



# Georgia Health Law Developments

A Publication of the Health Law Section of the State Bar of Georgia

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### PLUS OCTOBER 19TH SEMINAR AND ANNUAL MEETING

#### NOTICE

The articles which are published in *Georgia Health Law Developments* are sole responsibility of their respective authors, and do not represent any views or opinions of the State Bar of Georgia or of the Health Law Section.

## MESSAGE FROM THE CHAIR

We hope you will be able to join us for our annual meeting, which will be held during the October 19, 2007 luncheon of the Advanced Health Care Law seminar. At that time, we will discuss Section business and elect Section officers for the coming year.

Additionally, the Executive Committee put together a wonderful panel of speakers for the Advanced Health Care Law seminar who will address timely topics such as Medicare and Medicaid investigations and appeals, and recent developments in Stark, managed care, and medical staff matters. (The agenda is included below and walk-ins are welcome).

In 2007, the Section also served as co-sponsor of two other seminars with ICLE: the Fundamentals of Health Care Law seminar and the Toxic Torts seminar. These seminars will be offered again in early 2008, and we hope to see you there.

Finally, we would like to thank Stan Jones and Helen Sloat for once again providing us with a comprehensive Legislative Summary, which not only reviews the 2007 Legislative session, but also provides a view towards the 2008 Legislative session. This is a perfect preview for our panel discussion on that very topic at the Advanced Health Law seminar.

Thank you for allowing me to serve as the Chair of the Health Law Section. I look forward to seeing you on October 19th.

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**2007 LEGISLATIVE UPDATE  
WITH A VIEW TOWARDS THE  
2008 LEGISLATIVE SESSION**

*By*

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**NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.**

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### Legislative Update 2007 Edition

In what was the longest Legislative Session in Georgia history, the General Assembly adjourned Sine Die on April 20, 2007. Despite the length of the Session, relatively few measures passed. Governor Perdue had forty calendar days to consider whether to sign or veto Bills or let them become law without formal signature. That timeframe expired on May 20, 2007. In total, Governor Perdue vetoed forty-one Bills – a record number of vetoes. Most of the vetoes preserved executive department discretion rather than permit legislative control or were justified as administrative efficiencies. Notes from veto messages are included in this Update below.

House, Senate, and Governor's Office tempers waged during the Session on the State's Budget Bills HB 94 and HB 95, and have continued to simmer since. On Day 38, the Governor, on television, announced his veto of the State's Supplemental Budget, HB 94, because of controversy over the refunding of \$142 million in property taxes to property owners as he believed that the money should have been placed in the State's "rainy day" fund. The House then took action, having never done so before, to override the Governor's veto. The Speaker of the House, Glenn Richardson (R-Hiram), urged House Members "to do the right thing" and overturn the veto, and in a vote of 163 to 5 on April 20, 2007, the House did so. The Senate opted not to override the veto because the formal veto message and attached Bill had not yet been delivered to the General Assembly. In the end, the Governor rescinded his veto and no Special Session was called to resolve the Budget.

In the health arena, the 2007 discussion on certificate of need ("CON") deregulation continues as no real resolution was reached during the Session. The Department of Community Health ("Department" or "DCH") took action to revise the powers of the Health Strategies Council, which became an *advisory* council in August. The Department is pursuing revisions to regulations this fall to deal with the general surgeons' ambulatory surgery center ("ASC") exemption issue, which will likely be a subject of debate. The General Assembly may get weary of the issue, but it could serve as good campaign fodder for the November 2008 elections. Over the summer, the Governor and Lieutenant Governor proposed health reforms for the uninsured which will require legislative action for either to be pursued. In the coming national election, similar health reforms could also propel state solutions. Newt Gingrich's health transformation ideas have received some State Senate support and could gain enough steam for action as another Study Committee is

researching his proposals during this interim. Following the *Atlanta Journal-Constitution's* series on deaths in the State-owned hospitals, the Governor's Mental Health Commission has been named and will commence reviewing the Department of Human Resources' system and addressing all the departments, where responsibility for mental health services reside. The United States Department of Justice is also investigating the State's hospital system.

More than ten CON Bills were proposed with only three passing out of the House Special Committee on Certificate of Need, chaired by Rep. Sharon Cooper (R-Marietta), and only one of those three reaching the House Floor. That single Bill, exempting general surgeons from CON requirements, was recommitted upon a motion by Rep. Mickey Channell (R-Greensboro) late on the 38th legislative day. 2008 action seems likely, but some regulatory changes may be made this fall by the DCH Board. On October 11, 2007, the DCH Board approved for public comment regulations that would result in some changes along the lines proposed in certain CON Bills. The major legislative issues are an ambulatory surgery center exemption from CON review for general surgery; indigent care and Medicaid requirements, on existing ASCs; CON-covered imaging centers; and a specialty hospital moratorium.

It appears clear that, in 2008, the General Assembly intends to discuss tax reform, including Arthur Laffer's "flat tax" proposal in HR 900, offered by Speaker Richardson on the last day of the 2007 Session. This version of economic growth substitutes a flat goods and services tax for corporate and individual income tax. Existing sales and use tax exemptions are eliminated and some new services are taxed. Typically, property taxes are also reduced at the county level as the State supplies more moneys from the newer taxes to the counties. Other tax reform proposals have been narrower economic incentives, tax credits or income tax exemptions for types of activities or investments that generate new jobs. The Governor has also discussed State personal income tax relief for senior citizens. Numerous study committees have explored tax-related issues in 2006 and 2007. Speaker Richardson appears intent on some type of tax reform and continues speaking about his ideas around the State. Lt. Governor Cagle, however, has postponed any endorsement, wanting to see additional facts before making any decision on tax changes.

Bills, which were not passed or "killed" during the 2007 Session, are technically alive for the second year of the

Legislative Cycle in 2008, and eligible for additional action. Many of the Bills described in the Update below will likely have further action. While the CON discussion has shifted in part to the regulatory area, the CON ideas are not dead and will likely take the 2008 stage with perhaps some tackling procedural changes discussed as possible reforms.

Due to the numerous Bills and Resolutions proposed, this Update contains primarily those pieces of legislation which were passed or vetoed in 2007. The included Bills and Resolutions are divided by topic area.

### **BIRTH CERTIFICATES/DEATH CERTIFICATES**

*Three initiatives were offered with all remaining in their assigned House committees:*

- *HB 15 – permitting a birth certificate to be issued for a fetal death occurring between January 1, 2006 and July 1, 2007 upon submission of such proof of birth, by Rep. Meadows (R-Calhoun)*
- *HB 44 – providing that death certificates must be completed by the attending physician or other appropriate person within 72 hours of death of the individual in a hospice, nursing home, or hospital, by Rep. Sims (R-Ambrose)*
- *HB 244 – requiring a hospital where the pronouncement of death was made shall within 24 hours notify the coroner of the county where the original acts or events resulting in the death occurred, by Rep. Sims (R-Ambrose).*

### **CERTIFICATE OF NEED**

*Sen. Balfour (R-Snellville), who served on the State Commission on the Efficacy of CON, proposed a Bill which generally followed the hospital industry's position to more tightly regulate ASCs and make some procedural changes to the process. His Bill, SB 164, was not pursued this Session. Rep. Scott (R-Tifton), who also served on the CON Commission, introduced his version of reforms, HB 210, which received a hearing before the House Special Committee on CON but had no other action. HB 263, by Rep. Chambers (R-Atlanta), proposed the repeal of Georgia's Certificate of Need ("CON") law. Rep. Graves (R-Ranger) offered a Bill amending O.C.G.A. § 31-6-2 and the definition of "new institutional health service" to treat general surgery in the same exempt manner as other single surgical specialties, including applicable rules and regulations of the Department. This initiative by Rep. Graves, HB 337, was passed by the House Special Committee on Certificate of Need and made its way to the House Floor where it was recommitted to Committee rather than being killed or moved forward. Rep. Rice (R-Norcross) offered HB 376*

*which proposed a new definition in O.C.G.A. § 31-6-2 for "new institutional health service" but his Bill also made no movement out of the House Special Committee on CON. Rep. Channell (R-Greensboro) proposed HB 581, which gained discussion in the House Special Committee on CON but failed to pass out of the Committee. Rep. Royal (R-Camilla) offered a more limited Bill, HB 765, to exempt licensed pharmacists and licensed practical nurses or registered nurses employed by a home health agency or home infusion agency, who also administer injectable medications in a patient's home, from Certificate of Need requirements; his Bill also remained in Committee. The two Bills which had greater discussion were:*

**\* SB 53 \*** – Sen. Williams (R-Lyons), who is also the Senate Majority Leader, offered this Bill on behalf of Cancer Treatment Centers of America. It proposed to provide an "exemption for the development and offering of new institutional health services by acute cancer hospitals with 50 or fewer beds that specialize in advanced cancer treatment and that have a majority of their patients originating from outside the State of Georgia" in O.C.G.A. § 31-6-47. Hearings were held on this initiative but it never reached the Senate Floor for a vote, losing in the Senate Health and Human Services Committee by a vote of 6 to 8. A similar Bill, HB 249, was offered by Rep. Stephens (R-Savannah). His version would provide that certain destination acute care cancer specialty hospitals are subject to limited CON requirements (without a need standard) and would require them to provide 3% indigent care (of adjusted gross revenues) as a condition of receiving a certificate of need. HB 249 was also brought at the request of Cancer Treatment Centers of America; it passed out of Committee, but failed to clear the House Rules Committee.

**\* HB 568 \*** – Rep. Golick (R-Smyrna) proposed this Bill on behalf of Governor Perdue to amend Georgia's law on Certificate of Need. The Bill followed the Commission's recommendations to some degree, but it offered general surgeons an ambulatory surgery center exemption. After several revisions, the Bill made progress, including numerous hearings before the House Special Committee on Certificate of Need where it passed. The Bill never came to the House Floor for a vote due to the absence of an agreed-to compromise between the Governor's staff, hospitals, and physician specialty groups. This Bill is likely to be the basis for any 2008 compromise.

### **CHIROPRACTORS' SCOPE OF PRACTICE**

**\* SB 102 \*** – Sen. Balfour (R-Snellville) authored this Bill expanding the scope of practice for chiropractors with the end result not as "expanded" as the chiropractors had

originally proposed. A definition of "subluxation" was added to mean "a complex of functional or pathological articular changes that compromise neural integrity and general health. A subluxation is evaluated, diagnosed, and managed through the use of chiropractic procedures based on the best available rational and empirical evidence." Other changes were made in O.C.G.A. § 43-9-16 including subparagraphs (a) and (b):

(a) Chiropractors who have complied with this chapter shall have the right to practice chiropractic as defined in paragraph (2) of Code Section 43-9-1 and to evaluate, diagnose, and adjust patients according to specific chiropractic methods in order to correct spinal subluxations or to adjust the articulations of the human body. Chiropractors shall observe all applicable public health regulations.

(b) The chiropractic adjustment of the spine or articulations of the human body may include manual adjustments and adjustments by means of electrical and mechanical devices which produce traction or vibration. Chiropractors who have complied with this chapter may also use modalities. Modalities include any physical agent applied to produce therapeutic change to biologic tissues including thermal, acoustic, noninvasive light, mechanical, or electric energy, hot or cold packs, ultrasound, galvanism, microwave, diathermy, and electrical stimulation. Chiropractors who have complied with this chapter may utilize and recommend therapeutic procedures effecting change through the application of clinical skills and services that attempt to improve function, including therapeutic exercise, therapeutic activities, manual therapy techniques, massage, and structural supports as they relate to the articulations of the human body; provided, however, the same shall not be construed to allow chiropractors to treat patients outside the scope of practice of chiropractic as set forth in this chapter.

The changes took effect upon the signature of the Governor as Act No. 251 on May 24, 2007.

### **DEPARTMENTS OF COMMUNITY HEALTH AND HUMAN RESOURCES**

*Proposals were offered addressing the duties of both Departments. HB 47, by Rep. Stephens (R-Savannah), proposed combining the Departments of Community Health and Human Resources ("DHR") to be known as the Department of Health; his legislation remains in the House Health and Human Services Committee. Rep. Stephens (R-Savannah) proposed a change to O.C.G.A. § 49-4-158, in HB 456, to require that the Department of Community Health and managed care organizations with whom they contract to include county health departments as providers. HB 456 remained in the House Health and*

*Human Services Committee. Rep. Butler (R-Carrollton), proposed HB 514 amending Chapter 1 of Title 31 to create a State Commission on Government Health Services Reform so a determination could be made about whether DHR and DCH should be "restructured so that health services, finance, and regulatory oversight are under the sole purview of a single State agency at the department level, and human services and welfare programs are under the purview of a single State agency at the department level." While HB 514 cleared the House Health and Human Services Committee, it never reached the House Floor.*

**\* HB 155 \*** – Rep. Willard (R-Atlanta) authored this proposal to add a new Code Section at O.C.G.A. § 49-2-14.1 to permit the Department of Human Resources the ability to obtain criminal background information on owners of personal care homes, private home care providers, community living arrangements, and child welfare agencies and a process to conduct these background checks through the Georgia Crime Information Center and Federal Bureau of Investigation. Any owner found with a criminal background will not be permitted to operate or hold a license to operate such a facility. Governor Perdue signed this Bill into law as Act No. 208 on May 23, 2007 which takes effect on July 1, 2007.

**\* HB 505 \*** – Rep. Butler (R-Carrollton) proposed in Title 49 that the Department of Human Resources charge fees for the licensing of adult day centers. Adult day centers' licensure was passed several years ago, but no fees were ever assessed for licensing and inspection to occur. This Bill places the requirement on the collection of the fees in O.C.G.A. § 49-6-86 so that the Department of Human Resources is to collect "reasonable application fees, license fees, renewal fees, or other similar fees" relating to the licensure of adult day centers. Once collected, the General Assembly would appropriate the fees' use in supporting the licensing, inspecting and monitoring of the centers. An amendment was added to this legislation, in the Senate Finance Committee, to change provisions relating to recovery of assistance from third parties liable for sickness, injury, disease, or disability and expanding obligations of insurers, managed care entities, and pharmacy benefit managers. These revisions were made in O.C.G.A. § 49-4-148(b), clarifying when Medicaid was the payor of last resort. It would require that insurance plans and pharmacy benefit managers provide to the Department, on a quarterly basis, eligibility and claims payment data regarding applicants for medical assistance or recipients of medical assistance. Another provision is that an insurer could not deny a claim submitted solely on the basis of the date of submission, type or format of the claim, or a failure to present proper documentation at the point-of-sale. The initiative was signed as Act No. 216 on May 23, 2007.

The portion of the legislation dealing with the adult day centers licensure will become effective only if funds are specifically appropriated under the Act in an appropriations act making specific reference to this Act. Other portions took effect on July 1, 2007.

### EDUCATION FOR DISABLED CHILDREN

*The most significant education Bills, which passed, included the Charter School System Bill sponsored by Lt. Governor Cagle (R-Gainesville) and the scholarships for students suffering from disabilities to attend private schools by Sen. Johnson (R-Savannah). Two other noteworthy Bills were offered: 1) Rep. Manning's (R-Marietta) HB 654 (proposed a Student Asthma Management Act); and 2) Rep. Wilkinson's (R-Sandy Springs) HB 692 (proposed that the Department have a recognition program to acknowledge secondary schools which provide instruction and certification on the use of automated external defibrillators to its students as well as hospitals that provide community education and training to students and other laypersons on the use of these devices). HB 654 never cleared the House Education Committee and HB 692 stalled in the House Rules Committee.*

**\* SB 10 \*** – Sen. Johnson (R-Savannah) proposed enactment of the "Georgia Special Needs Scholarship Act" in Chapter 2 of Title 20. The proposal permits students with disabilities having special needs that merit educational alternatives to allow those students the ability to learn in alternative settings. The resident school system must annually notify parents, of children with disabilities, prior to the beginning of each school year a letter of the options available to the parent. The parent may choose for the student to attend another public school within the resident school system, with available space and which has a program with the services agreed to in the student's existing individualized education program (parents would be responsible for the child's transportation); the parent may choose to enroll the child in and transport the child to a public school outside of the child's resident school system which has available space and which has a program with the services agreed to in the student's existing individualized education program; the parent may choose for the student to attend one of the State schools for the deaf and blind if appropriate for the child's needs; or the parent may request and receive from the Department a scholarship for the student to enroll in and attend a participating private school. Qualification criteria are outlined such as:

- Student's parents must reside in Georgia and have been Georgia residents for at least one year
- Student has one or more disabilities (autism; deaf/blind; deaf/hard of hearing; emotional and behavioral disorder; intellectual disability;

orthopedic impairment; other health impairment; specific learning disability; speech-language impairment; traumatic brain injury or visual impairment)

- Student has spent the prior school year in attendance at a Georgia public school and has had an Individualized Education Program written by the school in accordance with federal and state laws/regulations
- Parent obtains acceptance for admission of the student to a participating school
- Parent submits an application for a scholarship to the Department no later than the deadline published by the Department

Students enrolled in a school operated by the Department of Juvenile Justice are not eligible for the scholarship. The scholarship remains in effect until the student returns to the assigned school, graduates from high school or reaches the age of 21 (whichever occurs first). Acceptance of the scholarship has the same effect as parental refusal to consent to services pursuant to the Individuals with Disabilities Act, 20 U.S.C.A. Section 1400 et seq. There are also criteria for participating schools to meet (such as the school must be physically located in Georgia). Home school programs are ineligible from enrolling scholarship students. Residential treatment facilities licensed or approved by the State are also ineligible from enrolling scholarship students. The Bill also outlines requirements on participating schools which intend to take students through the scholarship process (schools intending to enroll children in the 2007-2008 school year must have submitted an application no later than June 30, 2007). The maximum amount of the scholarship will be equivalent to the costs of the educational program that would have been provided for the student in the resident school system and will not include any federal funds. Payments would be made to the parent by "individual warrant made payable to the student's parent and mailed by the Department to the participating school of the parent's choice, and the parent shall restrictively endorse the warrant to the participating school for deposit into the account of such school." Reports would be made by the Office of Student Achievement no later than December 1 annually concerning the numbers of children participating in the schools. A similar Bill, HB 199 by Rep. Casas, failed in Committee this year; it proposed to provide students with an option to attend a public school other than the one to which they were assigned or to receive scholarship funding to attend a private school. HB 199 could be a "vehicle" for similar issues in 2008. SB 10 became Act No. 117 on May 18, 2007; it took effect upon signature and applies to the 2007-2008 school year and subsequent school years.

**\* SB 168 \*** – Sen. Smith (R-Rome) offered an amendment to Part 3 of Article 6 of Chapter 2 of Title 20, enacting the "Deaf Child's Bill of Rights Act" to require school systems in O.C.G.A. § 20-2-152.1 to take into account the child's needs and develop an individualized education program, considering the following:

- (b)(1) The child's individual communication mode or language;
  - (2) The availability to the child of a sufficient number of age, cognitive, and language peers of similar abilities;
  - (3) The availability to the child of deaf or hard-of-hearing adult models of the child's communication mode or language;
  - (4) The provision of appropriate, direct, and ongoing language access to teachers of the deaf and hard of hearing and interpreters and other specialists who are proficient in the child's primary communication mode or language; and
  - (5) The provision of communication-accessible academic instruction, school services, and extracurricular activities.
- (c) To enable a parent or guardian to make informed decisions concerning which educational options are best suited to the parent's or guardian's child, all of the educational options provided by the school system and available to the child at the time the child's individualized education program is prepared shall be explained to the parent or guardian.
- (d) No deaf or hard-of-hearing child shall be denied the opportunity for instruction in a particular communication mode or language solely because:
- (1) The child has some remaining hearing;
  - (2) The child's parent or guardian is not fluent in the communication mode or language being taught; or
  - (3) The child has previous experience with some other communication mode or language.
- (e) Nothing in this Code section shall preclude instruction in more than one communication mode or language for any particular child. Any child for whom instruction in a particular communication mode or language is determined to be beneficial shall receive such instruction as part of the child's individualized education program.
- (f) Notwithstanding the provisions of paragraph (2) of subsection (b) of this Code section, nothing in this Code section shall be construed to require that a specific number of peers be provided for a child who is deaf or hard of hearing.
- (g) Nothing in this Code section shall require a school system to expend additional resources or hire additional personnel to implement the provisions of this Code section.

This Governor signed this Bill as Act No. 201, and its provisions took effect on July 1, 2007.

### EMERGENCY MANAGEMENT/TRANSPORTATION/ SYSTEMS

*In addition to the passed initiatives, other ideas surfaced this Session concerning emergency management-related matters:*

- SB 33, by Sen. Harbison (D-Columbus), proposed adding Article 8 to Chapter 3 of Title 38 to authorize the development and implementation of a statewide first responder building mapping information system in order to better prepare for disasters, criminal acts, and acts of terrorism. SB 33 remains in the House Judiciary Committee.
- SB 202, by Sen. Rogers (R-Woodstock), proposed amending "Mattie's Call Act" and "Kimberly's Call" in O.C.G.A. § 38-3-110 et seq. His proposal would move the Act to Chapter 3 of Title 35 of the Code so that this statewide alert system for missing disabled adults and for unapprehended murder or rape suspects would be under the control of the Georgia Bureau of Investigation. SB 202 failed to clear the House Rules Committee.
- SB 305, by Sen. Shafer (R-Duluth), proposed changes in O.C.G.A. § 38-3-36 and incorporated O.C.G.A. § 51-1-29.2 to provide a limitation on civil liability to persons and businesses who are working in coordination and under a direct appropriate State Agency, when voluntarily provide services or goods in time of an emergency (such as a biological, chemical, nuclear, terrorism, pandemic, or epidemic of infectious disease or catastrophic natural event) when that activity has been the result of an emergency declaration by the Governor. SB 305 remains in the Senate Judiciary Committee. An amendment was also tacked onto HB 89, by Rep. Bearden (R-Villa Rica), to provide immunity for "good Samaritans" in O.C.G.A. § 51-1-29.2 when those individuals were volunteers in the time of biological, chemical, or nuclear agents; terrorism; pandemics or epidemics of infectious disease; or catastrophic acts of nature and which were declared emergencies by the Governor. HB 89 stalled in the Senate Rules Committee.
- HB 71, by Rep. Day (R-Tybee Island), offered amendments to Titles 36 and 38 to require local elected officials complete a course of training in comprehensive emergency preparedness. The Bill remains in the House Governmental Affairs Committee.
- HB 73, by Rep. Day (R-Tybee Island), proposed changes in Titles 31 and 38 to provide for emergency transportation for the elderly, disabled persons and children receiving long-

term health care in a facility during a state of emergency. HB 73 remains in the House Health and Human Services Committee.

**\* HB 76 \*** – Rep. Day (R-Tybee Island) authored amendments to Chapter 3 of Title 38 to require permission for use of the Georgia Emergency Management Agency's and Georgia Information Sharing and Analysis Center's nomenclature and symbols. While passed by the General Assembly, Governor Perdue **vetoed** this Bill as Veto No. 7 on May 30, 2007, stating that the Homeland Security Director, not GEMA's director, has jurisdiction over Georgia Information Sharing and Analysis Center.

**\* HB 394 \*** – Rep. Lunsford (R-McDonough) introduced changes in Titles 16 and 46 to establish an offense of unlawful conduct for individuals who contact a 9-1-1 system if the caller:

- (1) Without provocation, uses obscene, vulgar, or profane language with the intent to intimidate or harass a 9-1-1 communications officer;
- (2) Calls or otherwise contacts 9-1-1, whether or not conversation ensues, for the purpose of annoying, harassing, or molesting a 9-1-1 communications officer or for the purpose of interfering with or disrupting emergency telephone service;
- (3) Calls or otherwise contacts 9-1-1 and fails to hang up or disengage the connection for the intended purpose of interfering with or disrupting emergency service;
- (4) Calls or otherwise contacts 9-1-1 with the intention to harass a communications officer; or
- (5) Calls or otherwise contacts 9-1-1 and makes a false report.

The Bill also amends Chapter 5 of Title 46, the Georgia Emergency Telephone Number 9-1-1 Service Act of 1977, so that new technology will bear the cost of providing life-saving services through this system. New definitions are provided for a number of terms including "prepaid wireless service," "telephone service," "voice over Internet Protocol service," and "voice over Internet Protocol service supplier." The current 9-1-1 Advisory Committee membership is also altered with changes to meetings, quorums, and duties and responsibilities. A 9-1-1 charge will be imposed on all prepaid wireless services in O.C.G.A. § 46-5-134.2 with the Bill outlining how this supplier will charge and collect this fee. Fees collected will be paid to the Department of Community Affairs. This Bill became Act No. 211 on May 23, 2007 and took effect on July 1, 2007.

### FAITH-BASED INITIATIVES

*Republican interest persists with the notion of amending Georgia's Constitution to permit greater freedom for use of public funding by faith-based groups of social services. Two proposals of interest were:*

- *SR 345, by Sen. Heath (R-Bremen), which proposed an amendment to the State's Constitution in Paragraph VII, Section II of Article I in an effort to prevent discrimination in the public funding of social services by allowing religious or faith based organizations to receive public aid, directly or indirectly. Sen. Heath's amendment would align the State Constitution with the United States Constitution. SR 345 never cleared the Senate Rules Committee as there not enough requisite number votes to pass the Bill on the Floor, so no further Committee action was taken this year.*
- *Another proposal was SR 400, by Sen. Chapman (R-Brunswick), which proposed a Constitutional Amendment to Section V of Article VII providing for a program of State income tax credits for charitable contributions to nonprofit organizations providing health or social services which reduce the need for government services. The maximum creditable contribution by any taxpayer to any one nonprofit shall be \$10,000.00 per tax year (cap on the credit is included of no less than \$100 million per year). SR 400 cleared the Senate and now is assigned to the House Ways and Means Committee.*

### FRAUD, WASTE AND ABUSE

**\* HB 16 \*** – Rep. Golick (R-Smyrna), one of the Governor's Floor Leaders, offered this change to O.C.G.A. § 45-1-4(a) as a part of the Governor's legislative package. The revisions expand the list of employees, officials, and administrators who may be protected by the provisions in reporting fraud, waste and abuse in State programs and operations. It would cover employees, officials and administrators of any agency covered under the State Merit System of Personnel Administration and any local or regional governmental entity that receives any funds from the State or any State agency. Once passed, Governor Perdue signed this Bill as Act No. 206 on May 23, 2007, and it became effective on July 1, 2007.

### FUNERAL HOMES/CEMETERIES

*A couple of other initiatives surfaced in this Session aside from those passed items mentioned below. HB 278, by Rep. Thomas (D-Atlanta), proposed to require a plat marked with the location of a grave space be attached to*

any contract in O.C.G.A. § 10-14-18. This initiative remains in the House Agriculture and Consumer Affairs Committee. Another proposal, by Rep. Mitchell (D-Atlanta), proposed changes governing the hours of operation of a funeral and embalming service. HB 299 remained in the House Regulated Industries Committee.

**\* SB 204 \*** – Sen. Thomas (R-Dalton) offered amendments to Article 2 of Chapter 21 of Title 31 to create the Board for the Distribution of Cadavers, which would expedite the delivery of unclaimed cadavers to medical, osteopathic medical and dental colleges. Language is also provided in the Bill to allow that no school or college shall receive said bodies unless they provide a bond to the Department of Human Resources. The law previously required that this bond must be given to the Governor. This Bill was signed by the Governor on May 24, 2007 as Act No. 246 and became effective on July 1, 2007.

**\* HB 90 \*** – Rep. Sims (R-Ambrose) offered changes in Chapter 18 of Title 43 providing for reciprocity of licensure of funeral directors and establishments, embalmers, and crematories, if the person seeking a license has engaged in the active practice of funeral service as a licensed funeral director and embalmer for three years immediately preceding his or her application for a license in Georgia. The Bill also requires that a funeral home have actual caskets or models, mock-ups, or sections of caskets or similar items if all such caskets are available. Those items must be in stock for purchase at the establishment or available for delivery within 24 hours. Furthermore, the Bill requires that each funeral establishment maintain on the premises at each of its locations an adequate stock of funeral caskets (not less than eight and must meet such other criteria as necessary to protect the public). HB 90 became Act No. 263 on May 29, 2007; its provisions took effect on July 1, 2007.

**\* HB 391 \*** – Rep. Rogers (R-Gainesville) authored amendments to O.C.G.A. § 10-14-3 (with new definitions for burial merchandise, entombment, and inurnment) and O.C.G.A. § 43-8B-5 concerning cemetery and funeral services board member requirements (six members that are practicing cemeterians with at least five years of experience and one member who has no connection to the cemetery profession). Governor Perdue signed this Bill as Act No. 227 on May 24, 2007, and it became effective on that date.

### HEALTHCARE GENERALLY

Numerous Bills on health-related subjects were offered. HB 24, the new advanced directives legislation, passed; SB 148, the initiative regarding stem cell research also passed. Other noteworthy ideas included:

- SB 45, a Bill by Sen. Thomas (R-Dalton), proposed in Chapter 2 of Title 31 the creation of a task force and a plan of education for chronic kidney disease. This Bill remains in the House Health and Human Services Committee.
- SB 51, a Bill by Sen. Smith (R-Rome), proposed to amend Chapter 2 of Title 49 to permit the Department of Human Resources the ability to obtain a national criminal history on owners of personal care homes, private home care providers, and child welfare agencies. This would prohibit any owner of any of the facilities to operate a licensed facility in Georgia without first submitting to a criminal history background check. This Bill remains in the Senate Health and Human Services Committee.
- SB 57, by Sen. Untermyer (R-Buford), proposed amending Chapter 44 of Title 31. This Bill aims to define clearly the requirements for dialysis technicians and the certification required to become a certified dialysis technician in order to provide for better healthcare. SB 57 stalled in the House Rules Committee.
- SR 22 – Sen. Judson Hill (R-Marietta) offered this Resolution to create the Hospital Health Care Standards Commission for Prevention of Hospital-Acquired Infections. This Commission would consist of 15 persons. The Senate adopted this Resolution, and it was forwarded to the House where it remains in the House Health and Human Services Committee.
- HB 235, by Rep. Shipp (D-Atlanta), proposed in Title 31 to provide that additional persons be authorized to consent to surgical or medical treatment on behalf of an incapacitated person. Additional persons would include any niece or nephew for his/her aunt or uncle, any aunt or uncle for his/her niece or nephew, any cousin for his/her cousin and any person who has an affidavit stating that he or she meets the requirements as a competent adult (and does not receive compensation from the patient). Current law permits an adult child for parents; a parent of an adult child; an adult for his/her brother or sister; and a grandparent for his or her grandchild to make those decisions. The initiative never cleared the House Rules Committee.
- HB 352, by Rep. Sheldon (R-Dacula), proposed changes to O.C.G.A. § 31-12-6 concerning the laboratories which are to be used to conduct the newborn metabolic screenings. Her proposal permitted the Department of Human Resources the ability to use any laboratory certified pursuant to the federal Clinical Laboratory Improvement Amendments of 1988, 42 U.S.C.A. Section 263, licensed to perform screening

testing of newborn infants in any State and using normal pediatric reference ranges to conduct the analysis required, as an alternative to the State-operated newborn screening laboratory. This Bill remains in the House Health and Human Services Committee.

- *HB 526, by Rep. Loudermilk (R-Cassville), authored changes to Chapter 7 of Title 49 to provide that agencies (such as county health departments) may offer medical referral services to persons who are not unemancipated minors and to provide that agencies shall not provide medical referral services to unemancipated minors except under certain conditions (including showing of proper identification). One revision at O.C.G.A. § 49-7-2(2) was a new definition for the term "birth control device" means "any drug, medical preparation, medical procedure, medical device, rhythm chart, contraceptive, or related product whose primary function is to prevent pregnancy." This Bill remains in the House Health and Human Services Committee.*
- *HB 535, by Rep. Butler (R-Carrollton), proposed changes to Chapter 2 of Title 37 to create the State Ombudsman for Mental Health, Developmental Disabilities, and Addictive Disease. The initiative cleared the House Health and Human Services Committee by Committee Substitute, but stalled in the House Rules Committee.*
- *HB 628, by Rep. Sheldon (R-Dacula), offered her version of healthcare transparency to be created in Chapter 5A of Title 31 and Chapter 4 of Title 26. The Pharmacy Code changes proposed to require that pharmacies would submit performance and outcome data to the Department of Community Health. The Bill also listed twenty-two adverse incidents which would be reported by a healthcare facility. Physicians were not required to make any reporting in this Bill, which was to be known as the Health Care Quality and Transparency Act. The House Health and Human Services Committee reported out this Bill favorably, but it stalled in the House Rules Committee. See HB 24 on healthcare transparency.*
- *HB 729, by Rep. Forster (R-Ringgold), authored this Bill amending O.C.G.A. § 44-5-89 lowering the required age of a person for blood donation from 17 to 16 years of age. The initiative remains in the House Judiciary Committee.*

**\* SB 49 \*** – Sen. Thomas (D-Savannah) offered amendments to amend O.C.G.A. § 34-15-20 so that the Division of Rehabilitation Services within the Department of Labor would oversee the delivery of deaf-blind

services and techniques provided by an organization so that those may lead to maximum independence and employment for the individuals with both a hearing and a vision loss. Services are outlined (but not exclusively limited to these) as follows: transition of deaf-blind youth from education to the workforce; identification of deaf-blind individuals in Georgia; communication access for varying groups of individuals and their unique needs; training of deaf-blind individuals in orientation and mobility, rehabilitation, and Braille; utilization of support service providers to function as sighted guides, communication facilitators, and providers of transportation; support and increase in the number of qualified sign language interpreters working with deaf-blind individuals; etc. The Division is to integrate the services and techniques into standard practices. Additionally, subject to appropriation, the Division is also to retain an organization knowledgeable on deaf-blind issues to provide the services and techniques listed. Governor Perdue signed this Bill as Act No. 140 on May 18, 2007, and it became effective on July 1, 2007.

**\* SB 148 \*** – Sen. Shafer (R-Duluth) proposed this initiative, which stirred a bit of controversy, on stem cell research in Title 31. Numerous hearings took place with the final version of the Bill, which stripped out the controversial findings of fact, being completed on *Sine Die*. Known as "Keone's Law" or "Saving the Cure Act," the initiative creates numerous definitions, including one for the term "permitted stem cell research" which 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." "Stem cells" are "unspecialized or undifferentiated cells that can self-renew and have the potential to differentiate into specialized cell types." The Bill creates 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 Georgia for the purpose of collecting and storing postnatal tissue and fluid. This "bank" will be known as the Newborn Umbilical Cord Blood Bank (beginning on June 30, 2009, hospitals and doctors will have to inform pregnant patients of their range of options to donate to this bank no later than three days from the commencement of the woman's third trimester of pregnancy or at the first consultation between the attending doctor or the hospital). A 15-member Georgia Commission for Saving the Cure is also established which will be assigned to the Division of Public Health of the Department of Human Resources (it will oversee the promotion of awareness of this Bank, encourage donations, ensure privacy of persons who make donations, develop a plan for making postnatal tissue and fluid collected available for medical research, participate in the National Cord Blood Program, etc.). Donations,

through State income tax returns' refunds (for taxable years beginning on and after January 1, 2007), are also permitted by a change to O.C.G.A. § 48-7-63. This Bill was signed as Act No. 247 on May 24, 2007. It became effective on that date.

**\* SR 386 \*** – Sen. Orrock (D-Atlanta) proposed this Resolution to urge the Georgia Department of Human Resources to establish a uniform format among hospital forms used as Physician Orders for Life-Sustaining Treatment ("POLST") and to mandate their use in all Georgia hospitals. The Senate adopted this Resolution on April 19, 2007.

**\* HB 24 \*** – Rep. Tumlin (R-Marietta) authored the Title 31 amendments for advance directives for healthcare. This Bill combines Georgia's living will and durable power of attorney for healthcare forms into a single document. The Georgia Hospital Association and other interest groups participated in the writing of this law. In O.C.G.A. § 31-32-5, it permits any person of "sound mind who is emancipated or 18 years of age or older" to 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 nourishment 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). This "advance directive for healthcare" may be revoked at any time by the declarant without regard to the declarant's mental state or competency. See O.C.G.A. § 31-32-6. The language outlines the authority of the "health care agent" (it includes that he or she may sign documents and may act in person or through others reasonably employed by the healthcare agent for that purpose but cannot delegate authority to make health care decisions, etc.). The Legislation outlines the form's contents as well as the healthcare providers' duties and responsibilities. See O.C.G.A. § 31-32-7 and O.C.G.A. § 31-32-8 respectively. There are also provisions for life-sustaining procedures (or the withholding of such). The Bill also amends several other Code Sections including:

- O.C.G.A. § 10-12-4(i)(3) concerning the legal effect of electronic signatures
- O.C.G.A. § 16-5-5(d) concerning the assistance of an individual in the commission of suicide
- O.C.G.A. § 16-5-100(b) regarding to cruelty of a person 65 years or older
- O.C.G.A. § 29-4-3(c) regarding order of preference in the selection of guardians
- O.C.G.A. § 29-4-10(b)(6) concerning petition for appointment of a guardian
- O.C.G.A. § 29-4-21(b) pertaining to the rights and privileges removed from ward upon the appointment of a guardian
- O.C.G.A. § 29-5-21(b) concerning the rights and powers removed from the a ward
- O.C.G.A. § 31-8-55(b) relating the State or Community Ombudsman's authority to enter and investigate certain facilities
- O.C.G.A. § 31-9-2(a) concerning the persons authorized to consent to surgical or medical treatment
- O.C.G.A. § 31-33-2(2) regarding the furnishing of health records to a patient, provider, or other authorized person
- O.C.G.A. § 31-36A-6(a)(2) concerning persons authorized to consent
- O.C.G.A. § 31-39-2(3)(A) regarding definitions of cardiopulmonary resuscitation
- O.C.G.A. § 37-2-35(b) pertaining to the relationship to service recipients and the State ombudsman
- O.C.G.A. § 44-5-143(b)(1) concerning adult decedents
- O.C.G.A. § 49-6-72(9) concerning definitions for services for the aging

On the Senate Floor, Sens. Hill (R-Marietta) and Harp (R-Midland) proposed an amendment, which passed, adding an additional change to the Bill at O.C.G.A. § 31-5A-7. The amendment required healthcare transparency for hospitals, ambulatory surgery centers, nursing homes and rehabilitation centers. Further, the amendment requires reporting on a regular basis to the Department of Community Health with the Department establishing a website for the purpose of permitting consumers access to cost and quality information on healthcare (including costs on prescription drugs). The Department had pushed stand alone legislation on this issue as had Sen. Hill. The House agreed with the Senate amendment. Governor Perdue signed this Bill as Act No. 48 on May 16, 2007, and it became effective on July 1, 2007.

**\* HB 233 \*** – Rep. Ralston (R-Blue Ridge) offered revisions to Title 30 and O.C.G.A. § 31-8-81 regarding protection of disabled adults and elder persons and associated definitions for the Long-term Care Facility Resident Abuse Reporting Act. One of the changes made is to provide a new definition for the term "exploitation" In O.C.G.A. § 30-5-3(9):

'Exploitation' means the illegal or improper use of a disabled adult or elder person or that person's resources through undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for another's profit or advantage.

Governor Perdue signed this Bill as Act No. 126 on May 18, 2007, and it became effective on July 1, 2007.

**\* HB 366 \*** – Rep. Bearden (R-Villa Rica) authored changes to Chapter 4 of Title 30 regarding equal public accommodations for persons accompanied by guide or service dogs for such to also include those persons who raise and train such dogs. The Bill specifically amends O.C.G.A. § 30-4-2(b). The legislation also adds that any denials made to such persons who train or raise these guide dogs or service dogs will be guilty of a misdemeanor with a fine not to exceed \$2,000, imprisonment of not more than 30 days or both. See O.C.G.A. § 30-4-4. This Bill was signed by Governor Perdue as Act No. 210 on May 23, 2007; it became effective on July 1, 2007.

**\* HB 429 \*** – Rep. Cooper (R-Marietta) introduced this Bill on behalf of the Department of Human Resources to require that physicians and healthcare providers, including hospitals, test pregnant women for HIV unless the woman declines such a test. This screening requirement is included at O.C.G.A. § 31-17-4.2 and will be known as the Georgia HIV Pregnancy Screening Act of 2007. If the woman tests positive, she will be provided counseling services by the Department of Human Resources with a referral to appropriate medical care providers for both herself and her child. If the woman is not tested for HIV, that fact will be recorded in the patient's records and will relieve the physician or other healthcare provider of any responsibility under this new law. In a Senate Floor Amendment, language was added to this Bill to address one of the Certificate of Need Commission's recommendations. The Amendment altered current law found at O.C.G.A. § 31-6-2; O.C.G.A. § 31-6-20; and O.C.G.A. § 31-6-21 pertaining to the duties of the Department of Community Health's Health Strategies Council making that Council "advisory" in nature and requiring the Department of Community Health to prepare a State Health Plan. This Bill became Act No. 60 on May 16, 2007, and it took effect on July 1, 2007.

### **HOSPITALS, HOSPITAL AUTHORITIES AND SALES OF HOSPITALS**

*None of the proposals mentioned below dealing with hospitals, hospital authorities and sales of hospitals passed:*

- *Sen. Hamrick (R-Carrollton) offered SB 78 in Title 31 to require that hospitals and medical facilities make certain information available on their internet websites and to require that hospital authorities provide estimates of charges to patients available on their website. SB 78 remains in the Senate health and Human Services Committee.*
- *Sen. Smith (R-Rome) authored SB 134 with Title 31 amendments to the law regarding notice, fees*

*and the retention of an expert that may be retained by the Attorney General in conjunction with hospital acquisitions. It permits the Attorney General to retain financial, economic, health planning, or other experts or consultants to assist in addressing the criteria outlined in O.C.G.A. § 31-7-406. The costs and expenses incurred in connection with the retention of these experts/consultants are to be paid directly to each expert/consultant by the parties to the proposed transaction in proportionate amounts as the parties to the proposed transaction may agree or otherwise be determined by the Attorney General. These fees are limited to \$60,000. (Under current law, the seller, lessor, or acquiring entity pays \$50,000 to the Attorney General for such consulting fees.) The Bill was "highjacked" in the House Health and Human Services Committee where language was added to amend the Health Strategies Council as a part of the CON strategy, making the Council the Health Strategies Advisory Council with current duties and responsibilities revised as well as its composition. The current Council has 25 members; this change reduces the membership total to 15. Among the revisions is that the Council would also only review, comment, and make recommendations to the board on components of the State plan (currently, it has the ability to adopt the State Health Plan). SB 134 did not clear the House Rules Committee and is available in 2008.*

- *HB 151, by Rep. Lunsford (R-McDonough), proposed amending O.C.G.A. § 31-7-72 and the membership of a hospital authority and tying those to local legislation passed by the General Assembly. After the controversy the Bill stirred in the House, even though passed by the House without changes, the initiative was "gutted" in the Senate Health and Human Services to amend the Health Strategies Council and make the successor entity to be known as the Health Strategies Advisory Council. (See also SB 134.) These changes were made in the wake of the CON Commission's Recommendations. However, this Bill did not clear the Senate Rules Committee.*
- *Rep. Chambers (R-Atlanta) proposed HB 425 amending Chapter 7 of Title 31 to create the Hospital Litigation Protection Act to require a hospital which was providing elective non-emergency medical treatment, including surgery, to an uninsured patient, to provide to the patient: (1) A written good faith estimate of reasonably anticipated charges for the treatment; 2) The rate of payment for the treatment to the hospital that has been negotiated by or on behalf of the*

hospital with the managed care company that has the largest number of enrollees; and (3) The rate of payment for the treatment to the hospital under the Medicare program. After the treatment, including surgery, to an uninsured patient, the hospital would have to provide to such patient: (1) An itemized list of actual charges for the treatment; (2) The rate of payment for the treatment to the hospital that has been negotiated by or on behalf of the hospital with the managed care company that has the largest number of enrollees; and (3) The rate of payment for the treatment to the hospital under the Medicare program. Data reporting requirements are also included in this initiative. The Bill remains in the House Judiciary Committee.

### INSURANCE

Numerous pieces of legislation dealt with health insurance issues in 2007. It is likely that several will appear in 2008 in an effort to address the growing number of uninsured and under-insured, including proposals by Governor Perdue and Lt. Governor Cagle:

- SB 28, by Sen. Hill (R-Marietta) proposed creating, "Insuring Georgia's Families," with amendments to Titles 26, 31, 33, 45, and 48 following some of the Newt Gingrich ideas. Some of the provisions include further development of consumer driven health insurance plans; exemptions to health insurance plans on premium taxes paid; additional unfair trade practices; changes to preferred provider arrangements; changes to group accident and sickness policy requirements in order to cover dependents up to age 27 or until two years after ceasing to be a dependent; creation of the Georgia Health Security Underwriting Authority; and etc. This Bill remains in the Senate Insurance and Labor Committee.
- Sen. Shafer (R-Duluth) offered SB 73, in Chapter 20A of Title 33, allowing for continued healthcare for all managed health care plan enrollees subsequent to the termination of physician and facility contracts. This amendment, proposed in the wake of the issues between Piedmont Hospital and Blue Cross Blue Shield of Georgia, allows for enrollees to receive health care coverage for up to 60 days from the date of the termination of the physicians' or facility's contract. This amendment outlines that, no later than 30 days prior to the termination date, the provider must provide written notice to enrollees and the Commissioner. This Bill remains in the House Insurance Committee.
- A controversial Bill, SB 109, by Sen. Hudgens (R-Hull), proposed amendments to Chapter 29A of Title 33. The original proposal would bring third-party plan administrators into Georgia's prompt pay health insurance requirements. Cries that this Bill ran afoul with ERISA law caused numerous amendments made to the Bill prior to its passage by the Senate. However, once in the House the Bill was further stripped of those original language provisions to become a Bill providing individual health insurance coverage to persons by reauthorizing the Commission on the Georgia Health Insurance Risk Pool (a proposal pushed by the Georgia Association of Health Insurance Underwriters). The Bill remained in the House Rules Committee and has since been recommitted to the House Insurance Committee. "Prompt pay" issues are likely to resurface in 2008 as the Medical Association of Georgia has made that issue a priority. The House Insurance Committee discussed SB 109 at a hearing in August.
- Sen. Murphy (R-Cumming) offered SB 144, with changes to Article 1 of Chapter 24 of Title 33, relating to group insurance plans to permit that any member of a group insurance plan can opt out at any time with written notice to their employer. However, individuals who receive benefits as educators or public officers (as outlined in Titles 20 and 45) may not make such option. This Bill awaits further action in the House Ways and Means Committee.
- Sen. Hill (R-Marietta) also proposed SB 151 in Title 33 to create the Georgia Health Security Underwriting Authority and to provide an alternative mechanism for the health insurance coverage of persons. The Bill also proposed the repeal of Georgia's High Risk Health Insurance Plan. An assignment group would have made assignment of persons to plans and it would have also included options such as high-deductible health plans. This Bill never cleared the Senate Rules Committee after receiving a favorable report from the Senate Insurance and Labor Committee.
- SB 164, by Sen. Meyer von Bremen (D-Albany), proposed in Article 1 of Chapter 18 of Title 45 to create the State Health Benefit Plan Advisory Committee. This Bill remains in the Senate Health and Human Services Committee.
- Another Bill by Sen. Hill (R-Marietta), SB 241, offered comprehensive revisions to Title 33 regarding the provision of health insurance including changes to preferred provider arrangements. Among other provisions, it also proposed health insurance coverage for dependents up to age 25 or until two years after

ceasing to be a dependent. The Bill remains in the Senate Insurance and Labor Committee.

- Rep. Manning (R-Marietta) authored HB 11 concerning vaccinations of girls against the human papillomavirus ("HPV") and cervical cancer. It proposed that health insurance plans cover this type of activity in O.C.G.A. § 33-24-56.5. No action was taken on this Bill. [A similar measure was heard in the Senate, SB 155 by Sen. Balfour (R-Snellville). His Bill proposed language for O.C.G.A. § 20-2-16.3 to require female students to be vaccinated for HPV prior to entering the sixth grade. SB 155 proposed that vaccination requirements would commence in the 2008-2009 school year. It also contained a clause that would immediately suspend vaccination requirements should the FDA recall the vaccine. The HPV vaccine requirement would end July 1, 2011. While hearings were held on this Bill and it was reported out of the Senate Health and Human Services Committee, it never made it to the Senate Floor.]
- HB 342 – Rep. Hembree (R-Winston) proposed, in O.C.G.A. § 33-24-27.3, to provide for direct billing of anatomic pathology services. Hearings were held on this matter with physicians opposing the idea. The Bill remains in the House Insurance Committee.
- HB 367 – Rep. Carter (R-Pooler) authored amendments to Title 26 and 33 to provide for the substitution of therapeutically equivalent drugs (including their requirements) and to provide for health insurance coverage for therapeutically equivalent substitutions under certain circumstances. Hearings were held on this issue, but the Bill remains in the House Insurance Committee.
- HB 378, by Rep. Mumford (R-Conyers), proposed changes in Chapter 9 of Title 33 to enact the Medical Malpractice Insurance Reform Act. Provisions include: a requirement for medical malpractice insurers to file rates, rating plans, rating systems, and underwriting rules; a requirement that medical malpractice insurers develop rates based on each insurer's experience; requirements for the content of experience filings; prohibition of the retention of excess loss reserves; and a requirement that medical malpractice insurers file reports and information and provide a summary report to the General Assembly. This Bill remains in the House Insurance Committee.
- Rep. Hembree (R-Winston) introduced HB 544 as an amendment to O.C.G.A. § 33-50-2(b) to provide that any health plan or arrangement established or maintained by two or more accredited independent nonproprietary

institutions of higher education located in Georgia would not be subject to the requirements relating to multiple employer self-insured health plans. This idea remains in the House Insurance Committee.

- HB 709, by Rep. Harbin (R-Evans), proposed a revision to Georgia's law on COBRA health insurance adding a new Code Section at O.C.G.A. § 33-29A-9 to require that all "insurers or other persons licensed by the Commissioner who serve as administrators in Georgia under employer sponsored, self-funded health benefit arrangements or plans or self-funded Taft Hartley plans shall provide notices for all citizens of this state regarding potential eligibility for coverage under the Georgia Health Insurance Assignment System pursuant to Code Section 33-29A-4 and the Georgia Health Benefits Assignment System pursuant to Code Section 33-29A-5." This notice would be provided in the 14th month of the 18th months of eligibility under COBRA. This Bill remains in the House Insurance Committee.
  - HB 752, by Rep. Knox (R-Cumming), proposed to amend Title 33 and mirrored HB 28 above. It also proposed creation of the Georgia Assignment Pool Underwriting Authority. The Bill remains in the House Insurance Committee.
- \* **SB 131** \* – Sen. Hudgens (R-Hull) offered an amendment to Article 9 of Chapter 9 of Title 34, relating to the Subsequent Injury Trust Fund. The added language relates to payment of assessments to the Fund by insurers and self-insurers:

Each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion of 175 percent of the total disbursement made from the fund during the preceding calendar year less the amount of the net assets in the fund as of December 31 of the preceding calendar year which the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year. The administrator is authorized to reduce or suspend assessments for the fund when a completed actuarial survey shows further assessments are not needed. An employer who has ceased to be a self-insurer prior to the end of the calendar year shall be liable to the fund for the assessment of the calendar year. Such employer who has ceased to be a self-insurer shall continue to be liable to the fund for assessments in subsequent calendar years so long as payments are made on any workers' compensation claims made while in self-insured status. The initial assessment of

each insurer or self-insurer for the purpose of generating revenue to begin operation of the fund shall be in the amount of one-half of 1 percent of the workers' compensation premiums collected by the insurer for the preceding calendar years from an employer who is subject to this chapter or the equivalent of such in the case of a self-insurer.

Governor Perdue signed this initiative on May 18, 2007 as Act No. 145, and it became effective upon his signature.

**\* SB 193 \*** – Sen. Mullis (R-Chickamauga) introduced changes in Title 36 to provide that if a county governing authority provides group health insurance benefits to its county employees then such benefits must also be offered to the sheriff, judge of probate court, clerk of superior court, full-time magistrate court judges, tax receiver, tax collector, and tax commissioner. These benefits would be required to be provided on the same terms and conditions as other county employees. Additionally, the House added an amendment, new paragraph (b), to O.C.G.A. § 36-5-28 pertaining to compensation increases for county governing authorities:

Whenever the compensation to which a member of a governing authority is entitled is increased by local Act or pursuant to Code Section 36-5-24, any additional increase to be applied as a result of subsection (a) of this Code section shall be applied to the most recent such increase.

While it passed by both chambers, Governor Perdue **vetoed** this initiative as Veto No. 35 on May 30, 2007. The veto message stated that, "a decision regarding health insurance benefits, in these counties, is a local matter; it should be determined at the local level and not by an unfunded mandate from the General Assembly."

**\* HB 242 \*** – Rep. Knox (R-Cumming) proposed changes to Chapter 8 of Title 33 and Chapter 7 of Title 48 to provide an exemption, from the State's insurance premium taxes, for certain high deductible health plans sold or maintained in connection with a health savings account. It also proposed that the taxable net income of any taxpayer in Georgia will not include premiums paid for high deductible health plans established and used with a health savings account. Specifically, in O.C.G.A. § 33-8-4(c), it proposed:

Insurers may claim an exemption from otherwise applicable state premium taxes as provided for in subsection (a) of this Code section in an amount equal to 2.25 percent of the premiums such insurers collect during the applicable tax year from Georgia residents on premiums paid for high deductible health plans sold or maintained in connection with a health

savings account under the applicable provisions of Section 223 of the Internal Revenue Code.

While passed, this Bill was **vetoed** by Governor Perdue on May 30, 2007 as Veto No. 14 because of concerns that he had by adding the premium tax exemption which increased the cost of the proposal by \$61 million over six years. He agreed a more expansive review of the premium tax is warranted and "comprehensive health care transformation is needed."

**\* HB 559 \*** – Rep. Kaiser (D-Atlanta) offered amendments to O.C.G.A. § 20-2-880 and to O.C.G.A. § 20-2-910 concerning health insurance plans for teachers and other school personnel in elementary and secondary education. This proposal incorporates teachers and employees of charter schools to be considered "employees" for the purposes of participating in health insurance plans for teachers and other school personnel. While passed by both the House and Senate, Governor Perdue **vetoed** the Bill as Veto No. 27 on May 30, 2007.

**\* HB 648 \*** – Rep. Knox (R-Cumming) authored this amendment to O.C.G.A. § 33-42-4, amending the definition of "long-term care insurance." The term applies to accident and sickness insurance policies or riders advertised, marketed, offered, or designed primarily to provide coverage for not less than 12 (rather than 24 consecutive benefit months as current law states) consecutive benefit months or which provide coverage for recurring confinements separated by a period not to exceed six months with a minimum aggregate period of one year (rather than two years as current law requires) for each covered person on an expense incurred, indemnity, prepaid or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The Bill also amends the definition of "policy" so that it means "any policy, contract, or subscriber agreement or any rider or endorsement attached thereto, issued, delivered, issued for delivery, or renewed in this state by an insurer, fraternal benefit society, nonprofit hospital service corporation, nonprofit medical service corporation, health care plan, health maintenance organization, or any other similar organization. Such term shall also include a Georgia Qualified Long-term Care Partnership Program approved policy, as defined in paragraph (4) of Code Section 49-4-161, meeting the requirements of the Georgia Qualified Long-term Care Partnership Program as enacted in subsection (a) of Code Section 49-4-162." Governor Perdue signed this Bill as Act No. 134 on May 18, 2007; its provisions took effect on July 1, 2007.

### LICENSING OF PROFESSIONALS

*There were other licensing initiatives besides those noted below (such as chiropractors noted above and nurses and optometrists mentioned below in separate sections):*

- *HB 241, by Rep. Chambers, offered changes to O.C.G.A. § 43-29-7 specifying certain requirements for practical training and experience for an applicant to obtain licensure as an optician, through an apprenticeship program and providing credit for previous training and experience. Her changes also proposed to provide for alternative means of obtaining the required education, training, and experience for licensure (using 3,000 hours of experience). HB 241 stalled in the House Rules Committee.*
- *Another Bill was HB 401, by Rep. Sims (R-Ambrose), which proposed changes to O.C.G.A. § 43-18-42 to provide for additional options for reciprocity for persons wishing to become licensed funeral directors and embalmers (those persons must have engaged in the active practice of funeral service as a licensed funeral director and embalmer for three years immediately preceding his or her application for a license in Georgia). HB 401 never was voted out of the House Rules Committee.*

**\* HB 528 \*** – Rep. Martin (R-Alpharetta) offered an amendment to Chapter 34 of Title 43, relating to the licensing of cosmetic laser practitioners. Licensing requirements for cosmetic laser services are outlined. "Cosmetic laser practitioner" means a person licensed under this Code Section to provide cosmetic laser services and whose license is in good standing. Also, "cosmetic laser services" are defined as, "nonablative elective cosmetic light based skin, photo rejuvenation, or hair removal using lasers and pulsed light devices approved by the United States Food and Drug Administration for noninvasive procedures. Such services and the provision there of shall not be considered to be the practice of medicine." There are two levels of a license for a "cosmetic laser practitioner:" assistant laser practitioner and senior laser practitioner. In order to apply for these licenses an individual must hold a current valid license or certificate of registration as a physician's assistant, nurse, esthetician, or master cosmetologist, or has held previously a license or certificate of registration as a medical practitioner. An assistant laser practitioner must have received at least three laser certificates from attending laser/intense pulsed light courses as approved by the board, directly taught by a licensed physician or certified continuing medical education or continuing education educator. In order for an applicant to obtain a senior laser practitioner license, the applicant must hold a

current valid license or certificate of registration as a physician's assistant or nurse or has previously held a license or certificate as a medical practitioner. The applicant for the senior level must also have at least three years of clinical or technological medical experience, and also have been licensed or nationally board certified as a medical practitioner for at least three years. Any facility offering cosmetic laser services must be in an agreement with a consulting physician who:

- (1) Be trained in laser modalities;
- (2) Establish proper protocols for the cosmetic laser services provided at the facility and file such protocols with the board; and
- (3) Be available for emergency consultation with the cosmetic laser practitioner or anyone employed by the facility.

At, O.C.G.A. § 43-34-251, it makes illegal the act of any person licensed as a cosmetic laser practitioner to perform cosmetic laser services within one inch of the eye socket or administer any pharmaceutical agent or other substance by injection. This Act only becomes effective if funds are appropriated for the purposes of this Act in the General Appropriations Act (no money was included in the State's Budget for these purposes). The Bill was signed as an Act No. 339 on May 29, 2007 and takes effect when funds are appropriated.

### MEDICAID AND PEACHCARE

*The funding of PeachCare dominated the State's budget discussions as the Governor wanted Congress to reauthorize the State Children's Health Insurance Plan and assure new federal dollars, before the General Assembly added State dollars to the program. The General Assembly assured citizens that PeachCare would continue.*

### Medicaid

*There were a few Bills dealing directly with the Medicaid program. Several of which failed to pass this year.*

- HB 279, by Rep. Collins (R-Gainesville), failed to clear the Senate Rules Committee. HB 279 proposed in O.C.G.A. § 49-4-153.1 to require certain procedures for determinations relating to eligibility for medical assistance through the State's Katie Beckett Waiver Program under Medicaid. The amendments specifically deal with children with Spina Bifida who have Myelomeningocele. Once the eligibility for the Katie Beckett Waiver is documented, the Department of Community Health must not require further physician certification or documentation for purposes of eligibility under

this waiver program. "However, a physician letter shall be provided annually indicating eligibility conditions and such letter shall serve as adequate continued eligibility documentation under this waiver program."

- HB 550, by Rep. Lindsey (R-Atlanta), offered amendments to O.C.G.A. § 49-4-148(b) concerning the recovery of assistance from third-parties liable for sickness, injury, disease, or disability to include pharmacy benefit managers in addition to insurers such as limited or group health plans and managed care plans. As Medicaid is the payor of "last resort," this language was to expand the State's efforts on recoupment when other coverage was found. The Bill failed to clear the House Rules Committee. However, this language was included in HB 505 noted above.
- A third initiative was HB 866 which proposed amending Chapter 4 of Title 49, "Georgia Public Assistance Act of 1965" and codifying the delivery of Medicaid dental services to foster children including all aspects of dental care, extending coverage of Medicaid for all individuals who are under 21 years of age and are in the custody of the Department of Family and Children Services on or before their eighteenth birthday or voluntarily signed themselves out of care on or before their eighteenth birthday (pre-existing conditions would not prohibit an individual from enrolling in the program). This Bill remains in the House Health and Human Services Committee.

**\* HB 549 \*** – Rep. Burkhalter (R-Duluth) proposed changes to Medicaid's coverage of therapy services (speech, occupational and/or physical therapy) provided to eligible Medicaid beneficiaries 21 years of age or younger when those services are recommended as "medically necessary" by a physician. The Bill proposed a new definition for "medically necessary services:"

'Medically necessary services' means those services provided under the EPSDT Program such as screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment and equipment, and other measures to treat defects and physical and mental illnesses and conditions discovered by such screening services. Such services shall be based upon generally accepted medical practices in light of conditions at the time of treatment which are:

(A) Appropriate and consistent with the diagnosis of the treating physician and the omission of which could adversely affect the recipient's medical condition or the provision of which would correct or ameliorate the beneficiary's medical condition;

(B) Compatible with the standards of acceptable medical practice in the United States;

(C) Provided in a safe, appropriate, and cost-effective setting, given the nature of the diagnosis and the severity of the symptoms;

(D) Not provided solely for the convenience of the recipient or the convenience of the health care provider or hospital;

(E) Not primarily custodial care unless custodial care is a covered service or benefit under the recipient's evidence of coverage; and

(F) Services for which there are no other effective and more conservative or substantially less costly treatments, services, and settings available.

Additionally, the Bill contained changes to the "prior approval" process for children to access these services (for the services beyond basic therapy services, when required, which will be a minimum of six months (to the extent allowable under federal law)). While passed overwhelmingly by both the House and Senate, Governor Perdue **vetoed** this initiative as Veto No. 26 on May 30, 2007 and noted that "the proposed changes inadvertently conflict with federal mandates on Medicaid services." However, he directed the Department "to continue its efforts to provide for a more streamlined preauthorization process so as not to unduly burden the practitioners and patients this Bill seeks to assist."

**\* HB 551 \*** – Rep. Lindsey (R- Atlanta) offered an amendment to Chapter 4 of Title 49 to create the "State False Medicaid Claims Act" also known as the "Baby" False Claims Act. If a person "knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval; knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Georgia Medicaid program; or conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid; has possession, custody, or control of property or money used, or to be used by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate of receipt; being authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true; knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program, who lawfully may not sell or pledge the property; or knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay, repay or

transmit money or property to the State of Georgia," then that person would be liable to the State for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person. There are provisions for the burden of proof, statute of limitations, and venue. Authorization is provided for the Attorney General to make investigations of such claims. The Bill also encourages "whistleblowers" to come forward with information. The Bill became Act 220 on May 24, 2007, and it took effect on that date.

### PeachCare

Several proposals were offered to alter Georgia's PeachCare law in an effort to continue the program despite issues with the federal extension of its authorization or funding. These Bills proposed verification of eligibility for services or expanded program guidelines to cover all children. Initiatives, which did not pass in 2007, included HB 236 (permits State dollars to be used without federal funds), HB 324 (PeachCare for All Kids), HB 396 (requires DCH to contract for eligibility verification), and HB 625 (creates PeachCare A and B subprograms).

**SR 6** – Sen. Goggans (R-Douglas) offered this Resolution urging Congress to provide funding and ensure reauthorization of the State Children's Health Insurance Plan (Georgia's PeachCare for Kids program). The Senate adopted this Resolution on January 11, 2007; it was then assigned to the House Rules Committee.

**HB 340** – Speaker Richardson (R-Hiram) offered changes to Georgia's PeachCare law in Title 49. The original version of this Bill revised the income threshold amount for eligibility for PeachCare to 200 percent of the federal poverty level (from the current 235%). Once the Bill came to the Senate, it was amended where it passed with the Senate's amendments. However, while passed, both the House and Senate insisted on their positions; Conferees were not appointed, and thus, the Bill died. One of the differences in the Senate's versions would have permitted children from birth through 18 years of age, in families with family incomes below 125 percent of the federal poverty level, to be eligible for the Medicaid program. It would have then permitted families with incomes between 125 and 200 percent of the federal poverty level to participate in PeachCare (from birth through 18 years of age). It would also have charged \$25 co-payments to PeachCare-covered children who presented at the emergency room.

**\* HR 13 \*** – Rep. Channell (R-Greensboro) authored this Resolution urging Congress to provide funding and ensure reauthorization of the States' Children Health

Insurance Program (Georgia's PeachCare for Kids Program). The House adopted this Resolution on January 11, 2007.

### MENTAL HEALTH AND INCOMPETENCY

*There were a few mental health-related initiatives this Session:*

- *SB 277, by Sen. Schaefer (R-Turnerville), proposed a prohibition to universal mental health testing and psychiatric or socio-emotional screening of juveniles except under limited circumstances in Chapter 11 of Title 15. It also proposed a consent requirement from a parent, guardian, or custodian before any treatments. While hearings were held by the Senate Education and Youth Committee, this Bill never cleared the Committee. It raised concerns about additional requirements being placed on teachers and that passage of such law might run afoul with the Memorandum of Agreement between the Department of Juvenile Justice and Department of Justice on the State's educational instruction of juveniles. SB 277 remains in the Senate Education and Youth Committee.*
- *HB 343, by long-time mental health advocate Rep. Gardner (D-Atlanta), proposed a means for a competent adult to control either directly through instructions written in advance or indirectly through an appointment of an agent to make mental health care decisions on behalf of such person according to a written psychiatric advance directive in Chapter 11 of Title 37. Hearings were held on this Bill before the House Judiciary Committee, but it never received a favorable recommendation for passage.*
- *HB 461, by Rep. Sheldon (R-Dacula), offered on behalf of a Florida corporation specializing in the privatization of psychiatric facilities and created a new Code Section at O.C.G.A. § 37-1-25 requiring that the Department of Human Resources privatize West Central Georgia Regional Hospital or one or more other State facilities for the treatment of mental illness under the control and supervision of the Department. A similar proposal surfaced in the 2006 Session on this subject. HB 461 remains in the House Health and Human Services Committee and is subject to further study.*

**\* SB 190 \*** – Sen. Harp (R-Midland) offered changes to O.C.G.A. § 17-7-130 relating to the issues of insanity and mental incompetency in pretrial proceedings. It provides that the committing court (the court with jurisdiction over the criminal charges) may have discretion to allow evaluation in the community for certain defendants and

provides that the committing court can order an evaluation of the Defendant and permit that court to conduct a civil commitment hearing on the Defendant. This Bill was signed as Act No. 348 on May 29, 2007; its provisions took effect on July 1, 2007.

**\* SR 363 \*** – Sen. Grant (R-Milledgeville) authored this Resolution creating a thirteen-member Mental Health Service Delivery Commission in the wake of the public disclosure of the tragic events at the State's mental hospitals. This Commission would have been charged to:

- (1) Assess the needs of our citizens, both children and adults, for improved behavioral health services and resources wherever they reside;
- (2) Adequately size, staff, and secure our state hospitals for Georgia's population, taking into account which patients can be safely housed in community settings;
- (3) Use public and private community resources to relieve overcrowding in state facilities and to develop the full continuum of services and effective supports so Georgia's citizens who live with mental illness, developmental disabilities, and substance abuse may live and work when possible close to their families;
- (4) Divert Georgians in need of treatment and assistance to community based resources whenever appropriate and provide adequate forensic and treatment services in our institutions;
- (5) Aggressively develop housing and employment opportunities in our communities;
- (6) Assure parity in insurance benefits coverage for mental health, developmental disabilities, and substance abuse care so that health issues resulting from lack of adequate treatment are reduced and all our financing resources are used to destigmatize and treat mental illness, developmental disabilities, and substance abuse; and
- (7) Develop an organizational plan to coordinate or revitalize the agencies involved in mental health, developmental disabilities, and substance abuse services or the financing of those services.

Governor Perdue **vetoed** the Resolution. In his message in Veto No. 41 on May 30, 2007, he stated, "The Commission includes members from the legislative and judicial branches and citizen members. Because any changes would be implemented by the executive branch, appropriate representation from the executive branch should be included for an effective study. For this reason, I will sign an executive order calling for a commission, including those persons described in SR 363 and representatives of the executive branch, to review the matters addressed in SR 363." Governor Perdue proceeded with the issuance of an Executive Order to create this Commission on August 9, 2007 and has now named individuals to this Commission.

### NONPROFIT ENTITIES

*Neither of these initiatives passed this Session:*

- *SB 313, by Sen. Thomas (R-Dalton), proposed altering Chapter 34 of Title 43 to authorize the Composite State Board of Medical Examiners to contract with qualified nonprofit organizations to conduct impaired physician's programs with the aim of these programs to provide for early identification, intervention, and rehabilitation of physicians to practice in this State who may be impaired by reason of illness or use of alcohol, drugs, narcotics, chemicals, or other materials. This Bill remains in the Senate Health and Human Services Committee.*
- *HB 427, by Rep. Chambers (R-Atlanta), proposed, in O.C.G.A. § 31-7-17, that certain records of nonprofit hospitals be open to inspection: 1) Remuneration, including salary, benefits, equity of any form, in-kind gifts or services, and any other tangible or intangible item of value, received by an officer, administrator, president, or chief executive officer of the hospital as compensation from the hospital; (2) Remuneration, including salary, benefits, equity of any form, in-kind gifts or services, and any other tangible or intangible item of value, received by an officer, administrator, president, or chief executive officer of the hospital from any third-party entity doing business with, associated either in contract or in equity with, or representing or operating on behalf of said hospital, or who represents said hospital as a fiduciary or nonfiduciary in any other corporate entity or contractual alliance of any form or fashion; and (3) Hospital-acquired infection rates. However, HB 427, remains in the House Judiciary Committee.*

### NURSES/NURSING/ADVANCED PRACTICE REGISTERED NURSES

*Nursing issues were again in the limelight this Session following last year's prescriptive rights' fight. SB 253, by Sen. Wiles (R-Kennesaw), proposed amending O.C.G.A. § 43-34-26.3 concerning delegated medical acts to advanced practice registered nurses. SB 253 proposed on-site patient evaluation, as well as examinations of patients who receive a prescription drug order for a controlled substance (more than a 10-day supply) by a physician, and approval by the Board of Nursing of the protocol agreements. HB 676, by Rep. Knox (R-Cumming) mirrors SB 253. SB 253 and HB 676 remain in each of their respective Chamber's Health and Human Services Committees. Staffing requirements were also*

raised. *HB 589, this year's version of staffing requirements for circulating nurses (RNs with training and experience in surgical nursing services) for surgical services performed in a hospital or ambulatory surgery center was authored by Rep. Butler (R-Carrollton). HB 589 proposed requirements in O.C.G.A. § 31-7-2.1 to have "sufficient nursing personnel" in each separate operating room and one circulating nurse in each separate obstetrical room at every infant delivery. This Bill remains in the House Health and Human Services Committee. Finally, a Bill, HB 833 by Rep. Sheldon (R-Dacula), proposed in O.C.G.A. § 31-2-10 to require that the Department of Human Resources create and maintain a career track program designed to be an employment model for nurses who work within the Department's Division of Public Health (helping recruit and retain nurses and assist with health profession's shortages). HB 833 remains in the House Health and Human Services Committee.*

**\* SB 222 \*** – Sen. Grant authored this Bill revising the definition of "advanced practice registered nurse" and use of that title by a licensed registered nurse or advanced practice registered nurse. The new definition of "advanced practice registered nurse," found in O.C.G.A. § 43-26-3(1.1), means:

A registered professional nurse licensed under this chapter who is recognized by the board as having met the requirements established by the board to engage in advanced nursing practice and who holds a master's degree or other graduate degree approved by the board and national board certification in his or her area of specialty, or a person who was recognized as an advanced practice registered nurse by the board on or before June 30, 2006. This paragraph shall not be construed to require a certified registered nurse anesthetist who graduated from an approved nurse anesthetist educational program prior to January 1, 1999, to hold a master's degree or other graduate degree.

The Bill's amendment to current law regarding a display of "title" on a nurse's nametag is made at O.C.G.A. § 43-26-6(d): "Any person who is licensed as a registered professional nurse shall identify that he or she is so licensed by displaying either the title 'registered professional nurse' or 'registered nurse,' the abbreviation 'R.N.,' the title 'advanced practice registered nurse,' or the abbreviation 'A.P.R.N.' on a name tag or other similar form of identification during times when such person is providing direct patient care. An advanced practice registered nurse shall meet the identification requirements of this subsection by displaying the title or abbreviation of his or her area of specialization." Governor Perdue signed this initiative on May 24, 2007 as Act No. 243; it became effective on July 1, 2007. A similar Bill, SB 215 by Sen.

Carter (R-Tifton), was proposed which would not require a certified registered nurse anesthetist, who graduated from an approved nurse anesthetist educational program prior to January 1, 1999, to hold a master's degree or other graduate degree. SB 215 remains in the Senate Health and Human Services Committee.

### **OPTOMETRISTS' RIGHT TO PRESCRIBE AND SCOPE OF PRACTICE**

*The most significant piece of legislation pertaining to optometrists was SB 17, noted below. A couple of other Bills pertained to optometrists and opticians:*

- *SB 93, by Sen. Smith (R-Rome), proposed enactment in Title 31 the "Patient Disclosure for Eye Surgery Act." It proposed for the delegation of postoperative eye care for a patient who has undergone eye surgery and when that physician has entered into a co-management agreement with another physician or optometrist to provide post-surgical care to the patient. Details of such agreements would be required to be disclosed to the patient in writing before surgery is performed. This Bill remains in the Senate Health and Human Services Committee.*
- *HB 241, by Rep. Chambers (R-Atlanta), offered changes in O.C.G.A. § 43-29-7 to provide specific requirements for practical training and experience for applicants for an optician's license through an apprenticeship program. This initiative failed to clear the House Rules Committee.*

**\* SB 17 \*** – Sen. Harp (R-Midland) proposed the expansion of the scope of practice for optometrists so that they may use pharmaceutical agents. While there is an expansion, there are limitations imposed in O.C.G.A. § 43-30-1(D)(ii) as Conferees reached a Resolution on this Bill:

Oral and topical antibiotics, antivirals, topical steroids, antifungals, antihistamines, or antiglaucoma agents related to the diagnosis or treatment of diseases and conditions of the eye and adnexa oculi except Schedule I or Schedule II controlled substances. Doctors of optometry using such oral and topical pharmaceutical agents shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts; provided, however, that a doctor of optometry shall not be authorized to treat systemic diseases.

As initially proposed, the optometrists would have been permitted to:

A doctor of optometry who is certified to use pharmaceutical agents for treatment purposes shall be authorized to prescribe and administer those oral pharmaceutical agents medically indicated for the diagnosis, management, or treatment of diseases and conditions of the eye and adnexa oculi except those included in Article 2 of Chapter 13 of Title 16, the 'Georgia Controlled Substances Act,' as Schedule I or Schedule II controlled substances; provided, however, that a doctor of optometry shall not be authorized to prescribe or administer oral steroids for a period of more than 7 days.

Governor Perdue signed this Bill as Act No. 262 on May 29, 2007; the changes took effect on July 1, 2007.

### **PAIN MANAGEMENT**

*One initiative on pain management appeared in 2007. HB 287, by Rep. Carter (R-Pooler), proposed in O.C.G.A. § 31-1-10 to establish the Pain Management Ad Hoc Advisory Committee which would look at scientific and medical reviews of controlled substances, modern pain management knowledge, pain management techniques, etc. Hearings were held on this Bill, and it passed the House Judiciary Non-Civil Committee where it was stripped of the original Title 16 criminal code and immunity provisions. The Bill then stalled in the House Rules Committee.*

### **PHARMACY AND PRESCRIPTION DRUGS**

*There were several Bills relating to pharmacies and prescription drugs.*

- *SB 150, by Sen. Hill (R-Marietta), offered changes to Titles 26, 28, 31, 33, 45, and 49. The legislation contains several provisions including the requirement of pharmacies to submit certain performance and cost data to the Department of Community Health. The Bill remains in the Senate Health and Human Services Committee. Among other provisions include:*
  - *The establishment of a website to provide consumers with information on the cost and quality of healthcare in the State*
  - *Provision for the submission of data elements from healthcare facilities, pharmacies, nursing homes, and assisted living facilities*
  - *Establishment of the Georgia Patient Safety Corporation*
  - *Establishment of a central database of electronic medical records*
  - *Provision of grants, subsidies, and other incentives for individuals to obtain healthcare coverage*

- *Requirements for healthcare facilities to submit certain performance and cost data to the Department of Community Health*
- *Provisions that health records are the property of the patient*
- *Creation of the Georgia Health Care Overview Committee*
- *Comprehensive revisions to Georgia's health insurance laws*
- *Provisions that preferred provider arrangements will not have differences in co-insurance percentages applicable to benefit levels for services provided by preferred and non-preferred providers which differ by more than 40%*
- *Provisions that preferred provider arrangements will not have a co-insurance percentage applicable to benefit levels for services provided by non-preferred providers which exceed 50% of the benefit levels under the policy for such services*
- *Provisions that an insured under a group accident and sickness policy may include dependents up to age 25 or until two years after ceasing to be a dependent*
- *Creation of the Georgia Health Insurance Exchange.*
- *SB 294, by Sen. Murphy (R-Cumming), proposed a revision to O.C.G.A. § 26-4-81 which would no longer permit a pharmacist the ability to substitute a drug without the express authorization of the prescribing practitioner and when such authorization is provided the pharmacist would dispense with the same generic name in the same strength, quantity, dose, and dosage form as the prescribed brand name drug product which is, in the pharmacist's reasonable professional opinion, pharmaceutically equivalent. The proposal also stripped out the current law permitting a physician to write "brand necessary" on a prescription. Presently, substitution is permitted without the practitioner providing authorization. The Senate Insurance and Labor Committee held this Bill.*
- *HB 18, by Rep. Stephens (R-Savannah), prefiled this initiative requiring pharmacy rebates from a Care Management Organization that the Department of Community Health contracts with or has been granted a certificate of authority by the Department of Insurance be refunded by amending O.C.G.A. § 49-4-152.4. No formal action was taken on this Bill.*
- *HB 19, by Rep. Stephens (R-Savannah), also prefiled this initiative which had no action. It proposed amending O.C.G.A. § 49-4-152.4 to provide that any contract between the*

Department of Community Health and an HMO or CMO, providing Medicaid services, require disclosure to the Department of any prescription drug rebates, fees, commissions, or kickbacks received or retained by the organization.

- HB 45, also by Rep. Stephens (R-Savannah), proposed in O.C.G.A. § 33-24-59.13 to prohibit prior authorization for a prescription drug which a drug manufacturer provides to a community pharmacy at the lowest price of a pricing structure. HB 45 remains in the House Insurance Committee.
- HB 127, by Rep. Byrd (R-Woodstock), proposed altering existing law in O.C.G.A. § 26-4-81 concerning the substitution of prescription drugs and created a new Code Section at O.C.G.A. § 26-4-81.1 to prohibit the substitution of anti-epileptic drugs unless there is prior notification to and consent of the prescribing physician except that a pharmacist may substitute a generic version by one manufacturer for a generic version by another manufacturer if both such versions are "AB rated" drugs by the federal Food and Drug Administration. This Bill cleared the House and Senate Health and Human Services Committee but was held in the Senate Rules Committee.
- HB 180, by Rep. Rogers (R-Gainesville), proposed in O.C.G.A. § 31-5A-7 to provide that certain "prescription drugs and other health care products sold by Georgia biotechnology, biopharmaceutical, or pharmaceutical companies shall not be subject to certain access restrictions or supplemental rebates for purposes of coverage under the state health benefit plan, medical assistance program, PeachCare for Kids, or any other health benefit plan or policy administered by or on behalf of the State." HB 180 remains in the House Health and Human Services Committee.
- HB 285, by Rep. Stephens (R-Savannah), proposed amending O.C.G.A. § 16-13-41 to require that a pharmacist or pharmacist intern must obtain positive proof of identity prior to dispensing a prescription drug. HB 285 remains in the House Judiciary Non-Civil Committee.
- HB 397, by Rep. Cox (R-Lawrenceville), included revisions to Titles 16, 26, 31, and 43 in an effort to permit psychologists the right to prescribe drugs under certain circumstances and provide them an exemption from liability like other medical professionals licensed to prescribe. It further offered an exemption from liability to pharmacists and nurses who are acting in good faith upon the orders of a psychologist certified to prescribe. This Bill

remains in the House Judiciary Non-Civil Committee.

- HB 454, by Rep. Gardner (D-Atlanta), proposed, in O.C.G.A. § 26-4-91, to provide that every retail pharmacist must include the approximate retail price of an outpatient prescription drug on the receipt for that prescription drug. The Bill remains in the House Health and Human Services Committee.
- HB 455, by Rep. Stephens (R-Savannah), proposed creation in Chapter 13, Title 16 the Georgia Prescription Monitoring Program Act which would require the Georgia Drugs and Narcotics Agency establish and maintain a program for the monitoring of prescribing and dispensing of all Schedule II, III or IV controlled substances. The Bill remains in the House Judiciary Non-Civil Committee.
- HB 475, by Rep. Roberts (R-Ocilla), proposed prohibiting of drugs at flea markets in O.C.G.A. § 10-1-363. Drugs are defined in O.C.G.A. § 26-3-2. The House Judiciary Non-Civil Committee held hearings on this idea but no resolution was reached.
- HB 556, by Rep. Benton (R-Jefferson), included changes to Titles 16 and 26 to require prescriptions for controlled substances and dangerous drugs have the practitioner's name printed below the practitioner's signature on such prescriptions (which would apply to electronic prescription drug orders as well). HB 556 remains in the House Judiciary Committee.
- HB 739, by Rep. Beasley-Teague (D-Red Oak), proposed amending O.C.G.A. § 16-12-180 so that no person can sell or transfer possession of any cough medicine (containing dextromethorphan) to another person under 18 years of age. It also proposed to require that all places of business selling cough medicine must clearly mark those products to indicate that a person must be 18 years of age or older to purchase them. The Bill remains in the House Judiciary Non-Civil Committee.
- HB 798, by Rep. Scott (R-Tifton), proposed creation of the "Pharmacy Consumer Protection Act" in Chapter 4 of Title 26. Under this Act no person or organization can act or operate as a pharmacy benefits manager in Georgia without a valid certificate of registration. Furthermore, the proposal outlines the responsibilities of a pharmacy benefits manager. This Bill remains in the House Regulated Industries Committee.

\* **SB 205** \* – Sen. Thomas (R-Dalton) introduced amendments to Chapter 4 of Title 26 for prescription drug "pedigrees." Additional amendments were made in Conference Committee, altering Georgia's statute on

"mail order" permission for prescription drugs. The creation of a new Article 12 in Chapter 4 of Title 26 adds the "Prescription Medication Integrity Act" to authenticate prescription drugs. These changes develop in statute a "normal distribution channel" for prescription drugs in an effort to eliminate counterfeit medications and also create "pedigrees" for each drug. Until 2006, Georgia did not permit the use of mails or common carriers to routinely deliver any prescription drugs. Last year, permission was granted for a group model health maintenance organization to mail prescription drug refills (under certain conditions) to its enrollees. This year, manufacturers of "orphan drugs" wished to be granted a similar permission so that drugs might be delivered to either a patient or directly to a patient's guardian or caregiver or a physician or physician acting as the patient's agent for whom the prescription drug was prescribed if certain conditions were met (as found in O.C.G.A. § 26-4-60(a)(11)(A)):

- i) Such prescription drugs are prescribed for complex chronic, terminal, or rare conditions;
- (ii) Such prescription drugs require special administration, comprehensive patient training, or the provision of supplies and medical devices or have unique patient compliance and safety monitoring requirements;
- (iii) Due to the prescription drug's high monetary cost, short shelf life, special manufacturer specified packaging and shipping requirements or instructions which require temperature sensitive storage and handling, limited availability or distribution, or other factors, the drugs are not carried in the regular inventories of retail pharmacies such that the drugs could be immediately dispensed to multiple retail walk-in patients;
- (iv) Such prescription drug has an annual retail value to the patient of more than \$10,000.00;
- (v) The patient receiving the prescription drug consents to the delivery of the prescription drug via expedited overnight common carrier and designates the specialty pharmacy to receive the prescription drug on his or her behalf;
- (vi) The specialty pharmacy utilizes, as appropriate and in accordance with standards of the manufacturer, United States Pharmacopeia, and Federal Drug Administration and other standards adopted by the State Board of Pharmacy, temperature tags, time temperature strips, insulated packaging, or a combination of these; and
- (vii) The specialty pharmacy establishes and notifies the enrollee of its policies and procedures to address instances in which medications do not arrive in a timely manner or in which they have been compromised during shipment and to assure that the pharmacy replaces or makes provisions to replace such drugs.

The Conference Committee Report on SB 205 incorporates the language of SB 178 (by Sen. Balfour (R-Snellville)) the stand alone Bill on mailing of orphan drugs. SB 205 was signed as Act No. 245 on May 24, 2007; its provisions became effective on July 1, 2007.

**\* HB 286 \*** – Rep. Stephens (R-Savannah) authored the annual update to Georgia's dangerous drug list in Chapter 13 of Title 16. The changes relate to Schedule II and Schedule V controlled substances. Governor Perdue signed this Bill as Act No. 331 on May 29, 2007; it became effective upon the Governor's signature.

**\* HB 330 \*** – Rep. Stephens (R-Savannah) offered changes to Chapter 4 of Title 26 to provide for registration of pharmacy technicians who will be overseen by the Georgia State Board of Pharmacy. The Board will establish minimum qualifications for the registration of these technicians and maintain a registry of pharmacy technicians as well as conduct criminal background checks of these individuals. The pharmacists in charge of the technicians will be required to provide updated information for this registry. A certificate of registration will not be valid longer than two years and shall be renewable biennially upon payment of a renewal fee (which may be collected from the pharmacy technicians, their employers, or both) as well as compliance of other conditions that the Board may establish by rule or regulation. The Board may also deny registration, deny renewal or revoke or suspend the registration of a pharmacy technician. There will be an appeal process for such denials, revocations or suspensions. Governor Perdue signed this Bill as Act No. 130 on May 18, 2007. The Act becomes effective if funds are specifically appropriated for purposes of this Act in an Appropriations Act, making specific reference to this Act, and will otherwise become effective when funds so appropriated become available for expenditure.

### PHYSICIANS

*Two additional bills were offered this Session: 1) HB 108, by Rep. Keown (R-Coolidge), which proposed enactment in Chapter 34 of Title 43 the Patient Right to Participate Act so that a patient could participate in disciplinary proceedings of a physician including being provided prior notice of any hearings regarding the physician (this initiative remains in the House Health and Human Services Committee); and 2) HB 492 also by Rep. Keown, which offered changes to Chapter 34 of Title 43 and the Composite State Board of Medical Examiners' membership (moving the membership from 13 to 15 to include eleven M.D.s; two D.O.s and two individuals without any connection to the practice of medicine) including an actual name change to the Georgia Composite Medical Board (the Bill passed out of the*

House Health and Human Services Committee but never made it out of the House Rules Committee to the House Floor).

**\* HB 626 \*** – Rep. Graves (R-Ranger) offered a change to O.C.G.A. § 43-34-3 to provide for a maximum number of continuing education hours that retired physicians providing uncompensated health care services will be required to complete. The Composite State Board of Medical Examiners will require no more than 20 hours of continuing education annually for retired physicians who have an active license and who provide uncompensated healthcare services pursuant to O.C.G.A. § 43-34-45.1 or Article 8 of Chapter 8 of Title 31. However, the Board is authorized to require up to 40 hours of continuing education for retired physicians who have not had an active license to practice medicine for up to five years. This initiative passed and became Act No. 219 on May 24, 2007; its provisions took effect on July 1, 2007.

### STATE HEALTH BENEFIT PLAN

Rep. Harbin (R-Evans) offered HB 390 as a means of authorizing the Department of Community Health to contract for the continuation of health insurance for persons who retire as employees of community service boards ("CSBs") and their State Health Benefit Plan dependents (those who retire on or after July 1, 2007, with at least ten years of actual service to a CSB after having attained the age of 60 years of age, or after 30 years of actual service to a CSB regardless of age, and the spouses and dependent children of such employees). HB 390 passed out of the House Insurance Committee but never made it to the House Floor. HB 423, by Rep. Gardner (D-Atlanta), proposed amendments to O.C.G.A. § 31-5A-4 to require inclusion of mental health care coverage in any health benefits for members, employees and retirees of the Board of Regents Health Plan (currently, the Board of Regents does not offer such coverage). It also proposed changes to O.C.G.A. § 45-18-2 to require parity coverage for the State Health Benefit Plan-covered persons (presently, this coverage may be offered, but it is not required). This initiative remains in the House Insurance Committee.

### TAXES/TAXATION

State tax reform will dominate the 2008 Session of the General Assembly. Incentives for economic development and a flat uniform sales tax, to substitute for the current income tax, are hot topics. Some of these proposals would eliminate sales tax exemptions and grant property tax relief. Nonprofit hospitals could be required to pay sales tax (with the loss of their current exemption). Thus, some of the proposals may not benefit healthcare providers and could potentially cost nonprofit facilities.

A host of tax-related initiatives were offered this Session. Some included:

- HR 900 – the sweeping tax reform by Speaker Richardson (R-Hiram) involving a flat tax
- SR 282 – the Constitutional amendment eliminating and prohibiting subsequent imposition of State ad valorem taxes and State income taxes and impose in lieu thereof a comprehensive consumption tax, Georgia One Tax by Sen. Seabaugh (R-Sharpsburg)
- HB 66 – the proposal to abolish the State income tax by Rep. Davis (R-McDonough)
- HB 166 – the sales and use tax exemption for sales of tangible personal property to qualified government grantees (501(c)(3) entities) for a limited time by Rep. Martin (R-Alpharetta)
- HB 175 – the provision for annual adjustments to Georgia's taxable net income based on economic inflation (the Cost-of-Living Tax Fairness Act) by Rep. Scott (R-Rossville)
- HB 176 – the gradual reduction and abolishment of Georgia's income tax requirements by Rep. Scott (R-Rossville)
- HB 195 – the Governor's proposal excluding retirement income from net income with a phased-in approach by Rep. Golick (R-Smyrna)
- HB 198 – the income tax credit proposal to qualified businesses engaged in biotechnology or new or expanding businesses incurring qualified research expenses by Rep. Casas (R-Lilburn)
- HB 294 – a sales and use tax exemption for sales to certain nonprofit volunteer health clinics by Rep. Graves (R-Ranger)
- HB 304 – clarification of sales tax exemption for sales of durable medical equipment by Rep. Sims (R-Ambrose)
- HB 350 – repeal of current exemption for off-premises consumption or use of eligible foods and beverages (to fund PeachCare) by Rep. Smith (R-Ambrose)
- HB 622 – the income tax credit for the purchases of hearing aids by Rep. Smith (R-Watkinsville)

### Tax Reform Incentives or Administration

**\* SB 184 \*** – Sen. Rogers (R-Woodstock) proposed this initiative containing numerous changes to Chapter 7 of Title 48:

- A change adding O.C.G.A. § 48-7-21(15) concerning computation of corporate taxable income so that it will be increased by the amount of the payments, compensation, or other economic benefit disallowed by O.C.G.A. § 48-7-21.1.

- Disallowance as a business expense of certain compensation paid by a taxpayer in O.C.G.A. § 48-7-21.1
  - On and after January 1, 2008, no payment or compensation or other remuneration, including but not limited to wages, salaries, bonuses, benefits, in-kind exchanges, expenses, or any other economic benefit, paid for labor services to an individual totaling \$600.00 or more in a taxable year, may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer unless such individual is an authorized employee. Provisions would apply whether or not an IRS Form 1099 or Form W-2 is issued in conjunction with such payments, compensation, or other remuneration.
  - Exemptions for businesses
    - Enrollment and participation in a basic pilot program
    - Exemption from compliance with federal employment verification procedures under federal law, making employment of unauthorized aliens unlawful
  - Exemption for individuals when hired by the taxpayer prior to January 1, 2008
  - Provision that it only applies to a taxpayer where the individual is not directly compensated or employed by the taxpayer
  - Shall not apply to payments, compensation, or other remuneration paid for labor services to any individual who holds and presents to the taxpayer a valid license or identification card issued by the Georgia Department of Driver Services
- Military income received by a member of the national guard or any reserve component of the armed services of the United States stationed in a combat zone or stationed in defense of the U.S. borders and will apply with respect to each taxable year, or portion thereof, covered by military orders and will apply with respect to such member of the national guard or any reserve component of the armed forces and only with respect to military income earned during the period covered by such military orders
- A definition for "withholding agent" in O.C.G.A. § 48-7-101
- New withholding and reporting requirements for Form 1099 in O.C.G.A. § 48-7-101(i) with 6% to be withheld of the amount of compensation paid for labor services (when individual failed to provide a taxpayer identification number; failed to provide a correct taxpayer identification number; provided an IRS issued taxpayer identification number issued for nonresident

aliens). Failure to comply by the agent will make the agent liable for the taxes required to have been withheld unless the agent is exempt from federal withholding

Governor Perdue signed the Bill as Act No. 147 on May 18, 2007. Its provisions became effective on July 1, 2007 with the exception of the changes relating to military income, which will become effective on January 1, 2008.

**\* HB 357 \*** – Rep. O'Neal (R-Bonaire) authored Title 48 changes to define the terms "Internal Revenue Code" and "Internal Revenue Code of 1986" for certain taxable years and incorporate certain provisions of the federal law into Georgia law and provide that such provisions will supersede and control over certain other provisions. The Bill became Act No. 6 on April 17, 2007, and its provisions took effect on that date.

**\* HB 441 \*** – Rep. Floyd (R-Cordele) offered this idea amending Chapter 7 of Title 48. The changes proposed to revise provisions relative to the adjustment of taxable income with respect to income from federal obligations and certain other obligations concerning income taxes owed. Governor Perdue **vetoed** this Bill as Veto No. 20 on May 30, 2007, stating it "would eliminate the interest expense offset against certain tax-exempt interest income that a taxpayer may have." Further, he stated, "the effect of this Bill would be to eliminate 2005 legislative changes meant to clarify the process and bring the state into conformity with the vast majority of other states and the federal approach to expense offsets for certain tax-exempt obligations." The Governor asked the Department of Revenue to further examine this issue and regulation regarding this matter.

**\* HB 486 \*** – Rep. Willard (R-Atlanta) authored this amendment to O.C.G.A. § 48-5-359.1 to change provisions regarding the compensation to be paid to the tax commissioner for "additional duties." The provisions apply only to a county which has fewer than 50,000 tax parcels within such county. It also adds the following in O.C.G.A. § 48-5-359.1(a)(2)(B):

Any county and any municipality wholly or partially located within such county may contract for the tax commissioner to prepare the tax digest for such municipality; to assess and collect municipal taxes in the same manner as county taxes; and, for the purpose of collecting such municipal taxes, to invoke any remedy permitted for collection of municipal taxes. Any contract authorized by this subsection between the county governing authority and a municipality shall specify an amount to be paid by the municipality to the county which amount will substantially approximate the cost to the county of providing the service to the municipality.

Notwithstanding the provisions of any other law, the tax commissioner is authorized to accept, receive, and retain compensation from the county for such additional duties and responsibilities in addition to that compensation provided by law to be paid to the tax commissioner by the county.

The Bill was signed as Act No. 223 on May 24, 2007 and became effective on that date.

### Ad Valorem Property Tax

**\* HB 182 \*** – Rep. Martin (R-Alpharetta) carried this amendment to O.C.G.A. § 48-5-274 proposing that positive tax allocation increments must not be used in calculating certain tax digest amounts in the equalized adjusted property tax digest. The "digest will exclude all real and personal property exempted from taxation and the difference between the value of all taxable property within any tax allocation district and the tax allocation increment base of such tax allocation district as defined under paragraph (15) of Code Section 36-44-3 for which consent has been obtained pursuant to Code Section 36-44-9." This Bill became Act No. 364 on May 30, 2007; it took effect upon signature of the Governor.

### Sales and Use Tax

**\* HB 128 \*** – Rep. Smith (R-Newnan) authored changes to O.C.G.A. § 48-8-3:

- Amending paragraph (75) of subparagraph (A) for exemptions from State sales and use taxes for sales of certain school supplies, clothing, footwear, computers, and computer related accessories for the period commencing at 12:01 A.M. on August 2, 2007 and concluding at 12:00 Midnight on August 5, 2007 (this is known as the "Sales Tax Holiday").
- Amending paragraph (82) of subparagraph (A) permitting an exemption from sales and use taxes for energy efficient products with a sales price of \$1,500.00 or less per product purchased for noncommercial home or personal use during the period commencing at 12:01 A.M. on October 4, 2007 and concluding at 12:00 Midnight on October 7, 2007.

This Bill became Act No. 120 on May 18, 2007; the provisions became effective upon the Governor's signature.

**\* HB 162 \*** – Rep. Martin (R-Alpharetta) offered this tax initiative to be used in the construction of a performing arts amphitheater facility. This proposal proposed three exemptions from sales and use taxes in

O.C.G.A. § 48-8-3 with new paragraphs (86), (87) and (88):

- for materials used in the construction of a performing arts amphitheater facility from July 1, 2007 – June 30, 2008 and defined "performing arts amphitheater facility" as a performing arts amphitheater facility owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; is constructed after the effective date of this paragraph; has costs in excess of \$30 million; has more than 60,000 square feet of space; and has associated facilities, including, but not limited, parking. [It would require an "exemption letter" issued by the Department of Revenue to certify that the purchaser is entitled to purchase the property without paying the tax.]
- for a period which commenced upon the date construction first began until December 31, 2007, sales of tangible personal property to, or used in direct connection with the construction of, a performing arts center managed by a coliseum and exhibit hall authority, which authority was created by a local Act and which performing arts center has costs in excess of \$140 million and which has at least 185,000 square feet of space
- for the period commencing July 1, 2007 and ending June 30, 2009 sales of tangible personal property and services to a nonprofit volunteer health clinic which primarily treats indigent persons with incomes below 200 percent of the federal poverty level and which property and services are used exclusively by such volunteer health clinic in performing a general treatment function in this state when such volunteer health clinic is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner.

Governor Perdue also **vetoed** this initiative as Veto No. 2 on May 30, 2007. The rationale was that "tax Bills deal with unique issues and should be considered individually. Disparate provisions should not be logrolled together to combine an otherwise acceptable provision with an untenable one, as such practice often results in the total Bill being unacceptable."

**\* HB 436 \*** – Rep. Royal (R-Camilla) introduced an amendment to O.C.G.A. § 48-8-3 adding an additional exemption from State sales and use taxes at paragraph (7.05), for a limited period of time the sale or use of tangible personal property to certain nonprofit health centers. This issue came about in the 2006 Session and later caused a Bill to be vetoed as it proposed to eliminate the tax exemption currently enjoyed by hospitals and

nursing homes. This Bill remains in the House Ways and Means Committee. Similar language was added in HB 162 to permit this type of exemption for these nonprofit health centers, but HB 162 was **vetoed** as noted above.

### TOBACCO

*A piece of legislation offered by Rep. Butler (R-Carrollton), HB 887, proposed to alter the Chapter 13, Title 10 provisions regarding the Tobacco Prevention Master Settlement Agreement Oversight Committee. The proposal outlines the composition of this Committee along with its duties. The Bill remains in the House Appropriations Committee.*

### TORT REFORM – CIVIL PRACTICE

*Tort reform remains an area of interest since the passage of SB 3 in 2005. The medical and hospital communities are concerned about any erosion to the provisions of SB 3. There were several bills relating to torts offered this Session. One, SB 286, remains in the Senate Judiciary Committee. SB 286, by Sen. Harp (R-Midland), proposed changing O.C.G.A. § 51-1-29.5(c) to alter provisions relating to the limitation on health care liability claims in emergency medical care. It also proposed to eliminate the current provision that the burden of proof is clear and convincing evidence that the provider's action showed gross negligence. Rather, it proposed in (c): "In an action involving a health care liability claim arising out of the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, no physician, or healthcare provider shall be held liable unless it is proven by clear and convincing evidence that the physician or health care provider failed to meet the applicable standard of care."*

**\* SB 182 \*** – Sen. Wiles (R-Kennesaw) authored this initiative in Title 51 concerning asbestos and silica claims. The "purpose" of these changes in Chapter 14 is to:

- (1) Give priority to claimants who can demonstrate actual physical harm or illness caused by asbestos or silica;
- (2) Preserve the rights of claimants to pursue asbestos or silica claims if an exposed person becomes sick in the future;
- (3) Enhance the ability of the courts to supervise and control asbestos litigation and silica litigation; and
- (4) Conserve resources to allow compensation of claimants who have cancer and others who are impaired as a result of exposure to asbestos or silica while securing the right to similar compensation for

those who may suffer physical impairment in the future.

New definitions are added regarding such claims. It also provides that physical impairment is an essential element of an asbestos claim or a silica claim (prima-facia evidence of physical impairment must be submitted by the claimant with the claim – such as a medical report in the form of an affidavit). There are limitations for filing a claim and provisions for dismissal of pending claims (under certain conditions – in O.C.G.A. § 51-14-5, it states, "Notwithstanding any other provision of law, with respect to any asbestos claim or silica claim not barred as of May 1, 2007, the limitations period shall not begin to run until the exposed person, or any plaintiff making an asbestos claim or silica claim based on the exposed person's exposure to asbestos or silica, obtains, or through the exercise of reasonable diligence should have obtained, prima-facia evidence of physical impairment, as defined in paragraph (17) or (18) of Code Section 51-14.-3). It also permits for *forum non conveniens*. There are also provisions regarding limits to liabilities for asbestos claims relating to a successor corporation and that entity having become a successor corporation before January 1, 1972. Methods are included for determining fair market value of total gross assets at the time of a merger or consolidation to increase annually. This Bill was signed as Act No. 9 on April 30, 2007. It became effective on May 1, 2007 and applies to certain accrued or future accruing asbestos claims or silica claims in which trial has not commenced as of May 1, 2007, in accordance with its terms. Section 2 of the Act also became effective on May 1, 2007 and applies to asbestos claims that accrued or may accrue on or after that date (this Section relates to successor corporations). Governor Perdue signed this Bill on April 30, 2007 as Act No. 9.

**\* HB 221 \*** – Rep. Heard (R-Lawrenceville) proposed amending O.C.G.A. § 9-11-9.1 and affidavit requirements to accompany an action for damages alleging professional malpractice and the timing of a Defendant's answer to a complaint. The affidavit requirements apply to the professions currently outlined in this Code Section. One of the major provisions included is found at O.C.G.A. § 9-11-9.1(a)(2) which draws these actions into the affidavit requirements:

A domestic or foreign partnership, corporation, professional corporation, business trust, general partnership, limited partnership, limited liability company, limited liability partnership, association, or any other legal entity alleged to be liable based upon the action or inaction of a professional licensed by the State of Georgia and listed in subsection (g) of this Code Section;

The contemporaneous affidavit which is required to be filed with any case is not required if the period of limitation for the action will expire or there is a good faith basis to believe it will expire on any claim stated in the complaint within ten days of the date of filing the complaint, and because of time constraints, the plaintiff has alleged that an affidavit of an expert could not be prepared. The attorney for the plaintiff would be required to file an affidavit affirming or swearing that his or her law firm was not retained by the plaintiff more than 90 days prior to the expiration of the period of limitation on the plaintiff's claim(s); the plaintiff then has 45 days after the filing of the complaint to supplement the pleadings with the affidavit. No extension of time is granted for any reason without consent of the parties. If either affidavit is not filed, or it is determined that the law firm of the attorney who filed the affidavit in lieu of the contemporaneous filing of an expert affidavit or any attorney who appears on the pleadings was retained by the plaintiff more than 90 days prior to the expiration of the period of limitation, the complaint will be dismissed for failure to state a claim. Additionally, if the complaint alleging professional malpractice is filed without the contemporaneous filing of an affidavit, the defendant will not be required to file an answer to the complaint until 30 days after the filing of the affidavit of an expert, and no discovery will take place until after the filing of the answer. This Bill was signed as Act No. 125 on May 18, 2007. It became effective on July 1, 2007, and applies to any action filed on or after July 1, 2007.

### TRAUMA CARE/EMERGENCY ROOMS

*Development of a statewide trauma network and proper funding continues to be an issue. Several proposals were introduced this Session. Sen. Chance (R-Tyrone) offered SB 125 in Title 40 for Governor Perdue to create fines for super speeders (those who are involved in traffic offenses in excess of 85 mph) and using those fines for funding trauma services. SB 125 remains in the House Public Safety and Homeland Security Committee. Two House Bills were also offered but failed to pass their assigned committees. HB 417, by Rep. O'Neal (R-Bonaire), proposed amending O.C.G.A. § 40-5-57 to add a fine for each moving violation which would then be used to fund trauma care services. This initiative remains in the House Judiciary Non-Civil Committee. The other, HB 745, by Rep. Lunsford (R-McDonough) proposed amending O.C.G.A. § 46-5-30(c) to permit funds collected through the existing monthly maintenance surcharge for the provision of a telephone system for the physically impaired to also be used to provide trauma care to the citizens of Georgia. HB 745 remains in the House Energy, Utilities and Telecommunications Committee.*

**\* SB 60 \*** – Sen. Staton (R-Macon) introduced a new Article 5 of Chapter 11 of Title 31, establishing the

Georgia Trauma Care Network Commission and the Georgia Trauma Trust Fund (which presently has no funding). Lawmakers were attempting to respond to a need to help offset the tremendous costs of trauma care in Georgia and to address a shortage of trauma care services in the State. The nine-member Commission would be assigned to the Department of Human Resources for administrative purposes. The Bill outlines various duties and responsibilities of this Commission (such as apply for and administer State funds appropriated to the Commission; distribute the monies with a formula prioritizing distribution; development, implementation, administration, and maintenance of a system to compensate designated trauma centers to address the centers' costs associated with "readiness;" development, implementation, administration, and maintenance of a system to compensate members of the emergency medical service transportation community; etc.). The Trust Fund created would be overseen by a trustee who would be the executive director of the Georgia Trauma Care Network Commission. SB 60 became Act No. 14 on May 11, 2007, and it took effect on July 1, 2007.

### WOMAN'S RIGHT TO KNOW ACT

*HB 1, prefiled by Rep. Franklin (R-Marietta), proposed to make abortion unlawful in Title 16 (this Bill made no progress). Sen. Schaefer (R-Turnerville) proposed in SB 66 to require that certain facilities performing abortion be required to have functional ultrasound or sonogram equipment on site or provide information regarding medical facilities that provide such services. SB 66 passed out of the Senate Health and Human Services Committee and made it to the Senate General Calendar and was recommitted and later reported out favorably again on February 28, 2007. It received no further action.*

**\* HB 147 \*** – Rep. Mills (R-Gainesville) proposed amendments in Chapter 9A of Title 31 to the Woman's Right to Know Act. This initiative proposed that no abortion can be performed in Georgia except with voluntary and informed consent of the female upon whom the abortion is to be performed with that female being provided information with the name of the physician who is to perform the abortion at least 24 hours prior to the abortion and that woman be provided the results of an ultrasound test prior to that abortion. The woman is also to be provided information on how to obtain a list of healthcare providers, facilities, and clinics that offer to perform ultrasounds free of charge; such list must be arranged geographically and must include the name, address, hours of operation, and telephone number of each listed entity. "In 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." The Department of Human Resources will be required to make available the geographically indexed materials to inform the female of public and private facilities and services available to assist the female with obtaining an ultrasound and the location and contact information on the facilities including a 24-hour toll-free telephone number to receive information tailored by zip code entered by the caller for a list and description of facilities in a locale. Current law also requires that the Department of Human Resources provide a report on physicians who are performing abortions in a health facility licensed by the Department as well as the numbers of females whom the physician has provided information, etc. The changes also require that the Department of Human Resources track 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. This initiative was signed as Act No. 207 on May 23, 2007, and it became effective on July 1, 2007.

### WORKERS' COMPENSATION AND EMPLOYMENT

*Rep. Harbin (R-Evans) offered HB 597 to amend O.C.G.A. § 34-9-205 to require the promulgation of standards for the exemption of certain medical providers and treatments from the workers' compensation fee schedule (hospitals which specialize in acute care burn injuries) and would also require that certain kinds of medical services not be subject to any fee schedule but would be limited by usual, customary, and reasonable charge levels. Issues which prompted this legislation were resolved with the State Board of Workers' Compensation; thus, the Bill remains in the House Industrial Relations Committee.*

**\* SB 96 \*** – Sen. Golden (D-Valdosta) authored changes to O.C.G.A. § 34-9-415 to provide for onsite and oral testing in drug-free workplace programs. The testing would have to be conducted by trained and qualified persons to conduct onsite and/or oral testing. The Bill specifically added types of testing that employers may

conduct to qualify for the workers' compensation insurance premium discounts "urinalysis conducted by laboratories, testing at the employer worksite with on-site testing kits, or use of oral testing that satisfies testing criteria in this article shall be deemed suitable and acceptable substance abuse testing." This Bill became Act No. 258 on May 24, 2007; the provisions took effect on July 1, 2007.

**\* HB 424 \*** – Rep. Coan (R-Lawrenceville) proposed changes to Chapter 9 of Title 34. Among changes to Georgia's workers' compensation law included the following:

- Amendment to O.C.G.A. § 34-9-2(a) with a definition for the term "farm laborer" to include "any person employed by an employer in connection with the raising and feeding of and caring for wildlife, as such term is defined in paragraph (77) of Code Section 27-1-2."
- Amendment to O.C.G.A. § 34-9-100(c) regarding the "dismissal" of stale claims so that any application for hearing filed with the board (of workers' compensation) pursuant to this Code Section, on or after July 1, 1985 but prior to July 1, 2007, for which no hearing is conducted for a period of five years will automatically stand dismissed.
- New O.C.G.A. § 34-100(d) which states:
  - (1) For injuries occurring on or after July 1, 2007, any claim filed with the board for which neither medical nor income benefits have been paid shall stand dismissed with prejudice by operation of law if no hearing has been held within five years of the alleged date of injury. (2) This subsection will not apply to a claim for an occupational disease as defined in Code Section 34-9-280. (3) The form provided by the board for use in filing a workers' compensation claim shall include notice of the provisions of this subsection.
- Revisions to O.C.G.A. § 34-9-200.1(a) so that an employer now has 20 days (rather than 15) from the date of notification of a determination within which to select a rehabilitation supplier. If that employer fails to make that selection within the 20 days, the rehabilitation supplier will be appointed by the board to provide the services at the expense of the employer.
- Examinations of injured employees were also amended in O.C.G.A. § 34-9-202(a) and (e) noting what types of examinations are to be provided at reasonable times and places. It requires that such examinations include physical, psychiatric and psychological examinations which were previously not specified in the Code.

- Amendments to O.C.G.A. § 34-9-205 concerning fees to be approved by the board (which currently include physician, hospital and "other charges." An amendment in (a) provides that prescription drugs must also be included for approval by the board.
- Compensation amounts were amended in O.C.G.A. § 34-9-261 (compensation for total disability) and in O.C.G.A. § 34-9-262 (compensation for temporary partial disability). Current law provides for total disability be equal to two-thirds of the weekly wage but not more than \$400 per week nor less than \$45 per week, except that when the weekly wage is below \$45, the employer pays a weekly benefit equal to the average weekly wage. The change increases this amount to \$500 per week and not less than \$50 per week. The change in the temporary partial disability moves the amount from \$300 to \$334 per week for a period not exceeding 350 weeks from the date of injury.

Governor Perdue signed this Bill as Act No. 335 on May 29, 2007, which took effect on July 1, 2007.

**\* HB 443 \*** – Rep. Coan (R-Lawrenceville) introduced Title 34 changes. Amendments included a change to O.C.G.A. § 34-8-35 and what is deemed "employment" for employment security purposes (until it is shown that such individual and services performed for wages are the subject of an SS-8 determination by the Internal Revenue Service, which decided against employee status). Another change is made to O.C.G.A. § 34-8-156(d)(4)(B) concerning the State-wide Reserve Ratio (extending the suspension of adjustments). It also amends the weekly benefit amount in O.C.G.A. § 34-8-193 changing the computation of the weekly benefit amount; raising the weekly benefit amount for years beginning on or after July 1, 2007 to no less than \$44.00; and raising the weekly benefit amount entitlement for claims filed on or after July 1, 2008 to not exceed \$330.00. Passed by both chambers, the Governor signed this as Act No. 226 on May 24, 2007 which took effect on July 1, 2007.

**ADVANCED HEALTH CARE LAW**

FRIDAY, OCTOBER 19, 2007

*PRESIDING: KATHLYNN BUTLER POLVINO, CHAIR, HEALTH LAW SECTION,  
STATE BAR OF GEORGIA  
MCKENNA LONG & ALDRIDGE LLP, ATLANTA*

**8:00 a.m. REGISTRATION**

**8:55 a.m. WELCOME AND PROGRAM OVERVIEW**

**9:00 a.m. RECENT STARK DEVELOPMENTS**

- \* Phase III Regulations
- \* Physician Fee Schedule
- \* Implications for Compliance
- \* Implications on “Under Arrangements”

*Robert M. Keenan, III, King & Spalding LLP, Atlanta*

*Sally Austin, Assistant General Counsel, Children’s Healthcare of Atlanta*

*Alan H. Rumph, Smith, Hawkins, Hollingsworth & Reeves, LLP, Macon*

**10:00 a.m. BREAK**

**10:15 a.m. LEGAL & COMPLIANCE ISSUES RELATING TO CLINICAL RESEARCH**

*Summer H. Martin, McKenna Long & Aldridge LLP, Atlanta*

*Tracy M. Field, Arnall Golden Gregory LLP, Atlanta*

**11:15 a.m. MANAGED CARE DEVELOPMENTS**

- \* Litigation against MCOs
- \* Arbitration Provisions/Arbitrations
- \* Medicaid Managed Care

*Deborah J. Winegard, Vice President and General Counsel, California Medical Association*

*Ralph I. Knowles, Doffermyre, Shields, Canfield, Knowles & Devine LLC, Atlanta*

**12:15 p.m. LUNCHEON & ANNUAL BUSINESS MEETING**

**Keynote Address on Disaster Preparedness: Learning From Past Disasters**

*Donna D. Fraiche*, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.,  
New Orleans

**1:30 p.m. A VIEW TOWARDS THE 2008 LEGISLATIVE SESSION**

*Brad Alexander*, Chief of Staff for Lt. Governor Casey Cagle

Hospitals: Temple Sellers, Georgia Hospital Association

Physicians: Lasa Joiner, JLH Consulting, Atlanta

**2:30 p.m. BREAK**

**2:45 p.m. MEDICARE/MEDICAID AUDITS, INVESTIGATIONS & APPEALS**

*Amy Fouts*, McKenna Long & Aldridge LLP, Atlanta

*Dan Johnson*, MAG Mutual Healthcare Solutions

*D.J. Jeyaram*, Jeyaram & Associates, Atlanta

*Jason Bring*, Arnall, Golden Gregory LLP, Atlanta

**4:00 p.m. MEDICAL STAFF DEVELOPMENTS**

- \* New JCAHO Standards
- \* MAG Model Medical Staff Bylaws
- \* Recent Caselaw

*Donald J. Palmisano, Jr.*, General Counsel, Medical Association of Georgia

*Carol Michel*, Weinberg, Wheeler, Hudgens, Gunn & Dial, Atlanta

*Adrienne E. Marting*, Epstein, Becker & Green P.C., Atlanta

**4:30 p.m. ADJOURN**

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## MESSAGE FROM THE EDITOR – CALL FOR AUTHORS

The Health Law Section of the State Bar of Georgia is pleased to provide a publication for its members to address current topics of interest. We encourage you to send us summaries of recent cases, legislation, and agency activities that may be of interest to health law attorneys who practice in Georgia and the Southeast. Suitable short feature articles on timely topics may also be accepted for publication. Please address inquiries, submissions, and suggestions to:

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