvement in the general health of the citizens of this state and the savings of both public and private moneys being spent to deal with the serious consequences of this disease."

Law reviews. — For review of 1998 legislation relating to health, see 15 Ga. St. U. L. Rev. 130 (1998).

31-17-4.2. HIV and Syphilis Pregnancy Screening.

(a) This Code section shall be known and may be cited as the "Georgia HIV/Syphilis Pregnancy Screening Act of 2015."

(b) Every physician and health care provider who assumes responsibility for the prenatal care of a pregnant woman during gestation and at delivery shall be required to test such pregnant woman for HIV and syphilis except in cases where the woman refuses the testing. Additionally, every physician and health care provider who provides prenatal care of a pregnant woman during the third trimester of gestation shall offer to test such pregnant woman for HIV and syphilis at the time of first examination during that trimester or as soon as possible thereafter, regardless of whether such testing was performed during the first two trimesters of her pregnancy.

(c) If at the time of delivery there is no written evidence that an HIV test or a syphilis test has been performed, the physician or other health care provider in attendance at the delivery shall order that a test for HIV, syphilis, or both be administered at the time of the delivery except in cases where the woman refuses the testing; provided, however, that if available documentation indicates that a test for HIV and syphilis was already performed during the third trimester of her pregnancy in accordance with subsection (b) of this Code section, and the woman does not disclose when questioned any activities posing a risk for infection with HIV or syphilis occurring more recently than would have been detected by such test, the physician or health care provider in attendance at the delivery is not required to order such additional test.

(d) The woman shall be notified of the test to be conducted and shall have the opportunity to refuse the test. A pregnant woman shall submit to an HIV test and a syphilis test pursuant to this Code section unless she specifically refuses. If the woman tests positive for HIV or syphilis, counseling services provided by the Department of Public Health shall be made available to her and she shall be referred to appropriate medical care providers for herself and her child.

(e) If for any reason the pregnant woman is not tested for HIV and syphilis, that fact shall be recorded in the patient's records, which, if based upon the refusal of the patient, shall relieve the physician or other health care provider of any other responsibility under this Code section.

(f) The Department of Public Health shall be authorized to promulgate rules and regulations for the purpose of administering the requirements under this Code section.

History. — Code 1981, § 31-17-4.2, enacted by Ga. L. 2007, p. 173, § 1/HB 429; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2015, p. 1346, § 1/HB 436; Ga. L. 2016, p. 752, § 1/HB 1058.

Cross references. — Control of HIV, T. 31, C. 17A. HIV tests, generally, § 31-22-9.2.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-17-5. Prophylactic treatment at childbirth.

It shall be the duty of any person who shall be in attendance on any childbirth to apply to the child such prophylactic treatment as may be prescribed by the department to prevent blindness from gonococcus infection and otherwise to comply with such rules, regulations, and reporting requirements as shall be prescribed by the department.

History. — Code 1933, § 88-1605, enacted by Ga. L. 1964, p. 499, § 1.

Administrative rules and regulations. — Prophylactic treatment of the eyes of the newborn, Official Compilation of the Rules and Regulations of the State

of Georgia, Department of Public Health, Health Promotion, Subject 511-5-3.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 A.L.R. 421.

31-17-6. Regulation of laboratories.

All laboratories conducting tests for venereal diseases shall comply with the rules, regulations, and reporting requirements prescribed therefor by the department.

History. — Code 1933, § 88-1603, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 28 et seq., 43.

31-17-7. Consent of minor to medical or surgical care or services; informing spouse, parent, custodian, or guardian.

(a) The consent to the provision of medical or surgical care or services by a hospital or public clinic or to the performance of medical or surgical care or services by a physician licensed to practice medicine and surgery, when such consent is given by a minor who is or professes to be afflicted with a venereal disease or at risk for HIV, shall be as valid and binding as if the minor had achieved his or her majority, provided that any such treatment shall involve procedures and therapy related to conditions or illnesses arising out of the venereal disease or HIV diagnosis which gave rise to the consent authorized under this Code section. Any such consent shall not be subject to later disaffirmation by reason of minority. The consent of no other person or persons, including but not limited to a spouse, parent, custodian, or guardian, shall be necessary in order to authorize the provision to such minor of such medical or surgical care or services as are described in this subsection.

(b) Upon the advice and direction of a treating physician or, if more than one, of any one of them, a member of the medical staff of a hospital or public clinic or a physician licensed to practice medicine and surgery may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor as to the treatment given or needed. Such information may be given to or withheld from the spouse, parent, custodian, or guardian without the consent of the minor patient and

even over the express refusal of the minor patient to the providing of such information.

History. — Ga. L. 1971, p. 337, §§ 2, 3; Ga. L. 2016, p. 752, § 2/HB 1058.

Cross references. — Consent for surgical or medical treatment generally, T. 31, C. 9.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 65.

31-17-7.1. Expedited partner therapy.

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

(1) "Expedited partner therapy" means the practice of prescribing, ordering, or dispensing antibiotic drugs to the sexual partner or partners of a patient clinically diagnosed with chlamydia or gonorrhea without physical examination of such partner or partners.

(2) "Licensed practitioner" means a physician licensed to practice medicine in this state, an advanced practice registered nurse or physician assistant acting pursuant to delegated authority by a physician in accordance with Code Section 43-34-23 or 43-34-25 or subsection (e.1) of Code Section 43-34-103, or a registered professional nurse employed by the department or a county board of health.

(b) A licensed practitioner who diagnoses a patient to be infected with chlamydia or gonorrhea may utilize expedited partner therapy in accordance with any rules and regulations established by the department for the management of the health of such patient's sexual partner or partners.

(c) Any licensed practitioner who, reasonably and in good faith, prescribes antibiotic drugs for expedited partner therapy in accordance with this Code section and any rules and regulations established by the department shall not be subject to civil or criminal liability and shall not be deemed to have engaged in unprofessional conduct by such practitioner's licensing board.

(d) Any pharmacist licensed in this state who, reasonably and in good faith, dispenses antibiotic drugs pursuant to a prescription for expedited partner therapy in accordance with this Code section and any rules and regulations established by the department shall not be subject to civil or criminal liability and shall not be deemed to have engaged in unprofessional conduct by the State Board of Pharmacy.

(e) The department shall be authorized to promulgate rules and regulations to implement the provisions of this Code section.

History. — Code 1981, § 31-17-7.1, enacted by Ga. L. 2017, p. 764, § 3-2/SB 193.

Effective date. — This Code section became effective July 1, 2017.

Editor's notes. — Ga. L. 2017, p. 764, § 1-1/SB 193, not codified by the General Assembly, provides that: "The General Assembly finds that:

"(1) Untreated chlamydial infection has been linked to problems during pregnancy, including preterm labor, premature rupture of membranes, and low birth weight. The newborn may also become infected during delivery as the baby passes through the birth canal. Exposed newborns can develop eye and lung infections; and

"(2) Untreated gonococcal infection in pregnancy has been linked to miscarriages, premature birth and low birth weight, premature rupture of membranes, and chorioamnionitis. Gonorrhea can also infect an infant during delivery as the infant passes through the birth canal. If untreated, infants can develop eye infections."

31-17-8. Penalty.

Any person who violates any provision of this chapter or any rule or regulation promulgated under this chapter shall be guilty of a misdemeanor.

History. — Code 1933, § 88-1607, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statutes, ordinances, and regulations concerning the prevention and cure of venereal diseases, 127 A.L.R. 421.

CHAPTER 17A

CONTROL OF HIV

Sec.
31-17A-1. HIV deemed dangerous to public health.
31-17A-2. Examination of infected persons; administration of HIV test.
31-17A-3. Refusal to consent to test; procedure.
Sec.
31-17A-4. (For effective date, see note.) Pilot program for preexposure prophylaxis drug assistance or services.

Cross references. — Child committing delinquent act constituting AIDS transmission crime including testing and reporting, § 15-11-603. AIDS transmitting crimes and required reporting, § 17-10-15. Confidential nature of AIDS information, § 24-12-20. Disclosure of AIDS confidential information, § 24-12-21. Methods for selection of blood donors and collection of blood, § 31-22-5. HIV tests, §§ 31-22-9.1, 31-22-9.2.

Editor's notes. — Ga. L. 1988, p. 1799, § 1, not codified by the General Assembly, provides: "The General Assembly finds that Acquired Immunodeficiency Syndrome (AIDS) and its causative agent, including Human Immunodeficiency Virus (HIV), pose a grave threat to the health, safety, and welfare of the people of this state. In the absence of any effective vaccination or treatment for this disease, it threatens almost certain death to all who contract it. The disease is largely transmitted through sexual contacts and intravenous drug use, not through casual contact, and, while deadly, is therefore preventable. The key component of the fight against AIDS is education. Through public education and counseling our citizens can learn how the disease is transmitted and, thus, how to protect themselves and prevent its spread. The Department of Human Resources is encouraged to continue its efforts to educate all Georgians about the disease, its causative agent, and its means of transmission. In addition, voluntary testing should be encouraged for anyone who feels at risk of infection. While education, counseling, and voluntary testing are vital to the elimination of this epidemic, other measures are needed to protect the health of our citizens, and it is the intention of the General Assembly to enact such measures in the exercise of its police powers in order to deal with AIDS and HIV infection."

Administrative rules and regulations. — Acquired immunodeficiency syndrome, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Disease Surveillance and Control, Subject 511-2-5.

Law reviews. — For note, "'Rabbit' Hunting in the Supreme Court: The Constitutionality of State Prohibitions of Sex Toy Sales Following Lawrence v. Texas," see 44 Ga. L. Rev. 245 (2009).

For comment, "The Pursuit of Happiness (and Sexual Freedom): Lawrence v. Texas, Morality Legislation & the Sandy Springs Obscenity Statute," see 66 Mercer L. Rev. 1087 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 63.

C.J.S. — 39A C.J.S., Health and Environment, § 28 et seq.

31-17A-1. HIV deemed dangerous to public health.

(a) Any term used in this chapter and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) HIV and the degenerative diseases associated with it are declared to be contagious, infectious, communicable, and extremely dangerous to the public health.

History. — Code 1981, § 31-17A-1, enacted by Ga. L. 1988, p. 1799, § 7.

31-17A-2. Examination of infected persons; administration of HIV test.

The authorized agent or agents of the Department of Public Health are directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations of persons infected or suspected of being infected with HIV and to administer an HIV test with the consent of the person being tested. In the event the person infected or suspected of being infected with HIV refuses to consent to the administration of an HIV test, the authorized agent or agents of the Department of Public Health are authorized to petition the court for an order authorizing the administration of an HIV test pursuant to the procedure set forth in Code Section 31-17A-3.

History. — Code 1981, § 31-17A-2, enacted by Ga. L. 1988, p. 1799, § 7; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Damage action for HIV testing without consent of person tested, 77 A.L.R.5th 541.

31-17A-3. Refusal to consent to test; procedure.

(a) If a person refuses to consent to an HIV test, as provided in Code Section 31-17A-2, the Department of Public Health may file a civil complaint with the superior court of the county of the residence of the person refusing the test. The complaint shall allege with specificity the basis for the allegations which the department believes support the conclusion that the person is infected with HIV, as well as the scope, nature, and threat to the public health created thereby, and the proposed plan to be adopted to protect the public health in the event the court orders the administration of the HIV test and the person is found

to be an HIV infected person. The person against whom the complaint is filed shall be represented by counsel, and, in the event the person against whom the complaint is filed cannot afford counsel, counsel shall be appointed by the court.

(b) The superior court shall hear the complaint on an expedited basis without a jury. All proceedings before the court shall be sealed.

(c) If after consideration of the evidence, the court finds clear and convincing evidence that the person is reasonably likely to be infected with HIV and that there is a compelling need to protect the public health, the court may order the person to submit to an HIV test, shall retain jurisdiction to render such orders as are appropriate to effectuate that order, and, in the event the person so tested is determined to be infected with HIV, to require such procedures to protect the public health consistent with the least restrictive alternative which is available within the limits of state funds specifically appropriated therefor.

History. — Code 1981, § 31-17A-3, enacted by Ga. L. 1988, p. 1799, § 7; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-17A-4. (For effective date, see note.) Pilot program for preexposure prophylaxis drug assistance or services.

(a) The department shall conduct a three-year pilot program for the purpose of providing preexposure prophylaxis drug assistance or services to persons who have tested negative for the HIV infection but who have risk factors that expose them to HIV. The pilot program shall be conducted in counties identified by the federal Centers for Disease Control and Prevention as at risk of outbreaks of HIV as a result of a high rate of opioid related use or in such other counties as determined by the department. In designing the pilot program, the department may obtain advisement and consultation from county health departments in counties in this state that have an existing preexposure prophylaxis drug assistance program or related services.

(b) The pilot program shall provide assistance for preexposure prophylaxis medications approved by the federal Food and Drug Administration and for medical, laboratory, and outreach costs incurred in treatment. The department shall establish benchmark data at the beginning of the pilot program which shall be compared to data at the end of such pilot program to measure the effectiveness of such program. Participants in the pilot program shall be subject to clinical guidelines established by the department consistent with guidance from the federal Centers for Disease Control and Prevention, which may include, but not be limited to, regular HIV testing, education information,

sexually transmitted infection testing, and supportive services. Education information may be provided in writing, orally, or both.

(c) The department shall be authorized to solicit and accept grants of funding or in-kind services for use in conducting the pilot program.

(d) The department is authorized to establish such rules and regulations as may be necessary to implement the pilot program.

(e) No later than December 31, 2022, the department shall submit a detailed written report on the implementation and effectiveness of the pilot program to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of the House Committee on Health and Human Services and the Senate Health and Human Services Committee. Such report shall also include recommendations as to expansion of the pilot program state-wide.

History. — Code 1981, § 31-17A-4, enacted by Ga. L. 2019, p. 199, § 1/HB 290.

Delayed effective date. — Ga. L. 2019, p. 199, § 2/HB 290, not codified by the General Assembly, provides that this Code section becomes effective only when funds are specifically appropriated for purposes of the Act in an Appropriations Act making specific reference to that Act. Funds were not appropriated during the 2019 session of the General Assembly.

CHAPTER 18

REGISTRY FOR TRAUMATIC BRAIN AND SPINAL CORD INJURIES

Sec.
31-18-1. Declaration of policy.
31-18-2. Definitions.
31-18-3. Reporting procedures.
31-18-4. Duties of commission.

Cross references. — Brain and Spinal Injury Trust Fund, Ga. Const. 1983, Art. III, Sec. IX, Para. VI(k).

Administrative rules and regulations. — Traumatic brain injury facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-71.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Carbon Monoxide Brain Damage, 22 POF2d 135.

Brain Injuries Due to Trauma, 30 POF2d 95.

Proof of Paralysis, 67 POF3d 1.

Traumatic Brain Injuries, 72 POF3d 363.

31-18-1. Declaration of policy.

It is the intent of the General Assembly to create a state-wide central registry for traumatic brain and spinal cord injuries to ensure the registration of all persons with traumatic brain or spinal cord injuries in order that all such persons might obtain information about rehabilitative, independent living, and other services or goods provided by existing state agencies, departments, other organizations, and individuals.

History. — Code 1933, § 88-3401, enacted by Ga. L. 1980, p. 1245, § 1; Ga. L. 1985, p. 871, § 1; Ga. L. 1986, p. 10, § 31; Ga. L. 2006, p. 175, § 1/SB 208.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "central registry for traumatic brain and spinal cord injuries" was substituted for "Central Registry for Traumatic Brain and Spinal Injuries".

31-18-2. Definitions.

As used in this chapter, the term:

(1) "Brain injury" means a traumatic injury to the brain (cranio-cerebral head trauma), not of a degenerative or congenital nature, but arising from blunt or penetrating trauma or from acceleration-deceleration forces, that is associated with any of these symptoms or signs attributed to the injury: decreased level of consciousness, amnesia, other neurologic or neuropsychologic abnor-

malities, skull fracture, or diagnosed intracranial lesions. These impairments may be either temporary or permanent and can result in a partial or total functional disability.

(2) "Spinal cord injury" means a traumatic injury to the spinal cord, not of a degenerative or congenital nature, but arising from blunt or penetrating trauma or from acceleration-deceleration forces, resulting in paraplegia or quadriplegia, which can be a partial or total loss of physical function.

History. — Code 1933, § 88-3402, enacted by Ga. L. 1980, p. 1245, § 1; Ga. L. 1985, p. 871, § 1; Ga. L. 2006, p. 175, § 1/SB 208.

31-18-3. Reporting procedures.

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.

History. — Code 1933, § 88-3403, enacted by Ga. L. 1980, p. 1245, § 1; Ga. L. 1981, p. 1027, § 1; Ga. L. 1985, p. 871, § 1; Ga. L. 2004, p. 1107, § 1; Ga. L. 2006, p. 175, § 1/SB 208; Ga. L. 2008, p. 12, § 2-29/SB 433.

31-18-4. Duties of commission.

(a) The Brain and Spinal Injury Trust Fund Commission, which is administratively assigned to the Department of Public Health, shall establish procedures whereby a person with a traumatic brain or spinal cord injury for whom a report is made pursuant to this chapter shall be informed of appropriate agencies, departments, hospitals, facilities, organizations, or individuals providing rehabilitative, independent living, and other services or goods.

(b) The Brain and Spinal Injury Trust Fund Commission shall maintain records of reports and notifications made under this chapter. The Brain and Spinal Injury Trust Fund Commission shall produce an

annual report relating to information and data collected pursuant to this chapter and shall make such report available upon request. Such report shall be submitted annually no later than October 1 to the Office of Health Strategy and Coordination.

(c) Statistical information collected under this chapter shall be available to any other federal or state agency or private organization concerned with traumatic brain or spinal cord injuries, but no names or addresses will be provided without the consent of the person with the traumatic brain or spinal cord injury or the consent of the immediate family or guardian of such person if that person is unable to consent.

History. — Code 1933, § 88-3404, enacted by Ga. L. 1980, p. 1245, § 1; Ga. L. 1981, p. 1027, § 2; Ga. L. 1982, p. 833, § 2; Ga. L. 1985, p. 149, § 31; Ga. L. 1985, p. 871, § 1; Ga. L. 2000, p. 1137, § 3; Ga. L. 2004, p. 1107, § 2; Ga. L. 2006, p. 175, § 1/SB 208; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2019, p. 148, § 2-13/HB 186.

The 2019 amendment, effective July 1, 2019, added the third sentence in subsection (b).

Editor's notes. — Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 19

CONTROL OF RABIES

Sec.
31-19-1. Responsibility for control.
31-19-2. Powers of department in infected area.
31-19-3. Licensing and regulation of animals by local authorities.
31-19-4. Duty of notification.
31-19-5. Inoculation of canines and felines against rabies.
31-19-6. Certificates of inoculation; tags [Repealed].
31-19-7. County rabies control officer.
31-19-8. Joint administration of chapter by adjoining counties.
31-19-9. Applicability to municipalities with rabies control laws.
31-19-10. Penalty.

Administrative rules and regulations. — Rabies control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Disease Surveillance and Control, Subject 511-2-7.

OPINIONS OF THE ATTORNEY GENERAL

Control of rabies generally is delegated to county boards of health and control of dangerous drugs is vested with State Board of Pharmacy and state drug inspector (now director of Georgia Drugs and Narcotics Agency). 1975 Op. Att'y Gen. No. 75-23.

Expense of confining animals exhibiting signs of rabies included in county board's budget. — Local county boards of health should prescribe rules for prevention and control of rabies by providing for vaccination, tagging, and certification of dogs, and for confinement of any animal which exhibits any signs of rabies; cost of such confinement would be an expense of county board of health to be included in the board's budget which is submitted to local taxing authorities under provisions of Ga. L. 1964, p. 499, § 1. 1965-66 Op. Att'y Gen. No. 65-21.

Responsibility of county boards of health regarding strays and unwanted dogs. — Local county boards of health should adopt rules and regulations relative to catching and impounding of strays and unwanted dogs. 1965-66 Op. Att'y Gen. No. 65-21.

RESEARCH REFERENCES

C.J.S. — 3B C.J.S., Animals, § 123.

ALR. — Liability for injuries inflicted by rabid dog, 13 A.L.R. 492.

Constitutionality of "dog laws," 49 A.L.R. 847.

Right to and measure of compensation for animals or trees destroyed to prevent spread of disease or infection, 67 A.L.R. 208.

Liability for injuries caused by cat, 68 A.L.R.4th 823.

31-19-1. Responsibility for control.

Each county board of health shall have primary responsibility for the control of rabies within its jurisdiction. Such boards, in addition to their other powers, are empowered and required to adopt and promulgate rules and regulations for the prevention and control of such disease.

History. — Ga. L. 1945, p. 448, § 2; Code 1933, § 88-1501, enacted by Ga. L. 1964, p. 499, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Expense of confining animals exhibiting signs of rabies included in county board's budget. — Local county boards of health should prescribe rules for prevention and control of rabies by providing for vaccination, tagging, and certification of dogs, and for confinement of any animal which exhibits any signs of rabies; cost of such confinement would be an expense of county board of health to be included in the board's budget which is submitted to local taxing authorities under provisions of Ga. L. 1964, p. 499, § 1. 1965-66 Op. Att'y Gen. No. 65-21.

Responsibility of county boards of health regarding strays and unwanted dogs. — Local county boards of health should adopt rules and regulations relative to catching and impounding of strays and unwanted dogs. 1965-66 Op. Att'y Gen. No. 65-21.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 16 et seq.

31-19-2. Powers of department in infected area.

The department may declare any county or any area therein or any group of counties or areas therein where rabies exists to be an infected area and may provide for immunization and such other measures as shall be indicated for the prevention and control of the disease.

History. — Code 1933, § 88-1502, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 32.

31-19-3. Licensing and regulation of animals by local authorities.

The governing authorities of each county and municipality are authorized and required, in the control of rabies, to require regulation or licensing of animals.

History. — Code 1933, § 88-1503, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 834, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d, Animals, §§ 17, 19, 21, 37.

C.J.S. — 3B C.J.S., Animals, § 12 et seq.

31-19-4. Duty of notification.

It shall be the duty of any person bitten by any animal reasonably suspected of being rabid immediately to notify the appropriate county board of health. It shall be the duty of the owner, custodian, or person having possession and knowledge of any animal which has bitten any person or animal or of any animal which exhibits any signs of rabies to notify the appropriate county board of health and to confine such animal in accordance with rules and regulations of the county board of health.

History. — Ga. L. 1945, p. 448, § 10; Code 1933, § 88-1504, enacted by Ga. L. 1964, p. 499, § 1.

31-19-5. Inoculation of canines and felines against rabies.

The county boards of health are empowered and required to adopt and promulgate rules and regulations requiring canines and felines to be inoculated against rabies and to prescribe the intervals and means of inoculation, the fees to be paid in county sponsored clinics, that procedures be in compliance with the recommendations of the National Association of State Public Health Veterinarians for identifying inoculated canines and felines, and all other procedures applicable thereto. As used in this chapter, the term "inoculation against rabies" means the administering by a licensed veterinarian of antirabies vaccine approved by the department.

History. — Ga. L. 1945, p. 448, § 3; Code 1933, § 88-1505, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 834, § 3; Ga. L. 1992, p. 2089, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 31 et seq.

31-19-6. Certificates of inoculation; tags.

Reserved. Repealed by Ga. L. 1992, p. 2089, § 2, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1945, p. 448, § 4; Code 1933, § 88-1506, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1969, p. 834, § 4.

31-19-7. County rabies control officer.

(a) The county board of health shall appoint a person who is knowledgeable of animals to be the county rabies control officer. It shall be the duty of the county rabies control officer to enforce this chapter and other laws which regulate the activities of dogs.

(b) The county governing authority of each county is authorized to levy a fee not to exceed 50¢ for each dog, such fee to be collected by the veterinarian administering the antirabies vaccine required by this chapter. This fee shall be in addition to that provided for in Code Section 31-19-5. If any county has no resident veterinarian, the out-of-county veterinarian administering the antirabies vaccine and collecting the fee provided for by this Code section shall forward to the treasurer of the county of the dog owner's residence the fee prescribed by that county's governing authority.

(c) The fees collected under this Code section shall be used to help in paying the salary of the county rabies control officer.

History. — Code 1933, § 88-1506.1, enacted by Ga. L. 1969, p. 834, § 5; Ga. L. 1982, p. 3, § 31.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 65 et seq.

31-19-8. Joint administration of chapter by adjoining counties.

The governing authority of each county may devise and implement plans whereby this chapter, as amended, is administered jointly with one or more adjoining counties.

History. — Code 1933, § 88-1506.2, enacted by Ga. L. 1969, p. 834, § 6.

31-19-9. Applicability to municipalities with rabies control laws.

This chapter shall not apply to municipalities which already have a rabies control law unless and until such law is repealed.

History. — Ga. L. 1945, p. 448, § 13; Ga. L. 1969, p. 834, § 7.

31-19-10. Penalty.

Any person who violates any provision of this chapter or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor.

History. — Ga. L. 1945, p. 448, § 11; Code 1933, § 88-1507, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

C.J.S. — 3B C.J.S., Animals, §§ 175 et seq., 183 et seq.

CHAPTER 20

PERFORMANCE OF STERILIZATION PROCEDURES

Sec.
31-20-1. Definitions.
31-20-2. Performance of sterilization procedure upon request.
31-20-3. Sterilization of mentally incompetent persons.
31-20-4. Restriction on performance of sterilization procedure.
31-20-5. Civil and criminal liability; compliance where other medical treatment may result in sterilization.
31-20-6. Exemptions from requirements of chapter.

JUDICIAL DECISIONS

Cited in Leagan v. Levine, 158 Ga. App. 293, 279 S.E.2d 741 (1981).

31-20-1. Definitions.

As used in this chapter, the term:

(1) "Accredited hospital" means a hospital licensed by the Department of Community Health and accredited by a nationally recognized health care accreditation body.

(2) "Physician" means a person duly licensed to practice medicine and surgery without restriction in Georgia pursuant to Chapter 34 of Title 43.

(3) "Sterilization procedure" means any procedure which is designed or intended to prevent conception and which is not designed to unsex the patient by removing the ovaries or testicles.

History. — Ga. L. 1966, p. 453, § 3; Ga. L. 1970, p. 683, § 4; Ga. L. 1982, p. 3, § 31; Ga. L. 2008, p. 12, § 2-30/SB 433; Ga. L. 2012, p. 337, § 7/SB 361.

JUDICIAL DECISIONS

Procedure not designed to prevent conception not within ambit of law. — If surgical procedure involved was not designed or intended to prevent conception, it was not a surgical procedure within regulatory ambit of Ga. L. 1966, p. 453. Winfrey v. Citizens & S. Nat'l Bank, 149 Ga. App. 488, 254 S.E.2d 725 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

C.J.S. — 39A C.J.S., Health and Environment, § 72.

31-20-2. Performance of sterilization procedure upon request.

It shall be lawful for any physician to perform a sterilization procedure upon a person 18 years of age or over, or less than 18 years of age if legally married, provided that a request in writing is made by such person and provided, further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician to such person as to the meaning and consequence of such operation.

History. — Ga. L. 1966, p. 453, § 2; Ga. L. 1970, p. 683, § 2; Ga. L. 1990, p. 325, § 1.

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U. L. Rev. 309 (1990).

JUDICIAL DECISIONS

Physician need not disclose risks of sterilization procedure. — Language "full and reasonable medical explanation … as to the meaning and consequence of such operation" means that the physician must fully inform the patient of the intended results of sterilization, which is the permanent inability to have children, but does not mean that a physician must disclose the possible risks and complications of the sterilization procedure. Robinson v. Parrish, 251 Ga. 496, 306 S.E.2d 922 (1983).

O.C.G.A. § 31-20-2 does not require a physician to disclose possible risks and complications of a sterilization procedure. Robinson v. Parrish, 720 F.2d 1548 (11th Cir. 1983).

O.C.G.A. § 31-20-2 did not require a physician to inform a patient of the risk of chronic testicular pain, and failure to do so did not vitiate the plaintiff's written request. Ariemma v. Perlow, 223 Ga. App. 360, 477 S.E.2d 590 (1996).

Medical explanation required. — O.C.G.A. § 31-20-2 requires that a full and reasonable medical explanation be given by the physician to the patient as to the method to be employed in a sterilization operation and is not satisfied when the physician merely informs the patient that the intended result of the operation would be to render the patient permanently incapable of having children; the patient must understand how his or her inability to have children will result. Dohn v. Lovell, 187 Ga. App. 523, 370 S.E.2d 789, cert. denied, 187 Ga. App. 907, 370 S.E.2d 789 (1988).

After a patient requested her tubes be "cut and tied," whether her request was a generic request for sterilization rather than a request for a specific method of sterilization was a question of fact as to whether she was given a "full and reasonable medical explanation." Gowen v. Carpenter, 189 Ga. App. 477, 376 S.E.2d 384 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

C.J.S. — 16A C.J.S., Constitutional Law, §§ 756, 757, 758. 16C C.J.S., Constitutional Law, § 1199. 39A C.J.S., Health and Environment, § 72.

ALR. — Legality of voluntary nontherapeutic sterilization, 35 A.L.R.3d 1444.

31-20-3. Sterilization of mentally incompetent persons.

(a) **Declaration of policy.** The General Assembly finds that the present laws of this state provide no means for the performance of sterilization procedures upon persons who, because of a developmental disability, brain damage, or both, are irreversibly and incurably mentally incompetent to the degree that such persons, with or without economic aid (charitable or otherwise) from others, could not provide care and support for any children procreated by them in such a way that such children could reasonably be expected to survive to the age of 18 years without suffering or sustaining serious mental or physical harm.

(b) **Definitions.** As used in this Code section, the term "person subject to this Code section" means a person who, because of a developmental disability, brain damage, or both, is irreversibly and incurably mentally incompetent to the degree that such person, with or without economic aid (charitable or otherwise) from others, could not provide care and support for any children procreated by such person in such a way that such children could reasonably be expected to survive to the age of 18 years without suffering or sustaining serious mental or physical harm, when there has been, according to the procedures of this Code section as hereinafter stated, the required finding that the condition of such person is irreversible and incurable.

(c) **Prerequisites to performing a sterilization procedure on a person subject to this Code section.** A sterilization procedure may be performed by a physician on a person subject to this Code section pursuant to subsection (d) of this Code section only after satisfaction of all of the following conditions precedent:

(1) A petition shall be filed by one or more of the parents or legal guardian or next of kin of the person alleged to be subject to this Code section stating the reasons why such person is alleged to be subject to this Code section and containing the written consent of the parent or parents not filing the petition, if such parents are surviving, can be found after reasonable effort, and are mentally competent. If no such parent or parents survive or can be found after reasonable effort or if such parent or parents are mentally incompetent, the petition shall contain the written consent of a guardian ad litem who shall be appointed by the probate court and who shall make investigation and report to such court before the hearing shall commence, provided that such guardian ad litem shall be a duly qualified and licensed member of the State Bar of Georgia. The written consent of any parent shall not be required if such parent has not within six months of the date of filing of the petition provided any support or maintenance to the person alleged to be subject to this Code section and such parent does not reside within the same household as such person;

(2) The judge of the probate court shall appoint an examining team composed of a psychologist or psychiatrist qualified in the area of developmental disabilities and brain damage and one physician, neither of whom is the physician who proposes to perform the sterilization procedure on the person alleged to be subject to this Code section and neither of whom is a member of the committee of the accredited hospital described in paragraph (3) of this subsection. Said persons so appointed shall make an investigation and make a consolidated report to the court before the hearing shall commence that they have examined the person alleged to be subject to this Code section and whether or not they find such person to be a person subject to this Code section and whether, in their opinion, the condition of such person is irreversible and incurable. Such report shall include the reasons and factual information as to why such person should be subject to this Code section and the reasons, if any, why such person would not be subject to this Code section. If the examining team determines that such person is subject to this Code section, then the team shall include in its report some of the less permanent methods of preventing conception and shall report on the feasibility of each such method for that person. The person alleged to be subject to this Code section, the applicant, the parents of the person, the guardian ad litem, and the attorney representing the person shall receive a copy of the report not later than five days prior to the hearing and, upon a timely request by any party to the probate court proceedings, each author of that report shall be subject to cross-examination either by testimony in court or by deposition;

(3) Prior to the hearing on the application, evidence shall be presented to the court that a sterilization procedure has been approved for the person alleged to be subject to this Code section by a committee of the medical staff of the accredited hospital in which the operation is to be performed. Such committee shall be one established and maintained in accordance with the standards promulgated by a nationally recognized health care accreditation body, and its approval must be by a majority vote of a membership of not less than three members of the hospital staff, the physician proposing to perform the sterilization procedure not being counted as a member of the committee for this purpose. The approval of such committee as above specified shall be based upon a finding that the condition of the person alleged to be subject to this Code section is irreversible and incurable in the opinion of the majority of the committee as above specified. The person alleged to be subject to this Code section, the applicant, the parents of the person, the guardian ad litem, and the attorney representing the person shall receive a copy of the consolidated report not later than five days prior to the hearing and, upon a timely request by any party to the probate court proceeding, each

author of that finding shall be subject to cross-examination either by testimony in court or by deposition;

(4) If the person alleged to be subject to this Code section requests that the hearing be closed to the public, the judge shall close the hearing to the public unless an overriding or compelling reason can be shown as to why such hearing should not be closed to the public. The ruling by the judge whether to open the hearing to the public or not shall be in writing. Notice of the date, time, and location of the hearing shall be provided to the person alleged to be subject to this Code section and the attorney for the person alleged to be subject to this Code section at least ten days prior to the hearing;

(5) After the hearing, if the judge of the probate court shall find by clear and convincing evidence, from the evidence above specified, that the person alleged to be subject to this Code section is a person subject to this Code section and that the condition of such person is irreversible and incurable, he shall enter an order and judgment authorizing the physician to perform such sterilization procedure in accordance with subsection (d) of this Code section;

(6) Except as provided in Article 6 of Chapter 9 of Title 15, an appeal to the superior court may be had by the applicant or person alleged to be subject to this Code section or by any other interested party on such judgment in the probate court as provided in other cases by the laws of this state. The proceedings before the superior court shall constitute a trial de novo and upon application of either party shall be heard before a jury. If the person alleged to be subject to this Code section requests that the trial be closed to the public, the judge shall close the trial to the public unless an overriding or compelling reason can be shown as to why such trial should not be closed to the public. The ruling by the judge whether to open the trial to the public or not shall be in writing. Any decision of the superior court in such cases may be appealed to the higher courts of this state as in other civil cases. The cost of appeal, if any, to the superior and higher courts shall be taxed as in other civil cases. The pendency of any appeal shall stay the proceedings in the probate court until the appeal is finally determined. Affidavits in forma pauperis regarding court costs and costs of appeal may be filed as in other cases made and provided by the laws of this state; and

(7) The person alleged to be subject to this Code section shall have the right to counsel at all stages of the proceedings provided for in this Code section.

(d) **Performance of sterilization procedure.** After judgment of the court in accordance with the preceding subsections of this Code section shall have become final to the effect that such sterilization shall

be performed upon such person subject to this Code section, a sterilization procedure may be performed in an accredited hospital by a physician upon such person subject to this Code section.

History. — Ga. L. 1970, p. 683, § 3; Ga. L. 1971, p. 869, § 1; Ga. L. 1985, p. 1134, § 1; Ga. L. 1986, p. 982, § 10; Ga. L. 1992, p. 6, § 31; Ga. L. 2009, p. 453, § 3-7/HB 228; Ga. L. 2012, p. 337, § 8/SB 361.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "developmental disabilities" was substituted for "a developmental disability" in the first sentence of paragraph (c)(2).

Editor's notes. — Ga. L. 1986, p. 982, § 25, not codified by the General Assembly, provided that that Act would apply to all cases filed on or after July 1, 1986.

JUDICIAL DECISIONS

Procreation is a fundamental right. Motes v. Hall County Dep't of Family & Children Servs., 251 Ga. 373, 306 S.E.2d 260 (1983).

Code section unconstitutional prior to 1985 amendment. — Seriousness of an individual's interest at stake in a state initiated sterilization proceeding is such that due process requires "clear and convincing evidence" to authorize the sterilization of an individual. The standard of a "legal preponderance" set by paragraph (c)(4) in O.C.G.A. § 31-20-3 does not meet constitutional requirements. Motes v. Hall County Dep't of Family & Children Servs., 251 Ga. 373, 306 S.E.2d 260 (1983) (decided prior to 1985 amendment, which substituted a "clear and convincing" standard).

OPINIONS OF THE ATTORNEY GENERAL

Mental incompetent's right to counsel in sterilization proceeding. — In proceedings for sterilization of mental incompetent, incompetent has a right to counsel; if indigent, the incompetent has a right to appointed counsel. 1971 Op. Att'y Gen. No. U71-29.

Representation of person alleged to be subject to section. — Functions of court-appointed defense attorney and guardian ad litem may not be performed by the same person in involuntary sterilization procedures. 1987 Op. Att'y Gen. No. U87-4.

Hospitals operated exclusively by federal government exempt from state accreditation. — United States Army hospital in federal enclave not accredited or subject to accreditation under Georgia law; accreditation by state Department of Human Resources is not extended to hospitals operated exclusively by federal government. 1973 Op. Att'y Gen. No. U73-45.

Payment of cost of examining teams and hospital committees. — Fees and expenses of medical examining teams and hospital committees mandated by O.C.G.A. § 31-20-3 are a proper charge on the county treasury upon court order. 1987 Op. Att'y Gen No. U87-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parent and Child, § 65. 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

Am. Jur. Proof of Facts. — Proof of Qualification for Sterilization of a Person with a Mental Disability, 49 POF3d 101.

C.J.S. — 16B C.J.S., Constitutional Law, § 1217 et seq. 16D C.J.S., Constitutional Law, § 2055 et seq. 39A C.J.S., Health and Environment, §§ 61, 72, 81 et seq. 56 C.J.S., Mental Health, § 6 et seq. 67A C.J.S., Parent and Child, §§ 38, 40, 41, 46 et seq. 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 49 et seq.

ALR. — Legality of voluntary nontherapeutic sterilization, 35 A.L.R.3d 1444.

Validity of statutes authorizing asexualization or sterilization of criminals or mental defectives, 53 A.L.R.3d 960.

Jurisdiction of court to permit sterilization of mentally defective person in absence of specific statutory authority, 74 A.L.R.3d 1210.

Power of parent to have mentally defective child sterilized, 74 A.L.R.3d 1224.

31-20-4. Restriction on performance of sterilization procedure.

No operation under this chapter shall be performed by any person other than a physician duly licensed without restriction to practice medicine and surgery in this state pursuant to Chapter 34 of Title 43.

History. — Ga. L. 1966, p. 453, § 4; Ga. L. 1970, p. 683, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

31-20-5. Civil and criminal liability; compliance where other medical treatment may result in sterilization.

When an operation shall have been performed in compliance with this chapter, no physician duly licensed without restriction to practice medicine and surgery in this state or other person legally participating in the execution of this chapter shall be liable civilly or criminally as a result of such operation or participation therein, except in the case of negligence in the performance of such operation. Nothing in this chapter shall be construed so as to require compliance therewith where medical or surgical treatment for sound therapeutic purposes, by a physician duly licensed without restriction to practice medicine and surgery in this state, is required of any person in this state and where such treatment, at the same time that it serves such purposes, may involve the nullification or destruction of reproductive functions.

History. — Ga. L. 1966, p. 453, § 5; Ga. L. 1970, p. 683, § 6.

JUDICIAL DECISIONS

Claims based on contract barred. Shessel v. Gay, 139 Ga. App. 429, 228 S.E.2d 361 (1976).

Sterilization operation. — Since O.C.G.A. § 31-20-5 bars claims based on contract and all other claims, civil or criminal, except one based on the negligent performance of the sterilization operation, when it is uncontroverted that there was no negligence in the performance of the sterilization operation and that the sterilization procedure was performed in full compliance with O.C.G.A. Ch. 20, T. 31, the patient's claim, whether based on con-

tract or some other negligence, fell within the scope of O.C.G.A. § 31-20-5, and the trial court correctly granted summary judgment in favor of the physician. Cummings v. Dudley, 180 Ga. App. 545, 349 S.E.2d 543 (1986).

Written consent to the performance of a possible hysterectomy was not sufficient consent for the performance of a bilateral tubal ligation after obtaining only oral consent thereto. A tubal ligation is a "sterilization procedure" within the meaning of O.C.G.A. § 31-20-1(3) and written consent was required when the only purpose served by the performance of the procedure was to prevent a future pregnancy and it served no sound therapeutic purpose which was of any immediate benefit to the patient's non-reproductive health. Kaplan v. Blank, 204 Ga. App. 378, 419 S.E.2d 127 (1992).

Purpose of every sterilization procedure is the prevention of a future pregnancy and to hold that such a purpose, standing alone, constitutes a "sound therapeutic purpose" within the meaning of O.C.G.A. § 31-20-5 would effectively negate O.C.G.A. T. 31, Ch. 20. Kaplan v. Blank, 204 Ga. App. 378, 419 S.E.2d 127 (1992).

Operation without consent constitutes technical battery. — Operation performed without the consent of the patient constitutes a technical battery for which a physician may be held liable. Gowen v. Carpenter, 189 Ga. App. 477, 376 S.E.2d 384 (1988).

Showing of negligence required. — Since the physician complied with the requirements of O.C.G.A. § 31-20-2, and the patient did not claim that the physician was negligent in performing the vasectomy procedure, claims for negligence, fraud, battery, violations of the Fair Business Practices Act, O.C.G.A. § 10-1-390 et seq., and loss of consortium were barred. Ariemma v. Perlow, 223 Ga. App. 360, 477 S.E.2d 590 (1996).

Limitation of actions. — Statute of limitations for battery resulting from an unauthorized operation is the two-year statute of limitations for injuries to the person and the four-year statute of limitations for loss of consortium. Gowen v. Carpenter, 189 Ga. App. 477, 376 S.E.2d 384 (1988); Gowen v. Cady, 189 Ga. App. 473, 376 S.E.2d 390, cert. denied, 189 Ga. App. 912, 376 S.E.2d 390 (1988).

RESEARCH REFERENCES

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 181.

ALR. — Physicians and surgeons: res ipsa loquitur, or presumption or inference of negligence, in malpractice cases, 82 A.L.R.2d 1262.

Malpractice in appendicitis treatment and surgery, 94 A.L.R.2d 1006.

Physician's or surgeon's malpractice in connection with diagnosis or treatment of rectal or anal disease, 5 A.L.R.3d 916.

Legality of voluntary nontherapeutic sterilization, 35 A.L.R.3d 1444.

31-20-6. Exemptions from requirements of chapter.

(a) Nothing in this chapter shall require a hospital to admit any patient for the purpose of performing a sterilization procedure, nor shall any hospital be required to appoint a committee such as contemplated under paragraph (3) of subsection (c) of Code Section 31-20-3.

(b) A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which a sterilization procedure has been authorized who shall object to such sterilization procedure on moral or religious grounds shall not be required to participate in the medical procedures or the committee procedures leading to such sterilization procedure; the refusal of any such person to participate therein shall not form the basis of any claim

for damages resulting from such refusal or for any disciplinary or recriminatory action against such person.

History. — Ga. L. 1970, p. 683, § 7.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 262.

CHAPTER 21

DEAD BODIES

Article 1

General Provisions

Sec.
31-21-1. Approved disinfectant; "embalming" defined.
31-21-2. Conflict with authority of Commissioner of Agriculture.
31-21-3. Death of person with infectious or communicable disease; required reporting procedures; confidentiality; disclosure; penalties.
31-21-4. Burial at sea of cremated remains; notification that cremated remains are ready for interment; unclaimed cremated remains.
31-21-5. Incineration or cremation of dead body or parts thereof.
31-21-6. Notification of law enforcement agency upon disturbance, destruction, or debasement of human remains.
31-21-7. Preneed contracts and revisions; affidavit on disposition of remains; role of probate court; warrant as to truthfulness; liability of funeral home.

Article 2

Disposition of Unclaimed Dead Bodies

Sec.
31-21-20. Board for the Distribution of Cadavers.
31-21-21. Delivery to board of certain unclaimed bodies.
31-21-22. Disposition of bodies of travelers dying suddenly.
31-21-23. Distribution of bodies by board.
31-21-24. Transportation of bodies.
31-21-25. Bonds.
31-21-26. Payment of expenses.

Article 3

Offenses

31-21-40. Omission to perform duties imposed by chapter.
31-21-41. Traffic in human bodies.
31-21-42. Disinterment by coroner without good grounds.
31-21-43. Removal of dead body from grave for purposes of sale or dissection.
31-21-44. Wanton or malicious removal of dead body from grave or disturbance of contents of grave; receipt, retention, disposal, or possession of unlawfully removed dead body or bodily part.
31-21-44.1. Abuse of dead body.
31-21-44.2. Throwing away or abandonment of dead bodies prohibited; punishment.
31-21-45. Public exhibit or display of dead human bodies of American Indians or American Indian human remains.

Cross references. — Criminal penalty for concealing death of person, § 16-10-31. Disposal of aborted fetuses, § 16-12-141.1. Maintenance of vital records, T. 31, C. 10. Death certificates, § 31-10-15. Duty of county to pay for interment of deceased indigent persons, § 36-12-5. Funeral directors, embalmers, and operators of funeral establishments, T. 43, C. 18. Anatomical gifts, § 44-5-140 et seq. Post-mortem examinations and autopsies, § 45-16-20 et seq.

Administrative rules and regulations. — Organization and regulation of funeral services, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Board of Funeral Service, Chapter 250-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 1, 6, 7.

C.J.S. — 25A C.J.S., Dead Bodies, § 1.

ALR. — Constitutionality of statute or ordinance requiring, or permitting, removal of bodies from cemeteries, 71 A.L.R. 1040.

Enforcement of preference expressed by decedent as to disposition of his body after death, 54 A.L.R.3d 1037.

Dead bodies: liability for improper manner of reinterment, 53 A.L.R.4th 394.

ARTICLE 1

GENERAL PROVISIONS

31-21-1. Approved disinfectant; "embalming" defined.

(a) An approved disinfectant fluid shall contain not less than 5 percent formaldehyde gas.

(b) As used in this chapter, the term "embalming" means the injection by a licensed embalmer of not less than 10 percent of the weight for bodies of persons dead of communicable diseases, such as smallpox and diphtheria, injected arterially in addition to cavity injection and, in all other cases, not less than 6 percent of the body weight injected arterially in addition to cavity injection.

History. — Ga. L. 1916, p. 77, § 1; Code 1933, § 88-605; Code 1933, § 88-2713, enacted by Ga. L. 1964, p. 499, § 1.

Cross references. — Licenses for funeral directors and embalmers, § 43-18-40 et seq.

Law reviews. — For article, "A Review of Three Generations, No Imbeciles: Eugenics, The Court, and Buck v. Bell," see 26 Ga. St. U. L. Rev. 1295, (2010).

RESEARCH REFERENCES

C.J.S. — 25A C.J.S., Dead Bodies, §§ 2 et seq., 8 et seq., 12, 16, 40, 43, 46 56, 61, 65.

31-21-2. Conflict with authority of Commissioner of Agriculture.

Nothing in this article shall repeal or be construed to conflict with any power and authority now vested in the Commissioner of Agriculture by the laws of this state.

History. — Code 1933, § 88-2714, enacted by Ga. L. 1964, p. 499, § 1.

31-21-3. Death of person with infectious or communicable disease; required reporting procedures; confidentiality; disclosure; penalties.

(a) For the purposes of this Code section, the term "infectious or communicable disease" shall include the following:

(1) Infectious hepatitis;

(2) Tuberculosis;

(3) Any venereal disease enumerated in Code Section 31-17-1; or

(4) Acquired immune deficiency syndrome (AIDS).

(b)(1) When a person who has been diagnosed as having an infectious or communicable disease dies in a hospital or other health care facility, the attending physician shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition.

(2) When a person dies outside of a hospital or health care facility and without an attending physician, any family member or person making arrangements for the disposition of the dead body who knows that such dead person had been diagnosed as having an infectious or communicable disease at the time of death shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition.

(3) Any person who picks up a dead body for disposition and who has been notified that the person had been diagnosed as having an infectious or communicable disease at the time of death pursuant to the provisions of paragraph (1) or (2) of this subsection shall present such notification accompanying the dead body to any embalmer, funeral director, or other person taking possession of the dead body.

(c) Information regarding a deceased's infectious or communicable disease and contained in a notification required to be prepared pursuant to subsection (b) of this Code section shall be privileged and confidential and may only be disclosed if:

(1) That disclosure is required pursuant to Chapter 17 of this title;

(2) That disclosure is required by federal law, but only to the extent so required;

(3) That disclosure is made by a physician pursuant to Code Section 24-12-1 or any other law authorizing a physician to disclose otherwise privileged information;

(4) That disclosure is for research purposes and does not reveal:

(A) The identity of the deceased; or

(B) Information which would reveal the identity of the deceased;

(5) That disclosure involves information regarding sexual assault or sexual exploitation of a deceased child and is required to be reported pursuant to Code Section 19-7-5 or any other law requiring the reporting of such assault or exploitation of a child, but only to the extent that such disclosure is so required to be reported;

(6) That disclosure involves information regarding a deceased minor and the disclosure is made to the parent or guardian of that minor; or

(7) That disclosure is made to the person who picks up the dead body or is made in the ordinary course of business to any employee or agent of any person or entity authorized or required under this Code section to receive or report that information.

(d) Information privileged and confidential under this Code section may not be disclosed pursuant to discovery proceedings, subpoena, or court order.

(e) Any disclosure authorized by this Code section or any unauthorized disclosure of information or communications made privileged and confidential by this Code section shall not in any way abridge or destroy the confidential or privileged character thereof except for the purposes for which any authorized disclosure is made. Any person making a disclosure authorized by this chapter shall not be liable therefor, notwithstanding any contrary provisions of law.

(f) Any person having duties imposed upon that person pursuant to subsection (b) of this Code section who knowingly refuses or omits to perform such duties shall be guilty of a misdemeanor.

History. — Code 1981, § 31-21-3, enacted by Ga. L. 1986, p. 1513, § 1; Ga. L. 2011, p. 99, § 44/HB 24.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a semicolon was substituted for the period at the end of paragraph (c)(5).

Editor's notes. — Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews. — For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Not fingerprintable offense. — Failure of an embalmer, funeral director, or other such person to be given notice when a person has been diagnosed as having certain diseases is not an offense for which persons charged are to be fingerprinted. 1986 Op. Att'y Gen. 86-30.

31-21-4. Burial at sea of cremated remains; notification that cremated remains are ready for interment; unclaimed cremated remains.

(a)(1) Cremated remains may be taken by boat from any harbor in this state, or by air, for burial at sea at a point not less than three miles from the nearest shoreline. Cremated remains shall be removed from their container before such remains are buried at sea.

(2) Any person who buries at sea, either from a boat or from the air, any human cremated remains shall carry out the burial services within 50 days from the reduction of the body to cremated remains and file with the local registrar of births, deaths, and other vital records in the county nearest the point where the remains were buried a verified statement containing the name of the deceased person, the time and place of death, the place at which the cremated remains were buried, and any other information that the local registrar may require. Burial services may be delayed until weather conditions improve if inclement weather prevents safe burial.

(b) Any person who requests that a dead body be cremated shall provide the funeral establishment or other person responsible for the cremation an address at which such person can be notified when the cremated remains are ready for interment. Notification shall be made by first-class mail to such person at the address provided. If the cremated remains are not claimed for interment or other disposition within 60 days from the date that the notification is mailed, such remains shall be turned over to the coroner to be interred in a plot or niche in a cemetery where indigents are buried.

History. — Code 1981, § 31-21-4, enacted by Ga. L. 1989, p. 813, § 1; Ga. L. 1991, p. 94, § 31.

31-21-5. Incineration or cremation of dead body or parts thereof.

(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.

(b) A person who violates the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 31-21-5, enacted by Ga. L. 1992, p. 992, § 1; Ga. L. 2008, p. 12, § 2-31/SB 433.

31-21-6. Notification of law enforcement agency upon disturbance, destruction, or debasement of human remains.

(a) Any person who knows or has reason to believe that interred human remains have been or are being disturbed, destroyed, defaced, mutilated, removed, or exposed without a permit issued pursuant to Code Section 36-72-4, 12-3-52, or 12-3-82 or without written permission of the landowner for an archeological excavation on the site by an archeologist or not in compliance with Section 106 of the National Historic Preservation Act, as amended, and any person who accidentally or inadvertently discovers or exposes human remains shall immediately notify the local law enforcement agency with jurisdiction in the area where the human remains are located.

(b) Any law enforcement agency notified of the discovery or disturbance, destruction, defacing, mutilation, removal, or exposure of interred human remains shall immediately report such notification to the coroner or medical examiner of the county where the human remains are located, who shall determine whether investigation of the death is required under Code Section 45-16-24. If investigation of the death is not required, the coroner or medical examiner shall immediately notify the local governing authority of the county or municipality in which the remains are found and the Department of Natural Resources. If the remains are believed to be those of one or more aboriginal or prehistoric ancestors of or American Indians, then the Department of Natural Resources shall notify the Council on American Indian Concerns. All land-disturbing activity likely to further disturb the human remains shall cease until:

(1) The county coroner or medical examiner, after determining that investigation of the death is required, has completed forensic examination of the site;

(2) A permit is issued for land use change and disturbance pursuant to Code Section 36-72-4; a permit is issued or a contract is let pursuant to subsection (d) of Code Section 12-3-52; or written permission is obtained from the landowner for the conduct of an archeological excavation; or

(3) If such a permit is not sought, the Department of Natural Resources arranges with the landowner for the protection of the remains.

(c) The provisions of this Code section shall not apply to normal farming activity including, but not limited to, plowing, disking, harvesting, and grazing of livestock.

History. — Code 1981, § 31-21-6, enacted by Ga. L. 1992, p. 1790, § 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, this Code section was redesignated as Code Section 31-21-6 since Ga. L. 1992, p. 992, § 1, and Ga. L. 1992, p. 1790, § 3, both enacted a Code Section 31-21-5, and "archeologist" was substituted for "archaeologist" in subsection (a).

U.S. Code. — The National Historic Preservation Act, referred to in this Code section, is codified at 16 U.S.C. § 470 et seq.

31-21-7. Preneed contracts and revisions; affidavit on disposition of remains; role of probate court; warrant as to truthfulness; liability of funeral home.

(a) A person who is 18 years of age or older and of sound mind, by entering into a preneed contract, as defined in paragraph (30) of Code Section 10-14-3, may direct the location, manner, and conditions of the disposition of the person's remains and the arrangements for funeral goods and services to be provided upon the person's death. The disposition directions and funeral prearrangements that are contained in a preneed contract shall not be subject to cancellation or substantial revision unless the cancellation or substantial revision has been ordered by a person the decedent has appointed in the preneed contract as the person authorized to cancel or revise the terms of the preneed contract or unless any resources set aside to fund the preneed contract are insufficient under the terms of the preneed contract to carry out the disposition directions and funeral prearrangements contained therein.

(b) Except as provided in subsection (c) of this Code section, the right to control the disposition of the remains of a deceased person; the location, manner, and conditions of disposition; and arrangements for funeral goods and services to be provided vests in the following, in the order named, provided that such person is 18 years of age or older and is of sound mind:

(1) The health care agent, as defined in Code Section 31-32-2;

(1.1) If the deceased person died while serving in any branch of the United States Armed Forces as defined in 10 U.S.C. Section 148, the person, if any, designated by the deceased person as authorized to direct disposition as listed on the deceased person's United States Department of Defense Record of Emergency Data, DD Form 93, or any similar successor form adopted by the Department of Defense;

(2)(A) A person designated by the decedent as the person with the right to control the disposition in an affidavit executed in accordance with subparagraph (B) of this paragraph.

(B) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of his or her remains may execute an affidavit before a notary public in substantially the following form:

"State of Georgia

County of _____

I, _____, do hereby designate _____ with the right to control the disposition of my remains upon my death. I ____ have ____ have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided that such directions are lawful and there are sufficient resources in my estate to carry out the directions.

Subscribed and sworn to before me this _____ day of the month of _____ of the year _____.

_____ (signature of affiant)

_____ (signature of notary public)";

(3) The surviving spouse of the decedent;

(4) The sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children; provided, however, that less than one-half of the surviving children shall be vested with the rights under this Code section if they have used reasonable efforts to notify all other surviving children of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving children;

(5) The surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent shall be vested with the rights and duties under this Code section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(6) The surviving brother or sister of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings; provided, however, that less than the majority of surviving siblings shall be vested with the rights and duties under this Code section if they have used reasonable efforts to notify all other surviving siblings of their instructions and are not aware of any opposition to those instructions on the part of more than one-half of all surviving siblings;

(7) The surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents; provided, however, that less than the majority of the surviving grandparents shall be vested with the rights and duties under this Code section if they have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any

opposition to those instructions on the part of more than one-half of all surviving grandparents;

(8) The guardian of the person of the decedent at the time of the decedent's death if one had been appointed;

(9) The personal representative of the estate of the decedent;

(10) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition;

(11) If the disposition of the remains of the decedent is the responsibility of the state or a political subdivision of the state, the public officer, administrator, or employee responsible for arranging the final disposition of decedent's remains; or

(12) In the absence of any person under paragraphs (1) through (11) of this subsection, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the funeral director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals under paragraphs (1) through (11) of this subsection.

(c) A person entitled under law to the right of disposition shall forfeit that right, and the right is passed on to the next qualifying person as listed in subsection (b) of this Code section, in the following circumstances:

(1) Any person charged with murder or voluntary manslaughter in connection with the decedent's death and whose charges are known to the funeral director; provided, however, that, if the charges against such person are dismissed or if such person is acquitted of the charges, the right of disposition is returned to the person;

(2) Any person who does not exercise his or her right of disposition within two days of notification of the death of decedent or within three days of decedent's death, whichever is earlier;

(3) If the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of decedent's death; or

(4) Where the probate court pursuant to subsection (d) of this Code section determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this Code section, the term "estranged" means a physical and emotional separation from the decedent at the time of death which

has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(d) Notwithstanding subsections (b) and (c) of this Code section, the probate court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and may make decisions regarding the decedent's remains if those sharing the right of disposition cannot agree. The following provisions shall apply to the court's determination under this subsection:

(1) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of such persons or a funeral home with custody of the remains may file a petition asking the probate court to make a determination in the matter;

(2) In making a determination under this subsection, the probate court shall consider the following:

(A) The reasonableness and practicality of the proposed funeral arrangements and disposition;

(B) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

(C) The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;

(D) The convenience and needs of other families and friends wishing to pay respects;

(E) The desires of the decedent; and

(F) The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;

(3) In the event of a dispute regarding the right of disposition, a funeral home shall not be liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral home receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains. If the funeral home retains the remains for final disposition while the parties are in disagreement, the funeral home may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision of the probate court and may add the cost of embalming or refrigeration and sheltering to the final disposition costs. If a funeral home brings an action under this subsection, the funeral home may add the legal fees

and court costs associated with a petition under this subsection to the cost of final disposition. This subsection may not be construed to require or to impose a duty upon a funeral home to bring an action under this subsection. A funeral home and its employees shall not be held criminally or civilly liable for choosing not to bring an action under this subsection; and

(4) Except to the degree it may be considered by the probate court under subparagraph (C) of paragraph (2) of this subsection, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition shall not give that person a greater claim to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent shall not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

(e) Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition. A funeral home shall have the right to rely on such funeral service agreement or authorization and shall have the authority to carry out the instructions of the person or persons the funeral home reasonably believes hold the right of disposition. The funeral home shall have no responsibility to contact or to independently investigate the existence of any next of kin or relative of the decedent. If there is more than one person in a class who are equal in priority and the funeral home has no knowledge of any objection by other members of such class, the funeral home shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements, provided that no other person in such class provides written notice of his or her objections to the funeral home.

(f) If a funeral establishment or funeral director relies in good faith upon the instructions of an individual claiming the right of disposition pursuant to subsection (b) or (d) of this Code section and such individual is later determined to have falsely or fraudulently represented himself or herself as having such a right, the funeral establishment or funeral director shall not be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with such instructions.

History. — Code 1981, § 31-21-7, enacted by Ga. L. 2009, p. 292, § 1/HB 68; Ga. L. 2010, p. 208, § 1/SB 355; Ga. L. 2012, p. 775, § 31/HB 942.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "(11)" was substituted for "(10)" twice in paragraph (b)(12).

ARTICLE 2

DISPOSITION OF UNCLAIMED DEAD BODIES

Cross references. — Law enforcement agencies' duties as to identification of persons found dead, §§ 35-1-8, 35-3-4.

31-21-20. Board for the Distribution of Cadavers.

The academic deans of medical, osteopathic medical, and dental colleges or a representative appointed by the president of such schools incorporated under the laws of this state or otherwise operating in this state with authorization from the Nonpublic Postsecondary Education Commission shall constitute the Board for the Distribution of Cadavers to expedite the distribution and delivery of dead bodies described in Code Section 31-21-21 to and among such institutions as are entitled thereto. This board shall have power to establish rules and regulations for its governance and to appoint and remove its officers and shall keep minutes of its transactions. Records shall be kept, under its direction, of all bodies received and distributed, both from within and without this state, and of the persons or institutions to whom they may be distributed, which records shall be open at all times to the inspection of members of this board, any district attorney, or prosecuting attorney of any city or state court. The board shall appoint a member of the board to be chairperson, and such member shall call at least one meeting per year to carry out the responsibilities of the board. For the purposes of this article, the term "board" shall mean the Board for the Distribution of Cadavers.

History. — Ga. L. 1887, p. 86, § 1; Civil Code 1895, § 1511; Civil Code 1910, § 1755; Code 1933, § 88-701; Code 1933, § 88-2701, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1983, p. 884, § 3-25; Ga. L. 2007, p. 472, § 1/SB 204.

OPINIONS OF THE ATTORNEY GENERAL

Disposition of unclaimed prison inmate's body. — When body of inmate is not claimed, notice should be posted on courthouse door for 24 hours, and notice should be given to board and body delivered as directed by board. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of prison inmate's body claimed by one in financial straits. — When body of inmate is claimed by relative, or person connected by marriage, in financial straits, such person should be advised that, upon request, the body will be buried at public expense, or that such person may execute a consent to disposition to an institution; if such consent is executed, the board should be notified and claimant may then negotiate with a school or college which receives the body. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of unclaimed prison inmate's body donated by will. — When

inmate donates the inmate's body by will, and body is not claimed, notice should be posted on courthouse door for 24 hours and the board should be notified of the name of the school or college specified by the inmate in the inmate's will. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of prison inmate's body donated by will but claimed by proper claimant. — When an inmate donates the inmate's body by will, and the body is claimed by a proper claimant, a claimant should be advised that the body will be buried at public expense and that the claimant should execute a consent to disposition to an institution; if consent is executed, the board should be notified of the name of the school or college specified by the inmate in the inmate's will. If consent is not executed, the body should be buried, either at the expense of the claimant or at public expense, as the case may be, notwithstanding the will. 1965-66 Op. Att'y Gen. No. 66-84.

31-21-21. Delivery to board of certain unclaimed bodies.

(a) All public officers of this state and their assistants and all officers and their deputies of every county, city, town, or other municipality and of every prison, county correctional institution, morgue, public hospital, health care facility, except the Central State Hospital which institution shall have authority to perform autopsies on the dead bodies of persons dying as patients therein in the discretion of the superintendent and medical staff of the institution, having control over any dead human body not dead from contagious or infectious disease and required to be buried at public expense are required to notify the board created under Code Section 31-21-20 or such person as may from time to time be designated in writing by such board for distribution or its duly authorized officer whenever any such body comes into their possession or control. Such officers shall, without fee or reward, deliver the body and allow such board and its duly authorized agents who may comply with this chapter to remove such body and to provide for its use only within this state, solely for the advancement of medical science. No such notice shall be given nor shall any such body be delivered if any person, claiming to be and satisfying the authorities in charge of the body that he or she is of any degree of kin, or is related by marriage to, or socially or otherwise connected with and interested in the deceased, shall claim the body for burial, cremation, or other proper disposition; but it shall be at once surrendered to such person or shall be buried at public expense at the request of such claimant if a relative by blood or a connection by marriage and financially unable to provide burial, cremation, or other proper disposition.

(b) A body described in subsection (a) of this Code section shall in each and every instance be held and kept by the person or persons having charge or control of it for at least 24 hours after death, before delivery to such board or its agent for distribution, during which period notice of the death of such person shall be posted at the courthouse door of the county in which such body is held.

History. — Ga. L. 1887, p. 87, § 2; Civil Code 1895, §§ 1512, 1514; Civil Code 1910, §§ 1756, 1758; Ga. L. 1918, p. 114, § 1; Ga. L. 1920, p. 130, § 1; Code 1933, §§ 88-702, 88-704; Code 1933, §§ 88-2702, 88-2704, enacted by Ga. L. 1964, p. 499, § 1.

OPINIONS OF THE ATTORNEY GENERAL

State hospital's discretion to comply with provisions. — While it was the intention of the General Assembly to exempt a state hospital from provisions of the Act, and from requirements of this section, superintendent and medical staff of the institution have discretion of complying with requirements and of delivering bodies to distribution board to be used by schools and colleges, and if such bodies are unclaimed by any relative for purpose of burial, state hospital authorities should, insofar as it does not impede their work of promoting science in line of their study and work, comply with the requirements of this Code section. 1945-47 Op. Att'y Gen. p. 521.

Disposition of unclaimed prison inmate's body. — If body of inmate is not claimed, notice should be posted on courthouse door for 24 hours, and notice should be given to board and body delivered as directed by board. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of prison inmate's body claimed by one in financial strait. — When body of inmate is claimed by relative, or person connected by marriage, in financial straits, such person should be advised that, upon request, the body will be buried at public expense, or that such person may execute a consent; if such consent is executed, the board should be notified and the claimant may then negotiate with a school or college which receives the body. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of unclaimed prison inmate's body donated by will. — When inmate donates the inmate's body by will, and the body is not claimed, notice should be posted on the courthouse door for 24 hours and the board should be notified of the name of school or college specified by the inmate in the inmate's will. 1965-66 Op. Att'y Gen. No. 66-84.

Disposition of prison inmate's body donated by will but claimed by proper claimant. — When an inmate donates the inmate's body by will, and body is claimed by the proper claimant, the claimant should be advised that the body will be buried at public expense and that claimant should execute a consent to disposition to an institution; if consent is executed, the board should be notified of name of school or college specified by inmate in the inmate's will. If consent is not executed, the body should be buried, either at the expense of the claimant or at public expense, as case may be, notwithstanding the will. 1965-66 Op. Att'y Gen. No. 66-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, §§ 5, 10, 14. 22A Am. Jur. 2d, Dead Bodies, §§ 10 et seq., 17 et seq., 26, 27, 43, 45 et seq., 119 et seq.

31-21-22. Disposition of bodies of travelers dying suddenly.

Notice shall not be given nor shall any body be delivered pursuant to Code Section 31-21-21 if the deceased person was a traveler who died suddenly. In such cases, the next of kin shall be notified concerning the disposition of the dead body. If no next of kin is located, or no replies from next of kin are received, or the body is unclaimed within 72 hours, the procedure indicated in this chapter shall apply.

History. — Ga. L. 1887, p. 87, § 2; Civil Code 1895, § 1513; Civil Code 1910, § 1757; Code 1933, § 88-703; Code 1933, § 88-2703, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

C.J.S. — 25A C.J.S., Dead Bodies, §§ 4, 5, 9, 11, 12, 13, 16 et seq.

31-21-23. Distribution of bodies by board.

The board for distribution or its duly authorized agent may distribute bodies received pursuant to Code Section 31-21-21 to and among the schools or colleges described in Code Section 31-21-20 for lectures and demonstrations by such schools or colleges. The number assigned to each shall be based upon the number of bona fide students in each dissecting or operative surgery class, which number of students shall be reported by the schools or colleges to the above-specified board at such times as it may direct, provided that the schools or colleges, upon receiving such bodies and before any use is made of them, and without unnecessary mutilation or dissecting, shall cause them to be embalmed properly and preserved carefully and kept for a period of 60 days from the day of receipt and shall deliver them properly prepared for burial, cremation, or other proper disposition to any persons mentioned and described in Code Section 31-21-21, who shall claim such bodies before the expiration of the period of 60 days and who shall satisfy the officers of the school or college that they are such persons as are entitled under Code Section 31-21-21 to claim such bodies. If, at the expiration of 60 days, such body or bodies have not been claimed for burial in the manner and by the person or persons described in this article, they shall then be used by the schools or colleges for the purposes specified in this article. When the bodies have been so used and are no longer needed or serviceable for the purposes mentioned in this article, they shall be decently interred by the schools or colleges.

History. — Ga. L. 1887, p. 87, § 3; Civil Code 1895, § 1515; Civil Code 1910, § 1759; Code 1933, § 88-705; Code 1933, § 88-2705, enacted by Ga. L. 1964, p. 499, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Disposition of unclaimed stillborn infants by university hospital. — University hospital is without authority to dispose of bodies of unclaimed stillborn infants for a period of 60 days after the hospital's reception. 1952-53 Op. Att'y Gen. p. 174.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 43, 45 et seq.

31-21-24. Transportation of bodies.

The board for distribution may employ a carrier or carriers for the conveyance of bodies described in Code Section 31-21-21, which bodies shall be well enclosed in suitable incasements and carefully deposited free from public observation. The carrier or carriers shall obtain receipts containing the deceased's name or, if the person is unknown, a description for each body delivered, and shall deposit such receipts with the secretary of the above board, who shall record and preserve them.

History. — Ga. L. 1887, p. 87, § 4; Civil Code 1895, § 1516; Civil Code 1910, § 1760; Code 1933, § 88-706; Code 1933, § 88-2706, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, § 39.

31-21-25. Bonds.

No school or college shall be allowed or permitted to receive any body or bodies described in Code Section 31-21-21 until a bond shall have been given to the Department of Community Health by or in behalf of the school or college by its authorized officers, to be approved by the clerk of the superior court of the county in which the school or college is situated and to be filed in the office of such clerk. The bond shall be in the sum of $5,000.00 and shall be conditioned that the body or bodies received thereafter by the school or college shall be used only in the manner specified in this article and solely for the promotion of medical science in this state. Actions thereon shall be in the name of the Department of Community Health, and any sums recovered shall be deposited in the state treasury.

History. — Ga. L. 1887, p. 87, § 5; Civil Code 1895, § 1517; Civil Code 1910, § 1761; Code 1933, § 88-707; Code 1933, § 88-2707, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2007, p. 472, § 2/SB 204; Ga. L. 2009, p. 453, § 1-4/HB 228.

31-21-26. Payment of expenses.

Neither the state, county, municipality, nor officers thereof shall be placed at any expense by reason of delivery or distribution of bodies; but all expenses thereof shall be borne by those receiving the body or bodies as prescribed by the board for distribution.

History. — Ga. L. 1887, p. 87, § 8; Civil Code 1895, § 1518; Civil Code 1910, § 1762; Code 1933, § 88-708; Code 1933, § 88-2708, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Applicability. — When a county recovered, identified, and properly disposed of bodies found at a crematorium, O.C.G.A. § 31-21-26 did not authorize the county to recover the county's costs of doing so as compensatory damages in a tort action against the crematorium, funeral homes, and funeral directors alleging negligence and public nuisance claims; even if § 31-21-26 could be construed as providing a county an affirmative right to sue and recover costs associated with the delivery or distribution of certain dead bodies, the statute referred to the delivery or distribution of unclaimed bodies for purposes of medical research. Walker County v. Tri-State Crematory, 284 Ga. App. 34, 643 S.E.2d 324 (2007).

RESEARCH REFERENCES

ALR. — Construction and application of "Municipal Cost Recovery Rule," or "Free Public Services Doctrine", 32 A.L.R.6th 261.

ARTICLE 3

OFFENSES

31-21-40. Omission to perform duties imposed by chapter.

Any person having duties imposed upon him by Code Sections 31-21-20 through 31-21-24 who shall refuse or omit to perform such duties shall be guilty of a misdemeanor.

History. — Ga. L. 1887, p. 87, § 9; Penal Code 1895, § 416; Penal Code 1910, § 409; Code 1933, § 88-9920; Code 1933, § 88-2711, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 37 et seq., 42, 78, 79, 81, 92.

C.J.S. — 25A C.J.S., Dead Bodies, §§ 30 et seq., 67 et seq.

31-21-41. Traffic in human bodies.

Any person who shall sell or buy any dead human body or bodies or in any way traffic therein or transmit or convey, or procure the transmission or conveyance of any dead human body or bodies to any place outside of this state for purposes of sale or dissection, shall be punished by imprisonment and labor in the penitentiary for not less than one nor more than ten years; provided, however, that the board for the distribution and delivery of dead bodies shall be empowered to make payments to next of kin as burial benefits amounts not exceeding those payable from time to time by the Social Security Administration.

History. — Ga. L. 1887, p. 87, § 6; Penal Code 1895, § 414; Penal Code 1910, § 407; Code 1933, § 88-9918; Code 1933, § 88-2709, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 589, § 1.

Cross references. — Funeral directors and establishments, embalmers, and crematories, T. 43, C. 18. Anatomical gifts, T. 44, C. 5, A. 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 38, 42, 81, 92.

C.J.S. — 25A C.J.S., Dead Bodies, §§ 30 et seq., 67 et seq.

ALR. — Construction and application of graverobbing statutes, 52 A.L.R.3d 701.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 A.L.R.3d 1071.

31-21-42. Disinterment by coroner without good grounds.

If any person makes affidavit to facts to authorize the coroner to disinter a body or the coroner does so of his own motion and such affidavit is made or disinterment carried out without good grounds or from malice or mischief, the person so swearing or the coroner so officiating shall be guilty of a misdemeanor. In such cases, all circumstances shall be considered by the coroner's jury; and, if it believes there were reasonable grounds for the disinterment at the time it took place, it shall be its duty to acquit.

History. — Orig. Code 1863, § 568; Code 1868, § 632; Code 1873, § 591; Code 1882, § 591; Penal Code 1895, § 417; Penal Code 1910, § 410; Code 1933, § 88-9921; Code 1933, § 88-2712, enacted by Ga. L. 1964, p. 499, § 1.

Cross references. — Authority of coroner and medical examiner to disinter bodies, § 45-16-45.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, §§ 4, 5. 22A Am. Jur. 2d, Dead Bodies, §§ 50, 54, 59, 60, 74, 75, 78.

C.J.S. — 25A C.J.S., Dead Bodies, §§ 4, 19 et seq.

ALR. — Constitutionality of statute or ordinance requiring, or permitting, removal of bodies from cemeteries, 71 A.L.R. 1040.

Removal and reinterment of remains, 21 A.L.R.2d 472.

Enforcement of preference expressed by decedent as to disposition of his body after death, 54 A.L.R.3d 1037.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 A.L.R.3d 1071.

31-21-43. Removal of dead body from grave for purposes of sale or dissection.

Any person who shall remove a dead human body from any grave or other place of interment or from any vault, tomb, sepulcher, or from any

other place for the purpose of selling or dissecting the same and any person who shall receive or purchase any dead human body knowing it to have been so disinterred or removed for the purpose aforesaid shall be punished by imprisonment and labor in the penitentiary for not less than one nor more than ten years.

History. — Cobb's 1851 Digest, p. 818; Code 1863, § 4438; Ga. L. 1865-66, p. 233, §§ 1, 2; Code 1868, § 4479; Code 1873, § 4563; Code 1882, § 4563; Ga. L. 1887, p. 87, § 7; Penal Code 1895, § 415; Penal Code 1910, § 408; Code 1933, § 88-9919; Code 1933, § 88-2710, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1980, p. 1434, § 1.

JUDICIAL DECISIONS

Purpose. — Purpose of this section is for the protection of cemeteries and burying-places in this state, and to prevent and punish the unauthorized use of and traffic in dead human bodies. Davis v. State, 61 Ga. App. 379, 6 S.E.2d 736 (1939).

Application to any dead body part. — Code section extends not only to dead body as a whole, but to any part thereof; and whether body be in its original or intermediate state of flesh and bones, or in skeleton form only, irrespective of length of time interred. Davis v. State, 61 Ga. App. 379, 6 S.E.2d 736 (1939).

Shifting of body insufficient to establish offense. — There is no offense under this section without removal from grave or other place of interment; a shifting of body would not be sufficient. Davis v. State, 61 Ga. App. 379, 6 S.E.2d 736 (1939).

Sufficiency of indictment under section. — Substantial charge in language of this section is sufficient. The indictment need not allege that body is that of a human being when that fact may appear from language used, as that fact will be assumed, but name of person whose body was disinterred must be stated or a reason must be assigned for failure to state it. Davis v. State, 61 Ga. App. 379, 6 S.E.2d 736 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 50, 74, 75, 78.

ALR. — Constitutionality of statute or ordinance requiring, or permitting, removal of bodies from cemeteries, 71 A.L.R. 1040.

Constitutionality, construction, and application of criminal statutes specifically denouncing offenses affecting cemeteries, burial lots, tombstones, and the like, 132 A.L.R. 557.

Removal and reinterment of remains, 21 A.L.R.2d 472.

Construction and application of graverobbing statutes, 52 A.L.R.3d 701.

Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body, 81 A.L.R.3d 1071.

31-21-44. Wanton or malicious removal of dead body from grave or disturbance of contents of grave; receipt, retention, disposal, or possession of unlawfully removed dead body or bodily part.

(a) It is unlawful for any person wantonly or maliciously to:

(1) Remove the dead body of a human being from any grave or other place of interment or from any vault, tomb, or sepulcher; or

(2) Otherwise disturb the contents of any grave or other place of interment or any vault, tomb, or sepulcher.

(b) It is unlawful for any person to receive, retain, dispose of, or possess the dead body or any bodily part of a human being knowing it to have been removed unlawfully from any grave or other place of interment or any vault, tomb, or sepulcher. This subsection shall not apply to any person having duties imposed upon that person relating to the possession or disposition of dead bodies while in the performance of said duties, which persons shall include law enforcement personnel, coroners and medical examiners, operators of funeral establishments, cemetery operators, and medical and medical laboratory personnel.

(c) Any person who violates any provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years, or by both such imprisonment and fine.

History. — Code 1933, § 88-2710.1, enacted by Ga. L. 1980, p. 1434, § 1; Ga. L. 1989, p. 360, § 1.

JUDICIAL DECISIONS

No basis for private right of action. — Individual was not permitted pursuant to O.C.G.A. § 9-15-2(d) to file a pro se civil complaint related to the final disposition of a family member's remains because no applicable legal authority recognized any private right of action based on alleged violations of O.C.G.A. § 31-21-44, a criminal statute relating to the disposition of human remains. Verdi v. Wilkinson County, 288 Ga. App. 856, 655 S.E.2d 642 (2007), cert. denied, No. S08C0929, 2008 Ga. LEXIS 397 (Ga. 2008).

In a 42 U.S.C. § 1983 suit, a Native American plaintiff failed to state a claim against a city and a private developer for disturbing graves because O.C.G.A. § 31-21-44 criminalized the destruction of graves but did not create a private cause of action. Serpentfoot v. Rome City Comm'n, No. 08-15628, 2009 U.S. App. LEXIS 7712 (11th Cir. Apr. 7, 2009) (Unpublished).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, § 78.

C.J.S. — 25A C.J.S., Dead Bodies, §§ 30 et seq., 67 et seq.

ALR. — Liability for desecration of graves and tombstones, 77 A.L.R.4th 108.

31-21-44.1. Abuse of dead body.

(a)(1) A person commits the offense of abuse of a dead body if, prior to interment and except as otherwise authorized by law, such person

willfully defaces a dead body while the dead body is lying in state or is prepared for burial, showing, or cremation whether in a funeral establishment, place of worship, home, or other facility for lying in state or at a grave site. The lawful presence of the offender at a place where the dead body is abused shall not be a defense to a prosecution under this Code section.

(2) A person who is providing care to another person, other than in a hospital, either on a permanent or temporary basis, shall, upon the death of such person while in such person's care, be required to notify a local law enforcement agency or coroner or a relative of such deceased person within six hours of the discovery of the death of such person. Any person who intentionally violates the provisions of this paragraph shall commit the offense of abuse of a dead body.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than three years.

History. — Code 1981, § 31-21-44.1, enacted by Ga. L. 1995, p. 569, § 1; Ga. L. 1997, p. 1460, § 1; Ga. L. 1998, p. 128, § 31.

31-21-44.2. Throwing away or abandonment of dead bodies prohibited; punishment.

(a)(1) Any person who throws away or abandons any dead human body or portion of such dead body shall commit the offense of abandonment of a dead body.

(2) It shall not be an offense under this subsection to make final disposition of a dead human body or portion of such dead body under a death certificate issued under Chapter 10 of this title or the law of another jurisdiction by interment, entombment, inurnment, scattering of cremated remains, burial at sea, or any means otherwise authorized by law; nor shall it be an offense under this subsection for any law enforcement personnel, medical or medical laboratory personnel, hospital personnel, coroner or medical examiner, funeral director, embalmer, crematory operator, or cemetery operator to perform those duties or acts relating to possession or disposition of a dead human body or portion of such dead body which are otherwise imposed or authorized by law or lawful contract; nor shall use of a dead human body or portion of such dead body at or by an accredited medical school, dental school, college, or university for education, research, or advancement of medical or dental science or therapy be an offense under this subsection.

(b) Any person who commits an offense of abandonment of a dead body as provided by subsection (a) of this Code section shall be guilty of

a felony and shall be punished by imprisonment for not less than one nor more than three years.

History. — Code 1981, § 31-21-44.2, enacted by Ga. L. 2002, p. 641, § 1.

31-21-45. Public exhibit or display of dead human bodies of American Indians or American Indian human remains.

(a) After December 1, 1992, it shall be unlawful to exhibit or display to the public dead human bodies of American Indians or American Indian human remains except in connection with:

(1) Funeral or burial services;

(2) Education or instruction as part of a course of study at an accredited university, college, or school; or

(3) Educational exhibits or displays as may be allowed only with the express written permission of the lineal descendants of the deceased where such descendants can be identified or by the agent of the deceased's estate or, where there is no lineal descendant or agent of the deceased's estate, by the Council on American Indian Concerns created by Code Section 44-12-280.

(b) Any person who violates this Code section is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than two years.

History. — Code 1981, § 31-21-45, enacted by Ga. L. 1992, p. 1790, § 4; Ga. L. 2000, p. 136, § 31.

CHAPTER 22

CLINICAL LABORATORIES

Sec.
31-22-1. Definitions.
31-22-2. Licenses.
31-22-3. Clinical Laboratory, Blood Bank, and Tissue Bank Committee [Repealed].
31-22-4. Examination of human specimens.
31-22-5. Methods for selection of blood donors and collection, storage, and processing of human blood.
31-22-6. Powers of board to promulgate rules and regulations, establish and enforce standards.
31-22-7. Reports to department.
31-22-8. Inspections; evaluation program.
31-22-9. Applicability of chapter.
31-22-9.1. HIV tests — Who may perform test.
31-22-9.2. HIV tests — Report of positive results; notification; counseling; violations; exception for insurance coverage; exposure of health care provider.
31-22-10. Effect of this chapter on Chapter 23 of this title and Article 6 of Chapter 5 of Title 44.
31-22-11. Effect of this chapter on Chapter 34 of Title 43.
31-22-12. Injunction of operation of unlicensed clinical laboratories.
31-22-13. Penalty.

31-22-1. Definitions.

As used in this chapter, the term:

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

(2) "Clinical laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the diagnosis of, recommendation of treatment of, or for the purposes of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of human beings; the term "clinical laboratory" shall include specimen collection stations and blood banks which provide through their ownership or operation a system for the collection, processing, or storage of human blood and its component parts unless such human blood and its component parts are intended as source material for the manufacture of biological products and regulated by the Center for Biologics Evaluation and Research (CBER) within the federal Food and Drug Administration; the term "clinical laboratory" shall include tissue banks which procure, store, or process human or animal tissues designed to be used for medical purposes in human beings. The term "clinical laboratory" shall not include laboratories which are nondiagnostic only and regulated pursuant to the federal Clinical Laboratory Improvement Amendments (CLIA) whose sole function is to perform examination of human blood or blood components intended as source material for the manufacture of biological products.

(2.1) "Commissioner" means the commissioner of community health.

(2.2) "Department" means the Department of Community Health.

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

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

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

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

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

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

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

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

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

History. — Ga. L. 1970, p. 531, § 2; Ga. L. 1971, p. 247, § 1; Ga. L. 1982, p. 1081, §§ 1, 2, 6, 7; Ga. L. 1991, p. 94, § 31; Ga. L. 1991, p. 349, § 1; Ga. L. 2005, p. 1190, § 1/SB 51; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2011, p. 705, § 4-16/HB 214; Ga. L. 2016, p. 318, § 1/SB 273; Ga. L. 2017, p. 547, § 1/HB 210.

The 2017 amendment, effective July 1, 2017, in the middle of the first sentence

of paragraph (2), deleted "shall include" preceding "blood banks", and substituted "unless such human blood and its component parts are intended as source material for the manufacture of biological products and regulated by the Center for Biologics Evaluation and Research (CBER) within the federal Food and Drug Administration; the term 'clinical laboratory' shall include" for "as well as".

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

Cited in Sherrer v. Hale, 248 Ga. 793, 285 S.E.2d 714 (1982).

RESEARCH REFERENCES

ALR. — Right of corporation to engage in business, trade, or activity requiring license from public, 165 A.L.R. 1098.

31-22-2. Licenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Each clinical laboratory shall have a licensed director. An individual shall be permitted to direct no more than three clinical laboratories. No individual shall function as a director of a clinical laboratory unless he is a physician licensed to practice medicine and surgery pursuant to Chapter 34 of Title 43; provided, however, that the director of a clinical laboratory restricting its practice to dental pathology may be either a physician licensed to practice medicine and surgery or a dentist licensed to practice dentistry; provided, further, that the board may promulgate rules and regulations which authorize persons who possess doctorate degrees in biology, microbiology, and related fields to be directors of clinical laboratories when the proper circumstances and qualifications are present.

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

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

(h) The board shall fix and publish in print or electronically and from time to time revise schedules of fees for applications and renewals. Such fees for clinical laboratory licenses shall be in amounts calculated to

defray the costs of necessary inspections, evaluations, and investigations related thereto.

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

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

History. — Ga. L. 1970, p. 531, § 4; Ga. L. 1975, p. 737, § 2; Ga. L. 1982, p. 1081, §§ 3, 4, 8, 9; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 838, § 10/SB 388.

OPINIONS OF THE ATTORNEY GENERAL

Amount and disposition of licensure fees. — Fees for laboratory licenses must not exceed those amounts calculated to defray cost of inspecting, evaluating, and investigating nonexempt laboratories; all fees collected under licensure law must be paid into state treasury, and licensing program must be financed out of funds made available to department by General Assembly. 1970 Op. Att'y Gen. No. 70-140.

Subsection (e) enunciates qualifications for position of clinical director. — Legislature desires to have directors licensed as clinical directors; provisions of this section enunciate certain qualifications needed for position of clinical director. 1970 Op. Att'y Gen. No. 70-140.

RESEARCH REFERENCES

ALR. — Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

31-22-3. Clinical Laboratory, Blood Bank, and Tissue Bank Committee.

Reserved. Repealed by Ga. L. 2012, p. 1132, § 2/SB 407, effective July 1, 2012.

Editor's notes. — This Code section was based on Ga. L. 1970, p. 531, § 8; Ga. L. 1972, p. 1257, §§ 3-5; Ga. L. 1982, p. 2376, §§ 1, 2.

Law reviews. — For article, "Reforming Regenerative Medicine Regulation," see 34 Ga. St. U. L. Rev. 631 (2018).

31-22-4. Examination of human specimens.

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

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

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

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

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

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

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

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

History. — Ga. L. 1970, p. 531, § 5; Ga. L. 1985, p. 149, § 31; Ga. L. 1998, p. 1385, § 1.

31-22-5. Methods for selection of blood donors and collection, storage, and processing of human blood.

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

(b) The methods described in subsection (a) of this Code section shall conform to the most recent "Standards for Blood Banks and Transfusion Services" published by the American Association of Blood Banks; provided, however, that the board may modify the standards published by the American Association of Blood Banks by adopting separate or supplementary rules and regulations to ensure that the blood donation will not be detrimental to the donor and will protect the ultimate recipient of human blood or any of its component parts from diseases known to be transmissible by blood.

History. — Ga. L. 1972, p. 1247, § 2.

Cross references. — Inapplicability of implied warranties to injection, transfusion, or other transfer of blood, blood plasma, or transplanting of tissue, bones, or organs, §§ 11-2-316, 51-1-28. Age at which person may donate blood without consent of parent or guardian, § 44-5-89.

Administrative rules and regulations. — Blood labeling, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-9.

JUDICIAL DECISIONS

Cited in Sanders v. Colquitt County Hosp. Auth., 180 Ga. App. 58, 348 S.E.2d 490 (1986).

RESEARCH REFERENCES

ALR. — Liability of hospital, physician, or other individual medical practitioner for injury or death resulting from blood transfusion, 20 A.L.R.4th 136.

31-22-6. Powers of board to promulgate rules and regulations, establish and enforce standards.

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

(1) Promulgate rules and regulations for the implementation of this chapter;

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

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

History. — Ga. L. 1970, p. 531, § 4; Ga. L. 1972, p. 1257, § 2; Ga. L. 2012, p. 1132, § 3/SB 407.

OPINIONS OF THE ATTORNEY GENERAL

Board of Health (now Board of Community Health) must implement clinical laboratory licensing law. 1970 Op. Att'y Gen. No. 70-140.

31-22-7. Reports to department.

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

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

History. — Ga. L. 1970, p. 531, § 6.

31-22-8. Inspections; evaluation program.

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

(b) The department shall operate a clinical laboratory evaluation program and shall prescribe standards of performance in the examination of specimens. As part of the clinical laboratory evaluation program, the department may require the clinical laboratory to analyze test samples submitted or authorized by the department and report on the results of such analysis.

History. — Ga. L. 1970, p. 531, § 7; Ga. L. 1975, p. 737, § 3; Ga. L. 1982, p. 1081, §§ 5, 10.

RESEARCH REFERENCES

ALR. — Liability of owner or occupant of premises to building or construction inspector coming upon premises in discharge of duty, 28 A.L.R.3d 891.

31-22-9. Applicability of chapter.

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

(1) Operated by the Georgia Health Sciences University, the Emory University School of Medicine, any other medical schools in Georgia, or the United States government;

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

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

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

(b) This chapter shall not apply to pharmacists licensed pursuant to Chapter 4 of Title 26, who shall be considered practicing within their scope of practice, when they are performing tests and interpreting the results as a means to screen for or monitor disease risk factors or drug use and facilitate patient education, so long as such tests are available to and for use by the public without licensure of the user of such tests. Pharmacists performing such tests shall make reasonable efforts to report the results obtained from such tests to the patient's physician of choice.

History. — Ga. L. 1970, p. 531, § 1; Ga. L. 1972, p. 1247, § 1; Ga. L. 1972, p. 1257, § 1; Ga. L. 1975, p. 737, § 1; Ga. L. 1976, p. 1362, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2000, p. 226, § 1; Ga. L. 2011, p. 752, § 31/HB 142; Ga. L. 2018, p. 355, § 1/SB 422.

The 2018 amendment, effective July 1, 2018, substituted the present provisions of subsection (b) for the former provisions, which read: "This chapter shall not apply to pharmacists licensed pursuant to Chapter 4 of Title 26 practicing in accordance with the provisions thereof who are performing capillary blood tests and interpreting the results as a means to screen for or monitor disease risk factors and facilitate patient education as autho-

rized in Code Section 26-4-4, so long as such capillary blood tests are available to and for use by the public without licensure of the user of the test."

OPINIONS OF THE ATTORNEY GENERAL

Section effectively excludes Georgia Crime Laboratory from coverage. 1972 Op. Att'y Gen. No. U72-113.

31-22-9.1. HIV tests — Who may perform test.

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

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

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

(A) Has been diagnosed as having AIDS;

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

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

(D) Has submitted to an HIV test;

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

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

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

and which permits the identification of that person.

(3) "AIDS transmitting crime" means any of the following offenses specified in Title 16:

(A) Rape;

(B) Sodomy;

(C) Aggravated sodomy;

(D) Child molestation;

(E) Aggravated child molestation;

(F) Prostitution;

(G) Solicitation of sodomy;

(H) Incest;

(I) Statutory rape; or

(J) Any offense involving a violation of Article 2 of Chapter 13 of Title 16, regarding controlled substances, if that offense involves heroin, cocaine, derivatives of either, or any other controlled substance in Schedule I, II, III, IV, or V and that other substance is commonly intravenously injected, as determined by the regulations of the department.

(4) "Body fluids" means blood, semen, or vaginal secretions.

(5) "Confirmed positive HIV test" means the results of at least two separate types of HIV tests, both of which indicate the presence of HIV in the substance tested thereby.

(6) "Counseling" means providing the person with information and explanations medically appropriate for that person which may include all or part of the following: accurate information regarding AIDS and HIV; an explanation of behaviors that reduce the risk of transmitting AIDS and HIV; an explanation of the confidentiality of information relating to AIDS diagnoses and HIV tests; an explanation of information regarding both social and medical implications of HIV tests; and disclosure of commonly recognized treatment or treatments for AIDS and HIV.

(7) "Determined to be infected with HIV" means having a confirmed positive HIV test or having been clinically diagnosed as having AIDS.

(8) "Health care facility" means any:

(A) Institution or medical facility, as defined in Code Section 31-7-1;

(B) Facility for mentally ill persons or persons with developmental disabilities, as such terms are defined in Code Section 37-1-1, or alcoholic or drug dependent persons, as defined in Code Section 37-7-1;

(C) Medical, dental, osteopathic, or podiatric clinic;

(D) Hospice, as defined in Code Section 31-7-172;

(E) Clinical laboratory, as defined in Code Section 31-22-1; or

(F) Administrative, clerical, or support personnel of any legal entity specified in subparagraphs (A) through (E) of this paragraph.

(9) "Health care provider" means any of the following persons licensed or regulated by the state:

(A) Physician or physician assistant;

(B) Osteopath;

(C) Podiatrist;

(D) Midwife;

(E) Dentist, dental technician, or dental hygienist;

(F) Respiratory care professional, certified respiratory therapy technician, or registered respiratory therapist;

(G) Registered nurse;

(H) Licensed practical nurse;

(I) Emergency medical technician, paramedic, or cardiac technician;

(J) Clinical laboratory director, supervisor, technician, or technologist;

(K) Funeral director or embalmer;

(L) Member of a hospice team, as defined in Code Section 31-7-172;

(M) Nursing home administrator;

(N) Professional counselor, social worker, or marriage and family therapist;

(O) Psychologist;

(P) Administrative, clerical, or support personnel, whether or not they are licensed or regulated by the state, of any person specified in subparagraphs (A) through (O) of this paragraph;

(Q) Trainee, student, or intern, whether or not they are licensed or regulated by the state, of any persons listed in subparagraphs (A) through (O) of this paragraph; or

(R) First responder, as defined in Chapter 11 of this title, although such person is not licensed or regulated by the state.

(10) "HIV" means any type of Human Immunodeficiency Virus, Human T-Cell Lymphotropic Virus Types III or IV, Lymphadenopathy Associated Virus Types I or II, AIDS Related Virus, or any other identified causative agent of AIDS.

(11) "HIV infected person" means a person who has been determined to be infected with HIV, whether or not that person has AIDS, or who has been clinically diagnosed as having AIDS.

(12) "HIV test" means any antibody, antigen, viral particle, viral culture, or other test to indicate the presence of HIV in the human body, which test has been approved for such purposes by the regulations of the department.

(13) "Institutional care facility" means any:

(A) Health care facility;

(B) Child welfare agency, as defined in Code Section 49-5-12;

(C) Group care facility, as defined in Code Section 49-5-3;

(D) Penal institution; or

(E) Military unit.

(14) "Knowledge of being infected with HIV" means actual knowledge of:

(A) A confirmed positive HIV test; or

(B) A clinical diagnosis of AIDS.

(15) "Law" means federal or state law.

(16) "Legal entity" means a partnership, association, joint venture, trust, governmental entity, public or private corporation, health care facility, institutional care facility, or any other similar entity.

(17) "Military unit" means the smallest organizational unit of the organized militia of the state, as defined in Code Section 38-2-2, or of any branch of the armed forces of the United States, which unit is commanded by a commissioned officer.

(18) "Penal institution" means any jail, correctional institution, or similar facility for the detention of violators of state laws or local ordinances.

(19) "Person" means a natural person.

(20) "Person at risk of being infected with HIV" means any person who may have already come in contact with or who may in the future reasonably be expected to come in contact with the body fluids of an HIV infected person.

(21) "Physician" means any person licensed to practice medicine under Chapter 34 of Title 43.

(22) "Public safety agency" means that governmental unit which directly employs a public safety employee.

(23) "Public safety employee" means an emergency medical technician, firefighter, law enforcement officer, or prison guard, as such terms are defined in Code Section 45-9-81, relating to indemnification of such personnel for death or disability.

(b) Notwithstanding the provisions of Code Section 31-21-10 and Code Section 31-22-11, no person or legal entity, other than an insurer authorized to transact business in this state, shall submit for an HIV

test any human body fluid or tissue to any person or legal entity except to:

(1) A clinical laboratory licensed under this chapter;

(2) A clinical laboratory exempt from licensure under Code Section 31-22-9; or

(3) A clinical laboratory licensed as such pursuant to the laws of any other state.

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

History. — Code 1981, § 31-22-9.1, enacted by Ga. L. 1988, p. 1799, § 8; Ga. L. 1989, p. 14, § 31; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11; Ga. L. 2009, p. 453, §§ 1-4, 3-5/HB 228; Ga. L. 2009, p. 859, § 3/HB 509; Ga. L. 2011, p. 337, § 10/HB 324; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2016, p. 752, § 3/HB 1058.

Cross references. — Confidential nature of AIDS information, § 24-12-20.

Editor's notes. — Ga. L. 1988, p. 1799, § 1, not codified by the General Assembly, provides: "The General Assembly finds that Acquired Immunodeficiency Syndrome (AIDS) and its causative agent, including Human Immunodeficiency Virus (HIV), pose a grave threat to the health, safety, and welfare of the people of this state. In the absence of any effective vaccination or treatment for this disease, it threatens almost certain death to all who contract it. The disease is largely transmitted through sexual contacts and intravenous drug use, not through casual contact, and, while deadly, is therefore preventable. The key component of the fight against AIDS is education. Through public education and counseling our citizens can learn how the disease is transmitted and, thus, how to protect themselves and prevent its spread. The Department of Human Resources is encouraged to continue its efforts to educate all Georgians about the disease, its causative agent, and its means of transmission. In addition, voluntary testing should be encouraged for anyone who feels at risk of infection. While education, counseling, and voluntary testing are vital to the elimination of this epidemic, other measures are needed to protect the health of our citizens, and it is the intention of the General Assembly to enact such measures in the exercise of its police powers in order to deal with AIDS and HIV infection."

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "counselor, social worker, or marriage and family therapist" was substituted for "counselors, social workers, or marriage and family therapists" in subparagraph (a)(9)(N) and "Trainee, student, or intern" was substituted for "Trainees, students, or interns" in subparagraph (a)(9)(Q).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

HIV infected person. — Evidence was insufficient to convict the defendant of knowingly engaging in sexual intercourse without disclosing to the other person the fact of the defendant being an HIV infected person prior to such intercourse after the defendant obtained knowledge of being infected with HIV as the state failed to prove the defendant's HIV positive status as the record was devoid of any evi-

dence that the defendant was determined to be infected with HIV by an HIV test approved for such purposes by the regulations of the Department of Community Health; and there was no testimony by a physician or other competent witness to explain the test report or describe how the report satisfied the criteria for showing that the defendant was an HIV infected person. Propes v. State, 346 Ga. App. 116, 815 S.E.2d 571 (2018).

Cited in Rodriguez v. State, 343 Ga. App. 526, 806 S.E.2d 916 (2017).

31-22-9.2. HIV tests — Report of positive results; notification; counseling; violations; exception for insurance coverage; exposure of health care provider.

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

(b) Reserved.

(c) Unless exempted under this Code section, each health care provider who orders an HIV test for any person shall do so only after notifying the person to be tested. Unless exempted under this subsection, the person to be tested shall have the opportunity to refuse the test. The provisions of this subsection shall not be required if the person is required to submit to an HIV test pursuant to Code Section 15-11-603, 17-10-15, 31-17A-3, 42-5-52.1, or 42-9-42.1. The provisions of this subsection shall not be required if the person is a minor or incompetent and the parent or guardian thereof permits the test after compliance with this subsection. The provisions of this subsection shall not be required if the person is unconscious, temporarily incompetent, or comatose and the next of kin permits the test after compliance with this subsection. The provisions of this subsection shall not apply to emergency or life-threatening situations. The provisions of this subsection shall not apply if the physician ordering the test is of the opinion that the person to be tested is in such a medical or emotional state that disclosure of the test would be injurious to the person's health. The provisions of this subsection shall only be required prior to drawing the body fluids required for the HIV test and shall not be required for each test performed upon that fluid sample.

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

(e) The criminal penalty provided in Code Section 31-22-13 shall not apply to a violation of subsection (c), (d), or (g) of this Code section. The statute of limitations for any action alleging a violation of this Code section shall be two years from the date of the alleged violation.

(f) The provisions of this Code section shall not apply to situations in which an HIV test is ordered or required in connection with insurance

coverage, provided that the person to be tested or the appropriate representative of that person has agreed to have the test administered under such procedures as may be established by the Commissioner of Insurance after consultation with the Department of Community Health.

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

(1) If the patient or the patient's representative, if the patient is a minor, otherwise incompetent, or unconscious, does not refuse the test after being notified that the test is to be ordered; or

(2) If the patient or the patient's representative refuses the test, following compliance with paragraph (1) of this subsection, when at least one other health care provider who is otherwise authorized to order an HIV test concurs in writing to the testing and the patient is informed of the results of the test and is provided counseling with regard to those results.

History. — Code 1981, § 31-22-9.2, enacted by Ga. L. 1988, p. 1799, § 8; Ga. L. 1990, p. 705, §§ 2, 3; Ga. L. 2000, p. 20, § 20; Ga. L. 2006, p. 72, § 31/SB 465; Ga. L. 2007, p. 173, § 2/HB 429; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2013, p. 294, § 4-43/HB 242; Ga. L. 2015, p. 1346, § 2/HB 436; Ga. L. 2016, p. 752, § 4/HB 1058; Ga. L. 2018, p. 1112, § 31/SB 365.

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, deleted "31-17-4.2," following "17-10-15," in the third sentence of subsection (c).

Cross references. — HIV pregnancy screening, § 31-17-4.2. Control of HIV, T. 31, C. 17A.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, subsection (b) was reserved.

Editor's notes. — Ga. L. 1988, p. 1799, § 1, not codified by the General Assembly, provides: "The General Assembly finds that Acquired Immunodeficiency Syndrome (AIDS) and its causative agent, including Human Immunodeficiency Virus (HIV), pose a grave threat to the health, safety, and welfare of the people of this state. In the absence of any effective vaccination or treatment for this disease, it threatens almost certain death to all who contract it. The disease is largely transmitted through sexual contacts and intravenous drug use, not through casual contact, and, while deadly, is therefore preventable. The key component of the fight against AIDS is education. Through public education and counseling our citizens can learn how the disease is transmitted and, thus, how to protect themselves and prevent its spread. The Department of Human Resources is encouraged to continue its efforts to educate all Georgians about the disease, its causative agent, and its means of transmission. In addition, voluntary testing should be encouraged for anyone who feels at risk of infection. While education, counseling,

and voluntary testing are vital to the elimination of this epidemic, other measures are needed to protect the health of our citizens, and it is the intention of the General Assembly to enact such measures in the exercise of its police powers in order to deal with AIDS and HIV infection."

Former subsection (b) was repealed by its own terms effective December 31, 2003.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Administrative rules and regulations. — Medical or life-style questions on applications and underwriting guidelines affecting AIDS and ARC, Official Compilation of the Rules and Regulations of the State of Georgia, Comptroller General, Commissioner of Insurance, Subject 120-2-43.

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U. L. Rev. 312 (1990).

For comment, "AIDS: Balancing the Physician's Duty to Warn and Confidentiality Concerns," see 38 Emory L.J. 280 (1989).

JUDICIAL DECISIONS

Failure to inform patient. — Patient's claim against a doctor and hospital for failure to report the positive results of the patient's HIV test to the patient as required under O.C.G.A. § 31-22-9.2 was a classic medical malpractice claim, despite the patient's claim that it was ordinary negligence; because the claim was brought eight years after the test, the claim was barred by the five-year statute of repose, O.C.G.A. § 9-3-71(b). Piedmont Hospital, Inc. v. D. M., 335 Ga. App. 442, 779 S.E.2d 36 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 37A Am. Jur. 2d, Freedom of Information Act, § 37 et seq.

ALR. — Damage action for HIV testing without consent of person tested, 77 A.L.R.5th 541.

31-22-10. Effect of this chapter on Chapter 23 of this title and Article 6 of Chapter 5 of Title 44.

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

History. — Ga. L. 1972, p. 1247, § 3.

31-22-11. Effect of this chapter on Chapter 34 of Title 43.

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

History. — Ga. L. 1972, p. 1257, § 6.

31-22-12. Injunction of operation of unlicensed clinical laboratories.

The operation or maintenance of an unlicensed clinical laboratory in violation of this chapter is declared a nuisance, inimical to the public health, welfare, and safety. The commissioner in the name of the people of the state through the Attorney General may, in addition to other remedies provided in this chapter, bring an action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such clinical laboratory until compliance with this chapter or the rules or regulations promulgated under this chapter has been demonstrated to the satisfaction of the department.

History. — Ga. L. 1970, p. 531, § 10;
Ga. L. 1985, p. 149, § 31.

31-22-13. Penalty.

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

History. — Ga. L. 1970, p. 531, § 9.

CHAPTER 23

EYE BANKS

Sec.
31-23-1. Definitions.
31-23-2. Effect on eye donations of the "Georgia Revised Uniform Anatomical Gift Act."
31-23-3. Hospitals or medical schools which may operate eye banks; right of eye banks to receive gifts, donations, and bequests.
31-23-4. Powers of department.
31-23-5. Persons authorized to extract eyes; compensation therefor; liability of persons operating eye banks or having custody or control of donor's body.
31-23-6. Removal of eye or corneal tissue [Repealed].
31-23-7. Liability of donor or donor's estate.
31-23-8. Effect of chapter upon existing methods of treatment or instruction.
31-23-9. Penalty.

Cross references. — Anatomical gifts, § 44-5-140 et seq.

Administrative rules and regulations. — Eye banks, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-28.

31-23-1. Definitions.

As used in this chapter, the term:

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

(2) "Eye bank" means a nonprofit facility which is maintained and operated for the extraction, removal, care, storage, preservation, and use of human eyes or parts thereof for purposes of sight preservation or restoration, medical education, instruction pertaining to sight preservation or restoration, or research, which facility is operated by, under, or in affiliation with a hospital for the care of human beings or a medical school in conjunction with the department or school of ophthalmology of such medical school.

(3) "Person" means any individual, firm, partnership, corporation, trustee, association, or combination thereof.

History. — Ga. L. 1961, p. 582, § 1; Code 1933, § 88-2001, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1499, § 1; Ga. L. 1999, p. 832, § 1; Ga. L. 2011, p. 705, § 4-17/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-23-2. Effect on eye donations of the "Georgia Revised Uniform Anatomical Gift Act."

Any donation of a person's eyes or any part thereof shall be made in accordance with Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act."

History. — Ga. L. 1961, p. 582, §§ 3, 4; Code 1933, §§ 88-2003, 88-2004, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2008, p. 503, § 4/SB 405.

31-23-3. Hospitals or medical schools which may operate eye banks; right of eye banks to receive gifts, donations, and bequests.

Any facility, hospital, or any medical school in conjunction with the department or school of ophthalmology of such medical school, alone or in further conjunction with other charitable organizations, may establish and maintain an eye bank in, under, or in affiliation with such hospital or medical school upon approval for the establishment of the eye bank by the Department of Community Health, if the eye bank meets the medical standards approved by the Eye Bank Association of America and such facility, hospital, or medical school is a nonprofit organization and is not a subsidiary of a for profit corporation or business entity. Upon the establishment of any eye bank as authorized in this Code section, the extraction, removal, care, preservation, storage, and use of human eyes or parts thereof for any of the purposes for which eye banks may be established may begin in such facility or as authorized by such facility. The eye bank shall have the right to receive gifts, donations, and bequests for the purposes stated in this Code section.

History. — Ga. L. 1961, p. 582, § 2; Code 1933, § 88-2002, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1499, § 2; Ga. L. 1999, p. 832, § 2; Ga. L. 2003, p. 368, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration, see 59 Mercer L. Rev. 447 (2007).

31-23-4. Powers of department.

The department is empowered to approve or disapprove the establishment of an eye bank by any group desiring to establish one in accordance with rules and regulations adopted by the department; to exercise such control, inspection, and supervision of established eye banks as the department determines to be proper; and to terminate, for good cause, its approval of the maintenance and operation of an eye bank.

History. — Ga. L. 1961, p. 582, § 7; Code 1933, § 88-2007, enacted by Ga. L. 1964, p. 499, § 1.

31-23-5. Persons authorized to extract eyes; compensation therefor; liability of persons operating eye banks or having custody or control of donor's body.

(a) Upon the death of any donor, the persons holding a donor's unrevoked instrument of donation and maintaining and operating the donee eye bank may authorize any physician, or any embalmer licensed under Article 1 of Chapter 18 of Title 43, as now or hereafter amended, who has completed a course of training in eye extraction approved by the department, or any technician trained by and authorized by the eye bank to extract and remove the donated eyes or parts thereof for the eye bank in accordance with sound medical practices.

(b) The person or persons extracting and removing the donated eyes or parts thereof shall receive no compensation for such services other than that established, approved, and paid by the persons maintaining and operating the eye bank.

(c) Neither persons maintaining and operating eye banks, nor their agents, nor persons having custody or control of a deceased donor's body shall be liable criminally or civilly to any person or any person's estate for the removal of eyes or parts thereof donated and removed in accordance with this chapter.

History. — Ga. L. 1961, p. 582, § 5; Code 1933, § 88-2005, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1972, p. 234, § 1; Ga. L. 1976, p. 1559, § 1; Ga. L. 1982, p. 1499, § 3; Ga. L. 1992, p. 6, § 31.

31-23-6. Removal of eye or corneal tissue.

Reserved. Repealed by Ga. L. 2008, p. 503, § 3/SB 405, effective July 1, 2008.

Editor's notes. — This Code section was based on Code 1933, § 88-2010, enacted by Ga. L. 1978, p. 811, § 1; Ga. L. 1980, p. 1328, § 1; Ga. L. 1981, p. 611, § 1; Ga. L. 1982, p. 3, § 31; Ga. L. 1991, p. 94, § 31.

31-23-7. Liability of donor or donor's estate.

In no event shall any donor or donor's estate incur any liability for any expense connected with or resulting from the donation, extraction, removal, care, preservation, storage, or use of such donor's eyes or parts thereof.

History. — Ga. L. 1961, p. 582, § 6; Code 1933, § 88-2006, enacted by Ga. L. 1964, p. 499, § 1.

31-23-8. Effect of chapter upon existing methods of treatment or instruction.

Nothing in this chapter shall affect, interfere with, or change presently existing methods of the medical or scientific operation, treatment, examination, or instruction pertaining to the eyes of human beings as the same is now carried on in the hospitals or under the medical schools of this state.

History. — Ga. L. 1961, p. 582, § 8; Code 1933, § 88-2008, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1499, § 4.

31-23-9. Penalty.

(a) It shall be unlawful:

(1) For any person to sell either his eyes or any parts thereof or the eyes or any parts thereof of another person or to receive any remuneration for the giving of a human eye or any part thereof;

(2) For the person or persons operating and maintaining any eye bank to sell any donated eye or donated part thereof or knowingly to extract, remove, or take possession of any human eye or part thereof for which any person received compensation or remuneration; or

(3) For any person or persons to establish or operate any eye bank without approval of the department or otherwise not in accordance with this chapter.

(b) Any person who violates any provision of this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1961, p. 582, § 9; Code 1933, § 88-2009, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1982, p. 1499, § 5.

JUDICIAL DECISIONS

Action for damage to a corpse. — In an action regarding the alleged removal of eye tissue from a corpse without permission, even if the corneal tissue held pecuniary value, plaintiff could not sue for its recovery on the basis of contract. Bauer v. North Fulton Med. Ctr., Inc., 241 Ga. App. 568, 527 S.E.2d 240 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 38, 42, 81, 92.

C.J.S. — 25A C.J.S., Dead Bodies, § 67 et seq.

CHAPTER 24

BLOOD LABELING

Sec.
31-24-1. Short title.
31-24-2. Definitions.
31-24-3. Requirement of qualification of blood donors.
31-24-4. Labeling of containers of blood.
31-24-5. Transfusion of unlabeled blood; identification of blood administered by transfusion.
31-24-6. Transfer of blood and blood components for industrial use.
31-24-7. Administration of chapter.
31-24-8. Penalty.

Cross references. — Inapplicability of implied warranties to injection, transfusion, or other transfer of blood, blood plasma, or transplanting of tissue, bones, or organs, §§ 11-2-316, 51-1-28. Methods for selection of blood donors and collection of blood, § 31-22-5.

Administrative rules and regulations. — Blood labeling, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-9.

RESEARCH REFERENCES

Am. Jur. Trials. — Transfusion-Associated AIDS Litigation, 58 Am. Jur. Trials 1.

31-24-1. Short title.

This chapter shall be known and may be cited as "The Blood Labeling Act."

History. — Ga. L. 1976, p. 353, § 1.

31-24-2. Definitions.

As used in this chapter, the term:

(1) "Blood" means whole human blood, packed red blood cells, blood platelets, concentrated leucocytes, and blood plasma. It does not include blood derivatives manufactured or processed for industrial use.

(2) "Donation" means any transaction involving the person from whom blood is withdrawn, whether he presents himself for the withdrawal of blood on his own initiative or on the initiative of another person, in which he receives no consideration other than credit through blood assurance programs or other intangible benefits.

(3) "Industrial use" means a use of blood in which the blood is modified by physical or chemical means to produce derivatives for

therapeutic or pharmaceutic biologicals and laboratory reagents or controls.

(4) "Person" means any individual, blood bank, clinical laboratory, hospital, firm, corporation, or any other entity.

(5) "Purchase" means any transaction involving the person from whom blood is withdrawn, whether he presents himself for the withdrawal of blood on his own initiative or on the initiative of another person, in which he receives a monetary consideration in any form. Time off from work granted by an employer for the purpose of giving blood shall not be considered a direct monetary consideration.

(6) "Transfusion" means a use of blood in which the blood is administered to a human being for treatment of sickness or injury.

History. — Ga. L. 1976, p. 353, § 2.

31-24-3. Requirement of qualification of blood donors.

No blood may be withdrawn from any individual in this state for transfusion or industrial uses unless he qualifies to be a blood donor under the laws of this state.

History. — Ga. L. 1976, p. 353, § 3.
Cross references. — Age at which person may donate blood without consent of parent or guardian, § 44-5-89.

RESEARCH REFERENCES

ALR. — Liability of blood supplier or donor for injury or death resulting from blood transfusion, 24 A.L.R.4th 508.

31-24-4. Labeling of containers of blood.

(a) Every person who withdraws blood from an individual or separates blood into components by physical processes shall affix to each container of such blood or components a label in a form specified by the Department of Public Health which shall include an indication of whether the blood was obtained by purchase or donation.

(b) The director of any blood bank who obtains blood in this state from a federally licensed blood bank in another state may label such blood as donated blood if he can legally certify to that fact. If he cannot make such certification, he shall label the blood as blood acquired by purchase.

History. — Ga. L. 1976, p. 353, § 4; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-24-5. Transfusion of unlabeled blood; identification of blood administered by transfusion.

(a) No person may administer blood by transfusion in this state or transfer or offer to transfer blood for transfusion purposes by any type of transaction unless the container of such blood is labeled as required by Code Section 31-24-4.

(b) When blood is administered by transfusion in this state, the identification number of the unit of blood shall be recorded in the patient's medical record, and the label on the container of such blood may not be removed before or during the administration of that blood by transfusion.

History. — Ga. L. 1976, p. 353, § 5.

31-24-6. Transfer of blood and blood components for industrial use.

Blood and blood components, including salvage plasma, may be used and transferred for industrial uses without regard to whether its original acquisition was by purchase or donation.

History. — Ga. L. 1976, p. 353, § 6.

31-24-7. Administration of chapter.

The department shall administer this chapter as a part of and using the procedures of Chapter 22 of this title.

History. — Ga. L. 1976, p. 353, § 7.

31-24-8. Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor.

History. — Ga. L. 1976, p. 353, § 8.

RESEARCH REFERENCES

ALR. — Liability of blood supplier or donor for injury or death resulting from blood transfusion, 24 A.L.R.4th 508.

Liability for donee's contraction of Acquired Immune Deficiency Syndrome (AIDS) from blood transfusion, 64 A.L.R.5th 333.

CHAPTER 25

ARTICLES OF BEDDING

Sec.
31-25-1 through 31-25-13 [Repealed].

31-25-1 through 31-25-13.

Reserved. Repealed by Ga. L. 1997, p. 1339, § 1, effective July 1, 1997.

Editor's notes. — This chapter consisted of Code Sections 31-25-1 through 31-25-13, relating to articles of bedding, and was based on Ga. L. 1937, p. 719, §§ 1-7, 9, 11, 13; Code 1933, §§ 88-801—88-817, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1972, p. 1015, § 503; Ga. L. 1985, p. 149, § 31; Ga. L. 1991, p. 94 § 31.

CHAPTER 26

PRACTICE OF MIDWIFERY

Sec.
31-26-1. Definitions.
31-26-2. Requirement of certificate; application; educational requirements; issuance, suspension, and revocation.
31-26-3. Rules and regulations.
31-26-4. Conduct prohibited of certificate holders.
31-26-5. Attendance at other than normal childbirth; prohibited procedures; conduct in event of complications.
31-26-6. Enforcement.
31-26-7. Injunctive relief of violations.

Administrative rules and regulations. — Midwifery, Official Compilation of the Rules and Regulations of the State of Georgia, Rules for certified nurse-midwives, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Nursing, Regulation of Advanced Practice Registered Nurses, Chapter 410-11.

Georgia Department of Public Health, Health Promotion, Chapter 511-5.

RESEARCH REFERENCES

ALR. — Midwifery: state regulation, 59 A.L.R.4th 929.

31-26-1. Definitions.

As used in this chapter, the term:

(1) "Midwife" means any person not licensed under the laws of this state to practice obstetrics who is regularly engaged in attending women in childbirth or who holds himself or herself out as such, whether or not for consideration.

(2) "Normal childbirth" means delivery, at or close to term, of a pregnant woman whose physical examination by a physician reveals no abnormalities and who does not have signs or symptoms of hemorrhage, toxemia, infection, abnormal position or presentation, or prolonged labor.

(3) "Practice of midwifery" means and includes any act or practice of attending women in childbirth when engaged in by a midwife, whether or not for consideration.

History. — Ga. L. 1955, p. 252, § 1; Code 1933, § 88-1401, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 46.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, §§ 1 et seq., 12 et seq.

31-26-2. Requirement of certificate; application; educational requirements; issuance, suspension, and revocation.

(a) No person shall practice midwifery without first receiving from the Department of Public Health a certificate of authority as provided in this Code section and registering his or her name, address, and occupation with the county board of health and the local registrar, as defined in Code Section 31-10-2, of vital statistics in the county and district in which he or she lives.

(b) Persons desiring to enter into or continue the practice of midwifery shall make written application to the department through the county board of health in the county of their residence. All applicants for permits to practice midwifery shall be of good character and sound mind, shall be free of tuberculosis, venereal diseases, and other communicable diseases in the infectious stage, and shall be protected against smallpox.

(c) In order to become eligible for a certificate of authority to practice midwifery, applicants shall attend classes and satisfactorily complete courses of instruction therein to be prescribed by the department and shall pass an examination covering such courses. Such applicants shall also pass such physical examinations or, in the alternative, provide such evidence with regard to their personal health as the department may require.

(d) The department or any county board of health designated by the department shall issue, or refuse to issue, or, having issued, may suspend or revoke certificates of authority to practice midwifery under and in accordance with this chapter and such rules and regulations as may be issued and promulgated under this chapter. Certificates issued under this chapter shall be renewable annually at such time and in such manner as prescribed by the department. Suspension and revocation of certificates shall be subject to the administrative procedures contained in Article 1 of Chapter 5 of this title.

History. — Ga. L. 1955, p. 252, §§ 2-5; Code 1933, §§ 88-1402, 88-1403, 88-1404, 88-1405, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1991, p. 94, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 46.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 12 et seq.

31-26-3. Rules and regulations.

The department shall have the authority and power to adopt and promulgate such rules and regulations as may appear necessary and proper to carry out the purposes of this chapter, including, but not limited to, minimum educational and physical requirements for midwives and procedures and techniques to be employed and ethics to be observed in the practice of midwifery. The several county boards of health shall have the authority and power to adopt and promulgate supplementary rules and regulations consistent with those adopted and promulgated by the department.

History. — Ga. L. 1955, p. 252, § 7; Code 1933, § 88-1406, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 46.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 12 et seq.

31-26-4. Conduct prohibited of certificate holders.

A certificate issued under this chapter shall not confer upon any person the right to practice medicine; to prescribe or administer drugs; to undertake charge of abnormal cases of confinement or of any disease in connection with confinement; or to assume any name, title, or designation implying that such person is authorized by law to undertake charge of any such cases, or to practice medicine, or to administer drugs.

History. — Ga. L. 1955, p. 252, § 8; Code 1933, § 88-1407, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 46.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 12 et seq.

31-26-5. Attendance at other than normal childbirth; prohibited procedures; conduct in event of complications.

It shall be unlawful for any person holding a certificate as a midwife to attend any cases other than those of normal childbirth or to perform any internal examinations or manipulations of any kind. In all cases in which the child is not delivered spontaneously within a reasonable time, the midwife shall notify a qualified physician immediately and shall make no effort to deliver the child except under direction and supervision of such physician.

History. — Ga. L. 1955, p. 252, § 9; Code 1933, § 88-1408, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, §§ 21, 46.

C.J.S. — 70 C.J.S., Physicians, Surgeons, and Other Health Care Providers, § 12 et seq.

31-26-6. Enforcement.

The department and county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and rules and regulations adopted and promulgated under this chapter, as provided in Article 1 of Chapter 5 of this title.

History. — Ga. L. 1955, p. 252, § 10; Code 1933, § 88-1409, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.

31-26-7. Injunctive relief of violations.

Any violation of this chapter or any rules and regulations adopted and promulgated under this chapter is declared to be a public nuisance subject to abatement as provided in Code Section 31-5-9.

History. — Ga. L. 1955, p. 252, § 11; Code 1933, § 88-1410, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31.

CHAPTER 27

CONTROL OF MASS GATHERINGS

Sec.
31-27-1. Definitions.
31-27-2. Permit requirement.
31-27-3. Application for permit.
31-27-4. Additional requirements for issuance of permit; denial, suspension, or revocation.
31-27-5. Bond requirement; cash deposit in lieu of bond.
31-27-6. Assessment for persons in attendance beyond number specified.
31-27-7. Emergency powers of Governor; authority of director of Civil Defense Division.
31-27-8. Recovery by state for costs and damages.
31-27-9. Rules and regulations.
31-27-10. Applicability of chapter.
31-27-11. Civil penalty.
31-27-12. Criminal penalty.

Cross references. — Regulation of operators of motor vehicle racetracks, T. 43, C. 25.

Administrative rules and regulations. — Mass gatherings, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Environmental Health Hazards, Subject 511-3-2.

JUDICIAL DECISIONS

Constitutionality. — Requirement of the Mass Gathering Act, O.C.G.A. Ch. 27, T. 31, that a permit be obtained from the Department of Human Resources without specifying when, or even if, an application for a permit must be acted upon constitutes a prior restraint on speech in violation of the First Amendment. Bo Fancy Prods., Inc. v. Rabun County Bd. of Comm'rs, 476 S.E.2d 743 (1996).

Because the Mass Gatherings Act, O.C.G.A. Ch. 27, T. 31, fails to provide a time limit within which the Department of Human Resources (DHR) must act upon an application for a permit, the statute delegates overly broad discretion to the DHR and, therefore, constitutes an unconstitutional prior restraint on the exercise of First Amendment rights. Bo Fancy Prods., Inc. v. Rabun County Bd. of Comm'rs, 267 Ga. 341, 478 S.E.2d 373 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, § 74.

C.J.S. — 39A C.J.S., Health and Environment, § 32.

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 25 A.L.R. 114.

31-27-1. Definitions.

As used in this chapter, the term:

(1) "Mass gathering" means any event likely to attract 5,000 or more persons and to continue for 15 or more consecutive hours.

(2) "Permit" means written authorization to a person by the department to operate a mass gathering.

(3) "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

History. — Code 1933, § 88-1201a, enacted by Ga. L. 1971, p. 252, § 1.

JUDICIAL DECISIONS

Cited in Granite State Outdoor Adver., Inc. v. City of Roswell, 283 Ga. 417, 658 S.E.2d 587 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Interpretation of Code section's definition of a mass gathering. — Mass gathering would have to be likely to last the 15 or more consecutive hours with 5,000 or more persons attracted to it for 15 or more hours. 1971 Op. Att'y Gen. No. 71-123.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Breach of Peace and Disorderly Conduct, §§ 14 et seq., 33 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 556, 560, 562, 571, 572. 53A Am. Jur. 2d, Mobs and Riots, § 1. 77 Am. Jur. 2d, Veterans and Veterans' Laws, §§ 54, 55, 75.

C.J.S. — 16A C.J.S., Constitutional Law, §§ 728, 735 et seq.

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 A.L.R. 1483; 25 A.L.R. 114.

31-27-2. Permit requirement.

No person shall hold or promote, by advertising or otherwise, a mass gathering unless a permit has been issued for the gathering. Such permits shall be issued by the Department of Public Health, shall be in writing, shall specify the conditions under which issued, and shall remain in effect until suspended or revoked or until the mass gathering is terminated. The permit shall not be transferable or assignable, and a separate permit shall be required for each mass gathering.

History. — Code 1933, § 88-1202a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — Issuance of permits by Department of Natural Resources for holding of boat races, marine parades, tournaments, and other events, § 52-7-19.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, § 565 et seq.
ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 A.L.R. 1483; 25 A.L.R. 114.

31-27-3. Application for permit.

Application for a permit to promote or hold a mass gathering shall be made to the department on a form and in a manner prescribed by the department by the person who will promote or hold the mass gathering. Application for a permit to promote or hold a mass gathering shall be made at least 15 days before the first day of advertising and at least 45 days before the first day of the gathering. Water and sewage facilities shall be constructed and operational not later than 48 hours before the first day of the mass gathering. The application shall be accompanied by such plans, reports, and specifications as the department shall deem necessary. The plans, reports, and specifications shall provide for adequate and satisfactory water supply and sewage facilities, adequate drainage, adequate toilet and lavatory facilities, adequate refuse storage and disposal facilities, adequate sleeping areas and facilities, wholesome food and sanitary food service, adequate medical facilities, insect control, adequate fire protection, and such other matters as may be appropriate for security of life or health. The application shall disclose the names and addresses of all of the persons, firms, or corporations providing financial backing to the mass gathering and the amounts of such backing.

History. — Code 1933, § 88-1203a, enacted by Ga. L. 1971, p. 252, § 1.

JUDICIAL DECISIONS

Cited in Bo Fancy Prods., Inc. v. Rabun County Bd. of Comm'rs, 267 Ga. 341, 478 S.E.2d 373 (1996).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 48 et seq.

31-27-4. Additional requirements for issuance of permit; denial, suspension, or revocation.

(a) Prior to the issuance of a permit, the applicant must:

(1) Provide a plan for limiting attendance, including methods of entering the area, number and location of ticket booths and entrances, and provisions for keeping nonticket holders out of the area;

(2) Provide a statement verifying that all construction and installation of facilities, including water supply, sewage disposal, insect control, food service equipment, and garbage handling facilities, will be completed at least 48 hours prior to the commencement of the event;

(3) Provide a detailed plan for food service, including a description of food sources, menu, mandatory use of single service dishes and utensils, refrigeration, and food handling and dispensing;

(4) Provide a detailed plan for use of signs to locate all facilities and roadways;

(5) Provide a statement from local fire and police authorities having jurisdiction over the area acknowledging that they can supply adequate security, traffic control, and law enforcement for the proposed gathering;

(6) Provide a detailed plan for emergency situations covering:

(A) Food supplies;

(B) Medical supplies, facilities, and personnel;

(C) An evacuation plan; and

(D) Emergency access roads;

(7) Provide a statement from the local civil defense director, if there is such an officer, indicating that he has been advised of the event and has approved the plan from a civil defense standpoint; and

(8) Provide a command post to be used by department personnel consisting of a minimum of one building or trailer equipped with an adequate communication system.

(b) If it appears necessary and proper that an application for a permit be denied or that a permit previously granted be suspended or revoked, the applicant or holder of the permit shall be notified thereof in writing and shall be afforded an opportunity for hearing as provided in Article 1 of Chapter 5 of this title.

History. — Code 1933, § 88-1204a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 1996, p. 6, § 31.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 16 et seq.

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 25 A.L.R. 114.

31-27-5. Bond requirement; cash deposit in lieu of bond.

The person holding or promoting a mass gathering shall provide a bond of $1 million issued by a surety company authorized to transact business in this state. The purpose of the bond shall be to guarantee full compliance with this chapter as well as other applicable provisions of this title and the provisions of Title 12, relating to air quality control and water supply quality control, and rules and regulations promulgated thereunder and to cover cleanup of the site. This bond shall be in favor of the state for the benefit of any person who is damaged as a result of the activity of a mass gathering. Any person claiming against the bond may maintain an action at law against the person holding or promoting the mass gathering and the surety. In lieu of furnishing the bond, the person holding or promoting a mass gathering may deposit with the commissioner a cash deposit in like amount. However, the bond specified in this Code section shall not be required in cases where the other requirements of this chapter are met by the applicant for a permit and an incorporated municipality or county owns the area upon which the mass gathering is to be held and commits itself, in writing, to clean up the site upon which the gathering is to be held.

History. — Code 1933, § 88-1205a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 1972, p. 912, § 1; Ga. L. 1985, p. 149, § 31.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 16 et seq.

31-27-6. Assessment for persons in attendance beyond number specified.

The person promoting or holding a mass gathering shall be assessed at the rate of $5.00 for each person in attendance beyond the number specified in the application for such mass gathering. Any such assessment shall be remitted to the state treasury and credited to the general fund.

History. — Code 1933, § 88-1206a, enacted by Ga. L. 1971, p. 252, § 1.

31-27-7. Emergency powers of Governor; authority of director of Civil Defense Division.

In the event the commissioner of public health determines that the various facilities appropriate for security of life or health are inadequate due to the unprecedented size of the mass gathering, failure of the person or persons responsible for providing facilities, services, and

other requirements of this chapter, or for any other reason, the commissioner shall immediately inform the Governor who shall have general direction and control of the Civil Defense Division of the Department of Defense and may take whatever immediate action he deems necessary under the authority of Articles 1 through 3 of Chapter 3 of Title 38, as amended. Upon order of the Governor, the director of the Civil Defense Division shall, subject to the direction and control of the Governor, coordinate the activities of all organizations, agencies, and persons required to protect the health, safety, and general welfare of the public in the manner prescribed by Articles 1 through 3 of Chapter 3 of Title 38, as amended.

History. — Code 1933, § 88-1207a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214.

Cross references. — Further provisions regarding emergency powers of Governor, §§ 38-2-6, 38-3-22, 38-3-51, 45-12-29 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 A.L.R. 1483; 25 A.L.R. 114.

31-27-8. Recovery by state for costs and damages.

Any department or agency of the state which assumes the obligations of any person who has defaulted under this chapter may maintain an action at law to recover actual costs and damages suffered against the person holding or promoting a mass gathering, or one who defaults in the performance of an obligation. All damages recovered under this Code section, including, without limitation, the value of goods and services expended in behalf of one who has defaulted under this chapter, together with the costs thereof, shall be paid into the state treasury to the credit of the department or agency which suffered such expense. Actions to recover costs and damages under this Code section shall be brought in the superior court in the county in which the cause of action or some part thereof arose, or in which the person complained of has a principal place of business, or in which the person complained of resides. In all such actions, the procedure and rules of evidence shall be the same as in ordinary civil actions.

History. — Code 1933, § 88-1208a, enacted by Ga. L. 1971, p. 252, § 1.

31-27-9. Rules and regulations.

The department is authorized to adopt and promulgate such rules and regulations as may appear necessary to carry out the purposes of this chapter.

History. — Code 1933, § 88-1209a, enacted by Ga. L. 1971, p. 252, § 1.

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 A.L.R. 1483; 25 A.L.R. 114.

31-27-10. Applicability of chapter.

This chapter shall not apply to:

(1) Any mass gathering which is to be held in any regularly established permanent place of worship, athletic field, auditorium, coliseum, or other similar permanently established building within the maximum seating capacity;

(2) Fairs and similar industrial-agricultural exhibitions which have been in existence for at least five consecutive years prior to July 1, 1971; or

(3) Religious gatherings that are held for no more than seven days.

History. — Ga. L. 1971, p. 252, § 2.

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 A.L.R. 1483; 25 A.L.R. 114.

31-27-11. Civil penalty.

(a) Any person who is found by any agency or department after a hearing to have violated any provision of this chapter or duly promulgated supplementary rules and regulations or failed, neglected, or refused to comply with any final or emergency order of any agency or department acting under authority of this chapter shall be liable to a civil penalty of not less than $1,000.00 nor more than $10,000.00 for such violation. Each day of violation shall be considered a separate offense.

(b) Any person penalized under this Code section shall be entitled to judicial review. All hearings and proceedings for judicial review under this Code section shall be in accordance with Chapter 13 of Title 50, the

"Georgia Administrative Procedure Act." All penalties and interest recovered by such agency or department as provided in this Code section, together with the cost thereof, shall be paid into the state treasury to the credit of the general fund.

History. — Code 1933, § 88-1210a, enacted by Ga. L. 1971, p. 252, § 1; Ga. L. 1985, p. 149, § 31.

RESEARCH REFERENCES

ALR. — Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

31-27-12. Criminal penalty.

Any person who violates any provision of this chapter or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor.

History. — Code 1933, § 88-1211a, enacted by Ga. L. 1971, p. 252, § 1.

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance prohibiting or regulating holding of meeting in street, 10 A.L.R. 1483; 25 A.L.R. 114.

CHAPTER 28

TOURIST COURTS

Sec.
31-28-1. "Tourist court" defined.
31-28-2. Issuance of permits.
31-28-3. Denial, suspension, and revocation of permits.
31-28-4. Administrative review of local government order.
31-28-5. Standards for health, sanitation, and safety.
31-28-6. Inspection of premises.
31-28-7. Penalty.

Cross references. — Regulation of hotels, inns, roadhouses, and others, T. 43, C. 21.

Administrative rules and regulations. — Tourist accommodations, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Public Health, Food and Lodging Establishments, Subject 511-6-2.

RESEARCH REFERENCES

ALR. — Validity and application of zoning regulations relating to mobile home or trailer parks, 42 A.L.R.3d 598.

31-28-1. "Tourist court" defined.

As used in this chapter, the term "tourist court" means:

(1) Any facility consisting of two or more rooms or dwelling units providing lodging and other accommodations for tourists and travelers and includes tourist courts, tourist cottages, tourist homes, trailer parks, trailer courts, motels, motor hotels, hotels, and any similar place by whatever name called; and

(2) Any facility or establishment operated in conjunction with an establishment described in paragraph (1) of this Code section for the purpose of providing food, beverage, laundry, or recreational services.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 1; Code 1933, § 88-1101, enacted by Ga. L. 1964, p. 499, § 1.

JUDICIAL DECISIONS

Cited in Cobb County Health Dep't v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Covenants, Conditions, and Restrictions, §§ 195, 196, 206.

C.J.S. — 43A C.J.S., Inns, Hotels, and Eating Places, §§ 1, 2.

31-28-2. Issuance of permits.

It shall be unlawful for any person, firm, or corporation to operate a tourist court without having first obtained a valid permit therefor. Such permit shall be issued by the county board of health or its duly authorized representative, subject to supervision and direction by the Department of Public Health but, where the county board of health is not functioning, the permit shall be issued by the department. A permit shall be valid until suspended or revoked and shall not be transferable with respect to person or location.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 2; Code 1933, § 88-1102, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1996, p. 6, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

JUDICIAL DECISIONS

Applicability of injunction under § 31-5-9. — In absence of statutory provision for operation of motel, whether operated alone or in conjunction with a restaurant, while application for permit for its operation is pending, unlawful operation is subject to injunction under provisions of Ga. L. 1964, p. 499, § 1. Cobb County Health Dep't v. Henson, 226 Ga. 801, 177 S.E.2d 710 (1970).

Cited in Aldridge v. Georgia Hospitality & Travel Ass'n, 251 Ga. 234, 304 S.E.2d 708 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mobile Homes and Trailer Parks, §§ 5, 6.

C.J.S. — 39A C.J.S., Health and Environment, § 61 et seq. 43A C.J.S., Inns, Hotels, and Eating Places, § 6.

31-28-3. Denial, suspension, and revocation of permits.

The county boards of health may suspend or revoke permits where the health, sanitation, and safety of the public require such action. When, in the judgment of such board or its duly authorized agents, it is necessary and proper that such application for a permit be denied or that a permit previously granted be suspended or revoked, the applicant or holder of the permit shall be notified thereof in writing and shall be afforded an opportunity for hearing as provided in Article 1 of Chapter 5 of this title. In the event that such application is finally

denied or such permit finally suspended or revoked, the applicant or holder thereof shall be given notice in writing, which notice shall specifically state the reasons why the application or permit has been suspended, revoked, or denied.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 3; Code 1933, § 88-1103, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2001, p. 4, § 31.

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. 2d, Covenants, Conditions, and Restrictions, §§ 259, 260, 261, 276.

C.J.S. — 43A C.J.S., Inns, Hotels, and Eating Places, §§ 6, 12.

31-28-4. Administrative review of local government order.

Any person substantially affected by any final order of the county board of health denying, suspending, revoking, or refusing to renew any permit provided under this chapter may secure review thereof by appeal to the department as provided in Article 1 of Chapter 5 of this title.

History. — Code 1933, § 88-1104, enacted by Ga. L. 1964, p. 499, § 1.

31-28-5. Standards for health, sanitation, and safety.

(a) The Department of Public Health and county boards of health shall have the power to adopt and promulgate rules and regulations to ensure the protection of the public health. Such rules and regulations shall prescribe reasonable standards for health, sanitation, and safety of tourist courts with regard to:

(1) Location, drainage, and maintenance of grounds;

(2) Size, ventilation, and maintenance of sleeping rooms, toilet and washrooms, and laundry rooms, where provided;

(3) Installation of all electrical equipment and exposed electrical wiring;

(4) Heating appliances and equipment, and installation thereof;

(5) Water supply, plumbing fixtures and installations;

(6) Sewage disposal;

(7) Garbage and refuse disposal;

(8) Control of vermin;

(9) Accident prevention; and

(10) Spacing of trailer coaches and lighting of trailer parks.

(b) County boards of health are empowered to adopt and promulgate supplementary rules and regulations consistent with those adopted and promulgated by the department.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 5; Code 1933, § 88-1105, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — Standards and requirements for construction of buildings generally, § 8-2-1 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 9 et seq. 53A Am. Jur. 2d, Mobile Homes and Trailer Parks, § 3 et seq.

C.J.S. — 26A C.J.S., Deeds, § 446 et seq. 39A C.J.S., Health and Environment, § 61 et seq. 43A C.J.S., Inns, Hotels, and Eating Places, § 7.

ALR. — Regulations concerning location of laundries, 6 A.L.R. 1597.

Validity of statutory or municipal regulations as to garbage, 135 A.L.R. 1305.

Liability of hotel or motel operator for injury or death of guest or privy resulting from condition in plumbing or bathroom of room or suite, 93 A.L.R.3d 253.

31-28-6. Inspection of premises.

The Department of Public Health and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of a tourist court at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 6; Code 1933, § 88-1106, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1985, p. 149, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-28-7. Penalty.

Any person, firm, or corporation operating a tourist court without a valid permit shall be guilty of a misdemeanor.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 475, § 8; Code 1933, § 88-1107, enacted by Ga. L. 1964, p. 499, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mobile Homes and Trailer Parks, §§ 21, 22, 30.

CHAPTER 29

COMPENSATION OF EMPLOYEES OF STATE INSTITUTIONS WHO CONTRACT TUBERCULOSIS OR INFECTIOUS HEPATITIS

Sec.
31-29-1. Amount of compensation.
31-29-2. Physical examination required for compensation under Code Section 31-29-1.
31-29-3. Periodic physical examinations of persons receiving compensation.
31-29-4. Effect of retirement under Chapter 2 of Title 47.
31-29-5. Contributions to retirement system where employee does not retire.
31-29-6. Rights of employees under State Personnel Administration.
31-29-7. Rules and regulations of employing authority; exclusion from right to compensation of employees not subject to exposure.
31-29-8. Specific inclusion of employees of certain institutions.

Cross references. — Workers' compensation generally, T. 34, C. 9.

31-29-1. Amount of compensation.

Any employee of any state institution, agency, or department charged with the care, treatment, or diagnosis of persons infected with tuberculosis or infectious hepatitis who contracts tuberculosis or infectious hepatitis while employed by such institution, agency, or department may be carried on the payroll of such institution, agency, or department at one-half of his total compensation or $150.00 per month, whichever is less, for the duration of his disability due to tuberculosis or infectious hepatitis, not to exceed 350 weeks. In the event of death of the employee while receiving compensation under this Code section, such compensation shall immediately cease.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 1; Code 1933, § 88-2401, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Applicability to employee retiring before effective date of Ga. L. 1953, Jan.-Feb. Sess., p. 513. — Employee who has not retired under Employee's Retirement Act and who contracted infectious hepatitis prior to effective date of Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 1 et seq., would not be compensated under this section. 1970 Op. Att'y Gen. No. U70-170.

RESEARCH REFERENCES

Am. Jur. 2d. — 82 Am. Jur. 2d, Worker's Compensation, §§ 359 et seq., 383.

C.J.S. — 100 C.J.S. (Rev), Workers' Compensation, § 547.

31-29-2. Physical examination required for compensation under Code Section 31-29-1.

(a) In order for any employee of any state institution, agency, or department to be eligible to receive compensation under Code Section 31-29-1, he shall undergo a physical examination at the beginning of or during the course of his employment, which examination must show that he is free of tuberculosis or infectious hepatitis at the time of physical examination.

(b) All physical examinations conducted pursuant to subsection (a) of this Code section shall be provided free of charge by the institution, agency, or department employing the person.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 513, §§ 2, 3; Code 1933, §§ 88-2402, 88-2403, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 29 Am. Jur. 2d, Evidence, § 555 et seq.

C.J.S. — 99 C.J.S. (Rev), Workers' Compensation, § 372. 100 C.J.S. (Rev), Workers' Compensation, §§ 630, 704, 726. 100A C.J.S., Workers' Compensation, §§ 1120 et seq., 1131 et seq., 1184 et seq., 1205 et seq., 1247.

31-29-3. Periodic physical examinations of persons receiving compensation.

Any institution, agency, or department having employees qualifying for compensation under Code Section 31-29-1 may require periodic physical examinations of such employees to determine if each such employee has recovered sufficiently to resume his duties without danger of spreading the infection. If an employee is found to have recovered sufficiently, he must forthwith return to his duties. In the event of failure to do so, he shall be removed from the payroll of the institution, agency, or department.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 4; Code 1933, § 88-2404, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 82 Am. Jur. 2d, Worker's Compensation, §§ 503, 504.

ALR. — Requiring physical examination of insured in action for disability or accident benefits, 163 A.L.R. 923; 5 A.L.R.3d 929.

31-29-4. Effect of retirement under Chapter 2 of Title 47.

If an employee of any state institution, agency, or department elects to retire under the Employees' Retirement System of Georgia, if eligible to do so at the time it is ascertained that he has contracted tuberculosis or infectious hepatitis, the compensation authorized under Code Section 31-29-1 shall not be paid.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 5; Code 1933, § 88-2405, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.

31-29-5. Contributions to retirement system where employee does not retire.

In the event the employee is not eligible or does not elect to retire under the Employees' Retirement System of Georgia, if eligible to do so after contracting tuberculosis or infectious hepatitis, the state institution, agency, or department by which he is employed shall continue to make contributions to the Employees' Retirement System of Georgia, based on the employee's total or reduced compensation, for the duration of his illness, not to exceed a maximum of 350 weeks. The employee may elect to continue his contributions to the Employees' Retirement System of Georgia based on his total compensation or on the reduced compensation received from the institution, agency, or department. The retirement credits and benefits of an employee receiving compensation under Code Section 31-29-1 shall be based upon the compensation elected and contributed on by the employee.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 6; Code 1933, § 88-2406, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Code section inapplicable to one not retired under Employee's Retirement Act. — Employee not retired under Employee's Retirement Act who contracted infectious hepatitis prior to effective date of Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 1 et seq., would not be compensated. 1970 Op. Att'y Gen. No. U70-170.

31-29-6. Rights of employees under State Personnel Administration.

Any employee of any state institution, agency, or department who qualifies under Code Section 31-29-1 shall be given credit for all salary adjustments and the same eligibility for step increases to which he or she would have been entitled under the rules of the State Personnel Board had he or she not contracted tuberculosis or infectious hepatitis and had he or she remained on the job full time in the same capacity and with the same status as he or she had previously attained.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 7; Code 1933, § 88-2407, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-42/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

31-29-7. Rules and regulations of employing authority; exclusion from right to compensation of employees not subject to exposure.

The superintendent or director having the legal authority to appoint employees of any state institution, agency, or department affected by Code Section 31-29-1 is authorized to adopt and promulgate rules and regulations not inconsistent with Code Sections 31-29-1 through 31-29-6, to effectuate and carry out the intent and purpose of this chapter. Such superintendent or director may exclude from the coverage of Code Section 31-29-1 the employees of divisions or units of the institution, agency, or department who, in the opinion of the superintendent or director, have no occupational exposure to tuberculosis or infectious hepatitis.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 9; Code 1933, § 88-2409, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.

31-29-8. Specific inclusion of employees of certain institutions.

It is declared to be the specific intent of Code Section 31-29-1 that the employees of the Central State Hospital, Northwest Georgia Regional Hospital, and Reidsville State Prison be covered by Code Sections 31-29-1 through 31-29-7. This Code section shall not be construed to exclude the employees of any other state institution, agency, or department charged with the care, treatment, or diagnosis of persons infected with tuberculosis or infectious hepatitis who are subject to occupational exposure to tuberculosis or infectious hepatitis.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 513, § 10; Code 1933, § 88-2410, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1970, p. 737, § 1.

CHAPTER 30

REPORTS ON VETERANS EXPOSED TO AGENT ORANGE

Sec.
31-30-1. (For effective date, see note.) Definitions.
31-30-2. (For effective date, see note.) Submission of report to department.
31-30-3. (For effective date, see note.) Report by department of information submitted under chapter; conduct of epidemiological studies by department.
31-30-4. (For effective date, see note.) Disclosure of identity of subject of report; statistics as public information.
31-30-5. (For effective date, see note.) Immunity of physician or hospital providing required information.
31-30-6. (For effective date, see note) Actions for release of information and individual medical records.
31-30-7. (For effective date, see note.) Referral of veterans for medical and financial assistance; screening services to ascertain physical damage from exposure.
31-30-8. (For effective date, see note.) Discontinuance of referral and screening programs performed by federal government.
31-30-9. (For effective date, see note.) When chapter effective.

Delayed effective date. — Code Section 31-30-9 provides that this chapter shall become effective when and to the extent that funds are appropriated and available to the Department of Human Resources (now Department of Community Health) under an appropriation which specifically refers to this chapter and provides that it is intended for the implementation of this chapter. Funds were not appropriated at the 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, or 2019 sessions of the General Assembly.

Cross references. — Veterans affairs, T. 38, C. 4.

31-30-1. (For effective date, see note.) Definitions.

As used in this chapter, the term:

(1) "Agent Orange" means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.

(2) "Veteran" means a person who was a resident of this state at the time of his induction into the armed forces of the United States of America or was a resident of this state on or after November 1, 1982, and who served in Vietnam, Cambodia, or Laos during the Vietnam Conflict.

History. — Code 1981, § 31-30-1, enacted by Ga. L. 1982, p. 2321, § 1.
Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-2. (For effective date, see note.) Submission of report to department.

(a) A physician who has primary responsibility for treating a veteran who believes he may have been exposed to chemical defoliants or herbicides or other causative agents, including but not limited to Agent Orange, while serving in the armed forces of the United States shall, at the request of the veteran, submit a report to the department on a form provided by the department. If there is no physician having primary responsibility for treating the veteran, the hospital treating the veteran shall, at the request of the veteran, submit the report to the department.

(b) The form provided by the department to the physician shall request the following information:

(1) Symptoms of the veteran which may be related to exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange;

(2) Diagnosis of the veteran; and

(3) Methods of treatment prescribed.

(c) The department may require the veteran to provide such other information as determined by the commissioner.

History. — Code 1981, § 31-30-2, enacted by Ga. L. 1982, p. 2321, § 1.
Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-3. (For effective date, see note.) Report by department of information submitted under chapter; conduct of epidemiological studies by department.

(a) The department, in consultation and cooperation with a board certified medical toxicologist, shall compile and evaluate information submitted under this chapter into a report to be distributed annually to members of the General Assembly and to the United States Department of Veterans Affairs and the Georgia Department of Veterans Service. The report shall contain current research findings on the effects of exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange, and statistical information compiled from reports submitted by physicians or hospitals.

(b) The department, in consultation and cooperation with a board certified medical toxicologist, shall conduct epidemiological studies on

veterans who have cancer or other medical problems associated with exposure to a chemical defoliant or herbicide or any other causative agent, including Agent Orange, or who have children born with birth defects after the veterans' suspected exposure to a chemical defoliant or herbicide or any other causative agent, including Agent Orange. The department must obtain consent from each veteran to be studied under this subsection. The department shall compile and evaluate information obtained from these studies into a report to be distributed as provided by subsection (a) of this Code section.

History. — Code 1981, § 31-30-3, enacted by Ga. L. 1982, p. 2321, § 1; Ga. L. 1990, p. 45, § 1.
Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-4. (For effective date, see note.) Disclosure of identity of subject of report; statistics as public information.

The identity of a veteran about whom a report has been made under Code Section 31-30-2 or 31-30-3 may not be disclosed unless the veteran consents to the disclosure. Statistical information collected under this chapter is public information.

History. — Code 1981, § 31-30-4, enacted by Ga. L. 1982, p. 2321, § 1.
Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-5. (For effective date, see note.) Immunity of physician or hospital providing required information.

A physician or a hospital subject to this chapter who complies with this chapter may not be held civilly or criminally liable for providing the information required by this chapter.

History. — Code 1981, § 31-30-5, enacted by Ga. L. 1982, p. 2321, § 1.
Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-6. (For effective date, see note) Actions for release of information and individual medical records.

The Attorney General may represent a class of individuals composed of veterans who may have been injured because of contact with chemical defoliants or herbicides or other causative agents, including Agent Orange, in an action for release of information relating to exposure to such chemicals during military service and for release of individual medical records.

History. — Code 1981, § 31-30-6, enacted by Ga. L. 1982, p. 2321, § 1.
Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-7. (For effective date, see note.) Referral of veterans for medical and financial assistance; screening services to ascertain physical damage from exposure.

(a) The department and the health science centers and other medical facilities of the University System of Georgia shall institute a cooperative program to:

(1) Refer veterans to appropriate state and federal agencies for the purpose of filing claims to remedy medical and financial problems caused by the veterans' exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange; and

(2) Provide veterans with fat tissue biopsies, genetic counseling, and genetic screening to determine if the veteran has suffered physical damage as a result of substantial exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange.

(b) The commissioner shall adopt rules necessary to the administration of the programs authorized by this Code section.

History. — Code 1981, § 31-30-7, enacted by Ga. L. 1982, p. 2321, § 1.
Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-8. (For effective date, see note.) Discontinuance of referral and screening programs performed by federal government.

If the commissioner determines that an agency of the federal government is performing the referral and screening functions required by Code Section 31-30-7, the commissioner may discontinue any program required by this chapter or any duty required of a physician or hospital under this chapter.

History. — Code 1981, § 31-30-8, enacted by Ga. L. 1982, p. 2321, § 1.
Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

31-30-9. (For effective date, see note.) When chapter effective.

This chapter shall become effective when and to the extent that funds are appropriated and available to the Department of Public Health under an appropriation which specifically refers to this chapter and provides that it is intended for the implementation of this chapter.

History. — Code 1981, § 31-30-9, enacted by Ga. L. 1982, p. 2321, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Editor's notes. — For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this chapter.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 31

BOXING MATCH LICENSES

Sec.
31-31-1 through 31-31-6 [Repealed].

31-31-1 through 31-31-6.

Reserved. Repealed by Ga. L. 1998, p. 1052, § 1, effective July 1, 1998.

Editor's notes. — This chapter was based on Code 1981, § 31-31-1, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 1; Ga. L. 1987, p. 480, § 1; Code 1981, § 31-31-2, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, §§ 2, 3; Ga. L. 1995, p. 671, § 1; Code 1981, § 31-31-3, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 4; Code 1981, § 31-31-4, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 5; Code 1981, § 31-31-4.1, enacted by Ga. L. 1984, p. 1223, § 6; Ga. L. 1986, p. 674, § 1; Code 1981, § 31-31-4.2, enacted by Ga. L. 1984, p. 1223, § 6; Code 1981, § 31-31-4.3, enacted by Ga. L. 1984, p. 1223, § 6; Ga. L. 1996, p. 6, § 31; Code 1981, § 31-31-5, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 7; Code 1981, § 31-31-6, enacted by Ga. L. 1983, p. 941, § 1; Ga. L. 1984, p. 1223, § 8; Code 1981, § 31-31-7, enacted by Ga. L. 1986, p. 674, § 2; Ga. L. 1989, p. 840, § 1; Ga. L. 1995, p. 671, § 2.

This chapter was repealed by Ga. L. 1998, p. 1052, § 1, effective July 1, 1998. Ga. L. 1998, p. 1052, § 3, not codified by the General Assembly, provides: "This Act shall become effective only upon the express appropriation of funds by the General Assembly to carry out the purposes of this Act." Funding was appropriated effective July 1, 1998. For present provisions relating to the Georgia Athletic and Entertainment Commission, see Chapter 4B of Title 43.

CHAPTER 32

ADVANCE DIRECTIVES FOR HEALTH CARE

Sec.
31-32-1. Short title.
31-32-2. Definitions.
31-32-3. Savings clause for existing living wills and durable powers of attorney for health care.
31-32-4. Form.
31-32-5. Execution; use of form or other forms; witnesses; copies; amendment.
31-32-6. Revocation; declarant's marriage or appointment of a guardian.
31-32-7. Duties and responsibilities of health care agents.
31-32-8. Duties and responsibilities of health care providers.
31-32-9. Conditions precedent to carrying out health care treatment preferences; physician's failure to comply with treatment preferences.
31-32-10. Immunity from liability or disciplinary action.
31-32-11. Advance directive for health care's relationship to criminal and insurance laws.
31-32-12. Restriction on requiring and preparing advance directives for health care.
31-32-13. Penalties and legal sanctions for violations.
31-32-14. Effect of chapter on other legal rights and duties.

Cross references. — Cardiopulmonary resuscitation, T. 31, C. 39. Impact of anatomical gift on an advance directive for health care, § 44-5-159.

Editor's notes. — Chapter 32 was added to Title 31 by both Ga. L. 1984, p. 1477, § 1, and by Ga. L. 1984, p. 1680, § 1. The former was set out as former Chapter 32 and the latter was redesignated as Chapter 33 by Ga. L. 1985, p. 149, § 31.

Ga. L. 2007, p. 133, § 2/HB 24, effective July 1, 2007, repealed the Code sections formerly codified at this chapter and at Chapter 36 of this title and enacted the current chapter. The former chapter consisted of Code Sections 31-32-1 through 31-32-12, relating to living wills, and was based on Ga. L. 1984, p. 1477, § 1 and Ga. L. 1985, p. 455, § 1; Ga. L. 1986, p. 445, §§ 1, 2; Ga. L. 1987, p. 322, § 1; Ga. L. 1989, p. 1182, § 1, 2; Ga. L. 1991, p. 94, § 31; Ga. L. 1992, p. 1926, §§ 1-7; Ga. L. 1993, p. 91, § 31.

Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this

Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

"(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care."

Law reviews. — For article, "The 'Right to Die' in Georgia," see 20 Ga. St. B. J. 68 (1983). For article, "The Georgia Living Will," see 21 Ga. St. B. J. 15 (1984). For article, "An Overview of Georgia's Living Will Legislation," see 36 Mercer L. Rev. 45 (1984). For annual survey on wills, trusts, and administration of estates, see 36 Mercer L. Rev. 375 (1984). For article, "Right to Die Legislation: The Effect on Physicians' Liability," see 39 Mercer L. Rev. 517 (1988). For article, "If Nancy Cruzan Had Lived in Georgia: A Summary of Georgia Law Regarding the Right to Die," see 27 Ga. St. B. J. 194 (1991). For article, "Experimenting with the 'Right to Die' in the Laboratory of the States," see 25 Ga. L. Rev. 1253 (1991). For article, "Medical Decision-Making in Georgia," see 10 Ga. St. B. J. 50 (2005). For article, "Are There Checks and Balances on Terminating the Lives of Children with Disabilities? Should There Be?," see 25 Ga. St. U. L. Rev. 959 (2009). For article, "Exploring the Right to Die in the U.S.," see 33 Ga. St. U. L. Rev. 1021 (2017). For article, "Unbefriended and Unrepresented: Better Medical Decision Making for Incapacitated Patients Without Healthcare Surrogates," see 33 Ga. St. U. L. Rev. 923 (2017). For article, "Ending-Life Decisions: Some Disability Perspectives," see 33 Ga. St. U. L. Rev. 893 (2017). For article, "Distinctive Factors Affecting the Legal Context of End-Of-Life Medical Care for Older Persons," see 33 Ga. St. U. L. Rev. 869 (2017).

For note, "Amendments to the Living Will Statute: Two Down and One to Go," see 23 Ga. St. B. J. 99 (1987). For note, "Incubating for the State: The Precarious Autonomy of Persistently Vegetative and Brain-Dead Pregnant Women," 22 Ga. L. Rev. 1103 (1988). For note, "Determining Patient Competency in Treatment Refusal Cases," see 24 Ga. L. Rev. 733 (1990). For note, "Let Your Conscience Be Your Guide: Comparing and Contrasting Washington's Death with Dignity Act and Pharmacy Regulations After the Ninth Circuit's Decision in Stormans, Inc. v. Wiesman," see 52 Ga. L. Rev. 613 (2018).

For comment, "The Expense of Expanding the Right to Die: A Trilogy," see 5 Ga. St. U. L. Rev. 117 (1988). For comment, "Living Will Statutes in Light of Cruzan v. Director, Missouri Department of Health: Ensuring that a Patient's Wishes Will Prevail," see 40 Emory L.J. 1305 (1991).

JUDICIAL DECISIONS

Applicability to patients who have "terminal conditions." — The former Living Will Act applied to patients who had "terminal conditions" and who wish to exercise the patients' rights to refuse medical treatment by the withdrawal of life-sustaining procedures. State v. McAfee, 259 Ga. 579, 385 S.E.2d 651 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Death, § 511 et seq.

Am. Jur. Proof of Facts. — Time of Death — Medicolegal Considerations, 16 POF2d 87.

Proof of Basis for Refusal or Discontin-

uance of Life-Sustaining Treatment on Behalf of Incapacitated Person, 40 POF3d 287.

ALR. — Judicial power to order discontinuance of life-sustaining treatment, 48 A.L.R.4th 67.

Living wills: validity, construction, and effect, 49 A.L.R.4th 812.

Tortious maintenance or removal of life supports, 58 A.L.R.4th 222.

Propriety of, and liability related to, issuance or enforcement of do not resuscitate orders, 46 A.L.R.5th 793.

31-32-1. Short title.

This chapter shall be known and may be cited as the "Georgia Advance Directive for Health Care Act."

History. — Code 1981, § 31-32-1, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008).

For note, "An Advance Directive: The Elective, Effective Way to be Protective of Your Rights," see 68 Mercer L. Rev. 521 (2017).

JUDICIAL DECISIONS

Cited in Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015).

RESEARCH REFERENCES

C.J.S. — 41 C.J.S., Hospitals, § 42.

31-32-2. Definitions.

As used in this chapter, the term:

(1) "Advance directive for health care" means a written document voluntarily executed by a declarant in accordance with the requirements of Code Section 31-32-5.

(2) "Attending physician" means the physician who has primary responsibility at the time of reference for the treatment and care of the declarant.

(3) "Declarant" means a person who has executed an advance directive for health care authorized by this chapter.

(4) "Durable power of attorney for health care" means a written document voluntarily executed by an individual creating a health care agency in accordance with Chapter 36 of this title, as such chapter existed on and before June 30, 2007.

(5) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for a declarant's physical or mental health or personal care.

(6) "Health care agent" means a person appointed by a declarant to act for and on behalf of the declarant to make decisions related to consent, refusal, or withdrawal of any type of health care and decisions related to autopsy, anatomical gifts, and final disposition of a declarant's body when a declarant is unable or chooses not to make health care decisions for himself or herself. The term "health care agent" shall include any back-up or successor agent appointed by the declarant.

(7) "Health care facility" means a hospital, skilled nursing facility, hospice, institution, home, residential or nursing facility, treatment facility, and any other facility or service which has a valid permit or provisional permit issued under Chapter 7 of this title or which is licensed, accredited, or approved under the laws of any state, and includes hospitals operated by the United States government or by any state or subdivision thereof.

(8) "Health care provider" means the attending physician and any other person administering health care to the declarant at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or the practice of a profession, including any person employed by or acting for any such authorized person.

(9) "Life-sustaining procedures" means medications, machines, or other medical procedures or interventions which, when applied to a declarant in a terminal condition or in a state of permanent unconsciousness, could in reasonable medical judgment keep the declarant alive but cannot cure the declarant and where, in the judgment of the attending physician and a second physician, death will occur without such procedures or interventions. The term "life-sustaining procedures" shall not include the provision of nourishment or hydration but a declarant may direct the withholding or withdrawal of the provision of nourishment or hydration in an advance directive for health care. The term "life-sustaining procedures" shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain.

(10) "Living will" means a written document voluntarily executed by an individual directing the withholding or withdrawal of life-sustaining procedures when an individual is in a terminal condition, coma, or persistent vegetative state in accordance with this chapter, as such chapter existed on and before June 30, 2007.

(11) "Physician" means a person lawfully licensed in this state to practice medicine and surgery pursuant to Article 2 of Chapter 34 of

Title 43; and if the declarant is receiving health care in another state, a person lawfully licensed in such state.

(12) "Provision of nourishment or hydration" means the provision of nutrition or fluids by tube or other medical means.

(13) "State of permanent unconsciousness" means an incurable or irreversible condition in which the declarant is not aware of himself or herself or his or her environment and in which the declarant is showing no behavioral response to his or her environment.

(14) "Terminal condition" means an incurable or irreversible condition which would result in the declarant's death in a relatively short period of time.

History. — Code 1981, § 31-32-2, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

Law reviews. — For note, "An Advance Directive: The Elective, Effective Way to be Protective of Your Rights," see 68 Mercer L. Rev. 521 (2017).

JUDICIAL DECISIONS

Genuine issues of material fact as to whether medical defendants made good faith effort. — Trial court properly denied summary judgment to the medical defendants on the immunity question under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., specifically O.C.G.A. § 31-32-10(a)(2), because genuine issues of material fact existed regarding whether the defendants made a good faith effort to rely on the directions and decisions of the patient's health care agent under the Advance Directive in carrying out the March 7 intubation. Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015), aff'd, 299 Ga. 315, 788 S.E.2d 392 (2016).

31-32-3. Savings clause for existing living wills and durable powers of attorney for health care.

The provisions of this chapter shall not apply to, affect, or invalidate a living will or durable power of attorney for health care executed prior to July 1, 2007, to which the provisions of former Chapter 32 or Chapter 36 of this title shall continue to apply, nor shall it affect any claim, right, or remedy that accrued prior to July 1, 2007.

History. — Code 1981, § 31-32-3, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

31-32-4. Form.

"GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

By: _____ Date of Birth: _____
(Print Name) (Month/Day/Year)

This advance directive for health care has four parts:

PART ONE — HEALTH CARE AGENT. *This part allows you to choose someone to make health care decisions for you when you cannot (or do not want to) make health care decisions for yourself. The person you choose is called a health care agent. You may also have your health care agent make decisions for you after your death with respect to an autopsy, organ donation, body donation, and final disposition of your body. You should talk to your health care agent about this important role.*

PART TWO — TREATMENT PREFERENCES. *This part allows you to state your treatment preferences if you have a terminal condition or if you are in a state of permanent unconsciousness. PART TWO will become effective only if you are unable to communicate your treatment preferences. Reasonable and appropriate efforts will be made to communicate with you about your treatment preferences before PART TWO becomes effective. You should talk to your family and others close to you about your treatment preferences.*

PART THREE — GUARDIANSHIP. *This part allows you to nominate a person to be your guardian should one ever be needed.*

PART FOUR — EFFECTIVENESS AND SIGNATURES. *This part requires your signature and the signatures of two witnesses. You must complete PART FOUR if you have filled out any other part of this form.*

You may fill out any or all of the first three parts listed above. You must fill out PART FOUR of this form in order for this form to be effective.

You should give a copy of this completed form to people who might need it, such as your health care agent, your family, and your physician. Keep a copy of this completed form at home in a place where it can easily be found if it is needed. Review this completed form periodically to make sure it still reflects your preferences. If your preferences change, complete a new advance directive for health care.

Using this form of advance directive for health care is completely optional. Other forms of advance directives for health care may be used in Georgia.

You may revoke this completed form at any time. This completed form will replace any advance directive for health care, durable power of

attorney for health care, health care proxy, or living will that you have completed before completing this form.

PART ONE: HEALTH CARE AGENT

[PART ONE will be effective even if PART TWO is not completed. A physician or health care provider who is directly involved in your health care may not serve as your health care agent. If you are married, a future divorce or annulment of your marriage will revoke the selection of your current spouse as your health care agent. If you are not married, a future marriage will revoke the selection of your health care agent unless the person you selected as your health care agent is your new spouse.]

(1) HEALTH CARE AGENT

I select the following person as my health care agent to make health care decisions for me:

Name: _____

Address: _____

Telephone Numbers: _____
(Home, Work, and Mobile)

(2) BACK-UP HEALTH CARE AGENT

[This section is optional. *PART ONE will be effective even if this section is left blank.]*

If my health care agent cannot be contacted in a reasonable time period and cannot be located with reasonable efforts or for any reason my health care agent is unavailable or unable or unwilling to act as my health care agent, then I select the following, each to act successively in the order named, as my back-up health care agent(s):

Name: _____

Address: _____

Telephone Numbers: _____
(Home, Work, and Mobile)

Name: _____

Address: _____

Telephone Numbers: _____
(Home, Work, and Mobile)

(3) General Powers of Health Care Agent

My health care agent will make health care decisions for me when I am unable to communicate my health care decisions or I choose to have my health care agent communicate my health care decisions.

My health care agent will have the same authority to make any health care decision that I could make. My health care agent's authority includes, for example, the power to:

- Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or other health care facility or service;
- Request, consent to, withhold, or withdraw any type of health care; and
- Contract for any health care facility or service for me, and to obligate me to pay for these services (and my health care agent will not be financially liable for any services or care contracted for me or on my behalf).

My health care agent will be my personal representative for all purposes of federal or state law related to privacy of medical records (including the Health Insurance Portability and Accountability Act of 1996) and will have the same access to my medical records that I have and can disclose the contents of my medical records to others for my ongoing health care.

My health care agent may accompany me in an ambulance or air ambulance if in the opinion of the ambulance personnel protocol permits a passenger and my health care agent may visit or consult with me in person while I am in a hospital, skilled nursing facility, hospice, or other health care facility or service if its protocol permits visitation.

My health care agent may present a copy of this advance directive for health care in lieu of the original and the copy will have the same meaning and effect as the original.

I understand that under Georgia law:

- My health care agent may refuse to act as my health care agent;
- A court can take away the powers of my health care agent if it finds that my health care agent is not acting properly; and
- My health care agent does not have the power to make health care decisions for me regarding psychosurgery, sterilization, or treatment or involuntary hospitalization for mental or emotional illness, developmental disability, or addictive disease.

(4) Guidance for Health Care Agent

When making health care decisions for me, my health care agent should think about what action would be consistent with past conversations we have had, my treatment preferences as expressed in PART TWO (if I have filled out PART TWO), my religious and other beliefs and values, and how I have handled medical and other important issues in the past. If what I would decide is still unclear, then my health care agent should make decisions for me that my health care agent believes are in my best interest, considering the benefits, burdens, and risks of my current circumstances and treatment options.

(5) Powers of Health Care Agent After Death

(A) Autopsy

My health care agent will have the power to authorize an autopsy of my body unless I have limited my health care agent's power by initialing below.

_____ (Initials) My health care agent will not have the power to authorize an autopsy of my body (unless an autopsy is required by law).

(B) Organ Donation and Donation of Body

My health care agent will have the power to make a disposition of any part or all of my body for medical purposes pursuant to the Georgia Revised Uniform Anatomical Gift Act, unless I have limited my health care agent's power by initialing below.

[Initial each statement that you want to apply.]

_____ (Initials) My health care agent will not have the power to make a disposition of my body for use in a medical study program.

_____ (Initials) My health care agent will not have the power to donate any of my organs.

(C) Final Disposition of Body

My health care agent will have the power to make decisions about the final disposition of my body unless I have initialed below.

_____ (Initials) I want the following person to make decisions about the final disposition of my body:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

I wish for my body to be:

_____ (Initials) Buried

OR

_____ (Initials) Cremated

PART TWO: TREATMENT PREFERENCES

[PART TWO will be effective only if you are unable to communicate your treatment preferences after reasonable and appropriate efforts have been made to communicate with you about your treatment preferences. PART TWO will be effective even if PART ONE is not completed. If you have not selected a health care agent in PART ONE, or if your health care agent is not available, then PART TWO will provide your physician and other health care providers with your treatment preferences. If you have selected a health care agent in PART ONE, then your health care agent will have the authority to make all health care decisions for you regarding matters covered by PART TWO. Your health care agent will be guided by your treatment preferences and other factors described in Section (4) of PART ONE.]

(6) CONDITIONS

PART TWO will be effective if I am in any of the following conditions:

[Initial each condition in which you want PART TWO to be effective.]

_____ (Initials) A terminal condition, which means I have an incurable or irreversible condition that will result in my death in a relatively short period of time.

_____ (Initials) A state of permanent unconsciousness, which means I am in an incurable or irreversible condition in which I am not aware of myself or my environment and I show no behavioral response to my environment.

My condition will be determined in writing after personal examination by my attending physician and a second physician in accordance with currently accepted medical standards.

(7) TREATMENT PREFERENCES

[State your treatment preference by initialing (A), (B), or (C). If you choose (C), state your additional treatment preferences by initialing one or more of the statements following (C). You may provide additional instructions about your treatment preferences in the next section. You will be provided with comfort care, including pain relief, but you may also want to state your specific preferences regarding pain relief in the next section.]

If I am in any condition that I initialed in Section (6) above and I can no longer communicate my treatment preferences after reasonable

and appropriate efforts have been made to communicate with me about my treatment preferences, then:

(A) _____ (Initials) Try to extend my life for as long as possible, using all medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to receive nutrition or fluids by tube or other medical means.

OR

(B) _____ (Initials) Allow my natural death to occur. I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me. I do not want to receive nutrition or fluids by tube or other medical means except as needed to provide pain medication.

OR

(C) _____ (Initials) I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me, except as follows:

[Initial each statement that you want to apply to option (C).]

_____ (Initials) If I am unable to take nutrition by mouth, I want to receive nutrition by tube or other medical means.

_____ (Initials) If I am unable to take fluids by mouth, I want to receive fluids by tube or other medical means.

_____ (Initials) If I need assistance to breathe, I want to have a ventilator used.

_____ (Initials) If my heart or pulse has stopped, I want to have cardiopulmonary resuscitation (CPR) used.

(8) Additional Statements

[This section is optional. *PART TWO will be effective even if this section is left blank. This section allows you to state additional treatment preferences, to provide additional guidance to your health care agent (if you have selected a health care agent in PART ONE), or to provide information about your personal and religious values about your medical treatment. For example, you may want to state your treatment preferences regarding medications to fight infection, surgery, amputation, blood transfusion, or kidney dialysis. Understanding that you cannot foresee everything that could happen to you after you can no longer communicate your treatment preferences, you may want to provide guidance to your health care agent (if you have selected a health care agent in PART ONE) about following your treatment preferences. You may want to state your specific preferences regarding pain relief.]*

_____

_____

_____

(9) In Case of Pregnancy

[PART TWO will be effective even if this section is left blank.]

I understand that under Georgia law, PART TWO generally will have no force and effect if I am pregnant unless the fetus is not viable and I indicate by initialing below that I want PART TWO to be carried out.

_____ (Initials) I want PART TWO to be carried out if my fetus is not viable.

PART THREE: GUARDIANSHIP

(10) Guardianship

[PART THREE is optional. *This advance directive for health care will be effective even if PART THREE is left blank. If you wish to nominate a person to be your guardian in the event a court decides that a guardian should be appointed, complete PART THREE. A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. If you have selected a health care agent in PART ONE, you may (but are not required to) nominate the same person to be your guardian. If your health care agent and guardian are not the same person, your health care agent will have priority over your guardian in making your health care decisions, unless a court determines otherwise.]*

[State your preference by initialing (A) or (B). Choose (A) only if you have also completed PART ONE.]

(A) _____ (Initials) I nominate the person serving as my health care agent under PART ONE to serve as my guardian.

OR

(B) _____ (Initials) I nominate the following person to serve as my guardian:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

PART FOUR: EFFECTIVENESS AND SIGNATURES

This advance directive for health care will become effective only if I am unable or choose not to make or communicate my own health care decisions.

This form revokes any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that I have completed before this date.

Unless I have initialed below and have provided alternative future dates or events, this advance directive for health care will become effective at the time I sign it and will remain effective until my death (and after my death to the extent authorized in Section (5) of PART ONE).

_____ (Initials) This advance directive for health care will become effective on or upon _____ and will terminate on or upon _____.

[You must sign and date or acknowledge signing and dating this form in the presence of two witnesses.

Both witnesses must be of sound mind and must be at least 18 years of age, but the witnesses do not have to be together or present with you when you sign this form.

A witness:

- *Cannot be a person who was selected to be your health care agent or back-up health care agent in PART ONE;*

- *Cannot be a person who will knowingly inherit anything from you or otherwise knowingly gain a financial benefit from your death; or*

- *Cannot be a person who is directly involved in your health care.*

Only one of the witnesses may be an employee, agent, or medical staff member of the hospital, skilled nursing facility, hospice, or other health care facility in which you are receiving health care (but this witness cannot be directly involved in your health care).]

By signing below, I state that I am emotionally and mentally capable of making this advance directive for health care and that I understand its purpose and effect.

_____ _____

(Signature of Declarant) (Date)

The declarant signed this form in my presence or acknowledged signing this form to me. Based upon my personal observation, the declarant appeared to be emotionally and mentally capable of making this advance directive for health care and signed this form willingly and voluntarily.

_____ _____

(Signature of First Witness) (Date)

Print Name: _____

Address: _____

_____ _____

(Signature of Second Witness) (Date)

Print Name: _____

Address: _____

[This form does not need to be notarized.]"

History. —
(Code 1981, § 31-32-4, enacted by Ga. L. 2007, p. 133, § 2/HB 24; Ga. L. 2008, p. 503, § 4/SB 405; Ga. L. 2009, p. 453, § 3-6/HB 228.)

Cross references. — Standby Guardianship Act, § 29-2-9 et seq.

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration, see 59 Mercer L. Rev. 447 (2007). For survey article on wills, trusts, guardianships, and fiduciary administration, see 60 Mercer L. Rev. 417 (2008). For article, "Three General Principles of Good Drafting," see 16 (No. 2) Ga. St. B. J. 62 (2010).

JUDICIAL DECISIONS

Genuine issues of material fact as to whether medical defendants made a good faith effort. — Trial court properly denied summary judgment to the medical defendants on the immunity question under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., specifically O.C.G.A. § 31-32-10(a)(2), because genuine issues of material fact existed regarding whether the defendants made a good faith effort to rely on the directions and decisions of the patient's health care agent under the Advance Directive in carrying out the March 7 intubation. Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015), aff'd, 299 Ga. 315, 788 S.E.2d 392 (2016).

31-32-5. Execution; use of form or other forms; witnesses; copies; amendment.

(a) Any person of sound mind who is emancipated or 18 years of age or older may execute a document which:

(1) Appoints a health care agent;

(2) Directs the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourish-

ment or hydration when the declarant is in a terminal condition or state of permanent unconsciousness; or

(3) Covers matters contained in both paragraphs (1) and (2) of this subsection.

Such document shall be in writing, signed by the declarant or by some other person in the declarant's presence and at the declarant's express direction, and witnessed in accordance with the provisions of subsection (c) of this Code section.

(b) When a document substantially complying with Code Section 31-32-4 is executed in accordance with this Code section, it shall be treated as an advance directive for health care which complies with this Code section. No provision of this chapter shall be construed to bar a declarant from using any other form of advance directive for health care which complies with this Code section. A document covering any matter contained in paragraph (1), (2), or (3) of subsection (a) of this Code section which was executed in another state and is valid under the laws of the state where executed shall be treated as an advance directive for health care which complies with this Code section.

(c)(1) An advance directive for health care shall be attested and subscribed in the presence of the declarant by two witnesses who are of sound mind and at least 18 years of age, but such witnesses do not have to be together or present when the declarant signs the advance directive for health care.

(2) Neither witness can be a person who:

(A) Was selected to serve as the declarant's health care agent;

(B) Will knowingly inherit anything from the declarant or otherwise knowingly gain a financial benefit from the declarant's death; or

(C) Is directly involved in the declarant's health care.

(3) Not more than one of the witnesses may be an employee, agent, or medical staff member of the health care facility in which the declarant is receiving health care.

(d) A physician or health care provider who is directly involved in the declarant's health care may not serve as the declarant's health care agent.

(e) A copy of an advance directive for health care executed in accordance with this Code section shall be valid and have the same meaning and effect as the original document.

(f) An advance directive for health care may be amended at any time by a written document signed by the declarant or by some other person

in the declarant's presence and at the declarant's express direction, and witnessed in accordance with the provisions of subsection (c) of this Code section.

History. — Code 1981, § 31-32-5, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration, see 59 Mercer L. Rev. 447 (2007).

JUDICIAL DECISIONS

Genuine issues of material fact as to whether medical defendants made a good faith effort. — Trial court properly denied summary judgment to the medical defendants on the immunity question under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., specifically O.C.G.A. § 31-32-10(a)(2), because genuine issues of material fact existed regarding whether the defendants made a good faith effort to rely on the directions and decisions of the patient's health care agent under the Advance Directive in carrying out the March 7 intubation. Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015), aff'd, 299 Ga. 315, 788 S.E.2d 392 (2016).

31-32-6. Revocation; declarant's marriage or appointment of a guardian.

(a) An advance directive for health care may be revoked at any time by the declarant, without regard to the declarant's mental state or competency, by any of the following methods:

(1) By completing a new advance directive for health care that has provisions which are inconsistent with the provisions of a previously executed advance directive for health care, living will, or durable power of attorney for health care; provided, however, that such revocation shall extend only so far as the inconsistency exists between the documents and any part of a prior document that is not inconsistent with a subsequent document shall remain unrevoked;

(2) By being obliterated, burned, torn, or otherwise destroyed by the declarant or by some person in the declarant's presence and at the declarant's direction indicating an intention to revoke;

(3) By a written revocation clearly expressing the intent of the declarant to revoke the advance directive for health care signed and dated by the declarant or by a person acting at the declarant's direction. If the declarant is receiving health care in a health care facility, revocation of an advance directive for health care will become effective only upon communication to the attending physician by the declarant or by a person acting at the declarant's direction. The attending physician shall record in the declarant's medical record the time and date when the attending physician received notification of the written revocation; or

(4) By an oral or any other clear expression of the intent to revoke the advance directive for health care in the presence of a witness 18 years of age or older who, within 30 days of the expression of such intent, signs and dates a writing confirming that such expression of intent was made. If the declarant is receiving health care in a health care facility, revocation of an advance directive for health care will become effective only upon communication to the attending physician by the declarant or by a person acting at the declarant's direction. The attending physician shall record in the declarant's medical record the time, date, and place of the revocation and the time, date, and place, if different, when the attending physician received notification of the revocation. Any person, other than the health care agent, to whom an oral or other nonwritten revocation of an advance directive for health care is communicated or delivered shall make all reasonable efforts to inform the health care agent of that fact as promptly as possible.

(b) Unless an advance directive for health care expressly provides otherwise, if after executing an advance directive for health care, the declarant marries, such marriage shall revoke the designation of a person other than the declarant's spouse as the declarant's health care agent, and if, after executing an advance directive for health care, the declarant's marriage is dissolved or annulled, such dissolution or annulment shall revoke the designation of the declarant's former spouse as the declarant's health care agent.

(c) An advance directive for health care which survives disability, incapacity, or incompetency shall not be revoked solely by the appointment of a guardian or receiver for the declarant. Absent an order of the probate court or superior court having jurisdiction directing a guardian of the person to exercise the powers of the declarant under an advance directive for health care which survives disability, incapacity, or incompetency, the guardian of the person has no power, duty, or liability with respect to any health care matters covered by the advance directive for health care; provided, however, that no order usurping the authority of a health care agent known to the proposed guardian shall be entered unless notice is sent by first-class mail to the health care agent's last known address and it is shown by clear and convincing evidence that the health care agent is acting in a manner inconsistent with the power of attorney.

History. — Code 1981, § 31-32-6, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

Law reviews. — For survey article on wills, trusts, guardianships, and fiduciary administration, see 59 Mercer L. Rev. 447 (2007).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 31-36-6, which was subsequently repealed but was succeeded by provisions in this Code section are included in the annotations for this Code section.

Revocation held involuntary. — When an attorney-in-fact sought to enjoin the attorney-in-fact's siblings from enforcing a revocation of their parent's durable health care power of attorney, the trial court did not err under former O.C.G.A. § 31-36-6(a) in finding that the revocation had not been voluntary; although the trial court concluded that the parent signed the revocation of the power of attorney, the trial court also found that the siblings' actions in making plans and removing the parent from the parent's home by force were wrongful and that the siblings knew or should have known that the parent, having been diagnosed with dementia since 2005, lacked the mental capacity and competency to execute the purported revocation in 2006. Luther v. Luther, 289 Ga. App. 428, 657 S.E.2d 574 (2008), cert. denied, No. S08C0912, 2008 Ga. LEXIS 520 (Ga. 2008) (decided under former Code Section 31-36-6).

31-32-7. Duties and responsibilities of health care agents.

(a) A health care agent shall not have the authority to make a particular health care decision different from or contrary to the declarant's decision, if any, if the declarant is able to understand the general nature of the health care procedure being consented to or refused, as determined by the declarant's attending physician based on such physician's good faith judgment.

(b) A health care agent shall be under no duty to exercise granted powers or to assume control of or responsibility for the declarant's health care; provided, however, that when granted powers are exercised, the health care agent shall use due care to act for the benefit of the declarant in accordance with the terms of the advance directive for health care. A health care agent shall exercise granted powers in such manner as the health care agent deems consistent with the intentions and desires of the declarant. If a declarant's intentions and desires are unclear, the health care agent shall act in the declarant's best interest considering the benefits, burdens, and risks of the declarant's circumstances and treatment options.

(c) A health care agent may act in person or through others reasonably employed by the health care agent for that purpose but may not delegate authority to make health care decisions.

(d) A health care agent may sign and deliver all instruments, negotiate and enter into all agreements, and do all other acts reasonably necessary to implement the exercise of the powers granted to the health care agent. A health care agent shall be authorized to accompany a declarant in an ambulance or air ambulance if in the opinion of the ambulance personnel protocol permits a passenger and to visit or consult in person with a declarant who is admitted to a health care facility if the health care facility's protocol permits such visitation.

(e) The form of advance directive for health care contained in Code Section 31-32-4 shall, and any different form of advance directive for health care may, include the following powers, subject to any limitations appearing on the face of the form:

(1) The health care agent is authorized to consent to and authorize or refuse, or to withhold or withdraw consent to, any and all types of medical care, treatment, or procedures relating to the physical or mental health of the declarant, including any medication program, surgical procedures, life-sustaining procedures, or provision of nourishment or hydration for the declarant, but not including psychosurgery, sterilization, or involuntary hospitalization or treatment covered by Title 37;

(2) The health care agent is authorized to admit the declarant to or discharge the declarant from any health care facility;

(3) The health care agent is authorized to contract for any health care facility or service in the name of and on behalf of the declarant and to bind the declarant to pay for all such services, and the health care agent shall not be personally liable for any services or care contracted for or on behalf of the declarant;

(4) At the declarant's expense and subject to reasonable rules of the health care provider to prevent disruption of the declarant's health care, the health care agent shall have the same right the declarant has to examine and copy and consent to disclosure of all the declarant's medical records that the health care agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, health care facility, or other health care provider, notwithstanding the provisions of any statute or other rule of law to the contrary; and

(5) Unless otherwise provided, the health care agent is authorized to direct that an autopsy of the declarant's body be made; to make an anatomical gift of any part or all of the declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act"; and to direct the final disposition of the declarant's body, including funeral arrangements, burial, or cremation.

(f) A court may remove a health care agent if it finds that the health care agent is not acting properly.

History. — Code 1981, § 31-32-7, enacted by Ga. L. 2007, p. 133, § 2/HB 24; Ga. L. 2008, p. 503, § 4/SB 405.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 31-36-10, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Responsibilities. — Trial court properly granted summary judgment to the relative after the home healthcare agency sued the relative for a balance due on a contract the relative signed to have nursing services provided to the relative's father. The relative clearly signed in a representative capacity the contract that the home healthcare agency drafted and provided for the relative to sign, the principal, the relative's father, was clearly named in the document as such, and it was evident that the contract was substantially in the name of the principal; accordingly, there was no issue for the jury to decide because the contract obligated the father, not the relative, to pay. Associated Servs. of Accountable Prof'ls, Ltd. v. Workman, 265 Ga. App. 348, 593 S.E.2d 882 (2004) (decided under former Code Section 31-36-10).

Genuine issues of material fact as to whether medical defendants made a good faith effort. — Trial court properly denied summary judgment to the medical defendants on the immunity question under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., specifically O.C.G.A. § 31-32-10(a)(2), because genuine issues of material fact existed regarding whether the defendants made a good faith effort to rely on the directions and decisions of the patient's health care agent under the Advance Directive in carrying out the March 7 intubation. Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015), aff'd, 299 Ga. 315, 788 S.E.2d 392 (2016).

31-32-8. Duties and responsibilities of health care providers.

Each health care provider and each other person with whom a health care agent interacts under an advance directive for health care shall be subject to the following duties and responsibilities:

(1) It is the responsibility of the health care agent or declarant to notify the health care provider of the existence of the advance directive for health care and any amendment or revocation thereof. A health care provider furnished with a copy of an advance directive for health care shall make such copy a part of the declarant's medical records and shall enter in the records any change in or termination of the advance directive for health care by the declarant that becomes known to the health care provider. A health care provider shall grant a health care agent adequate access to a declarant when a declarant is admitted to any health care facility. Whenever a health care provider believes a declarant is unable to understand the general nature of the health care procedure which the provider deems necessary, the health care provider shall consult with any available health care agent known to the health care provider who then has power to act for the declarant under an advance directive for health care;

(2) A health care decision made by a health care agent in accordance with the terms of an advance directive for health care shall be

complied with by every health care provider to whom the decision is communicated, subject to the health care provider's right to administer treatment for the declarant's comfort or alleviation of pain; provided, however, that if the health care provider is unwilling to comply with the health care agent's decision, the health care provider shall promptly inform the health care agent who shall then be responsible for arranging for the declarant's transfer to another health care provider. A health care provider who is unwilling to comply with the health care agent's decision shall provide reasonably necessary consultation and care in connection with the pending transfer;

(3) At the declarant's expense and subject to reasonable rules of the health care provider to prevent disruption of the declarant's health care, each health care provider shall give a health care agent authorized to receive such information under an advance directive for health care the same right the declarant has to examine and copy any part or all of the declarant's medical records that the health care agent deems relevant to the exercise of the health care agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, health care facility, or other health care provider, notwithstanding the provisions of any statute or rule of law to the contrary; and

(4) If and to the extent an advance directive for health care empowers the health care agent to direct that an autopsy of the declarant's body be made; to make an anatomical gift of any part or all of the declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the "Georgia Revised Uniform Anatomical Gift Act"; or to direct the final disposition of the declarant's body, including funeral arrangements, burial, or cremation, the decisions of the health care agent on such matters shall be deemed the act of the declarant or of the person who has priority under law to make the necessary decisions, and each person to whom a direction by the health care agent in accordance with the terms of the agency is communicated shall comply with such direction to the extent it is in accord with reasonable medical standards or other relevant standards at the time of reference.

History. — Code 1981, § 31-32-8, enacted by Ga. L. 2007, p. 133, § 2/HB 24; Ga. L. 2008, p. 503, § 4/SB 405.

Law reviews. — For note, "An Advance Directive: The Elective, Effective Way to be Protective of Your Rights," see 68 Mercer L. Rev. 521 (2017).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 31-36-7, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Notice of limitation. — Since the health care agents did not notify defendant physician of a power of attorney and its proscription against surgery, and the document was not in the patient's hospital chart, the physician could not be held liable for battery for performing an operation. Roberts v. Jones, 222 Ga. App. 548, 475 S.E.2d 193 (1996) (decided under former Code Section 31-36-7).

Right to administer treatment for pain. — Even though a patient executed a power of attorney containing a limitation on "painful" surgery, the patient's physician had the duty to perform an operation to alleviate the patient's undoubted pain and suffering. Roberts v. Jones, 222 Ga. App. 548, 475 S.E.2d 193 (1996) (decided under former Code Section 31-36-7).

Genuine issues of material fact as to whether medical defendants made a good faith effort. — Trial court properly denied summary judgment to the medical defendants on the immunity question under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., specifically O.C.G.A. § 31-32-10(a)(2), because genuine issues of material fact existed regarding whether the defendants made a good faith effort to rely on the directions and decisions of the patient's health care agent under the Advance Directive in carrying out the March 7 intubation. Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015), aff'd, 299 Ga. 315, 788 S.E.2d 392 (2016).

Under advanced directive, will of patient or patient's agent controls. — Under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., it is the will of the patient or the patient's designated health care agent, rather than the will of the health care provider, that controls; and O.C.G.A. § 31-32-8(1) enforces that purpose by declaring that a health care provider who believes a declarant is unable to understand the general nature of the health care procedure which the provider deems necessary shall consult with any available health care agent known to the health care provider who then has power to act for the declarant under an advance directive for health care. Doctors Hospital of Augusta, LLC v. Alicea, 299 Ga. 315, 788 S.E.2d 392 (2016).

No immunity for health care provider. — After the designated health care agent sued a hospital and a doctor for intubating and putting the agent's grandmother on a mechanical ventilator, contrary to the grandmother's advance directive for health care, the trial court properly rejected the doctor's immunity argument under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., and properly denied summary judgment on that ground because there was a clear factual dispute about whether the doctor relied at all on any directive from the agent in acting to order the intubation; and there was apparently undisputed evidence that the doctor did not tell the agent that the doctor was unwilling to comply with the agent's decision, or promptly inform the agent of the doctor's decision. Doctors Hospital of Augusta, LLC v. Alicea, 299 Ga. 315, 788 S.E.2d 392 (2016).

31-32-9. Conditions precedent to carrying out health care treatment preferences; physician's failure to comply with treatment preferences.

(a) Prior to effecting a withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from a declarant pursuant to a declarant's

directions in an advance directive for health care, the attending physician:

(1) Shall determine that, to the best of that attending physician's knowledge, the declarant is not pregnant, or if she is, that the fetus is not viable and that the declarant has specifically indicated in the advance directive for health care that the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration are to be carried out;

(2) Shall, without delay after the diagnosis of a terminal condition or state of permanent unconsciousness of the declarant, take the necessary steps to provide for the written certification of the declarant's terminal condition or state of permanent unconsciousness in accordance with the procedure set forth in subsection (b) of this Code section;

(3) Shall make a reasonable effort to determine that the advance directive for health care complies with Code Section 31-32-5; and

(4) Shall make the advance directive for health care and the written certification of the terminal condition or state of permanent unconsciousness a part of the declarant patient's medical records.

(b) The procedure for establishing a terminal condition or state of permanent unconsciousness is as follows: two physicians, one of whom shall be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination and in accordance with currently accepted medical standards, that the declarant is in a terminal condition or state of permanent unconsciousness.

(c) The advance directive for health care shall be presumed, unless revoked, to be the directions of the declarant regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration.

(d) The attending physician who fails or refuses to comply with the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration shall advise promptly the health care agent, if one is appointed, and, otherwise, next of kin or legal guardian of the declarant that such physician is unwilling to effectuate such directions. The attending physician shall thereafter at the election of the health care agent, if one is appointed, and, otherwise, next of kin or legal guardian of the declarant:

(1) Make a good faith attempt to effect the transfer of the declarant to another physician who will comply with the declarant's directions

regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration; or

(2) Permit the health care agent, if one is appointed, and, otherwise, next of kin or legal guardian of the declarant to obtain another physician who will comply with the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration.

History. — Code 1981, § 31-32-9, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

31-32-10. Immunity from liability or disciplinary action.

(a) Each health care provider, health care facility, and any other person who acts in good faith reliance on any direction or decision by the health care agent shall be protected and released to the same extent as though such person had interacted directly with the declarant as a fully competent person. Without limiting the generality of the foregoing, the following specific provisions shall also govern, protect, and validate the acts of the health care agent and each such health care provider, health care facility, and any other person acting in good faith reliance on such direction or decision:

(1) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for complying with any direction or decision by the health care agent, even if death or injury to the declarant ensues;

(2) No such health care provider, health care facility, or person shall be subject to civil or criminal liability or discipline for unprofessional conduct solely for failure to comply with any direction or decision by the health care agent, as long as such health care provider, health care facility, or person promptly informs the health care agent of such health care provider's, health care facility's, or person's refusal or failure to comply with such direction or decision by the health care agent. The health care agent shall then be responsible for arranging the declarant's transfer to another health care provider. A health care provider who is unwilling to comply with the health care agent's decision shall continue to provide reasonably necessary consultation and care in connection with the pending transfer;

(3) If the actions of a health care provider, health care facility, or person who fails to comply with any direction or decision by the health care agent are substantially in accord with reasonable medical

standards at the time of reference and the provider cooperates in the transfer of the declarant pursuant to paragraph (2) of Code Section 31-32-8, the health care provider, health care facility, or person shall not be subject to civil or criminal liability or discipline for unprofessional conduct for failure to comply with the advance directive for health care;

(4) No health care agent who, in good faith, acts with due care for the benefit of the declarant and in accordance with the terms of an advance directive for health care, or who fails to act, shall be subject to civil or criminal liability for such action or inaction; and

(5) If the authority granted by an advance directive for health care is revoked under Code Section 31-32-6, a person shall not be subject to criminal prosecution or civil liability for acting in good faith reliance upon such advance directive for health care unless such person had actual knowledge of the revocation.

(b) No person shall be civilly liable for failing or refusing in good faith to effectuate the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration.

(c) No physician or any person acting under a physician's direction and no health care facility or any agent or employee thereof who, acting in good faith in accordance with the requirements of this chapter, causes the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from a declarant or who otherwise participates in good faith therein shall be subject to any civil or criminal liability or guilty of unprofessional conduct therefor.

(d) No person who witnesses an advance directive for health care in good faith and in accordance with subsection (c) of Code Section 31-32-5 shall be civilly or criminally liable or guilty of unprofessional conduct for such action.

(e) Any person who participates in the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration pursuant to an advance directive for health care and who has actual knowledge that such advance directive for health care has been properly revoked shall not have any civil or criminal immunity otherwise granted under this chapter for such conduct.

History. — Code 1981, § 31-32-10, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

Law reviews. — For note, "An Advance Directive: The Elective, Effective Way to be Protective of Your Rights," see 68 Mercer L. Rev. 521 (2017).

JUDICIAL DECISIONS

Genuine issues of material fact as to whether medical defendants made a good faith effort. — Trial court properly denied summary judgment to the medical defendants on the immunity question under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., specifically O.C.G.A. § 31-32-10(a)(2), because genuine issues of material fact existed regarding whether the defendants made a good faith effort to rely on the directions and decisions of the patient's health care agent under the Advance Directive in carrying out the March 7 intubation. Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015), aff'd, 299 Ga. 315, 788 S.E.2d 392 (2016).

No immunity for health care provider. — When the health care provider makes the patient's health care decisions based on the provider's own judgment, without relying in good faith on what the patient's designated health care agent directed, the provider must defend those actions without the immunity given in O.C.G.A. § 31-32-10(a). Doctors Hospital of Augusta, LLC v. Alicea, 299 Ga. 315, 788 S.E.2d 392 (2016).

After the designated health care agent sued a hospital and a doctor for intubating and putting the agent's grandmother on a mechanical ventilator, contrary to the grandmother's advance directive for health care, the trial court properly rejected the doctor's immunity argument under the Georgia Advance Directive for Health Care Act, O.C.G.A. § 31-32-1 et seq., and properly denied summary judgment on that ground because there was a clear factual dispute about whether the doctor relied at all on any directive from the agent in acting to order the intubation; and there was apparently undisputed evidence that the doctor did not tell the agent that the doctor was unwilling to comply with the agent's decision, or promptly inform the agent of the doctor's decision. Doctors Hospital of Augusta, LLC v. Alicea, 299 Ga. 315, 788 S.E.2d 392 (2016).

31-32-11. Advance directive for health care's relationship to criminal and insurance laws.

(a) The making of an advance directive for health care containing a declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration, shall not, for any purpose, constitute a suicide. If the declarant's death results from the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration in accordance with the terms of an advance directive for health care, the death shall not constitute a suicide or homicide for any purpose under any statute or other rule of law.

(b) The making of an advance directive for health care shall not restrict, inhibit, or impair in any manner the sale, procurement, issuance, or enforceability of any policy of life insurance, annuity, or other contract that is conditioned on the life or death of the declarant nor shall it be deemed to modify the terms of an existing policy of life insurance, annuity, or other contract that is conditioned on the life or death of the declarant, notwithstanding any term of the policy to the contrary. No policy of life insurance, annuity, or other contract that is conditioned on the life or death of the declarant shall be legally

impaired or invalidated in any manner by the making of an advance directive for health care pursuant to this chapter or by the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration from an insured declarant, nor shall the making of such an advance directive for health care or the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration operate to deny any additional insurance benefits for accidental death of the declarant in any case in which the terminal condition of the declarant is the result of accident, notwithstanding any term of the policy to the contrary.

History. — Code 1981, § 31-32-11, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

31-32-12. Restriction on requiring and preparing advance directives for health care.

(a) No physician, health care facility, or health care provider and no health care service plan, insurer issuing disability insurance, or self-insured employee welfare benefit plan shall require any person to execute an advance directive for health care as a condition for being insured for or receiving health care services.

(b) No health care facility shall prepare or offer to prepare an advance directive for health care unless specifically requested to do so by a person desiring to execute an advance directive for health care. For purposes of this subsection, the Department of Corrections shall not be deemed to be a health care facility.

History. — Code 1981, § 31-32-12, enacted by Ga. L. 2007, p. 133, § 2/HB 24; Ga. L. 2017, p. 164, § 57/HB 127.

The 2017 amendment, effective July 1, 2017, substituted "or self-insured employee welfare benefit plan" for "self-insured employee welfare benefit plan, or nonprofit hospital service plan" near the middle of subsection (a).

31-32-13. Penalties and legal sanctions for violations.

All persons shall be subject to the following sanctions in relation to advance directives for health care, in addition to all other sanctions applicable under any other law or rule of professional conduct:

(1) Any person who, without the declarant's consent, willfully conceals, cancels, or alters an advance directive for health care or any amendment or revocation of the advance directive for health care or who falsifies or forges an advance directive for health care, amendment, or revocation shall be civilly liable and guilty of a misdemeanor;

(2) Any person who falsifies or forges an advance directive for health care of another or who willfully conceals or withholds personal knowledge of an amendment or revocation of an advance directive for health care with the intent to cause a withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration contrary to the intent of the declarant and thereby, because of such act, directly causes life-sustaining procedures or the provision of nourishment or hydration to be withheld or withdrawn and death thereby to be hastened shall be subject to prosecution for criminal homicide as provided in Chapter 5 of Title 16;

(3) Any person who requires or prevents execution of an advance directive for health care as a condition of ensuring or providing any type of health care services to an individual shall be civilly liable and guilty of a misdemeanor; and

(4) Any person who willfully witnesses an advance directive for health care knowing at the time he or she is not eligible to witness such advance directive under subsection (c) of Code Section 31-32-5 or who coerces or attempts to coerce a person into making an advance directive for health care shall be civilly liable and guilty of a misdemeanor.

History. — Code 1981, § 31-32-13, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Sections 31-32-10 and 31-36-9, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Written document required for criminal liability. — Contention that beneficiaries under a will were subject to criminal liability based upon the act of falsifying a living will or health care agency could not be sustained since there was no evidence or allegation that written documents existed. Edwards v. Shumate, 266 Ga. 374, 468 S.E.2d 23 (1996) (decided under former O.C.G.A. §§ 31-32-10 and 31-36-9).

31-32-14. Effect of chapter on other legal rights and duties.

(a) Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration in any lawful manner.

(b) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or to permit any affirmative or deliberate act

or omission to end life other than to permit the process of dying as provided in this chapter. Furthermore, nothing in this chapter shall be construed to condone, authorize, or approve abortion.

(c) This chapter shall create no presumption concerning the intention of an individual who has not executed an advance directive for health care to consent to the use or withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration in the event of a terminal condition or state of permanent unconsciousness.

(d) Except to the extent provided in an advance directive for health care and subject to the health care agent's duty to exercise granted powers in such manner as the health care agent deems consistent with the intentions and desires of the declarant pursuant to subsection (b) of Code Section 31-32-7, a declarant's directions in an advance directive for health care regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration shall be ineffective as long as there is a health care agent available and willing to make decisions for and on behalf of the declarant regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration when the declarant is in a terminal condition or state of permanent unconsciousness.

(e) Unless an advance directive for health care provides otherwise, a health care agent who is known to a health care provider to be available and willing to make health care decisions for a declarant has priority over any other person, including any guardian, to act for the declarant in all matters covered by the advance directive for health care.

(f) Nothing in this chapter shall affect the delegation of a parent's power to control the health care of a minor child.

History. — Code 1981, § 31-32-14, enacted by Ga. L. 2007, p. 133, § 2/HB 24.

JUDICIAL DECISIONS

Cited in Doctors Hosp. of Augusta, LLC v. Alicea, 332 Ga. App. 529, 774 S.E.2d 114 (2015).

CHAPTER 33

HEALTH RECORDS

Sec.
31-33-1. Definitions.
31-33-2. Furnishing copy of records to patient, provider, or other authorized person.
31-33-3. Costs of copying and mailing; patient's rights as to records; applicability to psychiatric, psychological, and other mental health records.
31-33-4. Mental health records.
31-33-5. Immunity from liability for releasing information.
31-33-6. Confidential communications.
31-33-7. Furnishing copies of psychological or psychiatric evaluation to law enforcement officer upon request.
31-33-8. Electronic records; application to psychiatric, psychological, or other mental health records.

Cross references. — Temporary medical consent guardianship, § 29-4-18.

Editor's notes. — Chapter 32 was added to Title 31 by both Ga. L. 1984, p. 1477, § 1, and by Ga. L. 1984, p. 1680, § 1. The former is set out as Chapter 32 and the latter was redesignated as Chapter 33 by Ga. L. 1985, p. 149, § 31.

Administrative rules and regulations. — Patient referrals and patient records, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Chiropractic Examiners, Immoral and Unprofessional Conduct Defined, § 100-7-.07.

Unprofessional conduct defined, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board of Dentistry, § 150-8-.01.

Unprofessional conduct defined, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Podiatry Examiners, § 500-8-.01.

RESEARCH REFERENCES

ALR. — Medical malpractice: presumption or inference from failure of hospital or doctor to produce relevant medical records, 69 A.L.R.4th 906.

31-33-1. Definitions.

As used in this chapter, the term:

(1) "Patient" means any person who has received health care services from a provider.

(2) "Provider" means all hospitals, including public, private, osteopathic, and tuberculosis hospitals; other special care units, including podiatric facilities, skilled nursing facilities, and kidney disease treatment centers, including freestanding hemodialysis units; intermediate care facilities; ambulatory surgical or obstetrical facilities; health maintenance organizations; and home health agencies. It shall also mean any person licensed to practice under Chapter 9, 11, 26, 34, 35, or 39 of Title 43.

(3) "Record" means a patient's health record, including, but not limited to, evaluations, diagnoses, prognoses, laboratory reports, X-rays, prescriptions, and other technical information used in assessing the patient's condition, or the pertinent portion of the record relating to a specific condition or a summary of the record.

History. — Code 1981, § 31-32-1, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-1, as redesignated by Ga. L. 1985, p. 149, § 31.

31-33-2. Furnishing copy of records to patient, provider, or other authorized person.

(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 pursuant to Code Section 31-7-2.

(2) Upon written request from the patient or a person authorized to have access to the patient's record under an advance directive for health care or a durable power of attorney for health care for such patient, the provider having custody and control of the patient's record shall furnish a complete and current copy of that record, in accordance with the provisions of this Code section. If the patient is deceased, such request may be made by the following persons:

(A) The executor, administrator, or temporary administrator for the decedent's estate if such person has been appointed;

(B) If an executor, administrator, or temporary administrator for the decedent's estate has not been appointed, by the surviving spouse;

(C) If there is no surviving spouse, by any surviving child; and

(D) If there is no surviving child, by any parent.

(b) Any record requested under subsection (a) of this Code section shall within 30 days of the receipt of a request for records be furnished

to the patient, any other provider designated by the patient, any person authorized by paragraph (2) of subsection (a) of this Code section to request a patient's or deceased patient's medical records, or any other person designated by the patient. Such record request shall be accompanied by:

(1) An authorization in compliance with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations implementing such act; and

(2) A signed written authorization as specified in subsection (d) of this Code section.

(c) If the provider reasonably determines that disclosure of the record to the patient will be detrimental to the physical or mental health of the patient, the provider may refuse to furnish the record; however, upon such refusal, the patient's record shall, upon written request by the patient, be furnished to any other provider designated by the patient.

(d) A provider shall not be required to release records in accordance with this Code section unless and until the requesting person has furnished the provider with a signed written authorization indicating that he or she is authorized to have access to the patient's records by paragraph (2) of subsection (a) of this Code section. Any provider shall be justified in relying upon such written authorization.

(e) Any provider or person who in good faith releases copies of medical records in accordance with this Code section shall not be found to have violated any criminal law or to be civilly liable to the patient, the deceased patient's estate, or to any other person.

History. — Code 1981, § 31-32-2, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-2, as redesignated by Ga. L. 1985, p. 149, § 31; Ga. L. 2001, p. 1157, § 1; Ga. L. 2002, p. 641, § 2; Ga. L. 2006, p. 494, § 3/HB 912; Ga. L. 2007, p. 133, § 13/HB 24; Ga. L. 2008, p. 12, § 2-32/SB 433.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "and" was added at the end of subparagraph (a)(2)(C), in subsection (b), a comma was deleted following "Code section shall" in the introductory language, and "section" was substituted for "Section" in paragraph (b)(2).

Pursuant to Code Section 28-9-5, in 2008, "by the department" was deleted following "hospitals as issued" in division (a)(1)(B)(ii).

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency

contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

"(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care."

Law reviews. — For article, "What Every Attorney Should Know About Health Care Law," see 15 (No. 6) Ga. St. B. J. 17 (2010).

For note on the 2002 amendment of this Code section, see 19 Ga. St. U. L. Rev. 200 (2002).

JUDICIAL DECISIONS

O.C.G.A. § 31-33-2(a)(2) not preempted by 45 C.F.R. § 164.502(g)(4). — O.C.G.A. § 31-33-2(a)(2) is more stringent than, and thus is not preempted by, 45 C.F.R. § 164.502(g)(4) because § 164.502(g)(4) permits an executor, administrator, or some other person authorized to act on behalf of the decedent or his or her estate to obtain protected health information, but the person whom § 31-33-2(a)(2) allows to act on behalf of the deceased individual or the estate is only the executor or administrator if the estate is represented, and only the surviving spouse if one exists and the estate is unrepresented. Alvista Healthcare Ctr. v. Miller, 286 Ga. 122, 686 S.E.2d 96 (2009).

Under federal law, decedent's surviving spouse entitled to decedent's medical records. — Nursing home was obliged to release a decedent's medical records to the decedent's surviving spouse who was pursuing a wrongful death action since under O.C.G.A. §§ 31-33-2(a)(2)(B) and 51-4-2 the spouse was authorized to access those records, and the trial court's order requiring the release of the records complied with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. Alvista Healthcare Ctr., Inc. v. Miller, 296 Ga. App. 133, 673 S.E.2d 637 (2009).

Court of appeals did not err in affirming an order granting a surviving spouse a temporary restraining order and permanent injunction requiring the owner of a nursing care facility to release a decedent's medical records and a declaratory judgment that the spouse was entitled to the records pursuant to O.C.G.A. § 31-33-2(a)(2)(B) because the spouse was entitled to access the decedent's protected health information in accordance with 45 C.F.R. § 164.502(g)(4) when § 31-33-2(a)(2)(B) authorized a surviving spouse to act on behalf of the decedent or the estate in obtaining medical records; except for mental health records and any records which remained privileged or confidential, all of the decedent's protected health information was relevant to the limited personal representation granted to a surviving spouse by § 31-33-2(a)(2)(B), and the spouse, by qualifying for that limited personal representation and requesting medical records which the spouse was authorized to request by virtue of such representation, had met every requirement of 45 C.F.R. § 164.502(g)(4). Alvista Healthcare Ctr. v. Miller, 286 Ga. 122, 686 S.E.2d 96 (2009).

Because the evident purpose of O.C.G.A. § 31-33-2(a)(2), when read in

conjunction with § 31-33-2(b)(1), is to identify several persons, the executor or administrator being the first choice and the surviving spouse being the second, who have authority to submit an authorization in compliance with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and to obtain medical records on behalf of the decedent or the decedent's estate, § 31-33-2(a)(2) constitutes the applicable state law to which 45 C.F.R. § 164.502(g)(4) refers, and § 31-33-2(a)(2)(B) necessarily implies that, when there is no executor or administrator, the surviving spouse is granted authority to act on behalf of the decedent or his or her estate with respect to requests for medical records. Alvista Healthcare Ctr. v. Miller, 286 Ga. 122, 686 S.E.2d 96 (2009).

O.C.G.A. § 31-33-2(a)(2) treats the surviving spouse as a personal representative in lieu of the executor or administrator with respect to requests for medical records and § 31-33-2(a)(2)(B) establishes a limited personal representation in the surviving spouse for the express purpose of obtaining the decedent's medical records in compliance with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, the Georgia statute does not provide for personal representation by the surviving spouse for other purposes, but the statute permits the spouse to obtain all types of medical records, other than mental health records as excepted by O.C.G.A. § 31-33-4, and subject to the preservation in O.C.G.A. § 31-33-6 of the privileged or confidential nature of communications recognized in other laws, and therefore, § 31-33-2(a)(2) is carefully tailored to provide the authority contemplated by 45 C.F.R. § 164.502(g)(4). Alvista Healthcare Ctr. v. Miller, 286 Ga. 122, 686 S.E.2d 96 (2009).

45 C.F.R. § 164.502(g)(4) does not require that the person having authority to act on behalf of the decedent or his or her estate and requesting medical records must intend to make future use of those records in his or her fiduciary capacity as a personal representative because when the person having authority to act on behalf of the decedent or the estate makes a request for medical records which is within the scope of that authority, the very request constitutes an action in that person's capacity as a limited personal representative, and such request is the only action which can come within the limited personal representation established by O.C.G.A. § 31-33-2(a)(2) for the purpose of obtaining medical records; once the medical records are obtained by a person authorized by state law to act on behalf of the decedent or the estate by requesting them, 45 C.F.R. § 164.502(g)(4) does not restrict the future use of those records, and after obtaining the medical records, therefore, the surviving spouse may pursue a wrongful death claim, he or she may seek appointment as administrator in order to bring a survival action on behalf of the estate pursuant to O.C.G.A. § 51-4-5(b), he or she may do both or may do neither. Alvista Healthcare Ctr. v. Miller, 286 Ga. 122, 686 S.E.2d 96 (2009).

Patient's authorization required. — Trial court did not abuse the court's discretion in denying the doctors' copies of records of former patients in the absence of patient authorizations as the new practice owned the records. Gerguis v. Statesboro HMA Medical Group, LLC, 331 Ga. App. 867, 772 S.E.2d 227 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Refusing copies of reports to applicant for disability retirement benefits. — If the medical board of the Employees Retirement System determines that the examining physician has met the criteria of subsection (c) of O.C.G.A. § 31-33-2 in recommending nondisclosure of medical records prepared in the evaluation of a claim for disability retirement benefits, it is appropriate to refuse copies of those reports to the applicant who was examined. 1992 Op. Att'y Gen. No. 92-19.

31-33-3. Costs of copying and mailing; patient's rights as to records; applicability to psychiatric, psychological, and other mental health records.

(a) The party requesting the patient's records shall be responsible to the provider for the costs of copying and mailing the patient's record. A charge of up to $20.00 may be collected for search, retrieval, and other direct administrative costs related to compliance with the request under this chapter. A fee for certifying the medical records may also be charged not to exceed $7.50 for each record certified. The actual cost of postage incurred in mailing the requested records may also be charged. In addition, copying costs for a record which is in paper form shall not exceed $.75 per page for the first 20 pages of the patient's records which are copied; $.65 per page for pages 21 through 100; and $.50 for each page copied in excess of 100 pages. All of the fees allowed by this Code section may be adjusted annually in accordance with the medical component of the consumer price index. The Department of Community Health shall be responsible for calculating this annual adjustment, which will become effective on July 1 of each year. To the extent the request for medical records includes portions of records which are not in paper form, including but not limited to radiology films, models, or fetal monitoring strips, the provider shall be entitled to recover the full reasonable cost of such reproduction. Payment of such costs may be required by the provider prior to the records being furnished. This subsection shall not apply to records requested in order to make or complete an application for a disability benefits program.

(b) The rights granted to a patient or other person under this chapter are in addition to any other rights such patient or person may have relating to access to a patient's records; however, nothing in this chapter shall be construed as granting to a patient or person any right of ownership in the records, as such records are owned by and are the property of the provider.

(c) This Code section shall apply to psychiatric, psychological, and other mental health records of a patient.

History. — Code 1981, § 31-32-3, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-3, as redesignated by Ga. L. 1985, p. 149, § 31; Ga. L. 2001, p. 1157, § 2; Ga. L. 2015, p. 949, § 1/HB 385; Ga. L. 2016, p. 549, § 1/HB 910.

Law reviews. — For article, "Trial Practice and Procedure," see 53 Mercer L. Rev. 475 (2001). For survey article on workers' compensation law, see 60 Mercer L. Rev. 433 (2008).

JUDICIAL DECISIONS

Companies providing photocopying services were subject to the provision requiring hospitals to furnish patients' records for the "reasonable costs of copy-

ing and mailing." Cotton v. Med-Cor Health Info. Solutions, Inc., 221 Ga. App. 609, 472 S.E.2d 92 (1996).

Workers' Compensation Board regulated photocopying charges. — Because the Georgia Workers' Compensation Board, and not the Health Records Act, O.C.G.A. § 31-33-3, regulated the medical photocopying charges in workers' compensation proceedings, the trial court properly dismissed a declaratory judgment complaint filed by a photocopier, which sought guidance regarding the appropriate fee structure for medical photocopying services in workers' compensation proceedings, for failure to state a claim upon which relief could be granted. Smart Document Solutions, LLC v. Hall, 290 Ga. App. 483, 659 S.E.2d 838 (2008).

Cited in Best Jewelry Mfg. Co. v. Reed Elsevier Inc., 334 Ga. App. 826, 780 S.E.2d 689 (2015).

31-33-4. Mental health records.

The provisions of this chapter, except as otherwise provided in Code Sections 31-33-3, 31-33-7, and 31-33-8, shall not apply to psychiatric, psychological, or other mental health records of a patient.

History. — Code 1981, § 31-32-4, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-4, as redesignated by Ga. L. 1985, p. 149, § 31; Ga. L. 2010, p. 286, § 18/SB 244; Ga. L. 2016, p. 549, § 2/HB 910.

Cross references. — Right of mental patients to examine medical records, §§ 37-3-162, 37-3-167.

31-33-5. Immunity from liability for releasing information.

Any provider releasing information in good faith pursuant to the provisions of this chapter shall not be civilly or criminally liable to the patient, guardian, parent, or any other person for such release.

History. — Code 1981, § 31-32-5, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-5, as redesignated by Ga. L. 1985, p. 149, § 31.

31-33-6. Confidential communications.

Nothing in this chapter shall be construed as destroying or diminishing the privileged or confidential nature of any communication now or hereafter recognized by law.

History. — Code 1981, § 31-32-6, enacted by Ga. L. 1984, p. 1680, § 1; Code 1981, § 31-33-6, as redesignated by Ga. L. 1985, p. 149, § 31.

JUDICIAL DECISIONS

Cited in Stoneridge Properties, Inc. v. Kuper, 178 Ga. App. 409, 343 S.E.2d 424 (1986).

31-33-7. Furnishing copies of psychological or psychiatric evaluation to law enforcement officer upon request.

(a) Notwithstanding the provisions of Code Section 31-33-4, if a law enforcement officer employed by a governmental entity is required to submit to a psychological or psychiatric examination for the purpose of assessing the law enforcement officer's fitness for duty, employment status, or assignment of duties, then, upon the written request of the law enforcement officer, the employer shall furnish to the law enforcement officer a complete copy of the evaluation or report.

(b) Any employer or health care provider furnishing or making a report or evaluation in good faith pursuant to the provisions of this Code section shall not be civilly or criminally liable to the law enforcement officer or any other person for furnishing or making such report or evaluation.

(c) If an employer reasonably determines that disclosure of the evaluation or report to the law enforcement officer will be detrimental to the mental health of the law enforcement officer, would present a risk of harm to other persons, would involve the disclosure of confidential information or would violate the privacy of a third party, then the employer may refuse to furnish the record of evaluation; provided, however, that upon such refusal the evaluation or report shall, upon written request by the law enforcement officer, be furnished by the employer to a psychiatrist or psychologist treating the law enforcement officer.

History. — Code 1981, § 31-33-7, enacted by Ga. L. 1998, p. 1499, § 1.

Cross references. — Employment and training of peace officers, T. 35, C. 8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "; provided," was substituted for "provided; " in subsection (c).

31-33-8. Electronic records; application to psychiatric, psychological, or other mental health records.

(a) Notwithstanding any other provision of the law to the contrary, any provider may, in its sole discretion, create, maintain, transmit, receive, and store records in an electronic format within the meaning of Code Section 10-12-2 and may, in its sole discretion, temporarily or permanently convert records into an electronic format.

(b) A provider shall not be required to maintain separate tangible copies of electronically stored records.

(c) The other provisions of this chapter shall apply to electronic records to the same extent as those provisions apply to tangible records.

(d) This Code section is subject to all applicable federal laws governing the security and confidentiality of a patient's personal health information.

(e) A tangible copy of a record reproduced from an electronically stored record shall be considered an original for purposes of providing copies to patients or other authorized parties and for introduction of the records into evidence in administrative or court proceedings.

(f) Except as provided otherwise under federal law, upon receiving a request for a copy of a record from a patient or an authorized person under Code Section 31-33-3, a provider shall provide copies of the record in either tangible or electronically stored form.

(g) Subsections (a), (b), (d) and (e) of this Code section shall apply to psychiatric, psychological, or other mental health records of a patient.

History. — Code 1981, § 31-33-8, enacted by Ga. L. 2005, p. 618, § 1/SB 204; Ga. L. 2009, p. 698, § 4/HB 126; Ga. L. 2010, p. 286, § 19/SB 244.

Cross references. — Georgia Uniform Electronic Transactions Act, § 10-12-1 et seq.

CHAPTER 34

MEDICAL PROFESSIONALS FOR RURAL ASSISTANCE

Article 1

General Provisions

Sec.
31-34-1. Short title.
31-34-2. Purpose and intent of article.
31-34-3. Administration by Georgia Board of Health Care Workforce.
31-34-4. Loan applicant qualifications; rules and regulations.
31-34-4.1. Grants to hospitals and other entities; use of funds; rules and regulations authorized.
31-34-5. Service cancelable loan; amount; repayment; determination of underserved rural areas.
31-34-6. Contract between applicant and state agreeing to terms and conditions of loan; breach of contract; service cancelable contracts.
31-34-7. Cancellation of contract.
31-34-8. Funding.
31-34-9. Biennial report to General Assembly.

Article 2

Grant Program

31-34-20. Grant program for physicians serving underserved rural areas; eligibility qualifications; time of practice; rules and regulations.

Cross references. — Physicians, T. 43, C. 34.

Administrative rules and regulations. — Physicians for rural areas assistance program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board for Physician Workforce, Chapter 195-12.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — The existing provisions of Chapter 34 were designated as Article 1 by Ga. L. 2018, p. 132, § 6/HB769, effective July 1, 2018.

31-34-1. Short title.

This article shall be known and may be cited as the "Physicians, Dentists, Physician Assistants, and Advanced Practice Registered Nurses for Rural Areas Assistance Act."

History. — Code 1981, § 31-34-1, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2017, p. 397, § 1/HB 427; Ga. L. 2018, p. 132, § 6/HB 769.

The 2017 amendment, effective July 1, 2017, inserted ", Dentists, Physician Assistants, and Advanced Practice Registered Nurses" in the middle of this Code section.

The 2018 amendment, effective July 1, 2018, substituted "This article" for "This chapter" at the beginning of this Code section.

31-34-2. Purpose and intent of article.

It is the purpose of this article to increase the number of physicians, dentists, physician assistants, and advanced practice registered nurses in underserved rural areas of Georgia by making loans to physicians, dentists, physician assistants, and advanced practice registered nurses who have completed their medical or health care education and allowing such loans to be repaid by such physicians, dentists, physician assistants, and advanced practice registered nurses agreeing to practice medicine or provide health care services in such rural areas and by making grants to hospitals and, as determined by the Georgia Board of Health Care Workforce, other health care entities, local governments, and civic organizations in underserved rural areas of Georgia that agree to provide matching funds to the grant, with the intent to enhance recruitment efforts in bringing physicians, dentists, physician assistants, and advanced practice registered nurses to such areas. It is the intent of the General Assembly that if funds are available to the Georgia Board of Health Care Workforce to make loans, grants, or scholarships under this article or under other applicable state law, the Georgia Board of Health Care Workforce shall give priority to loans and scholarships under Part 6 of Article 7 of Chapter 3 of Title 20 and to loans under Code Section 31-34-4.

History. — Code 1981, § 31-34-2, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2006, p. 152, § 2B/HB 1178; Ga. L. 2009, p. 8, § 31/SB 46; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2011, p. 459, § 2/HB 509; Ga. L. 2017, p. 397, § 2/HB 427; Ga. L. 2018, p. 132, § 6/HB 769; Ga. L. 2019, p. 224, § 2/SB 207.

The 2017 amendment, effective July 1, 2017, in the first sentence, inserted ", dentists, physician assistants, and advanced practice registered nurses" four times, deleted "physician" preceding "underserved" twice, inserted "or health care", and inserted "or provide health care services".

The 2018 amendment, effective July 1, 2018, substituted "this article" for "this chapter" twice in this Code section.

The 2019 amendment, effective July 1, 2019, substituted "Georgia Board of Health Care Workforce" for "Georgia Board for Physician Workforce" in three places.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 197 (2006).

31-34-3. Administration by Georgia Board of Health Care Workforce.

This article shall be administered by the Georgia Board of Health Care Workforce, and, as used in this article, the word "board" means the Georgia Board of Health Care Workforce created in Code Section 49-10-1.

History. — Code 1981, § 31-34-3, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2011, p. 459, § 2/HB 509; Ga. L. 2018, p. 132, § 6/HB 769; Ga. L. 2019, p. 224, § 2/SB 207.

The 2018 amendment, effective July 1, 2018, substituted "This article" for "This chapter" near the beginning and substituted "this article" for "this chapter" near the middle of this Code section.

The 2019 amendment, effective July 1, 2019, substituted "Georgia Board of Health Care Workforce" for "Georgia Board for Physician Workforce" in two places.

31-34-4. Loan applicant qualifications; rules and regulations.

(a) A physician, dentist, physician assistant, or advanced practice registered nurse who receives a loan under the program provided for in this article shall be a citizen or national of the United States licensed to practice his or her health care profession within the State of Georgia at the time the loan is made, and shall be a graduate of an accredited graduate medical education program or other applicable accredited health care education program located in the United States which has received accreditation or provisional accreditation by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or such other applicable accreditation for other health care education programs, as determined by the board.

(b) The board shall make a full investigation of the qualifications of an applicant for a loan under the provisions of this article to determine the applicant's fitness for participation in such loan program, and for such purposes, the board may propound such examinations to applicants as the board deems proper. The board's investigation shall include a determination of the outstanding medical or health care education loans incurred by the applicant while completing his or her medical or health care education and training.

(c) The board is authorized to consider among other criteria for granting loans under the provisions of this article the state residency status and home area of the applying physician, dentist, physician assistant, or advanced practice registered nurse and to give priority to those applicants who are physicians, dentists, physician assistants, and advanced practice registered nurses actively practicing or beginning active practice in specialties experiencing shortages or distribution problems in rural areas of this state as determined by the board pursuant to rules and regulations adopted by it in accordance with this article.

(d) The board may adopt and prescribe such rules and regulations as it deems necessary or appropriate to administer and carry out the loan program provided for in this article. Such rules and regulations shall provide for fixing the rate of regular interest to accrue on loans granted under the provisions of this article. Such regular rate of interest shall not exceed by more than 2 percent the prime rate published from time to time by the Board of Governors of the Federal Reserve System. Within such limitation, the regular rate of interest may be increased for new recipients of loans under this article.

History. — Code 1981, § 31-34-4, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2006, p. 152, § 2C/HB 1178; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2017, p. 397, § 3/HB 427; Ga. L. 2018, p. 132, § 6/HB 769.

The 2017 amendment, effective July 1, 2017, in subsection (a), inserted ", dentist, physician assistant, or advanced practice registered nurse", substituted "his or her health care profession" for "medicine", inserted "or other applicable accredited health care education program", and added "or such other applicable accreditation for other health care education programs, as determined by the board."; in subsection (b), in the second sentence, inserted "or health care" twice; and, in subsection (c), near the middle, inserted ", dentist, physician assistant, or advanced practice registered nurse", and inserted ", dentists, physician assistants, and advanced practice registered nurses".

The 2018 amendment, effective July 1, 2018, substituted "this article" for "this chapter" throughout this Code section.

Law reviews. — For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 197 (2006).

31-34-4.1. Grants to hospitals and other entities; use of funds; rules and regulations authorized.

(a) After providing priority consideration to granting loans pursuant to Code Section 31-34-4, the board is authorized to make grants to hospitals and, as determined by the board, other health care entities, local governments, and civic organizations in underserved rural areas of Georgia, provided that any such hospital, health care entity, local government, or civic organization matches such grant in an amount not less than such grant. Such grants shall be for the purpose of enhancing recruitment efforts in bringing physicians, dentists, physician assistants, and advanced practice registered nurses to such areas.

(b) Acceptable expenditures of grant funds by a hospital or other health care entity, local government, or civic organization include, but are not limited to, medical or health care education loan repayment, salary supplements for physicians, dentists, physician assistants, and advanced practice registered nurses, and additional support staff for a physician's, dentist's, physician assistant's, or advanced practice registered nurse's office. Grant funds shall not be used for hiring or paying a recruiting firm or individual recruiter.

(c) The board is authorized to give priority over other grant applicants to applicant hospitals and other health care entities, local governments, and civic organizations in rural areas of this state experiencing shortages or distribution problems of certain specialties as determined by the board pursuant to rules and regulations adopted by the board in accordance with this article.

(d) The board may adopt and prescribe such rules and regulations as it deems necessary or appropriate to administer and carry out the grant program provided for in this article. Such rules and regulations shall provide for the criteria that must be met by an applicant and the penalties that shall be incurred for failure to comply with the grant requirements.

History. — Code 1981, § 31-34-4.1, enacted by Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2017, p. 397, § 4/HB 427; Ga. L. 2018, p. 132, § 6/HB 769.

The 2017 amendment, effective July 1, 2017, in subsection (a), deleted "physician" preceding "underserved" in the first sentence, and inserted ", dentists, physician assistants, and advanced practice registered nurses" near the end of the second sentence; and, in the first sentence of subsection (b), inserted "or health care", inserted ", dentists, physician assistants, and advanced practice registered nurses", and inserted ", dentist's, physician assistant's, or advanced practice registered nurse's" near the end.

The 2018 amendment, effective July 1, 2018, substituted "this article" for "this chapter" at the end of subsection (c) and at the end of the first sentence of subsection (d).

31-34-5. Service cancelable loan; amount; repayment; determination of underserved rural areas.

(a)(1) The board shall have the authority to grant to each applicant approved by the board on a one-year renewable basis a service cancelable loan for a period not exceeding four years. The amount of the loan shall be determined by the board, but such amount shall be related to the applicant's outstanding obligations incurred as a direct result of completing medical or health care education and training.

(2) A loan or loans to each approved applicant shall be granted on the condition that the full amount of the loan or loans shall be repaid to the State of Georgia in services to be rendered by the applicant's practicing his or her profession in a board approved physician, dentist, physician assistant, or advanced practice registered nurse underserved rural area of Georgia. For each full year of practicing his or her profession in such underserved rural area, the physician, dentist, physician assistant, or advanced practice registered nurse who obtained the loan shall receive credit for the full amount of one year's loan plus regular interest which accrued on such amount.

(b)(1) The board shall have the authority to make grants to each applicant hospital or other health care entity, local government, or civic organization approved by the board on a yearly basis, renewable each year at the discretion of the board. The amount of the grant shall be determined by the board, but such amount shall be related to and shall not exceed the applicant's proposed expenditures to enhance recruitment efforts in bringing one or more physicians, dentists, physician assistants, or advanced practice registered nurses to the underserved rural area.

(2) A grant to an approved applicant shall be made on any condition or conditions determined by the board, which may include, but not be limited to, that one or more physicians, dentists, physician assistants, or advanced practice registered nurses are employed and retained in the underserved rural area for a prescribed minimum length of time.

(c) In making a determination of physician, dentist, physician assistant, or advanced practice registered nurse underserved rural areas of Georgia, the board shall seek the advice and assistance of the Department of Public Health, the University of Georgia Cooperative Extension Service, the Department of Community Affairs, and such other public or private associations or organizations as the board determines to be of assistance in making such determinations. Criteria to determine physician, dentist, physician assistant, or advanced practice registered nurse underserved rural areas shall include, but shall not be limited to, relevant statistical data related to the following:

(1) The ratio of physicians, dentists, physician assistants, or advanced practice registered nurses to population in the area;

(2) Indications of the health status of the population in the area;

(3) The poverty level and dependent age groups of the population in the area;

(4) Indications of community support for more physicians, dentists, physician assistants, or advanced practice registered nurses in the area; and

(5) Indications that access to the physician's, dentist's, physician assistant's, or advanced practice registered nurse's services is available to every person in the underserved area regardless of ability to pay.

History. — Code 1981, § 31-34-5, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2011, p. 459, § 3/HB 509; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2017, p. 397, § 5/HB 427.

The 2017 amendment, effective July 1, 2017, throughout this Code section, inserted ", dentist, physician assistant, or advanced practice registered nurse" and inserted ", dentists, physician assistants, or advanced practice registered nurses"; inserted "or health care" near the end of the last sentence of paragraph (a)(1); deleted "a physician" preceding "underserved" in the last sentence of paragraph (a)(2); deleted "physician" preceding "underserved" throughout subsection (b); and substituted ", dentist's, physician assistant's, or advanced practice registered nurse's" in the middle of paragraph (c)(5).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-34-6. Contract between applicant and state agreeing to terms and conditions of loan; breach of contract; service cancelable contracts.

(a)(1) Before being granted a service cancelable loan provided for in this article, each applicant therefor shall enter into a contract with the State of Georgia agreeing to the terms and conditions upon which the loan is granted, which contract shall include such terms and conditions as will carry out the purposes and intent of this article. The chairperson of the board and the executive director of the board,

acting for and on behalf of the State of Georgia, shall execute the contract for the board. The contract shall also be properly executed by the applicant. The board is vested with full and complete authority to bring an action in its own name against any recipient of a loan under the provisions of this article for the performance of the contract and to collect any amount that may be due under the contract.

(2) Any recipient of a loan under the provisions of this article who breaches the contract for such loan by either failing to begin or failing to complete the rural practice service obligation under the contract shall be immediately liable to the board for twice the total uncredited amount of all loans contracted for with the recipient, such uncredited amount to be prorated on a monthly basis respecting the recipient's actual service rendered and the total service obligation. For compelling reasons provided for in rules or regulations of the board, the board may agree to and accept a lesser measure of damages for the breach of a contract.

(b)(1) Before receiving a grant under this article, each approved applicant hospital or other health care entity, local government, or civic organization shall enter into a service cancelable contract with the State of Georgia agreeing to the terms and conditions upon which the grant is made, which contract shall include such terms and conditions as will carry out the purposes and intent of this article. The chairperson of the board and the executive director of the board, acting for and on behalf of the State of Georgia, shall execute the contract for the board. The contract shall also be properly executed by the applicant. The board is vested with full and complete authority to bring an action in its own name against any recipient of a grant under the provisions of this article for the performance of the contract and to collect any amount that may be due under the contract.

(2) Any recipient of a grant under the provisions of this article who breaches the contract for such grant shall be liable for the measure of damages specified in the contract for the breach of such contract.

History. — Code 1981, § 31-34-6, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2018, p. 132, § 6/HB 769.

The 2018 amendment, effective July 1, 2018, substituted "this article" for "this chapter" throughout this Code section.

31-34-7. Cancellation of contract.

(a) The board shall have the authority to cancel the contract of any recipient of a loan under this article for cause deemed sufficient by the board, provided that such authority shall not be arbitrarily or unreasonably exercised. Upon such cancellation, the total uncredited amount paid to the recipient shall at once become due and payable to the board in cash, and interest at the rate of 12 percent per annum shall accrue

on such total uncredited amount from the date of cancellation to the date of payment.

(b) The board shall have the authority to cancel the contract of any recipient of a grant under this article for cause deemed sufficient by the board, provided that such authority shall not be arbitrarily or unreasonably exercised. Upon such cancellation, the grant recipient shall not be eligible to receive further grant funds pursuant to this article.

History. — Code 1981, § 31-34-7, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2018, p. 132, § 6/HB 769.

The 2018 amendment, effective July 1, 2018, substituted "this article" for "this chapter" throughout this Code section.

31-34-8. Funding.

The funds necessary to carry out the loan and grant program authorized by this article may come from funds made available to the board from private, federal, state, or local sources. Funds appropriated by the General Assembly for the purposes of this article shall be appropriated to the Department of Community Health for the specific purpose of the cancelable loan and grant program authorized by this article. The board shall be assigned to the Department of Community Health for administrative purposes only, except that such department shall prepare and submit the budget for that board in concurrence with that board.

History. — Code 1981, § 31-34-8, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 1999, p. 296, § 10; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2018, p. 132, § 6/HB 769.

The 2018 amendment, effective July 1, 2018, substituted "this article" for "this chapter" throughout this Code section.

31-34-9. Biennial report to General Assembly.

The board shall make a biennial report to the General Assembly of its activities under the provisions of this article. Such report shall include the name of each recipient of a loan made under the provisions of this article, the amount of each such loan, and the rural area in which the recipient is practicing medicine. Such report shall include the name of each recipient of a grant made under the provisions of this article, the amount of each such grant, and the rural area in which the recipient is located. Such report shall also report the amount of administrative expenses incurred by the board in carrying out the provisions of this article.

History. — Code 1981, § 31-34-9, enacted by Ga. L. 1989, p. 1234, § 1; Ga. L. 2010, p. 322, § 1/HB 866; Ga. L. 2018, p. 132, § 6/HB 769.

The 2018 amendment, effective July 1, 2018, substituted "this article" for "this chapter" throughout this Code section.

ARTICLE 2

GRANT PROGRAM

Effective date. — This article became effective July 1, 2018.

31-34-20. Grant program for physicians serving underserved rural areas; eligibility qualifications; time of practice; rules and regulations.

(a) Subject to appropriations, the Georgia Board of Health Care Workforce shall establish a grant program for the purpose of increasing the number of physicians who remain in Georgia to practice in medically underserved rural areas of the state. The grant program shall provide medical malpractice insurance premium assistance for physicians practicing in such medically underserved rural areas of the state, as identified by the Georgia Board of Health Care Workforce pursuant to Code Section 49-10-3.

(b) To be eligible to receive a grant under the grant program, a physician shall meet the following qualifications:

(1) Maintain a practice in a medically underserved rural area of the state;

(2) Be licensed to practice in this state and board certified;

(3) Complete a minimum of 100 hours of continuing medical education as approved by the Georgia Composite Medical Board;

(4) Provide weekend or extended hours; and

(5) Accept Medicaid and medicare patients.

(c) A physician receiving a grant pursuant to the grant program shall agree to practice medicine in such medically underserved rural areas of the state for a period of time determined by the Georgia Board of Health Care Workforce.

(d) The Georgia Board of Health Care Workforce may adopt and prescribe such rules and regulations as it deems necessary or appropriate to administer and carry out the grant program provided for in this chapter. In establishing the amount of grants, the Georgia Board of Health Care Workforce shall determine the average insurance premium rates for physicians in rural areas of this state.

History. — Code 1981, § 31-34-20, enacted by Ga. L. 2018, p. 132, § 6/HB 769; Ga. L. 2019, p. 224, § 2/SB 207.

The 2019 amendment, effective July 1, 2019, substituted "Georgia Board of Health Care Workforce" for "Georgia Board for Physician Workforce" throughout the Code section.

CHAPTER 35

VACCINATIONS FOR FIREFIGHTERS, EMERGENCY MEDICAL TECHNICIANS, AND PUBLIC SAFETY OFFICERS

Article 1

General Provisions

Sec.
31-35-1. Legislative findings.
31-35-2. Definitions.
31-35-3. Voluntary vaccinations for hepatitis B; screening for hepatitis C.

Article 2

Bioterrorism Protection for Emergency Responders

Sec.
31-35-10. Definitions.
31-35-11. Vaccinations for emergency responders; exemption provided by physician; priority; administration and implementation; funding.

Code Commission notes. — This chapter, which was enacted as Chapter 34 of Title 31, was renumbered as Chapter 35 pursuant to Code Section 28-9-5 in light of the previous enactment of a Chapter 34 by Ga. L. 1989, p. 1234.

JUDICIAL DECISIONS

Sovereign immunity. — Sovereign immunity of a county was not waived by O.C.G.A. Ch. 35, T. 31 since the law does not create a general duty for counties to vaccinate officers. The chapter only requires vaccination at the request of an employee. Diaz v. Gwinnett County, 225 Ga. App. 807, 485 S.E.2d 42 (1997).

Official immunity of county employees was not waived since there was no evidence that the employees acted maliciously, willfully, or corruptly in connection with the failure of a police officer to be vaccinated against hepatitis B. Diaz v. Gwinnett County, 225 Ga. App. 807, 485 S.E.2d 42 (1997).

ARTICLE 1

GENERAL PROVISIONS

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, Code Sections 31-35-1 through 31-35-3 were designated as Article 1 of Chapter 35 of Title 31.

31-35-1. Legislative findings.

The General Assembly finds and declares that, by reason of their employment, firefighters, emergency medical technicians, and public safety officers are required to work in the midst of and are subject to exposure to infectious diseases, especially hepatitis B and hepatitis C;

that the United States Centers for Disease Control and Prevention have estimated that 200,000 persons in the United States are infected each year with hepatitis B and of that number 25 percent become ill, 10,000 require hospitalization, and 5,000 die; that it is estimated that there are from 500,000 to 1,000,000 infectious hepatitis B carriers in the United States, of which up to 80 percent of such chronic carriers are unaware that they have hepatitis B and are capable of spreading it; that 3.9 million Americans are infected with chronic hepatitis C; that 350,000 to 450,000 new cases of chronic hepatitis C occur each year; that there is no known cure for hepatitis B or hepatitis C and for firefighters, emergency medical technicians, and public safety officers, there is no way of knowing who among those being helped at an accident, a fire, or any incident are hepatitis B or hepatitis C carriers. The General Assembly further finds and declares that all the aforementioned conditions exist and arise out of or in the course of such employment.

History. — Code 1981, § 31-35-1, enacted by Ga. L. 1989, p. 1780, § 1; Ga. L. 1998, p. 1499, § 2; Ga. L. 2012, p. 775, § 31/HB 942.

31-35-2. Definitions.

As used in this chapter, the term:

(1) "Emergency medical technician" means an emergency medical technician as defined in Code Section 31-11-2.

(2) "Fire department" means a service group (paid or volunteer) that is organized and trained for the prevention and control of loss of life and property from fire or other emergency.

(3) "Firefighter" means an individual who is assigned by a fire department to fire-fighting activity and is required to respond to alarms and perform emergency action at the location of a fire, a hazardous materials emergency, or other emergency incident.

(4) "Public safety officer" means an individual sworn to enforce the criminal laws of this state or any county or municipality of this state.

History. — Code 1981, § 31-35-2, enacted by Ga. L. 1989, p. 1780, § 1.

31-35-3. Voluntary vaccinations for hepatitis B; screening for hepatitis C.

Any active firefighter, emergency medical technician, or public safety officer who may be exposed to hepatitis B or hepatitis C during a period while the firefighter, emergency medical technician, or public safety officer is engaged in the performance of his or her duties shall at the

request of the firefighter, emergency medical technician, or public safety officer be vaccinated for protection against hepatitis B or screened for exposure to hepatitis C. The cost, after the payment by any third-party payor, of such vaccination or screening shall be paid by the county, municipality, or other person or entity employing such firefighter, emergency medical technician, or public safety officer or by the governing authority of the county in the case of a volunteer firefighter.

History. — Code 1981, § 31-35-3, enacted by Ga. L. 1989, p. 1780, § 1; Ga. L. 1998, p. 1499, § 3.

ARTICLE 2

BIOTERRORISM PROTECTION FOR EMERGENCY RESPONDERS

Cross references. — Bioterrorism and public health emergencies, §§ 31-12-1.1, 38-3-3.

31-35-10. Definitions.

As used in this article, the term:

(1) "Bioterrorism" means the intentional use, to cause or attempt to cause death, disease, or other biological malfunction in any living organism, of any of the following:

(A) Microorganism;

(B) Virus;

(C) Infectious substance; or

(D) Biological product that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product.

(2) "Commissioner" means the commissioner of public health.

(3) "Department" means the Department of Public Health.

(4) "Disaster location" means any geographical location where a bioterrorism attack, terrorist attack, catastrophic event, natural disaster, or emergency occurs.

(5) "Emergency responder" means any person employed as state or local law enforcement personnel, fire department personnel, corrections officers, or emergency medical personnel who may be deployed to a bioterrorism attack, terrorist attack, catastrophic event, natural disaster, or emergency.

History. — Code 1981, § 31-35-10, enacted by Ga. L. 2003, p. 569, § 4; Ga. L. 2009, p. 453, §§ 1-4, 1-6/HB 228; Ga. L. 2011, p. 705, §§ 6-3, 6-5/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-35-11. Vaccinations for emergency responders; exemption provided by physician; priority; administration and implementation; funding.

(a) The department shall offer a vaccination program for emergency responders who may be exposed to infectious diseases when deployed to a disaster location. The program shall include diseases for which vaccinations are recommended by the United States Public Health Service and in accordance with the Federal Emergency Management Directors Policy and may include, but not be limited to, vaccinations for hepatitis A, hepatitis B, diphtheria-tetanus, influenza, and pneumococcal.

(b) An emergency responder shall be exempt from vaccination when a written statement from a licensed physician is presented to the department indicating that a vaccine is medically contraindicated for that person or the emergency responder signs a written statement that the administration of a vaccination conflicts with his or her personal choice or religious beliefs.

(c) In the event of a vaccine shortage, the commissioner, in consultation with the Governor and the federal Centers for Disease Control and Prevention, shall use federal recommendations to determine the priority for vaccinations for emergency responders.

(d) The department shall notify emergency responders of the availability of the vaccination program and the risks associated with such vaccinations and shall provide educational materials to emergency responders on ways to prevent exposure to infectious diseases.

(e) The department may contract with county and local health departments, not for profit home health care agencies, hospitals, physicians, or other licensed health care organizations to administer the vaccination program for emergency responders.

(f) The vaccination program established pursuant to this article shall be implemented only upon receipt of federal funding or grants for aid available and approved for purposes under this article.

(g) The department shall take all necessary steps to apply for federal funding to implement the vaccination program under this article including use of an expedited application procedure if circumstances require such. The department shall also amend the state plan if necessary to meet federal funding requirements.

History. — Code 1981, § 31-35-11, enacted by Ga. L. 2003, p. 569, § 4.

CHAPTER 36

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Sec.
31-36-1 through 31-36-13 [Repealed].

31-36-1 through 31-36-13.

Reserved. Repealed by Ga. L. 2007, p. 133, § 3/HB 24, effective July 1, 2007.

Editor's notes. — This chapter consisted of Code Sections 31-36-1 through 31-36-13, relating to durable power of attorney for health care, and was based on Ga. L. 1990, p. 1101, § 1; Ga. L. 1999, p. 81, § 31; Ga. L. 1999, p. 485, § 6; Ga. L. 1999, p. 485, § 7. The former chapter was incorporated into Chapter 32 of this title by Ga. L. 2007, p. 133, § 2/HB 24, effective July 1, 2007.

CHAPTER 36A

TEMPORARY HEALTH CARE PLACEMENT DECISION MAKER FOR AN ADULT

Sec.
31-36A-1. Short title.
31-36A-2. Legislative findings.
31-36A-3. Definitions.
31-36A-4. Construction of chapter in relation to Title 37.
31-36A-5. Certification by physician.
31-36A-6. Persons authorized to consent; expiration of authorization; limitations on authority to consent; effect on other laws; immunity from liability or disciplinary action.
31-36A-7. Petition for order by health care facility; issuance, expiration, and limited authorization of order; effect on other laws; immunity from liability or disciplinary action.

Law reviews. — For article, "Medical Decision-Making in Georgia," see 10 Ga. St. B. J. 50 (2005).

31-36A-1. Short title.

This chapter shall be known and may be cited as the "Temporary Health Care Placement Decision Maker for an Adult Act."

History. — Code 1981, § 31-36A-1, enacted by Ga. L. 1999, p. 485, § 5.

31-36A-2. Legislative findings.

(a) The General Assembly recognizes that there may be occasions when an adult has not made advance arrangements for a situation when he or she is unable to consent to his or her own admission to or discharge from one health care facility or placement or transfer to another health care facility or placement. Under these circumstances, the General Assembly further recognizes that it may be necessary and in the adult's best interest to be admitted to or discharged from one health care facility or placement or transferred to an alternative facility or placement.

(b) In recognition of the findings in subsection (a) of this Code section, the General Assembly declares that the laws of the State of Georgia shall provide for the most appropriate placement available for these individuals and shall declare an order of priority for those persons who may make the decision to transfer, admit, or discharge such adults at the appointed times and a procedure for obtaining authorization from the court in the absence of a person authorized to consent.

History. — Code 1981, § 31-36A-2, enacted by Ga. L. 1999, p. 485, § 5.

31-36A-3. Definitions.

As used in this chapter, the term:

(1) "Absence of a person authorized to consent" means that:

(A) After diligent efforts for a reasonable period of time, no person authorized to consent under the provisions of Code Section 31-36A-6 has been located; or

(B) All such authorized persons located have affirmatively waived their authority to consent or dissent to admission to or discharge from a health care facility or placement or transfer to an alternative health care facility or placement, provided that dissent by an authorized person to a proposed admission, discharge, or transfer shall not be deemed waiver of authority.

(2) "Unable to consent" means that an adult is unable to:

(A) Make rational and competent decisions regarding his or her placement options for health or personal care; or

(B) Communicate such decisions by any means.

History. — Code 1981, § 31-36A-3, enacted by Ga. L. 1999, p. 485, § 5.

31-36A-4. Construction of chapter in relation to Title 37.

This chapter shall not apply to involuntary examination and hospitalization for treatment of mental illness, which shall continue to be governed by Title 37.

History. — Code 1981, § 31-36A-4, enacted by Ga. L. 1999, p. 485, § 5.

31-36A-5. Certification by physician.

An attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, after having personally examined an adult, may certify in the adult's medical records the following:

(1) The adult is unable to consent for himself or herself; and

(2) It is the physician's belief that it is in the adult's best interest to be discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition and to be transferred

to or admitted to an alternative facility or placement, including, but not limited to, nursing facilities, assisted living communities, personal care homes, rehabilitation facilities, and home and community based programs.

History. — Code 1981, § 31-36A-5, enacted by Ga. L. 1999, p. 485, § 5; Ga. L. 2011, p. 227, § 21/SB 178.

31-36A-6. Persons authorized to consent; expiration of authorization; limitations on authority to consent; effect on other laws; immunity from liability or disciplinary action.

(a) Upon a physician's certification pursuant to Code Section 31-36A-5, and in addition to such other persons as may be otherwise authorized and empowered, any one of the following persons is authorized and empowered to consent, in the priority order listed below, either orally or otherwise, to such transfer, admission, or discharge:

(1) Any adult, for himself or herself;

(2) Any person authorized to give such consent for the adult under an advance directive for health care or durable power of attorney for health care under Chapter 32 of this title;

(3) Any guardian of the person for his or her ward;

(4) Any spouse for his or her spouse;

(5) Any adult child for such person's parent;

(6) Any parent for such person's adult child;

(7) Any adult for such person's adult brother or sister;

(8) Any grandparent for such person's adult grandchild;

(9) Any adult grandchild for such person's grandparent;

(10) Any adult uncle or aunt for such person's adult nephew or niece; or

(11) Any adult nephew or niece for such person's adult uncle or aunt.

(b) Any person authorized and empowered to consent under subsection (a) of this Code section shall, after being informed of the provisions of this Code section, act in good faith to consent to a transfer, admission, or discharge which the patient would have wanted had the patient been able to consent in the circumstances under which such transfer, admission, or discharge is considered or, if the patient's preferences are unknown, which such person believes the patient would have wanted

had the patient been able to consent in the circumstances under which such transfer, admission, or discharge is considered. The current health care facility's discharge planner, social worker, or other designated personnel shall assist the person authorized to consent under subsection (a) of this Code section with identifying the most appropriate, least restrictive level of care available, including home and community based services and available placements, if any, in reasonable proximity to the patient's residence.

(c) The authorization to consent to such transfer, admission, or discharge shall expire upon the earliest of the following:

(1) The completion of the transfer, admission, or discharge and such responsibilities associated with such transfer, admission, or discharge, including, but not limited to, assisting with applications for financial coverage and insurance benefits for health or personal care;

(2) Upon a physician's certification that the adult is able to consent to decisions regarding his or her placements for health or personal care; or

(3) Upon discovery that another person authorized under subsection (a) of this Code section of a higher priority is available who has not affirmatively waived his or her authority to consent or dissent to admission to or discharge from a health care facility or placement or transfer to an alternative health care facility or placement, provided that dissent by such authorized person to a proposed admission, discharge, or transfer shall not be deemed waiver of authority.

(d) The authorization to give consent for transfer, admission, or discharge is limited solely to said transfer, admission, or discharge decision and responsibilities associated with such decision, including providing assistance with financial assistance applications. It does not include the power or authority to perform any other acts on behalf of the adult not expressly authorized in this Code section.

(e) This Code section shall not repeal, abrogate, or impair the operation of any other laws, either federal or state, governing the transfer, admission, or discharge of a person to or from a health care facility or placement. Further, the adult retains all rights provided under laws, both federal and state, as a result of an involuntary transfer, admission, or discharge.

(f) Each certifying physician, discharge planner, social worker, or other hospital personnel or authorized person who acts in good faith pursuant to the authority of this Code section shall not be subject to any civil or criminal liability or discipline for unprofessional conduct.

History. — Code 1981, § 31-36A-6, enacted by Ga. L. 1999, p. 485, § 5; Ga. L. 2007, p. 133, § 14/HB 24.

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

"(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care."

Law reviews. — For article, "Marriage, Death and Taxes: The Estate Planning Impact of Windsor and Obergefell on Georgia's Same Sex Spouses," see 21 Ga. St. Bar. J. 9 (Oct. 2015).

31-36A-7. Petition for order by health care facility; issuance, expiration, and limited authorization of order; effect on other laws; immunity from liability or disciplinary action.

(a) In the absence of a person authorized to consent under the provisions of Code Section 31-36A-6, any interested person or persons, including, but not limited to, any authority, corporation, partnership, or other entity operating the health care facility where the adult who is unable to consent is then present, with or without the assistance of legal counsel, may petition the probate court for a health care placement transfer, admission, or discharge order. The petition must be verified and filed in the county where the adult requiring an alternative placement or transfer, admission, or discharge resides or is found, provided that the probate court of the county where the adult is found shall not have jurisdiction to grant the order if it appears that the adult was removed to that county solely for purposes of filing such a petition. The petition shall set forth:

(1) The name, age, address, and county of the residence of the adult, if known;

(2) The name, address, and county of residence of the petitioner;

(3) The relationship of the petitioner to the adult;

(4) The current location of the adult;

(5) A physician's certification pursuant to Code Section 31-36A-5;

(6) The absence of any person to consent to such transfer, admission, or discharge as authorized by the provisions of Code Section 31-36A-6;

(7) Name and address of the recommended alternative health care facility or placement; and

(8) A statement of the reasons for such transfer, admission, or discharge as required by subsections (b) and (c) of this Code section.

(b) The petition shall be supported by the affidavit of an attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, attesting the following:

(1) The adult is unable to consent for himself or herself;

(2) It is the physician's belief that it is in the adult's best interest to be admitted to or discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition or to be transferred to an alternative facility or placement, including, but not limited to, nursing facilities, assisted living communities, personal care homes, rehabilitation facilities, and home and community based programs; and

(3) The identified type of health care facility or placement will provide the adult with the recommended services to meet the needs of the adult and is the most appropriate, least restrictive level of care available.

(c) The petition shall also be supported by the affidavit of the discharging health care facility's discharge planner, social worker, or other designated personnel attesting to and explaining the following:

(1) There is an absence of a person to consent to such transfer, admission, or discharge as authorized in Code Section 31-36A-6;

(2) The recommended alternative facility or placement is the most appropriate facility or placement available that provides the least restrictive and most appropriate level of care and reasons therefor; and

(3) Alternative facilities or placements were considered, including home and community based placements and available placements, if any, that were in reasonable proximity to the adult's residence.

(d) The court shall review the petition and accompanying affidavits and other information to determine if all the necessary information is provided to the court as required in subsections (a), (b), and (c) of this Code section. The court shall enter an instanter order if the following information is provided:

(1) The adult is unable to consent for himself or herself;

(2) There is an absence of any person to consent to such transfer, admission, or discharge as authorized in Code Section 31-36A-6;

(3) It is in the adult's best interest to be discharged from a hospital, institution, medical center, or other health care institution or placement providing health or personal care for treatment for any type of physical or mental condition and to be admitted or transferred to an alternative facility or placement;

(4) The recommended alternative facility or placement is the most appropriate facility or placement available that provides the least restrictive and most appropriate level of care; and

(5) Alternative facilities or placements were considered, including home and community based placements and available placements, if any, in reasonable proximity to the adult's residence.

The order shall authorize the petitioner or the petitioner's designee to do all things necessary to accomplish the discharge from a hospital, institution, medical center, or other health care institution and the transfer to or admission to the recommended facility or placement.

(e) At the same time as issuing the order, the court shall provide a copy of said order to the commissioner of public health.

(f) The order authorizing such transfer, admission, or discharge shall expire upon the earliest of the following:

(1) The completion of the transfer, admission, or discharge and such responsibilities associated with such transfer, admission, or discharge, including, but not limited to, assisting with the completion of applications for financial coverage and insurance benefits for the health or personal care;

(2) Upon a physician's certification that the adult is able to understand and make decisions regarding his or her placements for health or personal care and can communicate such decisions by any means; or

(3) At a time specified by the court not to exceed 30 days from the date of the order.

(g) The order is limited to authorizing the transfer, admission, or discharge and other responsibilities associated with such decision, such as authorizing the application for financial coverage and insurance benefits. It does not include the authority to perform any other acts on behalf of the adult not expressly authorized in this Code section.

(h) This Code section shall not repeal, abrogate, or impair the operation of any other laws, either federal or state, governing the transfer, admission, or discharge of a person to or from a health care facility or placement. Further, such person retains all rights provided under laws, both federal and state, as a result of an involuntary transfer, admission, or discharge.

(i) Each certifying physician, discharge planner, social worker, or other hospital personnel or authorized person who acts in good faith pursuant to the authority of this Code section shall not be subject to any civil or criminal liability or discipline for unprofessional conduct.

History. — Code 1981, § 31-36A-7, enacted by Ga. L. 1999, p. 485, § 5; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 227, § 22/SB 178; Ga. L. 2011, p. 705, § 6-5/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 37

HEALTH CARE PERSONNEL

Sec.
31-37-1 through 31-37-3 [Repealed].

31-37-1 through 31-37-3.

Reserved. Repealed by Ga. L. 1999, p. 296, § 11, effective July 1, 1999.

Editor's notes. — Ga. L. 1999, p. 296, § 11, effective July 1, 1999, repealed and reserved the Code sections formerly codified at this chapter. The former chapter, relating to health care personnel, consisted of Code Sections 31-37-1 through 31-37-3 and was based on Ga. L. 1990, p. 1051, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1996, p. 6, § 31.

CHAPTER 38

TANNING FACILITIES

Sec.
31-38-1. Definitions.
31-38-2. Exemptions from applicability of chapter.
31-38-3. Construction, operation, and maintenance requirements.
31-38-4. Warning sign to be posted; contents of warning sign.
31-38-4.1. Regulation of tanning facilities.
31-38-5. Compliance with federal regulations and national electrical code; physical barriers required.
31-38-6. Stand-up tanning booth requirements.
31-38-7. Protective goggles requirement.
31-38-8. Written report of injury requirement; use of equipment by minors restricted; equipment maintenance requirements; restriction on promoting and advertising certain health-related claims.
31-38-9. Noncompliance with chapter.
31-38-10. Private right of action authorized.
31-38-11. Variance permitted.
31-38-12. Effect of chapter on administrator; administrator's immunity from liability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, Chapter 38 of Title 31, as enacted by Ga. L. 1991, p. 1853, was redesignated as Chapter 39 thereof, since Ga. L. 1991, p. 1411, enacted this chapter, also numbered Chapter 38.

31-38-1. Definitions.

As used in this chapter, the term:

(1) "CFR" means Code of Federal Regulations.

(1.1) "Consumer" means any individual who is provided access to a tanning facility as defined in this chapter.

(2) "Individual" means any human being.

(3) "Operator" means any individual designated by the tanning facility owner or tanning equipment lessee to operate or to assist and instruct the consumer in the operation and use of the tanning facility or tanning equipment.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of these entities.

(5) "Tanning equipment" means ultraviolet or other lamps and equipment containing such lamps intended to induce skin tanning

through the irradiation of any part of the living human body with ultraviolet radiation.

(6) "Tanning facility" means any location, place, area, structure, or business or a part thereof which provides consumers access to tanning equipment. "Tanning facility" includes, but is not limited to, tanning salons, health clubs, apartments, or condominiums regardless of whether a fee is charged for access to the tanning equipment.

(7) "Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between 200 nanometers and 400 nanometers.

History. — Code 1981, § 31-38-1, enacted by Ga. L. 1991, p. 1411, § 2.

31-38-2. Exemptions from applicability of chapter.

(a) Any person is exempt from the provisions of this chapter to the extent that such person:

(1) Uses equipment which emits ultraviolet radiation incidental to its normal operation; and

(2) Does not use the equipment described in paragraph (1) of this subsection to deliberately expose parts of the living human body to ultraviolet radiation for the purpose of tanning or other treatment.

(b) Any physician licensed by the Georgia Composite Medical Board is exempt from the provisions of this chapter to the extent that such physician uses, in the practice of medicine, medical diagnostic and therapeutic equipment which emits ultraviolet radiation.

(c) Any individual is exempt from the provisions of this chapter to the extent that such individual owns tanning equipment exclusively for personal, noncommercial use.

History. — Code 1981, § 31-38-2, enacted by Ga. L. 1991, p. 1411, § 2; Ga. L. 2009, p. 859, § 2/HB 509.

31-38-3. Construction, operation, and maintenance requirements.

Each tanning facility in this state shall be constructed, operated, and maintained in accordance with the requirements of Code Sections 31-38-4 through 31-38-8.

History. — Code 1981, § 31-38-3, enacted by Ga. L. 1991, p. 1411, § 2.

31-38-4. Warning sign to be posted; contents of warning sign.

(a) The facility owner or operator shall conspicuously post the warning sign described in subsection (b) of this Code section within three feet of each tanning station and in such a manner that the sign is clearly visible, not obstructed by any barrier, equipment, or other object, and can be easily viewed by the consumer before energizing the tanning equipment.

(b) The warning sign required in subsection (a) of this Code section shall use upper and lower case letters which are at least two inches and one inch in height, respectively, and shall have the following wording:

DANGER — ULTRAVIOLET RADIATION

-Follow instruction.

-Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

-Wear protective eyewear.

FAILURE TO USE PROTECTIVE EYEWEAR
MAY RESULT IN SEVERE BURNS OR
LONG-TERM INJURY TO THE EYES.

-Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using sunlamp or tanning equipment if you are using medications or have a history of skin problems or believe yourself to be especially sensitive to sunlight.

-If you do not tan in the sun, you are unlikely to tan from the use of this product.

MAXIMUM EXPOSURE AT ANY ONE SESSION
SHOULD NEVER EXCEED 15 MINUTES.

According to the research and clinical experience of the American Academy of Dermatology, excessive or improper exposure to ultraviolet light can cause harmful changes in the skin and other organs, including skin cancer, cataracts, impairment of the immune system, premature aging, and photosensitivity. These are virtually the same risks associated with outdoor tanning.

History. — Code 1981, § 31-38-4, enacted by Ga. L. 1991, p. 1411, § 2.

31-38-4.1. Regulation of tanning facilities.

(a) After January 1, 2011, no person shall establish, maintain, or operate a tanning facility without first having registered with the department.

(b) A person shall register under this Code section by submitting a form to the department. The form shall require only the name, address, and telephone number of the tanning facility and owner and the model number and type of each ultraviolet lamp used in the tanning facility.

(c) A registrant shall be required to pay an annual registration fee of $25.00 per tanning facility and an additional registration fee of $15.00 per tanning device owned, leased, or otherwise used by the tanning facility.

History. — Code 1981, § 31-38-4.1, enacted by Ga. L. 2010, p. 548, § 2-1/SB 435.

Editor's notes. — Ga. L. 2010, p. 548, § 1-1/SB 435, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Diabetes is a chronic disease caused by the inability of the pancreas to produce insulin or to use the insulin produced in the proper way;

"(2) If untreated and poorly managed, diabetes has been medically proven to lead to blindness, kidney failure, amputation, heart attack, and stroke;

"(3) Diabetes is the sixth leading cause of death in the United States, responsible for a similar number of deaths each year as HIV/AIDS;

"(4) In Georgia, the prevalence of diabetes is 8 percent higher than the nation as a whole;

"(5) One out of three people with diabetes are not aware that they have the disease;

"(6) Without aggressive societal action, the number of people living with diabetes in Georgia will more than double to 1,697,000 people in the next 20 years, cutting life short for these people by ten to 20 years; and

"(7) Without aggressive societal action, the economic burden of diabetes on the State of Georgia is expected to grow from $5 billion each year to about $11.9 billion in the next 20 years."

Ga. L. 2010, p. 548, § 1-2/SB 435, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Diabetes and Health Improvement Act of 2010.'"

31-38-5. Compliance with federal regulations and national electrical code; physical barriers required.

(a) The tanning facility owner or operator shall use only tanning equipment manufactured in accordance with the specifications set forth in 21 CFR 1040.20. The exact nature of compliance shall be based on the standards in effect at the time of manufacture as shown on the device identification label required by 21 CFR 1010.3.

(b) Each assembly of tanning equipment shall be designated for use by only one consumer at a time and shall be equipped with a timer which complies with the requirements of 21 CFR 1040.20(c)(2). The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time. No timer interval shall have an error

exceeding plus or minus 10 percent of the maximum timer interval for the product.

(c) Tanning equipment shall meet the National Fire Protection Association National Electrical Code and shall be provided with ground fault protection on the electrical circuit.

(d) Tanning equipment shall include physical barriers to protect consumers from injury induced by touching or breaking the lamps.

History. — Code 1981, § 31-38-5, enacted by Ga. L. 1991, p. 1411, § 2.

31-38-6. Stand-up tanning booth requirements.

Tanning booths designed for stand-up use shall also comply with the following additional requirements:

(1) Booths shall have physical barriers or other means, such as handrails or floor markings, to indicate the proper exposure distance between ultraviolet lamps and the consumer's skin;

(2) Booths shall be constructed with sufficient strength and rigidity to withstand the stress of use and the impact of a falling person;

(3) Access to booths shall be of rigid construction with doors which are nonlatching and open outwardly; and

(4) Booths shall be equipped with handrails and nonslip floors.

History. — Code 1981, § 31-38-6, enacted by Ga. L. 1991, p. 1411, § 2.

31-38-7. Protective goggles requirement.

(a) The tanning facility owner or operator shall provide protective goggles to each consumer for use during any use of tanning equipment.

(b) The protective goggles required in subsection (a) of this Code section shall meet the requirements of 21 CFR 1040.20(c)(5).

(c) Tanning facility operators shall ensure that consumers wear the protective goggles required by this Code section.

(d) The tanning facility owner or operator shall ensure that the protective goggles required by this Code section are properly sanitized before each use and shall not rely upon exposure to the ultraviolet radiation produced by the tanning equipment itself to provide such sanitizing.

History. — Code 1981, § 31-38-7, enacted by Ga. L. 1991, p. 1411, § 2.

31-38-8. Written report of injury requirement; use of equipment by minors restricted; equipment maintenance requirements; restriction on promoting and advertising certain health-related claims.

(a) The tanning facility owner or operator shall compile a written report of actual or alleged injury from use of tanning equipment within five working days after occurrence or notice thereof. Such report shall be maintained for a period of not less than three years and shall be available for inspection and copying by any consumer. The report shall include:

(1) The name of the affected individual;

(2) The name and location of the tanning facility and identification of the specific tanning equipment involved;

(3) The nature of the actual or alleged injury; and

(4) Any other information relevant to the actual or alleged injury to include the date and duration of exposure.

(b) The tanning facility owner or operator shall not allow minors under 14 years of age to use tanning equipment. The tanning facility owner or operator shall not allow minors 14 years of age or over but under 18 years of age to use tanning equipment unless the minor's parent or legal guardian signs a written consent form meeting the requirements of this Code section. Such consent form shall be signed by the parent or legal guardian at the tanning facility before the minor may use the equipment or facility.

(c) The tanning facility owner or operator shall replace defective or burned out lamps, bulbs, or filters with a type intended for use in the affected tanning equipment as specified on the product label and having the same spectral distribution.

(d) The tanning facility owner or operator shall replace ultraviolet lamps and bulbs, which are not otherwise defective or damaged, at such frequency or after such duration of use as may be recommended by the manufacturer of such lamps and bulbs.

(e) A tanning facility shall not advertise or distribute promotional materials that claim that using a tanning device is safe or free from risk or that the use of a tanning device will result in medical or health benefits. Violation of the provisions of this subsection shall constitute an unfair or deceptive act pursuant to the terms of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

History. — Code 1981, § 31-38-8, enacted by Ga. L. 1991, p. 1411, § 2; Ga. L. 2010, p. 548, § 2-2/SB 435.

Editor's notes. — Ga. L. 2010, p. 548, § 1-1/SB 435, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Diabetes is a chronic disease caused by the inability of the pancreas to produce insulin or to use the insulin produced in the proper way;

"(2) If untreated and poorly managed, diabetes has been medically proven to lead to blindness, kidney failure, amputation, heart attack, and stroke;

"(3) Diabetes is the sixth leading cause of death in the United States, responsible for a similar number of deaths each year as HIV/AIDS;

"(4) In Georgia, the prevalence of diabetes is 8 percent higher than the nation as a whole;

"(5) One out of three people with diabetes are not aware that they have the disease;

"(6) Without aggressive societal action, the number of people living with diabetes in Georgia will more than double to 1,697,000 people in the next 20 years, cutting life short for these people by ten to 20 years; and

"(7) Without aggressive societal action, the economic burden of diabetes on the State of Georgia is expected to grow from $5 billion each year to about $11.9 billion in the next 20 years."

Ga. L. 2010, p. 548, § 1-2/SB 435, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Diabetes and Health Improvement Act of 2010.'"

31-38-9. Noncompliance with chapter.

Any person who leases tanning equipment or who owns a tanning facility as defined by this chapter who operates or permits to be operated that equipment or facility in noncompliance with the requirements of this chapter shall be guilty of a misdemeanor.

History. — Code 1981, § 31-38-9, enacted by Ga. L. 1991, p. 1411, § 2.

31-38-10. Private right of action authorized.

In addition to any other rights or remedies otherwise provided to consumers by law, any consumer who is damaged by any violation of this chapter may bring an action in superior court to recover a penalty fee of no less than $1,000.00 and to recover any actual, consequential, or punitive damages the court deems appropriate. Any recovery under this Code section shall also include attorney's fees and court costs. It is the intent of the General Assembly in this Code section to provide consumers with an additional remedy to encourage enforcement of this chapter through private rights of action.

History. — Code 1981, § 31-38-10, enacted by Ga. L. 1991, p. 1411, § 2.

31-38-11. Variance permitted.

Any tanning facility which finds that it is not possible to comply with Code Section 31-38-4 may apply to the Attorney General for a variance

from the requirements of Code Section 31-38-4. Any such variance granted by the Attorney General shall be in writing and shall be drawn as narrowly as possible.

History. — Code 1981, § 31-38-11, enacted by Ga. L. 1991, p. 1411, § 2; Ga. L. 2015, p. 1088, § 19/SB 148.

31-38-12. Effect of chapter on administrator; administrator's immunity from liability.

Nothing contained in this chapter shall be construed as imposing any duty, requirement, or enforcement authority upon the Attorney General except as described in Code Section 31-38-11, provided that nothing contained in this chapter shall be construed in any manner as limiting the Attorney General from exercising any of his or her duties, powers, or authority under any other law. The Attorney General shall not be liable to any person for any reason as a result of granting or failing to grant any variance under Code Section 31-38-11.

History. — Code 1981, § 31-38-12, enacted by Ga. L. 1991, p. 1411, § 2; Ga. L. 2015, p. 1088, § 20/SB 148.

CHAPTER 39

CARDIOPULMONARY RESUSCITATION

Sec.
31-39-1. Legislative findings and intent.
31-39-2. Definitions.
31-39-3. Patient presumed to consent to administration of cardiopulmonary resuscitation; patient's order not to resuscitate; health care facilities not required to expand to provide cardiopulmonary resuscitation.
31-39-4. Persons authorized to issue order not to resuscitate.
31-39-5. Cancellation of order not to resuscitate.
31-39-6. Revocation of consent to order not to resuscitate.
31-39-6.1. Form of order not to resuscitate; bracelet or necklace; revocation or cancellation of order.
31-39-7. Liability of persons carrying out in good faith decisions regarding cardiopulmonary resuscitation; notification of next of kin or authorized person of patient by physician refusing to comply with order not to resuscitate.
31-39-8. Effect of order not to resuscitate on life insurance policies.
31-39-9. Effect of chapter on legal rights and responsibilities; right of court to approve order not to resuscitate.

Cross references. — Advance directives for health care, T. 31, C. 32.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, this chapter, which was designated as Chapter 38 of Title 31, was redesignated as Chapter 39 thereof, since there exists another Chapter 38 of Title 31.

Law reviews. — For annual survey article on domestic relations law, see 45 Mercer L. Rev. 215 (1993). For article, "Medical Decision-Making in Georgia," see 10 Ga. St. B. J. 50 (2005).

For note on 1995 amendments and enactments of Code sections in this chapter, see 12 Ga. St. U. L. Rev. 223 (1995).

31-39-1. Legislative findings and intent.

The General Assembly finds that although cardiopulmonary resuscitation has proved invaluable in the reversal of sudden, unexpected death, it is appropriate for an attending physician, in certain circumstances, to issue an order not to attempt cardiopulmonary resuscitation of a patient where appropriate consent or authorization has been obtained. The General Assembly further finds that there is a need to establish and clarify the rights and obligations of patients, their families or representatives, and health care providers regarding cardiopulmonary resuscitation and the issuance of orders not to resuscitate. The General Assembly further finds that, in the interest of protecting individual autonomy, cardiopulmonary resuscitation in some circumstances may cause loss of patient dignity and unnecessary pain and suffering. In recognition of the considerable uncertainty in the medical and legal professions as to the legality of implementing orders not to resuscitate, in recognition of the request of the Supreme Court of Georgia for legislative guidance in this area, and in recognition of the

dignity and privacy which patients have a right to expect, the General Assembly declares that the laws of the State of Georgia shall recognize the right of patients or other authorized persons to instruct physicians and other health care personnel to refrain from cardiopulmonary resuscitation.

History. — Code 1981, § 31-39-1, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1.

31-39-2. Definitions.

As used in this chapter, the term:

(1) "Adult" means any person who is 18 years of age or older, is the parent of a child, or has married.

(2) "Attending physician" means the physician selected by or assigned to a patient to have primary responsibility for the treatment and care of the patient. Where more than one physician share such responsibility, any such physician may act as the attending physician pursuant to this chapter.

(3) "Authorized person" means any one person from the following list in the order of priority as listed below:

(A) Any agent under a durable power of attorney for health care or health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title;

(B) A spouse;

(C) A guardian over the person appointed pursuant to the provisions of Code Section 29-4-1;

(D) A son or daughter 18 years of age or older;

(E) A parent; or

(F) A brother or sister 18 years of age or older.

(4) "Candidate for nonresuscitation" means a patient who, based on a determination to a reasonable degree of medical certainty by an attending physician with the concurrence of another physician:

(A) Has a medical condition which can reasonably be expected to result in the imminent death of the patient;

(B) Is in a noncognitive state with no reasonable possibility of regaining cognitive functions; or

(C) Is a person for whom cardiopulmonary resuscitation would be medically futile in that such resuscitation will likely be unsuc-

cessful in restoring cardiac and respiratory function or will only restore cardiac and respiratory function for a brief period of time so that the patient will likely experience repeated need for cardiopulmonary resuscitation over a short period of time or that such resuscitation would be otherwise medically futile.

(5) "Cardiopulmonary resuscitation" means only those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.

(5.1) "Caregiver" means an unlicensed assistant who provides direct health related care to patients or residents, a proxy caregiver performing health maintenance activities as provided in Code Section 43-26-12, or a person performing auxiliary services in the care of patients as provided in Code Section 43-26-12.

(6) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of an order not to resuscitate, including the benefits and disadvantages of such an order, and to reach an informed decision regarding the order.

(6.1) "Emergency medical technician" means a person certified as an emergency medical technician, paramedic, or cardiac technician under Chapter 11 of this title.

(7) "Health care facility" means an institution which is licensed as a hospital or nursing home pursuant to Article 1 of Chapter 7 of this title or licensed as a hospice pursuant to Article 9 of Chapter 7 of this title, or a home health agency licensed pursuant to Article 7 of Chapter 7 of this title.

(8) "Minor" means any person who is not an adult.

(8.1) "Nurse" means a person who is a licensed practical nurse as provided in Code Section 43-26-32 or a registered professional nurse as provided in Code Section 43-26-3.

(9) "Order not to resuscitate" means an order not to attempt cardiopulmonary resuscitation in the event a patient suffers cardiac or respiratory arrest, or both.

(10) "Parent" means a parent who has custody of a minor or is the parent of an adult without decision-making capacity.

(11) "Patient" means a person who is receiving care and treatment from an attending physician.

(11.1) "Physician assistant" means a person licensed as a physician assistant pursuant to Article 4 of Chapter 34 of Title 43.

(12) "Reasonably available" means that a person to be contacted can be contacted with diligent efforts by an attending physician,

another person acting on behalf of the attending physician, or the health care facility within a reasonable period of time as determined by the attending physician.

History. — Code 1981, § 31-39-2, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 722, §§ 1, 1.1; Ga. L. 2004, p. 161, § 7; Ga. L. 2007, p. 133, § 15/HB 24; Ga. L. 2011, p. 379, § 1/HB 275.

Editor's notes. — Ga. L. 2007, p. 133, § 1/HB 24, not codified by the General Assembly, provides: "(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

"(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

"(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this state to execute advance directives for health care.

"(d) The General Assembly finds that the clear expression of an individual's decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care."

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary administration, see 67 Mercer L. Rev. 273 (2015).

JUDICIAL DECISIONS

Cited in Edwards v. Shumate, 266 Ga. 374, 468 S.E.2d 23 (1996).

31-39-3. Patient presumed to consent to administration of cardiopulmonary resuscitation; patient's order not to resuscitate; health care facilities not required to expand to provide cardiopulmonary resuscitation.

(a) Every patient shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless there is consent or authorization for the issuance of an order not to resuscitate. Such presumption of consent does not presume that every patient shall be administered cardiopulmonary resuscita-

tion, but rather that every patient agrees to its administration unless it is medically futile.

(b) Every adult shall be presumed to have the capacity to make a decision regarding cardiopulmonary resuscitation unless determined otherwise in writing in the patient's medical record pursuant to this Code section or pursuant to a court order. When an order not to resuscitate is requested by an adult with decision-making capacity, such order shall be presumed, unless revoked pursuant to Code Section 31-39-6, to be the direction of such person regarding resuscitation.

(c) Nothing in this chapter shall require a health care facility, any other facility, or a health care provider to expand its existing equipment and facilities to provide cardiopulmonary resuscitation.

History. — Code 1981, § 31-39-3, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1.

31-39-4. Persons authorized to issue order not to resuscitate.

(a) It shall be lawful for the attending physician to issue an order not to resuscitate pursuant to the requirements of this chapter. Any written order issued by the attending physician using the term "do not resuscitate," "DNR," "order not to resuscitate," "do not attempt resuscitation," "DNAR," "no code," "allow natural death," "AND," "order to allow natural death," or substantially similar language in the patient's chart shall constitute a legally sufficient order and shall authorize a physician, health care professional, nurse, physician assistant, caregiver, or emergency medical technician to withhold or withdraw cardiopulmonary resuscitation. Such an order shall remain effective, whether or not the patient is receiving treatment from or is a resident of a health care facility, until the order is canceled as provided in Code Section 31-39-5 or until consent for such order is revoked as provided in Code Section 31-39-6, whichever occurs earlier. An attending physician who has issued such an order and who transfers care of the patient to another physician shall inform the receiving physician and the health care facility, if applicable, of the order.

(b) An adult person with decision-making capacity may consent orally or in writing to an order not to resuscitate and its implementation at a present or future date, regardless of that person's mental or physical condition on such future date. If the attending physician determines at any time that an order not to resuscitate issued at the request of the patient is no longer appropriate because the patient's medical condition has improved, the physician shall immediately notify the patient.

(c) The appropriate authorized person may, after being informed of the provisions of this Code section, consent orally or in writing to an

order not to resuscitate for an adult candidate for nonresuscitation; provided, however, that such consent is based in good faith upon what such authorized person determines such candidate for nonresuscitation would have wanted had such candidate for nonresuscitation understood the circumstances under which such order is being considered. Where such authorized person is an agent under a durable power of attorney for health care or a health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title or where a Physician Orders for Life-Sustaining Treatment form with a code status of "do not resuscitate" or its equivalent has been executed in accordance with Code Section 31-1-14 by an authorized person who is an agent under a durable power of attorney for health care or a health care agent under an advance directive for health care appointed pursuant to Chapter 32 of this title, the attending physician may issue an order not to resuscitate a candidate for nonresuscitation pursuant to the requirements of this chapter without the concurrence of another physician, notwithstanding the provisions of paragraph (4) of Code Section 31-39-2.

(d) Any parent may consent orally or in writing to an order not to resuscitate for his or her minor child when such child is a candidate for nonresuscitation. If in the opinion of the attending physician the minor is of sufficient maturity to understand the nature and effect of an order not to resuscitate, then no such order shall be valid without the assent of such minor.

(e) If none of the persons specified in subsections (b), (c), and (d) of this Code section is reasonably available or competent to make a decision regarding an order not to resuscitate, an attending physician may issue an order not to resuscitate for a patient, provided that:

(1) Such physician determines with the concurrence of a second physician, in writing in the patient's medical record, that such patient is a candidate for nonresuscitation;

(2) An ethics committee or similar panel, as designated by the health care facility, concurs in the opinion of the attending physician and the concurring physician that the patient is a candidate for nonresuscitation; and

(3) The patient is receiving inpatient or outpatient treatment from or is a resident of a health care facility other than a hospice or a home health agency.

History. — Code 1981, § 31-39-4, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 10, § 31; Ga. L. 1995, p. 722, §§ 2, 2.1; Ga. L. 2009, p. 298, § 1/HB 69; Ga. L. 2011, p. 379, § 2/HB 275; Ga. L. 2015, p. 305, § 2/SB 109.

Law reviews. — For article, "Are There Checks and Balances on Terminating the Lives of Children with Disabili-

ties? Should There Be?," see 25 Ga. St. U. L. Rev. 959 (2009).

JUDICIAL DECISIONS

Cited in Edwards v. Shumate, 266 Ga. 374, 468 S.E.2d 23 (1996).

31-39-5. Cancellation of order not to resuscitate.

(a) An attending physician for whose patient an order not to resuscitate has been issued pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 shall examine that patient at such intervals as determined periodically by the physician to determine whether the patient still qualifies as a candidate for nonresuscitation, unless that order has been canceled or consent thereto revoked as provided in this chapter. That physician shall record such determination in the patient's medical chart. Failure to comply with this subsection shall not invalidate that order.

(b) If the order not to resuscitate was entered pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 and the attending physician who issued the order or, if that attending physician is unavailable, another attending physician, at any time determines that the patient no longer qualifies as a candidate for nonresuscitation, the attending physician or the physician's designee shall immediately include such determination in the patient's chart, cancel the order, and notify the patient, the person who consented to the order, and all health care facility staff responsible for the patient's care of the cancellation.

(c) If an order not to resuscitate was entered pursuant to subsection (c), (d), or (e) of Code Section 31-39-4 and the patient at any time regains decision-making capacity, the attending physician who issued the order or, if that attending physician is unavailable, another attending physician, shall immediately determine if the patient consents to the order not to resuscitate and, if the patient does not so consent, the attending physician or the physician's designee shall cancel the order by an appropriate entry on the record and notify all health care facility staff responsible for the patient's care of the cancellation.

History. — Code 1981, § 31-39-5, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 722, § 2.2.

31-39-6. Revocation of consent to order not to resuscitate.

(a) A patient may, at any time, revoke his or her consent to an order not to resuscitate by making either a written or an oral declaration or by any other act evidencing a specific intent to revoke such consent which is communicated to or in the presence of an attending physician,

nurse, physician assistant, caregiver, health care professional, or emergency medical technician.

(b) Any parent or authorized person may at any time revoke his or her consent to an order not to resuscitate a patient by making either a written or an oral declaration or by any other act evidencing a specific intent to revoke such consent which is communicated to or in the presence of an attending physician, nurse, physician assistant, caregiver, health care professional, or emergency medical technician.

(c) Any physician who is informed of or provided with a revocation of consent pursuant to this Code section shall, either by himself or herself or by designee, immediately include the revocation in the patient's chart, cancel the order, and notify any health care facility staff responsible for the patient's care of the revocation and cancellation. Any member of the nursing staff, or a physician assistant, caregiver, health care professional, or emergency medical technician who is informed of or provided with a revocation of consent pursuant to this Code section shall immediately notify a physician of such revocation.

History. — Code 1981, § 31-39-6, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 1; Ga. L. 1995, p. 722, § 4; Ga. L. 2011, p. 379, § 3/HB 275.

JUDICIAL DECISIONS

Parental consent to a DNR order. — O.C.G.A. § 31-39-6 allows "any parent" to revoke consent to an order not to resuscitate. The result is as follows: one parent may consent. If there is no second parent, if the other parent is not present, or if the other parent simply prefers not to participate in the decision, the consent of one parent to a DNR order is legally sufficient under the statute. However, if there is a second custodial parent who disagrees with the decision to forego cardiopulmonary resuscitation, the second parent may revoke consent under the terms of subsection (b) of O.C.G.A. § 31-39-6. In re Doe, 262 Ga. 389, 418 S.E.2d 3 (1992).

31-39-6.1. Form of order not to resuscitate; bracelet or necklace; revocation or cancellation of order.

(a) In addition to those orders not to resuscitate authorized elsewhere in this chapter, any physician, health care professional, nurse, physician assistant, caregiver, or emergency medical technician shall be authorized to effectuate an order not to resuscitate for a person who is not a patient in a hospital, nursing home, or licensed hospice if the order is evidenced in writing containing the patient's name, date of the form, printed name of the attending physician, and signature of the attending physician on a form substantially similar to the following:

"DO NOT RESUSCITATE ORDER

NAME OF PATIENT: _____

THIS CERTIFIES THAT AN ORDER NOT TO RESUSCITATE HAS BEEN ENTERED ON THE ABOVE-NAMED PATIENT.

SIGNED: _____

ATTENDING PHYSICIAN

PRINTED OR TYPED NAME OF ATTENDING PHYSICIAN: ___

ATTENDING PHYSICIAN'S TELEPHONE NUMBER: _____

DATE: _____"

(b) A person who is not a patient in a hospital, nursing home, or licensed hospice and who has an order not to resuscitate pursuant to this Code section may wear an identifying bracelet on either the wrist or the ankle or an identifying necklace and shall post or place a prominent notice in such person's home. The bracelet shall be substantially similar to identification bracelets worn in hospitals. The bracelet, necklace, or notice shall provide the following information in boldface type:

"DO NOT RESUSCITATE ORDER

Patient's name: _____

Authorized person's name and telephone number, if applicable: __

Patient's physician's printed name and telephone number: _____

Date of order not to resuscitate: _____"

Any physician, health care professional, nurse, physician assistant, caregiver, or emergency medical technician shall be authorized to regard such a bracelet, necklace, or notice as a legally sufficient order not to resuscitate in the same manner as an order issued pursuant to this chapter unless such person has actual knowledge that such order has been canceled or consent thereto revoked as provided in this chapter.

(c) Any order not to resuscitate evidenced pursuant to subsection (a) or (b) of this Code section may be revoked as provided in Code Section 31-39-6 and may be canceled as provided in Code Section 31-39-5.

History. — Code 1981, § 31-39-6.1, enacted by Ga. L. 1995, p. 722, § 3; Ga. L. 2011, p. 379, § 4/HB 275.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "of" was substituted for "or" preceding "this Code section" in subsection (c).

31-39-7. Liability of persons carrying out in good faith decisions regarding cardiopulmonary resuscitation; notification of next of kin or authorized person of patient by physician refusing to comply with order not to resuscitate.

(a) No physician, health care professional, nurse, physician assistant, caregiver, health care facility, other licensed facility, emergency medical technician, or person employed by, acting as the agent of, or under contract with any of the foregoing shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct for carrying out in good faith a decision regarding cardiopulmonary resuscitation authorized by this chapter by or on behalf of a patient or for those actions taken in compliance with the standards and procedures set forth in this chapter.

(b) No physician, health care professional, nurse, physician assistant, caregiver, health care facility, other licensed facility, emergency medical technician, or person employed by, acting as the agent of, or under contract with any of the foregoing shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct for providing cardiopulmonary resuscitation to a patient for whom an order not to resuscitate has been issued, provided that such physician or person:

(1) Reasonably and in good faith was unaware of the issuance of an order not to resuscitate; or

(2) Reasonably and in good faith believed that consent to the order not to resuscitate had been revoked or canceled.

(c) No persons shall be civilly liable for failing or refusing in good faith to effectuate an order not to resuscitate. No person shall be subject to criminal prosecution or civil liability for consenting or declining to consent in good faith, on behalf of a patient, to the issuance of an order not to resuscitate pursuant to this chapter.

(d) Any attending physician who fails or refuses to comply with an order not to resuscitate entered pursuant to this chapter shall endeavor to advise promptly the patient, if conscious, or the next of kin or authorized person of the patient that such physician is unwilling to effectuate the order. The attending physician shall thereafter at the election of the next of kin or authorized person:

(1) Make a good faith attempt to effect the transfer of the patient to another physician who will effectuate the order not to resuscitate; or

(2) Permit the next of kin or authorized person to obtain another physician who will effectuate the order not to resuscitate.

(e) Any emergency medical technician who fails or refuses to comply with an order not to resuscitate entered pursuant to this chapter shall endeavor to advise promptly the patient, if conscious, or the next of kin or authorized person of the patient, if reasonably available, that such emergency medical technician is unwilling to effectuate the order.

History. — Code 1981, § 31-39-7, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1995, p. 722, § 5; Ga. L. 2011, p. 379, § 5/HB 275.

31-39-8. Effect of order not to resuscitate on life insurance policies.

(a) No policy of life insurance shall be legally impaired, modified, or invalidated in any manner by the issuance of an order not to resuscitate notwithstanding any term of the policy to the contrary.

(b) A person may not prohibit or require the issuance of an order not to resuscitate for an individual as a condition for such individual's being insured or receiving health care services.

History. — Code 1981, § 31-39-8, enacted by Ga. L. 1991, p. 1853, § 1.

31-39-9. Effect of chapter on legal rights and responsibilities; right of court to approve order not to resuscitate.

(a) Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of cardiopulmonary resuscitation in any lawful manner or affect the validity of orders not to resuscitate issued and implemented under other circumstances. In such respect, the provisions of this chapter are cumulative.

(b) Nothing in this chapter shall be construed to preclude a court of competent jurisdiction from approving the issuance of an order not to resuscitate under circumstances other than those under which such an order may be issued pursuant to this chapter.

History. — Code 1981, § 31-39-9, enacted by Ga. L. 1991, p. 1853, § 1; Ga. L. 1994, p. 672, § 2.

CHAPTER 40

BODY ART STUDIOS

Sec.
31-40-1. Definitions.
31-40-2. Issuance of permits.
31-40-3. Denial, suspension, and revocation of permit; notice and hearing.
31-40-4. Administrative review of order of county board of health.
31-40-5. Rules and regulations.
31-40-6. Enforcement of chapter; inspection of premises.
31-40-7. Criminal penalty.
31-40-8. Display of notification concerning disqualification from military service.
31-40-9. Enactment of more stringent laws.
31-40-10. Criminal law not repealed.

31-40-1. Definitions.

As used in this chapter, the term:

(1) "Body art" means a tattoo or piercing placed on the body of a person for aesthetic or cosmetic purposes.

(2) "Body artist" means any person who performs body art. Such term shall not include in its meaning any physician or osteopath licensed under Chapter 34 of Title 43, nor shall it include any technician acting under the direct supervision of such licensed physician or osteopath, pursuant to subsection (a) of Code Section 16-5-71.

(3) "Body art studio" means any facility or building on a fixed foundation wherein a body artist performs body art.

(4) "Microblading of the eyebrow" means a form of cosmetic tattoo artistry where ink is deposited superficially in the upper three layers of the epidermis using a handheld or machine powered tool made up of needles known as a microblade to improve or create eyebrow definition, to cover gaps of lost or missing hair, to extend the natural eyebrow pattern, or to create a full construction if the eyebrows have little to no hair.

(5) "Tattoo" means to mark or color the skin by pricking in, piercing, or implanting indelible pigments or dyes under the skin. Such term includes microblading of the eyebrow.

History. — Code 1981, § 31-40-1, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2018, p. 996, § 1/SB 461; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2018 amendment, effective July 1, 2018, added paragraph (1); redesignated former paragraphs (1) through (3) as present paragraphs (2) through (4), respectively; and added the second sentence in present paragraph (2).

The 2019 amendment, effective July 1, 2019, added paragraphs (1) through (3);

redesignated former paragraphs (1) and (2) as present paragraphs (4) and (5), respectively; inserted "or machine powered" in the middle of paragraph (4); and deleted former paragraphs (3) and (4), which read: "(3) 'Tattoo artist' means any person who performs tattooing, except that the term tattoo artist shall not include in its meaning any physician or osteopath licensed under Chapter 34 of Title 43, nor shall it include any technician acting under the direct supervision of such licensed physician or osteopath, pursuant to subsection (a) of Code Section 16-5-71.

"(4) 'Tattoo studio' means any facility or building on a fixed foundation wherein a tattoo artist performs tattooing."

RESEARCH REFERENCES

ALR. — Regulation of business of tattooing, 67 A.L.R.6th 395.

31-40-2. Issuance of permits.

It shall be unlawful for any person to operate a body art studio or perform body art without having first obtained a valid permit. Body art studio permits shall be issued by the county board of health or its duly authorized representative, subject to supervision and direction by the department. Body artist permits shall be issued by the Department of Public Health. Permits shall be valid until suspended or revoked and shall not be transferable.

History. — Code 1981, § 31-40-2, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2019 amendment, effective July 1, 2019, rewrote this Code section, which read: "It shall be unlawful for any person to operate a tattoo studio without having first obtained a valid permit for such studio. Such permits shall be issued by the county board of health or its duly authorized representative, subject to supervision and direction by the Department of Public Health but, where the county board of health is not functioning, the permit shall be issued by the department. A permit shall be valid until suspended or revoked and shall not be transferable with respect to person or location."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 68.

C.J.S. — 39A C.J.S., Health and Environment, § 61 et seq.

31-40-3. Denial, suspension, and revocation of permit; notice and hearing.

(a) The county boards of health may deny, suspend, or revoke a body art studio permit for a violation of this chapter or the rules and regulations promulgated thereunder. When, in the judgment of such board or its duly authorized agents, it is necessary and proper that such application for a permit be denied or that a permit previously granted

be suspended or revoked, the applicant or holder of the permit shall be so notified in writing and shall be afforded an opportunity for hearing as provided in Article 1 of Chapter 5 of this title. In the event that such application is finally denied or such permit finally suspended or revoked, the applicant for or holder of such permit shall be given notice in writing, which notice shall specifically state the reasons why the application or permit has been suspended, revoked, or denied.

(b) The department may deny, suspend, or revoke a body artist permit for a violation of this chapter or the rules and regulations promulgated thereunder, after notice to the permit holder and opportunity for hearing. Such proceedings shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 31-40-3, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2019 amendment, effective July 1, 2019, designated the existing provisions of this Code section as subsection (a); rewrote the first sentence, which read: "The county boards of health may suspend or revoke permits where the health and safety of the public requires such action."; and added subsection (b).

31-40-4. Administrative review of order of county board of health.

Any person substantially affected by any final order of the county board of health denying, suspending, revoking, or refusing to renew a body artist studio permit provided under this chapter may secure review thereof by appeal to the department as provided in Article 1 of Chapter 5 of this title.

History. — Code 1981, § 31-40-4, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2019 amendment, effective July 1, 2019, substituted "a body artist studio permit" for "any permit" in the middle of this Code section.

31-40-5. Rules and regulations.

(a) The department shall have the power to adopt and promulgate rules and regulations to ensure the protection of the public health. Such rules and regulations shall prescribe health and safety standards for body artists and body art studios with regard to:

(1) Location and cleanliness of facilities;

(2) Sterilization and Occupational Safety and Health Administration guidelines for the prevention and spread of infectious diseases by all personnel;

(3) Informed consent by the person receiving any form of body art;

(4) Procedures for ensuring adequate explanation to consumers of the proper subsequent care of any form of body art;

(5) Proper use and maintenance of equipment, including tools, dyes, and pigments; and

(6) Competence and specialized knowledge of body artists.

(b) County boards of health are empowered to adopt and promulgate supplementary rules and regulations consistent with those adopted and promulgated by the department.

History. — Code 1981, § 31-40-5, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2019 amendment, effective July 1, 2019, in subsection (a), substituted "The department" for "The Department of Public Health and county boards of health" near the beginning of the first sentence and substituted "health and safety standards for body artists and body art studios" for "reasonable standards for health and safety of tattoo studios" in the second sentence; substituted "any form of body art" for "a tattoo" at the end of paragraphs (a)(3) and (a)(4); substituted "maintenance of equipment, including tools, dyes, and pigments; and" for "maintenance of tattoo equipment, including dyes and pigments." in paragraph (a)(5); and added paragraph (a)(6).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

RESEARCH REFERENCES

ALR. — Regulation of business of tattooing, 67 A.L.R.6th 395.

31-40-6. Enforcement of chapter; inspection of premises.

The department and the county boards of health and their duly authorized agents are authorized and empowered to enforce compliance with this chapter and the rules and regulations adopted and promulgated under this chapter and, in connection therewith, to enter upon and inspect the premises of a body art studio at any reasonable time and in a reasonable manner, as provided in Article 2 of Chapter 5 of this title.

History. — Code 1981, § 31-40-6, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2019 amendment, effective July 1, 2019, substituted "The department" for "The Department of Public Health" at the beginning and substituted "body art studio" for "tattoo studio" near the end.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-40-7. Criminal penalty.

Any person, firm, or corporation performing body art without a valid permit shall be guilty of a misdemeanor.

History. — Code 1981, § 31-40-7, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2019 amendment, effective July 1, 2019, substituted "performing body art" for "operating a tattoo studio" near the beginning and deleted "or performing tattooing outside of a licensed tattoo studio" following "valid permit" near the middle of this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "licensed" was substituted for "license".

31-40-8. Display of notification concerning disqualification from military service.

Each body art studio shall conspicuously display in a prominent place easily seen by patrons a printed sign that warns that any body art on the face, neck, forearm, hand, or lower leg of an individual may automatically disqualify such individual from military service in the armed forces of the United States. Such notice shall be at least 11 inches by 14 inches in size, with letters at least one inch in height.

History. — Code 1981, § 31-40-8, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2019 amendment, effective July 1, 2019, substituted the present provisions of this Code section for the former provisions, which read: "The Department of Public Health is authorized and directed to develop and institute a program of public education for the purpose of alerting the public to the possible side effects and exposure risks of tattooing."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-40-9. Enactment of more stringent laws.

Notwithstanding any other provision of this chapter, the governing authority of any county or municipality may enact more stringent laws governing body art.

History. — Code 1981, § 31-40-9, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2019 amendment, effective July 1, 2019, substituted "body art" for "tattooing" at the end of this Code section.

31-40-10. Criminal law not repealed.

Nothing in this chapter shall be construed to repeal the provisions of Code Section 16-12-5; provided, however, that Code Section 16-12-5 shall not apply to microblading of the eyebrow.

History. — Code 1981, § 31-40-10, enacted by Ga. L. 1994, p. 446, § 2; Ga. L. 2018, p. 996, § 2/SB 461; Ga. L. 2019, p. 462, § 2-1/SB 214.

The 2018 amendment, effective July 1, 2018, added the proviso at the end of this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "chapter" was substituted for "Act".

Editor's notes. — Ga. L. 2019, p. 462, § 2-1/SB 214, effective July 1, 2019, reenacted this Code section without change.

CHAPTER 41

LEAD POISONING PREVENTION

Article 1

General Provisions

Sec.
31-41-1. Short title.
31-41-2. Legislative findings.
31-41-3. Definitions.
31-41-4. Establishment of lead-based paint hazard reduction program; training programs; licensure and certification requirements; written information on renovation; record keeping requirements.
31-41-5. Enforcement of chapter; violations.
31-41-6. Federal regulations; fees; corrective orders; violations.

Article 2

Childhood Lead Exposure Control

Sec.
31-41-10. Short title.
31-41-11. Legislative findings.
31-41-12. Definitions.
31-41-13. Notice of lead poisoning hazard.
31-41-14. Abatement of lead poisoning hazard.
31-41-15. Owner liability for units constructed prior to 1978.
31-41-16. Certificate evidencing compliance; liability relief.
31-41-17. Advice regarding cleaning activities in homes occupied by children with elevated blood lead levels.
31-41-18. Application.
31-41-19. Rules and regulations.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, this chapter, which was designated as Chapter 40 of Title 31, was redesignated as Chapter 41 thereof, since Ga. L. 1994, p. 446 also added a Chapter 40 of Title 31.

Administrative rules and regulations. — Lead based paint hazard management, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Natural Resources, Environmental Protection, Chapter 391-3-24.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Lead Poisoning, 46 POF2d 145.

Landlord's Liability for Lead-Based Paint Hazard in Residential Dwelling, 35 POF3d 439.

Am. Jur. Trials. — Childhood Lead-Based Paint Poisoning Litigation, 66 Am. Jur. Trials 47.

ALR. — Landlord's liability for injury or death of tenant's child from lead paint poisoning, 19 A.L.R.5th 405.

ARTICLE 1
GENERAL PROVISIONS

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Citizens' Suits Under the Toxic Substances Control Act (TSCA), 50 POF3d 237.

C.J.S. — 39A C.J.S., Health and Environment, §§ 47 et seq., 66. 52 C.J.S., Landlord and Tenant, § 420.

31-41-1. Short title.

This chapter shall be known and may be cited as the "Georgia Lead Poisoning Prevention Act of 1994."

History. — Code 1981, § 31-41-1, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 2010, p. 531, § 6/SB 78.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "chapter" was substituted for "Act".

31-41-2. Legislative findings.

(a) The General Assembly finds that childhood lead poisoning is a devastating environmental health hazard to the children of this state. Exposure to even low levels of lead increases a child's risks of developing permanent reading and learning disabilities, intelligence quotient deficiencies, impaired hearing, reduced attention span, hyperactivity, behavior problems, and other neurological problems. It is estimated that thousands of children below the age of six are affected by lead poisoning in Georgia. Childhood lead poisoning is dangerous to the public health, safety, and general welfare.

(b) Childhood lead poisoning is the result of environmental exposure to lead. The most significant source of environmental lead is lead-based paint, particularly in housing built prior to 1978, which becomes accessible to children as paint chips, house dust, and soil contaminated by lead-based paint. The danger posed by lead-based paint hazards can be controlled by abatement, renovation, or interim controls of lead-based paint or by measures to limit exposure to lead-based paint hazards.

(c) It is crucial that the identification of lead hazards and subsequent implementation of interim control, renovation, or abatement procedures be accomplished in a manner that does not result in additional harm to the public or the environment. Improper lead abatement or renovation constitutes a serious threat to persons residing in or otherwise using an affected structure or site, to those performing such work, to the environment, and to the general public.

(d) The General Assembly finds that it is in the public interest to establish minimum standards for the training and certification or

licensure of all persons performing lead hazard reduction activities and for inspections, risk assessments, and planning and performance of interim controls, renovation, or abatement measures for such activities.

History. — Code 1981, § 31-41-2, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 2010, p. 531, § 6/SB 78.

JUDICIAL DECISIONS

Lead is pollutant. — Personal injury claims arising from a child's lead poisoning due to lead-based paint ingestion were excluded from coverage pursuant to an absolute pollution exclusion in a landlord's commercial general liability (CGL) insurance policy covering residential rental property where the child lived. There was no ambiguity as to whether lead in paint was a "pollutant." Ga. Farm Bureau Mut. Ins. Co. v. Smith, 298 Ga. 716, 784 S.E.2d 422 (2016).

31-41-3. Definitions.

As used in this chapter, the term:

(1) "Abatement" means any set of measures designed to eliminate lead-based paint hazards, in accordance with standards developed by the board, including:

(A) Removal of lead-based paint and lead contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(B) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(2) "Accessible surface" means an interior or exterior surface painted with lead-based paint that is accessible for a young child to mouth or chew.

(2.1) "Board" means the Board of Natural Resources of the State of Georgia.

(2.2) "Child-occupied facility" means a building or portion of a building constructed prior to 1978, visited by the same child, six years of age or under, on at least two different days within the same week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours. Child-occupied facilities include, but are not limited to, child care learning centers, preschools, and kindergarten facilities.

(3) "Department" means the Department of Natural Resources.

(4) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces.

(5) "Impact surface" means an interior or exterior surface or fixture that is subject to damage by repeated impacts, for example, certain parts of door frames.

(6) "Inspection" means a surface by surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(7) "Interim controls" means a measure or set of measures as specified by the board taken by the owner of a structure that are designed to control temporarily human exposure or likely exposure to lead-based paint hazards.

(8) "Lead-based paint" means paint or other surface coatings that contain lead in excess of limits established by board regulation.

(9) "Lead-based paint activities" means the inspection and assessment of lead hazards and the planning, implementation, and inspection of interim controls, renovation, and abatement activities at target housing and child-occupied facilities.

(10) "Lead-based paint hazard" means any condition that causes exposure to lead from lead contaminated dust, lead contaminated soil, or lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established pursuant to Section 403 of the Toxic Substances Control Act.

(11) "Lead contaminated dust" means surface dust in residential dwellings or in other facilities occupied or regularly used by children that contains an area or mass concentration of lead in excess of levels determined pursuant to Section 403 of the Toxic Substances Control Act.

(12) "Lead contaminated soil" means bare soil on residential real property or on other sites frequented by children that contains lead at or in excess of levels determined to be hazardous to human health pursuant to Section 403 of the Toxic Substances Control Act.

(13) "Lead contaminated waste" means any discarded material resulting from an abatement activity that fails the toxicity characteristics determined by the department.

(13.1) "Lead dust sampling technician" means an individual employed to perform lead dust clearance sampling for renovation as determined by the department.

(14) "Lead firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that employs or contracts with persons to perform lead-based paint activities.

(15) "Lead inspector" means a person who conducts inspections to determine the presence of lead-based paint or lead-based paint hazards.

(16) "Lead project designer" means a person who plans or designs abatement activities and interim controls.

(17) "Lead risk assessor" means a person who conducts on-site risk assessments of lead hazards.

(18) "Lead supervisor" means a person who supervises and conducts abatement of lead-based paint hazards.

(19) "Lead worker" means any person performing lead hazard reduction activities.

(19.1) "Minor repair and maintenance activities" means activities that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted as determined by the department are used or where the work does not involve window replacement or demolition of painted surface areas. Jobs performed in the same room within 30 days are considered the same job for purposes of this definition.

(19.2) "Renovation" means the modification of any target housing or child-occupied facility structure or portion thereof, that results in the disturbance of painted surfaces unless that activity is performed as part of an abatement activity. Renovation includes but is not limited to the removal, modification, re-coating, or repair of painted surfaces or painted components; the removal of building components; weatherization projects; and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building into target housing or a child-occupied facility is a renovation. Such term shall not include minor repair and maintenance activities.

(19.3) "Renovation firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity that employs or contracts with persons to perform lead-based paint renovations as determined by the department.

(19.4) "Renovator" means an individual who either performs or directs workers who perform renovations.

(20) "Risk assessment" means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in or on any structure or site, including:

(A) Information gathering regarding the age and history of the structure and the occupancy or other use by young children;

(B) Visual inspection;

(C) Limited wipe sampling or other environmental sampling techniques;

(D) Other activity as may be appropriate; and

(E) Provision of a report explaining the results of the investigation.

(21) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child or children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

History. — Code 1981, § 31-41-3, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1998, p. 248, § 1; Ga. L. 2010, p. 531, § 6/SB 78; Ga. L. 2013, p. 135, § 12/HB 354.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "Toxic Substances Control Act" was substituted for "Toxic Substance Control Act" in paragraphs (10), (11), and (12).

U.S. Code. — Section 403 of the Toxic Substances Control Act, referred to in this Code section, is codified at 15 U.S.C. § 2601 et seq.

31-41-4. Establishment of lead-based paint hazard reduction program; training programs; licensure and certification requirements; written information on renovation; record keeping requirements.

(a) There is established the Georgia Lead-Based Paint Hazard Reduction Program. The Department of Natural Resources is designated as the state agency responsible for implementation, administration, and enforcement of such program. The commissioner may delegate such duties to the Environmental Protection Division.

(b) The Board of Natural Resources not later than one year after the effective date of regulations promulgated by the federal Environmental Protection Agency relating to lead paint abatement and renovation certification programs shall issue regulations requiring the development and approval of training programs for the licensing or certification of persons performing lead-based paint hazard detection or lead-based paint activities, which may include, but shall not be limited to, lead inspectors, lead risk assessors, lead project designers, lead firms, lead supervisors, lead workers, lead dust sampling technicians, and renovators. The regulations for the approval of training programs shall include minimum requirements for approval of training providers, curriculum requirements, training hour requirements, hands-on training requirements, examinations of competency and proficiency, and training program quality control. The approval program shall provide for reciprocal approval of training programs with comparable require-

ments approved by other states or the United States. The approval program may be designed to meet the minimum requirements for federal approval under Section 404 of the federal Toxic Substances Control Act and the department may apply for such approval. The department shall establish fees for approval of such training programs.

(c)(1) The Board of Natural Resources not later than one year after the effective date of regulations promulgated by the federal Environmental Protection Agency relating to lead paint abatement and renovation certification programs shall establish training and licensure requirements for lead inspectors, lead risk assessors, lead project designers, lead firms, lead supervisors, lead workers, renovators, renovation firms, and lead dust sampling technicians. No person shall be licensed under this chapter unless such person has successfully completed the appropriate training program, passed an examination approved by the department for the appropriate category of license, and completed any additional requirements imposed by the board by regulation. The department is authorized to accept any lead-based paint hazard training completed after January 1, 1990, in full or partial satisfaction of the training requirements. The board may establish requirements for periodic refresher training for all licensees as a condition of license renewal. The board shall establish examination fees, license fees, and renewal fees for all licenses issued under this chapter, provided that such fees shall reflect the cost of issuing and renewing such licenses, regulating licensed activities, and administering the program.

(2) On and after the effective date of regulations promulgated by the board as provided in subsection (b) of this Code section, no person shall perform or represent that such person is qualified to perform any lead-based paint activities unless such person possesses the appropriate licensure or certification as determined by the board or unless such person is:

(A) An owner performing abatement or renovation upon that person's own residential property, unless the residential property is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level;

(B) An employee of a property management company doing minor repairs and maintenance activities upon property managed by that company where there is insignificant damage, wear, or corrosion of existing lead-containing paint or coating substances; or

(C) An owner routinely doing minor repairs and maintenance activities upon his or her property where there is insignificant

damage to, wear of, or corrosion of existing lead-containing paint or coating substances.

(3) A person who is employed by a state or county health department or state or federal agency to conduct lead investigations to determine the sources of lead poisonings, as determined by the department, shall be subject to licensing pursuant to paragraph (2) of this subsection as a lead risk assessor but shall not be required to pay any fees as otherwise required under this chapter or under rules and regulations promulgated by the board under this chapter.

(d) The board shall promulgate regulations establishing standards of acceptable professional conduct and work practices for the performance of lead-based paint activities, as well as specific acts and omissions that constitute grounds for the reprimand of any licensee, the suspension, modification, or revocation of a license, or the denial of issuance or renewal of a license.

(e) Written information on the renovation must be provided by the renovation firm or renovator to residents before beginning any renovation activities (except that the written information may be provided after the renovation begins for emergency renovations), in accordance with regulations promulgated by the board.

(f) The lead firm, renovation firm, and renovator must meet record-keeping and reporting requirements established by regulations promulgated by the board.

History. — Code 1981, § 31-41-4, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1996, p. 1140, § 1; Ga. L. 1998, p. 248, § 2; Ga. L. 2010, p. 531, § 6/SB 78.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "subsection (b)" was substituted for "subparagraph (b)" in paragraph (c)(2).

U.S. Code. — Section 404 of the Toxic Substances Control Act, referred to in this Code section, is codified at 15 USC § 2601 et seq.

31-41-5. Enforcement of chapter; violations.

The Board of Natural Resources shall be authorized to promulgate all necessary regulations for the implementation and enforcement of this chapter. In addition to any action which may be taken to reprimand a licensee or to revoke or suspend a license, any person who violates any provision of this chapter or any regulation promulgated pursuant to this chapter or any term or condition of licensure may be subject to a civil penalty of not more than $10,000.00, to be imposed by the department. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

History. — Code 1981, § 31-41-5, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1996, p. 1140, § 2; Ga. L. 2010, p. 531, § 6/SB 78.

31-41-6. Federal regulations; fees; corrective orders; violations.

(a) The department shall make available to all persons licensed or certified under this chapter current federal regulations affecting such licensees or certified persons.

(b) The department is authorized to charge an application fee, a license fee, a license renewal fee, or a similar fee and the amount of such fees shall be established by the Board of Natural Resources. Each fee so established shall be reasonable and shall be determined in such a manner that the total of the fees charged shall approximate the total of the direct and the indirect costs to the state of the operation of the licensing program. Fees may be refunded for good cause as determined by the department.

(c) The department is authorized to issue a corrective order to any person in violation of this chapter or any regulation promulgated pursuant thereto. The order shall specify the provisions of this chapter or any regulation alleged to have been violated and shall order necessary corrective action be taken within a reasonable time to be prescribed in such order.

(d) The department is authorized to revoke or suspend any license, certification, approval, or accreditation issued hereunder, in accordance with regulations promulgated pursuant to this chapter.

(e) It shall be unlawful for any person to engage in training or lead-based paint activities regulated under this chapter except in such a manner as to conform to and comply with this chapter and all applicable regulations and orders established under this chapter.

(f) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor.

History. — Code 1981, § 31-41-6, enacted by Ga. L. 2011, p. 619, § 2/SB 211.

Editor's notes. — Ga. L. 2011, p. 619, § 1/SB 211, not codified by the General Assembly, provides that: "The purpose of this Act is to reenact the provisions of former Code Section 31-41-6, relating to federal regulations copies, fees, corrective orders, and violations relative to lead poisoning prevention, as such Code section existed immediately prior to its repeal on May 27, 2010, by SB 78."

This Code section formerly pertained to federal regulations, fees, corrective orders, and violations and was based on Code 1981, § 31-41-6, enacted by Ga. L. 1994, p. 1617, § 1; Ga. L. 1998, p. 248, § 3, and was repealed by Ga. L. 2010, p. 531, § 6/SB 78, effective May 27, 2010.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Offenses arising from a violation of O.C.G.A. § 31-41-6 do not, at this time, appear to be offenses for which fingerprinting is required. 2011 Op. Att'y Gen. No. 11-5.

ARTICLE 2

CHILDHOOD LEAD EXPOSURE CONTROL

31-41-10. Short title.

This article shall be known and may be cited as the "Childhood Lead Exposure Control Act."

History. — Code 1981, § 31-41-10, enacted by Ga. L. 2000, p. 1260, § 1.

31-41-11. Legislative findings.

(a) The General Assembly finds that childhood lead poisoning prevention activities are currently carried out within the Environmental Health and Injury Prevention, Epidemiology and Prevention, and Laboratory Branches of the Department of Public Health. These activities include lead poisoning case identification, laboratory support, identification of exposure sources, environmental management, and lead hazard reduction. Childhood lead poisoning cases are identified through screening tests conducted by public health clinics and private health care providers and by laboratory reporting of test results. In 1994, lead poisoning was established as a notifiable condition and made part of the Notifiable Disease reporting system.

(b) The General Assembly further finds that the Georgia Public Health Laboratory is licensed and certified to analyze blood specimens for lead. Laboratory services are provided for children screened in public health clinics and for children without health insurance screened by private health care providers. For each reported case of lead poisoning, an environmental investigation is conducted to identify the source of lead. Environmental health specialists assess the primary residence and other locations frequented by the lead poisoned child. Information is collected from parents and caregivers; on-site surface testing and environmental sample collection and analysis are done as needed. When the lead source is identified, recommendations are made for the mitigation or abatement of the lead hazard. Identified lead poisoning cases are tracked collaboratively by public health nurses and environmental health specialists to assure that appropriate treatment is received and that the child does not reenter the environment where the exposure occurred.

History. — Code 1981, § 31-41-11, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2011, p. 705, § 6-2/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "lead poisoned child" was substituted for "lead-poisoned child" at the end of the fourth sentence in subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-41-12. Definitions.

As used in this article, the term:

(1) "Confirmed lead poisoning" means a confirmed concentration of lead in whole blood equal to or greater than 20 micrograms of lead per deciliter for a single test or between 15 and 19 micrograms of lead per deciliter in two tests taken at least three months apart.

(2) "Day-care facility" means a structure or structures used as a school, nursery, child care center, clinic, treatment center, or other facility serving the needs of children under six years of age including the grounds, any outbuildings, or other structures appurtenant to the facility.

(3) "Department" means the Department of Public Health.

(4) "Dwelling," "dwelling unit," or "residential housing unit" means the interior of a structure, all or part of which is designed or used for human habitation.

(5) "Elevated blood lead level" means a blood lead concentration of ten micrograms per deciliter or greater as determined by the lower of two consecutive blood tests within a six-month period.

(5.1) "Lead hazard abatement" means the removal and correction, in a manner no more strict than what is determined to be absolutely necessary, of a specifically identified hazard which causes a confirmed lead poisoning.

(6) "Lead poisoning hazard" means the presence of readily accessible or mouthable lead-bearing substances measuring 1.0 milligram per square centimeter or greater by X-ray fluorescence or 0.5 percent or greater by chemical analysis; 100 micrograms per square foot or greater for dust on floors; 500 micrograms per square foot or greater for dust on window sills.

(7) "Lead safe housing" is housing that was built since 1978 or that has been tested by a person who has been licensed or certified by the Board of Natural Resources to perform such testing and either found to have no lead-based paint hazards within the meaning of Title X of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 14 U.S.C. Code Section 185(b)(15) or housing that has been found to meet the requirements of the maintenance standard.

(8) "Maintenance standard" means the following:

(A) Repairing and repainting areas of deteriorated paint inside a residential housing unit;

(B) Cleaning the interior of the unit to a standard of cleaning which is at least customary in the local area at lease origination or as part of the abatement plan, whichever is first, to remove dust that constitutes a lead poisoning hazard;

(C) Adjusting doors and windows to minimize friction or impact on surfaces;

(D) Subject to the occupant's approval, appropriately cleaning any carpets at lease origination or as part of the abatement plan, whichever is first;

(E) Taking such steps as are necessary to ensure that all interior surfaces on which dust might collect are readily cleanable; and

(F) Providing the occupant or occupants all information required to be provided under the Residential Lead-Based Paint Hazard Reduction Act of 1992 and amendments thereto.

(9) "Managing agent" means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.

(10) "Mouthable lead-bearing substance" means any substance on surfaces or fixtures five feet or less from the floor or ground that form a protruding corner or similar edge, protrude one-half inch or more from a flat wall surface, or are freestanding and contain lead contaminated dust at a level that constitutes a lead poisoning hazard. Mouthable surfaces or fixtures include vinyl miniblinds, doors, door jambs, stairs, stair rails, windows, window sills, and baseboards.

(11) "Persistent elevated blood lead level" means a blood lead concentration of 15 to 19 micrograms per deciliter as determined by the lowest of three consecutive blood tests. The first two blood tests shall be performed within a six-month period, and the third blood test shall be performed at least 12 weeks and not more than six months after the second blood test.

(12) "Readily accessible lead-bearing substance" means any substance containing lead at a level that constitutes a lead poisoning hazard which can be ingested or inhaled by a child under six years of age. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, or blistering to the extent that the paint has separated from the substrate. Readily accessible substances also include paint that is chalking.

(13) "Regularly visits" means presence at a dwelling, dwelling unit, school, or day-care facility for at least two days a week for more than three hours per day.

(14) "Supplemental address" means a dwelling, dwelling unit, school, or day-care facility where a child with a persistent elevated blood lead level or a confirmed lead poisoning regularly visits or attends. Supplemental address also means a dwelling, school, or day-care facility where a child resided, regularly visited, or attended within the six months immediately preceding the determination of a persistent elevated blood lead level or a confirmed lead poisoning.

History. — Code 1981, § 31-41-12, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2008, p. 822, § 1/HB 1043; Ga. L. 2011, p. 705, § 5-18/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "lead-bearing substances" was substituted for "lead bearing substances" in paragraph (6).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-41-13. Notice of lead poisoning hazard.

Upon determination that a lead poisoning hazard exists, the department shall give written notice of the lead poisoning hazard to the owner of the dwelling, dwelling unit, school, or day-care facility and to all persons residing in or attending the dwelling or facility. The department shall also make every reasonable and practicable effort to provide written notice to the managing agent of the dwelling, dwelling unit, school, or day-care facility. The written notice to the owner, managing agent, or tenant shall include a list of possible methods of abatement of the lead poisoning hazard.

History. — Code 1981, § 31-41-13, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2008, p. 822, § 2/HB 1043; Ga. L. 2011, p. 705, § 6-6/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-41-14. Abatement of lead poisoning hazard.

(a) Upon determination that a child less than six years of age has a confirmed lead poisoning and that the child resides in, attends, or regularly visits a dwelling, dwelling unit, school, or day-care facility containing lead poisoning hazards, the department shall require a lead hazard abatement. The department shall also require a lead hazard abatement at the supplemental addresses of a child less than six years of age with a confirmed lead poisoning. Upon confirming that all other potential sources of the confirmed lead poisoning have tested negative and making every reasonable effort to obtain consent from such dwelling's owner or managing agent to comply with this Code section, the department shall solicit a court order from the superior court with

jurisdiction over such dwelling to order the dwelling's owner to perform a lead hazard abatement.

(b) When abatement is required under subsection (a) of this Code section, the owner or managing agent shall submit a written lead poisoning hazard abatement plan to the department within 14 days of receipt of the lead poisoning hazard notification and shall obtain written approval of the plan prior to initiating abatement. The lead poisoning hazard abatement plan shall comply with subsection (g) of this Code section. The written plan shall be deemed approved if the department does not respond within 14 days of receipt.

(c) If the abatement plan submitted fails to meet the requirements of this Code section, the department shall issue an abatement order requiring submission of a modified abatement plan. The order shall indicate the modifications which shall be made to the abatement plan and the date by which the plan as modified shall be submitted to the department.

(d) If the owner or managing agent does not submit an abatement plan within 14 days, the department shall issue an abatement order requiring submission of an abatement plan within five days of receipt of the order.

(e) The owner or managing agent shall notify the department and the occupants of the dates of abatement activities at least three days prior to the commencement of abatement activities.

(f) Abatement shall be completed within 60 days of the department's approval of the abatement plan. If the abatement activities are not completed within 60 days as required, the department shall issue an order requiring completion of abatement activities. An owner or managing agent may apply to the department for an extension of the deadline for abatement. The department may issue an order extending the deadline for 30 days upon proper written application by the owner or managing agent.

(g) All lead-containing waste and residue of the abatement of lead shall be removed and disposed of by the person performing the abatement in accordance with applicable federal, state, and local laws and rules.

(h) The department shall verify by visual inspection that the approved abatement plan has been completed. The department may also verify plan completion by residual lead dust monitoring. Compliance with the maintenance standard shall be deemed equivalent to meeting the abatement plan requirements.

(i) Removal of children from the dwelling, school, or day-care facility shall not constitute abatement if the property continues to be used for a dwelling, school, or day-care facility.

History. — Code 1981, § 31-41-14, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2008, p. 822, § 3/HB 1043; Ga. L. 2011, p. 705, § 6-6/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-41-15. Owner liability for units constructed prior to 1978.

Any owner of a residential housing unit constructed prior to 1978 who is sued by a current or former occupant seeking damages for injuries allegedly arising from exposure to lead-based paint or lead-contaminated dust shall not be deemed liable: (1) for any injuries sustained by that occupant after the owner first complied with the maintenance standard defined under paragraph (8) of Code Section 31-41-12, provided that the owner has repeated the steps provided for in the maintenance standard annually and obtained a certificate of compliance under Code Section 31-41-16 annually during such occupancy; or (2) if the owner is able to show that the unit was lead safe housing containing no lead-based paint hazards during the period when the injuries were sustained. Nothing contained in this article shall be construed or interpreted as imposing or creating any liability on or creating any cause of action against any owner or managing agent of a dwelling, dwelling unit, or residential housing unit arising from exposure to lead-based paint or lead-contaminated dust, regardless of when such dwelling, dwelling unit, or residential housing unit was constructed and regardless of whether the requirements of this article have been complied with or accomplished.

History. — Code 1981, § 31-41-15, enacted by Ga. L. 2000, p. 1260, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, a comma was inserted following "Code Section 31-41-12" in the first sentence.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 47 et seq., 66. 52 C.J.S., Landlord and Tenant, § 420.

31-41-16. Certificate evidencing compliance; liability relief.

An owner of a unit who has complied with the maintenance standard may apply annually to the department for, and upon presentation of acceptable proof of compliance shall be provided by the department a certificate evidencing such compliance. The owner shall be entitled to the liability relief provided for in Code Section 31-41-15 upon obtaining such certificate or certificates.

History. — Code 1981, § 31-41-16, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2011, p. 705, § 6-6/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-41-17. Advice regarding cleaning activities in homes occupied by children with elevated blood lead levels.

In any residential housing unit occupied by a child less than six years old who has an elevated blood lead level of ten micrograms per deciliter or greater, the department shall advise, in writing, the owner or managing agent and the child's parents or legal guardian as to the importance of carrying out routine cleaning activities in the units they occupy, own, or manage. Such cleaning activities shall include:

(1) Wiping clean all window sills with a damp cloth or sponge at least weekly;

(2) Regularly washing all surfaces accessible to the child;

(3) In the case of a leased residential housing unit, identifying any deteriorated paint in the unit and notifying the owner or managing agent of such conditions within 72 hours of discovery; and

(4) Identifying and understanding potential lead poisoning hazards in the environment of each child under the age of six in the housing unit including vinyl miniblinds, playground equipment, soil, and painted surfaces and taking steps to prevent the child from ingesting lead, such as encouraging the child to wash his or her face and hands frequently and especially after playing outdoors.

History. — Code 1981, § 31-41-17, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2011, p. 705, § 6-6/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-41-18. Application.

This article shall only apply to:

(1) Owners of residential rental property; and

(2) Landlords

that accept compensation for the use of residential property by another.

History. — Code 1981, § 31-41-18, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2008, p. 822, § 3/HB 1043.

31-41-19. Rules and regulations.

The Department of Public Health shall be authorized to promulgate all necessary regulations for the implementation and enforcement of this article.

History. — Code 1981, § 31-41-19, enacted by Ga. L. 2000, p. 1260, § 1; Ga. L. 2011, p. 705, § 6-2/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 42

OSTEOPOROSIS PREVENTION AND TREATMENT EDUCATION

Sec.
31-42-1. Short title.
31-42-2. Purposes.
Sec.
31-42-3. Strategies to promote and maintain education program.

Law reviews. — For note on the 1995 enactment of this chapter, see 12 Ga. St. U. L. Rev. 234 (1995).

31-42-1. Short title.

This chapter shall be known and may be cited as the "Osteoporosis Prevention and Treatment Education Act."

History. — Code 1981, § 31-42-1, enacted by Ga. L. 1995, p. 841, § 2.

Cross references. — Bone mass measurement coverage, T. 31, C. 15A.

31-42-2. Purposes.

The purposes of this chapter are, to the extent funds are available:

(1) To create a multigenerational, state-wide program to promote awareness and knowledge about osteoporosis, risk factors, prevention, detection, and treatment options;

(2) To facilitate understanding of osteoporosis with educational materials, information about research, services, and strategies for prevention and treatment;

(3) To utilize educational and training resources of organizations with expertise and knowledge of osteoporosis;

(4) To evaluate the quality and accessibility of osteoporosis services of community based services;

(5) To provide easy access to clear, complete, and accurate osteoporosis information and referral services;

(6) To educate and train service providers, health professionals, and physicians; and to heighten awareness about the prevention, detection, and treatment of osteoporosis among health and human service officials, health educators, and policy makers; and

(7) To promote the development of support groups for osteoporosis patients and their families and caregivers.

History. — Code 1981, § 31-42-2, enacted by Ga. L. 1995, p. 841, § 2.

31-42-3. Strategies to promote and maintain education program.

The department shall establish strategies to promote and maintain an osteoporosis prevention and treatment education program in order to raise public awareness, educate consumers, and train health professionals, teachers, and human service providers, including:

(1) **Public awareness.** The department shall develop strategies for raising public awareness of the causes and nature of osteoporosis, personal risk factors, value of prevention and early detection, and options for diagnosis and treatment;

(2) **Consumer education.** The department shall develop strategies for educating consumers about risk factors, diet and exercise, diagnostic procedures and their indications for use, risks and benefits of drug therapies currently approved by the U.S. Food and Drug Administration, and the availability of services;

(3) **Professional education.** The department may develop strategies for educating physicians and health professionals and training service providers on osteoporosis prevention, diagnosis, and treatment, including guidelines for detecting and treating in special populations, and medication options;

(4) **Needs assessment.** The department may conduct a needs assessment to identify research being conducted; technical assistance and educational materials and programs nationwide; the level of awareness about osteoporosis; the needs of patients, families, and caregivers; the needs of health care providers, including managed care organizations; the services available to patients; existence of treatment programs; existence of rehabilitation services; and number and location of bone density testing equipment. To the extent that funds are specifically appropriated, the department shall develop and maintain a resource guide to include osteoporosis related services; and

(5) **Technical assistance.** The department may replicate and use successful osteoporosis programs and contracts with and purchase materials or services from organizations with expertise and knowledge of osteoporosis.

History. — Code 1981, § 31-42-3, enacted by Ga. L. 1995, p. 841, § 2.

CHAPTER 43

COMMISSION ON MEN'S HEALTH

Sec.
31-43-1 through 31-43-13 [Repealed].

31-43-1 through 31-43-13.

Reserved. Repealed by Ga. L. 2019, p. 919, § 10-1/HB 553, effective July 1, 2019.

Editor's notes. — This chapter consisted of Code Sections 31-43-1 through 31-43-13, relating to Commission on Men's Health, and was based on Code 1981, §§ 31-43-1 through 31-43-13, enacted by Ga. L. 2000, p. 126, § 1; Ga. L. 2001, p. 4, § 31; Ga. L. 2005, p. 48, § 3/HB 309; Ga. L. 2011, p. 705, § 6-3/HB 214.

Ga. L. 2019, p. 919, § 10-2/HB 553, not codified by the General Assembly, provides that: "Any assets of the Commission on Men's Health existing as of June 30, 2019, shall devolve by operation of law and without further action to the State of Georgia on July 1, 2019. Any liabilities and obligations of the Commission on Men's Health existing as of June 30, 2019, shall be transferred to and assumed by the State of Georgia, by such instruments as may be required to maintain the same."

Pursuant to Code Section 28-9-5, in 2019, the amendment of Code Section 31-43-12 by Ga. L. 2019, p. 148, § 2-14/HB 186, was treated as impliedly repealed and superseded by Ga. L. 2019, p. 919, § 10-1/HB 553, due to irreconcilable conflict.

CHAPTER 44

RENAL DISEASE FACILITIES

Sec.
31-44-1. Definitions.
31-44-2. Fees.
31-44-3. Adoption of rules; annual reporting.
31-44-4. License required.
31-44-5. Exceptions to licensing requirement.
31-44-6. Application for license; fee; evidence of qualified staff; temporary provisional license; issuance of license; renewability of license.
31-44-7. Minimum standards of rules.
31-44-8. Qualifications of employees.
31-44-9. Minimum standards for curricula, instructors, and training.
31-44-10. Inspections.
31-44-11. Authority of department to deal with violations of this chapter or rules adopted thereunder.
31-44-12. Deposit of collected penalties.
31-44-13. Temporary management of facilities.
31-44-14. Action to enjoin operation of facility.
31-44-15. Fee of temporary manager.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 and the chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45.

Editor's notes. — Ga. L. 2005, p. 1194, § 1/SB 48, not codified by the General Assembly, provides that: "It is the general intent of this Act to eliminate the future 'sunset' of certain provisions relating to renal dialysis facilities. The following provisions of the Official Code of Georgia Annotated which were in effect and applicable on January 1, 2005, shall remain in effect and applicable until and unless changed by future Act of the General Assembly:

"(1) Code Section 31-44-1, relating to definitions;

"(2) Code Section 31-44-2, relating to fees;

"(3) Code Section 31-44-3, relating to adoption of rules and the establishment of the Renal Dialysis Advisory Council;

"(4) Code Section 31-44-4, relating to license requirement;

"(5) Code Section 31-44-5, relating to exceptions to licensing requirements;

"(6) Code Section 31-44-6, relating to application for license; fee; evidence of qualified staff; temporary provisional license; issuance of license; and renewability of license;

"(7) Code Section 31-44-7, relating to minimum standards of rules;

"(8) Code Section 31-44-8, relating to qualifications of employees;

"(9) Code Section 31-44-9, relating to minimum standards for curricula, instructors, and training;

"(10) Code Section 31-44-10, relating to inspections;

"(11) Code Section 31-44-11, relating to authority of department to deal with violations of Chapter 44 of Title 31 or rules adopted thereunder;

"(12) Code Section 31-44-12, relating to deposit of collected penalties;

"(13) Code Section 31-44-13, relating to temporary management of facilities;

"(14) Code Section 31-44-14, relating to action to enjoin operation of facility; and

"(15) Code Section 31-44-15, relating to fee of temporary manager.

"(b) The following provision of law is repealed:

"Section 4 of an Act amending Title 31 of the Official Code of Georgia Annotated, relating to health, approved April 20, 2000 (Ga. L. 2000, p. 526), which now repealed

section would have provided for a future repeal or sunset of certain provisions relating to renal dialysis facilities."

Administrative rules and regulations. — End stage renal disease facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Healthcare Facility Regulation, Subject 111-8-22.

31-44-1. Definitions.

As used in this chapter, the term:

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

(2) "Department" means the Department of Community Health.

(3) "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion, osmosis, and convection (ultrafiltration) from one fluid compartment to another across a semipermeable membrane.

(4) "Dialysis technician" means an individual who is not a registered nurse or physician and who provides dialysis care under the supervision of a registered nurse or physician.

(5) "End stage renal disease" means that stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.

(6) "End stage renal disease facility" means a facility that provides dialysis treatment, home dialysis training, support services, or any combination thereof to individuals with end stage renal disease.

(7) "Physician" means an individual who is licensed to practice medicine under Article 2 of Chapter 34 of Title 34.

(8) "Reuse technician" means an individual who is not a registered nurse or licensed physician who performs the procedures necessary to clean and properly prepare kidney dialyzers for use for multiple treatments.

History. — Code 1981, § 31-44-1, enacted by Ga. L. 2000, p. 526, § 1; Ga. L. 2011, p. 705, § 4-18/HB 214.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "semipermeable" was substituted for "semi-permeable" in paragraph (1) (now paragraph (3)).

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-44-2. Fees.

The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the costs of administering this chapter with due consideration to the amount of funds received from the federal government by the department for performance of medicare certification surveys of dialysis clinics. In setting fees under this Code section, the board shall consider setting a range of license and renewal fees based upon the number of dialysis stations at each facility, but in no event shall the annual license fee exceed $1,500.00 per end stage renal disease facility.

History. — Code 1981, § 31-44-2, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-3. Adoption of rules; annual reporting.

(a) The board shall adopt rules to implement this chapter, including but not limited to requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility. The rules adopted by the board pursuant to this Code section shall not conflict with any federal law or regulation applicable to end stage renal disease facilities or personnel thereof and shall set forth minimum standards for the health, safety, and protection of the patient being served.

(b) The council shall submit an annual report no later than October 1 of its recommendations and evaluation of its implementation to the Office of Health Strategy and Coordination.

History. — Code 1981, § 31-44-3, enacted by Ga. L. 2000, p. 526, § 1; Ga. L. 2005, p. 1194, § 2/SB 48; Ga. L. 2019, p. 148, § 2-15/HB 186; Ga. L. 2019, p. 919, § 11-1/HB 553.

The 2019 amendments. — The first 2019 amendment, effective July 1, 2019, added subsection (d). The second 2019 amendment, effective July 1, 2019, deleted the subsection (a) designation; deleted former subsection (b), which read: "The department shall establish a Renal Dialysis Advisory Council to advise the department regarding licensing and inspection of end stage renal disease facilities. The council shall be composed of a minimum of 13 persons appointed by the board: one member recommended by the Dogwood Chapter of the American Nephrology Nurses Association; one member recommended by the Georgia Association of Kidney Patients; two physicians specializing in nephrology recommended by the Georgia Renal Physicians Association; one member recommended by the National Kidney Foundation of Georgia;

two administrators of facilities certified as outpatient dialysis facilities in Georgia; three members of the general public, two of whom shall be dialysis patients or family members of dialysis patients; one member representing technicians working in renal dialysis facilities; one member representing social workers working in renal dialysis facilities; and one member representing dietitians working in renal dialysis facilities."; and deleted former subsection (c), which read: "Members of the council shall serve four-year terms and until their successors are appointed and qualified. No member of the council shall serve more than two consecutive terms. The council shall meet as frequently as the department considers necessary, but not less than twice each year. The council shall be consulted and have the opportunity to evaluate all rules promulgated by the department under this chapter applicable to end stage renal disease facilities prior to their adoption. Members shall serve without compensation." See the Code Commission note regarding the effect of these amendments.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2019, subsection (d) as enacted by Ga. L. 2019, p. 148, § 2-15/HB 186 was redesignated as subsection (b) due to the deletion of former subsections (b) and (c) by Ga. L. 2019, p. 919, § 11-1/HB 553. Additionally, the deletion of the subsection (a) designation by Ga. L. 2019, p. 919, § 11-1/HB 553 was not implemented.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

Ga. L. 2019, p. 919, § 11-2/HB 553, not codified by the General Assembly, provides: "Any assets of the Renal Dialysis Advisory Council existing as of June 30, 2019, shall devolve by operation of law and without further action to the State of Georgia on July 1, 2019. Any liabilities and obligations of the Renal Dialysis Advisory Council existing as of June 30, 2019, shall be transferred to and assumed by the State of Georgia, by such instruments as may be required to maintain the same."

31-44-4. License required.

Except as provided by Code Section 31-44-5, no person, business entity, corporation, or association may operate an end stage renal disease facility without a license issued under this chapter. Any end stage renal disease facility which is in operation when this chapter becomes effective for all purposes, and which has been certified for participation in the federal medicare program shall be granted a license by the department upon payment of the applicable license fee. A license shall be effective for a 12 month period following the date of issue and shall expire one year following such date; provided, however, a facility that has not been inspected during the year may continue to operate under its existing license until an inspection is made.

History. — Code 1981, § 31-44-4, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1,

and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-44-5" was substituted for "31-43-5" in the first sentence of this Code section.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-5. Exceptions to licensing requirement.

The following facilities are not required to be licensed under this chapter:

(1) A hospital permitted under Chapter 7 of this title that provides dialysis to individuals receiving services from the hospital;

(2) The office of a physician unless the office is used primarily as an end stage renal disease facility; or

(3) Federal or state agency facilities.

History. — Code 1981, § 31-44-5, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's note at the beginning of this chapter.

31-44-6. Application for license; fee; evidence of qualified staff; temporary provisional license; issuance of license; renewability of license.

(a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable $100.00 application fee.

(c) Each application must contain evidence that there are sufficient qualified staff at the facility.

(d) The department may grant a temporary provisional license to an applicant.

(e) The department shall issue a license if it finds the applicant meets the requirements of this chapter and the rules adopted under this chapter.

(f) The license is renewable periodically after submission of:

(1) The renewal application and fee; and

(2) Satisfactory compliance with the rules adopted under this chapter.

History. — Code 1981, § 31-44-6, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-7. Minimum standards of rules.

The rules adopted under Code Section 31-44-3 must contain minimum standards to protect the health and safety of a patient of an end stage renal disease facility.

History. — Code 1981, § 31-44-7, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-44-3" was substituted for "31-43-3" in this Code section.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-8. Qualifications of employees.

An end stage renal disease facility may not employ or have working in that facility as a dialysis or reuse technician anyone other than an individual trained and competent pursuant to the rules promulgated under this chapter.

History. — Code 1981, § 31-44-8, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future re-

peal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-9. Minimum standards for curricula, instructors, and training.

The rules adopted by the board under Code Section 31-44-3 shall establish:

(1) Minimum standards for the curricula and instructors used to train individuals to act as dialysis or reuse technicians;

(2) Minimum standards for the determination of the competency of individuals who have been trained as dialysis or reuse technicians;

(3) Minimum requirements for documentation that an individual has been trained and determined to be competent as a dialysis or reuse technician and the acceptance of that documentation by another end stage renal disease facility that may later employ the individual; and

(4) The acts and practices that are allowed or prohibited for dialysis or reuse technicians.

History. — Code 1981, § 31-44-9, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-44-3" was substituted for "31-43-3" in the introductory language.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-10. Inspections.

(a) The department shall conduct periodic inspections of each end stage renal disease facility to verify compliance with this chapter and rules adopted under this chapter.

(b) An inspection conducted under this Code section shall be unannounced, except for initial inspections, location changes, or expansions.

History. — Code 1981, § 31-44-10, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549 § 3 has been redesignated as

Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-11. Authority of department to deal with violations of this chapter or rules adopted thereunder.

(a) The department is authorized to issue, deny, suspend, or revoke a license issued under this chapter for a violation of this chapter or a rule adopted under this chapter, or take other disciplinary actions against licensees as provided in Code Section 31-2-8.

(b) The denial, suspension, or revocation of a license by the department shall be a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 31-44-11, enacted by Ga. L. 2000, p. 526, § 1; Ga. L. 2009, p. 453, § 1-9/HB 228; Ga. L. 2011, p. 705, § 4-7/HB 214.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-44-12. Deposit of collected penalties.

A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the general fund.

History. — Code 1981, § 31-44-12, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-13. Temporary management of facilities.

(a) A person holding a controlling interest in an end stage renal disease facility may, at any time, request the department to assume the

management of the facility through the appointment of a temporary manager under this chapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this Code section must:

(1) Specify all terms and conditions of the temporary manager's appointment and authority; and

(2) Preserve all rights granted by law of the individuals served by the facility.

(d) The primary duty of the temporary manager is to ensure that adequate and safe services are provided to patients until temporary management ceases.

(e) The appointment terminates at the time specified by the agreement.

History. — Code 1981, § 31-44-13, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "Code" was inserted in the introductory language of subsection (c).

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-14. Action to enjoin operation of facility.

The department may request that the Attorney General bring an action to enjoin either the continued operation of the facility or the closing of the facility in the superior court of the county in which an end stage renal disease facility is located in the name of and on behalf of the state or for the appointment of a temporary manager to manage that end stage renal disease facility if:

(1) The facility is operating without a license;

(2) The department has denied, suspended, or revoked the facility's license, but the facility continues to operate;

(3) License denial, suspension, or revocation proceedings against the facility are pending and the department determines that an imminent or reasonably foreseeable threat to the health and safety of a patient of the facility exists;

(4) The department determines that an emergency exists that presents an immediate threat to the health and safety of a patient of the facility; or

(5) The facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure.

History. — Code 1981, § 31-44-14, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

31-44-15. Fee of temporary manager.

(a) A temporary manager appointed under Code Section 31-44-13 or 31-44-14 is entitled to a reasonable fee as determined by the court. The fee shall be paid by the facility.

(b) A temporary manager appointed under Code Section 31-44-13 may petition the court to order the release to such manager of any payment owed such manager for care and services provided to patients of the facility if the payment has been withheld.

(c) Withheld payments that may be released under subsection (b) of this Code section may include payments withheld by a governmental agency or other entity before or during the appointment of the temporary manager, including:

(1) Medicaid, medicare, or insurance payments; or

(2) Payments from another third party.

History. — Code 1981, § 31-44-15, enacted by Ga. L. 2000, p. 526, § 1.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-44-13 or 31-44-14" was substituted for "31-43-13 or 31-43-14" in subsection (a) and "31-44-13" was substituted for "31-43-13" in subsection (b).

Editor's notes. — For information as to the elimination of a certain future repeal or "sunset" of this Code section, see the Editor's notes at the beginning of this chapter.

CHAPTER 45

PUBLIC SWIMMING POOLS

Sec.
31-45-1. Short title.
31-45-2. Purpose.
31-45-3. Definitions.
31-45-4. Issuance of permits; terms of expiration.
31-45-5. Operation permit required for each public swimming pool.
31-45-6. Construction of public swimming pools.
31-45-7. Notification for inspection.
31-45-8. Inspections by the county board of health.
31-45-9. Suspension or revocation of permit.
31-45-10. Rules and regulations.
31-45-11. Enforcement of rules and regulations.
31-45-12. Inspection of unregulated pools.
31-45-13. Applicability of chapter.

Code Commission notes. — Ga. L. 2000, p. 1269, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Administrative rules and regulations. — Public swimming pools, spas, and recreational water parks, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Public Health, Environmental Health Hazards, Subject 511-3-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 62A Am. Jur. 2d, Premises Liability, § 592 et seq.

Am. Jur. Proof of Facts. — Negligent Operation of Public Swimming Pool, 34 POF2d 63.

C.J.S. — 39A C.J.S., Health and Environment, § 74 et seq. 72A C.J.S., Products Liability, § 195.

31-45-1. Short title.

This chapter shall be known and may be cited as “Michelle’s Law.”

History. — Code 1981, § 31-45-1, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-2. Purpose.

The purpose of this chapter is to protect the public health and safety through the proper design, operation, and maintenance of public swimming pools.

History. — Code 1981, § 31-45-2, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-3. Definitions.

As used in this chapter, the term "public swimming pool," "swimming pool," or "pool" means any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation, or therapy, together with buildings, appurtenances, and equipment used in connection with the body of water, regardless of whether a fee is charged for its use. The term includes municipal, school, hotel, or motel pools and any pool to which access is granted in exchange for payment of a daily fee. This chapter shall not apply to a private pool or hot tub serving a single-family dwelling and used only by the residents of the dwelling and their guests. This chapter also shall not apply to apartment complex pools, country club pools, subdivision pools which are open only to residents of the subdivision and their guests, therapeutic pools used in physical therapy programs operated by medical facilities licensed by the department or operated by a licensed physical therapist, therapeutic chambers drained, cleaned, and refilled after each individual use, or to religious ritual baths used solely for religious purposes.

History. — Code 1981, § 31-45-3, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "single-family dwelling" was substituted for "single family dwelling" in the third sentence, and, in the fourth sentence, a comma was inserted following "licensed physical therapist" and following "each individual use", "nor to" was deleted preceding "therapeutic chambers drained" and "or to religious" was substituted for "nor to religious".

31-45-4. Issuance of permits; terms of expiration.

(a) On or after December 31, 2000, a permit shall be obtained from the county board of health in the county in which a public swimming pool is located prior to construction or continued operation of a public swimming pool. When the ownership of a public swimming pool changes or if the pool is leased by the owner, it shall be the responsibility of the new owner or lessee to secure a permit issued in his or her name.

(b) Unless suspended or revoked, a swimming pool operation permit shall be valid for the period of operation specified in the application, but in no event shall it be valid for more than 12 months.

History. — Code 1981, § 31-45-4, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-5. Operation permit required for each public swimming pool.

A separate application for an operation permit must be submitted for each public swimming pool. The owner or operator shall apply annually to the county board of health for an operator's permit. A form must be obtained from the county board of health to provide:

(1) The owner's name, address, and telephone number;

(2) The operator's name, address, and telephone number;

(3) The street address of the public swimming pool;

(4) The physical location of the public swimming pool;

(5) The type of public swimming pool;

(6) The construction date, if applicable;

(7) The proposed operating dates;

(8) The type of disinfection; and

(9) The signature of the owner or a designated representative of the owner.

History. — Code 1981, § 31-45-5, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been

redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-6. Construction of public swimming pools.

Construction of public swimming pools and additions and alterations to such pools may start only upon issuance and receipt of a permit pursuant to Code Section 31-45-4 and shall be in compliance with plans and data submitted in accordance with Code Section 31-45-5 and other data approved by the county board of health of the county in which each pool is located.

History. — Code 1981, § 31-45-6, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-45-4" was substituted for "31-43-4" and "31-45-5" was substituted for "31-43-5" in this Code section.

31-45-7. Notification for inspection.

A permittee shall notify the county board of health at the time of completion of the construction of a public swimming pool to permit inspection before the pool is placed in operation.

History. — Code 1981, § 31-45-7, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

31-45-8. Inspections by the county board of health.

Each public swimming pool shall be inspected by the county board of health to determine compliance with this chapter and with the rules and regulations adopted by the Department of Public Health. Pools which open on or after April 1 and which close on or before October 31 shall be inspected at least once during the period of operation. All other pools shall be inspected at least twice a year.

History. — Code 1981, § 31-45-8, enacted by Ga. L. 2000, p. 549, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code

Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-45-9. Suspension or revocation of permit.

A permit for a public swimming pool may be suspended or revoked by the county board of health for failure to comply with the provisions of this chapter and the rules and regulations adopted by the Department of Public Health.

History. — Code 1981, § 31-45-9, enacted by Ga. L. 2000, p. 549, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-45-10. Rules and regulations.

(a) The Department of Public Health shall adopt and promulgate rules and regulations concerning the construction and operation of public swimming pools. The Department of Public Health shall classify public swimming pools on the basis of size, usage, type, or any other appropriate factor and shall adopt requirements for each classification. The rules shall include requirements for:

(1) Submission and review of plans prior to construction;

(2) Application, review, expiration, renewal, and revocation or suspension of an operating permit;

(3) Inspection;

(4) Design and construction including materials, depth and other dimensions, and standards for the abatement of suction hazards; and

(5) Operation and safety including water source, water quality and testing, fencing, water treatment, chemical storage, toilet and bath facilities, measures to ensure the personal cleanliness of bathers, safety equipment, and sewage and other waste-water disposal.

Public swimming pools constructed or remodeled prior to December 31, 2000, that do not meet specific design and construction requirements of the rules and regulations for public swimming pools adopted by the

Department of Public Health shall not be required to comply with design and construction requirements other than requirements related to the abatement of suction hazards. Public swimming pools constructed or remodeled prior to December 31, 2000, shall comply with all other rules and regulations for public swimming pools adopted by the Department of Public Health by January 1, 2003.

(b) No single drain, single-suction outlet public swimming pool shall be allowed to operate unless a protective cover is properly installed.

History. — Code 1981, § 31-45-10, enacted by Ga. L. 2000, p. 549, § 3; Ga. L. 2001, p. 4, § 31; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-45-11. Enforcement of rules and regulations.

Each county board of health and its duly authorized agents are authorized and empowered to enforce compliance with the provisions of this chapter and the rules and regulations relating to public swimming pools adopted and promulgated by the Department of Public Health and, in connection therewith, to enter upon and inspect the premises of a public swimming pool at any reasonable time and in a reasonable manner.

History. — Code 1981, § 31-45-11, enacted by Ga. L. 2000, p. 549, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-45-12. Inspection of unregulated pools.

Notwithstanding any provision of Code Section 31-45-13 regarding the applicability of this chapter to the contrary, a resident or owner of an apartment complex that is not subject to regulation under this chapter or local ordinance may request that the county board of health inspect a pool at such apartment complex. Upon receipt of such a request, the county board of health shall have the authority to inspect

such pool at any reasonable time and in a reasonable manner and issue a report on the condition of such pool.

History. — Code 1981, § 31-45-12, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

Pursuant to Code Section 28-9-5, in 2000, "31-45-13" was substituted for "31-43-13" in this Code section.

31-45-13. Applicability of chapter.

The provisions of this chapter shall apply only in those counties where local rules and regulations governing public swimming pools are not in effect on December 31, 2000. Nothing in this chapter shall be construed to limit the authority of a county to adopt an ordinance or resolution regarding public swimming pools that applies to apartment complex pools.

History. — Code 1981, § 31-45-13, enacted by Ga. L. 2000, p. 549, § 3.

Code Commission notes. — Ga. L. 2000, p. 126, § 1, Ga. L. 2000, p. 526, § 1, and Ga. L. 2000, p. 549, § 3 all enacted a Chapter 43 of Title 31. Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 2000, p. 526, § 1 has been redesignated as Chapter 44 of Title 31 and the Code sections therein redesignated accordingly. The chapter enacted by Ga. L. 2000, p. 549, § 3 has been redesignated as Chapter 45 of Title 31 and the Code sections therein redesignated accordingly.

CHAPTER 46

NEWBORN UMBILICAL CORD BLOOD BANK

Sec.
31-46-1. Legislative findings.
31-46-2. Definitions.
31-46-3. Newborn Umbilical Cord Blood Bank for postnatal tissue and fluid; creation; donations and information concerning donations.
31-46-4. Georgia Commission for Saving the Cure; creation; membership; appointment; terms of office; duties.
31-46-5. Funding; requirements of federal law.

Editor's notes. — Ga. L. 2007, p. 473, § 1/SB 148, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Saving the Cure Act.' This Act may also be known and cited as 'Keone's Law.'"

Law reviews. — For note on 2007 enactment of this chapter, see 24 Ga. St. U. L. Rev. 211 (2007).

31-46-1. Legislative findings.

The General Assembly finds and declares that it shall be the public policy of this state to encourage the donation, collection, and storage of stem cells collected from postnatal tissue and fluid and to make such stem cells available for medical research and treatment; to promote principled and ethical stem cell research; and to encourage stem cell research with immediate clinical and medical applications.

History. — Code 1981, § 31-46-1, enacted by Ga. L. 2007, p. 473, § 2/SB 148.

31-46-2. Definitions.

As used in this chapter, the term:

(1) "Amniotic fluid" means the fluid inside the amnion.

(2) "Permitted stem cell research" means stem cell research permitted under federal law and Senate Resolution 30, the "Hope Offered through Principled and Ethical Stem Cell Research Act," as approved by the United States Senate on April 11, 2007.

(3) "Placenta" means the organ that forms on the inner wall of the human uterus during pregnancy.

(4) "Postnatal tissue and fluid" means the placenta, umbilical cord, and amniotic fluid expelled or extracted in connection with the birth of a human being.

(5) "Stem cells" means unspecialized or undifferentiated cells that can self-renew and have the potential to differentiate into specialized cell types.

(6) "Umbilical cord" means the gelatinous tissue and blood vessels connecting an unborn human being to the placenta.

History. — Code 1981, § 31-46-2, enacted by Ga. L. 2007, p. 473, § 2/SB 148.

31-46-3. Newborn Umbilical Cord Blood Bank for postnatal tissue and fluid; creation; donations and information concerning donations.

(a) Not later than June 30, 2008, the Georgia Commission for Saving the Cure, as created in Code Section 31-46-4, shall establish a network of postnatal tissue and fluid banks in partnership with one or more public or private colleges or universities, public or private hospitals, nonprofit organizations, or private firms in this state for the purpose of collecting and storing postnatal tissue and fluid. The bank network, which shall be known as the Newborn Umbilical Cord Blood Bank, shall make such tissue and fluid available for medical research and treatment in accordance with this chapter.

(b) The Georgia Commission for Saving the Cure shall develop a program to educate pregnant patients with respect to the banking of postnatal tissue and fluid. The program shall include:

(1) Notice of the existence of the Newborn Umbilical Cord Blood Bank;

(2) An explanation of the difference between public and private banking programs;

(3) The medical process involved in the collection and storage of postnatal tissue and fluid;

(4) The current and potential future medical uses of stored postnatal tissue and fluid;

(5) The benefits and risks involved in the banking of postnatal tissue and fluid; and

(6) The availability and cost of storing postnatal tissue and fluid in public and private umbilical cord blood banks.

(c) Beginning June 30, 2009, all physicians and hospitals in this state shall inform pregnant patients of the full range of options for donation of postnatal tissue and fluids no later than 30 days from the commencement of the patient's third trimester of pregnancy or at the first consultation between the attending physician or the hospital,

whichever is later; provided, however, that this subsection shall not be construed to require the participation of any physician who objects to the transfusion or transplantation of blood on the basis of bona fide religious beliefs.

(d) Nothing in this Code section shall be construed to prohibit a person from donating postnatal tissue or fluid to a private blood and tissue bank or storing postnatal tissue or fluid with a private blood and tissue bank.

(e) Any college or university, hospital, nonprofit organization, or private firm participating in the Newborn Umbilical Cord Blood Bank shall have or be subject to an institutional review board which shall be available on an ongoing basis to review the research procedures and conduct of any person desiring to conduct research with postnatal tissue and fluid from the bank. The institutional review board shall establish procedures to protect and ensure the privacy rights of postnatal tissue and fluid donors consistent with applicable federal guidelines.

History. — Code 1981, § 31-46-3, enacted by Ga. L. 2007, p. 473, § 2/SB 148.

31-46-4. Georgia Commission for Saving the Cure; creation; membership; appointment; terms of office; duties.

(a) There is created the Georgia Commission for Saving the Cure which shall consist of 15 members appointed as provided in this Code section. The commission shall be assigned to the Department of Public Health for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) Seven members shall be appointed by the Governor. The Governor shall appoint four members to serve initial terms of three years and three members to serve initial terms of two years. Thereafter, successors to such initial appointees shall serve terms of three years. The Governor shall designate one of the persons so appointed to be the chairperson of the commission. If the chief executive officer of the Georgia Research Alliance is not appointed by the Governor or any other appointing authority to serve on the commission, he or she shall serve as an advisory member.

(c) Four members shall be appointed by the Lieutenant Governor or, if the Lieutenant Governor belongs to a political party other than the political party to which a majority of the members of the Senate belong, by the Senate Committee on Assignments. Of these four members, there shall be at least one of each of the following: a physician licensed to practice medicine in this state; a recognized medical ethicist with an accredited degree in medicine, medical ethics, or theology; a medical

researcher in permitted stem cell research; and an attorney with experience in health policy law. The Lieutenant Governor or Senate Committee on Assignments shall appoint two members to serve initial terms of three years and two members to serve initial terms of two years. Thereafter, successors to such initial appointees shall serve terms of three years.

(d) Four members shall be appointed by the Speaker of the House of Representatives. Of these four members, there shall be at least one of each of the following: a physician licensed to practice medicine in this state; a recognized medical ethicist with an accredited degree in medicine, medical ethics, or theology; a medical researcher in permitted stem cell research; and an attorney with experience in health policy law. The Speaker of the House of Representatives shall appoint two members to serve initial terms of three years and two members to serve initial terms of two years. Thereafter, successors to such initial appointees shall serve terms of three years.

(e) Members of the commission shall be eligible to succeed themselves. The initial terms of office shall begin on July 1, 2007. Appointments shall be made by the respective appointing authorities no later than June 15, 2007. Thereafter, appointments of successors shall be made by the respective appointing authority no later than June 1 of the year in which the member's term of office expires. Vacancies shall be filled for the unexpired term by the respective appointing authority.

(f) The commission shall meet at least four times per year at the call of the chairperson or upon the request of at least seven of its members.

(g) The commission shall have the following duties and responsibilities:

(1) To investigate the implementation of this chapter and to recommend any improvements to the General Assembly;

(2) To make available to the public the records of all meetings of the commission and of all business transacted by the commission;

(3) To oversee the operations of the Newborn Umbilical Cord Blood Bank established in Code Section 31-46-3, including approving all fees established to cover administration, collection, and storage costs;

(4) To undertake the Saving the Cure initiative by promoting awareness of the Newborn Umbilical Cord Blood Bank and encouraging donation of postnatal tissue and fluid to the bank;

(5) To ensure the privacy of persons who donate postnatal tissue and fluid to the Newborn Umbilical Cord Blood Bank pursuant to subsection (a) of Code Section 31-46-3 consistent with applicable federal guidelines;

(6) To develop a plan for making postnatal tissue and fluid collected under the Saving the Cure initiative available for medical research and treatment and to ensure compliance with all relevant national practice and quality standards relating to such use;

(7) To develop a plan for private storage of postnatal tissue and fluid for medical treatment or to make potential donors aware of private storage options for said tissue and fluid as deemed in the public interest;

(8) To participate in the National Cord Blood Program and to register postnatal tissue and fluid collected with registries operating in connection with the program;

(9) To make grants and enter into agreements to support permitted stem cell research with immediate and clinical medical applications;

(10) To employ such staff and to enter into such contracts as may be necessary to fulfill its duties and responsibilities under this chapter subject to funding by the General Assembly; and

(11) To report annually to the General Assembly in December of each year concerning the activities of the commission with recommendations for any legislative changes or funding necessary or desirable to fulfill the goals of this chapter.

(h) The commission shall provide for protection from disclosure of the identity of persons making donations to the Newborn Umbilical Cord Blood Bank pursuant to subsection (a) of Code Section 31-46-3.

(i) The commission may request additional funding from any additional source including, but not limited to, federal and private grants.

(j) The commission may establish a separate not for profit organization or foundation for the purposes of supporting the Newborn Umbilical Cord Blood Bank established pursuant to Code Section 31-46-3.

History. — Code 1981, § 31-46-4, enacted by Ga. L. 2007, p. 473, § 2/SB 148; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-1/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-46-5. Funding; requirements of federal law.

Any public funds expended for stem cell research shall conform to the requirements set forth in federal law and Senate Resolution 30, the "Hope Offered through Principled and Ethical Stem Cell Research Act," as approved by the United States Senate on April 11, 2007.

History. — Code 1981, § 31-46-5, enacted by Ga. L. 2007, p. 473, § 2/SB 148.

CHAPTER 47

ARTHRITIS PREVENTION AND CONTROL PROGRAM

Sec.
31-47-1. Purpose of program; needs assessment; coordination and utilization with other programs.
31-47-2. Role and duties of commissioner.
Sec.
31-47-3. Acceptance of grants; compliance with federal requirements.

Editor's notes. — Ga. L. 2010, p. 1143, § 1/HB 1119, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Georgia Arthritis Prevention and Control Act.'"

Ga. L. 2010, p. 1143, § 2/HB 1119, not codified by the General Assembly, provides: "The General Assembly finds that:

"(1) Arthritis encompasses more than 100 diseases and conditions that affect joints, the surrounding tissues, and other connective tissues;

"(2) As one of the most common family of diseases in the United States, arthritis affects nearly one of every five Americans and will impact an estimated 67 million people by the year 2030;

"(3) Arthritis is the most common cause of disability in the United States, limiting daily activities for more than 17.4 million citizens;

"(4) Although prevailing myths inaccurately portray arthritis as an old person's disease, arthritis is a multigenerational disease that has become one of this country's most pressing public health problems;

"(5) This disease has a significant impact on quality of life, not only for the individual who experiences its painful symptoms and resulting disability, but also for family members and caregivers;

"(6) Compounding this picture are the enormous economic and social costs associated with treating arthritis and its complications; in 2003, the costs were $127.3 billion with $80.8 billion and $47 billion attributable to medical care expenditures and lost earnings, respectively; $3.9 billion of that was the cost in Georgia;

"(7) Currently, the challenge exists to ensure delivery of effective, but often underutilized, interventions that are necessary in the prevention or reduction of arthritis related pain and disability;

"(8) Although there exists a large quantity of public information and programs about arthritis, it remains inadequately disseminated and insufficient in addressing the needs of specific diverse populations and other underserved groups;

"(9) The Arthritis Foundation, the Centers for Disease Control and Prevention, and the Association of State and Territorial Health Officials have led in the development of a public health strategy, the National Arthritis Action Plan, to respond to this challenge; and

"(10) Educating the public and health care community throughout this state about this devastating disease is of paramount importance and is in every aspect in the public interest and to the benefit of all residents of the State of Georgia."

Ga. L. 2010, p. 1143, § 3/HB 1119, not codified by the General Assembly, provides: "The General Assembly finds that the purposes of this Act are to:

"(1) Create and foster a state-wide program that promotes public awareness and increases knowledge about the causes of arthritis, the importance of early diagnosis and appropriate management, effective prevention strategies, and pain prevention and management;

"(2) Develop knowledge and enhance understanding of arthritis by disseminating educational materials, information on research results, services provided, and strategies for prevention and control to

patients, health professionals, and the public;

"(3) Establish a solid scientific base of knowledge on the prevention of arthritis and related disabilities through surveillance, epidemiology, and prevention research;

"(4) Utilize educational and training resources and services developed by organizations with appropriate expertise and knowledge of arthritis and use available technical assistance;

"(5) Evaluate the need for improving the quality and accessibility of existing community based arthritis services;

"(6) Heighten awareness about the prevention, detection, and treatment of arthritis among state and local health and human officials, health professionals and providers, and policy makers;

"(7) Implement and coordinate state and local programs and services to reduce the public health burden of arthritis;

"(8) Fund adequately these programs on a state level; and

"(9) Provide lasting improvements in the delivery of health care for individuals with arthritis and their families, thus improving their quality of life while also containing health care costs."

31-47-1. Purpose of program; needs assessment; coordination and utilization with other programs.

(a) The Department of Public Health shall establish, promote, and maintain an Arthritis Prevention and Control Program in order to raise public awareness, educate consumers, educate and train health professionals, teachers, and human services providers, and for other purposes.

(b) As a part of the Arthritis Prevention and Control Program, the Department of Public Health shall periodically conduct a needs assessment to identify:

(1) Epidemiological and other public health research being conducted within this state;

(2) Available technical assistance and educational materials and programs nation-wide and within this state;

(3) The level of public and professional arthritis awareness;

(4) The needs of people with arthritis, their families, and caregivers;

(5) Educational and support service needs of health care providers, including physicians, nurses, managed care organizations, and other health care providers;

(6) The services available to a person with arthritis;

(7) The existence of arthritis treatment, self-management, physical activity, and other educational programs; and

(8) The existence of rehabilitation services.

(c) The Department of Public Health shall use, but shall not be limited to, strategies consistent with the National Arthritis Action Plan

and existing state planning efforts to raise public awareness and knowledge about the causes and nature of arthritis, personal risk factors, the value of prevention and early detection, ways to minimize preventable pain, and options for diagnosing and treating the disease.

(d)(1) Subject to appropriation or access to other private or public funds, the Department of Public Health may replicate and use successful arthritis programs and enter into contracts and purchase materials or services from entities with appropriate expertise for such services and materials as are necessary to carry out the goals of the Arthritis Prevention and Control Program.

(2) Subject to appropriation or access to other private or public funds, the Department of Public Health may enter into agreements with national organizations with expertise in arthritis to implement parts of the Arthritis Prevention and Control Program.

History. — Code 1981, § 31-47-1, enacted by Ga. L. 2010, p. 1143, § 4/HB 1119; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2011, p. 752, § 31/HB 142; Ga. L. 2019, p. 919, § 12-1/HB 553.

The 2019 amendment, effective July 1, 2019, deleted former subsection (c), which read: "The Department of Public Health shall establish and coordinate an advisory panel on arthritis which shall provide nongovernmental input regarding the Arthritis Prevention and Control Program. Membership shall include, but shall not be limited to, persons with arthritis, public health educators, medical experts on arthritis, providers of arthritis health care, persons knowledgeable in health promotion and education, and representatives of national arthritis organizations and their local chapters."; and redesignated former subsections (d) and (e) as present subsections (c) and (d), respectively.

Editor's notes. — Ga. L. 2019, p. 919, § 12-2/HB 553, not codified by the General Assembly, provides: "Any assets of the Arthritis Prevention and Control Program advisory panel existing as of June 30, 2019, shall devolve by operation of law and without further action to the State of Georgia on July 1, 2019. Any liabilities and obligations of the Arthritis Prevention and Control Program advisory panel existing as of June 30, 2019, shall be transferred to and assumed by the State of Georgia, by such instruments as may be required to maintain the same."

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-47-2. Role and duties of commissioner.

The commissioner of public health shall:

(1) Provide sufficient staff to implement the Arthritis Prevention and Control Program;

(2) Provide appropriate training for staff of the Arthritis Prevention and Control Program;

(3) Identify the appropriate organizations to carry out the program;

(4) Base the program on the most current scientific information and findings;

(5) Work to increase and improve community based services available to people with arthritis and their family members;

(6) Work with governmental offices, national voluntary health organizations and their local chapters, community and business leaders, community organizations, and health care and human service providers to coordinate efforts and maximize state resources in the areas of prevention, education, detection, pain management, and treatment of arthritis; and

(7) Identify and, when appropriate, use evidence based arthritis programs and obtain related materials and services from organizations with appropriate expertise and knowledge of arthritis.

History. — Code 1981, § 31-47-2, enacted by Ga. L. 2010, p. 1143, § 4/HB 1119; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2011, p. 752, § 31/HB 142.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

31-47-3. Acceptance of grants; compliance with federal requirements.

(a) The commissioner of public health may accept grants, services, and property from the federal government, foundations, organizations, medical schools, and other entities as may be available for the purposes of fulfilling the obligations of this chapter.

(b) The commissioner of public health shall seek any federal waiver or waivers that may be necessary to maximize funds from the federal government to implement this chapter.

History. — Code 1981, § 31-47-3, enacted by Ga. L. 2010, p. 1143, § 4/HB 1119; Ga. L. 2011, p. 705, § 6-5/HB 214.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 48

HEALTH CARE COMPACT

Sec.
31-48-1. Compact enacted and entered into by the State of Georgia; text of compact.

31-48-1. Compact enacted and entered into by the State of Georgia; text of compact.

The Health Care Compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

"The Health Care Compact

WHEREAS, the separation of powers, both between the branches of the federal government and between federal and state authority, is essential to the preservation of individual liberty; and

WHEREAS, the Constitution creates a federal government of limited and enumerated powers, and reserves to the States or to the people those powers not granted to the federal government; and

WHEREAS, the federal government has enacted many laws that have preempted state laws with respect to Health Care, and placed increasing strain on State budgets, impairing other responsibilities such as education, infrastructure, and public safety; and

WHEREAS, the Member States seek to increase individual liberty and control over personal Health Care decisions, and believe the best method to achieve these ends is by vesting regulatory authority over Health Care in the States; and

WHEREAS, by acting in concert, the Member States may express and inspire confidence in the ability of each Member State to govern Health Care effectively; and

WHEREAS, the Member States recognize that consent of Congress may be more easily secured if the Member States collectively seek consent through an interstate compact;

NOW THEREFORE, the Member States hereto resolve, and by the adoption into law under their respective state constitutions of the present Health Care Compact, agree, as follows:

Sec. 1. Definitions. As used in this Compact, unless the context clearly indicates otherwise:

'Commission' means the Interstate Advisory Health Care Commission.

'Effective Date' means the date upon which this Compact shall become effective for purposes of the operation of state and federal law in a Member State, which shall be the latter of:

(a) The date upon which this Compact shall be adopted under the laws of the Member State; or

(b) The date upon which this Compact receives the consent of Congress pursuant to Article I, Section 10, of the United States Constitution, after at least two Member States adopt this Compact.

'Health Care' means care, services, supplies, or plans related to the health of an individual and includes, but is not limited to:

(a) Preventative, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body;

(b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription; and

(c) An individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual,

except any care, services, supplies, or plans provided by the United States Department of Defense and United States Department of Veterans Affairs, or provided to Native Americans.

'Member State' means a State that is signatory to this Compact and has adopted it under the laws of that State.

'Member State Base Funding Level' means a number equal to the total federal spending on Health Care in the Member State during federal fiscal year 2010. On or before the Effective Date, each Member State shall determine the Member State Base Funding Level for its State, and that number shall be binding upon that Member State. The preliminary estimate of the Member State Base Funding Level for the State of Georgia is $21,556,000,000.00.

'Member State Current Year Funding Level' means the Member State Base Funding Level multiplied by the Member State Current Year Population Adjustment Factor multiplied by the Current Year Inflation Adjustment Factor.

'Member State Current Year Population Adjustment Factor' means the average population of the Member State in the current year less the average population of the Member State in federal fiscal year 2010, divided by the average population of the Member State in federal fiscal

year 2010, plus 1. Average population in a Member State shall be determined by the United States Census Bureau.

'Current Year Inflation Adjustment Factor' means the Total Gross Domestic Product Deflator in the current year divided by the Total Gross Domestic Product Deflator in federal fiscal year 2010. Total Gross Domestic Product Deflator shall be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Sec. 2. Pledge. The Member States shall take joint and separate action to secure the consent of the United States Congress to this Compact in order to return the authority to regulate Health Care to the Member States consistent with the goals and principles articulated in this Compact. The Member States shall improve Health Care policy within their respective jurisdictions and according to the judgment and discretion of each Member State.

Sec. 3. Legislative Power. The legislatures of the Member States have the primary responsibility to regulate Health Care in their respective states.

Sec. 4. State Control. Each Member State, within its State, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding Health Care that are inconsistent with the laws and regulations adopted by the Member State pursuant to this Compact. Federal and state laws, rules, regulations, and orders regarding Health Care will remain in effect unless a Member State expressly suspends them pursuant to its authority under this Compact. For any federal law, rule, regulation, or order that remains in effect in a Member State after the Effective Date, that Member State shall be responsible for the associated funding obligations in its State.

Sec. 5. Funding.

(a) Each federal fiscal year, each Member State shall have the right to federal monies up to an amount equal to its Member State Current Year Funding Level for that federal fiscal year, funded by Congress as mandatory spending and not subject to annual appropriation, to support the exercise of Member State authority under this Compact. This funding shall not be conditional on any action of or regulation, policy, law, or rule being adopted by the Member State.

(b) By the start of each federal fiscal year, Congress shall establish an initial Member State Current Year Funding Level for each Member State based upon reasonable estimates. The final Member State Current Year Funding Level shall be calculated and funding shall be reconciled by the United States Congress based upon information provided by each Member State and audited by the United States Government Accountability Office.

Sec. 6. Interstate Advisory Health Care Commission.

(a) The Interstate Advisory Health Care Commission is established. The Commission consists of members appointed by each Member State through a process to be determined by each Member State. A Member State may not appoint more than two members to the Commission and may withdraw membership from the Commission at any time. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the Commission's total membership.

(b) The Commission may elect from among its membership a Chairperson. The Commission may adopt and publish bylaws and policies that are not inconsistent with this Compact. The Commission shall meet at least once a year, and may meet more frequently.

(c) The Commission may study issues of Health Care regulation that are of particular concern to the Member States. The Commission may make non-binding recommendations to the Member States. The legislatures of the Member States may consider these recommendations in determining the appropriate Health Care policies in their respective states.

(d) The Commission shall collect information and data to assist the Member States in their regulation of Health Care, including assessing the performance of various State Health Care programs and compiling information on the prices of Health Care. The Commission shall make this information and data available to the legislatures of the Member States. Notwithstanding any other provision in this Compact, no Member State shall disclose to the Commission the health information of any individual, nor shall the Commission disclose the health information of any individual.

(e) The Commission shall be funded by the Member States as agreed to by the Member States. The Commission shall have the responsibilities and duties as may be conferred upon it by subsequent action of the respective legislatures of the Member States in accordance with the terms of this Compact.

(f) The Commission shall not take any action within a Member State that contravenes any State law of this Member State.

Sec. 7. Congressional Consent. This Compact shall be effective on its adoption by at least two Member States and consent of the United States Congress. This Compact shall be effective unless the United States Congress, in consenting to this Compact, alters the fundamental purposes of this Compact, which are:

(a) To secure the right of the Member States to regulate Health Care in their respective States pursuant to this Compact and to

suspend the operation of any conflicting federal laws, rules, regulations, and orders within their States; and

(b) To secure federal funding for Member States that choose to invoke their authority under this Compact, as prescribed by Section 5 above.

Sec. 8. Amendments. The Member States, by unanimous agreement, may amend this Compact from time to time without the prior consent or approval of Congress and any amendment shall be effective unless, within one year, the Congress disapproves that amendment. Any State may join this Compact after the date on which Congress consents to the Compact by adoption into law under its State Constitution.

Sec. 9. Withdrawal; Dissolution. Any Member State may withdraw from this Compact by adopting a law to that effect, but no such withdrawal shall take effect until six months after the Governor of the withdrawing Member State has given notice of the withdrawal to the other Member States. A withdrawing State shall be liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. This Compact shall be dissolved upon the withdrawal of all but one of the Member States."

History. — Code 1981, § 31-48-1, enacted by Ga. L. 2011, p. 30, § 1/HB 461.

CHAPTER 49

GEORGIA COUNCIL ON LUPUS EDUCATION AND AWARENESS

Sec.
31-49-1. Legislative findings.
31-49-2. Creation of Council on Lupus Education and Awareness; membership; organization.
31-49-3. Duties and responsibilities of council.
Sec.
31-49-4. Distribution of information.
31-49-5. Annual report.
31-49-6. Donations.

31-49-1. Legislative findings.

The General Assembly finds and declares that it is estimated that as many as 55,000 Georgia residents suffer from lupus, a life-long autoimmune disease in which the immune system becomes unbalanced, causing inflammation, tissue damage, seizures, strokes, heart attacks, miscarriages, and organ failure. Although anyone can develop lupus, it strikes mostly women of childbearing age; African American, Hispanic, Asian, and Native American women are two to three times more likely than Caucasians to develop lupus. Lupus can be difficult to diagnose and often is misdiagnosed because the symptoms are similar to those of other illnesses. It is in the public interest for this state to establish an entity to develop and implement a comprehensive program to improve education and awareness about lupus for health care providers and the general public.

History. — Code 1981, § 31-49-1, enacted by Ga. L. 2014, p. 397, § 2/SB 352.

31-49-2. Creation of Council on Lupus Education and Awareness; membership; organization.

(a) There is created the Georgia Council on Lupus Education and Awareness within the Department of Community Health.

(b) The council shall consist of six members as follows:

(1) The commissioner of community health, or the commissioner's designee, as an ex officio member;

(2) Three members to be appointed by the Governor. The Governor shall appoint two members to serve for one year and one to serve for two years. Thereafter, successors to such initial appointees shall serve for two years. Of these three members, one shall be a physician who treats patients with lupus and one shall be a lupus patient;

(3) One member to be appointed by the Speaker of the House of Representatives to serve for two years; and

(4) One member to be appointed by the Lieutenant Governor to serve for two years;

(c) All vacancies on the council shall be filled for the balance of the unexpired term in the same manner as the original appointment. A member of the council shall be eligible for reappointment.

(d) The members of the council shall serve without compensation but may be reimbursed for any expenses incurred by them in the performance of their duties, subject to the availability of funds.

(e) The council shall organize as soon as practicable after the appointment of its members and shall select a chairperson from among its members.

History. — Code 1981, § 31-49-2, enacted by Ga. L. 2014, p. 397, § 2/SB 352.

31-49-3. Duties and responsibilities of council.

(a) The council shall have the following duties and responsibilities:

(1) To initially investigate the level of education concerning lupus in this state; and

(2) Based on the results of its initial investigation pursuant to paragraph (1) of this Code section, to develop information on lupus endorsed by government agencies, including, but not limited to, the National Institutes of Health and the Centers for Disease Control and Prevention.

(b) The council shall develop a directory of lupus related health care services, which shall be made available on the department's website and shall include a list of health care providers specializing in the diagnosis and treatment of lupus.

History. — Code 1981, § 31-49-3, enacted by Ga. L. 2014, p. 397, § 2/SB 352.

31-49-4. Distribution of information.

(a) The department shall post the information developed by the council pursuant to paragraph (2) of subsection (a) of Code Section 31-49-3 on its website.

(b) Subject to appropriations or access to other private or public funds, the department may distribute such information to individuals with lupus, their family members, health care professionals, hospitals,

local health departments, schools, agencies on aging, employers, health plans, women's health groups, and nonprofit and community based organizations.

History. — Code 1981, § 31-49-4, enacted by Ga. L. 2014, p. 397, § 2/SB 352.

31-49-5. Annual report.

The council shall prepare annually a complete and detailed report to be submitted no later than October 1 to the Office of Health Strategy and Coordination detailing the activities of the council and may include any recommendations for legislative action it deems appropriate.

History. — Code 1981, § 31-49-5, enacted by Ga. L. 2014, p. 397, § 2/SB 352; Ga. L. 2019, p. 148, § 2-16/HB 186.

The 2019 amendment, effective July 1, 2019, substituted "no later than October 1 to the Office of Health Strategy and Coordination" for "to the Governor, the chairperson of the House Committee on Health and Human Services, and the chairperson of the Senate Health and Human Services Committee" in the middle of this Code section.

Editor's notes. — Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

31-49-6. Donations.

The council may solicit and accept donations, gifts, grants, property, or matching funds from any public or private source for the use of the council in performing its functions under this chapter.

History. — Code 1981, § 31-49-6, enacted by Ga. L. 2014, p. 397, § 2/SB 352.

CHAPTER 50

COMMISSION ON MEDICAL CANNABIS

Sec.
31-50-1 through 31-50-5 [Repealed].

31-50-1 through 31-50-5.

Reserved. Repealed by Ga. L. 2015, p. 49, § 3-1/HB 1, effective June 30, 2016.

Editor's notes. — This chapter, consisting of Code Sections 31-50-1 through 31-50-5, and relating to the Commission on Medical Cannabis, was based on Ga. L. 2015, p. 49, § 3-1/HB 1; Ga. L. 2016, p. 864, § 31/HB 737.

Ga. L. 2019, p. 1056, § 31/SB 52, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, designated this Code section as reserved.

CHAPTER 51

CREATION OF LOW THC OIL RESEARCH PROGRAM

Sec.
31-51-1. (Repealed effective July 1, 2020) Creation of program.
31-51-2. (Repealed effective July 1, 2020) Voluntary enrollment; residency.
31-51-3. (Repealed effective July 1, 2020) Authorized agents.
31-51-4. (Repealed effective July 1, 2020) Suppliers of low THC oil.
31-51-5. (Repealed effective July 1, 2020) Public record exempt from disclosure.
31-51-6. (Repealed effective July 1, 2020) Funds.
31-51-7. (Repealed effective July 1, 2020) Immunity.
31-51-8. (Repealed effective July 1, 2020) Fees.
31-51-9. (Repealed effective July 1, 2020) Rules and regulations.
31-51-10. Sunset.

Editor's notes. — Ga. L. 2015, p. 49, § 1-1/HB 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Haleigh's Hope Act.'"

Code Section 31-51-10 provides for the repeal of this chapter effective July 1, 2020.

Law reviews. — For article on the 2015 enactment of this chapter, see 32 Ga. St. U. L. Rev. 153 (2015).

31-51-1. (Repealed effective July 1, 2020) Creation of program.

(a) As used in this chapter, the term "low THC oil" shall have the same meaning as set forth in Code Section 16-12-190.

(b) The Board of Regents of the University System of Georgia may cause to be designed, developed, implemented, and administered a low THC oil research program to develop rigorous data that will inform and expand the scientific community's understanding of potential treatments for individuals under 18 years of age with medication-resistant epilepsies.

(c) Any such program shall adhere to the regulatory process established by the federal Food, Drug, and Cosmetic Act, as well as other federal laws and regulations governing the development of new medications containing controlled substances.

(d) Any universities and nonprofit institutions of higher education that conduct research may continue any research that is permitted under federal law as well as any additional research that is permitted under this chapter.

History. — Code 1981, § 31-51-1, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1; Ga. L. 2016, p. 864, § 31/HB 737.

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-2. (Repealed effective July 1, 2020) Voluntary enrollment; residency.

To the extent permissible under this chapter, any research program developed pursuant to this chapter shall be designed to permit the voluntary enrollment of all individuals under 18 years of age having medication-resistant epilepsies who are residents of this state and who:

(1) Have been residents of this state for the 24 month period immediately preceding their entry into the program; or

(2) Have been residents of this state continuously since birth if they are less than 24 months old at the time of their entry into the program.

History. — Code 1981, § 31-51-2, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-3. (Repealed effective July 1, 2020) Authorized agents.

(a) For purposes of this chapter, the board of regents may act through a unit of the University System of Georgia, a nonprofit corporation research institute, or a nonprofit institution of higher education that conducts research, or any combination thereof.

(b) Any nonprofit corporation research institute approved by the board of regents to participate in the research program established under this chapter shall be required to have the necessary experience, expertise, industry standards and security procedures, and infrastructure to implement such research in accordance with accepted scientific and regulatory standards.

(c) The board of regents and its authorized agent may enter into such agreements, among themselves and with other parties, as are reasonable and necessary to implement the provisions of this chapter.

History. — Code 1981, § 31-51-3, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.

Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-4. (Repealed effective July 1, 2020) Suppliers of low THC oil.

(a) The board of regents or its authorized agent may designate an FDA approved supplier of low THC oil and collaborate with a desig-

nated supplier to develop a clinical trial or research study protocol to study the use of low THC oil in the treatment of individuals under 18 years of age with medication-resistant epilepsies, which trial or research study shall be conducted at one or more locations in this state. Such supplier shall be required to supply a source of low THC oil that has been standardized and tested in keeping with such standards.

(b) The board of regents or its authorized agent shall work with any supplier of low THC oil to commit personnel and other resources to such collaboration and to supply low THC oil for a collaborative study under reasonable terms and conditions to be agreed upon mutually.

History. — Code 1981, § 31-51-4, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.
Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-5. (Repealed effective July 1, 2020) Public record exempt from disclosure.

Any public record, as defined by Code Section 50-18-70, produced pursuant to this chapter shall be exempt from disclosure to the extent provided by Code Section 50-18-72.

History. — Code 1981, § 31-51-5, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.
Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-6. (Repealed effective July 1, 2020) Funds.

All activities undertaken pursuant to this chapter shall be subject to availability of funds appropriated to the board of regents or to any other academic or research institution or otherwise made available for purposes of this chapter.

History. — Code 1981, § 31-51-6, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.
Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-7. (Repealed effective July 1, 2020) Immunity.

(a)(1) Research program participants and their parents, guardian, or legal custodian, employees of the board of regents designated to participate in the research program, program agents and collaborators and their designated employees, and program suppliers of low THC oil and their designated employees shall be immune from state prosecution as provided in Code Section 16-12-191.

(2) Physicians, clinical researchers, pharmacy personnel, and all medical personnel in the research program authorized by this chap-

ter shall be immune from state prosecution as provided in Code Section 16-12-191.

(b) For purposes of providing proof of research program participation, the board of regents or its agent which administers the research program authorized by this chapter shall provide appropriate permits, suitable for carrying on their persons or display, as applicable, to research program participants and their parents, guardian, or legal custodian, employees of the board of regents designated to participate in the research program, program agents and collaborators and their designated employees, program suppliers of low THC oil and their designated employees, physicians, clinical researchers, pharmacy personnel, and all medical personnel in the program.

History. — Code 1981, § 31-51-7, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.
Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-8. (Repealed effective July 1, 2020) Fees.

The board of regents may establish fees for program participants in such amounts as are reasonable to offset program costs.

History. — Code 1981, § 31-51-8, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.
Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-9. (Repealed effective July 1, 2020) Rules and regulations.

The board of regents may adopt such rules and regulations as are reasonable and necessary for purposes of this chapter.

History. — Code 1981, § 31-51-9, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.
Editor's notes. — Code Section 31-51-10 provides for the repeal of this Code section effective July 1, 2020.

31-51-10. Sunset.

This chapter shall stand repealed on July 1, 2020.

History. — Code 1981, § 31-51-10, enacted by Ga. L. 2015, p. 49, § 4-1/HB 1.

CHAPTER 52

TERMINALLY ILL PATIENT'S RIGHT TO TRY INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES

Sec.
31-52-1. Short title.
31-52-2. Legislative findings.
31-52-3. Definitions.
31-52-4. Eligibility criteria.
31-52-5. Written informed consent.
31-52-6. Manufacturers permitted to make investigational drugs, biological products, or devices available.
31-52-7. Coverage under health benefit plan permitted but not required.
31-52-8. Physician immunity from sanction for recommending, prescribing, or treating with investigational drugs, biological products, or devices.
31-52-9. State prohibited from blocking eligible patient access.
31-52-10. Statutory construction.

31-52-1. Short title.

This chapter shall be known and may be cited as the "Georgia Right to Try Act."

History. — Code 1981, § 31-52-1, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-2. Legislative findings.

(a) The General Assembly finds and declares that:

(1) The process of approval for investigational drugs, biological products, and devices in the United States protects future patients from premature, ineffective, and unsafe medications and treatments over the long run, but the process often takes many years;

(2) Patients who have terminal illnesses do not have the luxury of waiting until an investigational drug, biological product, or device receives final approval from the federal Food and Drug Administration;

(3) Patients who have terminal illnesses have a fundamental right to pursue the preservation of their own lives by accessing available investigational drugs, biological products, and devices;

(4) The use of available investigational drugs, biological products, and devices is a decision that should be made by a patient with a terminal illness in consultation with the patient's health care provider; and

(5) The decision to use an investigational drug, biological product, or device should be made with full awareness by the patient and the patient's family of the potential risks, benefits, and consequences.

(b) It is the intent of the General Assembly to allow for patients with terminal illnesses to use potentially life-saving investigational drugs, biological products, and devices.

History. — Code 1981, § 31-52-2, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-3. Definitions.

As used in this chapter, the term:

(1) "Eligible patient" means a person who meets the requirements of Code Section 31-52-4.

(2) "Investigational drug, biological product, or device" means a drug, biological product, or device which has successfully completed Phase I of a federal Food and Drug Administration approved clinical trial but has not yet been approved for general use by the federal Food and Drug Administration and currently remains under investigation in a federal Food and Drug Administration approved clinical trial.

(3) "Physician" means a person licensed to practice medicine pursuant to Article 2 of Chapter 34 of Title 43.

(4) "Terminal illness" means a disease that, without life-sustaining procedures, will result in death in the near future and is not considered by a treating physician to be reversible even with administration of current federal Food and Drug Administration approved and available treatments.

(5) "Written informed consent" means a written document that:

(A) Is signed by the patient; parent, if the patient is a minor; legal guardian; or health care agent designated by the patient in an advance directive for health care executed pursuant to Chapter 32 of Title 31;

(B) Is attested to by the patient's physician and a witness; and

(C) Meets the requirements of Code Section 31-52-5.

History. — Code 1981, § 31-52-3, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-4. Eligibility criteria.

In order for a person to be considered an eligible patient to access an investigational drug, biological product, or device pursuant to this chapter, a physician must document in writing that the person:

(1) Has a terminal illness;

(2) Has, in consultation with the physician, considered all other treatment options currently approved by the federal Food and Drug Administration;

(3) Has been given a recommendation by the physician for an investigational drug, biological product, or device; and

(4) Has given written informed consent for the use of the investigational drug, biological product, or device.

History. — Code 1981, § 31-52-4, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-5. Written informed consent.

Written informed consent shall, at a minimum, include the following:

(1) A description of the currently approved products and treatments for the terminal illness from which the patient suffers;

(2) An attestation that the patient concurs with his or her physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life; and the known risks of the investigational drug, biological product, or device are not greater than the probable outcome of the patient's terminal illness;

(3) Clear identification of the specific proposed investigational drug, biological product, or device that the patient is seeking to use;

(4) A description of the potential best and worst outcomes of using the investigational drug, biological product, or device and a realistic description of the most likely outcome. The description shall include the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by the proposed treatment. The description shall be based on the physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition;

(5) A statement that the patient understands that his or her health benefit plan is not obligated to pay for the investigational drug, biological product, or device, or any care or treatment consequent to the use of such drug, product, or device, unless such health benefit plan is specifically required to do so by law or contract;

(6) A statement that the patient understands that his or her eligibility for hospice care may be withdrawn if he or she begins treatment with the investigational drug, biological product, or device but that such hospice care may be reinstated if such treatment ends and he or she meets hospice eligibility requirements; and

(7) A statement that the patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that such liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the investigational drug, biological product, or device states otherwise.

History. — Code 1981, § 31-52-5, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-6. Manufacturers permitted to make investigational drugs, biological products, or devices available.

(a) A manufacturer of an investigational drug, biological product, or device may make available and an eligible patient may request access to the manufacturer's investigational drug, biological product, or device pursuant to this chapter; provided, however, that nothing in this chapter shall be construed to require that a manufacturer make available an investigational drug, biological product, or device to an eligible patient.

(b) A manufacturer may provide an investigational drug, biological product, or device to an eligible patient:

(1) Without receiving compensation; or

(2) With the requirement that the eligible patient pays the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device.

History. — Code 1981, § 31-52-6, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-7. Coverage under health benefit plan permitted but not required.

A health benefit plan or governmental agency may provide coverage for the cost of any investigational drug, biological product, or device pursuant to this chapter; provided, however, that nothing in this chapter shall be construed to require a health benefit plan or governmental agency to provide coverage for the cost of any investigational drug, biological product, or device pursuant to this chapter.

History. — Code 1981, § 31-52-7, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-8. Physician immunity from sanction for recommending, prescribing, or treating with investigational drugs, biological products, or devices.

The Georgia Composite Medical Board shall not revoke, suspend, sanction, fail to renew, or take any other action against a physician's license solely based on such physician's recommendation, prescription, or treatment of an eligible patient with an investigational drug, biological product, or device pursuant to this chapter.

History. — Code 1981, § 31-52-8, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-9. State prohibited from blocking eligible patient access.

No official, employee, or agent of the state shall block or attempt to block an eligible patient's access to an investigational drug, biological product, or device. Counseling, advice, or a recommendation for treatment consistent with medical standards of care shall not be construed as a violation of this Code section.

History. — Code 1981, § 31-52-9, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

31-52-10. Statutory construction.

(a) This chapter shall not be construed to create a private cause of action against a manufacturer of an investigational drug, biological product, or device or against any other person or entity involved in the care of an eligible patient using an investigational drug, biological product, or device for any harm done to the eligible patient resulting from the investigational drug, biological product, or device if the manufacturer or other person or entity is complying in good faith with the terms of this chapter and has exercised reasonable care.

(a.1) This chapter shall not be construed to create a private cause of action against a physician who refuses to recommend an investigational drug, biological product, or device for any otherwise eligible patient.

(b) Any person or entity providing treatment to an eligible patient using an investigational drug, biological product, or device shall not be liable for injury or death to such eligible patient as a result of the investigational drug, biological product, or device under Code Section 51-1-27 or 51-4-1, et seq., unless it is shown that the person or entity failed to obtain written informed consent in compliance with Code Section 31-52-5.

(c) This chapter shall not be construed to affect any required health care coverage under Title 33 for patients in clinical trials.

History. — Code 1981, § 31-52-10, enacted by Ga. L. 2016, p. 345, § 1/HB 34.

CHAPTER 53

OFFICE OF HEALTH STRATEGY AND COORDINATION

Article 1

General Provisions

Sec.
31-53-1. Legislative findings.
31-53-2. Definitions.
31-53-3. Establishment of Office of Health Strategy and Coordination; powers and duties.
31-53-4. Appointment of director; qualifications; authority; additional personnel.
31-53-5. Advisory committees; membership; function.
31-53-6. Compiling of reports; public dissemination of data.

Article 2

Georgia Data Access Forum

31-53-20. Legislative findings; public policy declaration.
31-53-21. Establishment of Georgia Data Access Forum; composition; membership.
31-53-22. Purpose.
31-53-23. Consultation with third party vendors.

Effective date. — This chapter became effective July 1, 2019.

Editor's notes. — Ga. L. 2019, p. 148, § 2-1/HB 186, not codified by the General Assembly, provides: "This part shall be known and may be cited as 'The Health Act.'"

ARTICLE 1

GENERAL PROVISIONS

31-53-1. Legislative findings.

The General Assembly finds that Georgia faces population and community health challenges. The current health infrastructure must be adapted to adequately integrate state and private resources in a manner that will serve to maximize the state's goals, including improved access to care, effective health management strategies, and cost control measures. All components of the state's health care system must be more strategic and better coordinated. The General Assembly, therefore, declares it to be the public policy of the state to unite the major stakeholders of the state's health care system under a strategic vision for Georgia. The public policy shall be realized through an agency focused on strategic health care management and coordination.

History. — Code 1981, § 31-53-1, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

31-53-2. Definitions.

As used in this chapter, the term:

(1) "Director" means the director of health strategy and coordination established pursuant to Code Section 31-53-4.

(2) "Office" means the Office of Health Strategy and Coordination established pursuant to Code Section 31-53-3.

History. — Code 1981, § 31-53-2, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

31-53-3. Establishment of Office of Health Strategy and Coordination; powers and duties.

(a) There is established within the office of the Governor the Office of Health Strategy and Coordination. The objective of the office shall be to strengthen and support the health care infrastructure of the state through interconnecting health functions and sharing resources across multiple state agencies and overcoming barriers to the coordination of health functions. To this end, all affected state agencies shall cooperate with the office in its efforts to meet such objective. This shall not be construed to authorize the office to perform any function currently performed by an affected state agency.

(b) The office shall have the following powers and duties:

(1) Bring together experts from academic institutions and industries as well as state elected and appointed leaders to provide a forum to share information, coordinate the major functions of the state's health care system, and develop innovative approaches for lowering costs while improving access to quality care;

(2) Serve as a forum for identifying Georgia's specific health issues of greatest concern and promote cooperation from both public and private agencies to test new and innovative ideas;

(3) Evaluate the effectiveness of previously enacted and ongoing health programs and determine how best to achieve the goals of promoting innovation, competition, cost reduction, and access to care, and improving Georgia's health care system, attracting new providers, and expanding access to services by existing providers;

(4) Facilitate collaboration and coordination between state agencies, including but not limited to the Department of Public Health, the Department of Community Health, the Department of Behavioral Health and Developmental Disabilities, the Department of Human Services, the Department of Economic Development, the Department of Transportation, and the Department of Education;

(5) Evaluate prescription costs and make recommendations to public employee insurance programs, departments, and governmental entities for prescription formulary design and cost reduction strategies;

(6) Maximize the effectiveness of existing resources, expertise, and opportunities for improvement;

(7) Review existing State Health Benefit Plan contracts, Medicaid care management organization contracts, and other contracts entered into by the state for health related services, evaluate proposed revisions to the State Health Benefit Plan, and make recommendations to the Department of Community Health prior to renewing or entering into new contracts;

(8) Coordinate state health care functions and programs and identify opportunities to maximize federal funds for health care programs;

(9) Oversee collaborative health efforts to ensure efficient use of funds secured at the federal, state, regional, and local levels;

(10) Evaluate community proposals that identify local needs and formulate local or regional solutions that address state, local, or regional health care gaps;

(11) Monitor established agency pilot programs for effectiveness;

(12) Identify nationally recognized effective evidence based strategies;

(13) Propose cost reduction measures;

(14) Provide a platform for data distribution compiled by the boards, commissions, committees, councils, and offices listed in Code Section 31-53-7; and

(15) Assess the health metrics of the state and recommend models for improvement which may include healthy behavior and social determinant models.

History. — Code 1981, § 31-53-3, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

31-53-4. Appointment of director; qualifications; authority; additional personnel.

(a) There is created the position of director of health strategy and coordination who shall be the chief administrative officer of the office. The Governor shall appoint the director who shall serve at the pleasure of the Governor.

(b) The director shall have such education, experience, and other qualifications as determined by the Governor.

(c) The director shall consult with the Governor on determining state priorities and adoption of a state strategy.

(d) The director may contract with other agencies, public and private, or persons as he or she deems necessary for carrying out the duties and responsibilities of the office.

(e) The director may employ such other professional, technical, and clerical personnel as deemed necessary to carry out the purposes of this chapter.

History. — Code 1981, § 31-53-4, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

31-53-5. Advisory committees; membership; function.

(a) The director shall have the power to establish and abolish advisory committees as he or she deems necessary to inform effective strategy development and execution.

(b) Membership on an advisory committee shall not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(c) An advisory committee shall elect a chairperson from among its membership.

(d) Members of an advisory committee shall serve without compensation, although each member of an advisory committee shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the office. Such reimbursement shall be limited to all travel and other expenses necessarily incurred through service on the advisory committee, in compliance with the state's travel rules and regulations; provided, however, that in no case shall a member of an advisory committee be reimbursed for expenses incurred in the member's capacity as the representative of another state agency.

(e) Policy proposals and strategies under consideration that arise from the efforts of an advisory committee must be presented to all members of the advisory committee with an opportunity to comment.

(f) An advisory committee shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. An advisory committee shall also meet on the call of the director or the Governor;

(2) Maintain minutes of its meetings;

(3) Identify and report to the director any federal laws or regulations that may enable the state to receive and disburse federal funds for health care programs;

(4) Advise the director if it needs additional members or resources to conduct its defined duties; and

(5) Provide a final report with supporting documentation to the director.

History. — Code 1981, § 31-53-5, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

31-53-6. Compiling of reports; public dissemination of data.

(a) The office shall compile reports received from the following boards, commissions, committees, councils, and offices pursuant to each such entity's respective statutory reporting requirements:

(1) The Maternal Mortality Review Committee;

(2) The Office of Women's Health;

(3) The Commission on Men's Health;

(4) The Renal Dialysis Advisory Council;

(5) The Kidney Disease Advisory Committee;

(6) The Hemophilia Advisory Board;

(7) The Georgia Council on Lupus Education and Awareness;

(8) The Georgia Palliative Care and Quality of Life Advisory Council;

(9) The Georgia Trauma Care Network Commission;

(10) The Behavioral Health Coordinating Council;

(11) The Department of Public Health on behalf of the Georgia Coverdell Acute Stroke Registry;

(12) The Office of Cardiac Care; and

(13) The Brain and Spinal Injury Trust Fund Commission.

(b) The office shall maintain a website that permits public dissemination of data compiled by the boards, commissions, committees, councils, and offices listed in subsection (a) of this Code section.

History. — Code 1981, § 31-53-6, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

Editor's notes. — The Commission on Men's Health, referred to in paragraph (a)(3) above, was repealed by Ga. L. 2019,

p. 919, § 10-1/HB 553, effective July 1, 2019.

The Renal Dialysis Advisory Council, referred to in paragraph (a)(4) above, was repealed by Ga. L. 2019, p. 919, § 11-1, effective July 1, 2019.

ARTICLE 2

GEORGIA DATA ACCESS FORUM

31-53-20. Legislative findings; public policy declaration.

(a) The General Assembly finds that:

(1) Cost of care, diagnostic metrics, care gaps, and best practices are best analyzed with large-scale data;

(2) The current data infrastructure must be adapted to adequately integrate state and private resources in a manner that will serve the divergent needs of the state;

(3) All components of state data collection and dissemination infrastructure must be more strategic and better coordinated to serve policy makers and health care providers; and

(4) A more robust data base will also serve as a platform to provide resources to the public for healthy living and cost transparency.

(b) The General Assembly, therefore, declares it to be the public policy of this state to unite the major stakeholders of the state's health care system under a common data platform. The public policy of the state will be served by restructuring data silos to inform policy makers, health care providers, and consumers.

History. — Code 1981, § 31-53-20, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

31-53-21. Establishment of Georgia Data Access Forum; composition; membership.

(a) The office shall convene a Georgia Data Access Forum composed of health care stakeholders and experts, including representatives from:

(1) The Georgia Health Information Network;

(2) Hospital associations;

(3) Physician associations;

(4) Pharmacy associations;

(5) Dental associations;

(6) The Department of Community Health;

(7) The Department of Public Health;

(8) The Department of Behavioral Health and Developmental Disabilities;

(9) The Insurance Commissioner's Office;

(10) Insurance carriers; and

(11) Self-insured employers.

(b) Membership on the Georgia Data Access Forum shall not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(c) Members shall serve without compensation, although each member shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the office. Such reimbursement shall be limited to all travel and other expenses necessarily incurred through service on the forum, in compliance with this state's travel rules and regulations; provided, however, that in no case shall a member be reimbursed for expenses incurred in the member's capacity as the representative of another state agency.

History. — Code 1981, § 31-53-21, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

31-53-22. Purpose.

The purpose of the Georgia Data Access Forum shall be to make recommendations to the office on:

(1) Conducting a baseline analysis of the current data base infrastructure;

(2) Identifying common goals for the state and stakeholders;

(3) Prioritizing desired data base functions;

(4) Securing proposals for data base platforms;

(5) Analyzing existing systems and technology that can be leveraged into a streamlined system;

(6) Analyzing system security and available data that can be leveraged into a streamlined system;

(7) Estimating and evaluating costs to various stakeholders;

(8) Establishing a timeline for implementation;

(9) Determining whether a tiered approach is necessary for implementation;

(10) Establishing a timeline for a tiered roll out;

(11) Establishing a short-term and long-term approach to funding the data base;

(12) Identifying appropriate funding sources other than the general fund;

(13) Recommending legislation necessary for data security;

(14) Recommending legislation necessary for stakeholder cooperation or protection;

(15) Recommending legislation necessary to capture data;

(16) Determining the appropriate agency or entity to manage the ongoing operation of the data base;

(17) Describing the relative benefits to the various stakeholders;

(18) Identifying population health tools; and

(19) Determining the cost, feasibility, and timeframe to implement a consumer health cost tool.

History. — Code 1981, § 31-53-22, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.

31-53-23. Consultation with third party vendors.

(a) Third-party vendors may be contacted for expertise at the director's discretion to assist the Georgia Data Access Forum in formulating its recommendations pursuant to Code Section 31-53-22.

(b) Third-party vendors may be consulted and permitted to offer proposals and make presentations to the office and the Georgia Data Access Forum.

History. — Code 1981, § 31-53-23, enacted by Ga. L. 2019, p. 148, § 2-2/HB 186.