

**STATE COMMISSION ON THE EFFICACY OF CON**  
Sanders Fireplace Room at the Capitol Education Center  
180 Central Avenue, Atlanta, Georgia

November 21, 2005; 1:00 pm

**Daniel W. Rahn, MD, Chair, Presiding**

**MEMBERS PRESENT**

Jeff Anderson  
Tim Burgess  
Melvin Deese, MD  
Donna Johnson, Esq.  
Robert Lipson, MD  
Dan Maddock  
Ronnie Rollins  
Joseph "Rusty" Ross, Esq.  
Representative Austin Scott

**MEMBERS ABSENT**

Senator Don Balfour

**GUESTS PRESENT**

Bill Lewis, Lewis Consulting, LLC  
Bobby Franklin, House District 43  
Brian Looby, Medical Association of Georgia  
Bryan Fiveash, Fiveash-Stanley  
Christi Carmichael, Emory  
Cynthia George, Phoebe Putney Health System  
Dale McCord, MD  
Deb Bailey, North Georgia Health System  
Dodie Putnam, Hospital Corporation of America  
Harve Bauguess, Bauguess Management Company, Inc.  
Holly Bates Snow, Piedmont Hospital  
Jeffrey Baxter, Nelson Mullins  
Jennifer Sender, Smith Moore, LLP  
Joe Parker, Georgia Hospital Association  
Joe Tanner, Joe Tanner & Associates  
John Parker, Georgia Alliance of Comm. Hospitals  
Jon Howell, GHCA  
Jill Fike, Senate Research Office  
Jimmy Lewis, HomeTown Health  
Kathy Browning, Georgia Society of General Surgeons  
Kevin Rowley, St. Francis Hospital  
Larry D. Lloyd, Innovative Consultants

**STAFF PRESENT**

Kim Anderson  
Doris Berry  
Neal Childers, JD  
Charemon Grant, JD  
Richard Greene, JD  
Matt Jarrard, MPA  
Julie Kerlin  
Victoria Kizito, JD  
Brigitte Maddox  
Robert Rozier, JD  
Virginia Seery, Ph.D.  
Stephanie Taylor, MPS

Leah Watkins, Powell Goldstein  
Linda Simmons, The Surgery Center, LLC  
Lisa Norris, The Strategy House  
Lori Jenkins, Phoebe Putney Memorial Hospital  
Monty Veazy, Georgia Alliance of Community Hospital  
Tarry Hodges, St. Joseph/Candler Health System  
Temple Sellers, Georgia Hospital Association  
Tommy Chambliss, Georgia Alliance of Comm. Hospitals  
Travis Lindey, Resurgens  
Victor Moldovan, Phears & Moldovan  
W. Clay Campbell, Archbold Medical Center  
Webb Cochran, Tenet

## WELCOME

Dr. Rahn called the meeting to order at 1:05pm. He called for a motion to accept the minutes of the October 24<sup>th</sup> meeting. Because a few members did not have the opportunity to review the minutes prior to the meeting, members agreed to postpone acceptance of the minutes until the next meeting in December.

Dr. Rahn said that the minutes of the Commission's meetings are prepared using a tape recording. He noted that the audio-recording is not always clear or audible, due to limited audio capability of the Sanders Fireplace Room. He said that because of this limitation, accurate transcription of the minutes is not always possible. He asked members whether a summary of the meeting deliberations would be adequate. Members agreed that minutes, not transcription of the meeting deliberations, would be acceptable for the meeting.

Dr. Rahn recognized and welcomed Representative Sharon Cooper, Chairman, House Health & Human Services Committee and Representative Bobby Franklin to the meeting.

Dr. Rahn acknowledged that this meeting is Mr. Burgess's final meeting as a member of the CON Commission. Commission members recognized Mr. Burgess for his service to the citizens of the state both as a member of the Commission and as Commissioner, Department of Community Health. Mr. Burgess has resigned as Commissioner, Department of Community Health effective December 1, 2005.

Dr. Rahn brought members attention to two documents that were included in meeting materials, including:

- Correspondence dated October 25, 2006, authored by Chris Smith, MD, FACS, The Georgia Society of General Surgeons
- Supplemental material submitted by Georgia Association for Home Health Agencies, Inc., including a report entitled: *Condition Guarded*, DCH/Health Care Workforce Policy Advisory Committee, Fiscal Year 2003 Annual Report

## PRESENTATION BY DEPARTMENT OF COMMUNITY HEALTH

Dr. Rahn called on Robert Rozier to provide an overview of the Rules for Specialized Services. Mr. Rozier noted that some "specialized services" were discussed at previous meetings, including:

- Ambulatory Surgical Services
- Skilled Nursing Beds
- General Hospital Beds
- Personal Care Homes
- Home Health Services
- Continuing Care Retirement Communities

He said that his presentation today would focus on the following services:

- Adult Cardiac Catheterization Services
- Adult Open Heart Surgery Services
- Pediatric Cardiac Catheterization & Open Heart Surgery Services
- Psychiatric & Substance Abuse Services
- Traumatic Brain Injury Facilities
- Comprehensive Inpatient Physical Rehabilitation Services

- Long Term Acute Care Hospitals

Future meetings would provide information on:

- Perinatal Services
- Freestanding Birthing Centers
- Positron Emission Tomography
- Radiation Therapy Services
- Magnetic Resonance Imaging
- Computed Tomography

Mr. Rozier said that the State Health Plans and Rules for Psychiatric & Substance Abuse Services, Traumatic Brain Injury Facilities, Comprehensive Inpatient Physical Rehabilitation Services and Long Term Acute Care Hospitals are currently being reviewed by two TACs. He outlined the planning process that the Department utilizes during the development of CON Rules. He said that a technical advisory committee (TAC), consisting of members of the Health Strategies Council (Council) and other stakeholders from around the state provide guidance and expertise in this process. Their recommendations are sent to the Council and the Council, in turn, could forward the recommendations to the DCH Board or may elect to send the recommendations back to the TAC for further review. Following acceptance of the TAC's recommendations by the DCH Board, they are sent to the Office of the Secretary of State. Mr. Rozier noted that there are opportunities for public comment and input throughout the entire planning process. He also noted that proposed rules are sent from the Department to the Health Committees of the Senate and the House. Both of these committees could make comments on proposed rules.

Mr. Rozier reviewed the General Review Considerations and the service-specific rules for each of the specialized services, indicated for review at today's meeting. He also noted that within the last year, the Department and the Health Strategies Council passed an exception to the existing Rules for Specialized Cardiovascular Services to allow participation in the Atlantic Cardiovascular Patient Outcome Research Trial (Atlantic-CPORT). Ten hospitals in the state were selected to participate in this trial for a time limited period of three years. He said that participants in this trial could perform therapeutic catheterizations (angioplasties) on certain patients without having open-heart surgery backup services. Mr. Rozier noted that the largest number of CON applications received by the Department is those proposing to offer cardiac catheterization services. He said that several of the applicants are existing providers who meet the utilization exception standard. He reiterated that when an applicant obtains a CON to provide additional services under the exception standard, all other CON standards (quality, data reporting etc.) would still have to be met. A copy of Mr. Rozier's presentation is attached as Appendix A.

Following Mr. Rozier's presentation, the following information was requested:

- Location of all services, including cardiac catheterization (diagnostic and therapeutic) and open heart providers around state, overlaid on a state map.
- Population data (beds/1,000)
- Occupancy rates of each service/by service area
- List of all Rules that have exceptions.
  - What are the specific exceptions for each service?
  - Number of providers (perinatal and OB) that were granted approval to provide services, based on the high utilization exception standard

Representative Scott expressed concern about the current CON rules for obstetrical and cardiac services. He said that existing providers have a competitive advantage to secure additional beds through the CON process as opposed to a new applicant. He inquired as to the number of OB and therapeutic and diagnostic cardiac catheterization providers that received approval to offer services, based on the service-specific high utilization exception standard. He asked if there are any quality rankings of facilities around the state and further asked whether the Department conducts any follow-up of providers after a CON is granted to determine whether providers are charging more or less than what was indicated in the CON application.

Commission members and Department staff discussed data limitations, noting that "quality" can be measured in many different ways. Members agreed that there are several organizations that collect different types of quality data, from both hospitals and physicians including Joint Commission on Accreditation of Healthcare Organizations (JCAHO), DHR/Office of Vital Records and the American College of Cardiology (ACC). It was also noted that the ACC collects charge data and participation in ACC data reporting is often a condition for reimbursement.

Members of the Department expressed concern that much of the data that is available may not be substantive or may not be readily accessible to the public. In response to Representative Scott's concern, Department staff noted that once a CON is granted, the Department has no statutory authority to revoke a CON based on provider charges that were submitted during the application process.

Jeff Anderson inquired about the state entity that ensures compliance after a CON is issued. He asked specifically about the quality indicators that are collected by the Dept. of Human Resources and asked about the circumstances that would trigger DHR to respond to a quality concern. He requested a map of the State Service Delivery Regions and the health planning maps associated with each specific service, including information regarding the last time the map was updated.

Robert Rozier indicated that maps of the State Service Delivery Regions are used for most of the CON services however he noted that there are some services that use other health planning maps. Mr. Rozier said that a review of the health planning maps is part of the planning process each time a TAC is convened.

Members of the Commission requested information about the types of data relating to "quality" that are available for Georgia healthcare facilities. They inquired as to which organizations collect and monitor quality data and information.

## **REPORT OF THE DEPARTMENT'S HOSPITAL ADVISORY COMMITTEE**

Dr. Rahn called on James Connolly, Director of Reimbursement Services, Department of Community Health to provide an overview of the work of the Department's Hospital Advisory Committee. Mr. Connolly said that the committee has 21 members that were appointed by the DCH Commissioner, Tim Burgess. Membership has wide geographic representation, including both urban and rural providers and wide diversity in hospital ownership and facility size. The committee meets monthly.

He said that the goal of the committee is to provide guidance to the Department on a number of policy-related issues, including updating of payment rates for hospital services. He said that the committee's work has been primarily focused on the distribution of Disproportionate Share Hospital (DSH) funds, (totaling approximately \$250Million). He noted that this program is federally funded via the Centers for Medicare

and Medicaid Services to provide compensation for services provided to uninsured patients and any losses incurred on services provided to Medicaid patients. He said that at present, the committee is specifically focusing on hospital eligibility, equitable distribution of funds and financing options, including how to secure additional state matching funds. He said that the committee has a data subcommittee which will examine state FY2006 funding.

Mr. Connolly said that the Hospital Advisory Committee has recommended that hospitals report about indigent and charity care, keeping in mind that hospitals' definitions of charity care differ. He also noted that in addition to collecting information about traditional hospital services, inpatient and outpatient services, hospitals are also being asked to provide information about some other types of charitable services, including transportation, etc. This information is collected for informational purposes only and may be used, at some time in the future, as a basis for allocation of funds. He said that the Hospital Advisory Committee is also looking at definitions of "indigent" and "charity care" and may look at compiling information that may break out "charity" care by income thresholds, particularly looking at 200% of poverty as a breaking point, perhaps subdividing their charity care below 200% in different segments, if applicable. He said that a survey is expected to be sent to hospitals in the coming weeks and some preliminary information might be available in early February.

Commission members inquired about the data source that the Hospital Advisory Committee uses to make its decision. They also inquired whether hospitals with higher charges would be reimbursed at higher rates than those with lesser charges. Mr. Connolly indicated that the Department looks at ratios of cost to charge. While the hospital may have higher charges, when the history of cost is used, it essentially evens out over time. Mr. Connolly also noted that Indigent Care Trust Fund and Disproportionate Share Hospital (DSH) are used interchangeably. DSH funds may meet the federal designation and ICTF meets the state designation. He said that distribution had been for small rural hospitals to receive their maximum amount of funding and all other hospitals would share the remaining proportionately.

Some members noted that cost accounting systems in hospitals are very poor and it is difficult to get an accurate picture of the cost of hospital services at the Department level.

Representative Scott inquired about the number of deliveries around the state and the cost/charges for these services. He recommended that the Commission obtains some data relating to healthcare costs and quality but he also said that the Department needs some flexibility to administer the CON Rules and regulations.

## **DISCUSSION OF SCOPE OF WORK**

Dr. Rahn said that the Commission needs to establish a work plan and to determine data needs to begin narrowing the Commission's focus. He asked members to start identifying the broad issues that the Commission should address and to develop an approach as to how consultants should be engaged. He said that most consultants have done work for hospitals, health planning agencies, etc. and the Commission needs to identify someone who doesn't have a bias either way. He recommended Dr. Sloan, Health Policy Center at Duke University. He acknowledged that Dr. Sloan has done some nationwide studies of states that have eliminated CON; some of this data have already been distributed to the Commission. He acknowledged that Dr. Sloan's conclusions are preknown: that CON does not have a major impact on state level healthcare costs and doesn't address access, quality or the flow of funds within the system or the financial integrity of providers.

Members made several recommendations regarding the type of speakers that should be invited including: consultants that have supportive or negative opinions about CON. Other members suggested that speakers could also have opinions that are in favor of highly regulated/less regulated systems. While other members suggested that speakers could represent state/s that have deregulated CON or that have deregulated then reinstated the CON program. Most members agreed to Ms. Johnson's suggestion regarding extending an invitation to an academician to speak to the Commission.

Dr. Rahn recommended that the Department identify a list of potential state-level speakers utilizing the national directory that is published by the American Health Planning Association. Members expressed concern about the costs of securing guest speakers given that no appropriations were made for the Commission. Commission Burgess has agreed to speak to the Governor regarding budget appropriations to support the Commission's work. Commission members said that speakers should represent states which have similar demographics to that of the State of Georgia (i.e. Texas).

There was some discussion of cross-subsidizing issues. Dr. Lipson indicated that this is a cost shifting process that was developed quite some time ago to address losses due to the provision of care to Medicaid or uninsured patients or losses due to high intensity service areas, including (ICU, neonatal units, trauma, ER, etc.) He indicated that it will be difficult to examine CON without also examining payment reform. Mr. Maddock also acknowledged that cross-subsidizing could be found on a local level through local sales tax or foundation resources.

## **DISCUSSION OF DATA AND INFORMATION NEEDS**

Because of the committee's ongoing need for data, members agreed to establish a subcommittee that would help the Commission to continue to identify data that could inform the Commission's deliberations. A motion to create a subcommittee to identify the Commission's data needs was made by Dr. Deese, seconded by Mr. Burgess. Members who volunteered to serve on this committee include the following:

- Jeffrey Anderson
- Melvin Deese, MD
- Robert Lipson, MD
- Ronnie Rollins
- Joseph Ross
- Representative Austin Scott

Members agreed that the subcommittee would be chaired by Dr. Deese.

The following is a summary of all of the data and information that was requested at the meeting:

- List of all cardiac catheterization and open heart providers around state. (Overlaid on a state map).
- Population data (beds/1,000)
- Occupancy rates of each service/by service area
- Number of applications that the Dept. receives for each service
- Number of approvals/denials of each service
- Number of appeals by service
- Costs (including legal costs) to administer the CON program
- What cost/charge data is available? (across all payor groups and at the service level)
  - What the applicant said the service would cost, versus what it actually costs.

- Charges: average charges by DRG
- Average charge per discharge
- Hospital cost info- for facilities participating in DSH
- Office of Commissioner of Insurance Benchmarks
  - Commercial insurance rates—are there benchmarks against other southern states? States with/without CON?
    - Cost data. How does Georgia compare to other states
  - Blue Cross/Blue Shield of Georgia
  - United Health Care

*Note: It was noted that American College of Cardiology has charge database for cardiac services.*

- Quality rankings of each facility
  - Accreditation agencies—JCAHO/ Am. College of Cardiology- (*based on subscription*)
  - Death Record data (DHR/Office of Vital Records)
  - Leap Frog
- Number of deliveries around the state (cost/charge data for OB) services
- List of all Rules that have exceptions.
  - What are the specific exceptions for each service?
- What quality indicators does the Dept. of Human Resources collect?
  - When would DHR respond to a quality concern?
- Map, State Service Delivery Regions and maps associated with each specific service (include when map was last updated)
- List of potential speakers at the state level (counterparts to Department staff)

## **OTHER BUSINESS AND ADJOURNMENT**

Dr. Rahn indicated that the Commission would proceed with presentation of information regarding other specialized services along with other data discussions. There was general agreement that the Commission may need to meet more frequently in order to have a draft set of recommendations prepared by the July 2006 meeting.

There being no further business, the meeting adjourned at 3:00 pm.

Minutes taken on behalf of the Chair by Stephanie Taylor.

Respectfully Submitted,

Daniel W. Rahn, MD, Chair

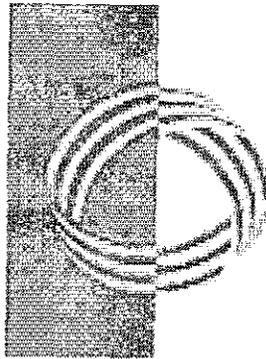
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## **APPENDIX A**

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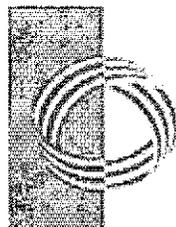
**Presentation by Robert Rozier, JD**



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# CON Rules for Specialty Services

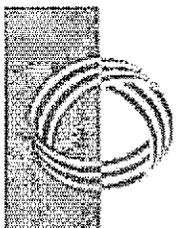
Georgia Commission on the Efficacy of the CON Program  
November 21, 2005



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## Specialized Services

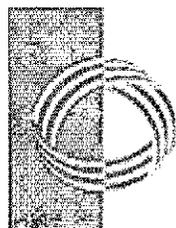
- Acute Care Related Services
  - Hospital Beds
  - Adult Cardiac Catheterization
  - Open Heart Surgery
  - Pediatric Cardiac Catheterization and Open Heart Surgery
  - Perinatal Services
  - Freestanding Birthing Centers
  - Psychiatric and Substance Abuse
- Special and Other Health Services
  - Ambulatory Surgery Centers
  - Positron Emission Tomography
  - Radiation Therapy Services
  - Magnetic Resonance Imaging
  - Computed Tomography
- Long Term Care Services
  - Skilled Nursing
  - Personal Care Home
  - Continuing Care Retirement Communities
  - Traumatic Brain Injury Facilities
  - Comprehensive Inpatient Physical Rehabilitation
  - Long Term Care Hospitals



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## Specialized Services: Previous Meetings

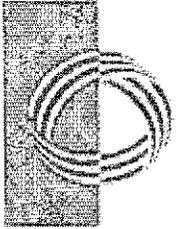
- Acute Care Related Services
  - **Hospital Beds**
  - Adult Cardiac Catheterization
  - Open Heart Surgery
  - Pediatric Cardiac Catheterization and Open Heart Surgery
  - Perinatal Services
  - Freestanding Birthing Centers
  - Psychiatric and Substance Abuse
- Special and Other Health Services
  - **Ambulatory Surgery Centers**
  - Positron Emission Tomography
  - Radiation Therapy Services
  - Magnetic Resonance Imaging
  - Computed Tomography
- Long Term Care Services
  - **Skilled Nursing**
  - **Personal Care Home**
  - **Home Health**
  - **Continuing Care Retirement Communities**
  - Traumatic Brain Injury Facilities
  - Comprehensive Inpatient Physical Rehabilitation
  - Long Term Care Hospitals



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## Specialized Services: Today

- Acute Care Related Services
  - **Adult Cardiac Catheterization**
  - **Open Heart Surgery**
  - **Pediatric Cardiac Catheterization and Open Heart Surgery**
  - **Perinatal Services**
  - **Freestanding Birthing Centers**
  - **Psychiatric and Substance Abuse**
- Special and Other Health Services
  - **Positron Emission Tomography**
  - **Radiation Therapy Services**
  - **Magnetic Resonance Imaging**
  - **Computed Tomography**
- Long Term Care Services
  - **Traumatic Brain Injury Facilities**
  - **Comprehensive Inpatient Physical Rehabilitation**
  - **Long Term Care Hospitals**



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## Specialized Services: Next Meeting

- Acute Care Related Services
  - Perinatal Services
  - Freestanding Birthing Centers
- Special and Other Health Services
  - Positron Emission Tomography
  - Radiation Therapy Services
  - Magnetic Resonance Imaging
  - Computed Tomography
- Long Term Care Services

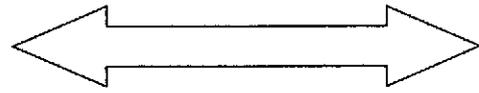


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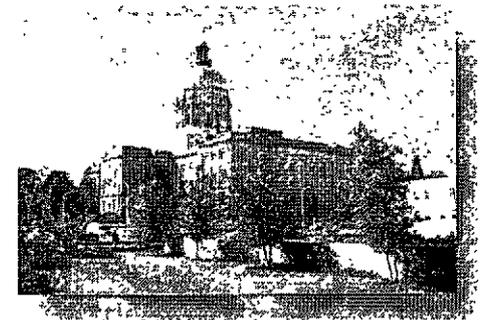
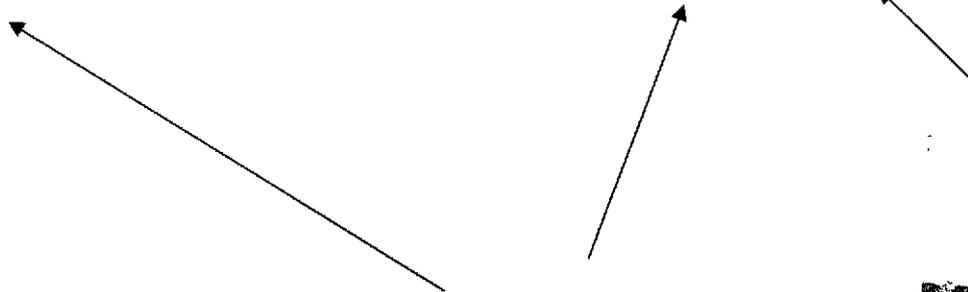
# Service-Specific Rule Making Process

**HSC**

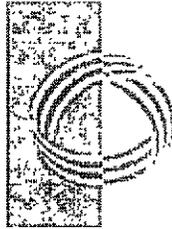
**DCH Board**



**TAG**



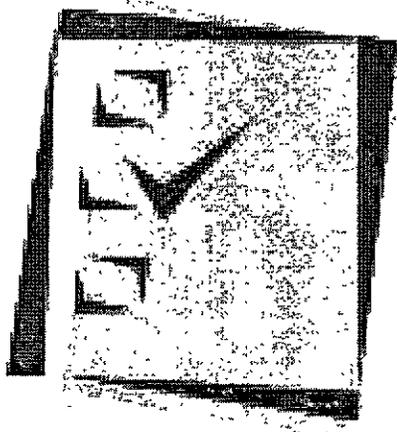
Specialized Services



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## General Review Considerations

All Services must Demonstrate the Following:



- Community has a Need
- No Existing Alternatives
- Financial Feasibility
- No Unreasonable Effects on Payors
- Reasonable Construction Costs and Methods
- Financial and Physical Accessibility
- Positive Relationship with Health Care Delivery System

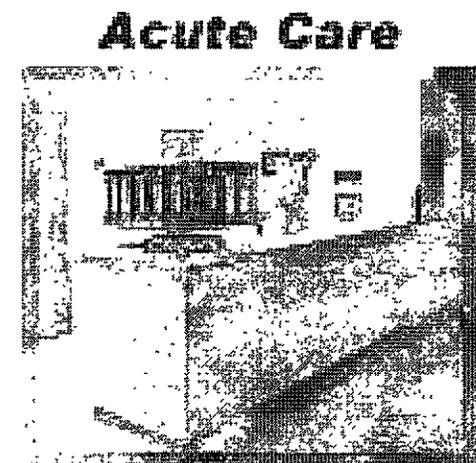
Specialized Services

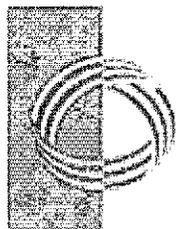


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## Acute Care Services

- Adult Cardiac Catheterization
- Adult Open Heart Surgery
- Pediatric Catheterization and Open Heart Surgery
- Inpatient Psychiatric and Substance Abuse

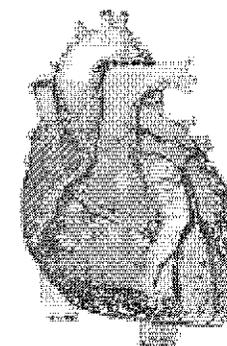


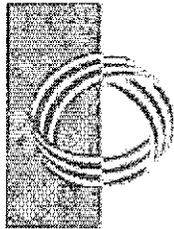


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## Acute Care Services: Adult Catheterization

- Generally hospital-based, but currently 2 freestanding cardiac catheterization laboratories
- Definition: a medical diagnostic or therapeutic procedure during which a catheter is inserted into a vein or artery in the patient
- Numerical Need Methodology
  - Utilization requirement: 85%
  - Exceptions include utilization of >90%
- Quality standards
  - Minimum staff qualifications
  - Minimum number of procedures per lab
  - Disease prevention and clinical intervention programs
- Currently 120 labs

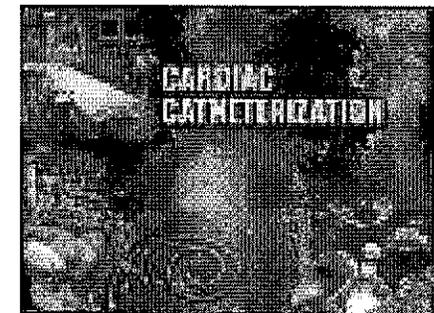


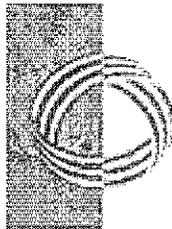


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## Acute Care Services: Adult Catheterization

- Prohibition on types of procedures
- No therapeutic caths can be performed unless also providing open heart surgery
- Exception: Atlantic C-PORT
  - Limited to 10 participants geographically distributed throughout State
  - Limited to 3-year length of trial

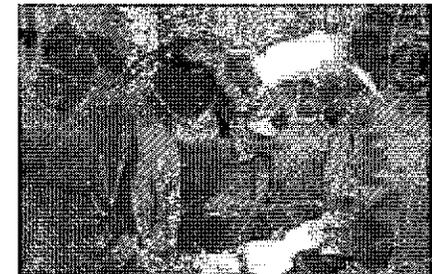


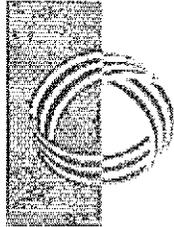


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## Acute Care Services: Open Heart Surgery

- Open heart surgery means surgery performed directly on the heart or its major veins or arteries
- Need
  - Existing diagnostic program has generated minimum of 250 adult open heart procedures
  - Minimum adverse impact on existing providers
- Quality
  - Minimum of 300 procedures
  - Must have offered diagnostic cath services for at least 3 years
- Can also perform therapeutic cath
- Currently 20 providers



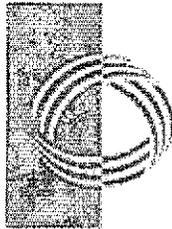


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## Acute Care Services: Pediatric Catheterization & Open Heart

- Children: 14 and under
- Pediatric tertiary hospital: Provide both pediatric cardiac caths AND pediatric cardiac surgery
- Need
  - Utilization requirement within state: 80% past two years
- Quality standards
  - Minimum staff qualifications
  - Minimum number of procedures: 150 per year
  - Necessary equipment meeting ACC and AAP
  - JCAHO accreditation
- Currently 3 providers



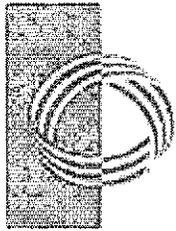


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## Acute Care Services: Psychiatric & Substance Abuse Programs

- Currently under TAC review
- Various Programs
  - Acute Psychiatric
  - Acute Substance Abuse
  - Extended Care Psychiatric
  - Extended Care Substance Abuse
- Only inpatient hospital programs are covered
- Numerical need methodology
- Quality standards
  - Minimum number of beds
- Currently 42 adult facilities

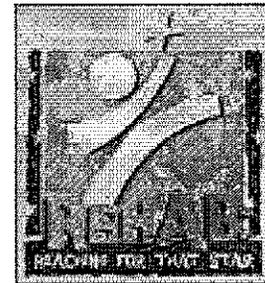


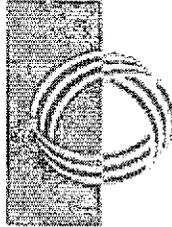


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# Long Term Care Services: Sub Acute

- Comprehensive Inpatient Physical Rehabilitation
- Traumatic Brain Injury Facilities
- Long Term Care Hospitals



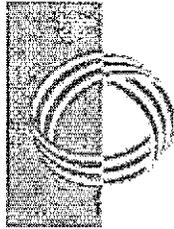


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## Sub-Acute Services: Comprehensive Inpatient Physical Rehabilitation

- Currently under TAC review
- Definition: services to patients with one or more medical conditions requiring intensive and interdisciplinary inpatient rehabilitation care
- Numerical need methodology
- New federal reimbursement guidelines
- Freestanding or based in acute care hospitals
- Quality standards:
  - CARF accreditation
- Types of Programs
  - Spinal Cord Disorders
  - Adult
  - Pediatric
- Currently 969 Adult beds, 31 Pediatric, 120 Spinal Cord

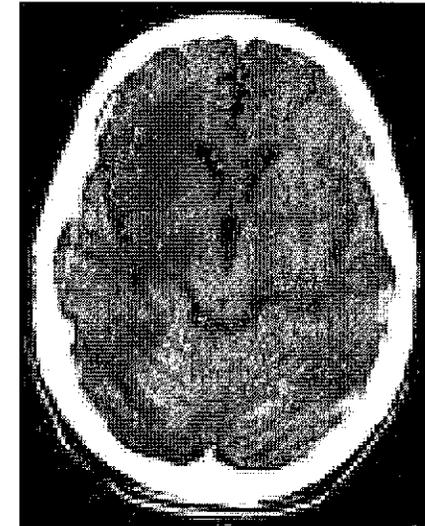
**PHYSICAL  
REHAB** *Regain  
Independence*

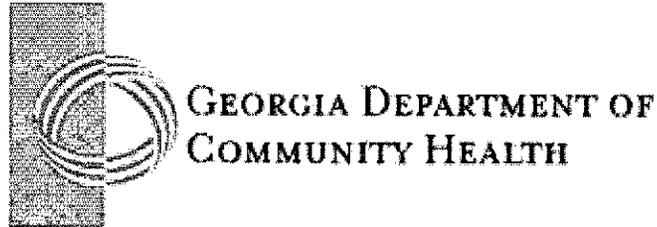


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## Sub-Acute Services: Traumatic Brain Injury

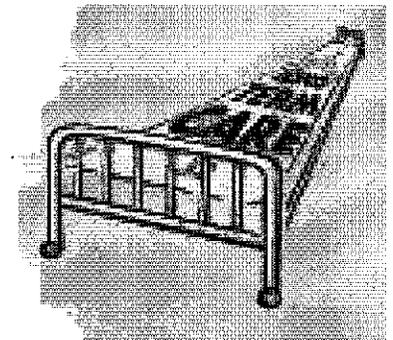
- Currently under TAC review
- Definition: services to patients with traumatic insult to the brain resulting in organic damage that may cause physical, intellectual, emotional, social, and vocational changes but not mental illness
- Types of Programs
  - Transitional Living
  - Life Long Living
- Numerical need methodology
- Quality standards
  - CARF accreditation
- Currently 81 Transitional beds, 40 Lifelong Beds

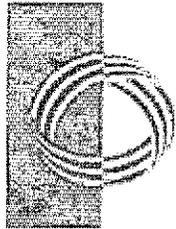




## Sub-Acute Services: Long Term Care Hospitals

- Currently under TAC review
- No specific standards currently
- Definition: hospital that has an average length of stay of greater than 25 days and is certified by the Center for Medicare and Medicaid Services (“CMS”) as a long term care hospital
- Can be a freestanding hospital or a hospital-within-a-hospital
- Currently 707 beds and 15 providers

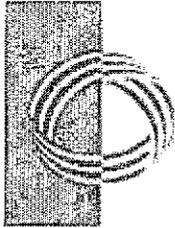




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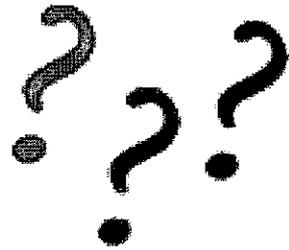
## Specialized Services: Next Meeting

- Acute Care Related Services
  - Perinatal Services
  - Freestanding Birthing Centers
- Special and Other Health Services
  - Positron Emission Tomography
  - Radiation Therapy Services
  - Magnetic Resonance Imaging
  - Computed Tomography
- Long Term Care Services



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# Questions



*Questions*

Specialized Services