



**FOR IMMEDIATE RELEASE**

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**FOR MORE INFORMATION CONTACT**

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## **Statement Regarding DCH Board Authority Concerning Proposed CON Rule Changes**

The Georgia Department of Community Health (DCH) stands by the authority given by law to the Board of Community Health to pass rules as outlined in O.C.G.A. § 31-6-21.1. Under this authority, the Board can move forward with the CON items on the agenda for Thursday's meeting.

O.C.G.A. § 31-6-21.1

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\*\*\* Current through the 2007 Regular Session \*\*\*

TITLE 31. HEALTH  
CHAPTER 6. STATE HEALTH PLANNING AND DEVELOPMENT  
ARTICLE 2. ORGANIZATION

O.C.G.A. § 31-6-21.1 (2007)

§ 31-6-21.1. Procedures for rule making by Department of Community Health

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

(b) The department shall transmit three copies of the notice provided for in paragraph (1) of subsection (a) of Code Section 50-13-4 to the legislative counsel. The copies shall be transmitted at least 30 days prior to that department's intended action. Within five days after receipt of the copies, if possible, the legislative counsel shall furnish the presiding officer of each house with a copy of the notice and mail a copy of the notice to each member of the Health and Human Services Committee of the Senate and each member of the Health and Human Services Committee of the House of Representatives. Each such rule and any part thereof shall be subject to the making of an objection by either such committee. Any rule or part thereof to which no objection is made by both such committees may become adopted by the department at the end of such 30 day period.

The department may not adopt any such rule or part thereof which has been changed since having been submitted to those committees unless:

- (1) That change is to correct only typographical errors;
- (2) That change is approved in writing by both committees and that approval expressly exempts that change from being subject to the public notice and hearing requirements of subsection (a) of Code Section 50-13-4;
- (3) That change is approved in writing by both committees and is again subject to the public notice and hearing requirements of subsection (a) of Code Section 50-13-4; or
- (4) That change is again subject to the public notice and hearing requirements of subsection (a) of Code Section 50-13-4 and the change is submitted and again subject to committee objection as provided in this subsection.

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

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

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

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

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

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

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

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

HISTORY: Code 1981, § 31-6-21.1, enacted by Ga. L. 1985, p. 829, § 2; Ga. L. 1986, p. 148, § 1; Ga. L. 1992, p. 6, § 31; Ga. L. 1994, p. 684, § 2; Ga. L. 1999, p. 296, § 22; Ga. L. 2005, p. 48, § 1/ HB 309.

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