

HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY

MINUTES OF THE APRIL 18, 2019 TRAINING SESSION

(Open Session)

Attendees:

Authority Board Members: Fred Ghiglieri, Joel Callins, Dr. Kathy Hudson, Clinton Johnson, Dr. Michael Laslie, Ferrell Moultrie, Glenn Singfield, Sr., Dr. Tania Smith, and Nyota Tucker

Authority Legal Counsel: Tommy Coleman and Jay Reynolds

Those Present on Behalf of Phoebe Putney Memorial Hospital, Inc.: Dawn Benson, Jessica Castle, Brian Church, Felicia Lewis, Scott Steiner

Absent Authority Members: None

Open Meeting and Establish a Quorum:

Chair Ghiglieri called the meeting to order at 7:00am in the Willson Board Room at Phoebe Putney Memorial Hospital. Mr. Ghiglieri thanked all Members for their attendance and participation and he observed that a quorum was present.

Approval of the Agenda:

The proposed Agenda had been previously provided to the Authority Members and a motion to adopt the proposed Agenda for the meeting was made by Ferrell Moultrie and seconded by Dr. Michael Laslie. A copy of the Agenda as adopted is attached. Chair Ghiglieri turned the training session over to Joel Callins, Chair of the Ad-Hoc Committee on Training.

Mission, Statutory Duties and Responsibilities of HAADC Members:

Jay Reynolds provided a copy of the Amended and Restated Lease and Transfer Agreement between the Authority and PPMH as well as a memorandum from Perry & Walters, LLP to the Authority members dated November 14, 2017, copies of both documents are attached hereto. Mr. Reynolds's training included the history and mission of HAADC; O.C.G.A. §31-7-70, and the HAADC/PPMH Lease Analysis.

Closing of the Meeting:

A motion was made by Ferrell Moultrie, seconded by Dr. Laslie to close the meeting for the purposes of: (i) engaging in privileged consultation with legal counsel; (ii) to discuss potentially valuable commercial plans, proposals or strategies that may be of competitive advantage in the operation of Phoebe Putney Memorial Hospital or its medical facilities, or (iii) to discuss confidential matters or information pertaining to peer review or provided by a peer review organization as defined in O.C.G.A. §31-7-131.

Chair Ghiglieri polled each individual Authority Member present with respect to his or her vote on the motion and the vote of each of the Members is shown below, with no Member opposing:

Fred Ghiglieri	Yes
Dr. Michael Laslie	Yes
Joel Callins	Yes
Dr. Kathy Hudson	Yes
Dr. Tania Smith	Yes
Clinton Jonson	Yes
Nyota Tucker	Yes
Ferrell Moultrie	Yes
Glenn Singfield, Sr.	Yes

The motion having passed, the meeting closed.

Open Session Reconvened:

Following unanimous vote of all Members in attendance at the conclusion of the Closed Session, the meeting reopened.

HAADC 2017 Policy on Meeting Conduct, and Presentation(s) by Public Community Visitors:

Tommy Coleman provided training on open meeting policy, requirements to close meeting, Open Records Requests, and policy on public community visitors speaking at meetings. He provided handouts of the HAADC 2017 Policy on Meeting Conduct, and Presentation(s) by Public Community Visitors and Georgia Municipal Association's Guide to Georgia's Open Meetings and Open Records Laws for Municipal Officials, a copy of both are retained with these Minutes.

PPMH Financial / Accounting Presentation:

Brian Church, CFO of PPMH, Inc., provided an overview of financial documents presented quarterly and annually to HAADC in compliance with the Lease; where the PPMH Financial Data is located for the public; and PPMH charges and costs in comparison to peer hospitals. Mr. Church provided the members with a copy of the Georgia Hospital Association's Resource Guide for Policy Makers, which is included with these minutes. The Members engaged Mr. Church in discussion and questions. A copy of the Mr. Church's presentation is attached.

PPMH Website Resources for the Public / HAADC Website

Jessica Castle, VP Marketing, provided a live demonstration of the PPMH and HAADC websites. The demonstration included resources for patients, quality data, price list of charges, Community Benefits report, Open Records Requests, and Authority information.

Adjournment:

There being no further business the meeting was adjourned.

TRAINING SESSION AGENDA

HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY, GEORGIA

(OPEN SESSION)
April 18, 2019
7am-11:30am
(Willson Board Room)

- | | | |
|-------|--|------------------------------|
| I. | Open training session and establish quorum | Chair |
| II. | Consider Approval of Agenda (draft previously provided to Members) | Chair |
| III. | Mission, Statutory Duties and Responsibilities of HAADC Members | Jay Reynolds, Esq. |
| IV. | Consideration of vote to close meeting for Executive Session | Chair |
| V. | HAADC 2017 Policy on Meeting Conduct, and Presentation(s) by Public Community Visitors | Tommy Coleman, Esq.
Chair |
| VI. | PPMH Financial / Accounting Presentation | Brian Church |
| VII. | PPMH Website Resources for the Public | Jessica Castle |
| VIII. | HAADC Website | Jessica Castle |
| IX. | Additional Business / Closing Remarks | Chair |
| X. | Adjournment | |

AMENDED AND RESTATED
LEASE AND TRANSFER AGREEMENT

BETWEEN

HOSPITAL AUTHORITY OF ALBANY-
DOUGHERTY COUNTY, GEORGIA

AND

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

DATED AS OF AUGUST 1, 2012

TABLE OF CONTENTS

Background and Supplemental Background		1
ARTICLE I		
<u>DEFINITIONS</u>		
		4
ARTICLE II		
<u>REPRESENTATIONS</u>		
SECTION 2.01	Representations and Warranties by Transferor	10
SECTION 2.02	Representations and Warranties by Transferee	11
ARTICLE III		
<u>LEASING OF EXISTING FACILITIES; TRANSFER OF OPERATING ASSETS; ASSUMPTION OF LIABILITIES; TERM AND REQUIRED PAYMENTS</u>		
SECTION 3.01	Leasing of Existing Facilities; Quiet Enjoyment; Commencement Date	11
SECTION 3.02	Transfer of Operating Assets and Existing Operations	12
SECTION 3.03	Assumption of Liabilities	13
SECTION 3.04	Transfer of the Existing Facilities and Existing Operations	13
SECTION 3.05	Required Payments	13
SECTION 3.06	Security Interest	14
SECTION 3.07	Absolute Obligation to Pay Required Payments	15
SECTION 3.08	Bonds and Bond Indentures	15
ARTICLE IV		
<u>COVENANTS OF TRANSFEROR AND TRANSFEREE</u>		
SECTION 4.01	Maintenance of Existing Facilities	15
SECTION 4.02	Operating of Hospital	16
SECTION 4.03	Compliance With Applicable Law	18
SECTION 4.04	Liens and Encumbrances	19
SECTION 4.05	Payments of Other Obligations	19
SECTION 4.06	Transferor's Performance of Transferee's Obligations	20
SECTION 4.07	Improvements	20
SECTION 4.08	Tax-Exempt Status	21
SECTION 4.09	Regulatory Controls	21
SECTION 4.10	License and Accreditation	21
SECTION 4.11	Medical Staff	21

SECTION 4.12	Medicare/Medicaid Filings	21
SECTION 4.13	Transfer of Employees; Benefits	22
SECTION 4.14	Participation and Reimbursement Agreements	22
SECTION 4.15	Articles and Bylaws of Transferee	22
SECTION 4.16	Implementation of Parent Holding Company Structure	22
SECTION 4.17	Consents and Notices	24
SECTION 4.18	Indigent Care	24
SECTION 4.19	Permitted Indebtedness	24
SECTION 4.20	Financial Books and Records	24
SECTION 4.21	Competition with Hospital	24
SECTION 4.22	Eminent Domain	25
SECTION 4.23	Existing Certificates of Need	25
SECTION 4.24	Name of the Hospital	25

ARTICLE V

IMPROVEMENTS; DISPOSITIONS OF PROPERTY; ALTERATIONS

SECTION 5.01	After-Acquired Property as Part of the Existing Facilities	25
SECTION 5.02	Covenant Against Unauthorized Disposition	25
SECTION 5.03	Dispositions of Property Without Notice	26
SECTION 5.04	Dispositions of Property With Notice	26
SECTION 5.05	Transfers to Affiliates	26
SECTION 5.06	Alterations	28
SECTION 5.07	Compliance with Bonds	28

ARTICLE VI

INSURANCE

SECTION 6.01	Insurance	28
SECTION 6.02	Insurers and Policies	29
SECTION 6.03	Involuntary Loss; Use of Insurance Proceeds, Condemnation Awards and Sale Proceeds	29
SECTION 6.04	Failure to Carry Insurance	30

ARTICLE VII

INDEMNIFICATION

SECTION 7.01	Indemnification; No Liability; Damage Claims	30
SECTION 7.02	Reimbursement of Costs and Expenses	31
SECTION 7.03	Continuation of Liability	31

ARTICLE VIII
ASSIGNMENTS; SUBLEASES; OPERATING ARRANGEMENTS

SECTION 8.01	Maintenance of Corporate Existence; Permitted Mergers, Consolidations and Sales	31
SECTION 8.02	Subleases and Operating Contracts	32
SECTION 8.03	Prohibition on Other Assignments and Subleases	32

ARTICLE IX

DEFAULT BY TRANSFEREE

SECTION 9.01	Events of Default	32
SECTION 9.02	Termination	34
SECTION 9.03	Repossession Without Termination	34
SECTION 9.04	Damages	34
SECTION 9.05	Additional Remedies	35
SECTION 9.06	No Waiver of Rights	35
SECTION 9.07	Reversion of Assets	35

ARTICLE X

MISCELLANEOUS

SECTION 10.01	Captions, Background and Recitals	35
SECTION 10.02	Covenants Considered Material	36
SECTION 10.03	Amendment of Agreement	36
SECTION 10.04	Georgia Law Controlling	36
SECTION 10.05	Consents and Approvals	36
SECTION 10.06	Multiple Counterparts	36
SECTION 10.07	Severability	36
SECTION 10.08	Transferee's Remedies	36
SECTION 10.09	Assignments	36
SECTION 10.10	Recording	36
SECTION 10.11	Notices; Demands; Requests	36
SECTION 10.12	Validity of Pledge	37
SECTION 10.13	No Personal Liability	37
SECTION 10.14	Payments	38
SECTION 10.15	Survival of Covenants, Representations and Warranties	38
SECTION 10.16	Entire Agreement	38
SECTION 10.17	Good Faith	38
SECTION 10.18	Relationship of Parties	38
SECTION 10.19	Brokerage Commission	38
SECTION 10.20	Attorneys' Fees and Costs	38
SECTION 10.21	Time is of the Essence	39

AMENDED AND RESTATED
LEASE AND TRANSFER AGREEMENT

THIS AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT (this "Agreement"), amending and restating the original Lease and Transfer Agreement as to Phoebe Putney Memorial Hospital entered into as of December 11, 1990, and thereafter amended, is made effective as of the 1st day of August, 2012, between the HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY, GEORGIA, a public body corporate and politic and an instrumentality of the State of Georgia (herein called "Transferor"), and PHOEBE PUTNEY MEMORIAL HOSPITAL, INC., a nonprofit corporation organized, existing and in good standing under the laws of the State of Georgia (herein called "Transferee").

N O W, W I T N E S S E T H:

WHEREAS, Transferor and Transferee originally entered into a Lease and Transfer Agreement on December 11, 1990 (the "1990 Lease"), with respect to the lease and transfer of Phoebe Putney Memorial Hospital (the "Hospital");

WHEREAS, Transferor and Transferee thereafter entered into two amendments to the 1990 Lease, dated March 14, 2002 and May 14, 2009 (the "Previous Amendments");

WHEREAS, Transferor acquired the assets and operations of the hospital formerly known as Palmyra Medical Center and related facilities effective as of December 15, 2011, which assets have been managed on behalf of Transferor by Transferee (pursuant to the terms of a Management Services Agreement dated December 15, 2011, between Transferor and Transferee, which Management Agreement is to be terminated as of the effective date hereof, except as may be necessary for transition purposes or except as any part thereof may expressly survive), and which are currently operated by Transferor under the name Phoebe North ("Phoebe North");

WHEREAS, Transferor has found and determined that a lease of Phoebe North to Transferee so that it becomes an integrated part of Transferee's healthcare system and operations will well serve the public health needs of the community by making available additional quality healthcare facilities and services on a basis which can be overseen by Transferor and will limit or contain future increases in the cost of healthcare in Dougherty County while promoting efficiencies and protecting the Hospital and its facilities as a community asset operated on a nonprofit basis for the benefit of our citizens;

WHEREAS, Transferor and Transferee desire to enter into this Agreement in order to: (i) restate the terms of the 1990 Lease; (ii) incorporate the terms of the Previous Amendments and to further amend the lease; (iii) include the lease and transfer of all the assets and operations of Phoebe North except as herein specifically excluded as part of this Agreement to be operated by Transferee as part of the Hospital; and (iv) extend the term of the lease from the effective date of

this Amended and Restated Lease and Transfer Agreement for a period of forty (40) years from said date;

NOW, THEREFORE, for and in consideration of the parties' respective promises, covenants, and agreements contained herein, including but not limited to all such agreements pertaining to the provision of quality healthcare to the citizens of Dougherty County at reasonable cost, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, Transferor and Transferee do hereby agree as follows:

Background and Recitals
From the 1990 Lease as Previously Amended

Transferor owns and operates PhoebePutneyMemorialHospital (the "Hospital"), a 450-bed multi-specialty, general medical and surgical hospital located in Albany, Dougherty County, Georgia. In recognition of the rapidly changing health care environment in which it operates, the Transferor retained a consulting firm in 1987 to prepare a management audit of Hospital operations and to make recommendations regarding how best to improve Hospital operations. The management audit report dated August, 1987, identified, among other things, corporate restructuring through a lease of the Hospital to a new nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and the creation of a parent holding company structure, as high priorities for consideration by the Transferor. Although the Transferor did not pursue restructuring in 1987, the subject continued to be discussed and gained increasing importance due to recent developments and opportunities affecting the ability of the Hospital to remain competitive and to enhance its position as the principal regional provider of specialty health care services in Southwest Georgia.

The plan of restructuring adopted by the Transferor provides the Hospital with a new, flexible structure which will remove various restrictions and limitations imposed upon the Transferor and will allow the Hospital to respond to existing competitive threats and to seize available opportunities both within and outside DoughertyCounty. The immediacy of both the competitive threats and the available opportunities within and outside Dougherty County compelled the Transferor to adopt a plan of restructuring to be implemented in a multi-phased approach, beginning with leasing of the Hospital by the Transferor to a single nonprofit corporation (the Transferee), with a subsequent adoption of a parent holding company structure to provide additional long-term flexibility for further ventures and activities of the Hospital. The Transferor's adoption of such a plan of restructuring has resulted in the preparation of this definitive agreement to implement such plan.

The restructuring plan adopted by the Transferor is authorized under Georgia law. Georgia's Hospital Authorities Law (O.C.G.A. §§ 31-7-70 et seq.), as confirmed by the Georgia Supreme Court's decision in Richmond County Hospital Authority v. Richmond County, 255 Ga. 183, 336 S.E.2d 562 (1985), authorizes a corporate restructuring of a hospital authority through a lease and transfer of hospital assets to a new 501(c)(3), nonprofit corporation, and also authorizes the establishment of a parent holding company structure. In addition, at least eleven other

Georgia hospitals owned by hospital authorities have restructured during the past seven years in a manner similar to the plan adopted by the Transferor.

The restructuring plan adopted by the Transferor also retains such public control of the Hospital as is contemplated by the Hospital Authorities Law to ensure continued fulfillment of the Hospital's public mission of providing quality health care at a reasonable cost to the residents of Dougherty County. A substantial inducement for Transferor's approval of the plan of restructuring, implementation of the restructuring of the Hospital and the execution of this Agreement is the promise of Transferee, on behalf of itself and any future affiliated entities including the contemplated parent corporation, that upon the expiration or earlier termination of this Agreement except as set forth in Section 5.05(b) of this Agreement, all assets of Transferee and its parent affiliate, including the assets of their respective affiliates, shall be distributed to Transferor and become Transferor's property absolutely, and Transferee and its parent affiliate and other affiliates shall thereafter be dissolved.

WHEREAS, Transferor has determined that this Agreement will promote the public health needs of the community, by making additional facilities available in the community and by lowering the cost of health care in the community, and that this Agreement retains sufficient control by the Transferor over the Hospital as is contemplated by the "Act" (as hereinafter defined);

WHEREAS, Transferor believes that continuation of the high quality and level of healthcare services currently rendered at the Hospital can best be accomplished by transferring all of the operations, assets and liabilities of the Hospital to a nonprofit corporation;

WHEREAS, to accomplish this end, Transferor wishes to lease the assets of the Hospital, and to transfer all of the operations and liabilities of the Hospital, to Transferee, and Transferee wishes to assume all of the operations, assets and liabilities of the Hospital, all on the terms and conditions hereinafter set forth.

Supplemental Background and Recitals
With Respect to Phoebe North

As of December 15, 2011, Transferee has acquired the assets, operations, and liabilities of Phoebe North. Based upon its findings and decisions, effective August 1, 2012, Transferor desires to lease and transfer the assets, operations, and liabilities of Phoebe North, including all Real Property acquired by Transferor in connection with its acquisition of Phoebe North, to Transferee pursuant to the terms of this Agreement, to be combined and operated together with those assets previously leased to Transferee.

WHEREAS, to accomplish the ends set forth above, and except as specifically excluded in this Agreement, Transferor wishes to lease and transfer all the assets of Phoebe North, including all Real Property acquired by Transferor in connection with its acquisition of Phoebe North, and to transfer all of the operations and liabilities of Phoebe North, to Transferee, and Transferee wishes to assume all of the operations, assets and liabilities of Phoebe North, including all Real

Property acquired by Transferor in connection with its acquisition of Phoebe North, all on the terms and conditions hereinafter set forth.

A R T I C L E I

DEFINITIONS

The following words, terms or phrases, when used in this Agreement, shall have the following meanings unless the context indicates a different meaning:

"Act" means the Georgia Hospital Authorities Law (O.C.G.A. §§ 31-7-70 et seq.) as amended.

"Affiliate" means a corporation, limited or general partnership, joint venture, limited liability company, limited liability partnership, limited liability limited partnership, business trust or similar entity organized under the laws of the State of Georgia or any foreign jurisdiction: (a) which controls, or which is controlled, directly or indirectly, by, Transferee, Parent Affiliate (as defined in Section 4.16 hereof), or another Affiliate; or (b) a majority of the members of the Directing Body of which are also members or directors of the Board of Directors of the Transferee and constitute a majority of the members or directors of the Board of Directors of the Transferee. For the purposes of this definition, control means with respect to: (a) a nonprofit corporation not having stock whose board of directors is not self-perpetuating, the power to elect or appoint, directly or indirectly, a majority of the Directing Body of such corporation; (b) a nonprofit corporation not having stock with a self-perpetuating board, that such nonprofit corporation was created through the action of Transferee, Parent Affiliate, or another Affiliate, or through the will or action of the Directing Body of Transferee, Parent Affiliate, or another Affiliate; (c) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the directors of such corporation; (d) a general or limited partnership, the ownership of a majority of the general partners' interest in the partnership; (e) any other entity, the power to direct the management of such entity through the ownership of at least a majority of its voting securities or the right to designate or elect at least a majority of the members of its Directing Body, by contract or otherwise. For the purposes of this definition, "Directing Body" means: (a) with respect to a nonprofit corporation not having stock, such corporation's members if the members have complete discretion to elect the corporation's directors, or the corporation's directors if the corporation's members do not have such discretion; (b) with respect to a corporation having stock, such corporation's board of directors and the owners, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporation's directors (both of which groups shall be considered a Directing Body); (c) with respect to a general or limited partnership, the holders of a majority of the general partners' interest in the partnership; and (d) with respect to any other entity, its governing board or body. For the purposes of this definition, all references to directors and members shall be deemed to include all entities performing the function of directors or members however denominated.

"Agreement" means this Lease and Transfer Agreement as from time to time amended or supplemented pursuant hereto.

"Assigned Contracts" means all agreements of Transferor assigned pursuant to this Agreement.

"Assumed Liabilities" means all of the liabilities and obligations of Transferor which incurred or arose in connection with the Existing Operations, whether known or unknown, contingent or otherwise, including, without limitation, all obligations and liabilities of Transferor in connection with the Bonds, all obligations incurred in the purchase of Phoebe North, all obligations and liabilities of Transferor under the Assigned Contracts, and all obligations of Transferor to the Medicare and Medicaid programs.

"Bonds" means, collectively, the \$9,775,000 Hospital Authority of Albany-Dougherty County, Georgia Refunding Revenue Anticipation Certificates Series 1990B, the \$29,600,000 Hospital Authority of Albany-Dougherty County, Georgia Revenue Anticipation Certificates Series 1990C, and any other Revenue Anticipation Certificates which may hereafter be issued by Transferor during the term of this Agreement, pursuant to the Bond Indentures.

"Bond Indentures" means that certain Trust Indenture dated as of October 1, 1990 between Transferor and Trust Company Bank, as Trustee, as supplemented by that certain Supplemental Trust Indenture dated as of November 1, 1990 between Transferor and Trust Company Bank, as Trustee, and any other Trust Indentures which may hereafter be executed by Transferor during the term of this Agreement.

"Book Value" means with respect to any Property the value thereof calculated on the basis of the book value of such assets shown on the asset side of the balance sheet in the financial statements for Transferee for the most recent Fiscal Year for which financial statements have been reported on by an Independent Accountant.

"Code" means the Internal Revenue Code of 1986, as amended, and all applicable existing and proposed regulations that may from time to time be issued thereunder.

"Commencement Date" shall have the meaning set forth in Subsections 3.01(c)(1) and 3.01(c)(2) hereof.

"Employees" means all of the employees of the Transferor employed in connection with Existing Operations on the Commencement Date hereof.

"Entity" means a corporation, general or limited partnership, joint venture, association, trust, person or other legal entity.

"Equipment" means all equipment, machinery and furniture owned by Transferor and used in connection with the Existing Operations as of the Commencement Date and all equipment, machinery and furniture acquired and installed in replacement thereof or in

substitution therefor and further shall mean all tangible personal property which is owned by Transferor and leased to Transferee which is not included in the definition of Real Property.

"Existing Facilities" means the Hospital, the Real Property, the Equipment, and all Improvements which are leased by Transferor to Transferee hereunder as the same may change from time to time.

"Existing Operations" means all of the hospital, health care, administrative and related activities conducted as of the Commencement Date hereof or in the past by Transferor in the ordinary course of owning and operating the Existing Facilities. Upon the transfer of the Existing Operations to Transferee pursuant to Section 3.02 hereof, the term "Existing Operations" shall mean all of the hospital, health care, administrative and related activities conducted by Transferee in the ordinary course of owning and operating the Existing Facilities.

"Financial Statements" means the audited financial statements of the Transferor as of July 31, 1990, and as of July 31, 2012.

"Fiscal Year" means the fiscal year of Transferee which shall be August 1 of each year through July 31 of the following year, unless changed by Transferee.

"Hospital" means (a) for purposes of the term of this Agreement through July 31, 2012, the facility and institution known as Phoebe Putney Memorial Hospital located in Albany, Dougherty County, Georgia, together with all deletions, additions and Improvements thereto, with the exception of Phoebe North, and all licenses, permits and approvals, including certificate of need approvals, necessary or desirable for the use and operation thereof; and (b) for purposes of the term of this Agreement commencing on August 1, 2012 and thereafter, Phoebe Putney Memorial Hospital, together with Phoebe North, and all licenses, permits and approvals, including certificate of need approvals, necessary or desirable for the use and operation of such expanded Hospital.

"Improvements" means any and all buildings, structures, improvements, furnishings, machinery, equipment and other personal property which shall be constructed, placed or installed in or upon the Real Property as a substitution for or in renewal or replacement of any buildings, structures, improvements, furnishings, machinery, equipment or other personal property constituting part of the Hospital, and any other additions, alterations and improvements to the Hospital placed or installed in or upon the Real Property.

"Independent Accountant" means a firm of regionally or nationally recognized, independent certified public accountants selected by Transferee.

"Joint Commission" means the Joint Commission.

"Operating Assets" means all assets which are owned by Transferor in connection with the operations of the Existing Facilities (including, without limitation, all assets reflected in the Financial Statements, with such changes as may have occurred after the date of the Financial

Statements in the ordinary course of business) excluding the Existing Facilities, but including, without limitation:

- (a) all cash, bank accounts, savings and loan accounts, certificates of deposit, money market accounts, treasury bills, other investments and revenues (including amounts held in any insurance trust) owned by Transferor in connection with the Existing Facilities;
- (b) all, accounts receivable and all other amounts owed to Transferor in connection with the Existing Facilities;
- (c) all, oral and written agreements of Transferor excepting only those listed in Exhibit "A" hereto which were entered into in connection with the Hospital (the "Assigned Contracts");
- (d) all books, records and other information collected and maintained in connection with the Existing Facilities including, without limitation, patient records and employee records;
- (e) all judgments, choses in action and intangibles owned by Transferor and related to the Existing Facilities;
- (f) the name "PhoebePutneyMemorialHospital";
- (g) all funded depreciation, board designated or board restricted assets and other similar reserves; and
- (h) all assets not listed above and not otherwise classified as Existing Facilities.

Upon the transfer of the Operating Assets to Transferee pursuant to Section 3.02 hereof, the term "Operating Assets" shall mean all Operating Assets received by Transferee plus all accumulations and additions thereto, and less all deletions and deductions therefrom, as may have occurred in the ordinary course of business of Transferee or as otherwise may have been permitted by the terms of this Agreement.

"Operating Year" means the initial partial year (i) commencing on the Commencement Date hereof and (ii) ending on the last day of the Transferee's Fiscal Year during which the Commencement Date occurred; and thereafter "Operating Year" shall consist of a successive period of twelve calendar months.

"Permitted Encumbrances" means the Bond Indentures, this Agreement and, as of any particular time,

- (a) liens for taxes and special assessments, if any, which are not then delinquent, or if then delinquent are being contested in accordance with the provisions of this Agreement;

(b) utility, access and other easements and rights-of-way, restrictions and exceptions which will not materially interfere with or materially impair the operation of the Hospital, or facilities thereof (or, if they are not being then operated, the operation for which they were designed or last modified);

(c) any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right in respect thereof, if any, if payment is not yet due under the contract in question or if such lien is being contested in accordance with the provisions of this Agreement;

(d) such minor defects and irregularities of title as normally exist with respect to properties similar in character to the land and which do not materially and adversely affect the value of the Hospital or materially impair the property affected thereby for the purpose for which it was acquired or is held by Transferee;

(e) leases to other than Affiliates which relate to portions of the Hospital which are customarily the subject of such leases, such as office space for physicians and educational institutions, food service facilities, gift shops and radiology, pharmacy and similar departments to the extent that such leases will not adversely affect the exemption from federal income taxation of the Bonds, and to the extent the same are permitted by Article V hereof or Section 8.02 hereof;

(f) zoning laws and similar restrictions which are not violated by Transferee or which do not materially and adversely affect the value of the Hospital;

(g) statutory rights under Section 291, Title 42 of the United States Code, as a result of what are commonly known as Hill-Burton grants, and similar rights under other federal and state statutes;

(h) all right, title and interest of the State, municipalities and the public in and to access over, under or upon a public way;

(i) any instrument creating or securing Permitted Indebtedness;

(j) liens on and security interests in Property which secure Permitted Indebtedness to the extent permitted by this Agreement;

(k) interests, including leasehold and ownership interest, of any Affiliate in Property leased or transferred to such Affiliate in accordance with the provisions of Section 5.05 hereof;

(l) liens on and security interests in Property, including those existing on such Property at the time of acquisition thereof (including acquisition by gift, bequest or devise) by Transferee, which (i) either existed at the time of the acquisition of such property or which secure Permitted Indebtedness assumed or incurred by Transferee in connection with the acquisition of such Property, (ii) do not extend to any Property of Transferor other than that so acquired, and (iii) at the time the indebtedness secured

thereby is or was issued or incurred by Transferee or in the case of Property acquired subject to an existing lien or security interest at the time of such acquisition, the aggregate amount remaining unpaid on the indebtedness secured thereby (whether or not assumed by Transferee) shall not exceed the lesser of the acquisition price or the fair market value of the property as determined in good faith by Transferee;

(m) liens on and security interests in Property given, bequeathed or devised to Transferee existing at the time of such gift, bequest or devise, provided that (i) such liens or security interests attach solely to the Property which is the subject of such gift, bequest or devise, and (ii) the indebtedness incurred by such liens or security interests is not assumed by Transferee or, if assumed, is assumed on a nonrecourse basis;

(n) leases of Property entered into by Transferee in order to obtain the use of such Property and which constitute Permitted Indebtedness; and

(o) restrictions or other encumbrances which are either insured over by a reputable, solvent title insurance company which has been writing title insurance in Dougherty County, Georgia for at least five (5) years or which relate to properties which are not contiguous to the property on which the Hospital is situated and the loss of which would have no material adverse impact on the operations of the Hospital.

"Permitted Indebtedness" means the indebtedness or obligations of Transferee permitted under Section 4.19 hereof.

"Phoebe North" means the hospital facility and institution formerly known as Palmyra Medical Center located in Albany, Dougherty County, Georgia (which Transferor acquired as of December 15, 2011 pursuant to the terms of an Asset Purchase Agreement dated December 21, 2010, by and among Transferor, Phoebe Putney Health System, Inc., Phoebe North, Inc., and Palmyra Park Hospital, Inc.), together with all deletions, additions and Improvements thereto, and all licenses, permits, and approvals, including certificate of need approvals, necessary or desirable for the use and operation thereof.

"Pledged Revenues" means accounts receivable, contract rights and general intangibles, and all proceeds of all of the foregoing whether cash or noncash, now existing or hereafter coming into being or now owned or hereafter acquired, of Transferee, excluding; however, (i) all right to receive any gifts, grants, bequests, devises, donations, contributions or pledges and earnings thereon, received or to be received and restricted as to use by the terms of such gift, grant, bequest, devise, donation, contribution or pledge in any way which would prevent its application to the Required Payments required hereunder, and (ii) the proceeds of any borrowing.

"Property" means any and, all rights, title and interest in and to any and all property whether real or personal, tangible or intangible and wherever situated.

"Property, Plant and Equipment" means all Property of Transferee which is classified as property, plant and equipment under generally accepted accounting principles.

"Real Property" means (i) the real property previously leased by Transferor to Transferee pursuant to the 1990 Lease, as amended, including all buildings, fixtures, improvements, mechanical systems, drawings or parking areas located thereon and all rights, easements and appurtenances thereto, and (ii) the real property acquired by Transferor in connection with its acquisition of Phoebe North, as more particularly described in Exhibit "B" hereto, including all buildings, fixtures, improvements, mechanical systems, drawings or parking areas located thereon and all rights, easements and appurtenances thereto.

"Required Payments" means any and all of the payments required to be made pursuant to Sections 3.05(a)(i) and 3.05(a)(ii) hereof.

"State" means the State of Georgia.

"Term of this Agreement" or the "term hereof" means the period commencing on the Commencement Date and ending on the last day of the 40th Operating Year hereunder, unless sooner terminated pursuant to the provisions hereof or unless extended pursuant to the provisions hereof.

"Trustee" means the Trustee serving from time to time under the Bond Indentures.

ARTICLE II

REPRESENTATIONS

SECTION 2.01. Representations and Warranties by Transferor. Transferor makes the following representations and warranties to Transferee as the basis for the undertakings on Transferee's part herein contained, subject to the order of any court of competent jurisdiction:

(a) Transferor is a public body corporate and politic and an instrumentality of the State of Georgia, duly organized, validly existing and in good standing under the laws of the State of Georgia;

(b) Transferor has good and sufficient fee simple title for purposes of this Agreement in and to the Real Property, and good and valid title in and to the Equipment and the Operating Assets, and such title with respect to the property acquired by Transferor in connection with its acquisition of Phoebe North is free and clear of any material lien, claim, encumbrance or security interest arising therein since the date of such acquisition, other than Permitted Encumbrances, except for those listed in Exhibit "C" attached hereto;

(c) Transferor has full power and authority to enter into this Agreement, to carry out the transactions contemplated hereunder, and to carry out its obligations hereunder;

(d) Transferor has duly authorized the execution, delivery and performance of this Agreement; and

(e) Transferor is not subject to any claim or restriction or subject to any provision of any nature whatsoever contained in Transferor's enabling legislation, charter, ordinances or bylaws or in any evidence of indebtedness, indenture, commitment, agreement or contract to which Transferor is a party or by which it is bound, or subject to any existing judgment, order or decree binding upon Transferor, which in any way prevents Transferor from entering into this Agreement or performing any of its obligations hereunder.

SECTION 2.02. Representations and Warranties by Transferee. Transferee makes the following representations and warranties to Transferor as of the date of delivery hereof:

(a) Transferee is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State of Georgia;

(b) Transferee has full power and authority to enter into this Agreement, to carry out the transactions contemplated hereunder and to carry out its obligations hereunder;

(c) Transferee is duly authorized to execute, deliver and perform this Agreement;

(d) Transferee is, as of the Commencement Date, an organization described in Section 501(c) (3) of the Code exempt from federal income tax under Section 501(a) of the Code and not a private foundation as defined in Section 509(a) of the Code; and

(e) Transferee is not subject to any limitation, restriction or provision of any nature whatsoever contained in Transferee's articles of incorporation or bylaws or in any evidence of indebtedness, indenture, commitment, agreement or contract to which Transferee is a party or by which it is bound, or subject to any existing judgment, order or decree binding upon Transferee, which in any way limits, restricts or prevents Transferee from entering into this Agreement or performing any of its obligations hereunder.

ARTICLE III

LEASING OF EXISTING FACILITIES; TRANSFER OF OPERATING ASSETS; ASSUMPTION OF LIABILITIES; TERM AND REQUIRED PAYMENTS

SECTION 3.01. Leasing of Existing Facilities; Quiet Enjoyment;
Commencement Date.

(a) Transferor, for and in consideration of the payment by Transferee of the Required Payments pursuant to Section 3.05 hereof and the performance by Transferee of the covenants and agreements set forth herein, leases the Existing Facilities to Transferee effective as of the Commencement Date, and Transferee effective as of the Commencement Date takes and accepts the Existing Facilities from Transferor, subject to the terms, covenants, conditions and provisions hereinafter stated and the following limitations, restrictions, reservations and encumbrances, to have and to hold for the term hereof. To the extent permitted under the Act, the term hereof may

be extended by mutual agreement of Transferor and Transferee and may be extended by Transferor and Transferee to be co-extensive with the term of any outstanding bonds issued by Transferor. By issuing any bonds after the date hereof, however, Transferor is not obligating itself to agree to any extension of the term hereof.

(b) Effective as of the Commencement Date, Transferor grants to Transferee the right to lease and operate the Existing Facilities, and agrees that so long as Transferee shall pay the Required Payments as provided herein and shall duly observe and perform all the terms, covenants, conditions provisions, stipulations and agreements of this Agreement obligatory upon Transferee and shall operate the Existing Facilities consistent with all obligations currently or in the future existing under the Act which are applicable to the Existing Facilities, then Transferee shall have, hold and enjoy, during the term hereof, peaceful, quiet and undisputed possession of the Existing Facilities, without hindrance or molestation by anyone claiming by or through Transferor subject, however, to the provisions of this Agreement, and Transferor shall from time to time take all necessary or appropriate action to that end.

(c)(1) "Commencement Date" means September 1, 1991, which is the date upon which the 1990 Lease became effective with respect to the lease and transfer of Phoebe Putney Memorial Hospital under the 1990 Lease pursuant to the following provisions thereof:

For purposes of this Agreement, the term "Commencement Date" shall mean the day on which the "Commencement Certificate" (as defined herein) is delivered by the Transferee to the Transferor after the following have been received: (i) a written determination from the Internal Revenue Service recognizing Transferee as a charitable organization within the meaning of Section 501(c)(3) of the Code; (ii) a final written approval from Georgia's State Health Planning Agency ("SHPA") granting certificate of need approval to the leasing and restructuring of the Hospital pursuant to this Agreement; and (iii) all opinions, reports and approvals required by the Bond Indentures in order to affect the leasing and restructuring of the Hospital pursuant to this Agreement.

Transferor and Transferee shall diligently pursue the completion of items (i) through (iii) above and, if required to satisfy such conditions, shall modify this Lease in any reasonable manner. When the events described in items (i) through (iii) above shall have occurred, Transferee shall deliver a certificate to Transferor certifying as to the same (the "Commencement Certificate"). Transferee shall deliver the Commencement Certificate to the Transferor no later than the first day of the month immediately following the date of receipt of all items (i) through (iii) above.

(c)(2) "Commencement Date" means August 1, 2012, with respect to the lease and transfer of the assets, operations, and liabilities of Phoebe North to the Transferee under this Amended and Restated Lease and Transfer Agreement.

SECTION 3.02. Transfer of Operating Assets and Existing Operations. Transferor, for and in consideration of the assumption by Transferee of the Assumed Liabilities pursuant to Section 3.03 hereof and the performance by Transferee of its other agreements hereunder, including but not limited to providing quality healthcare to the citizens of Dougherty County in a

manner which fulfills and carries out Transferor's obligations and mission under the Act, and effective as of the Commencement Date, assigns, transfers and conveys to Transferee all of Transferor's right, title and interest in and to the Operating Assets and Existing Operations. Transferee during the term hereof shall use the Operating Assets and Existing Operations so transferred to it in the operation of the Existing Facilities and in furtherance of Transferee's purposes as set forth in its Articles of Incorporation and as otherwise permitted by this Agreement. At the expiration or earlier termination of the term hereof, (a) Transferee shall assign and return to Transferor all of the Operating Assets and Existing Operations and (b) Transferor, to the extent allowed by law, shall assume in writing all the then current liabilities of Transferee and all other liabilities of Transferee incurred in the ordinary course of business; provided, that such Liabilities shall constitute Permitted Indebtedness hereunder and provided further that such obligation of Transferor shall be payable only from the revenues of the Existing Facilities. Transferee guarantees that it shall return to Transferor at the expiration or earlier termination of the term hereof an amount of total assets (determined in accordance with then generally accepted accounting principles) which when netted against the amount of total liabilities (determined in accordance with generally accepted accounting principles) assumed by Transferor pursuant to (b) above shall be at least equal to the amount of total assets (determined in accordance with generally accepted accounting principles) transferred to Transferee hereunder less the amount of total liabilities (determined in accordance with generally accepted accounting principles) assumed by Transferee hereunder. In the event Transferor cannot at the expiration or earlier termination of the term hereof legally assume any liability of Transferee, Transferee shall cause such liability to be discharged. In the event Transferee is required by Transferor to satisfy a liability that Transferor cannot legally assume, Transferee may utilize the Operating Assets to obtain sufficient funds to discharge any such liability, and Transferee shall then transfer and assign to Transferor the remaining Operating Assets net of the funds required to satisfy any such liability.

SECTION 3.03. Assumption of Liabilities. Effective as of the Commencement Date, Transferee assumes, and agrees to perform and discharge, all of the Assumed Liabilities as of the Commencement Date.

SECTION 3.04. Transfer of the Existing Facilities and Existing Operations. The parties hereby agree and acknowledge that the purpose of this Agreement and other instruments contemplated hereby is to effect, as of the Commencement Date, pursuant and subject to the terms hereof, the transfer of control over all of the Existing Facilities, the Existing Operations and the Operating Assets to Transferee and that the consideration therefor shall consist of the Required Payments made by Transferee pursuant to Section 3.05 hereof, the operation of the Hospital, the assumption or payment by Transferee of the Assumed Liabilities, and the performance of all other agreements and actions required of Transferee under this Agreement.

SECTION 3.05. Required Payments.

(a) In consideration of the leasing of the Existing Facilities to Transferee hereunder, effective as of the Commencement Date, and in addition to performing all other obligations hereunder and in addition to assuming liabilities and obligations of the Authority as set out elsewhere in this Agreement, Transferee agrees as follows:

(i) On the date that each payment of principal of, premium, if any, and interest on the Bonds shall be due until all the principal of, premium, if any, and interest on the Bonds shall have been paid in full, Transferee shall pay to the Trustee as a Required Payment hereunder an amount of money equal to the amount payable on the payment date as principal of (whether at stated maturity or by redemption or otherwise), premium, if any, and the interest on the Bonds as provided in the Bond Indentures. Transferee shall also pay to the Trustee until the principal of, premium, if any, and interest on the Bonds shall have been paid in full an amount equal to all fees and expenses of the Trustee as and when the same shall become due pursuant to the terms of the Bond Indentures; and

(ii) Transferee shall make all payments to Transferor as required under Section 7.2 or Article VII hereof.

The foregoing payments shall be in addition to Transferee's obligations to pay or discharge the Assumed Liabilities as specified in Section 3.03 hereof and all liabilities incurred by the Transferee in connection with the Existing Facilities after the Commencement Date and during the term hereof as well as any other payment obligation Transferee may have hereunder.

(b) In the event Transferee shall fail to make any Required Payment under Section 3.05(a)(i) above when due, then in addition to any other remedies provided in Article IX, Transferor shall have the right (but not the obligation) to make such payment and to otherwise cure any default under the Bond Indentures caused by such failure by Transferee to timely make such Required Payment, and if Transferor does so elect to cure such failure, then the amounts paid by Transferor to effect such cure shall constitute a debt due from Transferee to Transferor, which debt shall be due on demand and which shall bear interest from the date so advanced by Transferor until repaid by Transferee at the rate equal to the publicly announced "prime" or "base" (or equivalent) lending rate of the Trustee (or its successor), which rate shall be adjusted as and when adjusted by said Trustee.

SECTION 3.06. Security Interest.

(a) To secure the prompt payment of the Required Payments and to secure the performance by Transferee of its other obligations hereunder, Transferee, effective as of the Commencement Date, pledges to Transferor and grants to Transferor a security interest in Transferee's Pledged Revenues and in all equipment, machinery, furniture and other Operating Assets owned by Transferor and used in connection with the Existing Operations and all equipment, machinery and furniture acquired and installed in replacement therefor or in substitution therefor; provided, however, that such pledge and grant of security interest with respect to Pledged Revenues shall be subject and subordinate to Transferee's grant of a security interest in and pledge of the "Gross Revenues," as defined in the Bond Indentures, to Transferor in its capacity as issuer of the Bonds, which pledge and security interest have been assigned to the Trustee under the Bond Indentures. This grant of a security interest shall remain in full force and effect until all payments required by this Agreement have been made.

(b) Transferee (as Debtor) and Transferor (as Secured Party) will each execute a Form UCC-1 Financing Statement to be recorded in the public records of Dougherty County, Georgia designating as the "Collateral" the Pledged Revenues and all equipment, machinery, and furniture owned by Transferor and used in connection with the Existing Operations and all equipment, machinery and furniture acquired and installed in replacement therefor in substitution therefor. Transferee will cause the Form UCC-1 Financing Statement prepared for recording in the public records, as provided in this paragraph, to be recorded in the public records of Dougherty County, Georgia. Transferor and Transferee hereby agree that they shall make, execute and record or file such continuation statements as may be necessary or advisable in order to perfect, preserve and maintain Transferor's title to, lien upon and security interest in the properties, right and interests referred to in this Section. Transferee shall be responsible for timely notifying Transferor as to the need to make, execute and record or file any of the foregoing. Transferor shall, from time to time, at the request of Transferee, execute such releases as may be necessary to permit the Transferee to dispose of Property in accordance with Article V hereof. Transferor's consent to a release of its security interest shall not be required except and to the same extent as required for a disposition of property pursuant to Article V.

SECTION 3.07. Absolute Obligation to Pay Required Payments. The obligation of Transferee to make the Required Payments in accordance with Section 3.05 hereof shall be a general obligation of Transferee, shall be absolute and unconditional and shall not be abated, rebated, set off, reduced, abrogated, waived, diminished or otherwise modified in any manner or to any extent whatsoever, regardless of any rights of set off, recoupment or counterclaim that Transferee might otherwise have against Transferor. Failure to receive any prior notice of the due date of any Required Payment will not relieve Transferee of its obligation to pay such installment thereof, without notice or demand therefor, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts.

SECTION 3.08. Bonds and Bond Indentures. For as long as any Bonds are outstanding, each party hereto covenants with each other party that it shall comply at all times with the term of the Bonds, the Bond Indentures, and the documents related thereto that are applicable to it.

A R T I C L E I V

COVENANTS OF TRANSFEROR AND TRANSFEE

The following covenants contained in this Article IV shall be effective from and after the Commencement Date.

SECTION 4.01. Maintenance of Existing Facilities. Transferee shall, at its sole cost and expense, at all times during the term of this Agreement, keep and maintain the Existing Facilities and all Improvements, both inside and outside, structural and nonstructural, in a good state of repair and preservation, ordinary wear and tear and acts of God excepted, and Transferee shall make all repairs and replacements that may be necessary to maintain the Existing Facilities and all Improvements (including without limitation all electrical, plumbing, HVAC systems and equipment and such equipment as shall be reasonably required to meet Joint Commission or

comparable accreditation standards and to comply in all material respects with all applicable codes) in such state of repair. Transferee covenants that it will not permit, commit or suffer any waste of the whole or any part of the Existing Facilities and the Improvements and shall not use or permit the use of the Existing Facilities, or any part thereof, for any unlawful purpose or permit any nuisance to exist thereon. Transferee covenants and agrees that it shall provide at its own cost and expense, to the extent not financed with proceeds of the Bonds, current and modern equipment as generally used in accredited, comparable community hospitals, and shall provide all equipment, machinery, furnishings, supplies and other personal property required or necessary for the proper operation, repair and maintenance of the Hospital, consistent with standards of hospital organization and administration generally acceptable for fully accredited hospitals comparable to the Existing Facilities.

SECTION 4.02. Operation of Hospital. Transferee will faithfully and efficiently administer, maintain and operate the Hospital as a charitable facility open to the general public, free of discrimination based upon race, color, religion, creed, national origin or sex and will use, maintain and operate the Hospital on a revenue-producing basis, consistent with Transferee's obligations under this Agreement and the parties' obligations under the Act. Transferee further covenants and agrees that:

(a) it will at all times use its best efforts to maintain and operate the Hospital to meet the standards and requirements and provide health care of such quality and in such manner as shall enable the Hospital to participate in, and provide services in connection with, recognized medical insurance programs, and Transferee agrees that, so long as it shall remain a participating facility under such recognized programs, it will use its best efforts to comply with the standards and requirements for remaining a participating medical facility thereunder, unless Transferee shall determine, by resolution adopted by its Board of Directors, that it is not in the best interest of Transferee to comply therewith and that the financial condition of the Transferee will not be adversely and materially affected by noncompliance;

(b) it will comply with applicable federal and state laws prohibiting discrimination based on race, religion, creed, color, sex or national origin;

(c) it will use the Existing Facilities only in furtherance of the lawful purposes of Transferee;

(d) it will not use the Existing Facilities or any part thereof for sectarian instruction nor will it use the Existing Facilities as a place of religious worship or as a facility used as a part of a program of a school or department of divinity for any religious denomination or the religious training of ministers, priests, rabbis or other similar persons in the field of religion; provided, however, that the foregoing restrictions shall not be construed to prevent Transferee from (i) maintaining a chapel for the use of patients, employees and visitors as part of the Existing Facilities, (ii) conducting medical education programs on any subject with one or more institutions, whether or not sectarian, or seminars or meetings explaining the operating policies of Transferee with

regard to abortions or other medical or surgical services or (iii) maintaining pastoral care programs of the kind provided by hospitals generally;

(e) it will not use the Existing Facilities or suffer or permit the Existing Facilities to be used by any person or in any manner which would result in the loss of tax exemption of interest on the Bonds otherwise afforded under the Code and, further, it will not permit any of the proceeds of the Bonds to be used, directly or indirectly, in any manner which would result in the Bonds being classified as "arbitrage bonds" within the meaning of Section 148 of the Code;

(f) it will not be in material violation of any laws, ordinances, governmental rules or regulations to which it is subject and will not fail to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of the Existing Facilities or the conduct of its activities, which violation or failure to obtain might materially adversely affect the Hospital or the condition (financial or otherwise) of Transferee;

(g) no person in need of immediate or emergency medical treatment shall be denied admission because of inability to pay for services, charge or costs for which such person would ordinarily be responsible, provided, however admission may be denied when medical treatment is of a nature requiring services not offered at the Hospital;

(h) it will continue to provide indigent care in accordance with all requirements of law and will irrevocably provide indigent care substantially in accordance with the present indigent care practices of the Hospital and at not less than the level provided when the leasehold interest of Transferor first took effect. Transferor hereby assigns to Transferee all of Transferor's right, title and interest in and to any funds Transferor receives from Dougherty County, Georgia pursuant to any subsequent indigent care agreement or arrangement with Dougherty County, Georgia;

(i) Transferee shall provide an annual report to the Transferor addressing Transferee's performance on making additional facilities and care available in the community and/or lowering the cost of health care in the community;

(j) As a nonprofit corporation, Transferee, within ninety (90) days after the close of each Fiscal Year, shall submit to the Transferor copies of its annual Community Benefit Report and of annual reports of Transferee disclosing certain transactions with Transferee or with the Transferor, prepared subject to O.C.G.A. §§ 31-7-75(22) and 31-7-76(d)(4). The reports shall be made available to the public at or prior to the Transferor's meeting at which the Transferor reviews the report. Transferee, as a nonprofit corporation, shall not operate the Hospital for profit and shall fix rates and charges of the Hospital consistent therewith and in accordance with the policies and requirements of the Act, including the provisions of O.C.G.A. § 31-7-77;

(k) At least every three years, Transferee shall furnish a community needs assessment to the Transferor as required by 26 U.S.C. §501(r)(3). Further, Transferee

shall annually furnish a report to Transferor of any plan for the unmet health needs of the community. These reports shall be made available to the public at or prior to any Transferor's meeting at which the Transferor reviews the reports;

(l) Transferee shall at all times have prepared and have available a written summary of certain hospital and related services charges in compliance with O.C.G.A. § 31-7-11. Such summary shall be presented by Transferee to Transferor upon Transferor's request from time to time, and in any event at least annually at the time Transferee presents its annual financial statements to Transferor as provided in (m) below. Such summary must at all times be in compliance with the Act, including O.C.G.A. §31-7-77; and

(m) Annually, within 90 days after the close of its fiscal year, Transferee shall provide Transferor a complete and detailed audited financial statement showing its operations and financial condition for the fiscal year just completed and its budget for the current fiscal year. Also, from time to time as reasonably requested by Transferor, Transferee shall provide such current operating and financial information, including budgets, for Transferee's operations of the Hospital as is necessary to demonstrate Transferee's compliance with this Agreement and the Act. Transferor and Transferee shall take any and all action necessary and appropriate to protect the proprietary and confidential nature of any information provided hereunder pursuant to any and all provisions of the Act and of any other applicable provisions of law.

So long as Transferee is not in default under this Agreement, Transferee shall have sole and exclusive charge of the operation of the Hospital including, but not limited to, the selection or retention of any or all employees or personnel of Transferee.

Transferee shall employ the Operating Assets in accordance with reasonably prudent practices in the health care field.

SECTION 4.03. Compliance With Applicable Law.

(a) Transferee shall not use or occupy, nor permit any use or occupancy of, the Hospital or any part thereof contrary to any material applicable law, ordinance or governmental regulation now or hereinafter in force. Transferee covenants and agrees that throughout the term of this Agreement, at its sole cost and expense, it shall promptly comply with all such material applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, and appropriate departments, commissions, boards and offices thereof, whether or not requiring structural repairs or alterations to the Hospital or relating to the use or occupancy or manner of use of the Hospital. Transferee shall also observe and comply with in all material respects the requirements respecting the Hospital of all policies of insurance or programs of self-insurance at any time in force with respect to any of the buildings, improvements, machinery or equipment constituting a part of the Hospital. Transferee will not use or occupy the Hospital or permit its use or occupancy in such manner as may be reasonably be deemed to prejudice Transferor's title to or interest in the Hospital, or any portion thereof, or as may provide a basis for claims of adverse use or possession by the public or implied

dedication to public use of any part of the Hospital or as may in any way impair the efficient operation, use or control of the Hospital.

(b) Transferee shall operate the Existing Facilities in a manner which will not contravene the Act or the intent and policies of the Act, and Transferee will fix rates and charges for services by the Hospital and the Existing Facilities in accordance with the intent of and the policy established by the Act. To the extent permitted by law, Transferor delegates to Transferee the authority to establish rates and charges for services provided at or by the Hospital and Existing Facilities; provided however, such rates and charges must be established by Transferee in good faith in a manner which complies with the provisions, policies, and intent of the Act, including, but not limited to, O.C.G.A. §31-7-75(7) and 31-7-77, or otherwise shall constitute an event of default under Section 9.01(b) of this Agreement. In connection with such establishment of all rates and charges for services by the Hospital, Transferee and Transferor shall take any and all action necessary and appropriate to protect the proprietary and confidential nature of the budgets of Transferee and the Hospital pursuant to any and all provisions of the Act and of any other applicable law.

(c) Nothing in this Section 4.03 shall require Transferee to comply with any law, ordinance or governmental regulation so long as there is a substantial and legitimate question as to its applicability to Transferee or so long as the interpretation or validity of such law, ordinance or governmental regulation shall be contested in good faith and by appropriate legal proceedings, including securing any necessary injunctive relief which will stay enforcement of such law, ordinance or governmental regulation.

(d) Transferor and Transferee may establish and maintain such guidelines as to day-to-day policies regarding compliance with the provisions of the Act and this Agreement as they may mutually deem appropriate from time to time.

SECTION 4.04. Liens and Encumbrances. Except for Permitted Encumbrances or as set forth in Section 3.06 of this Agreement, Transferee covenants and agrees that it shall not create or suffer to be created any lien, encumbrance or charge upon the Hospital, the Operating Assets or the Pledged Revenues and that it will satisfy or cause to be discharged or structure a settlement with respect to or shall make adequate provision to satisfy and discharge, within sixty (60) days after the same shall be due, all lawful claims and demands for labor, materials, supplies or other items. Nothing in this Section shall require Transferee to satisfy or discharge any such charge, claim or demand so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings if the Transferee shall have posted a bond or other security to avoid any such risk to Transferor's interest in the Hospital, the Operating Assets or the Pledged Revenues.

SECTION 4.05. Payments of Other Obligations.

(a) Transferee covenants and agrees to pay when due the Required Payments and all assessments, levies, taxes (ordinary or extraordinary, special or general) and insurance premiums and self-insurance payments, of every kind and nature relating to the whole or any part of the Existing Facilities or this Agreement, or any interest therein and all sales, use or excise taxes, if

any, levied upon the Required Payments and other payments due under this Agreement, and all costs, expenses, liabilities and charges of every kind and nature, including charges for gas, electricity, water, sewer and other utilities, relating to the maintenance, repair, replacement and improvement, if undertaken hereunder by Transferee, of the Hospital, or any part, thereof, or the facilities, machinery or equipment thereon or in connection therewith which may arise or accrue during the term of this Agreement; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, Transferee shall be obligated to pay only such installments as are required to be paid during the term of this Agreement.

(b) Transferee shall not be required to pay any tax, charge, assessment or imposition, nor to remove any lien required to be removed under this Agreement, so long as Transferee shall contest or there shall be contested on Transferee's behalf, in good faith and at Transferee's own cost and expense, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the tax, assessment, levy, fee, rent, charge, lien or encumbrance so contested, and the sale, forfeiture, or loss of the Existing Facilities or any part thereof or interest therein, to satisfy the same; provided, that no such contest shall subject Transferor to the risk of any liability or loss or materially impair the obligations of Transferee under this Agreement. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of Transferee to settle any such contest), and in any event Transferee will save Transferor harmless against all losses, judgments, decrees and costs (including attorneys' fees and expenses in connection therewith) and will, promptly after the final determination of such contest or settlement thereof, enter into a structured payment agreement with respect to, or pay and discharge, the amounts which shall be levied, assessed or imposed or determined to be payable therein, together with all penalties, fines, interest, costs and expenses thereon or in connection therewith. Transferee shall give Transferor prompt written notice of any such contest. If in the reasonable opinion of counsel to Transferor, by nonpayment of any of the foregoing items, the Hospital, or any substantial part thereof, will be subject to imminent loss or forfeiture, then Transferor shall notify Transferee and Transferee shall promptly pay all such unpaid items and cause them to be satisfied and discharged.

SECTION 4.06. Transferor's Performance of Transferee's Obligations. In the event Transferee at any time neglects, refuses or fails to perform any of its obligations under this Agreement, Transferor, at its option and following at least thirty (30) days' written notice to Transferee, except where a shorter period of notice is necessary to avoid a default on the Bonds, or to prevent any loss or forfeiture thereof, or to prevent any material loss to the Existing Facilities or its operations, may (but is not obligated to) perform or cause to be performed such obligation, and all expenditures incurred by Transferor thereby shall be promptly paid or reimbursed, plus interest at the rate specified in Section 3.05(b) hereof, by Transferee to Transferor.

SECTION 4.07. Improvements. The parties hereto covenant and agree that in the event Improvements shall be provided to, on, within or above the Real Property, the provisions of this Agreement pertaining to the Existing Facilities shall automatically extend to such Improvements.

SECTION 4.08. Tax-Exempt Status. Transferee represents that as of the Commencement Date: (i) it is an organization described in Section 501(c)(3) of the Code; (ii) the facts and circumstances which form the basis of the application for tax-exempt status as represented to the Internal Revenue Service continue to exist; and (iii) it is exempt from federal income taxes under Section 501(a) of the Code, and is not a "private foundation" as defined in Section 509(a) of the Code. Transferee agrees that it shall not perform any act or enter into any agreement which shall adversely affect the federal income tax status of Transferee and conduct its operations and the Hospital and the affairs of its Affiliates, if any, so as to maintain Transferee's status as a charitable organization within the meaning of Section 501(c)(3) of the Code which is exempt from Federal income taxes under Section 501(a) of the Code, or any successor provisions of federal income tax law.

SECTION 4.09. Regulatory Controls. Transferee covenants and agrees that it shall take all appropriate action to obtain such consents, exceptions, exemptions or approvals of governmental authorities as may be necessary to permit it to comply fully with all of its covenants, stipulations, obligations and agreements contained in this Agreement. Transferor covenants to cooperate reasonably with Transferee in this regard.

SECTION 4.10. License and Accreditation. Transferee will procure and maintain in good standing a license from the State of Georgia to operate the Hospital as a hospital. Transferee will cause the Hospital to have Joint Commission accreditation or similar accreditation by another nationally approved and recognized accrediting body throughout the term of this Agreement, or in the event that such accreditation is superseded by comparable and federally recognized standards which provide for third party payor authorization, Transferee shall cause the Hospital to obtain in a reasonable period of time such other accreditation; provided, however, that Transferor may waive this requirement if the Board of Directors of Transferee shall have determined in good faith, evidenced by a resolution of said Board, that such compliance is not in Transferee's best interest and that lack of such compliance would not materially impair its ability to make the Required Payments and comply with its other covenants hereunder.

SECTION 4.11. Medical Staff. The Medical Staff and Medical Staff Bylaws of Transferee prior to the effective date of this Agreement shall remain on and after such effective date as the Medical Staff and Medical Staff Bylaws of Transferee and the Hospital, subject to such changes thereafter which Transferee may deem necessary or appropriate with respect to medical staff bylaws, appointments, and privileges.

SECTION 4.12. Medicare/Medicaid Filings. During the term hereof, Transferee shall be responsible for making all filings due to the Medicare and Medicaid programs and Transferor shall not file any reports or other documents or make any other filings in connection with Medicare and Medicaid reimbursement with respect to the Existing Facilities, including but not limited to any cost reports, without allowing Transferee at least thirty (30) business days to review any such filings and related documentation and obtaining Transferee's prior written approval of such filing. Transferee shall be responsible for taking all actions with respect to any liability to the Medicare or Medicaid program and Transferor shall, at Transferee's expense,

execute such documents, respond to any audit or Notice of Program Reimbursement and pursue any appeal with respect thereto in the manner and at the time deemed appropriate by Transferee in its sole discretion.

SECTION 4.13. Transfer of Employees; Benefits. All Employees employed by Transferor immediately prior to the Commencement Date shall be offered employment by Transferee effective as of the Commencement Date; subject, however, to Transferee's right as employer to terminate the employment of any such employee thereafter and to vary the compensation, duties and benefits of any employee for any reason permitted under applicable state and federal employment laws and in accordance with Transferee's personnel policies, which policies may be amended by Transferee during the term hereof. Thus, management personnel of the Hospital will be substantially maintained despite the leasing of the Hospital hereunder, and accordingly this transaction qualifies as a lease of the Hospital pursuant to a reorganization as described in § 7.12(c) of the Bond Indenture dated as of October 1, 1990 between Transferor and the Trustee. As to retirement benefits, Transferee shall offer a retirement plan for such employees with benefits at least equal to Transferor's plan as of the Commencement Date. No employee shall be a third party beneficiary of the provisions of this Section.

SECTION 4.14. Participation and Reimbursement Agreements. Transferee will enter into such participation and reimbursement agreements as it may, from time to time, deem to be appropriate, with Medicare, Medicaid, Blue Cross, and other third-party payors and insurers.

SECTION 4.15. Articles and Bylaws of Transferee. The existing Articles of Incorporation and Bylaws of Transferee are in the forms attached as Exhibit "D" and Exhibit "E", respectively, and have been approved by Transferor.

During the Term of this Agreement, the Board of Directors of the Transferee shall in any event include not less than one full voting member who is also a member of the governing body of Transferor.

SECTION 4.16. Implementation of Parent Holding Company Structure. Transferee has previously implemented the creation of a parent holding company structure for its operations of the Hospital, including the creation of an Affiliate which controls Transferee (the "Parent Affiliate") and any other Affiliates controlled by the Transferee, Parent Affiliate, or other Affiliates, provided that primary operations at the Hospital shall be retained by Transferee. Except as set forth in Section 5.05 (b) of this Agreement, Transferee and/or Parent Affiliate must cause to be included and continuously maintained in the organizational document of any Affiliate a provision stating that: (A) upon the first to occur of either dissolution of such Affiliate or dissolution of Parent Affiliate all interest in the Affiliate shall ultimately revert to Transferee, provided further such reversion may be provided for by reversion to one or more other Affiliates and/or the Parent Affiliate and (B) that upon the first to occur of either dissolution of Transferee or termination of this Agreement, all of Transferee's interest in all such Affiliates (inclusive of the Parent Affiliate) shall revert to Transferor. For the purposes hereof, the term "interest" shall mean the right to receive assets in liquidation, the right to receive profits (if applicable), the right to appoint the membership and/or Board of Directors of the Affiliate (if any), and any and all

ownership, equity, contractual, or other rights created or defined by the Affiliate's organizational documents or otherwise. Prior to initial implementation of such parent holding company structure, the Parent Affiliate executed an Agreement To Be Bound. Upon the effective date of this Amended and Restated Lease and Transfer Agreement, the Parent Affiliate must execute a similar Agreement To Be Bound in the form of Exhibit "F" attached hereto. The existing Articles of Incorporation and Bylaws of Transferee's Parent Affiliate are attached hereto as Exhibit "G" and Exhibit "H", respectively, and have been approved by Transferor.

The Articles of Incorporation and Bylaws of the Transferee shall at all times provide that: (1) the Parent Affiliate shall be the sole member of the Transferee; (2) all vacancies on the Board of Directors of the Transferee shall be filled by the Board of Directors of the Parent Affiliate; and (3) the Transferee may not take any of the following actions without the prior approval of the Parent Affiliate:

- (a) Adopt a plan of dissolution of the Transferee;
- (b) Authorize the Transferee to engage in, or enter into, any transaction providing for the sale, mortgage or other disposition of all or substantially all of the assets of the Transferee;
- (c) Adopt a plan of merger or consolidation of the Transferee with another corporation;
- (d) Adopt any annual or long-term capital and operational budgets of the Transferee or approve any changes therein exceeding ten percent (10%) of any budgeted item;
- (e) Amend or take any action to terminate any lease between the Transferee and the Transferor with respect to the Hospital;
- (f) Take any action which would, or reasonably could be expected to, cause the Transferee to exceed its annual budget for capital expenditures;
- (g) Incur an expenditure for any particular project or service of or for the Transferee in an amount in excess of \$1,000,000;
- (h) Take any action which would, or reasonably could be expected to, result in an adverse variance (on an annualized basis) of total expenses of greater than 2% of total annual budgeted expenses;
- (i) Appoint or remove the independent auditors of the Transferee;
- (j) Select or remove the President/Chief Executive Officer of the Transferee;
- (k) Adopt or permit any changes to any long term, strategic or master institutional plans of the Transferee; or
- (1) Amend the Articles of Incorporation or Bylaws of Transferee.

SECTION 4.17. Consents and Notices. Transferor shall obtain all material consents and give all notices which may be required in connection with the transfer of the Assigned Contracts to Transferee and the assumption by Transferee of the Assumed Liabilities hereunder in accordance with the terms of such agreements and liabilities. Transferor shall provide Transferee with satisfactory evidence that all such consents have been obtained and notices have been given upon Transferee's written request.

SECTION 4.18. Indigent Care. The parties will cooperate to provide indigent care pursuant to the provisions of Section 4.02(h) herein.

In addition, Transferee shall annually allocate funds for the purpose of providing charity care. The funds allocated will be no less than 3% of the gross revenues of the Hospital after provisions for bad debt and Medicaid and Medicare adjustments have been deducted. The funds allocated will be based on the previous year's financial records.

The parties hereto agree that the provisions of O.C.G.A. § 31-7-75.1 are not applicable to the transaction contemplated herein.

SECTION 4.19. Permitted Indebtedness. Except as permitted or required by this Agreement, Transferee covenants that it will not create, guarantee, assume, permit to exist or become liable, directly or indirectly, in respect to any indebtedness of any kind or character for money borrowed or in connection with acquisition of a capital asset (including, without limitation, any liability by way of endorsement, guarantee or agreement to repurchase or supply to repurchase or supply funds or any extension of its credit, directly or indirectly, in support of the obligations or undertakings of others) except that Transferee may incur "Permitted Indebtedness" as the same is described in Article XIII of the Bond Indenture dated as of October 1, 1990, which description (and all internal definitions used therein) is (and are) incorporated herein by this reference in this Section 4.19 and shall survive any termination of the Bond Indentures.

SECTION 4.20 Financial Books and Records. Transferee shall install and maintain proper books of record and account of all business and affairs of Transferee, in which full and correct entries shall be made in accordance with generally accepted accounting principles. Transferee will deliver to Transferor and to the County Commission of Dougherty County, Georgia, within ninety (90) days after the end of each Fiscal Year, a financial report for such Fiscal Year, a statement of changes in financial position of Transferee for such Fiscal Year and a statement of revenues and expenses of Transferee for such Fiscal Year. Such report shall be audited by a firm of Independent Accountants and shall contain their opinion as to whether the report fairly presents the results of operations and was prepared in accordance with generally accepted accounting principles, applied on a consistent basis.

SECTION 4.21. Competition with Hospital. During the term of this Agreement, Transferor may acquire or establish a project, as that term is defined in the Act, provided that the Transferor shall extend to Transferee an opportunity to lease such project under substantially the same terms and conditions as provided in this Agreement, including the assumption of any

necessary acquisition debt service by Transferee. Except as otherwise provided in this Section 4.21, the Transferor shall not, without prior written consent of Transferee, own, manage, operate, or control the ownership, management, operation, or control of any hospital or other health care facility (other than the Existing Facilities) in Dougherty County, Georgia, or in any other areas of operation of the Transferor as permitted under the Act.

SECTION 4.22. Eminent Domain. During the term of this Agreement, Transferor shall not exercise its right of eminent domain, granted pursuant to O.C.G.A. § 31-7-75(12) or any other provision of law, to acquire any of the Existing Facilities.

SECTION 4.23. Existing Certificates of Need. Transferee shall comply with the terms of all Certificates of Need granted to Transferor prior to the Commencement Date. Transferor shall cooperate with Transferee in complying with all Certificate of Need requirements, including requirements relating to the implementation of any outstanding Certificates of Need.

SECTION 4.24. Name of the Hospital. Transferee agrees that during the term of this Agreement the Hospital shall always be named "PhoebePutneyMemorialHospital"; provided, however, Transferee may designate Phoebe North with such name as it chooses, and as may be approved by the Parent, so long as the designated name indicates the affiliation with Phoebe Putney Memorial Hospital.

ARTICLE V

IMPROVEMENTS; DISPOSITIONS OF PROPERTY; ALTERATIONS

SECTION 5.01. After-Acquired Property as Part of the Existing Facilities. All buildings, structures, improvements, machinery, equipment and other property which shall be constructed, placed or installed in or upon the Real Property as an addition to, or as a substitute for in renewal or replacement of buildings, structures, improvements, furnishings, equipment or other property constituting part of the Existing Facilities shall (unless Transferor and Transferee otherwise provide by signed written agreement directed to a specific item) become Improvements hereunder without any further act or deed. At the request of Transferee, Transferor shall cooperate in securing such permits and authorizations and shall join in the application for such municipal and other governmental permits and authorizations as may be deemed necessary or advisable to be obtained in connection with any such construction, acquisition or installation, provided that Transferee shall indemnify and hold Transferor harmless against and from all costs and expenses which may be incurred by Transferor in connection with any such joinder or application.

SECTION 5.02. Covenant Against Unauthorized Disposition. Except as otherwise provided in this Article V and elsewhere in this Agreement, neither the Existing Facilities, nor the Operating Assets, nor any Property may be disposed of by Transferee, Parent Affiliate, or any other Affiliate unless such disposition is either in the ordinary course of business or the prior written consent of Transferor has been obtained. Transferee shall maintain accurate records of the location of, and any transfers with respect to, the Existing Facilities, the Operating Assets or

Property. For purposes of this Article V, the term "dispose of" means to transfer, assign, contribute, sell, lease, or sublease.

SECTION 5.03. Dispositions of Property Without Notice. Transferee may, from time to time, at its cost and expense, without notice to and without obtaining the approval of Transferor and free of any obligation to make any replacement thereof, remove or dispose of:

(a) Property for fair market value in a transaction which qualifies as a transaction in the ordinary course of business of operating a hospital similar to the Hospital;

(b) Property that in the discretion of Transferee is obsolete or unusable for its intended purpose; or

(c) Property (i) for fair market value and (ii) provided that during any consecutive twelve (12) calendar month period the aggregate Book Value thereof at the times of all such dispositions does not exceed five percent (5%) of the Book Value of the Property, Plant and Equipment of Transferee, and (iii) such dispositions will not impair the structural soundness or usefulness of the Hospital nor adversely affect the Hospital operations or the purposes of this Agreement.

Such Property disposed of as aforesaid shall thereafter not constitute part of the Hospital or the Existing Facilities: Transferee shall file a report with Transferor at least annually within one hundred-twenty (120) days following the end of each Fiscal Year stating the type or character of Property removed or otherwise disposed of pursuant to Section 5.03(c) and a fair market value and book value thereof at the time or times of such removal or other disposition.

SECTION 5.04. Dispositions of Property With Notice. Except for transfers made pursuant to Sections 5.03, 5.05 or 8.02 hereof, Transferee may not in any consecutive twelve (12) month period, cause one or more dispositions of Property, if the Book Value of which at the times of all such dispositions of Property totals, in the aggregate, in excess of five percent (5%) of the book value of the Property, Plant and Equipment of Transferee, unless not less than thirty (30) days prior to the last of such dispositions which causes such excess to occur the written consent of Transferor is obtained with respect to said last such disposition.

SECTION 5.05. Transfers to Affiliates.

(a) Notwithstanding the other provisions of this Agreement and except as set forth in Section 5.05(b) below, Transferee, Parent Affiliate, and any other Affiliate shall have the right to make dispositions of Property (including, without limitation, Real Property and nonrestricted gifts, grants and contributions) to an Affiliate so long as the organizational documents of such Affiliate provide that (A) upon the first to occur of either dissolution of such Affiliate or dissolution of Parent Affiliate all interest in the Affiliate shall ultimately revert to Transferee, provided further such reversion may be provided for by reversion to one or more other Affiliates and/or the Parent Affiliate (B) that upon the first to occur of either dissolution of Transferee or termination of this Agreement, all of Transferor's interest in all such Affiliates (inclusive of the Parent Affiliate) shall revert to Transferor. For the purposes hereof, the term "interest" shall

mean the right to appoint the membership and/or Board of Directors of the Affiliate (if any), and any and all ownership, equity, contractual, or other rights created or defined by the Affiliate's organizational documents or otherwise. Except as set forth in Section 5.05(b) below Transferee and Parent Affiliate shall cause any investment by Transferee or Parent Affiliate or any Affiliate in any corporation, limited or general partnership, joint venture, limited liability company, limited liability partnership, limited liability limited partnership, business trust or similar entity that does not otherwise meet the definition of an Affiliate to provide for an appropriate mechanism to liquidate, sell or redeem such investment upon the termination of this Agreement or upon the dissolution of Transferee, Parent Affiliate or the investing Affiliate. Notwithstanding the foregoing, without the prior written consent of Transferor, the Transferee shall not dispose of to any person (whether or not an Affiliate) either: (i) all of the Operating Assets or the Existing Facilities; or (ii) so substantial a part of the Operating Assets or the Existing Facilities as would remove Transferee from direct involvement with the day to day operations of the Hospital.

(b) Notwithstanding any other provision of this Agreement, in the event an Affiliate of Parent Affiliate (other than Transferee) enters into a lease or other agreement with a public body corporate and politic which is an instrumentality of the State of Georgia, organized and existing under the Georgia Hospital Authorities Act, O.C.G.A. §§ 31-7-70 et seq. as amended, (other than Transferor), then Transferee or Parent Affiliate shall have the right to: (A) make investments in or dispositions of Property to, excluding, however, from Property that may be transferred to such Affiliate any Real Property of Transferee, Parent Affiliate or an Affiliate located in Dougherty County, Georgia or Worth County, Georgia, but including within Property that may be transferred to such Affiliate, without limitation, nonrestricted gifts, grants and contributions and (B) Transferee or Parent Affiliate may enter into any other agreements, including financial guaranties, reasonably necessary to enable such Affiliate to perform the terms of its agreements provided: (i) Transferor has been given prior written notice of the intention of such Affiliate to enter into such lease or other agreement; (ii) Transferor has been given a copy of the proposed lease or other agreement in substantially final form together with written description of the general terms of the lease or other agreement prior to its execution and such lease or other agreement may not be amended in any material manner without the written consent of Transferor, which consent shall not be unreasonably withheld or delayed; (iii) the organizational documents of such Affiliate provide that upon dissolution of such Affiliate or upon termination of the lease or other agreement, and subject to payment and satisfaction of all obligations, all remaining assets owned or held by such Affiliate shall be returned to such other public body corporate and politic which is an instrumentality of the State of Georgia, organized and existing under the Georgia Hospital Authorities Law, O.C.G.A. §§ 31-7-70 et seq. as amended, and (iv) Transferor approved such Affiliate's execution of the lease or other agreement by a duly adopted resolution setting forth therein Transferor's basis and reasons for such approval. Provided items (i) through (iv) above occur, then the governing documents of such Affiliate shall not contain provisions requiring such Affiliate to liquidate, sell or redeem such dispositions or investments upon the termination of this Agreement or upon the dissolution of Parent Affiliate or any other Affiliate of Transferee and upon termination of this Agreement the interests of Transferee or Parent Affiliate in such Affiliate shall not revert to Transferor and Transferor shall have no right, title, claim or interest in and to such Affiliate or the assets owned or held by such Affiliate and Transferee and Parent Affiliate shall not be in violation of Section

5.05(a) of this Agreement nor any other similar provision of this Agreement with regard to such Affiliate. Notwithstanding anything to the contrary in the foregoing, without the prior written consent of Transferor, the Transferee shall not dispose of to any person (whether or not an Affiliate) either: (i) all of the Operating Assets or the Existing Facilities; or (ii) so substantial a part of the Operating Assets or the Existing Facilities as would remove Transferee from direct involvement with the day to day operations of the Hospital.

SECTION 5.06. Alterations. Transferee shall not, without Transferor's written consent, demolish or structurally alter the Real Property in any material respect unless such demolition or alteration is in connection with a project by Transferee to repair, remodel or make additions to such Real Property.

SECTION 5.07. Compliance with Bonds. Any disposition of Property pursuant to this Article V must at all times be in full compliance with the requirements of the Bonds and the Bond Indentures.

ARTICLE VI

INSURANCE

SECTION 6.01. Insurance.

(a) Transferee covenants and agrees that it shall, during the term of this Agreement, keep and maintain at all times insurance (in such amounts and with such deductibles as shall be comparable to coverage carried by institutions similar to Transferee):

(1) fire, with uniform standard extended coverage endorsements, flood and crime, vandalism and malicious mischief insurance, as may be approved for issuance in the State, including insurance against loss or damage from lightning, windstorm, civil commotion, aircraft vehicles and smoke, covering the Hospital at all times in an amount not less than the full insurable value thereof;

(2) insurance coverage of boilers, pressure vessels, auxiliary piping and selected machinery objects (pumps and compressors);

(3) comprehensive general liability insurance including but not limited to use and occupancy, and professional liability insurance protecting Transferee against liability for death, injury, loss or damage as a result or arising out of examination, diagnosis, treatment or care of (or failure to so examine, diagnose, treat or care for) any patient of the Hospital or any occupant of the same;

(4) comprehensive automobile liability insurance;

(5) worker's compensation and unemployment coverage as required or permitted by the State;

- (6) business interruption insurance;
- (7) fidelity bonds on all officers and employees of Transferee who have access to or have custody of revenues, receipts or income from the Hospital or any funds of Transferee;
- (8) builder's risk insurance during the construction of any Improvements; and
- (9) directors' and officers' liability insurance (including officers and directors of Transferor).

SECTION 6.02. Insurers and Policies. Transferee further agrees that each insurance policy required by Section 6.01 hereof (i) shall be by such insurer (or insurers) as is financially responsible, allowed to write the respective insurance in the State and of recognized standing, including Underwriters at Lloyds and insurers having at least a Best's "A" rating, (ii) shall be in such forms and with such provisions (including, without limitation, the loss payable clause, the waiver of subrogation clause, relieving the insurer of liability to the extent of minor claims, and the designation of the named assureds) as are generally considered standard provisions for the type of insurance involved and (iii) shall prohibit cancellation or substantial modification by the insurer without at least thirty (30) days, prior written notice to Transferor and Transferee. Without limiting the generality of the foregoing, all insurance policies carried pursuant to Section 6.01 above shall name Transferor and Transferee as parties insured thereunder as the respective interest of each of such parties may appear, and loss thereunder shall be made payable and shall be applied as provided in Section 6.03 hereof. Each such policy shall provide that losses thereunder shall be adjusted with the insurer by Transferee on behalf of the insured parties.

SECTION 6.03. Involuntary Loss; Use of Insurance Proceeds, Condemnation Awards and Sale Proceeds.

(a) If all or any part of the Hospital shall be damaged or destroyed by whatever cause or shall be taken by any public authority or entity in the exercise of, or acquired under the threat of the exercise of, the power of eminent domain (for purposes hereof, an "Involuntary Loss"), Transferee shall give prompt notice of such Involuntary Loss to Transferor. There shall be no abatement or reduction in the Required Payments as a result of any Involuntary Loss.

(b) Transferee shall proceed promptly to repair, rebuild or restore the property damaged, destroyed or taken with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by it and Transferee may receive the insurance proceeds, condemnation awards or sale proceeds resulting from such Involuntary Loss, and shall apply said proceeds for such purpose together with any additional moneys necessary therefor.

(c) Transferee and Transferor shall cooperate fully with one another in the handling and conduct of any prospective, pending or threatened condemnation

proceedings or with respect to any settlement or negotiation proceedings involving coverage provided under any policy of insurance.

(d) Transferee and Transferor agree that Transferor shall be entitled to the entire award attributable to any taking of all or part of the Hospital and Transferee shall not be entitled to any award by reason for the loss of its leasehold estate; provided, however, Transferee shall be entitled to claim compensation from the condemning authority for business interruption as long as any award to Transferee does not impair or diminish the award otherwise payable to Transferor.

(e) Any balance remaining after completion of the repair, rebuilding or restoration of the Hospital shall be considered part of the operating assets of Transferee, subject to set-off for any sums then due and payable to Transferor.

(f) In the event that it is determined by an independent management consultant that the taking or other loss results in Transferee's inability to generate revenues sufficient to meet its obligations under the Bonds and the resolutions of Transferor authorizing and securing said Bonds, all funds contemplated by this Article will be paid to the Trustee to be disposed of in accordance with the terms of the said resolutions authorizing and securing said Bonds.

SECTION 6.04. Failure to Carry Insurance. In the event Transferee shall at any time neglect or refuse to procure or maintain insurance or self-insurance as herein required, Transferor may at its option and following at least thirty (30) days' written notice to Transferee, except where a shorter period of written notice is necessary to avoid a default on the Bonds, or to prevent any loss or forfeiture thereof, procure and maintain such insurance and Transferee shall be obligated to reimburse promptly Transferor for all amounts expended in connection therewith.

ARTICLE VII

INDEMNIFICATION

SECTION 7.01. Indemnification; No Liability; Damage Claims. Transferee shall protect, indemnify and save harmless Transferor and its present or future members, officers, employees or agents against and from any and all liabilities, suits, actions, claims, demands, damages, losses, expenses (including reasonable counsel fees) and costs of every kind and nature incurred by, or asserted or imposed against, Transferor and its former, present or future members, officers, agents or employees, or any of them, by reason of any matter relating to the financing, leasing, construction, operation, management, maintenance or the existence of the Hospital or relating to the Assumed Liabilities or associated with or related to the acquisition, or any divestiture, of any part or all of the Phoebe North assets, unless resulting from the gross negligence or willful misconduct or fraud of any such persons, during the term of this Agreement, and regardless of whether such liabilities, suits, actions, claims demands, damages, losses, expenses and costs be against or be suffered or sustained by Transferor or by any of its respective present or future members, officers, agents or employees, or be against or be suffered or sustained by other persons, corporations or other legal entities to whom Transferor or any of

its respective present or future members, officers, agents may become liable therefor. Neither Transferor nor any of its former, present or future members, officers, employees or agents shall be liable for any damage or injury occurring during the term of this Agreement to property of Transferee. Transferee may, and if so requested by Transferor shall, undertake to defend at Transferee's sole cost and expense, any and all suits, actions or proceedings brought against Transferor or any of its respective present or future members, officers, agents or employees, in connection with any of the matters mentioned in this Section, provided that Transferor shall give Transferee timely notice of and shall forward to Transferee every demand, notice, summons or other process received with respect to any claim or legal proceeding within the preview thereof. Notwithstanding the foregoing, Transferee shall not be liable to Transferor to the extent Transferor is protected against any liability by the doctrine of sovereign immunity.

SECTION 7.02. Reimbursement of Costs and Expenses. In order to fund any and all obligations which might arise in connection with Transferee's indemnification obligations to Transferor under Section 7.01 above, Transferee shall transfer the sum of \$100,000 to a designated bank account of the Transferor as of the effective date of this Amended and Restated Lease and Transfer Agreement. Such amount shall be available for the Transferor's use in its sole discretion in connection with payment of any amount due under this Article VII, including in paying the Transferor's ordinary operating expenses including, but not limited to, payment for any necessary employees, legal, accounting or expert consultant support for oversight activities under the terms of this Agreement. At any time that such amount is not sufficient to pay the costs and expenses of Transferor, Transferee shall make additional necessary deposits to such fund. It is the intention of the parties that Transferor shall at all times have under its control in such account during the term of this Agreement an amount of not less than \$100,000 to pay Transferor's costs and expenses. The parties shall periodically review the amount of funds in such account and mutually agree in writing to adjust the total amount of funds kept on hand by Transferor in such account to accurately reflect its actual costs and expense needs.

SECTION 7.03. Continuation of Liability. Each of the foregoing provisions of this Article VII shall be severable from and independent of and may be enforced without regard to the enforcement of the other provisions of this Article VII and other provisions of this Agreement, and the provisions of this Article shall survive the termination of this Agreement with respect to acts occurring prior to the termination of this Agreement.

ARTICLE VIII

ASSIGNMENTS; SUBLEASES; OPERATING ARRANGEMENTS

SECTION 8.01. Maintenance of Corporate Existence; Permitted Mergers, Consolidations and Sales. During the term of this Agreement, Transferee agrees that it will maintain its corporate existence, will not dissolve or otherwise dispose of its assets except as permitted elsewhere in this Agreement and in its Articles of Incorporation and will not, without the approval of Transferor, (i) consolidate with or merge into another corporation or other entity or permit one or more corporations or other entities to consolidate with or merge into it (and the lease and transfer to the Hospital of assets, operations, and liabilities acquired by Transferor from

Palmyra Park Hospital, Inc. are not, and shall not be deemed, subject to this provision), or (ii) transfer all or substantially all of its assets to any other person or Entity.

SECTION 8.02. Subleases and Operating Contracts. Transferee may sublease any part, but not all or substantially all, of the Existing Facilities (or all or substantially all of the Hospital) or contract for the performance by others of operations or services on or in connection with any part, but not all or substantially all of the Existing Facilities (or all or substantially all of the Hospital) for any lawful purpose, if (i) each such sublease or contract is consistent with and subject to the provisions of this Agreement, (ii) Transferee shall remain fully obligated and responsible under this Agreement to the same extent as if such sublease or contract had not been executed, and (iii) if any Bonds are issued and outstanding, an opinion of nationally recognized bond counsel that the lease or contract does not jeopardize the federal tax exempt status of the Bonds; provided, however, that no opinion of counsel need be rendered to enter into subleases or contracts for any specialty services related to the operation of the Hospital and including, but not limited to, activities conducted at any professional office building located on the Real Property or at any of the other Existing Facilities related to gift shop, doctors' office space, food service, electronic banking machines, parking and similar services.

SECTION 8.03. Prohibition on Other Assignments and Subleases. Transferee shall not assign or sublet all or any part of the Existing Facilities without Transferor's consent except as described in Sections 5.03, 5.04, 5.05, 8.01 and 8.02 of this Agreement.

ARTICLE IX

DEFAULT BY TRANSFEREE

SECTION 9.01. Events of Default. The following shall constitute events of default under this Agreement:

(a) if Transferee shall fail to pay, when due and payable, any Required Payment, and, for any such failure to pay other than a payment of the principal of, premium, if any, and interest on the Bonds, such failure shall continue for a period of fifteen (15) business days after written notice of failure of payment shall have been given to Transferee by Transferor;

(b) substantial failure by Transferee to observe and perform in any material respect any covenant, condition or agreement in this Agreement on Transferee's part to be observed or performed, other than as referred to in subsection (a) of this Section, with such failure continuing unremedied for a period of thirty (30) days after written notice (specifying such failure and requesting that it be remedied) has been given to Transferee by Transferor, unless Transferor shall agree in writing to an extension of such time prior to its expiration; provided, however that if such failure by Transferee is of the type that cannot be remedied within such thirty (30) day period and Transferee immediately commences and diligently pursues on a continuous basis appropriate actions to remedy such failure, and there shall be no risk of substantial economic loss or forfeiture to Transferor, the agreement for a reasonable extension by Transferor shall not be withheld;

(c) the occurrence of an event of default under the Bond Indentures as a result of any action or inaction by Transferee, together with a declaration of default thereunder by the Trustee;

(d) if Transferee shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or other pleading seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of it or of all or any substantial part of its assets or of the Hospital, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due;

(e) if a petition or other pleading shall be filed against Transferee seeking an adjudication of bankruptcy, reorganization, composition, readjustment, liquidation or similar relief under any present or future law or regulation and shall remain undismissed or unstayed for sixty (60) days, or if, by an order or decree of a court of competent jurisdiction, Transferee shall be adjudicated a bankrupt or insolvent or relief shall be granted under or pursuant to any such petition or other pleading, or if by order or decree of such court, there shall be appointed without the consent or acquiescence of Transferee, a trustee in bankruptcy or reorganization or a receiver or liquidator of it or of all or any substantial part of its property or of the Hospital and any such order or decree shall have continued unvacated, or unstayed on appeal or otherwise and in effect for a period of sixty (60) days, or if Transferee shall be dissolved or liquidated;

(f) the abandonment by Transferee of the Hospital, or any substantial part thereof, for no valid reason;

(g) loss of federal tax exempt status for the interest on the Bonds as a result of any action or inaction by Transferee;

(h) the entry of a final judgment or judgments from which no further appeals are available for the payment of money aggregating in excess of fifteen percent (15%) of operating revenues of Transferee for the most recent Fiscal Year for which audited financial statements are available against Transferee, for which there does not exist adequate insurance, adequate self-insurance reserves or appropriate bonds, any one of which remains outstanding for more than sixty (60) days from the date it shall become unappealable without having been discharged in full, structured so that no annual payment required thereunder is in excess of 5% of operating revenues of Transferee, stayed or superseded; or

(i) any material representation or warranty by Transferee in this Agreement, or as provided in any other certificate, document or agreement by Transferee as required by or in connection with this Agreement or the restructuring of the Hospital shall clearly have been untrue in any material respect at the time such representation or warranty was

given or made and Transferee has been or is likely to be substantially damaged as a result of such untrue representation or warranty.

SECTION 9.02. Termination. Upon the occurrence of any one or more of the events of default specified in Section 9.01 hereof, Transferor may give to Transferee written notice that this Agreement shall terminate upon a date specified in such notice, which date shall be not less than twenty (20) days after the date of such notice. Upon any such termination of this Agreement, Transferee shall peaceably vacate and surrender possession of the Existing Facilities and the Operating Assets, including such additional or renewal or replacement facilities, furnishings or equipment as Transferee may have placed on or in the Existing Facilities, and Transferor, or its designee, may reenter and take possession of any interest that Transferor may then have in the Existing Facilities and the Operating Assets, including such additional or renewal or replacement facilities, furnishings, equipment or Improvements as Transferee may have placed on or in the Existing Facilities. If Transferor elects to exercise its remedies under this Section 9.02 and any of the Bonds are outstanding, Transferor shall take possession of the Existing Facilities and the Operating Assets subject and subordinate to the pledge of the Gross Revenues that has been granted to the Trustee pursuant to the Bond Indentures, and Transferor shall continue and maintain, or cause any lessee or operator of the Existing Facilities to continue and maintain, the pledge and grant of the security interest in the Gross Revenues of the Existing Facilities to the Trustee for the benefit of bondholders.

SECTION 9.03. Repossession Without Termination. Upon the occurrence of any one or more of the events of default specified in Section 9.01 above, in lieu of terminating this Agreement, at the option of Transferor, Transferee shall vacate (and surrender possession of the Hospital including such additional or renewal or replacement facilities, furnishings or equipment as Transferee may have placed on or in the Hospital and Transferor or its designee may reenter and take possession for Transferee's account. To protect its interest in the Hospital, Transferor upon such repossession without termination may provide for the use and occupancy of all or any part of the Hospital from time to time in the name of Transferee or Transferor without further notice, for such term or terms, on such conditions and consideration and for such uses and purposes as Transferor, in its discretion, may determine, and (subject to the prior pledge of the Gross Revenues under the Bond Indentures) may collect and receive all revenues and rentals derived therefrom and apply the same after deduction of all appropriate operating expenses, to the payment of the Required Payments payable hereunder by Transferee, Transferee shall remain liable for any deficiency in the Required Payments payable by it hereunder and all costs incurred by Transferor in connection with such reletting including without limitation all repairs, charges and attorneys' fees.

SECTION 9.04. Damages. Upon the termination of this Agreement pursuant to Section 9.02 hereof, Transferee shall be obligated to pay, and shall forthwith pay, as damages to Transferor:

- (a) an amount equal to all unpaid Required Payments accrued through the effective date of termination; and

(b) an additional amount sufficient to pay and satisfy all other unpaid costs and obligations reasonably incurred by Transferor in connection with or as a result of Transferee's default under this Agreement, and the termination hereof.

SECTION 9.05. Additional Remedies. The rights and remedies of Transferor specified in this Agreement shall be cumulative. In addition thereto, Transferor shall have all of the rights and remedies now or hereafter conferred by law or in equity, including, among other remedies, receivership and injunctions to restrain violations or attempted violations of any provision of this Agreement by Transferee. Transferee agrees that a default under the terms of this Agreement is such a default that entitles Transferor to specific performance of this Agreement.

SECTION 9.06. No Waiver of Rights. No failure by Transferor to insist upon the strict performance of any term, covenant, condition or provision of this Agreement, or to exercise any right or remedy consequent upon any event of default hereunder, and no acceptance of Required Payments during the continuance of any such default shall constitute a waiver of any such default or of such term, covenant, condition or provision or a waiver or relinquishment for the future of the right to insist upon and to enforce by any appropriate legal remedy a strict compliance with all the terms, covenants, conditions and provisions of this Agreement, or of the right to exercise any such rights or remedies, if any default by Transferee be continued or repeated, or of the right to recover possession of the Existing Facilities by reason thereof. No term, covenant, condition or, provision of this Agreement binding upon Transferee, and no breach hereof or default hereunder, shall be waived, altered or modified, except as set forth in a written instrument executed by Transferor. No waiver of any breach shall affect or alter this Agreement but every term, covenant, condition and provision of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

SECTION 9.07. Reversion of Assets. Except as set forth in Section 5.05(b) of this Agreement, upon the expiration or earlier termination of this Agreement, or upon a material breach of the terms of this Agreement by Transferee and such breach has not been cured if so allowed hereunder, or in the event this Agreement shall become void or unenforceable, all assets of the Transferee, including all of Transferee's interest in its Affiliates, shall become the property of the Transferor absolutely.

ARTICLE X

MISCELLANEOUS

SECTION 10.01. Captions, Background and Recitals. The captions of the Articles and Sections hereof have been inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. The background and recitals contained in this Agreement shall be considered part thereof for all purposes, including the construction or the interpretation thereof.

SECTION 10.02. Covenants Considered Material. All covenants made by Transferor or Transferee contained herein shall be considered to be material to the Agreement and the relationship between Transferor and Transferee.

SECTION 10.03. Amendment of Agreement. This Agreement may be amended by a written agreement duly executed by Transferee and Transferor, except that unless permitted by future amendment to the Act, the provisions of Section 4.02(m) dealing with Transferee's annual financial statements and the provisions of Section 4.15 dealing with Transferee's board membership, may not be altered or amended for the duration of this Agreement.

SECTION 10.04. Georgia Law Controlling. This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia.

SECTION 10.05. Consents and Approvals. Whenever the written consent or approval of Transferor or Transferee or any officer thereof shall be required under the provisions of this Agreement, such consent or approval shall not be unreasonably delayed or withheld.

SECTION 10.06. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

SECTION 10.07. Severability. If any one or more of the sentences, sections or other portions of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of any such sentence, section or other portion of this Agreement shall in no way affect the validity or effectiveness of the remainder of this Agreement, and this Agreement shall continue in force to the fullest extent permitted by law.

SECTION 10.08. Transferee's Remedies. In the event Transferor shall fail to perform any of its obligations under this Agreement, Transferee may institute such action against Transferor as Transferee may deem necessary to compel performance. In addition, Transferee shall have all of the rights and remedies conferred in this Agreement or now or hereafter conferred at law or in equity, which rights and remedies are cumulative.

SECTION 10.09. Assignments. Except as otherwise provided herein, neither Transferor nor Transferee shall give, assign or pledge its rights under this Agreement without the consent of the other party.

SECTION 10.10. Recording. The parties agree that a short form memorandum of this Agreement in customary form may be recorded in such office in the State as may be at the time provided by law as the proper place for the recordation of a deed conveying the Existing Facilities. This provision in no way precludes either party from recording this Agreement in its entirety.

SECTION 10.11. Notices; Demands; Requests. All notices, demands and requests to be given or made hereunder to or by Transferee or Transferor shall be in writing and shall be deemed to be properly given or made three business days after being properly deposited in the

United States mail, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

(a) As to Transferee--

Phoebe Putney Memorial Hospital, Inc.
417 Third Avenue
Albany, Georgia 31703
Attention: Chief Executive Officer

with a copy to its General Counsel at the same address.

(b) As to Transferor--

Hospital Authority of Albany - Dougherty County, Georgia
P.O. Box 70752
Albany, Georgia 31708-0752
Attention: Chairman

with a copy to its General Counsel at its usual business address.

Any of such addressees and addresses may be changed at any time upon written notice of such changes sent by United States certified or registered mail, return receipt requested, postage prepaid, to the other party by the party effecting the change. Any time periods commencing with notice prescribed by the terms of this Agreement shall commence with the date of receipt of written notice as evidenced by the return receipt required by this Section.

SECTION 10.12. Validity of Pledge. The Pledged Revenues are subject to the lien of the pledge hereunder without any physical delivery of the Pledged Revenues or further act, and (subject to the rights of the Trustee under the Bond Indentures) the lien of such pledge is valid and binding against all parties having claims of any kind against Transferor or Transferee or other operator or lessee of the Hospital (irrespective of whether such parties have notice of such pledge and create a perfected security interest) without the necessity for separation or delivery of the Required Payments or for the filing or recording of this Agreement or any other resolution or instrument by which such pledge is created or any certificate, statement or other document with respect to such pledge. The pledge under this Agreement of the Pledged Revenues shall be effective and the moneys therefrom and thereof may be applied to the purposes for which pledged without necessity of any further act of appropriation.

SECTION 10.13. No Personal Liability. Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of Transferor or Transferee in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement or obligation of any present or future member, director, trustee, affiliate, officer, employee or agent of Transferor or Transferee or of any incorporator, member, affiliate, director, trustee, officer, employee or agent of any successor to Transferor or Transferee, in any such person's

individual capacity, and no such person, in his individual capacity, shall be liable personally for breach or nonobservance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of any of the Required Payments due hereunder or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his individual capacity, either directly or through Transferor or Transferee or any successor to Transferor or Transferee, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released.

SECTION 10.14. Payments. All payments to be made by Transferee hereunder shall be made in immediately available funds (by wire transfer or otherwise) on or before the day on which such payments are due.

SECTION 10.15. Survival of Covenants, Representations and Warranties. All covenants, representations and warranties set forth herein shall survive the execution of this Agreement.

SECTION 10.16. Entire Agreement. This Agreement, together with the attachments and exhibits attached hereto, contains the entire understanding of the parties with respect to the transactions contemplated hereby and supersedes all other agreements and undertakings, oral or written, between or among the parties.

SECTION 10.17. Good Faith. Good faith is the essence of this Agreement. Transferor and Transferee each agrees to exercise good faith and commercial reasonableness in the interpretation, performance and enforcement of this Agreement.

SECTION 10.18. Relationship of Parties. Nothing contained in this Agreement shall be construed or deemed by the parties hereto or by any third party to create a relationship of partnership or of joint venture or of any association whatsoever between Transferor or Transferee, it being expressly understood and agreed that no provisions in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Transferor and Transferee other than the relationship of landlord and tenant.

SECTION 10.19. Brokerage Commission. Transferor and Transferee each hereby represents to each other that the negotiations relative to this Agreement and the transactions contemplated hereby do not give rise on account of either of their respective actions to any claim against any of the parties to this Agreement for a finder's fee, brokerage commission or other like payment.

SECTION 10.20. Attorneys' Fees and Costs. If any legal action is brought by any party hereto to enforce, defend or interpret its rights under this Agreement, the prevailing party in such action shall be entitled to receive as additional damages all court costs, all reasonable costs incurred in enforcing or defending its rights under this Agreement, and reasonable attorneys' fees incurred by the prevailing party, whether out of court, in the trial court, on appeal or in bankruptcy proceedings.

SECTION 10.21. Time is of the Essence. Time is of the essence in the performance by each party of its obligations hereunder.

SECTION 10.22. Specific Performance. This Agreement and each and every provision hereof shall be specifically enforceable. Each party hereto upon the introduction and presentation to the applicable court having jurisdiction over the matter of evidence showing a material breach by the other party hereto shall be entitled to injunctive relief mandating specific performance.

SECTION 10.23. Termination. Unless sooner terminated in accordance with the provisions hereof, this Agreement shall terminate on July 31, 2052.

ARTICLE XI

CONDITIONS

Both the effectiveness of this Agreement and commencement of the Term of this Agreement with respect to the 1990 Lease were subject to and conditional upon receipt by Transferor and Transferee of the various determinations, approvals, opinions and reports referenced in Subsection 3.01(c)(1) herein, which conditions were previously met. The effectiveness of this Agreement and commencement of the Term of this Agreement with respect to Phoebe North and all assets, operations and liabilities associated therewith shall occur on August 1, 2012.

IN WITNESS WHEREOF, the parties heeto have caused this Agreement to be executed under seal as of the day and year first above written.

Signed, sealed and delivered in the presence of:

[Handwritten signature]

Unofficial Witness

[Handwritten signature]

Notary Public

My Commission Expires: 11/18/13



Signed, sealed and delivered in the presence of:

[Handwritten signature]

Unofficial Witness

[Handwritten signature]

Notary Public

My Commission Expires: 11/18/13

[NOTARY SEAL]



TRANSFEROR:

HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY, GEORGIA

By: *[Handwritten signature]*

Title: CHAIRMAN

(SEAL)

Attest:

By: *[Handwritten signature]*

Title: Secretary

TRANSFeree:

PHOEBEPUTNEYMEMORIALHOSPITAL, INC.

By: *[Handwritten signature]*

Title: CHAIRMAN

(CORPORATE SEAL)

Attest:

By: *[Handwritten signature]*

Title: Secretary

EXHIBIT A

TO THE

AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT

DATED

AUGUST 1, 2012

EXCLUDED AGREEMENTS

ASU
PHC

**EXHIBIT A
TO THE
AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT
DATED AUGUST 1, 2012**

EXCLUDED AGREEMENTS

Participating Hospital Agreement, dated effective as of January 1, 1987, between HCA Palmyra Medical Center (assigned by Palmyra Park Hospital, LLC to the Hospital Authority of Albany-Dougherty County (the "Authority")) and Blue Cross and Blue Shield of Georgia, Inc.

Hospital Managed Care Agreement, dated May 1, 2008, between Palmyra Park Hospital, LLC (assigned to the Authority) and CIGNA Healthcare of Georgia, Inc.

Network Participation Agreement, dated April 1, 2009, between Palmyra Park Hospital, LLC (assigned to the Authority) and Consumer Life Insurance Company.

Network Participation Agreement, dated July 1, 2010, between Palmyra Park Hospital, LLC (assigned to the Authority) and Corvel Corporation.

Model Facility Agreement, dated September 1, 2001, between Palmyra Park Hospital, LLC (assigned to the Authority) and First Health Group Corp.

Healthcare Services Agreement, dated July 1, 2005, between Palmyra Park Hospital, LLC (assigned to the Authority) and Focus Healthcare Management, Inc.

Hospital Participation Agreement, dated December 1, 2003, between Palmyra Park Hospital, LLC (assigned to the Authority) and Humana Employers Health Plan of Georgia, Inc. and Humana Insurance Company.

Medicare Advantage Agreement, dated July 1, 2005, between Palmyra Park Hospital, LLC (assigned to the Authority) and Humana Employers Health Plan of Georgia, a Medicare Advantage Plan.

Facility Agreement, dated August 1, 2005, between Palmyra Park Hospital, LLC (assigned to the Authority) and Identity MCO, Inc.

Participating Provider Agreement, dated July 1, 2000, between Palmyra Park Hospital, LLC (assigned to the Authority) and Industry Buying Group, Inc.

Network Participation Agreement, dated August 1, 2008, between Palmyra Park Hospital, LLC (assigned to the Authority) and NovaNet, Inc.

Network Participation Agreement, dated September 15, 2008, between Palmyra Park Hospital, LLC (assigned to the Authority) and Rockport Community Network, Inc., d/b/a Rockport United Network.

Letter of Agreement, dated August 1, 2010, between Palmyra Park Hospital, LLC (assigned to the Authority) and Southern Health Partners.

Contracted Services Agreement, dated October 1, 2008, between Palmyra Park Hospital, LLC (assigned to the Authority) and Sterling Medical Inc.

Hospital Agreement, dated June 1, 2005, between Palmyra Park Hospital, LLC (assigned to the Authority) and Synergy Health Network, Inc.

Bariatric Surgery Provider Participation Agreement, dated as of July 1, 2010, between Palmyra Park Hospital, LLC (assigned to the Authority) and United Healthcare Services, Inc. on behalf of United Resource Networks.

Inpatient Care Contract, dated October 14, 2004, between Palmyra Park Hospital, LLC (assigned to the Authority) and United Hospice, Inc. d/b/a United Hospice of Cordele.

Facility Services Agreement, dated June 1, 2006, between Palmyra Park Hospital, LLC (assigned to the Authority) and Wellcare of Georgia, Inc.

Participating Facility Agreement, dated effective as of October 01, 2009, between TriStar Health System, Inc. (assigned to the Authority) and MultiPlan, Inc.

Hospital Services Agreement, dated as of January 1, 2006, between North Florida Division I, Inc. (assigned to the Authority) and Aetna Health, Inc.

Amended and Restated Hospital Agreement for Preferred Provider Program, dated May 1, 2010, between North Florida Division I, Inc. (assigned to the Authority) and Blue Cross and Blue Shield of Georgia, Inc.

Amended and Restated Hospital Agreement for HMO, dated May 1, 2010, between North Florida Division I, Inc. (assigned to the Authority) and Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.

Managed Medicaid Facility Participation Agreement, dated as of November 15, 2008, between North Florida Division I, Inc. (assigned to the Authority) and Peach State Health Plan, Inc.

Network Participation Agreement, dated August 01, 2010, between North Florida Division I, Inc. (assigned to the Authority) and PEN Edge Network, LLC.

Facility Participation Agreement, dated effective as of January 1, 2007, between North Florida Division I, Inc. (assigned to the Authority) and United Healthcare Insurance Company.

Medicare Advantage Facility Participation Agreement, dated effective as of January 1, 2011, between North Florida Division I, Inc. (assigned to the Authority) and Universal Health Care Group, Inc.

RSM
A.W.C.

Exhibit B to Amended and Restated Lease

Real Property

See Exhibit B-1 Attached Hereto for Legal Descriptions of the Real Property Listed Below

Tract	Owner	Parcel	Use	Address
1	Hospital Authority of Albany-Dougherty County, Georgia	0000N/00016/001	MOB	2100 Palmyra Rd, Albany, GA
2	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/01D	Parking Lot	806-808 14th Ave, Albany, GA
3	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/01E	MOB	806-808 14th Ave, Albany, GA
4	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/001	Main Hospital Parcel	(excluding Kanan MOB) 2000 Palmyra Rd, Albany, GA
5	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/025	MOB	1950 Palmyra Rd, Albany, GA
5	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/026	Vacant/Rear	1950 Palmyra Rd rear, Albany, GA
6-A2	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/4A2	Condo	810 13th Ave, Condo Unit A2, Albany, GA
6-B	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/04B	Condo	810 13th Ave, Condo Unit B, Albany, GA
6-C	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/04C	Condo	810 13th Ave, Condo Unit C, Albany, GA
6-D	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/04D	Condo	810 13th Ave, Condo Unit D, Albany, GA
6-E	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/04E	Condo	810 13th Ave, Condo Unit E, Albany, GA
7	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/07B	MOB	804 13th Ave, Albany, GA
8	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/007	MOB	1912 Arlington Lane, Albany, GA
9	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/07C	Unimproved Land	Aberdeen Rd, Albany, GA
10 #1	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/8A1	Condo	1909 Aberdeen Rd, Condo Unit 1, Albany, GA
10 #2	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/8A2	Condo	1909 Aberdeen Rd, Condo Unit 2, Albany, GA
10 #3	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/8A3	Condo	1909 Aberdeen Rd, Condo Unit 3, Albany, GA
10 #4	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/8A4	Condo	1909 Aberdeen Rd, Condo Unit 4, Albany, GA
10 #6	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/8A6	Condo	1909 Aberdeen Rd, Condo Unit 6, Albany, GA
10 #7	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/8A7	Condo	1909 Aberdeen Rd, Condo Unit 7, Albany, GA
11	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/008	Unimproved Land	Aberdeen Rd, Albany, GA
12	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/005	Unimproved Land	1901 Arlington Lane, Albany, GA
13	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/006	Unimproved Land	1900 Arlington Lane, Albany, GA
14	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/009	Unimproved Land	1900 Aberdeen Rd, Albany, GA
15	Hospital Authority of Albany-Dougherty County, Georgia	0000O/00039/002	Unimproved Land	Dawson Rd, Albany, GA
16	Hospital Authority of Albany-Dougherty County, Georgia	0000O/00039/003	Unimproved Land	Dawson Rd, Albany, GA
17	Hospital Authority of Albany-Dougherty County, Georgia	0000O/00039/004	Unimproved Land	Dawson Rd, Albany, GA
18	Hospital Authority of Albany-Dougherty County, Georgia	0000O/00039/005	Unimproved Land	Dawson Rd, Albany, GA
19	Hospital Authority of Albany-Dougherty County, Georgia	000LL/00009/4A1	Condo	810 13th Ave, Condo Unit A1, Albany, GA

Attached hereto is Exhibit B-2 which lists Real Property leased by Lessor.

EXHIBIT B-1

(Legal Descriptions of Real Property listed on Exhibit B)

TRACT 1 (2100 Palmyra Road; Tax Parcel 0000N/00016/001):

All that tract or parcel of land lying and being in Land Lot 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 1A of Recombination Plat of all of Lots 1, 2, 3, 4, 5 and 6 of the Addition to Palmyra Acres according to a map or plat of said recombination as same is recorded in Plat Cabinet 1D, Slide 27-D, in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This is a portion of the property described in warranty deed from Charles C. Lamb, et al, to HCA Realty, Inc., recorded June 1, 1992, in Deed Book 1203, Page 204, Dougherty County land records.

TRACTS 2 & 3 (806 and 808 14th Avenue; Tax Parcels 000LL/00009/01D and 01E):

All that tract or parcel of land lying and being in Land Lot 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 3 and the northeast sixty (60) feet of Lot 2 of the Property of Palmyra Park Hospital, Inc., according to a map or plat of said subdivision as same is recorded in Plat Book 4, Page 28 (Plat Cabinet 1, Slide B-23), in the office of the Clerk of Superior Court of Dougherty County, Georgia. The above-referenced portion of Lot 2 is all of said Lot 2 not previously conveyed in that certain warranty deed from Palmyra Park Hospital, Inc. to Charles B. Gillespie, M.D. dated September 9, 1980, recorded in Deed Book 663, Page 41, Dougherty County land records.

This property is a portion of the following two deeds: (a) warranty deed from E. J. Calhoun, Sr. to Hospital Corporation of America and Palmyra Hospital Corporation, dated November 18, 1968, recorded in Deed Book 394, Page 569, Dougherty County land records; and (b) warranty deed from Hospital Corporation of America to Palmyra Park Hospital, Inc., dated July 9, 1970, recorded in Deed Book 429, Page 247, aforesaid records.

TRACT 4 (2000 Palmyra Road, Main Hospital, excluding Kanan MOB; Tax Parcel 000LL/00009/001):

All that tract or parcel of land lying and being in Land Lots 366 and 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of **Tract 1A**, containing 16.313 acres, and **Tract 2**, containing 0.982 acres, of the Redivision of Tract One of the Plat of Subdivision for Palmyra Park Hospital, Inc. as same recorded in Plat Cabinet 1D, Slide 60-H, in the office of the Clerk of Superior Court of Dougherty County, Georgia. Tract 2 is the same as Tract 2 on the plat of survey of the Subdivision for Palmyra Park Hospital, Inc., recorded in Plat Cabinet 1, Slide B-79, in the office of the Clerk of Superior Court of Dougherty County, Georgia.

ALSO, a perpetual maintenance easement over an adjacent portion of Lot 1 of Property of Palmyra Park Hospital, Inc., according to a map or plat of said subdivision as same is recorded in Plat Book 4, Page 28 (Plat Cabinet 1, Slide B-23), in the office of the Clerk of Superior Court of Dougherty County, Georgia, as established in that certain Supplemental Deed and Easement, dated March 23, 1992, recorded in Deed Book 1195, Page 292, Dougherty County land records.

TRACT 5 (1950 Palmyra Road [Albany Urology Clinic]; Tax Parcels 000LL/00009/025 & 026):

All that tract or parcel of land lying and being in Land Lot 366 and 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being more particularly described as follows:

Beginning at the intersection of the southeast margin line of Thirteenth Avenue with the northeast margin line of Palmyra Road, run thence north 60 degrees 00 minutes east along the southeast margin line of Thirteenth Avenue for a distance of 500.7 feet to a point on the southwest margin line of a thirty (30) foot alley; run thence south 42 degrees 45 minutes 18 seconds east for a distance of 167.00 feet to a point on the southeast margin line of a ninety-five (95) foot wide Georgia Power easement; run thence south 51 degrees 48 minutes west along the southeast margin line of said easement for a distance of 508.84 feet to a point on the northeast margin line of Palmyra Road; run thence north 38 degrees 12 minutes west along the northeast margin line of said Palmyra Road for a distance of 237.89 feet to the point of beginning; said tract containing 2.325 acres and being more particularly described according to a plat thereof, dated March 4, 1987, as prepared by Malcolm Burnsed, Georgia Registered Land Surveyor.

This is the same property conveyed in that certain deed from Georgia Easter Seal Society for Crippled Children and Adults, Inc. to Palmyra Park Hospital, Inc., dated May 28, 1987, recorded in Deed Book 863, Page 209, in the office of the Clerk of Superior Court of Dougherty County, Georgia. This property is also known as Lots 1 and 2 of Palmyra Park Hospital, Inc. as shown on the plat of survey of said lots as recorded in Plat Cabinet 1, Slide C-64D, Dougherty County land records.

TOGETHER WITH a perpetual, non-exclusive driveway easement in and to the adjoining portion of the Easter Seal driveway (A25 Asphalt Drive@) shown on the plat of survey of part of Land Lots 366 and 367, First Land District, Dougherty County, Georgia, said plat dated March 4, 1987, prepared by Malcolm Burnsed, Georgia Registered Land Surveyor No. 1691.

TRACT 6 (810 13th Avenue; Tax Parcel 000LL/00009/4A2, 04B, 04C, 04D and 04E):

All that tract or parcel of land lying and being in Land Lots 366 and 367 of the First Land District, City of Albany, Dougherty County, Georgia, and being Condominium Office Units A-2, B, C, D and E of Palmyra Park Medical Center Condominium, as shown on plat of survey dated December 20, 1974, made by John Sperry, Registered Land Surveyor, which plat is recorded in Condominium Plat Book 1, Page 2, Dougherty County records, as amended by plat of survey dated November 9, 1978, made by John Sperry, Registered Land Surveyor, which plat is recorded in Condominium Plat Book 1, Page 16, aforesaid records, which Units are a part of the property

shown on said surveys;

TOGETHER WITH all right, title and interest of the unit owners in said Units and the appurtenances thereto, under the Declaration of Palmyra Park Medical Center Condominium, dated December 26, 1974, and recorded in Condominium Book 1, Page 173, Dougherty County records, as amended by the Amendment to the Declaration of Palmyra Park Medical Center Condominium, dated September 16, 1978, and recorded in Condominium Book 1, Page 625, aforesaid records, and as subsequently amended by Second Amendment to Declaration of Condominium as recorded in Condominium Record 3, Page 1, aforesaid records, which surveys, declaration and amendments thereto are, by reference, incorporated herein and made a part hereof. The interests described herein include, without limiting the generality of the foregoing, all of the undivided interests in the common areas of Palmyra Park Medical Center Condominium, as the same is defined in said Declaration, applicable to the above described condominium office units.

TRACT 7 (804 13th Avenue; Tax Parcel 000LL/00009/07B):

All that tract or parcel of land lying and being in Land Lot 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 2B of a Resubdivision of Lots 2, 3, 4, 5 & 6 of Palmyra Park Medical Center Subdivision, according to a map or plat of said resubdivision as same is recorded in Plat Cabinet 1, Slide B-88, in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This a portion of the property described in the following deeds: (a) warranty deed from E. J. Calhoun, Sr., dated November C, 1968, recorded in Deed Book 394, Page 569, Dougherty County land records; (b) warranty deed from Hospital Corporation of America, dated July 9, 1970, recorded in Deed Book 429, Page 247, aforesaid records; and (c) warranty deed from Flint River Cotton Mills, dated December 27, 1974, recorded in Deed Book 538, Page 238, aforesaid records.

TRACT 8 (1912 Arlington Lane; Tax Parcel 000LL/00009/007):

All that tract or parcel of land lying and being in Land Lot 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 2D of a Resubdivision of Lots 2, 3, 4, 5 & 6 of Palmyra Park Medical Center Subdivision, according to a map or plat of said resubdivision as same is recorded in Plat Cabinet 1, Slide B-88, in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This a portion of the property described in the following deeds: (a) warranty deed from E. J. Calhoun, Sr., dated November C, 1968, recorded in Deed Book 394, Page 569, Dougherty County land records; (b) warranty deed from Flint River Cotton Mills, dated December 27, 1974, recorded in Deed Book 538, Page 238, aforesaid records; and (c) warranty deed from Hospital Corporation of America, dated July 9, 1970, recorded in Deed Book 429, Page 247, aforesaid records.

TRACT 9 (Aberdeen Road; Tax Parcel 000LL/00009/07C):

All that tract or parcel of land lying and being in Land Lot 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 2C of a Resubdivision of Lots 2, 3, 4, 5 & 6 of Palmyra Park Medical Center Subdivision, according to a map or plat of said resubdivision as same is recorded in Plat Cabinet 1, Slide B-88, in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This a portion of the property described in the following deeds: (a) warranty deed from E. J. Calhoun, Sr., dated November C, 1968, recorded in Deed Book 394, Page 569, Dougherty County land records; (b) warranty deed from Flint River Cotton Mills, dated December 27, 1974, recorded in Deed Book 538, Page 238, aforesaid records; and (c) warranty deed from Hospital Corporation of America, dated July 9, 1970, recorded in Deed Book 429, Page 247, aforesaid records.

TRACT 10 (1909 Aberdeen Road; Tax Parcels 000LL/00009/8A1, 8A2, 8A3, 8A4, 8A6 & 8A7):

All those tracts or parcels of land lying and being in the City of Albany, in Land Lot 367 of the First Land District of Dougherty County, Georgia, and being all of Condominium Units 1, 2, 3, 4, 6 and 7 of Palmyra Park Physicians Center, a Condominium, according to a map or plat of survey of said condominium as recorded in Condominium Plat Book 1, Pages 22 and 23, in the office of the Clerk of Superior Court of Dougherty County, Georgia, as amended and revised by that certain Plat of Palmyra Park Physicians Center, a Condominium, a Conversion of Unit 5, Convertible Space, as recorded in Condominium Plat Book 1, Page 24, of said records;

TOGETHER WITH all right, title and interest applicable and appurtenant to said units as established under the Declaration of Condominium of Palmyra Park Physicians Center, a Condominium, as recorded in Condominium Book 2, Page 372, Dougherty County land records, as amended by First Amendment to said Declaration recorded in Condominium Book 2, Page 667, and as amended by Second Amendment to said Declaration recorded in Condominium Book 3, Page 54, of said records. The interest described herein includes, without limiting the generality of the foregoing, all of the undivided interest in the common area and common elements of Palmyra Park Physicians Center, a Condominium, as more particularly established in the above referenced Declaration of Condominium, and the right of ingress to and egress from said condominium units and the right to use, for all proper purposes, any and all portions of the condominium designated as common elements. The plans of said condominium are filed in File No. M0B000800, as revised by First Amendment to said plans as contained in File No. 000836, in the Condominium Plans Cabinet in the office of the Clerk of Superior Court of Dougherty County, Georgia.

Said Declaration of Condominium, as amended and as may be amended, together with the above referenced plat and plans, including any amendments as may be made thereto, are incorporated herein by reference as part of the description of the condominium unit conveyed herein.

TRACT 11 (Aberdeen Road; Tax Parcel 000LL/00009/008):

All that tract or parcel of land lying and being in Land Lot 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 3B of a Resubdivision of Lots 2, 3, 4, 5 & 6 of Palmyra Park Medical Center Subdivision, according to a map or plat of said resubdivision as same is recorded in Plat Cabinet 1, Slide B-88, in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This a portion of the property described in the following deeds: (a) warranty deed from E. J. Calhoun, Sr., dated November C, 1968, recorded in Deed Book 394, Page 569, Dougherty County land records; (b) warranty deed from Flint River Cotton Mills, dated December 27, 1974, recorded in Deed Book 538, Page 238, aforesaid records; and (c) warranty deed from Hospital Corporation of America, dated July 9, 1970, recorded in Deed Book 429, Page 247, aforesaid records.

TRACT 12 (1901 Arlington Lane; Tax Parcel 000LL/00009/005):

All that tract or parcel of land lying and being in Land Lots 366 and 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 6 of Palmyra Park Medical Center Subdivision, according to a map or plat of said subdivision as same is recorded in Plat Book 4, Page 157 (Plat Cabinet 1, Slide B-39), in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This is a portion of the property described in the following deeds: (a) warranty deed from Flint River Textiles, Inc., dated February 3, 1983, recorded in Deed Book 705, Page 509, Dougherty County land records; and (b) warranty deeds from Hospital Corporation of America, dated August 23, 1988, Deed Book 951, Pages 123 and 124, aforesaid records.

TRACT 13 (1900 Arlington Lane; Tax Parcel 000LL/00009/006):

All that tract or parcel of land lying and being in Land Lots 366 and 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 5 of Palmyra Park Medical Center Subdivision, according to a map or plat of said subdivision as same is recorded in Plat Book 4, Page 157 (Plat Cabinet 1, Slide B-39), in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This is a portion of the property described in the following deeds: (a) warranty deed from Flint River Textiles, Inc., dated February 3, 1983, recorded in Deed Book 705, Page 509, Dougherty County land records; and (b) warranty deeds from Hospital Corporation of America, dated August 23, 1988, Deed Book 951, Pages 123 and 124, aforesaid records.

TRACT 14 (1900 Aberdeen Road; Tax Parcel 000LL/00009/009):

All that tract or parcel of land lying and being in Land Lots 366 and 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lot 4 of Palmyra Park Medical Center Subdivision, according to a map or plat of said subdivision as same is recorded in Plat Book 4, Page 157 (Plat Cabinet 1, Slide B-39), in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This is a portion of the property described in the following deeds: (a) warranty deed from Flint River Textiles, Inc., dated February 3, 1983, recorded in Deed Book 705, Page 509, Dougherty County land records; and (b) warranty deeds from Hospital Corporation of America, dated August 23, 1988, Deed Book 951, Pages 123 and 124, aforesaid records.

TRACTS 15, 16, 17 & 18 (Dawson Road; Tax Parcels 0000O/00039/002, 003, 004 and 005):

All that tract or parcel of land lying and being in Land Lot 411 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of Lots 2, 3, 4 and 5 of Lake Park Center Subdivision according to a map or plat of said subdivision as same is recorded in Plat Book 6, Page 39 (Plat Cabinet 1, Slide B-71), in the office of the Clerk of Superior Court of Dougherty County, Georgia.

This is a portion of the property described in warranty deed from Cornelia H. Walden, et al, to HCA Realty, Inc., dated July 12, 1984, recorded in Deed Book 739, Page 75, Dougherty County land records.

TRACT 19(810 Thirteenth; Tax Parcel 000LL/00009/4A1):

All that tract or parcel of land lying and being in Land Lots 366 and 367 in the First Land District, City of Albany, Dougherty County, Georgia, and being all of **Office Condominium Unit A-1** of Palmyra Park Medical Center Condominium, according to the plat of survey of said condominium as recorded in Condominium Plat Book 1, Page 2, as amended in Condominium Plat Book 1, Page 16, in the office of the Clerk of Superior Court of Dougherty County, Georgia, TOGETHER WITH all right, title and interest applicable and appurtenant to said unit as established under the Declaration of Condominium of said condominium as recorded in Condominium Book 1, Page 173, Dougherty County land records, as amended. The interest described herein includes, without limiting the generality of the foregoing, all of the undivided interest in the common area of Palmyra Park Medical Center Condominium applicable to Unit A-1 as more particularly established in the above referenced Declaration of Condominium, and the right of ingress to and egress from said condominium unit and the right to use, for all proper purposes, any and all portions of the condominium designated as common elements. The plans of said condominium are filed in File No. #PPMC-100 in the Condominium Plans Cabinet in the office of the Clerk of Superior Court of Dougherty County, Georgia.

EXHIBIT B-2 to EXHIBIT B

LEASED REAL PROPERTY

Lease of entire building located at 810 14th Avenue, Albany, GA (“Gillespie Building”)

Lease of space (Suite # 100 and Suite #200) in building located at 2002 Palmyra Road, Albany, GA (the “Palmyra Park Building”)

Lease of space (1,784 sf) in building located 2402 Osler Court, Albany, GA (the “AIM Building”)

EXHIBIT C

TO THE

AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT

DATED

AUGUST 1, 2012

LIST OF PHOEBE NORTH PERMITTED ENCUMBRANCES

MSN
QWC

**EXHIBIT C
TO THE
AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT
DATED AUGUST 1, 2012**

Except for those Permitted Encumbrances disclosed on Schedule B, Section II to the Policy of Title Insurance issue by Old Republic National Title Insurance Company to the Hospital Authority of Albany-Dougherty County on December 15, 2011, Policy Number OX185594, there are no Permitted Encumbrances.

EXHIBIT D

TO THE

AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT

DATED

AUGUST 1, 2012

ARTICLES OF INCORPORATION OF LESSEE

MB
44C

STATE OF GEORGIA

Secretary of State

Corporations Division
313 West Tower
2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334-1530

Certified Copy

I, Brian P. Kemp, Secretary of the State of Georgia, do hereby certify under the seal of my office that the attached documents are true and correct copies of documents filed under the name of

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

Domestic Non-Profit Corporation

Said entity was formed in the jurisdiction set forth above and has filed in the Office of Secretary of State on the 10th day of December, 1990 its certificate of limited partnership, articles of incorporation, articles of association, articles of organization or application for certificate of authority to transact business in Georgia. This Certificate is issued pursuant to Title 14 of the Official Code of Georgia Annotated and is prima-facie evidence of the existence or nonexistence of the facts stated herein.



WITNESS my hand and official seal of the City of Atlanta and the State of Georgia on 25th day of July, 2012

A handwritten signature in black ink, appearing to read 'B. P. Kemp'.

Brian P. Kemp
Secretary of State

STATE OF GEORGIA

Secretary of State

Corporations Division

315 West Tower

#2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

CERTIFICATE OF AMENDMENT

I, **Karen C Handel**, the Secretary of State and the Corporations Commissioner of the State of Georgia, hereby certify under the seal of my office that

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.
a Domestic Non-Profit Corporation

has filed articles/certificate of amendment in the Office of the Secretary of State on 03/20/2007 and has paid the required fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles/certificate of amendment.

WITNESS my hand and official seal of the City of Atlanta
and the State of Georgia on March 20, 2007



A handwritten signature in cursive script that reads "Karen C Handel".

Karen C Handel
Secretary of State

**ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF
PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.**

07 MAR 20 PM 2:14
RECEIVED
SECRETARY OF STATE
SOUTH GA OFFICE

I.

The name of the corporation is Phoebe Putney Memorial Hospital, Inc.

II.

Article VII of the Articles of Incorporation is amended by the deletion of the last paragraph of said Article, which read:

"The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia."

III.

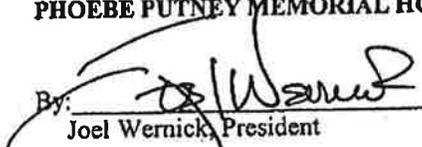
The amendment to the Articles of Incorporation was adopted on December 3, 2003.

IV.

The amendment was duly approved by the Board of Directors of the Corporation, in accordance with (a) the Articles of Incorporation of the Corporation; and (b) Section 14-3-1002 of the Georgia Nonprofit Corporation Code.

In witness whereof, the Corporation has caused these Articles of Amendment to be executed and attested by its duly authorized officers on January 9, 2004.

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

By: 
Joel Wernick, President

ATTEST:

By: 
Kerry L. Loudermilk, Secretary

L:\Documents\Phoebe\General\Articles & Bylaws\Articles of Amendment to the Articles of Incorporation of PPMH.doc

State of Georgia
Amend/Restate 2 Page(s)



T0708614501

CERTIFICATE REGARDING
ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF
PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

07 MAR 20 PM 2: 14

RECEIVED
SECRETARY OF STATE
PHOENIX GA OFFICE

The undersigned, Joel Wernick, the President and Chief Executive Officer of Phoebe Putney Memorial Hospital, Inc. (the "Corporation"), a Georgia corporation, hereby certifies pursuant to Section 14-3-1006(e) of the Georgia Nonprofit Corporation Code:

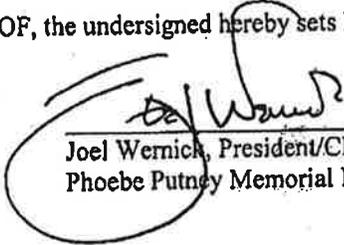
(1) The Articles of Amendment to the Articles of Incorporation of the Corporation contain amendments to the Articles of Incorporation of the Corporation which requires the approval of a majority vote of its Board of Directors.

(2) Article VII of the Articles of Incorporation was amended by the deletion of the last paragraph of said Article, which read:

"The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia."

(3) The Articles of Amendment were duly adopted by the Board of Directors of the Corporation on December 3, 2003.

IN WITNESS WHEREOF, the undersigned hereby sets his hand and seal this 9th day of January, 2004.



Joel Wernick, President/CEO
Phoebe Putney Memorial Hospital, Inc.

(SEAL)



Secretary of State

Corporations Division

315 West Tower

**#2 Martin Luther King, Jr. Dr.
Atlanta, Georgia 30334-1530**

DOCKET NUMBER : 011510336
CONTROL NUMBER: K022265
EFFECTIVE DATE: 05/31/2001
REFERENCE : C007
PRINT DATE : 05/31/2001
FORM NUMBER : 115

DAVID L. WEIR
ATTORNEY AT LAW
P. O. BOX 1826
ALBANY, GA 31602

CERTIFICATE OF RESTATED ARTICLES OF INCORPORATION

I, Cathy Cox, the Secretary of State and the Corporations Commissioner of the State of Georgia, do hereby certify under the seal of my office that the articles of incorporation of

**PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.
A DOMESTIC NONPROFIT CORPORATION**

have been duly restated and amended by the filing of articles of restatement in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles of restatement.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on the date set forth above.



Cathy Cox



Cathy Cox
Secretary of State

011510336

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

ARTICLE I

Name

The name of the Corporation is Phoebe Putney Memorial Hospital, Inc.

ARTICLE II

Organization

The Corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

ARTICLE III

Period of Duration

The period of duration of the Corporation shall be perpetual.

ARTICLE IV

Purposes

The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, including:

(a) To own, manage, control, operate, govern, reconstruct, repair and lease existing medical facilities, hospitals and related support facilities in Georgia; and to own, operate, construct, lease and joint venture other medical facilities, hospitals and related support facilities which may be constructed in Georgia;

(b) To establish, operate and/or joint venture hospitals, extended care facilities, ambulatory surgery facilities, clinics, teaching units and any other health care services for the purpose of furnishing medical, surgical and psychiatric aid, nursing, medical and psychiatric care, food and any other necessary care for those suffering from illness, disease, injuries or

disabilities and to operate an emergency room or rooms in such hospitals, extended care facilities, ambulatory surgery facilities and clinics; and to lend or advance money to or otherwise invest in such hospitals, extended care facilities, clinics, teaching units and health care services;

(c) To carry on any education or other activities relating to the rendering of care to the sick and injured or to the promotion of the general health and welfare of the citizens of the State of Georgia and surrounding areas;

(d) To participate in any activity designed and carried on to promote the general health of the citizens of the state of Georgia and surrounding areas;

(e) To promote and carry on scientific research and educational activities related to the care of the sick and injured;

(f) To solicit and receive funds, gifts, endowments, donations, devises and bequests;

(g) To lease or purchase wherever located land or lands, building or buildings, and purchase and construct buildings for purposes in connection with the activities of the Corporation, including, but not limited to, hospitals, doctors' offices, clinics, ambulatory surgical facilities, laboratories or any related medical activity;

(h) To exercise, without limitation, all the powers enumerated in the Georgia Nonprofit Corporation Code, as it now exists or is subsequently amended or superseded, and to do and perform such acts and to have such powers as shall be desirable and necessary in furtherance of any of the powers hereinabove enumerated which are not in derogation of the laws of the State of Georgia;

(i) To exercise any of the powers enumerated herein or in the Georgia Nonprofit Corporation Code, as it now exists or is subsequently amended or superseded, by the Corporation singly or by joint venture or partnership with any person or entity, whether or not said entity is

for profit or not for profit, so long as the Corporation's participation in the joint venture or partnership is primarily in furtherance of the charitable, educational and scientific purposes for which the Corporation is organized;

(j) To form and own shares in affiliated or related corporations, whether said corporations are for profit or not for profit, so long as said formation and ownership is not inconsistent with the furtherance of the charitable, educational and scientific purposes for which the Corporation is organized;

(k) To conduct and provide such other programs, activities and services as are necessary, incident or pertaining to the foregoing purposes of the Corporation.

ARTICLE V

Sole Member

The sole member of the Corporation shall be Phoebe Putney Health System, Inc., a corporation organized pursuant to the Georgia Nonprofit Corporation Code, whose principal offices are located at 417 Third Avenue, Albany, Georgia 31703. Membership in the Corporation is not transferable or assignable.

ARTICLE VI

Election of Directors

The affairs of the Corporation shall be managed by the Board of Directors. The qualifications, minimum and maximum number and manner of election of the Directors shall be provided in the Bylaws of the Corporation.

ARTICLE VII

Initial Board of Directors

The initial Board of Directors shall consist of eleven (11) members, whose names and addresses are set forth below. Each member of the initial Board of Directors shall serve as a director for a term of the number of years appearing opposite his name or until his successor has been elected and qualified.

	<u>Director</u>	<u>Term</u>
1.	Laurence Crimmins, M.D. 1111 Palmyra Road Albany, Georgia	4 years
2.	Willie D. Hampton 902 Dorsett Street Albany, Georgia	4 years
3.	John L. Brunson 801 Highland Avenue Albany, Georgia	5 years
4.	Dr. Billy C. Black 504 College Drive Albany, Georgia	5 years
5.	Lamar H. Moree, M.D. 2604 E. Doublegate Drive Albany, Georgia	During term as Chief of Medical Staff of Phoebe Putney Memorial Hospital
6.	William George, Jr., M.D. 5023 Gillionville Road Albany, Georgia	3 years
7.	Will Sims 6014 Old Dawson Road Albany, Georgia	4 years
8.	Withmenia Hall 512 Mercer Avenue Albany, Georgia	4 years

- | | | |
|-----|--|--|
| 9. | Robert D. Jones
2512 E. Alberson Drive
Albany, Georgia | Earlier of 3 years or election of
successor |
| 10. | Edwin J. Ollie
2530 Pheasant Drive
Albany, Georgia | Earlier of 3 years or election of
successor |
| 11. | Joel Wernick
417 Byron Plantation Road
Albany, Georgia | During tenure as President/Chief
Executive Officer of the Corporation |

The Board of Directors of the Corporation shall at all times include the Chief Executive Officer of the Corporation and at least three (3) physician members who are members of the Medical Staff of Phoebe Putney Memorial Hospital. These ex-officio Board Members shall be full voting members.

The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia.

ARTICLE VIII

Powers

The Corporation shall have all powers enumerated herein and in the Georgia Nonprofit Corporation Code.

ARTICLE IX

Restrictions

This Corporation is organized exclusively for charitable, educational and scientific purposes, as a nonprofit corporation, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and its activities shall be conducted for such purposes in such a manner that no part of its net earnings shall inure to the benefit of any

director, officer or individual. In addition, the Corporation shall be authorized to exercise the powers permitted nonprofit corporations under the Georgia Nonprofit Corporation Code; provided, however, that the Corporation while exercising any one or more powers shall do so in furtherance of the charitable, educational and scientific purposes for which it has been organized as described in Section 501(c)(3) of the Code. All of the assets and earnings of the Corporation shall be used exclusively for the charitable, educational and scientific purposes hereinabove set forth, including the payment of expenses incidental thereto, and all of the powers of the Corporation shall be exercised exclusively for such purposes. No part of the Corporation's activities shall inure to the benefit of any individual, and no substantial part of its activities shall be for the carrying on of a program of propaganda or for influencing legislation, nor shall it participate in any political campaign on behalf of any candidate for public office. The Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Code, or any organization to which contributions are deductible under Section 170(c)(2) of the Code.

ARTICLE X

Dissolution

Upon dissolution of the Corporation, all of its assets remaining after the payment of all costs and expenses of such dissolution, and after adequate provision has been made for the discharge or assumption of its liabilities, shall be distributed to the Hospital Authority of Albany-Dougherty County, Georgia (the "Authority"), which is a public body corporate and politic and an instrumentality of the State of Georgia, to be used exclusively for a public purpose, and none of the assets will be distributed upon such dissolution to any member, officer or director of the Corporation. If the Corporation enters into an agreement with the Authority pursuant to which

the Authority leases, transfers and assigns to Phoebe Putney Memorial Hospital (the "Hospital"), then upon the termination of such lease, transfer or assignment agreement, or upon termination of any renewal or extension thereof, all of the assets of the Corporation (after adequate provision is made for the discharge or assumption of the Corporation's liabilities) shall be distributed to the Authority to be used exclusively for a public purpose, and the Corporation shall be dissolved, and none of the assets will be distributed upon such termination to any member, officer or director of the Corporation. In the event the Authority is not then in existence or is for any reason unable to accept title to such assets, then all of the net assets of the Corporation shall in that event be distributed exclusively for the purposes of the Corporation, in such manner, and to such organization or organizations, organized and operated exclusively for charitable, scientific and educational purposes, as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States internal revenue law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be disposed of by the Superior Court of Dougherty County, exclusively for such purposes and to such organization or organizations, as such court shall determine. The Authority shall have the authority to compel the Corporation's compliance with this Article.

ARTICLE XI

Restrictions on the Authority of the Board of Directors

The Board of Directors of the Corporation may not, without the prior approval of Phoebe Putney Health System, Inc., as the sole member of the Corporation, take any of the following actions:

- (a) Adopt a plan of dissolution of the Corporation;

(b) Authorize the Corporation to engage in, or enter into, any transaction providing for the sale, mortgage or other disposition of all or substantially all of the assets of the Corporation;

(c) Adopt a plan of merger or consolidation of the Corporation with another corporation;

(d) Adopt any annual or long-term capital and operational budgets of the Corporation or approve any changes therein exceeding ten percent (10%) of the budgeted item;

(e) Amend or take any action to terminate any lease between the Corporation and the Authority with respect to Phoebe Putney Memorial Hospital;

(f) Take any action which would, or reasonably could be expected to, cause the Corporation to exceed its annual budget for capital expenditures;

(g) Incur an expenditure for any particular project or service of or for the Corporation in an amount in excess of \$1,000,000;

(h) Take any action which would, or reasonably could be expected to, result in an adverse variance (on an annualized basis) of total expenses of greater than two percent (2%) of total annual budgeted expenses;

(i) Appoint or remove the independent auditors of the Corporation;

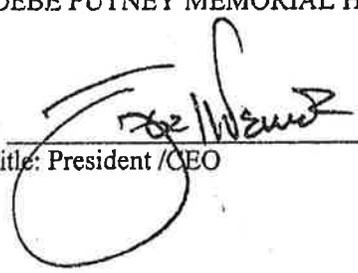
(j) Select or remove the President/Chief Executive Officer of the Corporation;

(k) Adopt or permit any changes to any long-term, strategic or master institutional plans of the Corporation; or

(l) Amend the Articles of Incorporation or Bylaws of the Corporation.

IN WITNESS WHEREOF, Phoebe Putney Memorial Hospital, Inc. has caused these Amended and Restated Articles of Incorporation to be executed, its corporate seal affixed and the foregoing to be attested, all by duly authorized officers on the 2ND day of MAY, 2001.

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

BY: 
Title: President /CEO

[CORPORATE SEAL]

ATTEST:

BY: 
Title: Secretary

CAOFFICE\WP\IN\PPMH\DOCUMENT\PPMHART3.AMD

01 MAY 31 AM 10:44

RECEIVED
SECRETARY OF STATE
SOUTH GA OFFICE

CERTIFICATE REGARDING
AMENDED AND RESTATED ARTICLES OF
INCORPORATION OF PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

The undersigned, Joel Wernick, the President and Chief Executive Officer of Phoebe Putney Memorial Hospital, Inc. (the "Corporation"), a Georgia corporation, hereby certifies pursuant to Section 14-3-1006(e) of the Georgia Nonprofit Corporation Code:

(1) The Amended and Restated Articles of Incorporation of the Corporation contain amendments to the Articles of Incorporation of the Corporation which requires the approval of the sole member of the Corporation, Phoebe Putney Health System, Inc.

(2) The amendments adopted are the insertion of the following paragraph in Article VII of the Articles of Incorporation:

"The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia."

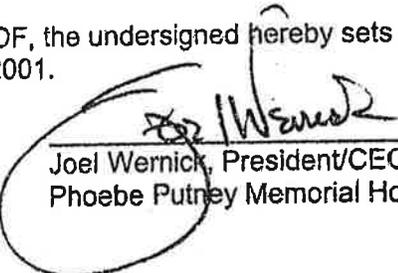
and the removal of the following paragraph in Article VII of the Articles of Incorporation:

"Additional ex-officio members of the Board of Directors that are non-voting may be designated as set forth in the By-Laws of the Corporation."

(3) The amendments were duly approved on April 5, 2001, by the member of the Corporation in accordance with the provisions of Section 14-3-1003 of the Georgia Nonprofit Corporation Code, and the Articles of Incorporation of the Corporation.

(4) The amendments were duly adopted by the Board of Directors of the Corporation on May 2, 2001.

IN WITNESS WHEREOF, the undersigned hereby sets his hand and seal this 2nd day of May, 2001.



Joel Wernick, President/CEO
Phoebe Putney Memorial Hospital, Inc.

(SEAL)

01 MAY '01 AM 10:44
RECEIVED
SECRETARY OF STATE
SOUTH GA OFFICE

**Secretary of State
Corporations Division
Suite 315, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1530**

DOCKET NUMBER : 980470869
CONTROL NUMBER: 9022265
EFFECTIVE DATE: 02/05/1998
REFERENCE : 0033
PRINT DATE : 02/16/1998
FORM NUMBER : 111

DAVID L. WEIR
LANGLEY & LEE, LLC
412 WEST TIFT AVENUE, P.O. BOX 1826
ALBANY GA 31702-1826

CERTIFICATE OF AMENDMENT

I, Lewis A. Massey, the Secretary of State and the Corporation Commissioner of the State of Georgia, do hereby certify under the seal of my office that

**PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.
A DOMESTIC NONPROFIT CORPORATION**

has filed articles of amendment in the office of the Secretary of State and has paid the required fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles of amendment.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on the date set forth above.

Lewis A. Massey
LEWIS A. MASSEY
SECRETARY OF STATE



980470869
9022265

ARTICLES OF AMENDMENT TO THE ARTICLES OF
INCORPORATION
OF PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

I.

The name of the Corporation is Phoebe Putney Memorial Hospital, Inc.

II.

Article VII of the Articles of Incorporation of the Corporation is amended by the deletion of the last three paragraphs of such Article, and the substitution therefor of the following two paragraphs:

"The Board of Directors of the Corporation shall at all times include the Chief Executive Officer of the Corporation and at least three physician members who are member of the Medical Staff of Phoebe Putney Memorial Hospital. These ex-officio Board Members shall be full voting members

Additional ex-officio members of the Board of Directors that are non-voting may be designated as set forth in the By-Laws of the Corporation."

III.

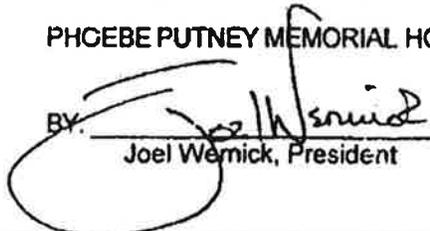
The amendment to the Articles of Incorporation was adopted January 30, 1998.

IV.

The amendment to the Articles of Incorporation was duly approved by the sole member of the Corporation, as required by (a) the Articles of Incorporation of the Corporation, and (b) Section 14-3-1003 of the Georgia Nonprofit Corporation Code.

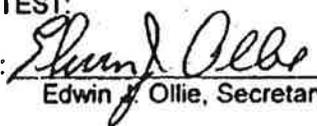
IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed and attested by its duly authorized officers on January 30, 1998.

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

BY: 

Joel Wernick, President

ATTEST:

BY: 

Edwin Ollie, Secretary

C:\OFFICE\WPWIN\PPM\DOCUMENT\PPMS ART

Secretary of State
Business Services and Regulation
Suite 315, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1538

DOCKET NUMBER : 922120544
CONTROL NUMBER: 9022265
EFFECTIVE DATE: 07/30/1992
REFERENCE : 0091
PRINT DATE : 07/30/1992
FORM NUMBER : 115

PARKER, HUDSON, RAINER & DOBBS
DAVID G. CLEVELAND
133 CARNEGIE WAY
1200 CARNEGIE BUILDING
ATLANTA, GA 30303

CERTIFICATE OF RESTATED ARTICLES OF INCORPORATION

I, **MAX CLELAND**, Secretary of State and the Corporation Commissioner of the State of Georgia, do hereby certify under the seal of my office that the articles of incorporation of

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.
a domestic nonprofit corporation

have been duly restated and amended by the filing of articles of restatement in the office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles of restatement.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on the date set forth above.

Max Cleland

MAX CLELAND
SECRETARY OF STATE

Verley J. Spivey

VERLEY J. SPIVEY
DEPUTY SECRETARY OF STATE



CORPORATIONS

CORPORATIONS HOT-LINE
770-462-3333

RESTATED AND AMENDED
ARTICLES OF INCORPORATION
OF
PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

The name of the Corporation is Phoebe Putney Memorial Hospital, Inc. The Articles of Incorporation of the Corporation are restated and amended, effective at 12:01 a.m. on August 1, 1992, so as to read in their entirety as follows:

ARTICLE I

Name

The name of the Corporation is Phoebe Putney Memorial Hospital, Inc.

ARTICLE II

Organization

The Corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

ARTICLE III

Period of Duration

The period of duration of the Corporation shall be perpetual.

ARTICLE IV

Purposes

The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, including:

(a) To own, manage, control, operate, govern, reconstruct, repair and lease existing medical facilities, hospitals and related support facilities in Georgia; and to own, operate, construct, lease and joint venture other medical facilities, hospitals and related support facilities which may be constructed in Georgia.

(b) To establish, operate and/or joint venture hospitals, extended care facilities, ambulatory surgery facilities, clinics, teachings units and any other health care services for the purpose of furnishing medical, surgical and psychiatric aid, nursing, medical and psychiatric care, food and any other necessary care for those suffering from illness, disease, injuries or disabilities and to operate an emergency room or rooms in such hospitals, extended care facilities, ambulatory surgery facilities and clinics; and to lend or advance money to or otherwise invest in such hospitals, extended care facilities, clinics, teaching units and health care services.

(c) To carry on any education or other activities relating to the rendering of care to the sick and injured or to the promotion of the general health and welfare of the citizens of the State of Georgia and surrounding areas.

(d) To participate in any activity designed and carried on to promote the general health of the citizens of the State of Georgia and surrounding areas.

(e) To promote and carry on scientific research and educational activities related to the care of the sick and injured.

(f) To solicit and receive funds, gifts, endowments, donations, devises and bequests.

(g) To lease or purchase wherever located land or lands, building or buildings, and purchase and construct buildings for purposes in connection with the activities of the Corporation, including, but not limited to, hospitals, doctors' offices, clinics, ambulatory surgical facilities, laboratories or any related medical activity.

(h) To exercise, without limitation, all the powers enumerated in the Georgia Nonprofit Corporation Code, as it now exists or is subsequently amended or superseded, and to do and perform such acts and to have such powers as shall be desirable and necessary in furtherance of any of the powers hereinabove enumerated which are not in derogation of the laws of the State of Georgia.

(i) To exercise any of the powers enumerated herein or in the Georgia Nonprofit Corporation Code, as it now exists or is subsequently amended or superseded, by the Corporation singly or by joint venture or partnership with any person or entity, whether or not said entity is for profit or not for profit, so long as the Corporation's participation in the joint venture or partnership is primarily in furtherance of the charitable, educational and scientific purposes for which the Corporation is organized.

(j) To form and own shares in affiliated or related corporations, whether said corporations are for profit or not for

profit, so long as said formation and ownership is not inconsistent with the furtherance of the charitable, educational and scientific purposes for which the Corporation is organized.

(k) To conduct and provide such other programs, activities and services as are necessary, incident or pertaining to the foregoing purposes of the Corporation.

ARTICLE V

Sole Member

The sole member of the Corporation shall be Phoebe Putney Health Systems, Inc., a corporation organized pursuant to the Georgia Nonprofit Corporation Code, whose principal offices are located at 417 Third Avenue, Albany, Georgia 31703. Membership in the Corporation is not transferable or assignable.

ARTICLE VI

Election of Directors

The affairs of the Corporation shall be managed by the Board of Directors. The qualifications, minimum and maximum number and manner of election of the Directors shall be provided in the Bylaws of the Corporation.

ARTICLE VII

Initial Board of Directors

The initial Board of Directors shall consist of eleven (11) members, whose names and addresses are set forth below. Each member of the initial Board of Directors shall serve as a director for a term of the number of years appearing opposite his name or until his successor has been elected and has qualified.

<u>Director</u>	<u>Term</u>
1. Laurence Crimmins, M.D. 1111 Palmyra Road Albany, Georgia	4 years
2. Willie D. Hampton 902 Dorsett Street Albany, Georgia	5 years
3. John L. Brunson 801 Highland Avenue Albany, Georgia	5 years
4. Dr. Billy C. Black 504 College Drive Albany, Georgia	5 years
5. Lamar H. Moree, M.D. 2604 East Doublegate Drive Albany, Georgia	During term as Chief of Medical Staff of Phoebe Putney Memorial Hospital
6. William George, Jr., M.D. 5023 Gillionville Road Albany, Georgia	3 years
7. Will Sims 6014 Old Dawson Road Albany, Georgia	4 years
8. Wilhmenia Hall 512 Mercer Avenue Albany, Georgia	4 years

- | | | |
|-----|--|--|
| 9. | Robert D. Jones
2512 East Alberson Drive
Albany, Georgia | Earlier of 3 years or
election of successor |
| 10. | Edwin J. Ollie
2530 Pheasant Drive
Albany, Georgia | Earlier of 3 years or
election of successor |
| 11. | Joel Wernick
417 Byron Plantation Road
Albany, Georgia | During tenure as President/
Chief Executive Officer of
the Corporation |

The Board of Directors of the Corporation shall at all times include the Chief Executive Officer of the Corporation and the Chief of the Medical Staff of Phoebe Putney Memorial Hospital.

The Board of Directors of the Corporation shall at all times include at least three physician members who are members of the Medical Staff of Phoebe Putney Memorial Hospital.

The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia.

In addition, the Chief of Medicine and Chief of Surgery of Phoebe Putney Memorial Hospital shall serve as ex-officio, non-voting members of the Board of Directors. Additional ex-officio members of the Board of Directors may be designated as set forth in the Bylaws of the Corporation.

ARTICLE VIII

Powers

The Corporation shall have all powers enumerated herein and in the Georgia Nonprofit Corporation Code.

ARTICLE IX

Restrictions

The Corporation is organized exclusively for charitable, educational and scientific purposes, as a nonprofit corporation, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and its activities shall be conducted for such purposes in such a manner that no part of its net earnings shall inure to the benefit of any director, officer or individual. In addition, the Corporation shall be authorized to exercise the powers permitted nonprofit corporations under the Georgia Nonprofit Corporation Code; provided, however, that the Corporation while exercising any one or more powers shall do so in furtherance of the charitable, educational and scientific purposes for which it has been organized as described in Section 501(c)(3) of the Code. All of the assets and earnings of the Corporation shall be used exclusively for the charitable, educational and scientific purposes hereinabove set forth, including the payment of expenses incidental thereto, and all of the powers of the Corporation shall be exercised exclusively for such purposes. No part of the Corporation's activities shall inure to the benefit of

any individual, and no substantial part of its activities shall be for the carrying on of a program of propaganda or for influencing legislation, nor shall it participate in any political campaign on behalf of any candidate for public office. The Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Code, or any organization to which contributions are deductible under Section 170(c)(2) of the Code.

ARTICLE X

Dissolution

Upon dissolution of the Corporation, all of its assets remaining after the payment of all costs and expenses of such dissolution, and after adequate provision has been made for the discharge or assumption of its liabilities, shall be distributed to the Hospital Authority of Albany-Dougherty County, Georgia (the "Authority"), which is a public body corporate and politic and an instrumentality of the State of Georgia, to be used exclusively for a public purpose, and none of the assets will be distributed upon such dissolution to any member, officer or director of the Corporation. If the Corporation enters into an agreement with the Authority pursuant to which the Authority leases, transfers and assigns to the Corporation all of the assets, operations and liabilities of Phoebe Putney Memorial Hospital (the "Hospital"), then upon the termination of such lease, transfer or assignment

agreement, or upon termination of any renewal or extension thereof, all of the assets of the Corporation (after adequate provision is made for the discharge or assumption of the Corporation's liabilities) shall be distributed to the Authority to be used exclusively for a public purpose, and the Corporation shall be dissolved, and none of the assets will be distributed upon such termination to any member, officer or director of the Corporation. In the event the Authority is not then in existence or is for any reason unable to accept title to such assets, then all of the net assets of the Corporation shall in that event be distributed exclusively for the purposes of the Corporation, in such manner, and to such organization or organizations, organized and operated exclusively for charitable, scientific and educational purposes, as shall at the time qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States internal revenue law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be disposed of by the Superior Court of Dougherty County, exclusively for such purposes and to such organization or organizations, as such court shall determine. The Authority shall have the authority to compel the Corporation's compliance with this Article.

ARTICLE XI

Restrictions on the Authority of the Board of Directors

The Board of Directors of the Corporation may not, without the prior approval of Phoebe Putney Health Systems, Inc., as the sole member of the Corporation, take any of the following actions:

- (a) Adopt a plan of dissolution of the Corporation;
- (b) Authorize the Corporation to engage in, or enter into, any transaction providing for the sale, mortgage or other disposition of all or substantially all of the assets of the Corporation;
- (c) Adopt a plan of merger or consolidation of the Corporation with another corporation;
- (d) Adopt any annual or long-term capital and operational budgets of the Corporation or approve any changes therein exceeding ten percent (10%) of any budgeted item;
- (e) Amend or take any action to terminate any lease between the Corporation and the Authority with respect to Phoebe Putney Memorial Hospital;
- (f) Take any action which would, or reasonably could be expected to, cause the Corporation to exceed its annual budget for capital expenditures;
- (g) Incur an expenditure for any particular project or service of or for the Corporation in an amount in excess of \$1,000,000;

(h) Take any action which would, or reasonably could be expected to, result in an adverse variance (on an annualized basis) of total expenses of greater than 2% of total annual budgeted expenses;

(i) Appoint or remove the independent auditors of the Corporation;

(j) Select or remove the President/Chief Executive Officer of the Corporation;

(k) Adopt or permit any changes to any long-term, strategic or master institutional plans of the Corporation; or

(l) Amend the Articles of Incorporation or Bylaws of the Corporation.

ARTICLE XII

Registered Office and Agent

The initial registered office of the Corporation shall be at 417 Third Avenue, Albany, Dougherty County, Georgia 31703. The initial registered agent at such address shall be Joel Wernick.

ARTICLE XIII

Incorporator

The name and address of the Incorporator is:

John H. Parker, Jr.
Parker, Hudson, Rainer & Dobbs
1200 Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303

CERTIFICATE

I, Edwin J. Ollie, Secretary of Phoebe Putney Memorial Hospital, Inc., a Georgia nonprofit corporation (the "Corporation"), hereby certify that the attached Restated and Amended Articles of Incorporation of Phoebe Putney Memorial Hospital, Inc. have been duly adopted by the members of the board of directors of the Corporation (such members being the sole voting members of the Corporation), and they do not contain any amendment requiring the approval of any other member or any other person other than the board of directors.

WITNESS, my hand and the seal of the Corporation this 29th
day of July, 1992.

Edwin J. Ollie
Edwin J. Ollie Secretary
[CORPORATE SEAL]

dgc\phoebe\artofinc.res

Secretary of State
Business Services and Regulation
Suite 315, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1538

16
CHARTER NUMBER : 9022265 DN
COUNTY : DOUGHERTY
DATE INCORPORATED : DECEMBER 10, 1990
EXAMINER : SUSAN GOLDEN
TELEPHONE : 404-656-0624

REQUESTED BY:

JOHN H. PARKER, ESQ
133 CARNEGIE WAY
1200 CARNEGIE BUILDING
ATLANTA, GEORGIA 30303

CERTIFICATE OF INCORPORATION

I, MAX CLELAND, Secretary of State and the Corporations Commissioner of the State of Georgia do hereby certify, under the seal of my office, that

"PHOEBE PUTNEY MEMORIAL HOSPITAL, INC."

has been duly incorporated under the laws of the State of Georgia on the date set forth above, by the filing of articles of incorporation in the office of the Secretary of State and the fees therefor paid, as provided by law, and that attached hereto is a true copy of said articles of incorporation.

WITNESS, my hand and official seal, in the City of Atlanta and the State of Georgia on the date set forth below.

DATE: DECEMBER 10, 1990

FORM A1 (JULY 1989)



Max Cleland

MAX CLELAND
SECRETARY OF STATE

SECURITIES

CEMETERIES

CORPORATIONS

CORPORATIONS HOT-LINE
404 656 3333

ARTICLES OF INCORPORATION
OF
PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

ARTICLE I

Name

The name of the Corporation is Phoebe Putney Memorial Hospital, Inc.

ARTICLE II

Organization

The Corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

ARTICLE III

Period of Duration

The period of duration of the Corporation shall be perpetual.

ARTICLE IV

Purpose

The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, including:

- (a) To own, manage, control, operate, govern, reconstruct, repair and lease existing medical facilities, hospitals and related support facilities in Georgia; and to own, operate, construct, lease and joint venture other medical facilities, hospitals and related support facilities which may be constructed in Georgia.

(b) To establish, operate and/or joint venture hospitals, extended care facilities, ambulatory surgery facilities, clinics, teachings units and any other health care services for the purpose of furnishing medical, surgical and psychiatric aid, nursing, medical and psychiatric care, food and any other necessary care for those suffering from illness, disease, injuries or disabilities and to operate an emergency room or rooms in such hospitals, extended care facilities, ambulatory surgery facilities and clinics; and to lend or advance money to or otherwise invest in such hospitals, extended care facilities, clinics, teaching units and health care services.

(c) To carry on any education or other activities relating to the rendering of care to the sick and injured or to the promotion of the general health and welfare of the citizens of the State of Georgia and surrounding areas.

(d) To participate in any activity designed and carried on to promote the general health of the citizens of the State of Georgia and surrounding areas.

(e) To promote and carry on scientific research and educational activities related to the care of the sick and injured.

(f) To solicit and receive funds, gifts, endowments, donations, devises and bequests.

(g) To lease or purchase wherever located land or lands, building or buildings, and purchase and construct buildings for purposes in connection with the activities of the Corporation,

including, but not limited to, hospitals, doctors' offices, clinics, ambulatory surgical facilities, laboratories or any related medical activity.

(h) To exercise, without limitation, all the powers enumerated in the Georgia Nonprofit Corporation Code, as it now exists or is subsequently amended or superseded, and to do and perform such acts and to have such powers as shall be desirable and necessary in furtherance of any of the powers hereinabove enumerated which are not in derogation of the laws of the State of Georgia.

(i) To exercise any of the powers enumerated herein or in the Georgia Nonprofit Corporation Code, as it now exists or is subsequently amended or superseded, by the Corporation singly or by joint venture or partnership with any person or entity, whether or not said entity is for profit or not for profit, so long as the Corporation's participation in the joint venture or partnership is primarily in furtherance of the charitable, educational and scientific purposes for which the Corporation is organized.

(j) To form and own shares in affiliated or related corporations, whether said corporations are for profit or not for profit, so long as said formation and ownership is not inconsistent with the furtherance of the charitable, educational and scientific purposes for which the Corporation is organized.

(k) To conduct and provide such other programs, activities and services as are necessary, incident or pertaining to the foregoing purposes of the Corporation.

ARTICLE V

Election of Directors

The affairs of the Corporation shall be managed by the Board of Directors which shall exercise all of the powers of the Corporation except to the extent that any such powers are reserved to members, if any, of the Corporation in the Bylaws. The qualifications, minimum and maximum number and manner of election of the Directors shall be provided in the Bylaws of the Corporation.

ARTICLE VI

Initial Board of Directors

The initial Board of Directors shall consist of eleven (11) members, whose names and addresses are set forth below. Each member of the initial Board of Directors shall serve as a director for a term of the number of years appearing opposite his name or until his successor has been elected and has qualified.

Director	Term
1. Laurence Crimmins, M.D. 1111 Palmyra Road Albany, Georgia	4 years
2. Willie D. Hampton 902 Dorsett Street Albany, Georgia	5 years
3. John L. Brunson 801 Highland Avenue Albany, Georgia	5 years
4. Dr. Billy C. Black 504 College Drive Albany, Georgia	5 years
5. Lamar H. Moree, M.D. 2604 East Doublegate Drive Albany, Georgia	During term as Chief of Medical Staff of Phoebe Putney Memorial Hospital
6. William George, Jr., M.D. 5023 Gillionville Road Albany, Georgia	3 years
7. Will Sims 6014 Old Dawson Road Albany, Georgia	4 years
8. Wilhmenia Hall 512 Mercer Avenue Albany, Georgia	4 years
9. Robert D. Jones 2512 East Alberson Drive Albany, Georgia	Earlier of 3 years or election of successor
10. Edwin J. Ollie 2530 Pheasant Drive Albany, Georgia	Earlier of 3 years or election of successor
11. Joel Wernick 417 Byron Plantation Road Albany, Georgia	During tenure as President/ Chief Executive Officer of the Corporation

The Board of Directors of the Corporation shall at all times include the Chief Executive Officer of the Corporation and the Chief of the Medical Staff of Phoebe Putney Memorial Hospital.

The Board of Directors of the Corporation shall at all times include at least three physician members who are members of the Medical Staff of Phoebe Putney Memorial Hospital.

In addition, the Chief of Medicine and Chief of Surgery of Phoebe Putney Memorial Hospital shall serve as ex-officio, non-voting members of the Board of Directors. Additional ex-officio members of the Board of Directors may be designated as set forth in the Bylaws of the Corporation.

ARTICLE VII

Membership in the Corporation

The members of the Corporation shall be the Board of Directors who shall be the sole voting members of the Corporation.

The Bylaws may provide for one or more classes of other members who shall be admitted in such manner and who shall have such rights and privileges as are set forth in the Bylaws but who shall not have the right to vote.

ARTICLE VIII

POWERS

The Corporation shall have all powers enumerated herein and in the Georgia Nonprofit Corporation Code.

ARTICLE IX

Restrictions

The Corporation is organized exclusively for charitable, educational and scientific purposes, as a nonprofit corporation, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and its activities shall be conducted for such purposes in such a manner that no part of its net earnings shall inure to the benefit of any member, director, officer or individual. In addition, the Corporation shall be authorized to exercise the powers permitted nonprofit corporations under the Georgia Nonprofit Corporation Code; provided, however, that the Corporation while exercising any one or more powers shall do so in furtherance of the charitable, educational and scientific purposes for which it has been organized as described in Section 501(c)(3) of the Code. All of the assets and earnings of the Corporation shall be used exclusively for the charitable, educational and scientific purposes hereinabove set forth, including the payment of expenses incidental thereto, and all of the powers of the Corporation shall be exercised exclusively for such purposes. No part of the Corporation's activities shall inure to the benefit of any individual, and no substantial part of its activities shall be for the carrying on of a program of propaganda or for influencing legislation, nor shall it participate in any political campaign on behalf of any candidate for public office. The Corporation shall not carry on any activities not permitted to

be carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Code, or any organization to which contributions are deductible under Section 170(c)(2) of the Code.

ARTICLE X

Dissolution

Upon dissolution of the Corporation, all of its assets remaining after the payment of all costs and expenses of such dissolution, and after adequate provision has been made for the discharge or assumption of its liabilities, shall be distributed to the Hospital Authority of Albany-Dougherty County, Georgia (the "Authority"), which is a public body corporate and politic and an instrumentality of the State of Georgia, to be used exclusively for a public purpose, and none of the assets will be distributed upon such dissolution to any member, officer or director of the Corporation. If the Corporation enters into an agreement with the Authority pursuant to which the Authority leases, transfers and assigns to the Corporation all of the assets, operations and liabilities of Phoebe Putney Memorial Hospital (the "Hospital"), then upon the termination of such lease, transfer or assignment agreement, or upon termination of any renewal or extension thereof, all of the assets of the Corporation (after adequate provision is made for the discharge or assumption of the Corporation's liabilities) shall be distributed to the Authority to be used

exclusively for a public purpose, and the Corporation shall be dissolved, and none of the assets will be distributed upon such termination to any member, officer or director of the Corporation. In the event the Authority is not then in existence or is for any reason unable to accept title to such assets, then all of the net assets of the Corporation shall in that event be distributed exclusively for the purposes of the Corporation, in such manner, and to such organization or organizations, organized and operated exclusively for charitable, scientific and educational purposes, as shall at the time qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States internal revenue law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be disposed of by the Superior Court of Dougherty County, exclusively for such purposes and to such organization or organizations, as such court shall determine. The Authority shall have the authority to compel the Corporation's compliance with this Article.

ARTICLE XI

Registered Office and Agent

The initial registered office of the Corporation shall be at 417 Third Avenue, Albany, Dougherty County, Georgia 31703. The initial registered agent at such address shall be Joel Wernick.

ARTICLE XII

Incorporator

The name and address of the Incorporator is:

John W. Parker, Jr.
Parker, Hudson, Rainer & Dobbs
1200 Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303

ARTICLE XIII

Amendments

These Articles of Incorporation may be amended at any time and from time to time by the affirmative vote of a majority of all of the Directors then in office.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation this 10th day of December, 1990.



Incorporator

DCC\Phoebe\013

Dec 13 2 53 PM '90

SECRETARY OF STATE

CONSENT TO APPOINTMENT AS REGISTERED AGENT

TO: Max Cleland
Secretary of State
Room 315 - West Tower
2 Martin Luther King, Jr., Drive, S.E.
Atlanta, Georgia 30334

I, Joel Wernick, do hereby consent to serve as registered
agent for Phoebe Putney Memorial Hospital, Inc.

This 10th day of December, 1990.


Joel Wernick

417 Third Avenue
Albany, Georgia 31703

\\g\incorp\putney.10

Secretary of State
Business Services and Regulation
Suite 315, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1538

CERTIFICATE DATE : 11/26/90
DOCKET NUMBER : 90330251
EXAMINER : STACY GILLEY
TELEPHONE : 404-656-0624

REQUESTED BY:

PARKER, HUDSON, RAINER & DOBBS
LORNA L. GRUPP
133 CARNEGIE WAY, STE 1200
ATLANTA, GEORGIA 30303

NAME RESERVATION CERTIFICATE

THE RECORDS OF THE SECRETARY OF STATE HAVE BEEN REVIEWED AND THE FOLLOWING NAME IS NOT IDENTICAL TO, AND APPEARS TO BE DISTINGUISHABLE FROM, THE NAME OF ANY OTHER EXISTING CORPORATION, LIMITED PARTNERSHIP OR PROFESSIONAL ASSOCIATION ON FILE PURSUANT TO THE APPLICABLE PROVISIONS OF GEORGIA LAW. (TITLE 14 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED).

"PUTNEY MEMORIAL HOSPITAL, INC."

THIS CERTIFICATE SHALL BE VALID FOR A NONRENEWABLE PERIOD OF NINETY (90) DAYS FOR PROFIT AND NONPROFIT CORPORATIONS, PROFESSIONAL ASSOCIATIONS (DP, FP, DN, FN, & PA) OR LIMITED PARTNERSHIPS (7D OR 7F) FROM THE DATE OF THIS CERTIFICATE. PLEASE SUBMIT THE ORIGINAL CERTIFICATE (WHITE COPY) WITH THE ARTICLES OF INCORPORATION, CERTIFICATE OF LIMITED PARTNERSHIP, APPLICATION FOR PROFESSIONAL ASSOCIATION OR CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS.

NAME RESERVATIONS ARE NOT RENEWABLE AFTER EXPIRATION OF THE STATUTORY RESERVATION PERIOD SET OUT ABOVE.

FORM NR (JULY 1989)



Max Cleland

MAX CLELAND
SECRETARY OF STATE

SECURITIES
656-2894

CEMETERIES
656-3079

CORPORATIONS
656-2817

CORPORATIONS HOT-LINE
404-656-2222
Outside Metro Atlanta



MAX CLELAND
Secretary of State
State of Georgia

BUSINESS SERVICES AND REGULATION
Suite 315, West Tower
2 Martin Luther King Jr., Drive
Atlanta, Georgia 30334
(404) 656-2817

A100

Eff. 7/1/89
J. F. GULLION
Director

**ARTICLES OF INCORPORATION DATA ENTRY FORM
FOR GEORGIA CORPORATIONS**

I. Filing Date: 12/10/90 Code: DN Docket Number: 90344448-501
Assigned Exam: _____ Amount: \$ 100-50 By: 70
Charter Number: 4622265 Completed: _____

DO NOT WRITE ABOVE THIS LINE - SOS USE ONLY

NOTICE TO APPLICANT: PRINT PLAINLY OR TYPE THE REMAINDER OF THIS FORM.

II. Corporate Name: Phoebe Putney Memorial Hospital, Inc.
Mailing Address: 417 Third Avenue
City: Albany County: Dougherty State: Georgia Zip Code: 31703

III. Fees Submitted By: Parker, Hudson, Rainer & Dobbs
Amount Enclosed: \$ 110.00 Check Number: _____

IV. Incorporator: John H. Parker, Esq.
Address: 133 Carnegie Way, 1200 Carnegie Building
City: Atlanta State: Georgia Zip Code: 30303

V. Registered Agent/Office: Joel Wernick
Address: 417 Third Avenue
City: Albany County: Dougherty State: Georgia Zip Code: 31703

VI. ARTICLES OF INCORPORATION FILING CHECK-OFF LIST		Applicant	Examiner
1. Original and one conformed copy of Articles of Incorporation		X	
2. Corporate name verification number		X	
3. Authorized shares stated		N/A	
4. Incorporator's signature		X	
5. Post effective date, if applicable			
6. Number of pages attached:			

VII. Applicant/Attorney: John H. Parker, Esq. Telephone: (404) 523-5300
Address: 133 Carnegie Way, 1200 Carnegie Building
City: Atlanta State: Georgia Zip Code: 30303

NOTICE: Attach original and one copy of the Articles of Incorporation and the Secretary of State filing fee (\$80.00). Mail or deliver to the above address. This form does not replace the Articles of Incorporation.

I understand that the information on this form will be used in the Secretary of State Corporate database. I certify that a notice of intent to incorporate and a publishing fee of \$40.00 has been mailed or delivered to an authorized newspaper, as required by law.

Signed: John H. Parker Date: December 10, 1990

90-011 046 00

EXHIBIT E

TO THE

AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT

DATED

AUGUST 1, 2012

BYLAWS OF LESSEE

MSW
guc

**AMENDED AND RESTATED
BYLAWS
OF
PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.
(the "Corporation")
(as Amended July 11, 2012)**

ARTICLE I

Membership

The sole Member of Phoebe Putney Memorial Hospital, Inc., a Georgia nonprofit corporation under the Georgia Nonprofit Corporation Code (the "Corporation"), shall be Phoebe Putney Health System, Inc., a Georgia nonprofit corporation ("PPHS"), whose principal offices are located at 417 Third Avenue, Albany, Georgia 31701.

ARTICLE II

Board of Directors

Section 2.1. Authority. The Board of Directors shall carry out the purposes of the Corporation in compliance with the Articles of Incorporation and the Bylaws of the Corporation. The property, affairs, business and operation of the Corporation shall be managed by a Board of Directors

Section 2.2. Composition. The Board of Directors shall consist of not less than eleven (11) nor more than thirteen (13) Directors, and shall at all times include the President/Chief Executive Officer of the Corporation and at least three (3) physician Directors who are members of the Medical Staff of Phoebe Putney Memorial Hospital. A majority of the Directors shall be independent directors as defined in Section 2.3. below.

Either at a regular or special meeting, the Board of Directors of PPHS may from time to time elect persons to serve as Directors Emeritus, which shall be lifetime designations once awarded to a person by the Board of Directors of PPHS. To be eligible for designation as Director Emeritus, a person must have served on the Board of Directors of the Corporation for a significant period of time, with fifteen (15) years of service generally being required; must be a person who has made significant contributions to the Corporation; and must be a person of good reputation and high integrity. Persons who are designated as Directors Emeritus may attend any meetings of the Board of Directors of the Corporation. Persons who are designated as Directors Emeritus shall not be counted as Directors for purposes of Article II, Section 2.2 and 2.3 or Article IV, Section 4.3, shall have no vote at any meetings and shall not be required to serve as members of any committee.

Section 2.3. Independence. A majority of the Directors on the Board must be "independent." To be considered independent, the Board of Directors of PPHS must determine that a Director does not have any material relationship with the

Corporation, PPHS, or any of PPHS' subsidiaries (either directly or as a partner, shareholder or officer of an organization that has a material relationship with the Corporation, PPHS, or any of PPHS' subsidiaries). The following guidelines shall be used to assist the Board of Directors of PPHS in determining director independence:

Independent Directors shall, during the current fiscal year:

- (a) Not be an employee of the Corporation, PPHS, or any of PPHS' subsidiaries, nor have an immediate family member who is an executive officer of the Corporation, PPHS, or any of PPHS' subsidiaries. "Immediate Family" includes a person's spouse, parents, children, grandchildren, and siblings.
- (b) Not be the recipient of, nor have an immediate family member who is the recipient of, more than \$50,000.00 in direct compensation from the Corporation, PPHS, or any of PPHS' subsidiaries, excluding pension or other deferred compensation for prior services.
- (c) Not be an executive officer or an employee, nor have an immediate family member who is an executive officer, of another company that makes payments to, or receives payments from, the Corporation, PPHS, or any of PPHS' subsidiaries for property or services in an amount which exceeds the greater of (i) \$100,000.00 or (ii) 10% of the other company's consolidated gross revenues.

The Board of Directors of PPHS will also evaluate, on a case-by-case basis, any other relationship, direct or indirect, between a Director and the Corporation, PPHS, or any of PPHS' subsidiaries and its officers, which might have the appearance of potentially impairing a Director's independence of judgment. Special attention will be paid to service on a non-profit or charitable board by a Director or a close personal relationship between a Director and any executive officer.

Section 2.4. Qualifications. Directors must exhibit the desire, time, interest and ability to support the Corporation and shall be selected based upon interest in and loyalty to the objectives and purposes of the Corporation as set forth in the Articles of Incorporation. Whenever possible, Directors shall also be selected based upon their involvement and interest in the community of which the Corporation is a part.

No person shall be eligible to serve as a Director who has been convicted of a felony or any crime involving moral turpitude.

No two persons who are immediate family members may serve at the same time as Directors on the Board.

Section 2.5. Election. Director vacancies shall be filled by appointment by the Board of Directors of PPHS, which shall make its selection from persons approved by the Nominating/Governance Committee of PPHS. Directors appointed or elected to fill

vacancies on the Board of Directors due to death, removal, or resignation shall hold office for the unexpired portion of the term.

Section 2.6. Term of Service. All Directors shall serve for a term of five (5) years and until their respective successors are elected and qualified, except for the person who is a Director by virtue of being a member of the Medical Staff of Phoebe Putney Memorial Hospital, who shall serve for a term of two (2) years and until his or her successor is elected and qualified. However, in the event any such physician Director shall cease to be a member of said Medical Staff, such physician Director shall be deemed to have resigned from the Board of Directors and such vacancy shall be filled by another member of the Medical Staff of Phoebe Putney Memorial Hospital to serve the remainder of the term. The terms of the Directors shall be staggered so that the terms of no less than approximately one-third (1/3) are expiring in any one (1) year. Directors may serve for unlimited successive terms. The person who is a Director by virtue of being the President/Chief Executive Officer of the Corporation shall serve as long as he or she holds that position.

Section 2.7. Conflicts of Interest. No Director shall use his or her position on the Board of Directors for financial, political, or other self-interest that could be interpreted by the Board of Directors or the Corporation as not being in the Corporation's best interests, and the Director shall maintain unselfish loyalty to the Board of Directors and will disclose to the entire Board of Directors the full particulars of his or her financial interest in any matter under consideration by the Board of Directors. Each Director (whether a voting or non-voting member of the Board of Directors) shall file a "No Conflict of Interest and Loyalty" statement with the Chairperson of the Board of Directors. Said statement shall be in such form as approved by the Board of Directors from time to time. If, in the view of the Director or of the Board of Directors, an interest of a Director in a matter under consideration by the Board of Directors may interfere with the exercise of such Director's unselfish loyalty to the Corporation or may pose a conflict between duty and self-interest, the Director shall neither vote on the issue nor participate in the discussion, but shall leave the room and the minutes shall so reflect that he or she left the room and neither voted nor participated in discussion on the issue (nevertheless the presence of a Director with voting rights may be counted for purposes of establishing a quorum).

Section 2.8. Resignation; Removal. Any Director may resign at any time by giving written notice to the President/Chief Executive Officer of the Corporation or Chairperson of the Board of Directors, and giving a copy of said notice to the Secretary of the Corporation. Such resignation, which may or may not be made contingent on formal acceptance, shall take effect on the date of receipt or at any later time specified therein.

Any Director, other than the President/Chief Executive Officer of the Corporation, may be removed for cause by a vote of at least two-thirds (2/3) of the Directors of the Corporation, subject to ratification by the Board of Directors of PPHS. Any Director sought to be removed shall be given reasonable notice and, in the case of a Director removed for cause, an opportunity to be heard regarding the cause or causes

stipulated for his or her removal.

Section 2.9. Compensation. Directors shall not receive compensation for their service to the Corporation, but, at the discretion of the Chairperson of the Board of Directors, may be reimbursed by the Corporation for actual reasonable travel expenses to Board of Directors meetings or when specifically selected to represent the Corporation at a business or educational meeting. Nothing contained in these Bylaws precludes any Director from receiving compensation for services to the Corporation in any other capacity.

ARTICLE III

Officers of the Board of Directors

Section 3.1. Election. The Officers of the Board of Directors shall be a Chairperson and a Vice Chairperson. After consultation with the Nominating Committee of the Board of Directors of PPHS, the Board of Directors of the Corporation shall elect the Chairperson and Vice Chairperson by vote at the annual meeting of the Board of Directors. The election of the Chairperson and Vice Chairperson shall not become effective until approved and ratified by the full Board of Directors of PPHS. Each Officer of the Board of Directors shall serve for a one (1) year term of office. Officers of the Board of Directors may serve unlimited terms in the same office. The Chairperson and Vice Chairperson of the Board of Directors shall be "independent" as is defined in Art. II, Section 2.3. herein.

Section 3.2. Duties. The Chairperson shall preside at all meetings of the Board of Directors. Except as otherwise expressly provided herein, the Chairperson shall appoint all committee members and all committee chairpersons, subject to the ratification by and approval of a majority of the Board of Directors of the Corporation and ratification and approval by the Board of Directors of PPHS. The Chairperson shall have such other duties and responsibilities hereinafter set forth in these Bylaws and delegated by the Board of Directors from time to time.

The Vice Chairperson shall act in the absence of the Chairperson, and when so acting shall have all the authority and powers of the Chairperson. The Vice Chairperson shall perform such other duties as from time to time are assigned to him or her by the Chairperson.

Section 3.3. Successors. Each Officer shall deliver to his or her successor in office all official material of the Corporation not later than ten (10) days following the election of his or her successor.

ARTICLE IV

Meetings of the Board of Directors

Section 4.1. Regular Meetings. The Board of Directors shall hold a regular

monthly meeting at Phoebe Putney Memorial Hospital on the first Wednesday of each month, unless the Board of Directors shall otherwise designate another date or place for its regular monthly meetings.

Section 4.2. Annual Meeting. The regular meeting held in the month of February shall be the annual meeting of the Board of Directors.

Section 4.3. Special Meetings. Special meetings may be called by the Chairperson and shall be called at the written request of at least one-third (1/3) of the Directors. Written notice of special meetings shall be considered duly given if mailed to each Director at least three (3) days before such special meeting or if personally delivered to the home or office of each Director at least 24 hours before such special meeting. The notice shall state the business or the transaction for which the meeting has been called and no other business shall be transacted at such meeting unless by unanimous consent of the Directors present and participating. An emergency meeting of the Board of Directors may be called without the necessity of any notice so long as the notice provisions are waived by at least two-thirds of the Directors.

Section 4.4. Quorum. A majority of the Directors with voting rights shall constitute a quorum of the Board of Directors for the transaction of business, and an act of the majority of the Directors present and voting at a meeting at which a quorum is present shall be the official act of the Board of Directors.

Section 4.5. Attendance. The Directors are expected to attend the regular monthly meetings of the Board of Directors. Any Director, other than the President/Chief Executive Officer of the Corporation, who shall fail to attend two (2) regular meetings of the Board of Directors during any consecutive twelve-month period, without the Chairperson excusing such absence, shall be deemed to have resigned from the Board of Directors.

Section 4.6. Cancellation or Change of Regular Meetings. The Board of Directors, by a vote of two-thirds (2/3) of the Directors present, may dispense with or alter the date of a monthly meeting at the meeting preceding the monthly meeting to be dispensed or altered.

Section 4.7. Action by Written Consent. Any action required or permitted to be taken by the Board of Directors under any provision of law, the Articles of Incorporation, or these Bylaws may be taken without a meeting of the Board of Directors by the collective consent of all the Directors, in writing, setting forth the action so taken. Such written consents shall be filed with the proceedings of the Board of Directors and shall be made available for review at the next regular meeting of the Board of Directors. Such action by written consent shall have the same force and effect as the unanimous vote of the Directors. Any certificate or other document filed under law relating to action so taken shall state that the action was taken by unanimous written consent of the Board of Directors without a meeting and that the Bylaws authorized the Directors to so act.

Section 4.8. Telephonic Participation in Meetings. Directors or members of any Board Committee may participate in any meeting of the Board of Directors or of a Board Committee by means of a conference telephone or similar communication equipment by which means all persons participating in the meeting can hear one another at the same time. Participation with proper notice by such means shall constitute presence in person at a meeting.

Section 4.9. Voting. Each Director with voting rights shall be entitled to one vote on any matter before the Board of Directors. Voting by proxy shall not be permitted.

Section 4.10. Proper Officers. For the purposes of these Bylaws, the Chairperson of the Board of Directors, the Vice Chairperson of the Board of Directors, and the President/Chief Executive Officer of the Corporation shall each be deemed a "proper officer". Whenever any resolution or action adopted by the Board of Directors or a Committee of the Board of Directors shall authorize the "proper officer" of the Corporation to execute any note or other document or take any other action or shall generally authorize any action without specifying the officer or officers authorized to take such action, any proper officer acting alone and without counter signatures may take such action on behalf of the Corporation.

ARTICLE V

Committees of the Board of Directors

Section 5.1. Appointment of Committees. The Chairperson of the Board of Directors shall appoint the Chairpersons and all members of the standing committees and such special committees as may be necessary, subject to the ratification by and approval of the Board of Directors of PPHS. Vacancies of committee chairs shall be filled in a like manner. The Chairperson of each committee and all members shall be a Director of the Corporation, unless otherwise provided herein. The Chairperson of the Board of Directors and the President/Chief Executive Officer of the Corporation shall each be ex-officio voting members of all committees.

A committee shall limit its activities to the task or tasks for which the committee is organized, and will have only such authority and responsibility as specifically conferred upon it by the Board of Directors. All committees shall be subject to the control and general supervision of the Board of Directors. Each committee shall meet as required and as set by policy of the Board of Directors.

One-half (1/2) of a committee's members shall constitute a quorum for the carrying out of committee functions and actions.

Section 5.2. Committee Chairperson's Duties. The Chairperson of each committee shall have the following general duties, responsibilities and powers, together with such others as may be designated from time to time by the Board of Directors:

- (a) Coordinate committee activities through the designated management

liaison;

- (b) Prepare an agenda for each committee meeting;
- (c) Preside or designate an alternate to preside at committee meetings;
- (d) Provide for maintenance of official records of the committee and appoint a secretary of the committee for that purpose;
- (e) Report committee activities and formal recommendations to the Board of Directors at its regular meetings;
- (f) Delegate specific responsibilities among committee members; and
- (g) Appoint members to subcommittees as necessary.

Section 5.3. Standing Committees. The following committees shall be appointed annually by the Chairperson, subject to approval and ratification by the Board of Directors of PPHS, and shall serve until their successors have been designated, except as otherwise provided herein.

(a) Finance Committee. This committee shall recommend policy and maintain oversight on all matters relating to the funds, securities, and investments of the Corporation. It shall maintain a continuous and over-all review of income and expenditures and make recommendations on these matters as needed to the Board of Directors. This committee shall annually present to the Board of Directors a fiscal budget of anticipated receipts and expenditures for the coming year

(b) Professional Affairs Committee. The Professional Affairs Committee shall serve as the liaison between the medical staff and the Board of Directors and shall represent the Board of Directors with regard to applications for medical staff membership, including appointment and re-appointment. The Committee shall recommend to the Board of Directors whether or not a practitioner shall be granted appointment or re-appointment and the level of clinical privileges which should be granted to the practitioner.

(c) Community Benefit Committee. The Chairperson and the members of this committee are not required to be a Director of the Corporation. This committee shall (1) facilitate coordinated and collaborative health planning and service delivery through an integrated process involving health providers, educators, local officials, payers and consumers; (2) provide a strong emphasis on community-oriented primary care research and on the evaluation of the community-based programs arising out of the integrated planning process; (3) provide a powerful interface between local and regional providers, recipients and planners and to link these groups with the research and technical support resources available through private and public academic, research, philanthropic and governmental institutions; (4) develop a data gathering, management and analysis consortium which will ensure that appropriate needs,

assessments and program and policy evaluations are undertaken and utilized; (5) evaluate health needs and develop programs to address those needs and to coordinate appropriate research efforts; (6) improve health promotion and education, across a wide spectrum of the population including health care professionals; (7) develop the local capacity necessary to seek, obtain and properly administer grants, foundation and public funding for innovative health care research and programs; and (8) encourage the provision of adequate and appropriate health care services to all citizens in Southwest Georgia.

ARTICLE VI

Officers of the Corporation

Section 6.1. General Provisions. The Officers of the Corporation shall consist of a President/Chief Executive Officer, a Secretary, a Treasurer/Chief Financial Officer and such other officer positions as the Board of Directors of the Corporation may create. The President/Chief Executive Officer of PPHS shall be the President/Chief Executive Officer of the Corporation. All other officers shall be elected or appointed by, and shall serve at the pleasure of, the Board of Directors of PPHS. Each Officer shall be elected or appointed for a term of office running until the next annual meeting of the Board of Directors of PPHS or such shorter term as may be provided by (i) resolution of the Board of Directors of PPHS (ii) the appointment to office, or (iii) by employment contract. Each Officer shall serve during the term of office for which he or she is elected, appointed, or employed and until his or her successor has been elected, appointed, or employed and has qualified, or until his or her earlier resignation, removal from office or death.

Any two offices may be held by the same person, except that the President/Chief Executive Officer may not hold any other officer position.

Section 6.2. Removal. Any Officer may be removed from office, with or without cause, upon the majority vote of the Directors of PPHS present at any meeting of the Board of Directors of PPHS at which a quorum is present.

Section 6.3. President/Chief Executive Officer. The President/Chief Executive Officer shall be given the necessary authority and be held responsible for supervision of the total administration of the Corporation in all its activities and departments, subject only to such policies as may be adopted or issued by the Board of Directors or by any of its committees to which the Board of Directors has delegated power for such action. He or she shall act as the duly authorized representative of the Board of Directors in all matters in which the Board of Directors has not formally designated some other person for that specific purpose. The President/Chief Executive Officer of the Corporation shall be a Director and an ex-officio voting member of all committees of the Board of Directors.

Section 6.4. Duties of President/Chief Executive Officer. The authority and duties of the President/Chief Executive Officer shall include among other things:

- (a) Carrying out all policies established by the Board of Directors and formulating and enforcing all rules and regulations necessary and desirable for the proper conduct of the Corporation;
- (b) Perfecting and submitting to the Board of Directors for approval a plan of organization of the personnel and others concerned with the operation of the Corporation;
- (c) Assisting the Secretary of the Corporation with all the duties assigned to the Secretary and assuring that all notices are given in accordance with these Bylaws or as required by law;
- (d) Selecting, employing, controlling and discharging all employees, and developing and maintaining personnel policies and practices for the Hospital;
- (e) Ensuring that all physical properties of the Corporation are kept in a good state of repair and operating condition;
- (f) Making and executing all contracts pertaining to the ordinary affairs and operations of the Corporation, except as to the execution of those contracts specifically reserved to the Board of Directors;
- (g) Supervising all business affairs; and ensuring that all funds are collected and expended to the best possible advantage of the Corporation;
- (h) Working with the Medical Staff and with all those concerned with the rendering of professional service to the end that the best possible care may be rendered to all the patients of the Hospital;
- (i) Serving as the liaison officer and channel of communications between the Board of Directors or any of its committees and the Medical Staff or all other organizations working on behalf of the Corporation;
- (j) Attending all meetings of the Board of Directors; and
- (k) Performing any other duty that may be necessary in the best interest of the Corporation or that the Board of Directors shall require.

Section 6.5. Secretary. The Secretary shall attend all meetings of the Board of Directors; shall keep minutes of all meetings of the Board of Directors; shall have charge of the corporate books and seal of the Corporation; and shall perform such other duties and have such other powers as may from time to time be delegated to him or her by the Board of Directors.

The Secretary shall have the discretion to delegate his or her responsibilities to another person.

Section 6.6. Treasurer/Chief Financial Officer. The Treasurer/Chief Financial Officer shall be charged with the management of all financial affairs of the Corporation; shall have the power to recommend action concerning the Corporation's affairs to the Board of Directors; and shall perform such other duties and have such other powers as may from time to time be delegated to him or her by the Board of Directors.

In addition to the foregoing duties and without limitation thereof, the Treasurer/Chief Financial Officer shall:

- (a) Prepare an annual budget including, but not limited to, anticipated revenue and expenditures; be responsible for all funds and securities of the Corporation; and receive and give receipts for monies due and payable to the Corporation from any source whatever and deposit all such monies in the name of the Corporation in such banks or other depository as shall be selected in accordance with the Bylaws;
- (b) Submit regularly to the Board of Directors, or its authorized committees, periodic reports showing the financial activities of the Corporation; and prepare and submit such special reports as may be required by the Board of Directors; and
- (c) Keep and maintain an up-to-date inventory of all property and equipment (including medical) owned or leased by the Corporation.

ARTICLE VII

Medical Staff

Section 7.1. Acceptance of Current Medical Staff. The staff of physicians practicing at the Hospital and the bylaws and rules for such staff, as in effect at the time of adoption of these Bylaws, are hereby adopted as the Medical Staff and as the bylaws of such Medical Staff, subject to review, amendment and final approval by the Board of Directors.

Section 7.2. Subsequent Changes to the Medical Staff. The Board of Directors shall hereafter appoint the Medical Staff of the Hospital in accordance with the bylaws and rules to be adopted by such Medical Staff and which bylaws and rules shall be in accordance with recommendations of the Joint Commission on Accreditation of Healthcare Organizations, which provide, among other things, for the method of appointing additional staff members and for the removal of staff members and which bylaws and any amendments thereto shall be subject to approval by the Board of Directors.

ARTICLE VIII

Hospital Rules and Regulations

Such rules and regulations as are necessary for the efficient operation of Phoebe Putney Memorial Hospital shall be adopted by the Board of Directors after receiving the recommendations of the Medical Staff and the President/Chief Executive Officer of the Corporation. The initial rules and regulations shall be the rules and regulations in effect at Phoebe Putney Memorial Hospital on the date of the adoption of these Bylaws.

ARTICLE IX

Conflicting Regulations

No charters, constitutions, bylaws, rules, provisions or regulations of any organization operating as a part of the Corporation or as an agency thereof (including the Medical Staff, Phoebe Putney Memorial Hospital, any nursing organization or related organizations), shall be in conflict with or repugnant or contrary to these Bylaws or to the Articles of Incorporation of the Corporation or to the laws of the State of Georgia or of the United States.

ARTICLE X

Amendments

These Bylaws may be amended, subject to the restrictions set forth in Article XI of the Articles of Incorporation of the Corporation, by an affirmative vote of a majority of the voting membership of the Board of Directors present at the regular monthly meeting or any special meeting of the Board of Directors.

ARTICLE XI

Indemnification by Corporation

Section 11.1. Indemnification. Any person (including the heirs, executors, administrators or estate of such person) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Corporation), by reason of the fact that he or she is or was a director, officer, employee, consultant or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, consultant or agent of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified by the Corporation against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation (and with respect to any criminal action or proceeding, if he or she had no reasonable

cause to believe his or her conduct was unlawful), to the maximum extent permitted by, and in the manner provided by, the Georgia Nonprofit Corporation Code.

Section 11.2. Insurance. The Corporation may purchase and maintain insurance at its expense, to protect itself and any such person against any such liability, cost, payment or expense, whether or not the Corporation would have the power to indemnify such person against such liability.

ARTICLE XII

Corporate Seal

The Corporation's Board of Directors may provide for a corporate seal in such form and with such inscription as it shall determine, provided such seal shall always contain the word "Non-profit".

ARTICLE XIII

Waiver of Notice

Whenever any notice is required to be given under the provisions of the Georgia Nonprofit Corporation Code, of the Articles of Incorporation, or of these Bylaws, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice where such waiver is permitted by State law. All waivers shall be filed with the corporate records, or shall be made a part of the minutes of the relevant meeting.

ARTICLE XIV

Reserve Powers

The Corporation is subject to powers reserved to PPHS as set forth in Article XI of the Bylaws of PPHS.

IN WITNESS WHEREOF, Phoebe Putney Memorial Hospital, Inc. has caused these Bylaws to be executed, its corporate seal affixed and the foregoing to be attested, all by duly authorized officers on the 11 day of July, 2012.

PHOEBE PUTNEY MEMORIAL HOSPITAL, INC.

BY: John W. Culbreath
JOHN W. CULBREATH, Chairman

ATTEST: Kerry Loudermilk
KERRY LOUDERMILK, Secretary

[CORPORATE SEAL]

EXHIBIT F

TO THE

AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT

DATED

AUGUST 1, 2012

AGREEMENT TO BE BOUND


MSM
GUC

EXHIBIT "F"

AGREEMENT TO BE BOUND

For \$10.00 and other valuable consideration and in order to induce Transferor to execute the foregoing Amended and Restated Lease and Transfer Agreement, the undersigned Phoebe Putney Health System, Inc., a Georgia nonprofit corporation ("Parent Affiliate"), hereby agrees with Transferor as follows:

(a) Parent Affiliate shall be bound by all the provisions of Section 4.16, Section 5.05, and any other section of the foregoing Amended and Restated Lease and Transfer Agreement that are applicable to Parent Affiliate.

(b) Upon the expiration or earlier termination of the Amended and Restated Lease and Transfer Agreement, or in the event this Agreement or the foregoing Amended and Restated Lease and Transfer Agreement shall become void or unenforceable, except as otherwise provided in Section 5.05(b) of the Amended and Restated Lease and Transfer Agreement, all assets of Parent Affiliate, including the Parent Affiliate's interests in its affiliates, shall become the property of the Transferor absolutely.

Dated: _____

PHOEBE PUTNEY HEALTH SYSTEM, INC.

[CORPORATE SEAL]

By: _____

Attest:

Title: _____

By: _____

Title: _____

EXHIBIT G

TO THE

AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT

DATED

AUGUST 1, 2012

ARTICLES OF INCORPORATION OF PPHS


GMA ©

STATE OF GEORGIA

Secretary of State

Corporations Division
313 West Tower
2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334-1530

Certified Copy

I, Brian P. Kemp, Secretary of the State of Georgia, do hereby certify under the seal of my office that the attached documents are true and correct copies of documents filed under the name of

PHOEBE PUTNEY HEALTH SYSTEM, INC.

Domestic Non-Profit Corporation

Said entity was formed in the jurisdiction set forth above and has filed in the Office of Secretary of State on the 10th day of December, 1990 its certificate of limited partnership, articles of incorporation, articles of association, articles of organization or application for certificate of authority to transact business in Georgia. This Certificate is issued pursuant to Title 14 of the Official Code of Georgia Annotated and is prima-facie evidence of the existence or nonexistence of the facts stated herein.



WITNESS my hand and official seal of the City of Atlanta and the State of Georgia on 25th day of July, 2012

A handwritten signature in black ink, appearing to read "B. P. Kemp".

Brian P. Kemp
Secretary of State

Secretary of State
Corporations Division
315 West Tower
#2 Martin Luther King, Jr. Dr.
Atlanta, Georgia 30334-1530

DOCKET NUMBER : 030350454
CONTROL NUMBER: KC22266
EFFECTIVE DATE: 02/04/2003
REFERENCE : 00J7
PRINT DATE : 02/06/2003
FORM NUMBER : 111

C. RICHARD LANGLEY
ATTORNEY AT LAW
P. O. BOX 607
ALBANY, GA 31702

CERTIFICATE OF AMENDMENT

I, Cathy Cox, the Secretary of State and the Corporations Commissioner of the State of Georgia, do hereby certify under the seal of my office that

FORBES PUTNEY HEALTH SYSTEM, INC.
A DOMESTIC NONPROFIT CORPORATION

has filed articles of amendment in the Office of the Secretary of State and has paid the required fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles of amendment.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on the date set forth above.



Cathy Cox

Cathy Cox
Secretary of State

030350454

**ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF
PHOEBE PUTNEY HEALTH SYSTEM, INC.**

I.

The name of the corporation is Phoebe Putney Health System, Inc.

II.

Article VI of the Articles of Incorporation is amended by the deletion of the next to last paragraph of said Article, which read:

"The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia."

III.

The amendment to the Articles of Incorporation was adopted January 9, 2003.

IV.

The amendment was duly approved by the Board of Directors of the Corporation, in accordance with (a) the Articles of Incorporation of the Corporation; and (b) Section 14-3-1002 of the Georgia Nonprofit Corporation Code.

In witness whereof, the Corporation has caused these Articles of Amendment to be executed and attested by its duly authorized officers on January 9th, 2003.

PHOEBE PUTNEY HEALTH SYSTEM, INC.

By: [Signature]
Joel Wernick, President

ATTEST.

By: [Signature]
Kerry L. Loudernilk, Secretary

030350454

**CERTIFICATE REGARDING
ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF
PHOEBE PUTNEY HEALTH SYSTEM, INC.**

The undersigned, Joel Wernick, the President and Chief Executive Officer of Phoebe Putney Health System, Inc. (the "Corporation"), a Georgia corporation, hereby certifies pursuant to Section 14-3-1006(e) of the Georgia Nonprofit Corporation Code:

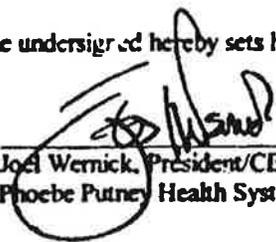
(1) The Articles of Amendment to the Articles of Incorporation of the Corporation contain amendments to the Articles of Incorporation of the Corporation which requires the approval of a majority vote of its Board of Directors.

(2) Article VI of the Articles of Incorporation was amended by the deletion of the next to last paragraph of said Article, which read:

"The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia."

(3) The Articles of Amendment were duly adopted by the Board of Directors of the Corporation on January 9, 2003.

IN WITNESS WHEREOF, the undersigned hereby sets his hand and seal this 29th day of January, 2003.



Joel Wernick, President/CEO
Phoebe Putney Health System, Inc.

(SEAL)

Secretary of State

Corporations Division

315 West Tower

#2 Martin Luther King, Jr. Dr.

Atlanta, Georgia 30334-1530

DOCKET NUMBER : 000461028
CONTROL NUMBER: K022266
EFFECTIVE DATE: 02/15/2000
REFERENCE : 0007
PRINT DATE : 02/23/2000
FORM NUMBER : 611

DAVID L. WEIR
ATTORNEY AT LAW
P. O. BOX 1826
ALBANY, GA 31702

CERTIFICATE OF NAME CHANGE AMENDMENT

I, Cathy Cox, the Secretary of State and the Corporations Commissioner of the State of Georgia, do hereby certify under the seal of my office that

**PHOEBE PUTNEY HEALTH SYSTEMS, INC.
A DOMESTIC NONPROFIT CORPORATION**

has filed articles of amendment in the Office of the Secretary of State changing its name to

PHOEBE PUTNEY HEALTH SYSTEM, INC.

and has paid the required fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles of amendment.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on the date set forth above.



A handwritten signature in black ink, appearing to read "Cathy Cox".

Cathy Cox
Secretary of State

ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION
OF PHOEBE PUTNEY HEALTH SYSTEMS, INC.

1.

The name of the Corporation is Phoebe Putney Health Systems, Inc.

2.

Effective the date hereof, Article I. of the Articles of Incorporation is amended to read as follows:

"1.

The name of the Corporation is Phoebe Putney Health System, Inc."

3.

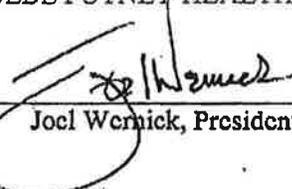
All other provisions of the Articles of Incorporation shall remain in full force and effect.

4.

This amendment was duly approved at a meeting of the Board of Directors of the Corporation held on February 3, 2000, in accordance with and as authorized under The Articles of Incorporation and Bylaws of the Corporation and Section 14-3-1002 of the Georgia Nonprofit Corporation Code. There are no members of the Corporation.

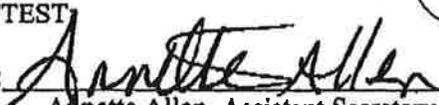
IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed and attested by its duly authorized officers this 10th day of February, 2000.

PHOEBE PUTNEY HEALTH SYSTEMS, INC.

By: 

Joel Wernick, President

ATTEST

By: 

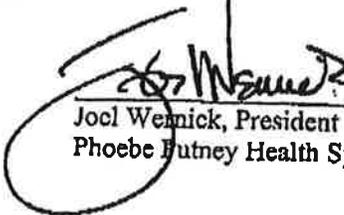
Annette Allen, Assistant Secretary

RECEIVED
SECRETARY OF STATE
SOUTH GA OFFICE
00 FEB 15 AM 11:04

**CERTIFICATE REGARDING REQUEST FOR PUBLICATION
OF NOTICE OF CHANGE OF CORPORATE NAME**

The undersigned hereby certifies that a request for publication of a notice of intent to file Articles of Amendment to change the name of PHOEBE PUTNEY HEALTH SYSTEMS, INC., a Georgia non-profit corporation, and payment therefor has been made as required by Section 14-3-1005.1 of the Official Code of Georgia Annotated.

IN WITNESS WHEREOF, the undersigned does hereby set their hand and seal this 10th day of February, 2000.


_____(SEAL)
Joel Wernick, President
Phoebe Putney Health Systems, Inc.

00 FEB 15 AM 11:04
RECEIVED
SECRETARY OF STATE
SOUTH GA OFFICE

49055 1029
110222166

**RESTATED
ARTICLES OF INCORPORATION
OF
PHOEBE PUTNEY HEALTH SYSTEMS, INC.**

ARTICLE I

Name

The name of the Corporation is Phoebe Putney Health Systems, Inc.

ARTICLE II

Organization

The Corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

ARTICLE III

Period of Duration

The period of duration of the Corporation shall be perpetual.

ARTICLE IV

Purposes

The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, including:

- (a) To support, promote, advance and strengthen, within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provisions of any subsequent United States internal revenue law) (the "Code"), Phoebe Putney Memorial Hospital, Inc., a Georgia nonprofit corporation ("PPMH"), and, in the discretion of the Board of Directors of the Corporation, to support other nonprofit health care providers organized for charitable and civic purposes; provided that each corporation is an

organization described in Section 501(c)(3) of the Code and in Section 509(a)(1) or (2) of the Code; and, further provided that the Corporation shall be operated, supervised or controlled by or in connection with each additional supported corporation within the meaning of Section 509(a)(3) of the Code;

(b) To itself operate exclusively for charitable, educational and scientific purposes, and in furtherance of the charitable, educational and scientific purposes, causes and objects now or at any time hereafter fostered by said Phoebe Putney Memorial Hospital, Inc., a Georgia nonprofit corporation, and such other nonprofit and tax exempt health care providers as the Board of Directors of the Corporation elects to support;

(c) To participate in, form, own and operate joint ventures, partnerships, corporations or other entities, whether or not any such entity is for profit or not for profit, so long as this Corporation's participation therein is not inconsistent with the furtherance of the charitable, educational and scientific purposes for which the Corporation is organized.

ARTICLE V

Election of Directors

The affairs of the Corporation shall be managed by the Board of Directors which shall exercise all of the powers of the Corporation except to the extent that any such powers are reserved to members, if any, of the Corporation in the Bylaws. The qualifications, minimum and maximum number and manner of election of the Directors shall be provided in the Bylaws of the Corporation.

ARTICLE VI

Initial Board of Directors

The initial Board of Directors shall consist of nine (9) members, whose names and addresses are set forth below. Each member of the initial Board of Directors shall serve as a director for a term of the number of years appearing opposite his name or until his successor has been elected and has qualified.

	<u>Director</u>	<u>Term</u>
1.	W. Harry Willson P. O. Box 1275 Albany, Georgia	4 years
2.	Anna Louise McCormack P. O. Box 3170 Albany, Georgia	3 years
3.	Elmer H. Bridges 4917 Van Cise Lane Albany, Georgia	5 years
4.	Nathaniel Cross 1503 Lily Pond Road Albany, Georgia	5 years
5.	Bernard P. Scoggins, M.D. 1712 E. Broad Avenue Albany, Georgia	During term as immediate past Chief of Medical Staff of Phoebe Putney Memorial Hospital
6.	Alfredo Stokes 2405 Greenmount Drive Albany, Georgia	3 years
7.	Tom Law 711 7th Avenue Albany, Georgia	4 years

- | | | |
|----|---|--|
| 8. | Walter Carl Gordon, Jr., M.D.
3220 Jacqueline Drive
Albany, Georgia | 3 years |
| 9. | Joel Wernick
417 Byron Plantation Road
Albany, Georgia | During tenure as President/Chief
Executive Officer of the Corporation |

The Board of Directors of the Corporation shall at all times include the Chief Executive Officer of the Corporation.

The Board of Directors of the Corporation shall also include at least one (1) physician member who is a member of the Medical Staff of Phoebe Putney Memorial Hospital. That Board Member shall serve a term of two years.

The Board of Directors of the Corporation shall at all times include at least one member of the Board of Directors of Phoebe Putney Memorial Hospital, Inc.

The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia.

In addition, the Chairman of the Board of Directors of Phoebe Putney Memorial Hospital, Inc. shall serve as an ex-officio, non-voting member of the Board of Directors.

ARTICLE VII

Membership in the Corporation

The members of the Corporation shall be the Board of Directors who shall be the sole voting members of the Corporation.

The Bylaws may provide for one or more classes of other members who shall be admitted in such manner and who shall have such rights and privileges as are set forth in the Bylaws but who shall not have the right to vote.

ARTICLE VIII

Powers

The Corporation shall have all powers enumerated herein and in the Georgia Nonprofit Corporation Code.

ARTICLE IX

Restrictions

This Corporation is organized exclusively for charitable purposes, as a nonprofit corporation, within the meaning of Section 501(c)(3) of the Code, and its activities shall be conducted for such purposes in such a manner that no part of its net earnings shall inure to the benefit of any member, director, officer or individual. In addition, the Corporation shall be authorized to exercise the powers permitted nonprofit corporations under the Georgia Nonprofit Corporation Code, provided, however, that the Corporation while exercising any one or more powers shall do so in furtherance of the charitable, educational and scientific purposes for which it has been organized as described in Section 501(c)(3) of the Code. All of the assets and earnings of the Corporation shall be used exclusively for the charitable, educational and scientific purposes hereinabove set forth, including the payment of expenses incidental thereto and all of the powers of the Corporation shall be exercised exclusively for such purposes. No part of its activities shall inure to the benefit of any individual and no substantial part of its activities shall be for the carrying on of a

program of propaganda or for influencing legislation nor shall it participate in any political campaign on behalf of any candidate for public office. The Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Code, or any organization to which contributions are deductible under Section 170(c)(2) of the Code.

ARTICLE X

Dissolution

Upon dissolution of the Corporation, all of its assets, including all its interests in any affiliated entities, remaining after the payment of all costs and expenses of such dissolution, and after adequate provision has been made for the discharge or assumption of its liabilities, shall be distributed to PPMH; provided that PPMH is then an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, and if not, then to the Hospital Authority of Albany-Dougherty County, Georgia (the "Authority"), which is a public body corporate and politic and an instrumentality of the State of Georgia, to be used exclusively for a public purpose, and none of the assets will be distributed upon such dissolution to any member, officer or director of the Corporation. If PPMH enters into an agreement with the Authority pursuant to which the Authority leases, transfers and assigns to PPMH all of the assets, operations and liabilities of Phoebe Putney Memorial Hospital (the "Hospital"), then upon termination of such lease, transfer or assignment agreement, or upon termination of any renewal or extension thereof, all of the assets of the Corporation, including all its interest in PPMH and any other affiliated entities (after adequate provision is made for the discharge or assumption of the Corporation's liabilities)

shall be distributed to the Authority to be used exclusively for a public purpose, and the Corporation shall be dissolved, and none of the assets will be distributed upon such termination to any member, officer or director of the Corporation. In the event the Authority is not then in existence or is for any reason unable to accept title to such assets, then all of the net assets of the Corporation shall in that event be distributed exclusively for the purposes of the Corporation, in such manner, and to such organization or organizations, organized and operated exclusively for charitable, scientific and educational purposes, as shall at the time qualify as an exempt organization under Section 501(c)(3) of the Code (or the corresponding provision of any future United States internal revenue law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be disposed of by the Superior Court of Dougherty County, exclusively for such purposes and to such organizations, as such court shall determine. The Authority shall have the authority to compel the Corporation's compliance with this Article.

ARTICLE XI

Registered Office and Agent

The initial registered office of the Corporation shall be at 417 Third Avenue, Albany, Dougherty County, Georgia 31703. The initial registered agent at such address shall be Joel Wernick.

ARTICLE XII

Incorporator

The name and address of the Incorporator is:

John H. Parker, Jr.
PARKER, HUDSON, RAINER & DOBBS
1200 Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303

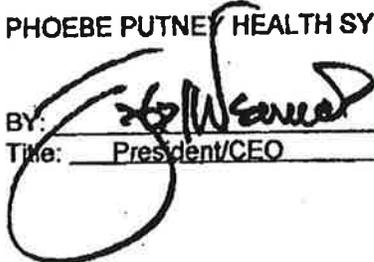
ARTICLE XIII

Amendments

These Articles of Incorporation may be amended at any time and from to time by the affirmative vote of a majority of all the Directors then in office.

IN WITNESS WHEREOF, Phoebe Putney Health Systems, Inc. has caused these Restated Articles of Incorporation to be executed, its corporate seal affixed and the foregoing to be attested, all by duly authorized officers on the 4th day of February, 1909.

PHOEBE PUTNEY HEALTH SYSTEMS, INC.

BY: 
Title: President/CEO

[CORPORATE SEAL]

ATTEST:

By: 
Title: Secretary

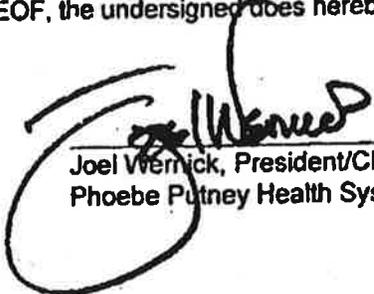
SECRETARY OF STATE
FEB 18 3 11 PM '09
BSR 101

C:\OFFICE\WP\M\PPM\DOCUMENT\PPHSART.AMD

**CERTIFICATE REGARDING
RESTATED ARTICLES OF INCORPORATION OF
PHOEBE PUTNEY HEALTH SYSTEMS, INC.**

The undersigned, the President and Chief Executive Officer of PHOEBE PUTNEY HEALTH SYSTEMS, INC. (the "Corporation"), a Georgia corporation, hereby certifies pursuant to Section 14-3-1006(e)(1) of the Georgia Nonprofit Corporation Code that the Restated Articles of Incorporation of the Corporation do not contain an amendment to the Articles of Incorporation of the Corporation that requires the approval by the members or any other person other than the Board of Directors. The Restated Articles of Incorporation were duly adopted by the Board of Directors of the Corporation at a meeting held on February 4, 1999. The Corporation's Board of Directors consists of ten directors, the majority vote of whom was required for the adoption of these Restated Articles of Incorporation and all of whom consented to the adoption of these Restated Articles of Incorporation.

IN WITNESS WHEREOF, the undersigned does hereby set his hand and seal this 5th day of February, 1999.



Joel Wernick, President/CEO
Phoebe Putney Health Systems, Inc.

(SEAL)

pphs.cer

**Secretary of State
Corporations Division
Suite 315, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1530**

DOCKET NUMBER : 980470871
CONTROL NUMBER: 9022266
EFFECTIVE DATE: 02/05/1998
REFERENCE : 0033
PRINT DATE : 02/16/1998
FORM NUMBER : 111

DAVID L. WEIR
LANGLEY & LEE, LLC
412 WEST TIFT AVENUE, P.O. BOX 1826
ALBANY GA 31702-1826

CERTIFICATE OF AMENDMENT

I, Lewis A. Massey, the Secretary of State and the Corporation Commissioner of the State of Georgia, do hereby certify under the seal of my office that

**PHOEBE PUTNEY HEALTH SYSTEMS, INC.
A DOMESTIC NONPROFIT CORPORATION**

has filed articles of amendment in the office of the Secretary of State and has paid the required fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles of amendment.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on the date set forth above.

Lewis A. Massey
LEWIS A. MASSEY
SECRETARY OF STATE



980470871
9022266

**ARTICLES OF AMENDMENT TO THE ARTICLES OF
INCORPORATION
OF PHOEBE PUTNEY HEALTH SYSTEMS, INC.**

I.

The name of the Corporation is Phoebe Putney Health Systems, Inc.

II.

Article VI of the Articles of Incorporation of the Corporation is amended by the deletion of the second and third full paragraphs of such Article, and the substitution therefor of the following two paragraphs:

"The Board of Directors of the Corporation shall at all times include the Chief Executive Officer of the Corporation.

The Board of Directors of the Corporation shall also include at least one (1) physician member who is a member of the Medical Staff of Phoebe Putney Memorial Hospital. That Board Member shall serve a term of two (2) years."

III.

The amendment to the Articles of Incorporation was adopted January 30, 1998.

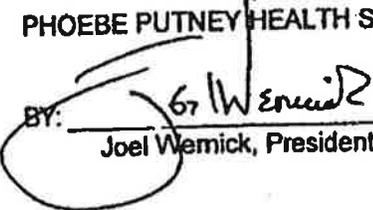
IV.

The amendment to the Articles of Incorporation was duly approved by the Board of Directors of the Corporation, as required by (a) the Articles of Incorporation of the Corporation, and (b) Section 14-3-1002 of the Georgia Nonprofit Corporation Code.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed and attested by its duly authorized officers on January 30, 1998.

PHOEBE PUTNEY HEALTH SYSTEMS, INC.

BY:


Joel Wernick, President

ATTEST:

BY:


Edwin J. Olfe, Secretary

C:\OFFICE\WP\WWW\PM\DOC\DOCUMENT\PPHS ART

RECEIVED
JAN 31 1998
SECRETARY OF STATE

Secretary of State
Business Services and Regulation
Suite 315, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1530

DOCKET NUMBER : 922120540
CONTROL NUMBER: 9022266
EFFECTIVE DATE: 07/30/1992
REFERENCE : 0091
PRINT DATE : 07/30/1992
FORM NUMBER : 115

PARKER, HUDSON, RAINER & DOBBS
DAVID G. CLEVELAND
133 CARNEGIE WAY
1200 CARNEGIE BUILDING
ATLANTA, GA 30303

CERTIFICATE OF RESTATED ARTICLES OF INCORPORATION

I, **MAX CLELAND**, Secretary of State and the Corporation Commissioner of the State of Georgia, do hereby certify under the seal of my office that the articles of incorporation of

PHOEBE PUTNEY HEALTH SYSTEMS, INC.
a domestic nonprofit corporation

have been duly restated and amended by the filing of articles of restatement in the office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said articles of restatement.

WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on the date set forth above.



Max Cleland

MAX CLELAND
SECRETARY OF STATE

Verley J. Spivey

VERLEY J. SPIVEY
DEPUTY SECRETARY OF STATE

SECURITIES
656-2894

CEMETERIES
656-3079

CORPORATIONS
656-2817

CORPORATIONS HOT-LINE
404-656-2222
Outside Metro-Atlanta

RESTATED AND AMENDED
ARTICLES OF INCORPORATION
OF
PHOEBE PUTNEY HEALTH SYSTEMS, INC.

The name of the Corporation is Phoebe Putney Health Systems, Inc. The Articles of Incorporation of the Corporation are restated and amended, effective at 12:01 a.m. on August 1, 1992, so as to read in their entirety as follows:

ARTICLE I

Name

The name of the Corporation is Phoebe Putney Health Systems, Inc.

ARTICLE II

Organization

The Corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

ARTICLE III

Period of Duration

The period of duration of the Corporation shall be perpetual.

ARTICLE IV

Purposes

The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, including:

- (a) To support, promote, advance and strengthen, within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provisions of any subsequent United

States internal revenue law) (the "Code"), Phoebe Putney Memorial Hospital, Inc., a Georgia nonprofit corporation ("PPMH");

(b) To itself operate exclusively for charitable, educational and scientific purposes, and in furtherance of the charitable, educational and scientific purposes, causes and objects now or at any time hereafter fostered by said Phoebe Putney Memorial Hospital, Inc., a Georgia nonprofit corporation; and

(c) To participate in, form, own and operate joint ventures, partnerships, corporations or other entities, whether or not any such entity is for profit or not for profit, so long as this Corporation's participation therein is not inconsistent with the furtherance of the charitable, educational and scientific purposes for which the Corporation is organized.

ARTICLE V

Election of Directors

The affairs of the Corporation shall be managed by the Board of Directors which shall exercise all of the powers of the Corporation except to the extent that any such powers are reserved to members, if any, of the Corporation in the Bylaws. The qualifications, minimum and maximum number and manner of election of the Directors shall be provided in the Bylaws of the Corporation.

ARTICLE VI

Initial Board of Directors

The initial Board of Directors shall consist of nine (9) members, whose names and addresses are set forth below. Each member of the initial Board of Directors shall serve as a director for a term of the number of years appearing opposite his name or until his successor has been elected and has qualified.

<u>Director</u>	<u>Term</u>
1. W. Harry Willson P.O. Box 1275 Albany, Georgia	4 years
2. Anna Louise McCormack P.O. Box 3170 Albany, Georgia	3 years
3. Elmer H. Bridges 4917 Van Cise Lane Albany, Georgia	5 years
4. Nathaniel Cross 1503 Lily Pond Road Albany, Georgia	5 years
5. Bernard P. Scoggins, M.D. 1712 East Broad Avenue Albany, Georgia	During term as immediate past Chief of Medical Staff of Phoebe Putney Memorial Hospital
6. Alfredo Stokes 2405 Greenmount Drive Albany, Georgia	3 years
7. Tom Law 711 7th Avenue Albany, Georgia	4 years
Walter Carl Gordon, Jr., M.D. 3220 Jacqueline Drive Albany, Georgia	3 years

9. Joel Wernick
417 Byron Plantation Road
Alhany, Georgia

During tenure as President/
Chief Executive Officer of
the Corporation

The Board of Directors of the Corporation shall at all times include the Chief Executive Officer of the Corporation, the Chief Executive Officer of Phoebe Putney Memorial Hospital, Inc., and the Immediate Past Chief of the Medical Staff of Phoebe Putney Memorial Hospital.

The Board of Directors of the Corporation shall at all times include at least two physician members who are members of the Medical Staff of Phoebe Putney Memorial Hospital. If at any time any such physician member of the Board of Directors of the Corporation shall be named as the Chief of Staff of the Medical Staff of Phoebe Putney Memorial Hospital, such physician member shall resign from the Board of Directors of the Corporation and such vacancy shall be filled by another member of the Medical Staff of Phoebe Putney Memorial Hospital.

The Board of Directors of the Corporation shall at all times include at least one member of the board of directors of Phoebe Putney Memorial Hospital, Inc.

The Board of Directors of the Corporation shall at all times include at least two members who contemporaneously also serve on the Board of Trustees of the Hospital Authority of Albany-Dougherty County, Georgia.

In addition, the Chairman of the Board of Directors of Phoebe Putney Memorial Hospital, Inc. shall serve as an ex-officio, non-voting member of the Board of Directors.

ARTICLE VII

Membership in the Corporation

The members of the Corporation shall be the Board of Directors who shall be the sole voting members of the Corporation.

The Bylaws may provide for one or more classes of other members who shall be admitted in such manner and who shall have such rights and privileges as are set forth in the Bylaws but who shall not have the right to vote.

ARTICLE VIII

Powers

The Corporation shall have all powers enumerated herein and in the Georgia Nonprofit Corporation Code.

ARTICLE IX

Restrictions

This Corporation is organized exclusively for charitable purposes, as a nonprofit corporation, within the meaning of Section 501(c)(3) of the Code, and its activities shall be conducted for such purposes in such a manner that no part of its net earnings shall inure to the benefit of any member, director, officer or individual. In addition, the Corporation shall be authorized to

exercise the powers permitted nonprofit corporations under the Georgia Nonprofit Corporation Code, provided, however, that the Corporation while exercising any one or more powers shall do so in furtherance of the charitable, educational and scientific purposes for which it has been organized as described in Section 501(c)(3) of the Code. All of the assets and earnings of the Corporation shall be used exclusively for the charitable, educational and scientific purposes hereinabove set forth, including the payment of expenses incidental thereto and all of the powers of the Corporation shall be exercised exclusively for such purposes. No part of its activities shall inure to the benefit of any individual and no substantial part of its activities shall be for the carrying on of a program of propaganda or for influencing legislation nor shall it participate in any political campaign on behalf of any candidate for public office. The Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Code, or any organization to which contributions are deductible under Section 170(c)(2) of the Code.

ARTICLE X

Dissolution

Upon dissolution of the Corporation, all of its assets, including all its interests in any affiliated entities, remaining after the payment of all costs and expenses of such dissolution, and after adequate provision has been made for the discharge or

assumption of its liabilities, shall be distributed to PPMH; provided that PPMH is then an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, and if not, then to the Hospital Authority of Albany-Dougherty County, Georgia (the "Authority"), which is a public body corporate and politic and an instrumentality of the State of Georgia, to be used exclusively for a public purpose, and none of the assets will be distributed upon such dissolution to any member, officer or director of the Corporation. If PPMH enters into an agreement with the Authority pursuant to which the Authority leases, transfers and assigns to PPMH all of the assets, operations and liabilities of Phoebe Putney Memorial Hospital (the "Hospital"), then upon the termination of such lease, transfer or assignment agreement, or upon termination of any renewal or extension thereof, all of the assets of the Corporation, including all its interest in PPMH and any other affiliated entities (after adequate provision is made for the discharge or assumption of the Corporation's liabilities) shall be distributed to the Authority to be used exclusively for a public purpose, and the Corporation shall be dissolved, and none of the assets will be distributed upon such termination to any member, officer or director of the Corporation. In the event the Authority is not then in existence or is for any reason unable to accept title to such assets, then all of the net assets of the Corporation shall in that event be distributed exclusively for the purposes of the Corporation, in such manner, and to such organization or organizations, organized and operated exclusively for charitable,

scientific and educational purposes, as shall at the time qualify as an exempt organization under section 501(c)(3) of the Code (or the corresponding provision of any future United States internal revenue law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be disposed of by the Superior Court of Dougherty County, exclusively for such purposes and to such organization or organizations, as such court shall determine. The Authority shall have the authority to compel the Corporation's compliance with this Article.

ARTICLE XI

Registered Office and Agent

The initial registered office of the Corporation shall be at 417 Third Avenue, Albany, Dougherty County, Georgia 31703. The initial registered agent at such address shall be Joel Wernick.

ARTICLE XII

Incorporator

The name and address of the Incorporator is:

John H. Parker, Jr.
Parker, Hudson, Rainer & Dobbs
1200 Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303

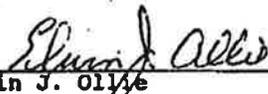
ARTICLE XIII

Amendments

These Articles of Incorporation may be amended at any time and from time to time by the affirmative vote of a majority of all of the Directors then in office."

IN WITNESS WHEREOF, the undersigned has executed these Restated and Amended Articles of Incorporation this 29th day of

July, 1992.



Edwin J. Ollie
Secretary,
Phoebe Putney Health Systems, Inc.

DCC\Phoebe\instofia2.res

Jul 30 2 41 PM '92
SFC

CERTIFICATE

I, Edwin J. Ollie, Secretary of Phoebe Putney Health Systems, Inc., a Georgia nonprofit corporation (the "Corporation"), hereby certify that the attached Restated and Amended Articles of Incorporation of Phoebe Putney Health Systems, Inc. have been duly adopted by the members of the board of directors of the Corporation (such members being the sole voting members of the Corporation), and they do not contain any amendment requiring the approval of any other member or any other person other than the board of directors.

WITNESS, my hand and the seal of the Corporation this 21st day of July, 1992.


Edwin J. Ollie, Secretary
[CORPORATE SEAL]

dgc\phoebe\artofia2.ree

Secretary of State
Business Services and Regulation
Suite 315, West Tower
2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1530

14
CHARTER NUMBER : 9022266 DN
COUNTY : DOUGHERTY
DATE INCORPORATED : DECEMBER 10, 1990
EXAMINER : SUSAN GOLDEN
TELEPHONE : 404-656-0624

REQUESTED BY:

JOHN H. PARKER, ESQ
133 CARNEGIE WAY
1200 CARNEGIE BUILDING
ATLANTA, GEORGIA 30303

CERTIFICATE OF INCORPORATION

I, MAX CLELAND, Secretary of State and the Corporations Commissioner of the State of Georgia do hereby certify, under the seal of my office, that

"PHOEBE PUTNEY HEALTH SYSTEMS, INC."

has been duly incorporated under the laws of the State of Georgia on the date set forth above, by the filing of articles of incorporation in the office of the Secretary of State and the fees therefor paid, as provided by law, and that attached hereto is a true copy of said articles of incorporation.

WITNESS, my hand and official seal, in the City of Atlanta and the State of Georgia on the date set forth below.

DATE: DECEMBER 10, 1990

FORM A1 (JULY 1989)



Max Cleland

MAX CLELAND
SECRETARY OF STATE

SECURITIES
656-2894

CEMETERIES
656-3079

CORPORATIONS
656-2817

CORPORATIONS HOT-LINE
404-656-2222
Outside Metro-Atlanta

**ARTICLES OF INCORPORATION
OF
PHOEBE PUTNEY HEALTH SYSTEMS, INC.**

ARTICLE I

Name

The name of the Corporation is Phoebe Putney Health Systems, Inc.

ARTICLE II

Organization

The Corporation is organized pursuant to the Georgia Nonprofit Corporation Code.

ARTICLE III

Period of Duration

The period of duration of the Corporation shall be perpetual.

ARTICLE IV

Purposes

The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, including:

(a) To support, promote, advance and strengthen, within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (or corresponding provisions of any subsequent United States internal revenue law) (the "Code"), Phoebe Putney Memorial Hospital, Inc., a Georgia nonprofit corporation ("PPMH"), and, in the discretion of the Board of Directors of the Corporation, to support other nonprofit health care providers organized for

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charitable and civic purposes; provided that each corporation is an organization described in Section 501(c)(3) of the Code and in Section 509(a)(1) or (2) of the Code; and, further provided that the Corporation shall be operated, supervised or controlled by or in connection with each additional supported corporation within the meaning of Section 509(a)(3) of the Code;

(b) To itself operate exclusively for charitable, educational and scientific purposes, and in furtherance of the charitable, educational and scientific purposes, causes and objects now or at any time hereafter fostered by said Phoebe Putney Memorial Hospital, Inc., a Georgia nonprofit corporation, and such other nonprofit and tax exempt health care providers as the Board of Directors of the Corporation elects to support.

(c) To participate in, form, own and operate joint ventures, partnerships, corporations or other entities, whether or not any such entity is for profit or not for profit, so long as this Corporation's participation therein is not inconsistent with the furtherance of the charitable, educational and scientific purposes for which the Corporation is organized.

ARTICLE V

Election of Directors

The affairs of the Corporation shall be managed by the Board of Directors which shall exercise all of the powers of the Corporation except to the extent that any such powers are reserved to members, if any, of the Corporation in the Bylaws. The qualifications, minimum and maximum number and manner of election

of the Directors shall be provided in the Bylaws of the Corporation.

ARTICLE VI

Initial Board of Directors

The initial Board of Directors shall consist of nine (9) members, whose names and addresses are set forth below. Each member of the initial Board of Directors shall serve as a director for a term of the number of years appearing opposite his name or until his successor has been elected and has qualified.

	Director	Term
1.	W. Harry Willson P.O. Box 1275 Albany, Georgia	4 years
2.	Anna Louise McCormack P.O. Box 3170 Albany, Georgia	3 years
3.	Elmer H. Bridges 4917 Van Cise Lane Albany, Georgia	5 years
4.	Nathaniel Cross 1503 Lily Pond Road Albany, Georgia	5 years
5.	Bernard P. Scoggins, M.D. 1712 East Broad Avenue Albany, Georgia	During term as immediate past Chief of Medical Staff of Phoebe Putney Memorial Hospital
6.	Alfredo Stokes 2405 Greenmount Drive Albany, Georgia	3 years
7.	Tom Law 711 7th Avenue Albany, Georgia	4 years

8. Walter Carl Gordon, Jr., M.D. 3 years
3220 Jacqueline Drive
Albany, Georgia
9. Joel Wernick During tenure as President/
417 Byron Plantation Road Chief Executive Officer of
Albany, Georgia the Corporation

The Board of Directors of the Corporation shall at all times include the Chief Executive Officer of the Corporation and the Immediate Past Chief of the Medical Staff of Phoebe Putney Memorial Hospital.

The Board of Directors of the Corporation shall at all times include at least two physician members who are members of the Medical Staff of Phoebe Putney Memorial Hospital. If at any time any such physician member of the Board of Directors of the Corporation shall be named as the Chief of Staff of the Medical Staff of Phoebe Putney Memorial Hospital, such physician member shall resign from the Board of Directors of the Corporation and such vacancy shall be filled by another member of the Medical Staff of Phoebe Putney Memorial Hospital.

The Board of Directors of the Corporation shall at all times include at least one member of the board of directors of Phoebe Putney Memorial Hospital, Inc.

In addition, the Chairman of the Board of Directors of Phoebe Putney Memorial Hospital, Inc. shall serve as an ex-officio, non-voting member of the Board of Directors.

ARTICLE VII

Membership in the Corporation

The members of the Corporation shall be the Board of Directors who shall be the sole voting members of the Corporation.

The Bylaws may provide for one or more classes of other members who shall be admitted in such manner and who shall have such rights and privileges as are set forth in the Bylaws but who shall not have the right to vote.

ARTICLE VIII

Powers

The Corporation shall have all powers enumerated herein and in the Georgia Nonprofit Corporation Code.

ARTICLE IX

Restrictions

This Corporation is organized exclusively for charitable purposes, as a nonprofit corporation, within the meaning of Section 501(c)(3) of the Code, and its activities shall be conducted for such purposes in such a manner that no part of its net earnings shall inure to the benefit of any member, director, officer or individual. In addition, the Corporation shall be authorized to exercise the powers permitted nonprofit corporations under the Georgia Nonprofit Corporation Code, provided, however, that the Corporation while exercising any one or more powers shall do so in furtherance of the charitable, educational and scientific purposes for which it has been organized as described in Section 501(c)(3)

of the Code. All of the assets and earnings of the Corporation shall be used exclusively for the charitable, educational and scientific purposes hereinabove set forth, including the payment of expenses incidental thereto and all of the powers of the Corporation shall be exercised exclusively for such purposes. No part of its activities shall inure to the benefit of any individual and no substantial part of its activities shall be for the carrying on of a program of propaganda or for influencing legislation nor shall it participate in any political campaign on behalf of any candidate for public office. The Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Code, or any organization to which contributions are deductible under Section 170(c)(2) of the Code.

ARTICLE X

Dissolution

Upon dissolution of the Corporation, all of its assets, including all its interests in any affiliated entities, remaining after the payment of all costs and expenses of such dissolution, and after adequate provision has been made for the discharge or assumption of its liabilities, shall be distributed to PPMH; provided that PPMH is then an organization exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, and if not, then to the Hospital Authority of Albany-Dougherty County, Georgia (the "Authority"), which is a public body corporate and politic and an instrumentality of the State of Georgia, to be used exclusively for a public purpose, and none of the assets will be

distributed upon such dissolution to any member, officer or director of the Corporation. If PPMH enters into an agreement with the Authority pursuant to which the Authority leases, transfers and assigns to PPMH all of the assets, operations and liabilities of Phoebe Putney Memorial Hospital (the "Hospital"), then upon the termination of such lease, transfer or assignment agreement, or upon termination of any renewal or extension thereof, all of the assets of the Corporation, including all its interest in PPMH and any other affiliated entities (after adequate provision is made for the discharge or assumption of the Corporation's liabilities) shall be distributed to the Authority to be used exclusively for a public purpose, and the Corporation shall be dissolved, and none of the assets will be distributed upon such termination to any member, officer or director of the Corporation. In the event the Authority is not then in existence or is for any reason unable to accept title to such assets, then all of the net assets of the Corporation shall in that event be distributed exclusively for the purposes of the Corporation, in such manner, and to such organization or organizations, organized and operated exclusively for charitable, scientific and educational purposes, as shall at the time qualify as an exempt organization under section 501(c)(3) of the Code (or the corresponding provision of any future United States internal revenue law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be disposed of by the Superior Court of Dougherty County, exclusively for such purposes and to such organization or organizations, as such court shall determine.

The Authority shall have the authority to compel the Corporation's compliance with this Article.

ARTICLE XI

Registered Office and Agent

The initial registered office of the Corporation shall be at 417 Third Avenue, Albany, Dougherty County, Georgia 31703. The initial registered agent at such address shall be Joel Wernick.

ARTICLE XII

Incorporator

The name and address of the Incorporator is:

John H. Parker, Jr.
Parker, Hudson, Rainer & Debbs
1200 Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303

ARTICLE XIII

Amendments

These Articles of Incorporation may be amended at any time and from time to time by the affirmative vote of a majority of all the Directors then in office.

Dec 12
2:22 PM '90
SECRETARY OF STATE

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation this 12th day of December, 1990.



Incorporator

DCC\Phoebe\007

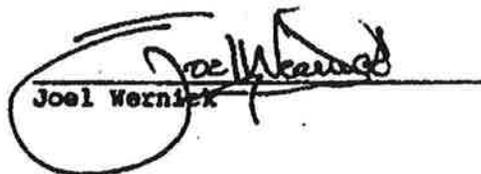
90 966 047 000

CONSENT TO APPOINTMENT AS REGISTERED AGENT

**TO: Max Cleland
Secretary of State
Room 315 - West Tower
2 Martin Luther King, Jr., Drive, S.E.
Atlanta, Georgia 30334**

I, Joel Wernick, do hereby consent to serve as registered agent for Phoebe Putney Health Systems, Inc.

This 10th day of December, 1990.


Joel Wernick

**417 Third Avenue
Albany, Georgia 31703**

llg\incorp\putney.10

99 066 047 000

Secretary of State
Business Services and Regulation

Suite 315, West Tower

**2 Martin Luther King Jr. Dr.
Atlanta, Georgia 30334-1330**

CERTIFICATE DATE : 11/26/90
DOCKET NUMBER : 90330249
EXAMINER : STACY GILLEY
TELEPHONE : 404-656-0624

REQUESTED BY:

**PARKER, HUDSON, RAINER & DOBBS
LORNA L. GRUPP
133 CARNEGIE WAY, STE 1200
ATLANTA, GEORGIA 30303**

NAME RESERVATION CERTIFICATE

THE RECORDS OF THE SECRETARY OF STATE HAVE BEEN REVIEWED AND THE FOLLOWING NAME IS NOT IDENTICAL TO, AND APPEARS TO BE DISTINGUISHABLE FROM, THE NAME OF ANY OTHER EXISTING CORPORATION, LIMITED PARTNERSHIP OR PROFESSIONAL ASSOCIATION ON FILE PURSUANT TO THE APPLICABLE PROVISIONS OF GEORGIA LAW. (TITLE 14 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED).

"PHOEBE POTNEY HEALTH SYSTEMS, INC."

THIS CERTIFICATE SHALL BE VALID FOR A NONRENEWABLE PERIOD OF NINETY (90) DAYS FOR PROFIT AND NONPROFIT CORPORATIONS, PROFESSIONAL ASSOCIATIONS (DP, FP, DN, FN, & PA) OR LIMITED PARTNERSHIPS (7D OR 7F) FROM THE DATE OF THIS CERTIFICATE. PLEASE SUBMIT THE ORIGINAL CERTIFICATE (WHITE COPY) WITH THE ARTICLES OF INCORPORATION, CERTIFICATE OF LIMITED PARTNERSHIP, APPLICATION FOR PROFESSIONAL ASSOCIATION OR CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS.

NAME RESERVATIONS ARE NOT RENEWABLE AFTER EXPIRATION OF THE STATUTORY RESERVATION PERIOD SET OUT ABOVE.

FORM NR (JULY 1989)



Max Cleland

**MAX CLELAND
SECRETARY OF STATE**

**SECURITIES
656-2894**

**CEMETERIES
656-3079**

**CORPORATIONS
656-2817**

**CORPORATIONS HOT-LINE
404-656-2222
Outside Metro Atlanta**



MAX CLELAND
Secretary of State
State of Georgia

BUSINESS SERVICES AND REGULATION
Suite 315, West Tower
2 Martin Luther King Jr., Drive
Atlanta, Georgia 30334
(404) 656-2817

A100

Eff. 7/1/89
J. F. GULLION
Director

**ARTICLES OF INCORPORATION DATA ENTRY FORM
FOR GEORGIA CORPORATIONS**

I. Filing Date: 12/12/90 Code: SN Docket Number: 90344583-505
Assigned Exam: 70 Amount: \$ 60.50 By: 70
Charter Number: 9022366 Completed: 70

DO NOT WRITE ABOVE THIS LINE - SOS USE ONLY

NOTICE TO APPLICANT: PRINT PLAINLY OR TYPE THE REMAINDER OF THIS FORM.

II. Corporate Name: Phoebe Putney Health Systems, Inc.
Mailing Address: 417 Third Avenue
City: Albany County: Dougherty State: Georgia Zip Code: 31703

III. Fees Submitted By: Parker, Hudson, Rainer & Dobbs
Amount Enclosed: \$ 110.00 Check Number: _____

IV. Incorporator: John H. Parker, Esq.
Address: 133 Carnegie Way, 1200 Carnegie Building
City: Atlanta State: Georgia Zip Code: 30303

V. Registered Agent/Office: Joel Wernick
Address: 417 Third Avenue
City: Albany County: Dougherty State: Georgia Zip Code: 30303

VI. ARTICLES OF INCORPORATION FILING CHECK-OFF LIST		Applicant	Examiner
1. Original and one conformed copy of Articles of Incorporation		X	
2. Corporate name verification number		X	
3. Authorized shares stated		N/A	
4. Incorporator's signature		X	
5. Post effective date, if applicable			19
6. Number of pages attached:			

VII. Applicant/Attorney: John H. Parker, Esq. Telephone: (404) 523-5300
Address: 133 Carnegie Way, 1200 Carnegie Building
City: Atlanta State: Georgia Zip Code: 30303

NOTICE: Attach original and one copy of the Articles of Incorporation and the Secretary of State filing fee (\$80.00). Mail or deliver to the above address. This form does not replace the Articles of Incorporation.

I understand that the information on this form will be used in the Secretary of State Corporate database. I certify that a notice of intent to incorporate and a publishing fee of \$40.00 has been mailed or delivered to an authorized newspaper, as required by law.

Signed: John H. Parker Date: December 10, 1990

EXHIBIT H

TO THE

AMENDED AND RESTATED LEASE AND TRANSFER AGREEMENT

DATED

AUGUST 1, 2012

BYLAWS OF PPHS

A handwritten signature in black ink, appearing to be "J. J. Gal e", is located in the bottom right corner of the page. The signature is written in a cursive style with a large initial "J" and "G".

**AMENDED AND RESTATED
BYLAWS
OF PHOEBE PUTNEY HEALTH SYSTEM, INC.
(the "Corporation")
(as Amended July 12, 2012)**

ARTICLE I

Board of Directors

Section 1.1. Authority. The Board of Directors shall carry out the purposes of the Corporation in compliance with the Articles of Incorporation and the Bylaws of the Corporation. The property, affairs, business and operation of the Corporation shall be managed by the Board of Directors.

Section 1.2. Composition. The Board of Directors shall consist of not less than nine (9) nor more than twelve (12) Directors. The Board of Directors shall at all times include the President/Chief Executive Officer of the Corporation and at least one (1) physician member who is a member of the Medical Staff of Phoebe Putney Memorial Hospital, Inc. A majority of the Directors shall be independent directors as defined in Section 1.3. below.

The Board of Directors may from time to time elect any person to serve as Director Emeritus, which shall be a lifetime designation once awarded by the Board of Directors. To be eligible for designation as Director Emeritus, a person must have served on the Board of the Corporation for a significant period of time, with fifteen (15) years of service generally being required, be a person who has made significant contributions to the Corporation and be a person of good reputation and high integrity. Persons who are designated as Directors Emeritus may attend any meetings of the Board of Directors of the Corporation. Persons who are designated as Directors Emeritus shall not be counted as Directors for purposes of this Article 1, Section 1.2 or Article III, Section 3.3, shall have no vote at any meetings and shall not be required to serve as members of any committee.

Section 1.3. Independence. A majority of the Directors on the Board must be "independent." To be considered independent, the Board of Directors must determine that a Director does not have any material relationship with the Corporation, its subsidiaries or Phoebe Putney Memorial Hospital, Inc. (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Corporation, its subsidiaries or Phoebe Putney Memorial Hospital, Inc.). The Board will consider the following standards to assist it in determining director independence:

Independent Directors shall, during the current fiscal year:

- (a) Not be an employee of the Corporation, its subsidiaries or Phoebe Putney Memorial Hospital, Inc. nor have an immediate family member who is an executive officer. "Immediate Family" includes a person's spouse, parents, children, grandchildren, and siblings.

- (b) Not be the recipient of, or whose family member is the recipient of, more than \$50,000.00 in direct compensation from the Corporation, its subsidiaries or Phoebe Putney Memorial Hospital, Inc. excluding pension or other deferred compensation for prior services.
- (c) Not be an executive officer or an employee, or whose immediate family is an executive officer, of another company that makes payments to, or receives payments from, the Corporation, its subsidiaries or Phoebe Putney Memorial Hospital, Inc. for property or services in an amount which exceeds the greater of (i) \$100,000.00 or (ii) 10% of the other company's consolidated gross revenues.

The Board will also evaluate, on a case-by-case basis, any other relationship, direct or indirect, between a Director and the Corporation, its subsidiaries or Phoebe Putney Memorial Hospital, Inc. and its officers, which might have the appearance of potentially impairing a Director's independence of judgment. Special attention will be paid to service on a non-profit or charitable board by a Director or a close personal relationship between a Director and any executive officer.

Section 1.4. Qualifications. Directors must exhibit the desire, time, interest and ability to support the Corporation and shall be selected based upon interest in and loyalty to the objectives and purposes of the Corporation as set forth in the Articles of Incorporation. Whenever possible, Directors shall also be selected based upon their involvement and interest in the community of which the Corporation is a part.

No person shall be eligible to serve as a Director who has been convicted of a felony or any crime involving moral turpitude.

No two persons who are immediate family members may serve at the same time as Directors on the Board.

Section 1.5. Election. The Board of Directors shall elect Directors to fill expired terms, or vacancies that have occurred for other reasons from a slate of nominees presented by the Nominating/Governance Committee of the Board.

Section 1.6. Term of Service. All Directors shall serve for a term of five (5) years and until their respective successors are elected and qualified, except for the person who is a Director by virtue of being a member of the Medical Staff of Phoebe Putney Memorial Hospital, Inc., who shall serve for a term of two (2) years and until his or her successor is elected and qualified. However, in the event any such physician member of the Board of Directors loses his or her privileges at Putney Memorial Hospital, Inc., or cease to be a member of said Medical Staff, such physician member shall resign from the Board of Directors and such vacancy shall be filled by another member of the Medical Staff of Phoebe Putney Memorial Hospital, Inc. to serve the remainder of the term. The terms of the Directors shall be staggered so that the terms of no less than approximately one-third (1/3) are expiring in any one (1) year. Directors may serve for unlimited successive terms. The person who is a Director by virtue of being the Chief Executive Officer of the Corporation shall serve as long as he or she holds that position.

Section 1.7. Ex-Officio Board Members. The Chairperson of the Board of Directors of Phoebe Putney Memorial Hospital, Inc., shall serve as an ex-officio, non-voting member of the Board of Directors. The Chairperson of the Board of Directors of Phoebe Putney Memorial Hospital, Inc., shall not be counted as a Director for purposes of Article I, Section 1.2., or Article III, Section 3.3 hereof.

Section 1.8. Conflicts of Interest. No Director shall use his or her position on the Board of Directors for financial, political, or other self-interest that could be interpreted by the Board of Directors or the Corporation as not being in the Corporation's best interests, and the Director shall maintain unselfish loyalty to the Board of Directors and will disclose to the entire Board of Directors the full particulars of his or her financial interest in any matter under consideration by the Board of Directors. Each Director (whether a voting or non-voting member of the Board of Directors) shall file a "No Conflict of Interest and Loyalty" statement with the Chairperson of the Board of Directors. Said statement shall be in such form as approved by the Board from time to time. If, in the view of the Director or of the Board of Directors, an interest of a Director in a matter under consideration by the Board may interfere with the exercise of such Director's unselfish loyalty to the Corporation or may pose a conflict between duty and self-interest, the Director shall neither vote on the issue nor participate in the discussion, but shall leave the room and the minutes shall so reflect that he or she left the room and neither voted nor participated in discussion on the issue (nevertheless the presence of a Director with voting rights may be counted for purposes of establishing a quorum).

Section 1.9. Resignation; Removal. Any Director may resign at any time by giving written notice to the President/Chief Executive Officer of the Corporation or Chairperson of the Board of Directors, and giving a copy of said notice to the Secretary of the Corporation. Such resignation, which may or may not be made contingent on formal acceptance, shall take effect on the date of receipt or at any later time specified therein.

Any Director, other than the President/Chief Executive Officer of the Corporation, may be removed with or without cause by a vote of at least two-thirds (2/3) of the members of the Board of Directors. Any Director sought to be removed shall be given reasonable notice and, in the case of a Director removed for cause, an opportunity to be heard regarding the cause or causes stipulated for his or her removal.

Section 1.10. Vacancies. All vacancies on the Board of Directors (whether due to expiration of the term of a Director, death, resignation, removal or otherwise), shall be filled by majority vote of the remaining Directors from a slate submitted by the Nominating/Governance Committee of the Corporation. Members elected to fill vacancies on the Board of Directors due to death, removal, or resignation shall hold office for the unexpired portion of the term.

Section 1.11. Compensation. Directors shall not receive compensation for their service to the Corporation, but at the discretion of the Chairperson of the Board, may be reimbursed by the Corporation for actual reasonable travel expenses to Board of Director meetings or when specifically selected to represent the Corporation at a business meeting. Nothing contained in these Bylaws precludes any Director from receiving compensation for services to the Corporation in any other

capacity.

ARTICLE II

Officers of the Board

Section 2.1. Election. The Officers of the Board of Directors shall be a Chairperson and a Vice Chairperson. The Nominating/Governance Committee shall nominate the Chairperson and Vice Chairperson of the Board, to be voted on for approval by the entire Board at the annual meeting of the Board of Directors. Each Officer of the Board of Directors shall serve for a one (1) year term of office. Officers of the Board of Directors may serve unlimited terms in the same office. At such time as the current Chairperson and Vice Chairperson of the Board vacate that position, then all future Chairpersons and Vice Chairpersons of the Board shall be "independent" as is defined in Art. I, Section 1.3.

Section 2.2. Duties. The Chairperson shall preside at all meetings of the Board of Directors. Except as otherwise expressly provided herein, the Chairperson shall appoint all committee members and all committee chairpersons, subject to the ratification by and approval of a majority of the Board of Directors. The Chairperson shall have such other duties and responsibilities hereinafter set forth in these Bylaws and delegated by the Board from time to time.

The Vice Chairperson shall act in the absence of the Chairperson, and when so acting shall have all the authority and powers of the Chairperson. The Vice Chairperson shall perform such other duties as from time to time are assigned to him or her by the Chairperson.

Section 2.3. Successors. Each Officer shall deliver to his or her successor in office all official material of the Corporation not later than ten (10) days following the election of his or her successor.

ARTICLE III

Meetings of the Board of Directors

Section 3.1. Regular Meetings. The Board of Directors shall hold a regular monthly meeting on the first Thursday of each month, unless the Board of Directors shall otherwise designate another date for its regular monthly meetings.

Section 3.2. Annual Meeting. The regular meeting held in the month of January shall be the annual meeting of the Board of Directors.

Section 3.3. Special Meetings. Special meetings may be called by the Chairperson and shall be called at the written request of at least one-third (1/3) of the members of the Board of Directors.

Written notice of special meetings shall be considered duly given if mailed to each member of the Board of Directors at least three (3) days before such special meeting or if personally delivered to the home or office of each Director at least 24 hours before such special meeting. The notice shall state the business or the transaction for which the meeting has been called and no other business shall be transacted at such meeting unless by unanimous consent of the members of the Board of Directors present and participating. An emergency meeting of the Board of Directors may be called without the necessity of any notice so long as the notice provisions are waived by at least two-thirds (2/3) of the members of the Board of Directors.

Section 3.4. Quorum. A majority of the members of the Board of Directors with voting rights shall constitute a quorum of the Board of Directors for the transaction of business, and an act of the majority of the Directors present and voting at a meeting at which a quorum is present shall be the official act of the Board of Directors.

Section 3.5. Attendance. The members of the Board of Directors are expected to attend the regular monthly meetings of the Board of Directors. Any member, other than the President/Chief Executive Officer of the Corporation or the Chairman of the Board of Directors of Phoebe Putney Memorial Hospital, Inc., who shall fail to attend two (2) regular meetings of the Board of Directors during any consecutive twelve (12) month period, without the Chairperson of the Board of Directors excusing such absence, shall create a vacancy of that person's membership on the Board of Directors.

Section 3.6. Cancellation or Change of Regular Meetings. The Board of Directors, by a vote of two-thirds (2/3) of the members present and voting, may dispense with or alter the date of a monthly meeting at the monthly meeting preceding the monthly meeting to be dispensed with or altered.

Section 3.7. Action by Written Consent. Any action required or permitted to be taken by the Board of Directors under any provision of law, the Articles of Incorporation, or these Bylaws may be taken without a meeting of the Board of Directors by the collective consent of all the Directors with voting rights, in writing, setting forth the action so taken. Such written consents shall be filed with the proceedings of the Board of Directors and shall be made available for review at the next regular meeting of the Board of Directors. Such action by written consent shall have the same force and effect as if action were approved at a duly constituted meeting of the Board of Directors. Any certificate or other document filed under law relating to action so taken shall state that the action was taken by unanimous consent of the Board of Directors without a meeting and that the Bylaws authorized the Directors to so act.

Section 3.8. Telephonic Participation in Meetings. Members of the Board of Directors or any committee may participate in any meeting of the Board of Directors or of a Board committee by means of a conference telephone or similar communication equipment by which means all persons participating in the meeting can hear one another at the same time. Participation with proper notice by such means shall constitute presence in person at a meeting.

Section 3.9. Voting. Each Director with voting rights shall be entitled to one vote on any matter before the Board of Directors. Voting by proxy shall not be permitted.

Section 3.10. Proper Officers. For the purposes of these Bylaws, the Chairperson of the Board, the Vice Chairperson of the Board and the President/Chief Executive Officer of the Corporation shall each be deemed a "proper officer." Whenever any resolution or action adopted by the Board of Directors or a Board Committee shall authorize the "proper officer" of the Corporation to execute any note or other document or take any other action or shall generally authorize any action without specifying the officer or officers authorized to take such action, any proper officer acting alone and without counter signatures may take such action on behalf of the Corporation.

ARTICLE IV

Committees of the Board of Directors

Section 4.1. Appointment of Committees. The Board of Directors shall have a Facilities Committee, Finance Committee, Pension and Benefit Committee, Nominating/Governance Committee, Bylaws Committee, Compensation Committee and Audit Committee, and such other standing or special committees of the Board of Directors that may be from time to time created by the Board. The Chairperson of the Board shall appoint the Directors, or such other persons as the Chairman designates, to serve on such standing committees and other special committees of the Board, subject to the ratification by and approval of a majority of the Board of Directors. The chairperson of each committee shall be a member of the Board of Directors of the Corporation and shall be appointed by the Chairperson of the Board. Vacancies of committee chairs shall be filled during the interim by appointment of the Chairperson of the Board. The Chairperson of the Board and the President/Chief Executive Officer of the Corporation shall each be ex-officio voting members of all committees, except the President/Chief Executive Officer is not a member of the Nominating/Governance Committee, the Compensation Committee, and the Audit Committee.

A committee shall limit its activities to the task or tasks for which the committee is organized, and will have only such authority and responsibility as specifically conferred upon it by the Board of Directors. All committees shall be subject to the control and general supervision of the Board of Directors. Each committee shall adopt written charters for its activities which shall be approved by the Board of Directors and shall meet as required and as set by policy of the Board of Directors.

One-half (1/2) of a committee's members shall constitute a quorum for the carrying out of committee functions and actions.

Section 4.2. Committee Chairperson's Duties. The chairperson of each committee shall have the following general duties, responsibilities and powers, together with such others as may be designated from time to time by the Board of Directors:

- (a) Coordinate committee activities through the designated management liaison;

- (b) Prepare an agenda for each committee meeting;
- (c) Preside or designate an alternate to preside at committee meetings;
- (d) Provide for maintenance of official records of the committee and appoint a secretary of the committee for that purpose;
- (e) Report committee activities and formal recommendations to the Board at its regular meetings;
- (f) Delegate specific responsibilities among committee members; and
- (g) Appoint members to subcommittees as necessary.

Section 4.3. Standing Committees. The Board of Directors shall have the following standing committees:

- (a) Facilities Committee. This committee shall maintain oversight of all property owned by the Corporation and its subsidiaries. This Committee shall also oversee and develop a facilities master plan.
- (b) Finance Committee. This committee shall recommend policy and maintain oversight on all matters relating to the funds, securities, debt and investments of the Corporation. It shall maintain a continuous and over-all review of income and expenditures and make recommendations on these matters as needed to the Board of Directors. This committee shall annually present to the Board of Directors a fiscal budget of anticipated receipts and expenditures for the coming year.
- (c) Pension and Benefit Committee. This committee shall review all matters related to the pension, benefit and welfare plans of the employees of the Corporation and its subsidiaries.
- (d) Nominating/Governance Committee. This committee shall (i) recommend to the Board a set of corporate governance principles applicable to the Corporation; (ii) review at least bi-annually the corporate governance principles and recommend changes, additions or modifications for approval by the Board of Directors; (iii) nominate the Chairperson and Vice Chairperson of the Board of Directors; and (iv) identify individuals qualified to become Directors of the Corporation or its subsidiaries and recommend that the Board select Director nominees at the next meeting of the Board of Directors. Members of this committee shall be Directors of either the Corporation or of a subsidiary corporation.
- (e) Compensation Committee. This committee shall (i) assist the Board in discharging its responsibilities relating to compensation of the Corporation's executives, (ii) in

consultation with management, establish the Corporation's general policies relating to employee compensation, and (iii) oversee the development and implementation of benefit and welfare programs for the Corporation's executives. All members of this committee shall be independent Directors of the Corporation as defined in Art. 1, Section 1.3.

- (f) Audit Committee. This committee shall provide advice and counsel to management regarding, and to assist the Board of Directors in its oversight of, (i) the integrity of the Corporation's financial statements, (ii) the Corporation's compliance with legal and regulatory requirements, (iii) the independent accountant's qualifications and independence, and (iv) the performance of the Corporation's internal audit function and independent accountant. This committee is empowered, without seeking Board approval, to retain persons having special competence, including outside legal, financial accounting and other advisors, as necessary to assist the committee in fulfilling its responsibility. All members of this committee shall be independent Directors as defined in Art. 1, Section 1.3.
- (g) Bylaws Committee. This committee shall review at least bi-annually the corporation's bylaws and recommend changes, additions or modifications for approval by the Board of Directors.
- (h) Investment Committee. This committee shall provide oversights to all invested funds, and shall be responsible for the selection and review of investment managers and consultants.

ARTICLE V

Officers of the Corporation

Section 5.1. General Provisions. The Officers of the Corporation shall consist of a President/Chief Executive Officer, a Secretary, a Treasurer/Chief Financial Officer, and such other officer positions as the Board may create, each of whom shall be elected by, and shall serve at the pleasure of, the Board of Directors. Each Officer shall be elected or appointed for a term of office running until the next annual meeting of the Board of Directors or such other term as may be provided by (i) resolution of the Board of Directors or (ii) the appointment to office or (iii) by employment contract. Each Officer shall serve during the term of office for which he or she is elected or appointed and until his or her successor has been elected or appointed and has qualified, or until his or her earlier resignation, removal from office or death.

Any two offices may be held by the same person, except that the President/Chief Executive Officer may not hold any other officer position.

Section 5.2. Removal. Any Officer may be removed from office, with or without cause, upon the majority vote of the Directors present at any meeting of the Board of Directors at which a quorum is present.

Section 5.3. President/Chief Executive Officer. The President/Chief Executive Officer shall be given the necessary authority and be held responsible for supervision of the total administration of the Corporation in all its activities and departments, subject only to such policies as may be adopted or issued by the Board or by any of its committees to which the Board has delegated power for such action. He or she shall act as the duly authorized representative of the Board of Directors in all matters in which the Board of Directors has not formally designated some other person for that specific purpose. The President/Chief Executive Officer shall be a member of the Board of Directors and an ex-officio voting member of all committees of the Board of Directors except the Compensation Committee and the Audit Committee.

Section 5.4. Duties of President/Chief Executive Officer. The authority and duties of the President/Chief Executive Officer shall include among other things:

- (a) Carrying out all policies established by the Board of Directors and formulating and enforcing all rules and regulations necessary and desirable for the proper conduct of the Corporation;
- (b) Submitting to the Board of Directors for approval a plan of organization of the personnel and others concerned with the operation of the Corporation;
- (c) Assisting the Secretary of the Corporation with all the duties assigned to the Secretary and assuring that all notices are given in accordance with these Bylaws or as required by law;
- (d) Selecting, employing, controlling and discharging all employees, and developing and maintaining personnel policies and practices for the Corporation;
- (e) Ensuring that all physical properties of the Corporation are kept in a good state of repair and operating condition;
- (f) Making and executing all contracts pertaining to the ordinary affairs and operations of the Corporation, except as to the execution of those contracts specifically reserved to the Board;
- (g) Supervising all business affairs and ensuring that all funds are collected and expended to the best possible advantage of the Corporation;
- (h) Serving as the liaison officer and channel of communication between the Board of Directors or any of its committees and all other organizations working on behalf of the Corporation;

- (i) Attending all meetings of the Board of Directors; and
- (j) Performing any other duty that may be necessary in the best interest of the Corporation or that the Board of Directors shall require.

Section 5.5. Secretary. The Secretary shall attend all meetings of the Board of Directors and any and all committees thereof; shall keep minutes of all meetings of the Board of Directors and any and all committees thereof; shall have charge of the corporate books and seal of the Corporation; and shall perform such other duties and have such other powers as may from time to time be delegated to him or her by the Board of Directors.

The Secretary shall have the discretion to delegate his or her responsibilities to another person.

Section 5.6. Treasurer/Chief Financial Officer. The Treasurer/Chief Financial Officer shall be charged with the management of all financial affairs of the Corporation; shall have the power to recommend action concerning the Corporation's affairs to the Board of Directors; and shall perform such other duties and have such other powers as may from time to time be delegated to him or her by the Board of Directors.

In addition to the foregoing duties and without limitation thereof, the Treasurer/Chief Financial Officer shall:

- (a) Prepare an annual budget showing, but not limited to, anticipated revenue and expenditures; be responsible for all funds and securities of the Corporation; and receive and give receipts for monies due and payable to the Corporation from any source whatever and deposit all such monies in the name of the Corporation in such banks or other depository as shall be selected in accordance with the Bylaws;
- (b) Submit regularly to the Board of Directors, or its authorized committees, periodic reports showing the financial activities of the Corporation; and prepare and submit such special reports as may be required by the Board of Directors;
- (c) Keep and maintain an up-to-date inventory of all property and equipment (including medical) owned or leased by the Corporation; and
- (d) Review the annual budgets of Phoebe Putney Memorial Hospital, Inc. and other affiliated corporations and make appropriate recommendations to the Board of Directors of the Corporation concerning their approval.

ARTICLE VI

Conflicting Regulations

No charters, constitutions, bylaws, rules, provisions or regulations of any organization operating as a part of the Corporation or as an agency thereof shall be in conflict with or repugnant or contrary to these Bylaws or to the Articles of Incorporation of the Corporation or to the laws of the State of Georgia or of the United States.

ARTICLE VII

Amendments

These Bylaws shall be reviewed at least bi-annually by the Bylaws Committee of the Board of Directors and, upon the recommendation of such committee, may be amended by an affirmative vote of at least two-thirds (2/3) of the voting membership of the Board of Directors present at a regular monthly meeting or any special meeting of the Board of Directors.

ARTICLE VIII

Indemnification by Corporation

Section 8.1. Indemnification. Any person (including the heirs, executors, administrators or estate of such person) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the Corporation), by reason of the fact that he or she is or was a director, officer, employee, consultant or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, consultant or agent of another corporation, partnership, joint venture, trust or other enterprise, may be indemnified by the Corporation against expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation (and with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe his or her conduct was unlawful), to the maximum extent permitted by, and in the manner provided by, the Georgia Nonprofit Corporation Code.

Section 8.2. Insurance. The Corporation may purchase and maintain insurance at its expense, to protect itself and any such person against any such liability, cost, payment or expense, whether or not the Corporation would have the power to indemnify such person against such liability

ARTICLE IX

Corporate Seal

The Corporation's Board of Directors may provide for a corporate seal in such form and with such inscription as it shall determine, provided such seal shall always contain the word "Non-profit."

ARTICLE X

Waiver of Notice

Whenever any notice is required to be given under the provisions of the Georgia Nonprofit Corporation Code, of the Articles of Incorporation, or of these Bylaws, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice where such waiver is permitted by State law. All waivers shall be filed with the corporate records, or shall be made a part of the minutes of the relevant meeting.

ARTICLE XI

Reserve Powers

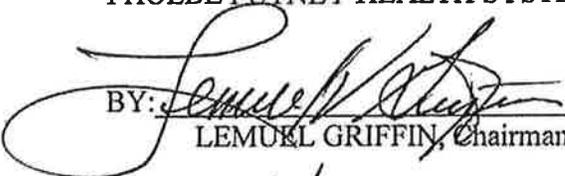
The Corporation may create subsidiary corporations wherein the Corporation is the sole shareholder, partner or member of the subsidiary corporation. Said subsidiary corporations may not take any of the following actions without the prior approval of the Corporation:

- (a) Adopt a plan of dissolution of the subsidiary corporation;
- (b) Engage in, or enter into, any transaction providing for the sale, mortgage or other disposition of all or substantially all of the assets of the subsidiary corporation;
- (c) Adopt a plan of merger or consolidation of the subsidiary corporation with another corporation;
- (d) Adopt any annual or long-term capital and operational budgets of the subsidiary corporation or approve any changes therein exceeding ten percent (10%) of any budgeted item;
- (e) Amend or take any action to terminate any lease between the subsidiary corporation and the Hospital Authority of Albany-Dougherty County, Georgia with respect to Phoebe Putney Memorial Hospital;

- (f) Take any action which would, or reasonably could be expected to, cause the subsidiary corporation to exceed its annual budget for capital expenditures;
- (g) Incur an expenditure for any particular project or service of or for the subsidiary corporation in an amount in excess of \$1,000,000.00;
- (h) Take any action which would, or reasonably could be expected to, result in an adverse variance (on an annualized basis) of total expenses of greater than two-percent (2%) of the subsidiary corporation's total annual budgeted expenses;
- (i) Appoint or remove the independent auditors of the subsidiary corporation;
- (j) Select or remove the Corporate Officers of the subsidiary corporation;
- (k) Adopt or permit any changes to any long-term, strategic or master institutional plans;
- (l) Enter into any debt obligation;
- (m) Approve any annual operating or capital budgets; or
- (n) Amend the Articles of Incorporation or Bylaws of the subsidiary corporation.

IN WITNESS WHEREOF, Phoebe Putney Health System, Inc. has caused these Bylaws to be executed, its corporate seal affixed and the foregoing to be attested, all by duly authorized officers on the 12th day of July, 2012.

PHOEBE PUTNEY HEALTH SYSTEM, INC.

BY: 
LEMUEL GRIFFIN, Chairman

ATTEST: 
KERRY LOUDERMILK, Secretary

[CORPORATE SEAL]

ATTORNEY/CLIENT CONFIDENTIAL COMMUNICATION

MEMORANDUM

TO: Board of Directors of the Hospital Authority of Albany-Dougherty
County, Georgia (the "Authority")

FROM: Perry & Walters, LLP

DATE: November 14, 2017

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We have been asked to provide you, the members of the Authority Board our opinion as counsel in regards to your duties and responsibilities as Members of the Authority, particularly in light of the fact that as of December 11, 1990 (and fully restated August 1, 2012) the Authority entered into the Lease and Transfer Agreement (the "Lease") with Phoebe Putney Memorial Hospital, Inc. ("PPMH"). As discussed in more detail below, views expressed herein necessarily involve an analysis and synthesization of the Hospital Authorities Law, the Resolution establishing the Authority, the Lease, and interpretive judicial decisions

I.

Summary

As Members of the Authority, itself a public body, you very much occupy a position of public trust, responsible to the public to carry out and effectuate the functions and purposes of the Authority. Fundamentally, the principal purpose of the Authority is to seek to provide for our community, quality health care at reasonable cost.¹ In 1990 the Authority validly and lawfully entered into a long term Lease and Transfer Agreement with PPMH, leasing to it essentially all of the Authority's assets, and materially changing the current role of the Authority. That Lease was amended and fully restated in 2012, and remains in effect. Notwithstanding the Lease, not all of your duties and responsibilities have been totally transferred or delegated. At this juncture, the role of Authority Board Members would generally include handling such business as may properly come before the Authority (including the issuance of Bonds), causing the Authority to remain properly organized and in existence, complying with any legal or contractual requirements of the Authority, monitoring compliance by PPMH of its obligations and undertakings under the Lease, and any other matters you collectively determine would further the purposes of the Authority. This Memorandum focuses on the Lease and the Authority's relationship with PPMH and not other general matters, even

¹There is, of course, an inherent tension between providing low cost health care and the ability to provide modern, well-equipped and high quality health care. One without the other is of little benefit to the community, and seeking to do both, with proper balance, is a judgment decision,

if important, such as compliance with the FTC order. Included is a listing of the majority of PPMH's covenants under the Lease, and with each we have offered for your consideration some suggestions as to how the Authority may wish to attempt to monitor compliance. Ultimately, however, the Authority is to use its own collective reasonable judgment in determining how it wishes to seek to monitor compliance.

II.

Background.

The Authority is created and governed by the "Hospital Authorities Law", found at O.C.G.A. §31-7-70 *et. seq.* (the "Act"). Pursuant to the Act, as currently amended, the Authority has a governing board which is appointed solely by the Dougherty County Commission. Although the specifics have changed through the years, pursuant to its most recent resolutions, the Dougherty County Commission now appoints nine (9) members of the Authority Board, currently including the President of Phoebe's Medical Staff. Additionally, at least one of the nine Authority Board Members is to be a currently sitting member of the Dougherty County Commission.

Prior to entering into the Lease in December, 1990, the Hospital Authority Board was in fact the governing body for the operations of Phoebe Putney Memorial Hospital. The Authority Board at that time made and implemented all short-term and long-term decisions regarding the management, operation, and planning for Phoebe Putney Memorial Hospital. In December, 1990, after having studied the concept for a period of years, the Authority acted to create and implement a non-profit hospital holding company structure, under which all of the Hospital assets (including buildings, equipment, accounts receivable, cash, and all operating assets) would be leased and transferred to a new non-profit corporation created by the Authority and known as Phoebe Putney Memorial Hospital, Inc. In turn PPMH as Lessee, has undertaken certain agreements and covenants set forth in the Lease. The goal of the restructuring, as described in the Lease, is to "promote the public health needs of the community, by making additional facilities available in the community and by lowering the costs of healthcare in the community," and further to "provide the Hospital with a new, flexible structure which will remove various restrictions and limitations imposed upon the Authority and will allow the Hospital to respond to existing competitive threats and to seize available opportunities both within and outside Dougherty County."

As originally contemplated in the Lease, Phoebe Putney Health Systems, Inc. ("Parent Company") was also created as another non-profit corporation, to serve as the "parent" (ie., the sole owner) of PPMH as well as other corporations. The Parent Company has the power to appoint PPMH's Board of Directors. It was also contemplated that the Parent Company may have additional ownership interests in other companies, and in fact, the Parent Company has subsequently acquired sole or joint ownership interest in several different profit or non-profit entities. Attached is a diagram we were provided, showing the structure and ownership as it currently exists. The Lease was amended most recently in 2012 and now reflects additional authorizations for the Parent Company to enter into Lease-type arrangements with other

hospital authorities in nearby jurisdictions, subject in all cases to the express approval of this Authority.

Since the inception of the Lease, PPMH has controlled and operated all of the assets of the Hospital. The decision-making power regarding day to day operations as well as long-term planning for the Hospital now rests with the Board of PPMH, and the Authority has no direct control with respect to these matters. The Parent Company Board is self-appointed in that its members serve and are elected (and possibly re-elected) by vote of the Parent Company Board itself. Accordingly, the Authority has no direct control over the make-up of the boards that now run the Hospital and related entities. Under the terms of the Lease, the Board of PPMH must at all times include at least one member of the Board of the Authority.

Significantly, the Authority acquired the assets/facilities of the hospital formerly known as Palmyra Medical Center in a purchase transaction in 2012. Those assets/facilities (which include the hospital itself and all its related facilities and operations) were subsequently leased by the Authority to PPMH pursuant to the most recently amended Lease. The assets/facilities of the former Palmyra Medical Center are referred to in the Lease as “Phoebe North” and are subject to the same terms as the original PPMH assets.

III.

Current Framework.

As alluded to above, the question regarding the current powers and responsibilities of the Authority involves an analysis of the Hospital Authorities Law, the Resolution establishing the Authority, the Lease, and rulings by the Georgia Courts (including a major Georgia Supreme Court ruling) providing interpretation of certain of the provisions of the Act in the context of similar lease and transfer arrangements. There is, however, no case or other such source rendering specific or detailed guidance as to how a hospital authority board which has entered into a lease of all of its assets is to function during the lease term.

A. Hospital Authorities Act and Resolution

The Act creates a “Hospital Authority” for each county and municipal corporation of the State of Georgia. However, the Act requires the local municipality or county to properly adopt a resolution or ordinance declaring the need for an authority to function before the authority is legally established and allowed to transact business. Our Authority was established by joint resolution (the “Resolution”) of the City of Albany and the Dougherty County Commission in 1941. The Resolution recites that those bodies deemed it “advisable and to the best interest of the community and beneficial to the welfare of the citizens of Albany and Dougherty County that a Hospital Authority be created for the City of Albany and Dougherty County, with a view to eliminating [an acute shortage of hospital facilities in the area] by providing improvements and additional buildings to be used for hospitals.”

Pursuant to the Act, each hospital authority is a public body, corporate and politic, the

nature and essence of which involves governmental functions for the benefit of citizens of the city and county it serves. The Act states that “every hospital authority shall be deemed to exercise public and essential governmental functions and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of [the Act]” O.C.G.A. Section 31-7-75. To demonstrate the governmental nature of each authority, we point out that each hospital authority receives sales tax exemptions, ad valorem tax exemptions and income tax exemptions. O.C.G.A. 31-7-72(e). Furthermore, a hospital authority may issue Revenue Anticipation Certificates (Bonds), interest upon which may qualify as exempt from federal and state income tax, and each hospital authority is granted the power of eminent domain, allowing it to take private land if necessary to advance its public purposes. Please note that none of the foregoing powers are transferred to PPMH by the Lease (e.g., only the Authority may condemn property).

Accordingly, each member of the Authority Board occupies a position of public trust and undertakes to be responsible to the public with respect to the functions and purposes of the Authority.²

B. Lease Agreement.

The Lease was entered into approximately five (5) years after the decision in the Richmond County case, discussed below, and, we understand, at a time when several (perhaps as many as ten (10)) other hospital authorities in Georgia had already reorganized by entering into similar transactions. As such there was quite ample precedent. Our Authority’s Lease structure appears to have been patterned after the structure described in the Richmond County case, and there should be no question that entering into of the Lease was a valid and lawful act by the Hospital Authority.

Section 31-7-75(7) of the Act specifically authorizes the leasing of assets, granting the Authority power :

“to lease for any number of years up to a maximum of 40 years for operation by others any project, provided that the authority shall have first determined that such lease will promote the public health needs of the community by making additional facilities available in the community or by lowering the cost of health care in the community and that the Authority shall have retained sufficient control over any project so leased so as to ensure that the lessee will not in any event obtain more than a reasonable rate of return on its investment in the

²“Hospital Authority members are, of course, public officers, and as such are further restrained by the provisions of the Georgia Constitution which provide: “Public Officers are the trustees and servants of the people and are at all times amenable to them.” *Richmond County Hospital Authority, et al v. Richmond County, et al*, 255 Ga. 183 at page 189 (1985).”

project, which reasonable rate of return³, if and when realized by such lessee, shall not contravene in any way the mandate set forth in Code Section 31-7-77⁴, specifying that no authority shall operate or construct any project for profit.”

These provisions specifically authorize the Authority to engage in leasing “projects” to other profit or nonprofit entities so long as the above statutory criteria are met. However, any such lease must be considered and construed within the statutory framework of the Act. Under the terms of the Lease, the Authority essentially turns over the entire operation of the Hospital (now including the “Phoebe North” Hospital, formerly Palmyra Hospital) to PPMH. All real property, facilities, equipment, and the like are leased by the Authority to the Hospital and all cash and accounts receivable are transferred to PPMH by the Authority. In return for this, PPMH enters into certain agreements and covenants. Included in these agreements and covenants, in Sections 5.05 and 9.07, are provisions requiring that all of the assets of PPMH, including its interest in its Affiliates (defined below) are to be returned to the Authority upon termination of the Lease or dissolution of PPMH, subject only to certain exceptions contained in Section 5.05(b), discussed below.

The “recitals” and “background” sections of the Lease help establish the underlying intent of the arrangement and as such are pertinent in determining how Lease provisions should be construed. The Lease recites in these sections that the Authority itself is creating the corporate structure that will be given control over its assets in order to “allow the Hospital to respond to existing competitive threats and to seize available opportunities within and outside Dougherty County” and “to provide additional long-term flexibility for further ventures and activities of the Hospital.” The Lease goes on to state that the Authority “retains such public control of the Hospital as is contemplated by the Hospital Authorities Law to ensure continued fulfillment of the Hospital’s public mission of providing quality health care at a reasonable cost to the residents of Dougherty County,” and that the Authority “has determined that this agreement will promote the public health needs of the community by making additional facilities available in the community and by lowering the cost of health care in the community.” These acknowledgments of the purposes behind the leasing arrangement are pertinent in the discussion and construction of the specific Lease terms in Section IV below.

Beyond the “recitals” and “background,” the Lease details specific duties,

³This provision of the Act, dealing with reasonable rate of return, is addressed by the Court in the Richmond County case and is discussed in more detail below.

⁴Section 31-7-77 specifically provides: “No Authority shall operate or construct any project for profit. It shall fix rates and charges consistent with this declaration of policy and such as will produce revenues only in amounts sufficient, together with all other funds of the Authority, to pay principal and interest on certificates and obligations of the Authority, to provide for maintenance and operations of the project, and to create and maintain a reserve sufficient to meet principal and interest payments due on any certificates in any one year after the issuance thereof. The Authority may provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services.”

responsibilities, and covenants of PPMH regarding the assets transferred and leased from the Authority. These duties and covenants constitute a contractual undertaking by PPMH in favor of the Authority and constitute the “strings” that the Authority expressly retains over the use of its assets. In certain cases, the Lease specifically provides for the means by which the Authority may monitor compliance. For example, the Lease expressly provides that PPMH must provide annual financial statements and other reports to the Authority (see Lease Section 4.02). In other cases, there may be no direct provision in the Lease expressly requiring PPMH to produce information to the Authority; yet, it is implicit that the Authority is entitled to information necessary to allow it to confirm compliance with the contractual covenants and duties.⁵

C. Richmond County Hospital Authority v. Richmond County⁶ .

The Georgia Supreme Court, in 1985, considered a challenge to the validity of a lease between the Richmond County Hospital Authority and its newly formed not-for-profit entity in a structure essentially identical to the structure employed in the Lease between the Authority and PPMH. This decision clearly constitutes the seminal hospital authority lease case in Georgia, approving the propriety and legality of the arrangement. Among other things the Court specifically approved the idea of leasing all of the Hospital’s facilities and conveying all of the Hospital’s operating assets to the private entity in exchange for the nominal rental rate of \$1.00 per year. The Court found that such an arrangement was consistent with Hospital Authorities Act and specifically approved several other aspects of the arrangement. Some of these specific aspects will be mentioned as they arise in context in the following sections of this memorandum.

IV.

The Authority’s Responsibilities, Powers, and Rights As To The Lease.

Because the Richmond County case is an affirmed opinion of the Georgia Supreme Court, we believe it is settled as a matter of State law that the arrangement between the Authority and PPMH is a valid contractual arrangement, not inconsistent with the Act. It is our view that the Authority’s purposes and obligations under the Act have not disappeared because the Lease exists; rather, the Authority’s role has changed, so that it now should properly

⁵Beyond the Lease and the Act, see also *Northwest Georgia Health System, Inc. v. Times-Journal, Inc.*, 218 Ga. App. 336 (1995); and *Clayton County Hospital Authority v. Webb*, 208 Ga. App. 91 (1993). Section 31-7-75.2 of the Act exempts private non-profit corporations as well as the authority itself from public disclosure of information dealing with a commercially valuable plan, proposal or strategy until such time as such plan, proposal or strategy has either been approved or rejected by the board of the corporation or authority.

⁶“*Richmond County Hospital Authority, et al v. Richmond County, et al*, 255 Ga. 183 at page 189 (1985).”

administer, monitor, and enforce⁷ the Lease in accordance with the Lease terms and in compliance with the Act. In this Section we will address many of PPMH's specific obligations and covenants under the Lease and the Act, generally providing comments or suggestions relative to the Authority's monitoring responsibilities. We have limited our discussions to those obligations under the Lease that we believe require affirmative monitoring by the Authority, and exclude obligations that don't reasonably contemplate such attention.⁸ References below to "Sections" refer to correspondingly numbered Sections of the Lease, as amended, and the requirements are generally listed below as they appear in the Lease, not necessarily in order of importance. The monitoring suggestions are just that, suggestions for your consideration, and ultimately you should monitor compliance with these various covenants as you determine in your collective judgment. Certainly as the Authority has done from time to time in the past, you can request of PPMH reports or programs on compliance with any lease requirement in addition to the below suggestions.

1. Lease Requirement. Section 3.05 requires PPMH to make all payments with respect to outstanding Hospital Bond Issues.

Monitoring. Because of the structure of the Bonds (ie., the Bonds are publicly held, trustee and most issues involve a remarketing agent), the Authority would hear quickly if Bonds were not paid when due. The Bond documents also include provisions whereby the Authority is to be notified of a default. The Authority receives annual financial reports of PPMH. Accordingly, unless the Authority obtains information indicating PPMH's ability to pay has been impaired, the Authority probably has in place sufficient monitoring mechanisms.

2. Lease Requirement. Section 3.06 requires PPMH to provide the Authority a perfected security interest in the leased personal property.

Monitoring. The Authority, probably through its counsel or some similar mechanism, should monitor and ensure that proper UCC Financing Statements are on record, perfecting its security interest in its transferred properties and that proper continuation statements have been filed to maintain the priority for such security interest. PPMH is required to notify the Authority regarding the timing of filings. As your counsel, we have confirmed that all UCC filings are currently up to date. Each renewed filing is valid for five (5) years.

3. Lease Requirement. Section 4.01 requires that all Existing Facilities be

⁷It is possible that in monitoring or otherwise, you become aware of a technical default under the Lease which you determine is not detrimental to the quality or cost of our healthcare. You could in such event choose to waive enforcement of such provision.

⁸e.g., Requirement that PPMH maintain its corporate existence (Section 8.01) or that the name of the Hospital will not be changed (Section 4.24).

maintained in a good state of repair, ordinary wear and tear excepted. Furthermore, PPMH is required to maintain and provide the equipment, machinery, furnishings, and supplies, commensurate with standards for fully accredited hospitals with comparable credentials.

Monitoring. The Lease does not provide for any express reasonable inspection right for the Authority with respect to the facilities leased to PPMH, although such right is implicit. The Authority may wish to monitor this requirement in a general way by its Members being in and around the facilities, or it may wish to engage an inspector. The Report has typically addressed this issue in the past by comparisons to peers, and is a possible source for monitoring the condition of the tangible leased asset.

4. Lease Requirement. Section 4.02(a) requires PPMH to operate the Hospital to meet a standard of care allowing for participation in recognized medical insurance programs. This is an obligation to maintain a certain standard of care and not an obligation to participate in any certain insurance program. The Board of Directors of PPMH, of its own prerogative, without violating the Lease, can choose to participate or not to participate in such insurance programs so long as the financial condition of PPMH is not materially and adversely affected.

Monitoring. Again this has typically been analyzed in the Report, utilizing peer review methodologies and data, and is a source of information and analysis on the issue. The Authority should be alert to any rejection or loss of participation based on failure to meet standards.

5. Lease Requirement. Section 4.02(b) specifically requires compliance with non-discrimination laws.

Monitoring. The Board could request PPMH to periodically report on its anti-discrimination policies and protocols and to report to the Authority all EEOC complaints/discrimination claims or lawsuits made or filed against it.

6. Lease Requirement. Section 4.02(d) states PPMH will not use the Existing Facilities as a place of religious worship or as a facility for a divinity school or program for any religious denomination. Note, this does not preclude the Hospital Chapel and its operations, which are expressly permitted.

Monitoring. Authority members being in and around the Hospital and community should be sufficient monitoring of this provision.

7. Lease Requirement. Section 4.02(e) prohibits PPMH from using the Existing Facilities in a manner that would result in either a loss of tax exemption for the interest on its Bonds or the Bonds being classified as “arbitrage” Bonds.

Monitoring. From a practical standpoint, probably no special monitoring will be required since the Authority would become aware if this situation arose. Because the Bonds are publically held, there would be disclosure and publicity, plus the Bond documents require that the Authority be notified if this occurred.

8. Lease Requirement. Section 4.02(f) requires that PPMH will not be in material violation of any laws or governmental regulations, nor will it fail to obtain necessary licenses.

Monitoring. The Authority could ask PPMH to notify the Authority if such situation exists. The licensure requirements, and in a limited fashion the material violation of laws requirements, are included as covenants in the Bond documents, so for the same reasons mentioned above, that will assist in the monitoring.

9. Lease Requirement. Section 4.02(g) states no person in need of emergency medical treatment will be denied admission because of inability to pay, provided the Hospital provides medical treatment of the nature required.

Monitoring. You could explore operation of the Emergency Room. Also, if the Emergency Room physicians are independent of PPMH, their contract could be reviewed to be certain this requirement is covered.

10. Lease Requirement. Section 4.02(h) requires PPMH to provide indigent care in accordance with all requirements of law and in accordance with the indigent care practices of the Hospital present at the time of the Lease was entered into, and at not less than the level when the Lease became effective. However, Section 4.18, also requires cooperation between the Authority and PPMH to provide indigent care pursuant to Section 4.02(h), plus PPMH itself agrees that no less than 3% of the gross revenues of the Hospital after adjustments for bad debt and Medicare and Medicaid adjustments have been deducted, is to be spent on indigent care.

Monitoring. The Report has analyzed this in the past and can be reviewed. PPMH files regular reports with the State showing indigent care provided, and these public reports could be consulted to confirm compliance. In the past the level of indigent care has well exceeded the Lease requirement.

11. Lease Requirement. Sections 4.02 (i), (j), (k), (l), and (m) require PPMH to provide certain reports to the Authority, which reports taken together, offer the Authority the most accessible means of monitoring one of the more important and difficult-to-pin-down requirements under that law and the lease. Section 4.03(b) is a more general statement of the concept: *PPMH must operate the Existing Facilities in a manner which will not contravene the Act and PPMH is to fix the rates and charges in accord with the intent and policies of the Act.* The discussion of this

requirement and the required reports that relate to it is undertaken more completely in Section IV below.

Monitoring. The Report as well as prior Board sessions have also addressed this question. See discussion in Section IV below.

12. Lease Requirement. Sections 4.04 and 4.05 require that PPMH make any and all payments necessary to keep the Hospital running and its assets unencumbered by non-consensual liens.

Monitoring. The Authority could consider occasionally having the general execution docket checked to ensure no liens are of record. Additionally, the Authority should attempt to stay informed regarding any payment default by Hospital. Violation of these Sections could also be a default under current Bond documents, for which the Authority is to be notified.

13. Lease Requirement. In Section 4.08, PPMH agrees that it shall not perform any act or enter into any agreement which shall adversely affect its §501(c)(3) tax-exempt status.

Monitoring. The Internal Revenue Service monitors retention or revocation of the status through required IRS filings, and possibly through audit, plus the Internal Revenue Service maintains a list of exempt organizations. The Report focused on the requirement to maintain tax-exempt status, especially confirming that PPMH was fulfilling the community benefit aspects of the exemption, and it was a favorable conclusion. The Bond documents require continuation of the tax exempt status and, accordingly, the Authority would be notified if PPMH lost its tax exempt status. PPMH annual financial statements include a report on community benefits as well.

14. Lease Requirement. Section 4.10 requires PPMH to maintain a State of Georgia License to operate the Hospital and to have "Joint Commission" (or equivalent) accreditation throughout the Lease, unless the Authority waives that requirement.

Monitoring. The Authority could request proof of accreditation and licensing at least annually. The above is also required under at least some of the Bond documents, providing another avenue by which the Authority would be advised of a default. PPMH currently utilizes DNV rather than the Joint Commission as its accrediting organization.

15. Lease Requirement. Section 4.20 is an affirmative and express reporting requirement, requiring that PPMH (i) maintain proper books and records under generally accepted accounting principles and (ii) deliver each year to the Authority (and also to the County Commission of Dougherty County) within 90

days after the end of the fiscal year, the financial report (containing balance sheet and income statement), statement of changes in financial position, and a statement of revenues and expenses. This report must be audited by independent accountants and is to be delivered within 90 days of the end of the fiscal year.

Monitoring. The Authority should always examine the annual certified financial information, as it should be helpful in determining compliance with many provisions of the Lease.

16. Lease Requirement. Sections 5.02, 5.03, 5.04, and 5.05 provide parameters for how and when PPMH may transfer or retransfer certain assets to others. Section 5.02 generally prohibits the transfer of "Existing Facilities" (defined generally as buildings, land, equipment leased to PPMH, but excluding cash, accounts, investments, etc.) without the prior written consent of the Authority, subject to certain exceptions. Section 5.03 contains certain exceptions and allows any "Property" (defined to include any type of real or personal property) to be transferred (a) for fair market value in the ordinary course business, (b) if the asset is obsolete or unusable, or (c) for fair market value not in the ordinary course of business, so long as the book value of the assets transferred in a 12-month calendar period do not exceed 5% of the book value of total property "Property, Plant, and Equipment" (as defined for accounting purposes) of PPMH. PPMH must file a report with the Authority following the fiscal year in which a transfer covered by 5.03(c) occurs, describing the transferred property and the value computations with respect thereto. Section 5.04 prohibits a transfer of Property that doesn't fall within the exceptions of 5.03, 5.05 (discussed below) or 8.02 (dealing with certain sub-leases) unless (i) written consent is given by the Authority, or (ii) the book value of the Property transferred (cumulatively in a 12 month period) does not exceed 5% of the book value of "Property, Plant, and Equipment" of PPMH. Section 5.05 provides that regardless of the other restrictions contained in the Lease, PPMH may make any disposition of property (including gifts, grants, and contributions) to an Affiliate so long as the organizational documents of the Affiliate provide that the assets so transferred return to either PPMH or to the Authority upon dissolution of the Affiliate or termination of Lease. Section 5.05 further provides that if PPMH, Parent Company or an Affiliate make any investments in "any joint venture, partnership, or corporation" (presumably this is a transfer to a non-Affiliate), there must be "an appropriate mechanism to liquidate, sell, or redeem such investment" upon the termination of the Lease Agreement or upon "the dissolution of Parent Company or any such Affiliate."

In determining what is a permitted transfer, the definition of "Affiliate" contained in the Lease is important. Under that definition, the Parent Company qualifies as an "Affiliate" of PPMH, a subsidiary of PPMH qualifies as an Affiliate, and a subsidiary of Parent Company qualifies as a "Affiliate". Restrictions which apply to transfers by PPMH also apply to transfers by Parent

Company. All such transfers by PPMH or Parent Company or another Affiliate are conditioned on the presence of the liquidation and/or reversion provisions required by Section 5.05.

Monitoring. PPMH, under Section 5.03, must within 120 days of the fiscal year end report to the Authority any dispositions of Property not in the ordinary course of business that purports to meet the exception of 5.03(c) (*i.e.*, for fair market value and not greater than the 5% in a given year). The Authority should always monitor such report and be sure to ascertain that it is forthcoming following the end of each fiscal year.

Regarding transfers falling under the exception of 5.05, the Authority should ensure that the preconditions to such transfers have been met. Specifically, with respect to any transfer that is to an “Affiliate”, the Authority should request and review the organizational documents to ensure that such documents contain provisions that the transferred assets be returned to PPMH or to the Authority as required by the first sentence of Section 5.05. With respect to transfers by PPMH, Parent Company, or any Affiliate in the nature of a contribution to a wholly owned or partially owned entity that is not an “Affiliate”, the Authority should request documentation to verify that such investment contribution is contractually required to be liquidated or redeemed upon termination of the Lease or upon dissolution of the contributing Affiliate as required by Section 5.05. This goes to the very heart of the Authority’s entitlement to receive all of the assets at the end of the Lease or upon dissolution of PPMH or the Parent Company, and accordingly, we believe it is important that these documents be reviewed from time to time to confirm to that required provisions are in place.

17. In almost any circumstance, the provisions of Article V as described above require that any transferred assets must be subject to provisions that require those assets to ultimately come back to this Authority at the termination of this Lease, and the provisions of Article V are designed to ensure that. However, there is an important exception to the transfer requirements described above that is contained in Section 5.05 (b) of the Lease. Under the very specific circumstances of Section 5.05 (b), and after strict compliance with a review procedure and approval of this Authority, certain assets may be transferred to an Affiliate that will NOT ultimately return to this Authority upon termination of this Lease

Under Section 5.05(b), if an Affiliate of Parent Company plans to enter into a lease or other agreement with *another hospital authority* properly formed under the laws of the State of Georgia, then PPMH or Parent Affiliate may transfer any of the Property it controls (other than Real Estate in Dougherty or Worth County) to the Affiliate without the need that it ultimately come back to our Authority. In such event, the transferred Property must instead return to the other hospital authority upon the expiration of the lease or other agreement between that

Affiliate and such other authority.

For such a transaction to be undertaken, notice must first be given to the Authority of the Affiliate's intentions to enter into such a lease/agreement including a copy of the proposed lease/agreement, the organization of such Affiliate must provide that its assets return to such other hospital authority, and this Authority Board must approve the proposed transaction in a resolution *setting forth the basis and reasons for such approval*. This last sentence is emphasized because the Authority must at all times keep in mind that its principal mission is to ensure quality cost effective health care for the citizens of Dougherty County. Accordingly, the Authority would need to make the determination that the proposed transaction in another county would have sufficient collateral benefits to the citizens of Dougherty County to justify its undertaking.

Previously, the Authority has approved two transactions of this nature. One for an arrangement with Americus & Sumter County Authority in connection with the new hospital there, and one for Hospital Authority of Ben Hill County in a proposed transaction that was ultimately not consummated.

18. Lease Requirement. Sections 6.01 and 6.02 require that PPMH at all times maintain proper insurance coverage for the various assets leased, general and professional liability insurance, workers' compensation and other insurance necessary for the operation of a hospital. The policies must be issued by companies with an "A" rating from Best's, must generally be considered a standard policy, must not be cancellable without 30-days prior written notice to PPMH and the Authority, must name PPMH and the Authority as insureds as respects their interests, and must be in such an amount with such deductibles as comparable coverage carried by institutions similar to PPMH

Monitoring. The Authority should maintain proof of the insurance being provided and that it is an additional insured, together with the certifications of the Insurance Consultant or actuary.

V.

Authority's Responsibilities, Powers, and Rights under Section 4.03(b) of the Lease

Section 4.03(b) states: "[PPMH] shall operate the Existing Facilities in a manner which will not contravene the intent of the Act, and [PPMH] will fix rates and charges for services by the Hospital and the Existing Facilities in accordance with the intent of and the policy established by the Act. To the extent permitted by law, [the Authority] delegates to [PPMH] the authority to establish rates and charges for services provided at or by the Hospital and

Existing Facilities; provided however, such rates and charges must be established by [PPMH] in good faith in a manner which complies with the provisions, policies, and intent of the Act, including but not limited to O.C.G.A. Sections 31-7-75(7) and 31-7-77, or otherwise shall constitute an event of default under Section 9.01(b) of this Agreement.” This Lease provision expressly requires that PPMH must operate the Hospital and fix its rates and charges consistent not only with the Act but with the intent and the policy established by the Act. Accordingly, PPMH’s pricing and rates should not violate the restrictions set forth in Act Sections 31-7-75(7) and 31-7-77, each of which are discussed below.

1. Profit Prohibition Under Section 31-7-77. Section 31-7-77 of the Act is mentioned by reference in Section 31-7-75(7), and so we discuss it first even though it appears later in the Act. Section 31-7-77 states: “No authority shall operate or construct any project for profit. It shall fix rates and charges consistent with this declaration of policy and such as will produce revenues only in amounts sufficient, together with all other funds of the authority, to pay principal and interest on certificates and obligations of the authority, to provide for maintenance and operation of the project, and to create and maintain a reserve sufficient to meet principal and interest payments due on any certificates in any one year after the issuance thereof. The authority may provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services.”

The Lease expressly requires PPMH to comply with the mandate of Section 31-7-77. The prohibition against profit in this statute does not mean that the revenues generated by PPMH cannot exceed its disbursements, otherwise there could never be growth or improvement at our Hospital, and that is not what is intended. The statute does, however, prohibit pricing which causes resources to exceed the amounts sufficient, when considered together with all other available funds, to maintain and operate the facilities, to provide for debt service currently and for a year and to provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services. The Georgia Supreme Court did not directly address this requirement in the Richmond County case as it was not really an issue before the Court. However, in reciting some of the obligations that the nonprofit hospital company had under its lease, the Court noted that the company was required to “set rates using the same nonprofit criteria applicable to Hospital Authorities (thus not an improper delegation of the Authority’s right to affix rates and charges).” This dicta⁹ suggests that the Court would have found delegating the right to set rates improper if it were not supported by this standard. The Lease with PPMH, consistent with this apparent pronouncement in the Richmond County case, provides that PPMH is to set rates and to make returns consistent with the intent of and policy established by the Act, and specifically in accordance with 31-7-77.

Monitoring. There are several reporting requirements under the Lease that can be sources of information to allow the Authority Board to determine whether this requirement is

⁹When any Court advances an opinion that is not necessary to adjudicate the issue that is before it, such an opinion is commonly referred to as *dicta*. While *dicta* is indicative of a Court’s thinking on an issue, it does not fully rise to the level of controlling legal precedent.

being met: Section 4.02 (i) requires PPMH to provide an annual report addressing PPMH's performance on "making additional facilities and care available in the community and/or lowering the cost of health care in the community." The annual Community Benefit Report required by Section 4.02(j) and the Act is a potential source. Section 4.02 (k) requires PPMH provide a community needs assessment (under federal law) every three years and to provide, annually, a report of any plan for the unmet health needs of the community. Section 4.02 (m) requires PPMH to provide full audited financial statements within 90 days following the end of each Fiscal Year, and to provide a budget for the current fiscal year. In the event the Authority is not satisfied with the mandatory information requirements, then under that Section, the Authority may request, and PPMH must provide, such current operating and financial information as is "necessary to demonstrate compliance with this Agreement and the Act." Importantly, PPMH is required to at all times have prepared and available a written summary of hospital and related service charges, which must be presented annually with the financial statements (or any other time upon request from the Authority) and which must at all times be in compliance with 31-7-77.

Obviously, these reporting tools will need to be considered together in discharging your duty to monitor compliance. It is noteworthy in this context the overlap between the specific obligations under 3-7-77 and the over-arching mission of the Authority to "provide quality health care at a reasonable cost." As mentioned previously, there is inherent tension between "best quality" and "lowest cost" and finding that balance is a judgement call. The requirements of 31-7-77 are there to ensure that pricing is always limited by what is necessary to maintain and improve. The Authority has an important role in overseeing that balance.

2. Rate of Return and Profit Under Section 31-7-75(7). Section 31-7-75(7) of the Act requires that in any lease between a hospital authority and a private entity, the authority "shall have retained sufficient control over any project so leased so as to ensure that the Lessee will not in any event obtain a more than reasonable return on its investment in the project, which reasonable rate of return, if and when realized by such Lessee, shall not contravene in any way the mandate set forth in Code Section 31-7-77 specifying that no authority shall operate or construct any project for profit." By plain reading of this language, one could conclude that in a leasing arrangement such as ours, the Authority would have to retain control over pricing to the extent necessary to ensure that the Lessee does not generate an excessive return on the leased assets. In the Richmond County case, however, the Georgia Supreme Court took the opportunity to address this requirement of the Act. In that case, the County had apparently contended that the above-quoted provision of the Act required the Lessee to "make an investment." Apparently the County was arguing that the \$1.00 per month lease rate was not a sufficient investment to allow the newly created company to be entitled to operate and retain the earnings from the leased project. The Supreme Court determined, however, that while the statutory language limited an investment's return rate, it did not require any investment at all. This determination alone may have been sufficient to counter the County's argument; however, the Court went further and took the opportunity to explain and expound upon its interpretation of the concept of "rate of return" as applied to a nonprofit corporation. The Court opined that because the lessee was a "not-for-profit" corporation, and legally prohibited from providing a

profit to its owners, it is “untouched by the concept of a reasonable rate of return on investment” Under the Court’s analysis, so long as an Authority is leasing to a nonprofit entity, that nonprofit entity can internally generate a high rate of return on the assets invested because the benefit of such return does not and cannot generate profit for its owners or members, since such owners or members are prohibited from receiving any fruits of the company’s earnings. Taken at its face value, the end result of this reasoning in the Richmond County case is that PPMH is not subject to a reasonable return requirement; and, consequently, there is not, we believe, a responsibility for the Authority to monitor PPMH’s rate of return under the Lease. Admittedly, the Court’s reasoning concluding that non-profits are not concerned with rate of return is *dicta*, and the Court statements on this point could be argued, however, we believe it is more authoritative than *dicta* would normally be, because it appears the Court was clearly going out of its way to answer this particular question for other interested parties.

The Supreme Court, in Richmond County, did not address whether a for-profit company that is a subsidiary of a not-for-profit company is subject to the reasonable rate of return limitation, and the answer is not clear. Valid arguments can be made on both sides of that issue.

Monitoring. Given the Court’s *dicta* relative to the rate of return issue and these unanswered legal questions, we are not prepared to advise the Authority’s Board that it has a responsibility to seek to monitor the rate of return of the for-profit subsidiaries of Parent Company, nor can we advise that it has no right to do so. However, as indicated above, we believe the Authority has the right to monitor compliance under Section 31-7-77, and for the most part that would provide similar financial information and will provide insight into rate of return. In the context of a non-profit structure such as we have, we believe compliance with the requirements of Section 31-7-77 is more significant than rate of return concerns under Section 31-7-75(7).

VI.

Applicability of Covenants to Parent Company and its Subsidiaries.

The Authority obtaining financial information from Parent Company or its subsidiaries may not be an issue at all, either because you do not need or desire it, or because such information is made available to the Authority upon request. By addressing this issue herein, we do not in any way intend to infer that you will find it necessary to request it, nor that it would not be readily forthcoming if requested. However, since the Lease itself rarely refers directly to these entities, except as to the transfer of assets, and because you may determine you need such information, we have included the following brief comments on the subject.

The Lease itself contemplates and in fact requires PPMH to create the Parent Company and further expressly contemplates that Parent Company would create various profit and nonprofit subsidiaries. Thus, it is a part of the contract between the Authority and PPMH that the Parent Company be formed, and it is contemplated that subsidiaries may also be formed. The initial Articles and Bylaws of both PPMH and the Parent Company are attached to the Lease and the parties expressly agree in the Lease to be guided by the provisions thereof.

However, where there are affirmative covenants and obligations in the Lease, those obligations are stated in terms of “Transferee shall ... or Transferee shall not ...”. The capitalized term “Transferee” is defined in the Lease as PPMH and, consequently, on its face the Lease constrains only Transferee.

Although such a position is not unassailable, it is our view that if the Authority reasonably determines that it needs information from Parent Company or one or more of its subsidiaries, in order to monitor the requirements under the Lease, it is an implicit right that it should be entitled to receive the same. If the Authority needs to review legal documentation to ensure that the reversionary or liquidation language required under Article V, it should be entitled to obtain copies of the documents; and, if in monitoring whether Hospital pricing is such that it is generating more revenue than that permitted under O.C.G.A. §31-7-77,¹⁰ the Authority should be able to obtain necessary information from the related entities as well as PPMH.

VII.

Conclusion.

The foregoing analysis unavoidably involves detail that can sometimes obscure the big picture, and as an Authority Board Member we encourage you to maintain the broader vision of your role. You are not called upon to become an alternative Hospital Board, overseeing the running and the operations of Phoebe Putney Memorial Hospital. You should, however, provide oversight by involving and educating yourself as to the issues set forth above and you should feel free to request presentations and information from PPMH on any such issue.

We would like to conclude by emphasizing and stating clearly that this firm’s views and conclusions regarding the need and requirement for Authority monitoring and oversight is in no way intended to suggest that there is or ever has been any improper activity whatsoever within the Hospital structure. To the contrary, this firm has no reason to question the integrity of any of the boards of PPMH or related entities, or the officials that execute the will of those boards, and we do not wish or intend to unnecessarily create any tension between the Authority and PPMH and its related entities. We have simply attempted to provide a sterile and objective analysis of the Authority’s role under the current structure. The Authority’s duties and responsibilities are important, not because improper activity is occurring, but because public trust is facilitated by the Authority. The Authority Board forms the major publicly-accountable nexus between the operations under our current structure and the citizenry that structure was created to better serve. Your role and the Authority’s role is an indispensable part of this structure.

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¹⁰See Page 14 above for discussion of requirements under Section 31-7-77.

HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY
POLICY ON THE CONDUCT OF AUTHORITY MEETINGS

An agenda together with accompanying information shall be sent to the Chairman and each member of the Authority seven (7) days preceding the Authority meeting. This agenda, upon approval at the beginning of each meeting, shall govern the order of business for the meeting. Additions, deletions, or amendments to the approved agenda shall be made by a majority vote of the Authority.

Individuals who wish to appear before the Authority may submit a written request to the Board Coordinator together with a statement of the topic to be addressed fourteen (14) days prior to the meeting. All those individuals who have timely submitted a written request to appear before the Board prior to the meeting shall be allowed to address the Authority for ten (10) minutes.

Immediately prior to each meeting, individuals who wish to address a specific agenda item shall complete a **speaker appearance form**, a copy of which is attached hereto as "Exhibit A." The speaker appearance form will be provided by the Board Coordinator or the Board Coordinator's designee who shall be available to answer any questions regarding procedures for addressing the Authority. Speakers who wish to address a specific agenda item shall be given three (3) minutes to make their remarks. No speakers will be allowed who did not complete a speaker appearance form before the meeting commenced.

There shall be no further comment by members of the public during the course of the meeting unless recognized by the Chairman after a majority vote of the Authority.

Following the approval of the minutes of the previous meeting, there shall be an agenda item entitled "speaker appearances." This agenda item shall contain a list of those individuals who have requested at least five days in advance of the meeting that their names be placed on the agenda. Following presentations by those on the agenda, the Chairman shall recognize those who wish to speak on a specific agenda item and have completed a speaker appearance form.

The Authority may refuse to public comment on those matters that are exemptions from the Georgia Open Meetings Act or any other statute permitting non-disclosure. These matters would include, but are not limited to, real estate acquisitions, consultation with legal counsel regarding matters of litigation, the deliberation of personnel matters, a potentially commercially valuable plan, proposal or strategy that may be of competitive advantage in the operation of the Authority or its medical facilities which has not been made public or the actions of any peer review group which evaluates the quality and efficiency of health care providers.

Notwithstanding any provision contained in this policy, meetings of the Hospital Authority of Albany-Dougherty County are not open forums and speech shall be limited to those matters pertaining to the operation and function of the Hospital Authority of Albany-Dougherty County. Nothing in this policy shall provide any individual any right to make a presentation to the Authority that is irrelevant or unrelated to the Hospital Authority of Albany-Dougherty County and its mission.

Prior to any statement or presentation to the Authority, each speaker shall state his/her name and shall provide his/her address. Each speaker shall comply with the following restrictions:

1. No person shall be allowed to make obscene, derogatory, or slanderous remarks that disrupt the orderly conduct of the meeting.
2. No person shall disrupt the meeting or interfere in any way with the orderly conduct of the meeting.
3. Remarks shall end when a speaker's allotted time has expired.
4. Speakers may respond to questions from the Chairman and Authority member, should clarification be necessary. Provided, however, no person shall be permitted to enter into discussion with the Chairman or Authority member or any member of the Hospital staff during the conduct of a meeting.
5. No question or comment shall be directed to the Chairman or individual Authority members but shall be directed to the entire Authority.

Any person who willfully violates these rules shall be prohibited from appearing before the Authority for a period of six months. The Chairman shall order the removal of anyone who disrupts or interferes with the orderly conduct of the meeting.

Should the Chairman fail to carry out the directives of this policy, the Authority by a majority vote shall carry out the directive contained herein.

Availability of Agenda

Prior to any meeting of the Authority, the Administrator shall make available an agenda of all matters expected to come before the Authority at such meeting. The agenda shall be available upon request and shall be posted at the meeting site as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted at a minimum at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of the meeting shall not preclude consideration of and action upon such item. New items shall be added or existing items deleted by a majority vote of the Authority.

**HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY
SPEAKER APPEARANCE FORM**

NAME: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

PHONE: _____ **E-MAIL:** _____

AGENDA ITEM TO BE ADDRESSED: _____

Any individual wishing to address the Hospital Authority of Albany-Dougherty County must complete the information requested above. Speakers will be allotted three (3) minutes in which to complete their presentation abiding by the following rules:

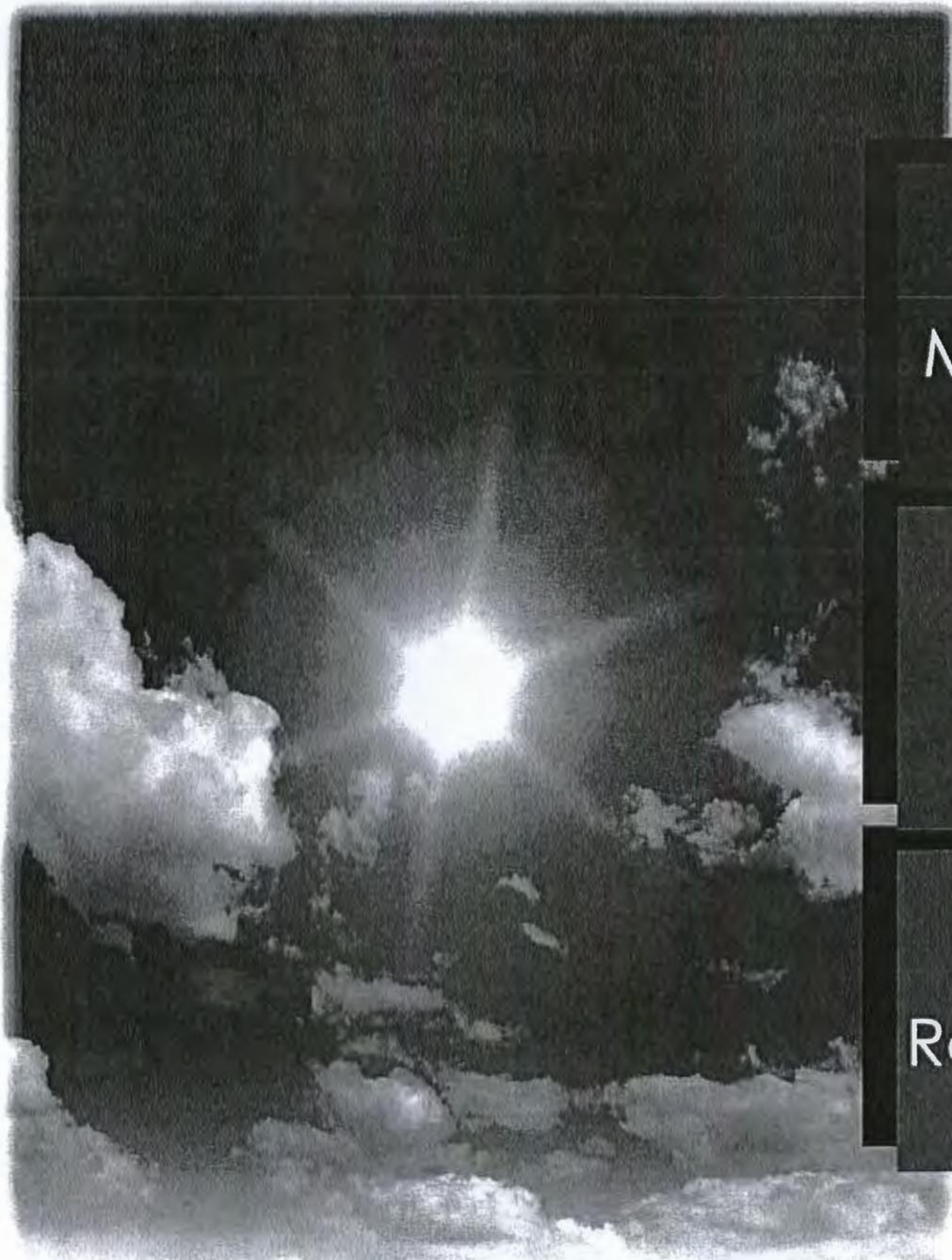
- No person shall be allowed to make obscene, derogatory, or slanderous remarks that disrupt the orderly conduct of the meeting.
- No person shall disrupt or interfere in any way with the orderly conduct of the meeting.
- Remarks shall end when a speaker's allotted time has expired.
- Speakers may respond to questions from the Chairman and Authority members, should clarification be necessary; provided, however, no person shall be permitted to enter into discussion with the Chairman, an Authority member, or any member of the hospital or health system staff during the conduct of a meeting.
- No question or comment shall be directed to the Chairman or individual Authority members but shall be directed to the entire Authority Board.

Any person willfully violating these rules may be prohibited from appearing before the Authority for a period of six months. The Chairman shall order the removal of anyone who disrupts or interferes with the orderly conduct of the meeting.

Date

Speaker Signature

Received by: _____
Hospital Authority of Albany-Dougherty County Representative



Open
Meetings

Open
Records

Records
Retention

Government in the Sunshine

A Guide to Georgia's Open Meetings and Open Records Laws for Municipal Officials

August 2014
Eleventh Edition



A Georgia Municipal Association Publication

Government in the Sunshine

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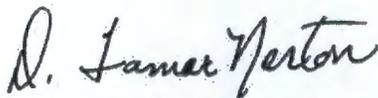
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FOREWORD

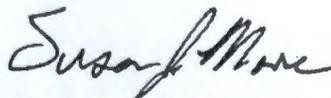
GMA is pleased to provide for municipal officials a review of the key features of the Georgia open meetings and open records laws. These laws were significantly revised in the 2012 session of the Georgia General Assembly. Many of the revisions made in HB 397 attempt to address “gray areas” under the previous laws or have incorporated or overturned court rulings interpreting the laws. Due to these changes in the laws, GMA has changed the design and content of this publication. Those who are familiar with previous editions of GMA’s “Government in the Sunshine” publication will notice that this edition has a completely different format and includes some new features such as frequently asked questions and additional information on records management. The intent is to make this edition more readable and accessible.

We express our thanks to Rusi Patel, GMA Associate General Counsel, for his work on this handbook and to Lois Kono for her invaluable assistance in formatting. We also thank the cities of Duluth, Griffin and Roswell for allowing us to include adapted versions of their ordinances, forms, policies and other materials.

The materials in this publication reflect the law in place as of August 2014 but this publication cannot and should not be used to substitute for timely advice from the city attorney. Municipal officials should rely on their city attorney to apply the law and judicial interpretations to the specific fact situations they face. We present this publication in the hopes that a working knowledge of the open meetings and open records statutes will allow city officials to recognize potential problem situations when they arise and to seek legal counsel to insure compliance with the law.



D. Lamar Norton
GMA Executive Director



Susan J. Moore
GMA General Counsel

Table of Contents

FOREWORD	i
Introduction	1
Part I - Open Meetings	3
Overview of the Open Meetings Act	3
Who Must Comply with the Open Meetings Act?	3
What is and is not a “Meeting”?	3
Notice of Meetings.	5
Agenda, Summary and Minutes	6
When Can a Meeting be Closed?	8
How a Meeting is Closed?	11
Enforcement and Penalties	12
Selective Summary of Exceptions	15
What is NOT a Meeting	15
Which Meetings May be Closed	15
Open Meetings - FAQs	17
The Georgia Open Meetings Act	21
Sample Procedure and Forms for an Executive Session.	33
Part II - Open Records	39
Overview of the Open Records Act	39
Who Must Comply with the Open Records Law?	39
Public Records Subject to Disclosure	40
Response to an Open Records Request.	41
Penalties and Fines for Failure to Comply with the Open Records Law.	45
Records That Must be Kept Confidential.	46
Records That Are Temporarily Exempt from Disclosure	48
Records That May Be Withheld	49
List of Common Exceptions to Disclosure	53
Information the City is Prohibited from Disclosing	53
Information that the City May Refuse to Disclose	53

Open Records - FAQs55
Summary of Some Exceptions Outside the Open Records Act.59
The Georgia Open Records Act61
Sample Request for Records88
Record Retrieval Fees89
Sample News Media Request Form90
Sample Response to Open Records Requests91
Sample Open Records Policy92
Model Ordinance to Designate a Records Custodian	100
Part III - Records Management	109
Overview of the Georgia Records Act	109
Record Management	110
Portions of the State Records Management Act.	113

GOVERNMENT IN THE SUNSHINE

Introduction

“All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people and are at all times amenable to them.¹ ...The people of this state have the inherent right of regulating their internal government. Government is instituted for the protection, security, and benefit of the people; and at all times they have the right to alter or reform the same whenever the public good may require it.”² These words in the Georgia Constitution are the starting point for any consideration of Georgia’s laws on open meetings and open records. They are a reminder that government is created by and for the people to promote the common good and that public officials and employees are the servants, not the masters. These public servants are expected to execute their duties in an honest and trustworthy manner that can be reviewed, judged and critiqued by the people. The only way the people can regulate their government is if they know what it is doing. Thus, openness in government must be the rule and not the exception. Openness in government is also a key to building public trust.

This publication is divided into three parts. The first part addresses the Georgia Open Meetings Act, the second part addresses the Georgia Open Records Act and the third part addresses records retention and basic records management. The first two parts of the publication are set up the same way. First there is a narrative on the requirements and exemptions in the law focusing on those areas most relevant to local government operations. Second, there are summaries or checklists for easy reference. Third, there are frequently asked questions, followed by the text of the entire statute and then by sample forms and policies. All of these are intended to assist city officials and employees in complying with the Open Meetings Act and the Open Records Act but they cannot take the place of consultation with the city attorney. The city’s attorney is in the best position to apply the law to the facts of a particular situation and be able to provide accurate, timely advice.

¹ Ga. Const. Art. I, Sec. II, Par. I.

² Ga. Const. Art. I, Sec. II, Par. II.

Part I - Open Meetings

Overview of the Open Meetings Act

Who Must Comply with the Open Meetings Act?

Georgia's open meetings law applies to meetings of the governing authority of every "agency" as that word is defined in the statute. The definition includes every county, municipal corporation, school district, or other political subdivision of the state and every municipal, county, regional or other authority.¹ Thus meetings of the city council and meetings of the city's downtown development authority are covered meetings. The term "agency" also applies to the governing body of every city department, agency, board, bureau, office, commission, authority, or similar body. This definition is somewhat redundant in that the governing body of most city departments will be the city council itself or some subset of its members. However, this definition does make clear that meetings of the planning and zoning board, the zoning board of appeals, the personnel review board, the merit system board, the water and sewer authority, the development authority, the housing authority, the recreation authority, and similar bodies must also follow the requirements of the open meetings law. Finally, the definition of "agency" includes every state department, agency, board, bureau, office, commission, public corporation, and authority. The definition of "agency", and thus coverage by the Open Meetings Act, does not apply to the General Assembly.

What is and is not a "Meeting"?

The first requirement for a "meeting" is the gathering of a quorum of the members of the governing body of an agency, any committee of the members of the governing body of an agency, or any committee created by such governing body.² The second requirement is that the gathering must be one at which any official business, policy, or public matter of the agency or committee is formulated, presented, discussed or voted upon. Both of these requirements must be met to come within the statute's definition of "meeting."

A "quorum" may be defined in a city's charter but, if it is not, the accepted definition of a "quorum" is fifty percent plus one. Thus, a city council comprised of five members

¹O.C.G.A. §50-14-1(a)(1).

²O.C.G.A. §50-14-1(a)(3).

Government in the Sunshine

would usually have a quorum of three. Whether the mayor is or is not counted for purposes of determining a quorum again depends on the language of the charter.

The definition of “meeting” does not include certain gatherings of a quorum of a governing body or committee so long as the primary purpose of the gathering is not to evade or avoid the requirements of the Open Meetings Act and so long as no official action is taken by the members during that gathering.³ For example, it is not considered a “meeting” when a quorum of a governing body or committee gathers to inspect physical facilities or property under the jurisdiction of the agency or gathers to meet with officials of the legislative or executive branches of the state or federal government at state or federal offices. Similarly, it is not considered a “meeting” when a quorum of a governing body or committee of an agency gathers to attend state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency. It also is not considered a “meeting” when a quorum of the members of a governing body of an agency gets together for the purpose of traveling to a meeting or gathering as otherwise authorized by the law. Again, no official business, policy, or public matter can be formulated, presented, discussed, or voted upon by the quorum while attending the training or traveling.

The law also recognizes that city officials are often present at the same social, ceremonial, civic or religious events but are there to participate in that event and not to conduct official business. Thus, the law states that when a quorum of the body or committee are at such an event it is not a “meeting” so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum. Even though these types of gatherings are not considered “meetings” and thus are not subject to the requirements for notice, agenda and minutes, city officials should always be mindful of the public’s perception that official decisions are being made informally in these types of settings.

Additionally, city officials should be aware that exclusion from the definition of “meeting” of the exemptions noted above will not apply “...if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.”⁴ Thus, city officials utilizing most of the exemptions noted above from the definition of “meeting”

³O.C.G.A. §50-14-1(a)(3)(B).

⁴O.C.G.A. §50-14-1(a)(3)(B).

Open Meetings

need to scrupulously avoid discussing any policy, public matter or official business of or related to the city. Note that the exception for meeting with state or federal legislative or executive branch officials at a state or federal office only prohibits taking official action by the members. It makes sense that discussion or formulation of official business, policy or a public matter would be allowed in such circumstances but a vote would not. However, when a quorum is traveling to such a meeting, attending a funeral, or participating in training on city functions, such officials are advised to limit discussion with one another to matters that do not implicate city business.

There are also gatherings which are not subject to the Open Meetings Act. The Open Meetings Act does not apply to gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party.⁵ Any decision or resolution agreed to by an agency through such mediation shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement or similar document formally resolving a claim or dispute is subject to the Open Records Act. Also not subject to the Open Meetings Act are incidental conversations unrelated to the business of an agency.⁶ An example of this would be something like "How about them Braves?" Finally, the law states that e-mail communications among members of an agency are not subject to the Open Meetings Act.⁷ Note, however, that such communications are subject to disclosure pursuant to the Open Records Act. The intent of this provision is to recognize and treat e-mail communications like hard copy memoranda shared with members of an agency. City officials are cautioned not to use technology in an attempt to avoid the requirements of the Open Meetings Act.

Notice of Meetings

The city must provide the public with advance notice of meetings. Notice of the time, place, and dates of regular meetings (e.g., the city council's monthly meeting) must be made available to the general public and be posted in a conspicuous place at the regular meeting place of the agency and must be posted on the agency's website, if it has one.⁸ For any meetings that are not conducted at the regular meeting place or time, the agency must post the time, place, and date of the meeting for at least 24

⁵O.C.G.A. §50-14-3(a)(5).

⁶O.C.G.A. §50-14-3(a)(7).

⁷O.C.G.A. §50-14-3(a)(8).

⁸O.C.G.A. §50-14-1(d)(1).

Government in the Sunshine

hours at the regular meeting location and give written or oral notice at least 24 hours in advance of the meeting to the legal organ of the county or a newspaper with equal circulation.⁹ In counties in which a legal organ is published less than four times per week, the time, place, and date of the meeting must be posted for at least 24 hours at the regular meeting location and, upon written request from broadcast or print media in the county, notice must be provided to the requesting media outlet 24 hours in advance of the meeting. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda must be provided by fax, by e-mail, or by mail through a self-addressed, stamped envelope provided by the requester.

For emergency meetings (i.e., meetings with less than 24 hours notice), the meeting notice must include the date, time and location of the meeting, the subjects expected to be covered at the meeting and the reason for meeting with less than 24 hours notice.¹⁰ Notice must be provided to the county legal organ or a newspaper with greater circulation in the county than the legal organ. Notice must also be provided by telephone, fax or e-mail to any broadcast or print media outlet whose place of business and physical facilities are located in the county when such media outlet has made written request for such notice within the previous calendar year. Many cities have made it a practice to simply notify all of the newspapers, radio stations and television stations serving the area when there are special called meetings or there is an emergency meeting.

Regularly scheduled meetings can be cancelled or postponed. This often happens when the customary meeting date falls on a holiday.

Agenda, Summary and Minutes

An agenda of all matters expected to come before the council or other governing body must be made available upon request and must be posted at the meeting site as far in advance as is practicable during the two weeks prior to the meeting.¹¹ If a particular issue is not included on the posted agenda it may still be considered by the council if it is deemed necessary to address it. The courts have not yet defined what is meant by "necessary to address" and individuals, often with competing political agendas, may have different definitions. However the clear intent of this provision is to ensure that the public is informed of the matters that will come before the body.

⁹O.C.G.A. §50-14-1(d)(2).

¹⁰O.C.G.A. §50-14-1(d)(3).

¹¹O.C.G.A. §50-14-1(e).

Thus elected officials should avoid amending the agenda at the meeting to add a matter, particularly one that is known to be controversial, unless there is a clear and unambiguous necessity to do so.

Many cities post agendas for their meetings on the city website and note on the face of the agenda the date and time when each agenda was last updated. This allows members of the public to have up to date information.

Members of the public must be allowed access to the meeting and must be allowed to make visual and sound recordings of the open portions of any meeting.¹² Some city councils designate an area or areas where equipment for visual and sound recordings can be placed so that the equipment does not obstruct the view of meeting attendees and use of the equipment is not disruptive to the meeting. If a city or any other “agency” subject to the Open Meetings Act is going to do this, they should formulate and adopt a clear policy addressing the issue at a time when there is nothing controversial going on to avoid the perception that the policy on recording equipment is aimed at a particular person or constituency.

If attendance at a meeting is larger than the meeting room can accommodate, then the council should move the meeting to a larger meeting room, if available.¹³

A written summary of the subjects acted on and a list of the officials attending the meeting must be prepared and made available within two business days of the meeting.¹⁴ Minutes of the meeting must be prepared and made publicly available after having been approved as official; such approval is to occur at the next regular meeting of the agency. The minutes must, at a minimum, contain the names of the governing body members present at the meeting, a description of each motion or other proposal made, a record of who made and seconded each motion, and a record of all votes including who voted for and who voted against each motion. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining. For meetings with less than 24 hours notice, the minutes must also describe the notice given and the reason for the emergency meeting.

Minutes of executive sessions must be taken but are not open to the public. Such minutes must specify each issue discussed but the substance of attorney-client

¹²O.C.G.A. §50-14-1(c).

¹³Maxwell v. Carney, 273 Ga. 864, 548 S.E.2d 293 (2001)

¹⁴O.C.G.A. §50-14-1(e)(2).

Government in the Sunshine

discussions need not be recorded and are not to be identified in the minutes. Executive session minutes are subject to *in camera* inspection by an appropriate court should a dispute arise as to the propriety of any executive session. An *in camera* inspection is a review of the records by a judge in the judge's chamber. This preserves the confidentiality of the executive session minutes unless and until the judge rules that the meeting should have been open.

If the governor or other authorized state official declares an emergency or disaster that renders it impossible or imprudent to hold a meeting at the regular time and place, a meeting may be held at the call of the presiding officer or any two members of the governing body.¹⁵ To the extent made necessary by the emergency, the council members are not required to comply with time consuming procedures and formalities prescribed by law, according to the Georgia Emergency Management Act of 1981.¹⁶ Additionally, in situations necessitated by emergency conditions involving public safety or the preservation of property or public services cities may conduct meetings via teleconference so long as the proper notice requirements are met and the public is given access to the teleconference meeting. A city council or other agency can also meet by teleconference if necessary due to the health of a member or the absence of a member from the jurisdiction so long as a quorum is present in person and the other requirements for an open meeting are met.¹⁷ Under this exception a member of an agency can only participate by teleconference twice in one calendar year unless there are emergency conditions or the member has a written opinion of a physician or other health professional stating that reasons of health prevent that member's physical presence, however, a quorum of the members must still be present in person.¹⁸ Finally, teleconference meetings are allowed to be held when one or more of the city's members are on ordered military duty at the time of the meeting, so long as the meeting is otherwise held in compliance with state law.¹⁹

When Can a Meeting be Closed?

Although there are numerous exceptions to the requirements of the open meetings law, there are six primary reasons why a city council would lawfully hold a closed

¹⁵O.C.G.A. §§ 38-3-54 and 38-3-55.

¹⁶Ibid.

¹⁷O.C.G.A. §50-14-1(g).

¹⁸Ibid.

¹⁹O.C.G.A. § 38-2-279(g).

Open Meetings

meeting or executive session. These reasons are: (1) to discuss pending or potential litigation with legal counsel and to discuss or vote on settlement;²⁰ (2) to discuss or vote on authorizing negotiations to purchase, dispose of, or lease property; (3) to discuss or vote on the acquisition, disposition or lease of real estate by the city;²¹ (4) to discuss hiring, compensation, evaluation or disciplinary action for a specific public officer or employee;²² (5) to interview an applicant to be executive head of a department; or (6) to discuss records that are exempt from disclosure.²³

The attorney-client privilege allows the council to meet in a closed meeting with its attorney to discuss a pending or potential lawsuit, settlement, claim, administrative proceeding or other judicial action brought against or by the city, or any officer or employee of the city, or in which the city or any officer or employee may be directly involved. Two things must be considered before closing a meeting pursuant to the attorney-client privilege. First, an attorney representing the city must be present and discussing with the counsel the pending or potential lawsuit, settlement or claim. Second, a lawsuit by or against the city must already be filed, or there must be a potential lawsuit. A mere threat to take legal action against the city is not enough to close a meeting to discuss a potential lawsuit.²⁴ In order to determine whether a threat to sue the city is a potential lawsuit that may be discussed in an executive session, council members should ask the following questions:

1. Is there a formal demand letter or something else in writing that presents a claim against the city and indicates a sincere intent to sue?
2. Is there previous or preexisting litigation between the city and the other party or proof of ongoing litigation on similar claims?
3. Is there proof that the other party has hired an attorney and expressed an intent to sue?

Additionally, the meeting may not be closed to receive legal advice on whether a topic may be discussed in a closed meeting.²⁵ No vote in executive session to

²⁰O.C.G.A. § 50-14-2(1).

²¹O.C.G.A. § 50-14-3(b)(1).

²²O.C.G.A. § 50-14-3(b)(2).

²³O.C.G.A. § 50-14-3(b)(4).

²⁴The Claxton Enterprise v. Evans County Board of Commissioners, 249 Ga.App. 870, 549 S.E.2d 830 (2001).

²⁵O.C.G.A. § 50-14-2(1).

Government in the Sunshine

settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the parties and principal settlement terms are disclosed before the vote. Remember, a meeting may not be closed for advice or consultation on whether to close a meeting.

An agency may close a meeting to discuss or vote to authorize negotiations to purchase, dispose of or lease property, or to enter into a contract to purchase, dispose of or lease property subject to approval in a subsequent public vote. Note that these exceptions apply to property generally and are not limited to real estate. Thus they should apply to authorize negotiations or the entering into contracts for city purchases of personal property, such as vehicles, equipment, or supplies. The additional exceptions authorizing a closed meeting to discuss or vote upon ordering an appraisal related to the acquisition or disposal of real estate, or to enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote are limited to real estate only. No vote in executive session to acquire, dispose of, or lease real estate, is binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote.

The governing body of an agency may close the portion of the meeting during which the members are deliberating on hiring, appointing, compensating, disciplining, or dismissing a public officer or employee. However, any portion of a meeting during which the body receives evidence or hears arguments on personnel matters must be open. A city council may also go into executive session to discuss or deliberate on the periodic evaluation or rating of a public officer or employee, or to interview applicants for the position of executive head of an agency. What positions qualify as "executive head of an agency"? To determine that, reference must be made to the definition of agency provided in the Open Meetings Act. "Agency" includes the city itself and "[e]very department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state."²⁶ Thus, if the governing body of an agency is empowered to hire the "executive head of an agency", then a quorum of the body should be permitted by the statute to interview applicants for that position in a properly closed meeting. Note that the exceptions allow certain discussions and interviews to take place in an executive session but that all votes on personnel matters must be taken in public.

²⁶ O.C.G.A. §50-14-1(a)(1)(C).

The final reason that the governing body of a local government agency, such as a city council, would go into executive session is to discuss records that are exempt from disclosure but only if there are no reasonable means by which the agency could consider the record without disclosing the exempt portions of the record if the meeting were open.

Because closed meetings are the exception and not the rule, if there is any doubt whether a topic may be discussed in a closed meeting, the city attorney should be consulted. If doubt remains, the meeting should be open. And it does not matter what a closed meeting is called. A closed meeting may be called an executive session, a work session or something else.²⁷ For purposes of the open meetings law, there are only two types of meetings – open or closed. Whatever a meeting is called, it should be clear to the public whether the meeting is open or closed.

How a Meeting is Closed?

A majority vote of the quorum present for the meeting is required to close a meeting. The specific reason for closing the meeting must be stated in the minutes, the minutes must reflect the names of the members of the governing authority present and those voting to close the meeting, and these portions of the minutes must be made available to the public.²⁸ When a meeting is properly closed but the discussion begins to stray into an area of discussion required to be open, the presiding officer must rule the discussion out of order and the discussion must cease.²⁹ If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer must immediately adjourn the executive session.³⁰

When a meeting is closed under the Open Meetings Act, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, must execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the

²⁷The law actually defines "executive session" as "a portion of a meeting lawfully closed to the public." O.C.G.A. §50-14-1(a)(2).

²⁸O.C.G.A. §50-14-4(a).

²⁹O.C.G.A. § 50-14-4(b)(2).

³⁰Ibid.

Government in the Sunshine

exceptions provided by law and identifying the specific relevant exception.³¹ False swearing is a felony under Georgia law.³²

Enforcement and Penalties

Any action taken at a meeting that was not open and should have been is not binding.³³ Parties who wish to contest that an action was invalidly taken in a closed meeting must do so within 90 days after the date the action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken. Any action under the Open Meetings Act contesting a zoning decision must be commenced within 30 days.

Any person knowingly and willfully conducting or participating in a meeting in violation of the Open Meetings Act may be convicted of a misdemeanor and fined not more than \$1,000.00.³⁴ Alternatively, a civil penalty not to exceed \$1,000.00 for the first violation may be imposed by the court in any civil action brought under the Open Meetings Act against any person who negligently violates the Act. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation committed within a 12-month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action that a person has acted in good faith. An agency or person who provides access to information in good faith pursuant to the Open Meetings Act will not be held liable for having provided such access.³⁵ If anyone signs an executive session affidavit containing false information, he or she may be convicted of a felony and fined \$1,000.00 and/or imprisoned for up to five years.³⁶ Further, participation in a meeting that is held in violation of the Open Meetings Act may be grounds for a recall action.³⁷

Someone who sues for a violation of the Open Meetings Act is to be paid their attorney's fees and other litigation costs, unless special circumstances exist. The

³¹ O.C.G.A. § 50-14-4(b)(1).

³² O.C.G.A. § 16-10-71.

³³ O.C.G.A. § 50-14-1(b)(2).

³⁴ O.C.G.A. § 50-14-6.

³⁵ *Ibid.*

³⁶ O.C.G.A. § 16-10-71.

³⁷ See O.C.G.A. § 21-4-3(7); Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650 (1994).

test for whether fees and other expenses will be assessed against the governing body is whether the position of the complaining party was substantially justified. The Attorney General is authorized to bring enforcement actions, either civil or criminal, as appropriate to enforce the law.³⁸

³⁸O.C.G.A. § 50-14-5(b).

Government in the Sunshine

Selective Summary of Exceptions

What is NOT a Meeting

- Inspecting facilities or property where no other official action is discussed or taken [§ 50-14-1 (a)(3)(B)(i)].
- Attending statewide or regional meetings or training on matters related to the purpose of the agency and where no official action is taken [§ 50-14-1 (a)(3)(B)(ii)].
- Meetings, where no official action is taken, with state or federal legislative or executive officials at state or federal offices [§ 50-14-1 (a)(3)(B)(iii)].
- Traveling together where no official business, policy, or public matter is formulated, presented, discussed or voted on [§ 50-14-1 (a)(3)(B)(iv)].
- Attending social, civic, ceremonial or religious events where no official business, policy, or public matter is formulated, presented, discussed or voted on [§ 50-14-1(a)(3)(B)(v)].

However, regarding exceptions (i) through (v) above, if it can be shown that the primary purpose of the gathering was to avoid the requirements of the open meetings law while discussing or conducting official business, then the gathering would be deemed a meeting where all notice, access, agenda, summary and minutes requirements must be met [§ 50-14-1 (a)(3)(B)].

Which Meetings May be Closed

- Acquisition, disposal or lease of property may be discussed in executive session [§ 50-14-3 (b)(1)].
- In contrast to the general rule, votes may be taken in executive session regarding the following [§ 50-14-3 (b)(1)]:
 - To authorize settlement of any matter relative to the attorney-client privilege per OCGA § 50-14-2 (1).
 - To authorize negotiations to acquire, dispose of or lease property.
 - To authorize an appraisal relative to the acquisition or disposal of real estate.

Government in the Sunshine

- o To contract to purchase, dispose of or lease property.
- o To enter into an option to purchase, dispose or lease real estate.

However, no vote to acquire, dispose of or lease real estate or to settle a claim is binding until subsequently voted on in open meeting.

- Applicants for the position of executive head of an agency may be interviewed in executive session [§ 50-14-3 (b)(2)].
- Discussion in executive session of records that are otherwise protected from disclosure under the Open Records Act is authorized [§ 50-14-3 (b)(4)].

Open Meetings - FAQs

Q: What if a member of a committee or council shows up to a duly noticed meeting of another committee or board of the city of which he or she is not a member? For instance, is it a covered "meeting" if a quorum of the city council attend a meeting of the planning and zoning board or of the development authority?

A: In our opinion, the operative questions in this instance are: (1) why the members of the city council are at the meeting; and (2) whether the quorum is discussing city business or policy amongst themselves at the meeting. It is important to remember that persons serving on city council, a city committee or city board are also citizens of the community and may legitimately have a need to or interest in attending committee and board meetings just as any other citizen. If each member of the quorum has a matter of interest before the zoning board that evening, they should take care to avoid discussing any public business and should sit separated from each other to emphasize that they are attending as individuals and not in an official capacity. This would seem to fall within the exception for attending a civic event where the quorum is not discussing or voting upon official business, policy or public matter. O.C.G.A. §50-14-1(a)(3)(B)(v). Note that the council can certainly provide more notice to the public than required by the Open Meetings Act.

Q: We have a council member who travels frequently for work and another who has an ongoing seriously illness making it impossible for him to physically attend meetings for the next six months. Can our city hold a meeting via teleconference or video conference?

A: Yes, however you need to be aware of and comply with the limitations on teleconference meetings. If one or more of the members of city council, committee, or board is on ordered military duty at the time of the meeting then that member may participate in the meeting by teleconference as long as the meeting is otherwise conducted in accordance with state law. Cities can also conduct meetings via teleconference when necessitated by emergency conditions involving public safety, or the preservation of property or public services. However, if a city holds a teleconference meeting for emergency purposes the public must be afforded access to the teleconference meeting

Government in the Sunshine

and proper notice of the meeting must be given. Finally, members of the city council, a city committee, or board may take part in a meeting via teleconference if necessary due to health reasons or when they are absent from the city but a quorum of the council, committee or board must be present at the meeting in person and the other requirements of the law (notice, agenda, minutes, etc.) must be met. Under this authorization for teleconferencing a member can only participate by teleconference twice in one calendar year unless there are emergency conditions or the member has a written opinion from a physician or other medical professional that health reasons prevent him or her from attending in person.

Q: The city is preparing for local option sales tax (LOST) negotiations and the committee which will undertake the negotiations with the county wants to be able to prepare a strategy in private. Is there an exception to the open meetings law for such preparations?

A: No, under the open meetings law the gathering of a quorum of any committee of the members of a city or a quorum of any committee created by the governing body is a meeting subject to the open meetings requirements under the law. If, however, the initial negotiations do not result in agreement and the matters moves to mediation, the exception applicable to mediations may apply. If disagreement over the LOST distributions end up in court, then the attorney-client privilege may apply.

Q: When can our city vote in executive session?

A: The city council is allowed to vote in executive session on the acquisition, disposal of, or lease of real estate, or to settle litigation, claims, or administrative proceedings but that vote will not be binding until the city council takes a vote in a public meeting where the property and terms are identified before the vote or the parties and settlement terms are disclosed before the vote. Although interviewing applicants to be the executive head of an agency can be done in executive session and certain personnel matters can be discussed in executive session, all votes must be taken in public.

Open Meetings

Q: Is there any requirement that issues discussed in executive session be kept secret?

A: The provisions in the law allowing certain discussions to occur in executive sessions (closed meetings) are there to ensure that the agency can function efficiently and is not placed at a financial or legal disadvantage. The members of the agency's governing body owe a fiduciary duty to the agency and those served by it to act in the best interests of the agency as a whole and not any particular individual, business or other interest. The confidentiality of the executive session is a privilege that belongs to all members of the city council in the executive session and not to any one member individually. This is especially true in instances where matters subject to the attorney-client privilege are discussed. It is important for city council members to understand that although the city attorney may represent them in their capacity as city officials, the city attorney is not their attorney individually; the city attorney is the attorney for the city. Therefore, when the executive session involves matters subject to the attorney-client privilege it is not an option of any one individual to waive the attorney-client privilege for the entire city.

Additionally, depending upon the circumstances, divulging matters appropriately discussed in a closed session could be perceived as malfeasance in office, misconduct in office or a violation of the oath of office and could result in someone seeking to recall or remove the official from office. A city's charter or ethics ordinance may also impose a penalty for violating the confidentiality of a properly closed meeting. Finally, if it is a litigation matter covered by insurance, the insurer may regard the failure to keep attorney-client confidences as a failure to cooperate that could impact the coverage provided to the city or the individual.

Q: Are hearings or appeals regarding employee disciplinary procedures subject to open meetings?

A: Meetings that are held to discuss or deliberate upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a city employee or officer may be held in a closed meeting. However, if any of the above involves the receipt of evidence or hearing argument on personnel matters, including whether to impose

Government in the Sunshine

disciplinary action or dismiss a city employee or officer, then it must be held in an open meeting. It doesn't matter if the employee requests that the hearing be private. The open meetings law determines what can and cannot be the subject of a closed meeting.

The Georgia Open Meetings Act

§ 50-14-1.

(a) As used in this chapter, the term:

(1) "Agency" means:

- (A) Every state department, agency, board, bureau, office, commission, public corporation, and authority;
- (B) Every county, municipal corporation, school district, or other political subdivision of this state;
- (C) Every department, agency, board, bureau, office, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;
- (D) Every city, county, regional, or other authority established pursuant to the laws of this state; and
- (E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as defined in this paragraph which constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Executive session" means a portion of a meeting lawfully closed to the public.

(3) (A) "Meeting" means:

- (i) The gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon; or

Government in the Sunshine

- (ii) The gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon.
- (B) "Meeting" shall not include:
- (i) The gathering of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities or property under the jurisdiction of such agency at which no other official business of the agency is to be discussed or official action is to be taken;
 - (ii) The gathering of a quorum of the members of a governing body or committee for the purpose of attending state-wide, multijurisdictional, or regional meetings to participate in seminars or courses of training on matters related to the purpose of the agency or to receive or discuss information on matters related to the purpose of the agency at which no official action is to be taken by the members;
 - (iii) The gathering of a quorum of the members of a governing body or committee for the purpose of meeting with officials of the legislative or executive branches of the state or federal government at state or federal offices and at which no official action is to be taken by the members;
 - (iv) The gathering of a quorum of the members of a governing body of an agency for the purpose of traveling to a meeting or gathering as otherwise authorized by this subsection so long as no official business, policy, or public matter is formulated, presented, discussed, or voted upon by the quorum; or
 - (v) The gathering of a quorum of the members of a governing body of an agency at social, ceremonial, civic, or religious events so long as no official business, policy, or public matter is formulated, presented, discussed or voted upon by the quorum.

Open Meetings

This subparagraph's exclusions from the definition of the term 'meeting' shall not apply if it is shown that the primary purpose of the gathering or gatherings is to evade or avoid the requirements for conducting a meeting while discussing or conducting official business.

- (b) (1) Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.
 - (2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken.
 - (3) Notwithstanding the provisions of paragraph (2) of this subsection, any action under this chapter contesting a zoning decision of a local governing authority shall be commenced within the time allowed by law for appeal of such zoning decision.
- (c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual and sound recording during open meetings shall be permitted.
- (d) (1) Every agency subject to this chapter shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted at least one week in advance and maintained in a conspicuous place available to the public at the regular place of an agency or committee meeting subject to this chapter as well as on the agency's website, if any. Meetings shall be held in accordance with

Government in the Sunshine

a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting.

- (2) For any meeting, other than a regularly scheduled meeting of the agency for which notice has already been provided pursuant to this chapter, written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in such county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly sufficient notice shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet at least 24 hours in advance of the called meeting. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately or as soon as practicable make the information available upon inquiry to any member of the public. Upon written request from any local broadcast or print media outlet, a copy of the meeting's agenda shall be provided by facsimile, e-mail, or mail through a self-addressed, stamped envelope provided by the requester.
- (3) When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances, including notice to the county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Such reasonable notice shall also include, upon written request within the previous calendar year from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone, facsimile, or e-mail to that requesting media outlet.

Open Meetings

- (e) (1) Prior to any meeting, the agency or committee holding such meeting shall make available an agenda of all matters expected to come before the agency or committee at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.
- (2) (A) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting.
- (B) The regular minutes of a meeting subject to this chapter shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting; provided, however, that nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Such minutes shall, at a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, the identity of the persons making and seconding the motion or other proposal, and a record of all votes. The name of each person voting for or against a proposal shall be recorded. It shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.
- (C) Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. In the case of executive sessions where matters subject to the attorney-client privilege are discussed, the fact that an attorney-client discussion occurred and its subject shall be identified, but

Government in the Sunshine

the substance of the discussion need not be recorded and shall not be identified in the minutes. Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session.

- (f) An agency with state-wide jurisdiction or committee of such an agency shall be authorized to conduct meetings by teleconference, provided that any such meeting is conducted in compliance with this chapter.
- (g) Under circumstances necessitated by emergency conditions involving public safety or the preservation of property or public services, agencies or committees thereof not otherwise permitted by subsection (f) of this Code section to conduct meetings by teleconference may meet by means of teleconference so long as the notice required by this chapter is provided and means are afforded for the public to have simultaneous access to the teleconference meeting. On any other occasion of the meeting of an agency or committee thereof, and so long as a quorum is present in person, a member may participate by teleconference if necessary due to reasons of health or absence from the jurisdiction so long as the other requirements of this chapter are met. Absent emergency conditions or the written opinion of a physician or other health professional that reasons of health prevent a member's physical presence, no member shall participate by teleconference pursuant to this subsection more than twice in one calendar year.

§ 50-14-2.

This chapter shall not be construed so as to repeal in any way:

- (1) The attorney-client privilege recognized by state law to the extent that a meeting otherwise required to be open to the public under this chapter may be closed in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved; provided, however, the meeting may not be closed for advice or consultation on whether to close a meeting; and
- (2) Those tax matters which are otherwise made confidential by state law.

§ 50-14-3.

- (a) This chapter shall not apply to the following:
- (1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;
 - (2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition such board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;
 - (3) Meetings of the Georgia Bureau of Investigation or any other law enforcement or prosecutorial agency in the state, including grand jury meetings;
 - (4) Adoptions and proceedings related thereto;
 - (5) Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party. In such a gathering, the neutral party may caucus jointly or independently with the parties to the mediation to facilitate a resolution to the conflict, and any such caucus shall not be subject to the requirements of this chapter. Any decision or resolution agreed to by an agency at any such caucus shall not become effective until ratified in a public meeting and the terms of any such decision or resolution are disclosed to the public. Any final settlement agreement, memorandum of agreement, memorandum of understanding, or other similar document, however denominated, in which an agency has formally resolved a claim or dispute shall be subject to the provisions of Article 4 of Chapter 18 of this title;
 - (6) Meetings:
 - (A) Of any medical staff committee of a public hospital;
 - (B) Of the governing authority of a public hospital or any committee thereof when performing a peer review or medical review function as set forth in Code Section 31-7-15, Articles 6 and 6A of Chapter

Government in the Sunshine

- 7 of Title 31, or under any other applicable federal or state statute or regulation; and
- (C) Of the governing authority of a public hospital or any committee thereof in which the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law is discussed, considered, or voted upon;
- (7) Incidental conversation unrelated to the business of the agency; or
 - (8) E-mail communications among members of an agency; provided, however, that such communications shall be subject to disclosure pursuant to Article 4 of Chapter 18 of this title.
- (b) Subject to compliance with the other provisions of this chapter, executive sessions shall be permitted for:
- (1) Meetings when any agency is discussing or voting to:
 - (A) Authorize the settlement of any matter which may be properly discussed in executive session in accordance with paragraph (1) of Code Section 50-14-2;
 - (B) Authorize negotiations to purchase, dispose of, or lease property;
 - (C) Authorize the ordering of an appraisal related to the acquisition or disposal of real estate;
 - (D) Enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; or
 - (E) Enter into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote.

No vote in executive session to acquire, dispose of, or lease real estate, or to settle litigation, claims, or administrative proceedings, shall be binding on an agency until a subsequent vote is taken in an open meeting where the identity of the property and the terms of the acquisition, disposal, or lease are disclosed before the vote or where the parties and principal settlement terms are disclosed before the vote;

Open Meetings

- (2) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee or interviewing applicants for the position of the executive head of an agency. This exception shall not apply to the receipt of evidence or when hearing argument on personnel matters, including whether to impose disciplinary action or dismiss a public officer or employee or when considering or discussing matters of policy regarding the employment or hiring practices of the agency. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;
- (3) Meetings of the board of trustees or the investment committee of any public retirement system created by or subject to Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and
- (4) Portions of meetings during which that portion of a records made exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of this title is to be considered by an agency and there are no reasonable means by which the agency can consider the record without disclosing the exempt portions if the meeting were not closed.

§ 50-14-4.

- (a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be

Government in the Sunshine

taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.

- (b) (1) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.
- (2) In the event that one or more persons in an executive session initiates a discussion that is not authorized pursuant to Code Section 50-14-3, the presiding officer shall immediately rule the discussion out of order and all present shall cease the questioned conversation. If one or more persons continue or attempt to continue the discussion after being ruled out of order, the presiding officer shall immediately adjourn the executive session.

§ 50-14-5.

- (a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.
- (b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

Open Meetings

- (c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information.

§ 50-14-6.

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this chapter against any person who negligently violates the terms of this chapter in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date that the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions.

Government in the Sunshine

SAMPLE PROCEDURE AND FORMS FOR AN EXECUTIVE SESSION: SAMPLE MOTION, RESOLUTION AND AFFIDAVIT

To properly close a city council meeting to the public, certain information must be included in the council minutes and, following the executive session, the presiding officer, or all members of the governing body participating in the executive session, must complete an affidavit (1) stating that the subject matter of the meeting was within an exception to the Open Meetings Act, and (2) identifying the specific relevant exception(s) relied upon. See O.C.G.A. Chapter 50-14-4(b). The following sample city council motion, council resolution, and affidavit are provided to assist city attorneys in assuring that the requirements of the law for closing meetings to the public are met.

To close an agency meeting to the public, a majority of a quorum present must vote for such closure. The specific reasons for the closure must be included in the official minutes. What if only one topic on the agenda represents a matter allowing for closure? The law mandates that when only a portion of a meeting involves a matter that permits closure to the public, the remainder of the meeting must be open to the public.

All proper closed meetings start in an open meeting. A motion is then made to go into executive session or close the meeting and, after a proper second and approval of the motion, the meeting is closed. When the closed meeting ends there should be a motion, second and vote to return to an open meeting. The body should then conduct the remainder of its business, even if it is simply to adjourn, in the open meeting.

Although motions usually are not written in advance the sample motion form is intended to ensure that the minutes reflect the specific reason(s) for closing the meeting, who moved to close the meeting, who provided a second and how each member in attendance voted.

Unlike the sample motion, the sample resolution is not required by law. However, it gives the council's support to the presiding officer who must execute an affidavit confirming compliance with the law. As an added precaution, the council may, as suggested in the sample resolution, ratify any action taken during the closed meeting.

A key requirement of the law is that the presiding officer or all members of the governing body participating in the executive session must execute an affidavit under oath. This affidavit must state that the subject matter of the closed meeting or closed portion of a meeting was devoted to matters falling within the exceptions to the open meeting requirement and must identify the specific exception(s) applicable to the closed meeting covered by the affidavit. A sample affidavit is also presented.

Government in the Sunshine

SAMPLE

MOTION TO ENTER INTO A CLOSED MEETING OF A CITY COUNCIL

Council member _____ makes the following motion:

That this Mayor and Council now enter into closed session as allowed by Chapter 14 of Title 50 of the Georgia Code and pursuant to advice by the City Attorney, for the purpose of discussing the following:

___ (*Specify the purpose(s) by which the meeting is to be closed*);

Motion Seconded By: _____

Motion Approved

Those voting in favor of the motion for closure: Council Members _____,
_____, and _____.

Those voting against the motion for closure: Council Members _____,
_____, and _____.

**SAMPLE RESOLUTION
OF THE _____ CITY COUNCIL**

BE IT RESOLVED by the _____ City Council as follows: At the meeting held on the ____ day of _____, _____, the Council entered into executive session for the purpose of discussing _____. At the close of the discussions upon this subject, the Council did vote to re-enter into open session and herewith takes the following action in open session:

- (1) The actions of the Council and the discussions of the same regarding the matter set forth for closed session purposes are hereby ratified.
- (2) Each member of this body does hereby confirm that to the best of his or her knowledge, based upon the advice of the City Attorney, the said subject matter of the meeting and of the closed session portion was devoted to matters within the specific relevant exception(s) as set forth above.
- (3) The Mayor, or the presiding officer, is hereby authorized and directed to execute an affidavit, with full support of the members of this Council, in order to comply with O.C.G.A. §50-14-4(b).
- (4) The affidavit shall be included and filed with the official minutes of the meeting and shall be in a form as required by the statute, which shall be substantially as follows: *(see sample affidavit)*.

Approved this _____ day of _____, _____.

Attest _____
City Clerk

Mayor

Government in the Sunshine

SAMPLE AFFIDAVIT

Before an officer duly authorized to administer oaths appeared _____, who, after being duly sworn, deposes and on oath states the following:

(1) I am competent to make this Affidavit and have personal knowledge of the matters set forth herein.

(2) Pursuant to my duties as _____, I was the presiding officer of a meeting of the _____ City Council held on the ___ day of __, __. A portion of said meeting was closed to the public.

(3) It is my understanding that O.C.G.A. § 50-14-4(b) provides as follows:

When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the person presiding over such meeting or, if the agency's policy so provides, each member of the governing body of the agency attending such meeting, shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception.

(4) The subject matter of said meeting, or the closed portion thereof, was devoted to matters within exceptions to public disclosure provided by law. Those specific relevant exceptions are identified as follows: *(Using the list below as a guide list in the affidavit **only** the exceptions actually applicable to the specific closed meeting.)*

A. Meeting to discuss or vote to authorize the settlement of a matter covered by the attorney-client privilege as provided in Georgia Code section 50-14-2(1) and 50-14-3(b)(1)(A). The subject discussed was *[identify the case or claim discussed but not the substance of the attorney-client discussion]*.

B. Meeting to discuss or vote to authorize negotiations to purchase, dispose of or lease property as provided in Georgia Code section 50-14-3(b)(1)(B).

- C. Meeting to discuss or vote to authorize the ordering of an appraisal related to the acquisition or disposal of real estate as provided in Georgia Code section 50-14-3(b)(1)(C).
- D. Meeting to discuss or vote to enter into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote as provided in Georgia Code section 50-14-3(b)(1)(D).
- E. Meeting to discuss or vote to enter into an option to purchase, dispose of, or lease real estate subject to approval in a subsequent public vote as provided in Georgia Code section 50-14-3(b)(1)(E).
- F. Meeting to discuss or deliberate upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee as provided in Georgia Code section 50-14-3(b)(2).
- G. Meeting to interview one or more applicants for the position of the executive head of an agency as provided in Georgia Code section 50-14-3(b)(2).
- H. Pursuant to the attorney-client privilege and as provided by Georgia Code section 50-14-2(1), a meeting otherwise required to be open was closed to the public in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved and the matter discussed was identify the matter but not the substance of the discussion.
- I. Staff meeting held for investigative purposes under duties or responsibilities imposed by law as provided by Georgia Code section 50-14-3(a)(1).

Government in the Sunshine

J. Meeting to consider records or portions of records exempt from public inspection or disclosure pursuant to Article 4 of Chapter 18 of Title 50 of the Georgia Code because there are no reasonable means to consider the record without disclosing the exempt portions.

This Affidavit is executed for the purpose of complying with the mandate of O.C.G.A. § 50-14-4(b) and is to be filed with the official minutes for the aforementioned meeting.

This ____ day of _____, _____.

Affiant

Sworn to and subscribed before me
this ____ day of _____, _____.

Notary Public

Part II - Open Records

Overview of the Open Records Act

“The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.”¹

Who Must Comply with the Open Records Law?

Georgia’s open records law generally applies to the same “agencies” as defined by the Open Meetings Act. Thus it applies to the city and all city departments, agencies, boards, bureaus, commissions, authorities, and other similar bodies.²

Generally, the city employee or official who maintains the records is the records custodian who actually responds to requests for city records. For example, if an individual requested council meeting minutes, the city clerk would be the likely records custodian to handle the request. If an individual requested personnel records, the personnel director or his or her designee might be the records custodian. Often police departments have their own records officer due to the frequency of records requests and the special rules applicable to certain law enforcement records.

The city can designate one or more persons to serve as the custodian of agency records and open records officer.³ A city may want to review its charter to determine whether a custodian of records is named in the charter and determine whether the city’s charter should be amended to authorize the appointment of additional records officers. An agency can require that all written records requests be made upon

¹O.C.G.A § 50-18-70(a).

²Ibid

³O.C.G.A. §50-18-71(b)(1)(B).

Government in the Sunshine

the designated open records officer. However, the law specifically provides that an agency cannot delay its response to an open records request just because the designated open records officer is absent or unavailable.⁴ Thus, a city needs to ensure that at all times there is available to the public a designated open records officer who can receive and respond to their request. This may necessitate stating at the time the designation of one or more open records officers is made who the alternate open records officers will be. Another option is to designate alternates on an “as needed” basis.

If an agency designates one or more open records officers, it must provide notice of such designation(s) to any person requesting records, must notify the county legal organ, and must post the designation(s) on the agency’s website, if it has one.⁵

Public Records Subject to Disclosure

“Public record” is defined to include all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received in the course of the operation of an agency.⁶ Such records are subject to disclosure unless they fall within one of the legal exemptions to the open records law. Handwritten notes, e-mails, text messages, calendars, etc., are all public records subject to disclosure under the Open Records Act. It does not matter whether the record exists electronically, as a hard copy or in some other format.

Additionally, records prepared and maintained or received by any company, individual, or other entity that does business with or has contracts with the city to provide services for the city must be available to the public under the Open Records Act.⁷ This rule applies to records possessed by a private person or entity in the performance of a service or function on behalf of the “agency.”

Some records are not required ever to be disclosed, while other records may be withheld from disclosure only temporarily. Most of the exemptions to the open records law merely permit the city to withhold records; in other words, although records are exempt, the city may choose to release them. However, certain records must be

⁴Ibid.

⁵O.C.G.A. §50-18-71(b)(2).

⁶O.C.G.A. § 50-18-70(b)(2).

⁷Ibid.; Hackworth v. Board of Education for the City of Atlanta, 214 Ga. App. 17, 447 S.E.2d 78 (1994).

kept confidential and may not be released. Another section of this chapter discusses some of the exemptions most relevant to mayors and council members.

Response to an Open Records Request

The open records law requires that all public records, except those legally exempted from disclosure, must be open for personal inspection by any individual at a reasonable time and place usually within three business days from the receipt of the request.⁸ In order to respond within three business days as required, the records custodian or other individual designated to respond to open records requests needs to do the following:

1. Determine whether the city has the requested documents. The city is not required to prepare any reports, summaries, or compilations that are not in existence at the time of the request.⁹ However, so long as the city's existing computer programs can handle it, the city cannot refuse to produce electronic records just because production of the records will require inputting search, filter or report parameters into the city's computer system.¹⁰
2. Determine whether the requested documents are subject to an exemption to the open records law. The records custodian should give careful consideration, and is well advised to consult legal counsel, before determining that a record is not subject to disclosure. Remember, the rule is that the record is open; the exceptions for not having to release a document are very narrow. As will be explained, failure to provide an open record is a crime.¹¹ However, a records custodian will not be held liable if he or she is sued for releasing a record in error in good faith reliance that it was subject to the open records law.¹² Once it has been determined that all or part¹³ of a document falls under one of the legal exemptions, the city must provide, in writing, the specific legal authority exempting such

⁸O.C.G.A. § 50-18-71.

⁹O.C.G.A. §50-18-71(j).

¹⁰O.C.G.A. §50-18-71(f).

¹¹O.C.G.A. § 50-18-74(a).

¹²O.C.G.A. § 50-18-73(c).

¹³O.C.G.A. § 50-18-72(b).

Government in the Sunshine

record from disclosure by code section, subsection, and paragraph.¹⁴ If a requested document contains both open and exempt information, the records custodian must still release the document but may redact or mark out the exempt information.

3. Provide an estimate of any copying, production and administrative charges for responding to the request. Where the costs are expected to exceed \$25.00, within the three business day response time the city must inform the requester of that estimate. Unless the requester stated in the request a willingness to pay an amount that exceeds the search and retrieval costs, the city can defer search and retrieval of the records until the requester has agreed to pay the estimated costs.¹⁵ Where fees are specifically authorized by law, those fees shall apply.¹⁶ Reasonable charges for search, retrieval, redaction, production and copying may be collected. Where the cost is estimated to exceed \$500.00, the city can insist on prepayment of the costs before beginning any search and retrieval.¹⁷ If a person asks to inspect or copy records and then does not pay the lawfully incurred charges, the city can require prepayment for all future requests until the prior charge is paid.¹⁸ When a person has requested copies and does not pay, the city is authorized to collect the charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the city,¹⁹ so long as an estimate for the charges was provided to the requesting party before the records custodian fulfilled the request.²⁰ This is true even if the requester does not inspect the records or accept copies of the records.

The hourly charge for search, retrieval or redaction cannot exceed the salary of the lowest-paid full-time employee with the requisite skill and knowledge to perform the request and there may be no charge for the first 15 minutes of work.²¹ When a request has been made that requires

¹⁴ O.C.G.A. § 50-18-71(d).

¹⁵ Ibid.

¹⁶ O.C.G.A. § 50-18-71(c)(1).

¹⁷ O.C.G.A. 50-18-71(d).

¹⁸ Ibid.

¹⁹ O.C.G.A. § 50-18-71(c)(3).

²⁰ O.C.G.A. § 50-18-71(d).

²¹ Ibid.

photocopies to be produced by the agency, it may charge 10¢ per page for letter or legal size copies, or, in the case of other documents, the actual cost of producing the copy.²² For records made available through electronic means, the agency may charge the actual cost of the media on which the records are produced.²³ Cities may establish license fees or other fees for providing information from the geographic information system to recover a reasonable portion of the cost to the taxpayers associated with building and maintaining the system.²⁴ When requests are made by a state or federal grand jury, taxing authority, law enforcement agency or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation, the procedures and copying fees do not apply if they are sought in conjunction with an ongoing administrative, criminal, or tax investigation.²⁵

4. Permit inspection and copying of the requested documents, if available. Available documents must be made available within three business days. For records or documents that cannot be made available within three business days, a written description of the records, along with a timetable for inspection and copying, must be provided within three business days.²⁶ In lieu of providing printouts or copies of records or data, the city can provide access to records through a website accessible to the public.²⁷ The city must allow a person to bring a portable copying or scanning device and make copies that way instead of being charged the city's rates.²⁸ However, if confidential information must be removed from portions of a record, the city can provide redacted copies instead of allowing inspection of the record.²⁹

Many cities are making routine records more accessible to the public by posting records on the city's website or allowing citizens to access records through the Internet. This makes getting information easier for citizens and saves staff time. Examples

²² O.C.G.A. § 50-18-71(c)(2).

²³ Ibid.

²⁴ O.C.G.A. § 50-29-2.

²⁵ O.C.G.A. § 50-18-77.

²⁶ O.C.G.A. § 50-18-71(b)(1)(A).

²⁷ O.C.G.A. § 50-18-71(h).

²⁸ O.C.G.A. § 50-18-71(b)(1)(B).

²⁹ Ibid.

Government in the Sunshine

of records that many cities are posting on the Internet include meeting schedules, agendas, minutes, and city ordinances. However, thought should be given to the type of electronic access that will be offered, the type of records that will be made available electronically, and whether or not systems can be designed to ensure the security of city computer systems and records. To avoid any confusion about computer access, city officials may choose to designate by ordinance or resolution which records, if any, will be made available electronically via posting on a city website.

City officials should also emphasize to city employees the importance of good customer service. Almost all of the information contained in city records belongs to the public. Make sure that city employees understand that, regardless of the attitude of the party requesting the documents, these are public records and, as public employees, they are required to assist the requester. The requester should not be considered an adversary.

Although the records custodian may ask that open records requests be made in writing, he or she may not require them to be in writing. However, municipal employees that receive records requests should be instructed to make a written record of oral open records requests. Most requesters will readily provide a written request for two reasons: it protects from misunderstanding the request and helps focus the request to avoid excessive charges, when the request is for something other than meeting minutes, agendas, ordinances, etc. A written request also becomes an identifiable record, clearly triggering the three business day time period for access when received by the open records officer or records custodian designated by the city.³⁰ Finally, legal action to enforce compliance with the Open Records Act is only available when a written request is made and is not available for an oral request.³¹

To simplify the process, a city could provide the requester with a basic request form if he or she appears at city hall in person, or the form could be mailed, faxed, e-mailed, or posted on the city's website. City staff receiving the request should use a standard form for recording requests not received in writing. If a city uses e-mail or faxes in the normal course of business then it must accept faxed or e-mailed written records requests.³²

³⁰ O.C.G.A. §50-18-71(b)(2).

³¹ O.C.G.A. §50-18-71(b)(3).

³² O.C.G.A. §50-18-71(b)(2).

The city should update its records retention schedule and make sure that employees responding to records requests are familiar with the schedule. State law requires cities to have a records retention schedule,³³ and all department heads and records custodians should familiarize themselves with and follow the records retention plan adopted by the city. Within three business days of a request, the requested records should be found if practicable and any relevant exemptions identified. A file list or inventory will allow quicker access to records as well as complete and accurate responses to requests.

Cities should adopt a standard policy on charges for copying, administrative searches and other permitted fees and seek reimbursement of costs uniformly. Do not charge some citizens but not others for copies and administrative time unless the policy provides that no charge is imposed for minimal amounts of copying. The copying and administrative charges authorized by the open records law are not to be used to discourage frequent or unpleasant requesters. Rather, they are designed to ease the cost to the taxpayers of providing access to public records and it is the taxpayers who ultimately pay the cost of compliance beyond what is collected in fees from the requester.

Finally, resist taking advantage of technicalities and loopholes in the law. Trying to work around the law is the surest way to guarantee that new changes will be made that will make it even tougher for city officials to comply efficiently with the open records law. When faced with a gray area or a loophole, remember that the General Assembly and the courts are available to clear up the issue. Be assured that the courts have made it clear that they will always lean toward making access easier or records more open.

Penalties and Fines for Failure to Comply with the Open Records Law

In addition to the district attorney or solicitor, the Attorney General is authorized to file a criminal action against individuals who violate the open records law.³⁴ Anyone who knowingly and willfully violates the open records law, by refusing access, failing to provide documents within the requisite time, or "attempting to frustrate access by intentionally making records difficult to obtain or review", may be found guilty of a misdemeanor and may be subject to a fine not to exceed \$1000.00 for the first

³³ O.C.G.A. § 50-18-90 et seq.

³⁴ O.C.G.A. § 50-18-73(a).

Government in the Sunshine

violation.³⁵ A civil penalty or criminal fine not to exceed \$2500.00 can be imposed for each additional violation committed within a twelve month period. Additionally, civil penalties may also be imposed by the court on any person who negligently violates the terms of the statute.³⁶ As with the open meetings law, the Attorney General or any other person, firm, or corporation may bring a civil action in superior court to require the municipal records custodian to release records and the city may be required to pay the complaining party's attorney's fees if the records custodian acted without substantial justification in denying an open records request.³⁷

Records That Must be Kept Confidential

In addition to medical records, certain information that could lead to identity theft should not be released except under specific circumstances. Specifically, social security numbers, mother's birth name, credit card, debit card, bank account information, account number, including utility account number and password used to access the account, financial data, insurance information, medical information, unlisted telephone numbers if so designated in a public record, personal e-mail addresses, cellular telephone numbers, and month and date of birth must be redacted from all records before they are released.³⁸

There are certain people, however, who may request and receive access to the personal and financial data generally exempted from access as discussed above. These are as follows:

- An individual or his or her legal representative may obtain records containing that individual's social security numbers, mother's birth name, credit card, debit card, bank account, financial data, insurance data, or medical information;³⁹
- A government employee may obtain records containing social security numbers, mother's birth name, credit card, debit card, bank account, financial data, insurance data, or medical information if he or she is doing so for administrative or law enforcement purposes;⁴⁰

³⁵ O.C.G.A. § 50-18-74(a).

³⁶ *Ibid.*

³⁷ O.C.G.A. § 50-18-73.

³⁸ O.C.G.A. § 50-18-72(a)(20)(A).

³⁹ O.C.G.A. §§ 50-18-72(a)(20)(B)(v).

⁴⁰ O.C.G.A. §§ 50-18-72(a)(20)(B)(ii) and 50-18-72(a)(B)(iii).

- Any individual may obtain date of birth and mother's birth name of a deceased individual⁴¹
- Consumer reporting agencies may obtain credit and payment information.⁴²
- Tax matters made confidential by state law, such as certain occupation tax records, must not be released.⁴³ Trade secrets and certain proprietary information protected by the Georgia Trade Secrets Act of 1990 may not be released.⁴⁴
- Records specifically required by federal statute or regulation to be kept confidential may not be released.⁴⁵

Additionally, a representative of a "news media organization" gathering information for use in connection with news reporting may obtain access to an individual's social security number and day and month of birth by requesting such in a writing signed under oath attesting that they are a member of the media requesting such information for news gathering purposes.⁴⁶ This, of course, leads to the yet unanswered questions of what is a "news media organization" and what qualifies as "news gathering purposes." But even representatives of a news media organization are not entitled to access the information listed above or the home address or home telephone number of public employees.⁴⁷ For the purpose of this exception to open records, "public employee" means any officer, employee or former employee of the State of Georgia or of any county, municipality or other political subdivision of this state. It also includes teachers in public, private and charter schools and employees of early care and education programs administered through the Department of Early Care and Learning.⁴⁸

Finally, certain law enforcement related records must be kept confidential unless certain specific criteria are met. Booking photographs of persons arrested by law enforcement cannot be posted on a website by an arresting law enforcement

⁴¹ O.C.G.A. § 50-18-72(a)(20)(B)(vi).

⁴² O.C.G.A. § 50-18-72(a)(20)(B)(vii).

⁴³ O.C.G.A. §§ 50-18-72(a)(43); 48-13-15.

⁴⁴ O.C.G.A. §§ 10-1-760 et seq. and 50-18-72(a)(34); Theragenics Corp. v. Georgia Department of Natural Resources, 545 S.E.2d 904 (2001).

⁴⁵ O.C.G.A. § 50-18-72(a)(1).

⁴⁶ *Ibid.*

⁴⁷ O.C.G.A. § 50-18-72(a)(21).

⁴⁸ *Ibid.*

Government in the Sunshine

agency. This prohibition, however, does not apply to the state sexual offender registry and some other limited exceptions.⁴⁹ The arresting law enforcement agency also is prohibited from providing such photograph to any person who may publish the photograph and require a fee or other consideration for its removal.⁵⁰ Additionally, audio recordings of 9-1-1 calls which contain speech or cries of a person who died during the call or the speech or cries of a minor are prohibited from being released with only limited exceptions.⁵¹

Records That Are Temporarily Exempt from Disclosure

The following records may be (but are not required to be) withheld for a specific period of time.

Investigation of complaints against city employees. Records containing materials from investigations of complaints against public employees or relating to the suspension or termination of an employee are not subject to disclosure until 10 days after the investigation is complete or otherwise terminated.⁵²

Appointment of the executive head. Records that would identify all of the applicants for the position of executive head of an agency (such as city manager) may be withheld until up to three finalists are selected, unless the public has had access to the application and interview process.⁵³ Fourteen days prior to the final decision, the names and application materials of as many as three finalists must be made available to the public upon request, unless the applicant no longer seeks the position.⁵⁴ However, the city may be required to provide information regarding the number of applicants and the race and gender of those applicants.

Land acquisition. Real estate appraisals, engineering or feasibility estimates, or other records relating to the acquisition of real property may be withheld only until the transaction has been completed or terminated.⁵⁵

⁴⁹O.C.G.A. § 35-1-18.

⁵⁰Ibid.

⁵¹O.C.G.A. § 50-18-72(a)(26.1).

⁵²O.C.G.A. § 50-18-72(a)(8).

⁵³O.C.G.A. § 50-18-72(a)(11).

⁵⁴Ibid.

⁵⁵O.C.G.A. § 50-18-72(a)(9).

Pending bids and proposals. Competing bids and proposals may be withheld until such time as the final award of the contract is made, the project is abandoned or the agency takes a public vote regarding the sealed bid or proposal, whichever comes first.⁵⁶

Pending investigations. Records of law enforcement, prosecution, or regulatory agencies in any pending investigation, other than the initial incident report, may be withheld until the prosecution or any direct litigation is final or terminated.⁵⁷ However, note that this exception does not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution.

Records That May Be Withheld

Certain records may be, but are not required to be, withheld from disclosure.

Invasion of privacy. Records the disclosure of which would be an invasion of privacy according to Georgia case law may be withheld.⁵⁸

Attorney-client privilege and attorney work product. Records subject to the attorney-client privilege and confidential attorney work product may be withheld.⁵⁹ However, if an attorney is conducting an investigation on behalf of an agency, the legal conclusions of the attorney are protected but the factual findings are not unless the investigation pertains to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee of the agency.

Security systems and neighborhood watch programs. An exemption from public disclosure is also provided for information related to neighborhood watch programs, public safety notification programs, and burglar alarm, fire alarm, or other electronic security systems.⁶⁰ Government records that contain names, home addresses, telephone numbers, e-mail addresses, security codes or other information related

⁵⁶O.C.G.A. § 50-18-72(a)(10).

⁵⁷O.C.G.A. § 50-18-72(a)(4); Unified Government of Athens-Clarke County v. Athens Newspapers, LLC, 284 Ga. 192, 663 S.E.2d 248 (2008).

⁵⁸O.C.G.A. § 50-18-72(a)(2); Dortch v. Atlanta Journal, 261 Ga. 350, 405 S.E.2d 43 (1991); Fincher v. State, 231 Ga.App. 49, 497 S.E.2d 632 (1998).

⁵⁹O.C.G.A. §§ 50-18-72(a)(41) and 50-18-72(a)(42).

⁶⁰O.C.G.A. § 50-18-72(a)(19).

Government in the Sunshine

to those systems may be kept private. However, initial police reports and incident reports are subject to disclosure.

Carpools and rideshare programs. Records acquired by an agency to establish or implement a carpooling or ridesharing program may also be withheld.⁶¹

Accident reports. Georgia Uniform Motor Vehicle Accident Reports may be withheld unless the person requesting the accident report is named in the report, represents someone named in the report, or files a statement of need.⁶² Additionally, certain other governmental agencies may acquire accident reports without filing a statement of need if they are obtaining the accident report in conjunction with an ongoing administrative, criminal, or tax investigation.⁶³ Law enforcement officers and staff are prohibited from soliciting, releasing or selling any information relating to the parties of a motor vehicle accident for personal financial gain.⁶⁴

Security plans. Cities, and other agencies, need not disclose certain records, such as security plans, vulnerability assessments and blueprints, if the disclosure of such documents would compromise security against sabotage or criminal or terrorist acts.⁶⁵

Emergency telephone calls. The name, address and telephone number of a person calling a public safety answering point can be redacted from E 9-1-1 records to prevent disclosing a confidential source, the existence of a confidential surveillance or investigation, or material which would endanger the life or physical safety of any person.⁶⁶ However, upon request, such information must be provided to the accused in a criminal case or such person's attorney.

Job references and examinations. Records of confidential evaluations submitted to an agency in connection with the appointment or hiring of a public officer or employee⁶⁷ need not be disclosed. Likewise, examinations prepared by an agency

⁶¹ O.C.G.A. § 50-18-72(a)(24).

⁶² O.C.G.A. § 50-18-72(a)(5).

⁶³ O.C.G.A. § 50-18-77.

⁶⁴ O.C.G.A. § 33-24-53.

⁶⁵ O.C.G.A. § 50-18-72(a)(25).

⁶⁶ O.C.G.A. § 50-18-72(a)(26).

⁶⁷ O.C.G.A. § 50-18-72(a)(7).

and questions, scoring keys and other test materials that derive value from being unknown to the test-taker prior to administration of the test need not be disclosed.⁶⁸

Recreation programs. Records of athletic or recreational programs that include information identifying any child 12 years of age or under by name, address, telephone number, or emergency contact are also not subject to disclosure.⁶⁹

Trade secrets. When a business or individual provides to a city records containing trade secrets and the submission of those records is required by law, regulation, bid or request for proposal, the business or individual should identify the records to be kept confidential and attach to them an affidavit declaring specific information in those records to be trade secrets. If the city receives a request for those records, the city is supposed to notify the submitting person or business of the request and the city's intent to produce the records within ten days before disclosing the records. This provides the submitting person or business with an opportunity to seek a protective order in court. If the city determines the records do actually contain trade secrets, the city can withhold the records and the requester can seek to obtain a court order declaring that the requested records are not trade secrets.⁷⁰

Economic development projects and job training. Documents maintained by the Department of Economic Development concerning a proposal to locate or expand a business that would involve the expenditure of more than \$25 million or the hiring of more than 50 employees need not be disclosed until a binding commitment has been secured or the project has been terminated.⁷¹ Likewise, records related to a job training program operated under the State Board of the Technical College System of Georgia for such an economic development project need not be disclosed prior to a binding commitment having been secured.⁷²

⁶⁸ *Ibid*; O.C.G.A. §50-18-72(a)(38).

⁶⁹ O.C.G.A. §50-18-72(a)(27).

⁷⁰ O.C.G.A. §50-18-72(a)(34).

⁷¹ O.C.G.A. §50-18-72(a)(46).

⁷² O.C.G.A. §50-18-72(a)(47).

Government in the Sunshine

List of Common Exceptions to Disclosure

Information the City is Prohibited from Disclosing

- Social security numbers, mother's birth name, credit card information, debit card information, account numbers, bank account information, utility account numbers, passwords used to access accounts, financial data or information, insurance and medical records, unlisted telephone numbers, personal e-mail addresses, cellular telephone numbers, and month and date of birth. [§ 50-18-72(a)(20)(A)].

There are certain exceptions to the release of some social security number and day and month of birth information to "news media organizations", an individual or his or her legal representative, government employees for specific purposes, consumer reporting agencies, and other narrow exceptions. [§§ 50-18-72(a)(20)(A); 50-18-72(a)(20)(B)(v); 50-18-72(a)(20)(B)(ii); 50-18-72(a)(20)(B)(vii); 50-18-72(a)(20)].

However, some of those exceptions have exceptions of their own, particularly when such information relates to public employees. [§ 50-18-72(a)(21)].

- Records containing tax matters or tax information that is confidential under state or federal law [§ 50-18-72(a)(43)].
- Data records, or information of a proprietary nature, that contain trade secrets and certain proprietary information protected by the Georgia Trade Secrets Act of 1990. [§ 50-18-72(34)].
- Records specifically required by federal statute or regulation to be kept confidential. [§ 50-18-72(a)(1)].

Information that the City May Refuse to Disclose

- Records consisting of confidential evaluations submitted to, or examinations prepared by, the city relating to the hiring or appointment of a public officer or employee. [§ 50-18-72(a)(7)].
- Records of which the disclosure would be an invasion of personal privacy according to Georgia case law. [§ 50-18-72(a)(2)].

Government in the Sunshine

- The home address, home telephone number, e-mail address, and social security numbers of public employees and of private school teachers. [§ 50-18-72(a)(21)].
- Information related to neighborhood watch programs, public safety notification programs, burglar alarm, fire alarm, and other electronic security systems. [§ 50-18-72(a)(19)].
- Georgia Uniform Motor Vehicle Accident Reports may be withheld unless the person requesting the accident report is named in the report, represents someone named in the report, or files a statement of need. [§ 50-18-72(a)(5)].

Open Records - FAQs

- Q:** Does a person making an Open Records request have to provide their name and/or contact information in order to make the request valid?
- A:** No, the Open Records Act does not create any requirement for a requestor to provide their name or contact information in order to make the request. However, in order to utilize the enforcement provisions of the law a written request must have been made. Written requests also allow the agency to provide an estimate of the cost to produce the requested records and contact information in the event that particular records are not readily available or information in certain records must be redacted. Except for simple requests for readily available records such as recent agendas and minutes or current ordinances, cities should have their open records officer or records custodian document all requests and retain a file copy of all responsive records produced. This documentation may be necessary if the city's responsiveness to the records request is challenged.
- Q:** Our city has a working draft of the budget but it has not been approved and we have received an open records request for the document. Does the working draft fall under the open records law?
- A:** Yes. The document does not fall within any of the exceptions in the open records laws. Although a document may only be a draft, unless it is protected by an exception the document would still be required to be released in an open records request.
- Q:** Are documents and emails sent from my personal computer/phone/tablet discussing city business subject to open records laws?
- A:** Yes, city officials and employees need to be aware that they cannot skirt state open records laws by utilizing personal computers, phones, tablets, or other similar devices to discuss and conduct city business in an effort to conceal records. If a city official or employee is documenting city business, that record is subject to the state open records law regardless of whether the device on

Government in the Sunshine

which the documents are received, sent, written or stored are public or private devices.

Q: Are emails from my personal email account sent from my city issued computer/ phone/tablet discussing private matters subject to open records laws?

A: The answer to that is not completely clear from the face of the statute. The definition of "public record" applies to material prepared and maintained or received by an agency. The way the definition is written, particularly in light of the definition previously in the law, indicates that it may not be limited to information sent, received or generated in the course of the operation of a public office or agency. In order to avoid potential problems and the potential disclosure of personal information, city officials and employees should avoid or limit the use of any city issued computer, phone, tablet, or other similar device for personal discussions or business.

Q: Can the city require persons making open records requests to make requests in writing?

A: A request made under the open records law may be made to the custodian of a public record orally or in writing. The city may, but is not obligated to, require that all written requests be made upon a designated open records officer, but a city cannot require that all records be made in writing. However, the enforcement provisions are only available to enforce compliance and punish noncompliance when a written request is made consistent with the state law and are not available to those who make oral open records requests.

Q: Who takes the minutes of executive sessions and how are those minutes approved?

A: The law does not specifically address this. At the end of the day it will be up to the governing body of each agency to determine whether the regular clerk should accompany the body into executive session for the purpose of taking minutes or whether some other party to the executive session, such as the city manager or city attorney, should perform that function. As a general rule,

only those who are necessary to the discussion of the executive session topic should be in the executive session. This is critically important in the case of attorney-client discussions in order to preserve the attorney-client privilege. Given that most municipal charters enumerate as one of the clerk's duties maintaining city council records and other city records it seems justifiable for the clerk to continue performing this duty in executive session. Of course, if the executive session discussion is about the clerk or if it would otherwise be a conflict of interest or clear breach of confidentiality to include the clerk in the executive session then the clerk should be excluded. Executive session minutes could be approved in two different ways. One way would be to review and approve them in the next executive session. The other would be to approve them in the next regular, open meeting of the body but without making them public. Again, the statute does not speak directly to this issue. The city attorney should be consulted for guidance on each of these issues.

Government in the Sunshine

Summary of Some Exceptions Outside the Open Records Act

Though most exceptions to the Open Records Act are located in Title 50, there are several sections of the Georgia code that provide exceptions to the public disclosure requirement. The following examples are sections that might be applicable to cities.

1. Information provided by victims participating in a notification program is protected from disclosure. O.C.G.A. § 17-17-14.
2. Public school teachers, administrators and superintendents are required to undergo annual performance evaluations. These evaluations are protected from disclosure. O.C.G.A. § 20-2-210.
3. Library records that could identify the user of library materials are protected from disclosure. O.C.G.A. § 24-9-46.
4. Hospital plans, proposals, or strategies that are potentially commercially valuable and have not been made public, until such time as the plan, proposal, or strategy has been either approved or rejected. O.C.G.A. § 31-7-75.2.
5. Vital records such as birth certificates are protected from disclosure. O.C.G.A. § 31-10-25.
6. All work papers, analysis, information and documents from another state or any other materials produced or obtained pursuant to Chapter 2 of Title 33 of the Georgia Code, or any materials produced or obtained by the Commissioner of Insurance for analysis of the financial condition or market conduct of a company must be held confidential. O.C.G.A. § 33-2-14.
7. Records a city obtains from the insurance commissioner through the administration of a tax, such as the insurance premium tax, are protected from disclosure. O.C.G.A. § 33-8-10.
8. Records provided to the county board of tax assessors by a taxpayer, other than the tax return. These confidential records may include taxpayers' accounting records, profit and loss statements, and balance sheets. O.C.G.A. § 48-5-314.

Government in the Sunshine

9. Information on gross receipts received by a business or practitioner provided to a city for purposes of occupation taxes is protected from inspection or disclosure. O.C.G.A. § 48-13-15.
10. A city that creates or maintains geographic information systems in electronic form is not required to disclose this information under the Open Records Act. The municipality may contract to distribute, sell, or provide access to such information and may license or establish fees for providing such records. O.C.G.A. § 50-29-2.
11. Records on candidates and peace officers prepared pursuant to the Georgia Peace Officer Standards and Training Act are considered confidential and may only be released to the candidate or peace officer to whom they pertain or to a law enforcement unit considering such person for employment. O.C.G.A. § 35-8-15.
12. Crime scene photographs and video recordings, including video recordings created or produced by a state or local agency or by a perpetrator or suspect at a crime scene, which depict or describe a deceased person in a state of dismemberment, decapitation, or similar mutilation including, without limitation, where the deceased person's genitalia are exposed. O.C.G.A. § 45-16-27.

The Georgia Open Records Act

§ 50-18-70.

(a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in government and so that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions. The General Assembly further finds and declares that there is a strong presumption that public records should be made available for public inspection without delay. This article shall be broadly construed to allow the inspection of governmental records. The exceptions set forth in this article, together with any other exception located elsewhere in the Code, shall be interpreted narrowly to exclude only those portions of records addressed by such exception.

(b) As used in this article, the term:

- (1) "Agency" shall have the same meaning as in Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization that has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state, their officers, or any combination thereof and derives more than 33 1/3 percent of its general operating budget from payments from such political subdivisions.
- (2) "Public record" means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency or by a private person or entity in the performance of a service or function for or on behalf of an agency or when such documents have been transferred to a private person or entity by an agency for storage or future governmental use.

§ 50-18-71.

(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted

Government in the Sunshine

from disclosure. Records shall be maintained by agencies to the extent and in the manner required by Article 5 of this chapter.

(b)(1)(A) Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request; provided, however, that nothing in this chapter shall require agencies to produce records in response to a request if such records did not exist at the time of the request. In those instances where some, but not all, records are available within three business days, an agency shall make available within that period those records that can be located and produced. In any instance where records are unavailable within three business days of receipt of the request, and responsive records exist, the agency shall, within such time period, provide the requester with a description of such records and a timeline for when the records will be available for inspection or copying and provide the responsive records or access thereto as soon as practicable.

(B) A request made pursuant to this article may be made to the custodian of a public record orally or in writing. An agency may, but shall not be obligated to, require that all written requests be made upon the responder's choice of one of the following: the agency's director, chairperson, or chief executive officer, however denominated; the senior official at any satellite office of an agency; a clerk specifically designated by an agency as the custodian of agency records; or a duly designated open records officer of an agency; provided, however, that the absence or unavailability of the designated agency officer or employee shall not be permitted to delay the agency's response. At the time of inspection, any person may make photographic copies or other electronic reproductions of the records using suitable portable devices brought to the place of inspection. Notwithstanding any other provision of this chapter, an agency may, in its discretion, provide copies of a record in lieu of providing access to the record when portions of the record contain confidential information that must be redacted.

Open Records

- (2) Any agency that designates one or more records officers upon whom requests for inspection or copying of records may be delivered shall make such designation in writing and shall immediately provide notice to any person upon request, orally or in writing, of those open records officers. If the agency has elected to designate an open records officer, the agency shall so notify the legal organ of the county in which the agency's principal offices reside and, if the agency has a website, shall also prominently display such designation on the agency's website. In the event an agency requires that requests be made upon the individuals identified in subparagraph (B) of paragraph (1) of this subsection, the three-day period for response to a written request shall not begin to run until the request is made in writing upon such individuals. An agency shall permit receipt of written requests by e-mail or facsimile transmission in addition to any other methods of transmission approved by the agency, provided such agency uses e-mail or facsimile in the normal course of its business.
 - (3) The enforcement provisions of Code Sections 50-18-73 and 50-18-74 shall be available only to enforce compliance and punish noncompliance when a written request is made consistent with this subsection and shall not be available when such request is made orally.
- (c)(1) An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records pursuant to this article. An agency shall utilize the most economical means reasonably calculated to identify and produce responsive, nonexcluded documents. Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply when certified copies or other records to which a specific fee may apply are sought. In all other instances, the charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.
- (2) In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to

Government in the Sunshine

exceed 10¢ per page for letter or legal size documents or, in the case of other documents, the actual cost of producing the copy. In the case of electronic records, the agency may charge the actual cost of the media on which the records or data are produced.

- (3) Whenever any person has requested to inspect or copy a public record and does not pay the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully estimated and agreed to pursuant to this article, and the agency has incurred the agreed-upon costs to make the records available, regardless of whether the requester inspects or accepts copies of the records, the agency shall be authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments by such agency.
- (d) In any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting the requested records or records from disclosure by Code section, subsection, and paragraph within a reasonable amount of time not to exceed three business days or in the event the search and retrieval of records is delayed pursuant to this paragraph or pursuant to subparagraph (b)(1)(A) of this Code section, then no later than three business days after the records have been retrieved. In any instance in which an agency will seek costs in excess of \$25.00 for responding to a request, the agency shall notify the requester within a reasonable amount of time not to exceed three business days and inform the requester of the estimate of the costs, and the agency may defer search and retrieval of the records until the requester agrees to pay the estimated costs unless the requester has stated in his or her request a willingness to pay an amount that exceeds the search and retrieval costs. In any instance in which the estimated costs for production of the records exceeds \$500.00, an agency may insist on prepayment of the costs prior to beginning search, retrieval, review, or production of the records. Whenever any person who has requested to inspect or copy a public record has not paid the cost for search, retrieval, redaction, or copying of such records when such charges have been lawfully incurred, an agency may require prepayment for compliance with all future requests for production of records from that person until the costs for the prior production of records have been paid or the dispute regarding payment resolved.

- (e) Requests by civil litigants for records that are sought as part of or for use in any ongoing civil or administrative litigation against an agency shall be made in writing and copied to counsel of record for that agency contemporaneously with their submission to that agency. The agency shall provide, at no cost, duplicate sets of all records produced in response to the request to counsel of record for that agency unless the counsel of record for that agency elects not to receive the records.
- (f) As provided in this subsection, an agency's use of electronic record-keeping systems must not erode the public's right of access to records under this article. Agencies shall produce electronic copies of or, if the requester prefers, printouts of electronic records or data from data base fields that the agency maintains using the computer programs that the agency has in its possession. An agency shall not refuse to produce such electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into an agency's computer system so long as such commands or instructions can be executed using existing computer programs that the agency uses in the ordinary course of business to access, support, or otherwise manage the records or data. A requester may request that electronic records, data, or data fields be produced in the format in which such data or electronic records are kept by the agency, or in a standard export format such as flat file electronic American Standard Code for Information Interchange (ASCII) format, if the agency's existing computer programs support such an export format. In such instance, the data or electronic records shall be downloaded in such format onto suitable electronic media by the agency.
- (g) Requests to inspect or copy electronic messages, whether in the form of e-mail, text message, or other format, should contain information about the messages that is reasonably calculated to allow the recipient of the request to locate the messages sought, including, if known, the name, title, or office of the specific person or persons whose electronic messages are sought and, to the extent possible, the specific data bases to be searched for such messages.
- (h) In lieu of providing separate printouts or copies of records or data, an agency may provide access to records through a website accessible by the public. However, if an agency receives a request for data fields, an agency shall

Government in the Sunshine

not refuse to provide the responsive data on the grounds that the data is available in whole or in its constituent parts through a website if the requester seeks the data in the electronic format in which it is kept. Additionally, if an agency contracts with a private vendor to collect or maintain public records, the agency shall ensure that the arrangement does not limit public access to those records and that the vendor does not impede public record access and method of delivery as established by the agency or as otherwise provided for in this Code section.

- (i) Any computerized index of county real estate deed records shall be printed for purposes of public inspection no less than every 30 days, and any correction made on such index shall be made a part of the printout and shall reflect the time and date that such index was corrected.
- (j) No public officer or agency shall be required to prepare new reports, summaries, or compilations not in existence at the time of the request.

§ 50-18-72.

- (a) Public disclosure shall not be required for records that are:
 - (1) Specifically required by federal statute or regulation to be kept confidential;
 - (2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;
 - (3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records is reasonably likely to disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;
 - (4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving

such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution; and provided, further, that the release of booking photographs shall only be permissible in accordance with Code Section 35-1-18;

- (5) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party, to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term "need" means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:
- (A) Has a personal, professional, or business connection with a party to the accident;
 - (B) Owns or leases an interest in property allegedly or actually damaged in the accident;
 - (C) Was allegedly or actually injured by the accident;
 - (D) Was a witness to the accident;
 - (E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;
 - (F) Is a prosecutor or a publicly employed law enforcement officer;
 - (G) Is alleged to be liable to another party as a result of the accident;

Government in the Sunshine

- (H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;
 - (I) Is gathering information as a representative of a news media organization; provided, however, that such representative submits a statement affirming that the use of such accident report is in compliance with Code Section 33-24-53. Any person who knowingly makes a false statement in requesting such accident report shall be guilty of a violation of Code Section 16-10-20;
 - (J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, that this subparagraph shall apply only to accident reports on accidents that occurred more than 60 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted; or
 - (K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;
- (6) Jury list data, including, but not limited to, persons' names, dates of birth, addresses, ages, race, gender, telephone numbers, social security numbers, and when it is available, the person's ethnicity, and other confidential identifying information that is collected and used by the Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15; provided, however, that when ordered by the judge of a court having jurisdiction over a case in which a challenge to the array of the grand or trial jury has been filed, the Council of Superior Court Clerks of Georgia or the clerk of the county board of jury commissioners of any county shall provide data within the time limit established by the court for the limited purpose of such challenge. Neither the Council of Superior Court Clerks of Georgia

nor the clerk of a county board of jury commissioners shall be liable for any use or misuse of such data;

- (7) Records consisting of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee;
- (8) Records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;
- (9) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned;
- (10) Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the agency in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first;
- (11) Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than

Government in the Sunshine

have documents pertaining to such person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with Chapter 14 of this title, it shall not be required to delay final action on the position. The agency shall not be required to release such records of other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

- (12) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Budget and Research Office, provided that this exception shall not have any application to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;
- (13) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;
- (14) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that

disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

- (15) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;
- (16) Agricultural or food system records, data, or information that are considered by the Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "critical infrastructure" shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;
- (17) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "national animal identification program" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herd mates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;
- (18) Records that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural

Government in the Sunshine

habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

- (19) Records that reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;
- (20) (A) Records that reveal an individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, day and month of birth, and information regarding public utility, television, Internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available. Items exempted by this subparagraph shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security

Open Records

numbers and day and month of birth; and provided, further, that the news media organization exception in this subparagraph shall not apply to paragraph (21) of this subsection.

- (B) This paragraph shall have no application to:
- (i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;
 - (ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;
 - (iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;
 - (iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;
 - (v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;
 - (vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;
 - (vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

Government in the Sunshine

- (viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;
 - (ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or
 - (x) The disclosure of the date of birth within criminal records.
- (C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy.
- (D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.
- (E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of

the methods of such access where not otherwise provided for, restricted, or prohibited;

(21) Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, title, or offices. For the purposes of this paragraph, the term 'public employee' means any officer, employee, or former employee of:

- (A) The State of Georgia or its agencies, departments, or commissions;
- (B) Any county or municipality or its agencies, departments, or commissions;
- (C) Other political subdivisions of this state;
- (D) Teachers in public and charter schools and nonpublic schools; or
- (E) Early care and education programs administered through the Department of Early Care and Learning;

(22) Records of the Department of Early Care and Learning that contain the:

- (A) Names of children and day and month of each child's birth;
- (B) Names, addresses, telephone numbers, or e-mail addresses of parents, immediate family members, and emergency contact persons; or
- (C) Names or other identifying information of individuals who report violations to the department;

(23) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or

Government in the Sunshine

adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-2;

- (24) Records acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, including, but not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;
- (25) (A) Records the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:
 - (i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;
 - (ii) Any plan for protection against terrorist or other attacks that depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;
 - (iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks that depend for their effectiveness in whole or in part upon a lack of general public knowledge;
 - (iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts; and
 - (v) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would

reveal information described in divisions (i) through (iv) of this subparagraph.

(B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.

(C) As used in division (i) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;

(26) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (5) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point. Such information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;

(26.1) In addition to the exemption provided by paragraph (26) of this subsection, audio recordings of a 9-1-1 telephone call to a public safety answering point which contain the speech in distress or cries in extremis of a caller who died during the call or the speech or cries of a person who was a minor at the time of the call, except to the following, provided that the person seeking the audio recording of a 9-1-1 telephone call submits a sworn affidavit that attests to the facts necessary to establish eligibility under this paragraph:

Government in the Sunshine

- (A) A duly appointed representative of a deceased caller's estate;
 - (B) A parent or legal guardian of a minor caller;
 - (C) An accused in a criminal case when, in the good faith belief of the accused, the audio recording of the 9-1-1 telephone call is relevant to his or her criminal proceedings;
 - (D) A party to a civil action when, in the good faith belief of such party, the audio recording of the 9-1-1 telephone call is relevant to the civil action;
 - (E) An attorney for any of the persons identified in subparagraphs (A) through (D) of this paragraph; or
 - (F) An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, the audio recording of the 9-1-1 telephone call is relevant to the potential civil action;
- (27) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;
- (28) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon any toll project.
- (29) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in

excess of \$10,000.00 in the aggregate in a calendar year and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

- (30) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard, SmartCard, or successor or similar system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard, SmartCard, or successor or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name;
- (31) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;
- (32) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 and are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies;
- (33) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127;
- (34) Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited

Government in the Sunshine

from doing so by an appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;

- (35) Data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;
- (36) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This paragraph shall apply to, but shall not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works;
- (37) Any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations;

- (38) Unless otherwise provided by law, records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration which is to be administered by an agency, including, but not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test. These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics;
- (39) Records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity;
- (40) Any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms, except to the extent that such records relating to licensing and possession of firearms are sought by law enforcement agencies as provided by law;
- (41) Records containing communications subject to attorney-client privilege recognized by state law; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other

Government in the Sunshine

judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to the attorney-client privilege. Attorney-client communications, however, may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which such proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

- (42) Confidential attorney work product; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to confidentiality as attorney work product. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;
- (43) Records containing tax matters or tax information that is confidential under state or federal law;

- (44) Records consisting of any computer program or computer software used or maintained in the course of operation of a public office or agency; provided, however, that data generated, kept, or received by an agency shall be subject to inspection and copying as provided in this article;
- (45) Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to any agency;
- (46) Documents maintained by the Department of Economic Development pertaining to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated. No later than five business days after the Department of Economic Development secures a binding commitment and the department has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the Department of Economic Development shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Department of Economic Development's records documenting the bidding [sic] commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve the expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business; or
- (47) Records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills,

Government in the Sunshine

or other business methods and practices of a private entity. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve the expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business.

- (b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.
- (c) (1) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case.
- (2) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following:
- (A) A photograph;
 - (B) A photocopy;
 - (C) A facsimile; or
 - (D) Another reproduction.
- (3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.
- (d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall

be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than \$100,000.00, or both.

§ 50-18-73.

- (a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have authority to bring such actions in his or her discretion as may be appropriate to enforce compliance with this article and to seek either civil or criminal penalties or both.
- (b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.
- (c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of such decision.

§ 50-18-74.

- (a) Any person or entity knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article, by knowingly and willfully failing or refusing to provide access to such records within the time limits set forth in this article, or by knowingly and willingly frustrating or attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000.00 for the first violation. Alternatively, a civil penalty may be imposed by the court in any civil action brought pursuant to this article against any

Government in the Sunshine

person who negligently violates the terms of this article in an amount not to exceed \$1,000.00 for the first violation. A civil penalty or criminal fine not to exceed \$2,500.00 per violation may be imposed for each additional violation that the violator commits within a 12 month period from the date the first penalty or fine was imposed. It shall be a defense to any criminal action under this Code section that a person has acted in good faith in his or her actions. In addition, persons or entities that destroy records for the purpose of preventing their disclosure under this article may be subject to prosecution under Code Section 45-11-1.

- (b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40; such citation shall be personally served upon the accused. The defendant shall not be arrested prior to the time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance.

§ 50-18-75.

Communications between the Office of Legislative Counsel and the following persons shall be privileged and confidential: members of the General Assembly, the Lieutenant Governor, and persons acting on behalf of such public officers; and such communications, and records and work product relating to such communications, shall not be subject to inspection or disclosure under this article or any other law or under judicial process; provided, however, that this privilege shall not apply where it is waived by the affected public officer or officers. The privilege established under this Code section is in addition to any other constitutional, statutory, or common law privilege.

§ 50-18-76.

No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other

Open Records

documents in the office of the judge or clerk of any court prior to filing with the Department of Public Health shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection.

§ 50-18-77.

The procedures and fees provided for in this article shall not apply to public records, including records that are exempt from disclosure pursuant to Code Section 50-18-72, which are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The lawful custodian shall provide copies of such records to the requesting agency unless such records are privileged or disclosure to such agencies is specifically restricted by law.

Government in the Sunshine

SAMPLE REQUEST FOR RECORDS

The City of _____ is dedicated to complying with the Georgia Open Records Act. In order to provide you with responsive records in as efficient and economical a fashion as possible, we request that you complete this written request for records. Precise identification of the records you seek will help us get the records to you as quickly as possible and for the least cost. Your contact information will allow us to provide you with an estimate of the cost to retrieve and prepare the records.

Name of Requester: _____

Address: _____

Phone: _____

Email Address: _____

Other Contact Information _____

All of the following identify and limit the records I am requesting:

Subject Matter: _____

Department Creating or Maintaining the Record: _____

Dated between _____ and _____.

Contain the names or titles of the following person(s) _____

Database containing the record: _____

Please indicate here if you would prefer to inspect records rather than receive copies. _____

I agree to pay any copying and/or administrative costs incurred in fulfilling my requests to the extent permitted by Georgia law. Such costs may include copying charges of \$.10 per page and administrative charges for search, retrieval, redaction, and other direct costs, such administrative charges not to exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request. (The requester is not charged for the first fifteen minutes of time.)

Name (Print): _____

Signature: _____

Please return this form to:

[Identify appropriate open records officers.]

RECORD RETRIEVAL FEES

The following record retrieval fees may be charged:

Actual time of record preparation (varies)	Hrs x \$	=\$
Actual time of copying (varies)	Hrs X \$	=\$
\$0.10 per page copy	Pages @ \$0.10	=\$
\$ #.00 first CD copy	Copies @ \$ #.00	=\$
\$ #.00 each additional CD copy	Copies @\$ #.00	=\$
Postage		=\$
Other costs:		=\$
Video costs:	Copies @\$ #.00	=\$
Total actual costs:		=\$

The requester is not charged for the first fifteen minutes of time. Charges for time are not to exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request.

Government in the Sunshine

SAMPLE NEWS MEDIA REQUEST FORM

Name of Requesting News Media Organization: _____

Address: _____

Phone: _____

Pursuant to O.C.G.A. §50-18-72(a)(20)(A), I am formally requesting to inspect certain public records. In particular, records requested for inspection are:

Personally appeared before the undersigned attesting officer, duly authorized to administer oaths, _____, who, after being duly sworn, deposes and on oath states the following:

- (1) I am a legally authorized representative of a news media organization and am gathering information for use in connection with news gathering and reporting; and
- (2) I understand that O.C.G.A. § 50-18-72(a)(20)(C) provides as follows:
Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy.
- (3) I further understand that pursuant to Code Section 16-10-20 false swearing is a felony in the State of Georgia, punishable by up to five years in prison.

This ____ day of _____, _____.

Sworn to and subscribed before me
this ____ day of _____, _____.

Notary Public

SAMPLE RESPONSE TO OPEN RECORDS REQUESTS

Dear _____,

We have received your request dated _____, in which you asked for access to [public records/documents] in our possession. These records will be made available to you in Room _____ in City Hall [during normal business hours/as you requested]. [OR call Ms./Mr. _____ for an appointment]. Ask for Ms./Mr. _____.

As authorized by Code Section 50-18-71 of the Open Records Act, we will charge you a fee of \$ _____ per hour for search, retrieval, redaction, monitoring, and other direct administrative costs involved with your request for access to our records, after the first fifteen minutes of agency employee time expended. This fee represents the salary of the lowest paid full-time employee who possesses the necessary skill and training to perform the request. You will also be charged \$.10 for each page of our records you request to have copied, and may be charged an additional fee for certified copies or for other copies for which a fee is specifically authorized or otherwise provided for by law.

The estimated cost of the copying, search, retrieval, and other administrative fees authorized by Code Section 50-18-71 is \$ _____.

Please realize that if you request copying or other administrative services for which charges may be assessed, then you will be required to provide payment for these services. If you fail to pay, the city may enforce its collection by all means available under the law.

Very truly yours,

(Name)
Custodian of the Records

of _____
(Agency)

I agree to pay any copying and/or administrative costs incurred in fulfilling my request.

This _____ day of _____, _____.

Print Name

Signature

SAMPLE OPEN RECORDS POLICY

Purpose	I
Policy	II
Public Records	III
Ownership of Public Records	IV
Release of Information Procedures	V
Inspection of Records; fees; costs	VI
Exemptions	VII

- I. **PURPOSE** - The purpose of this policy is to provide procedures for open records requests.
- II. **POLICY** - The City of _____ is committed to conducting city business in a manner that complies with all legal requirements, fosters citizen confidence in city government, and promotes efficient and effective governmental operations. The city recognizes the importance of communicating information to citizens and other interested parties and will cooperate in supplying requested information which is considered a matter of public record.
- III. **PUBLIC RECORDS** - O.C.G.A. § 50-18-70 (b)(2) defines a public record as all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, data, data fields, or similar material prepared and maintained or received by an agency. Public records also means such items received or maintained by a private person or entity in the performance of a service or function for or on behalf of an agency and such items transferred to a private person or entity for storage or future governmental use.

O.C.G.A. § 50-18-70 et. seq., called the Georgia Open Records Act, establishes the right of every citizen to inspect and take a copy of all records except those specifically exempt from being open. When an agency receives a record request under the Open Records Act, it must comply with guidelines established in the law:

- The agency has three business days from the date of the request to determine if the requested records, or portions of such records, are open or closed.
- If the records are closed, the agency must respond in writing specifying the legal authority for restricting access to the records.
- Otherwise, the records are to be provided within the three-day period or a plan for providing access to the records provided to the requester.

IV. OWNERSHIP OF PUBLIC RECORDS – Records created, received or acquired by an employee of the City of _____ in the course of conducting government business are the property of the city and of the State of Georgia. Persons who create or acquire custody or possession of official records by virtue of their positions do not necessarily attain a proprietary interest in these records. City records are public records under the law and belong to the government rather than the employee. All city employees are responsible for reporting any actual or threatened loss or removal of records to the City Clerk, City Attorney, City Administrator, or Department Head.

V. RELEASE OF INFORMATION PROCEDURES - Formal requests for information under the Georgia Open Records Act pursuant to O.C.G.A. § 50-18-71 should be made in writing to the City Clerk. The City Clerk may accept requester's formal written request or shall provide an Open Records Request Form to the person making the request, which must be completed and returned to the City Clerk for further action. Informal requests may be made verbally. The public will **not** need to make a formal request for copies or viewing of routine ordinances, resolutions, agendas, maps, and minutes. Upon receipt of request, the City Clerk will notify the appropriate Department Head/Director/Division Head by Form ORR-1 for retrieval of information. When the requested information is compiled, all information along with Form ORR-1, reflecting attorney review and approval, approval by Department Head/Director/Division Head and an estimate of costs and time, will be submitted to the City Clerk. (See Form ORR-1) The City Clerk

Government in the Sunshine

will certify information, issue invoice, and notify requester to make arrangements for submittal of information.

Exception: Standardized and routine open records requests such as accident, incident, and miscellaneous reports and general research and analysis requests from the Police and Fire Departments will be received and handled by the Police and Fire Departments. The Open Records Officers for these departments are : _____ . Also, open record requests pertaining to municipal court dispositions will be handled by the Clerk of Municipal Court.

Whenever either type of request is received, the Department Head/Director Division Head or designated person responsible for control of that information should ensure that the information is provided as quickly as possible. Within 48 hours the City Clerk will be advised of requests, which cannot be available to the requester within three (3) business days from the date of receipt. The advisory will include a description of the records requested and a timetable for availability. The City Clerk will provide a written notification of this information to the requester within 24 hours. In no event shall more than three (3) business days lapse before a written timetable of inspection is provided to the requester from the City Clerk or the information is provided to the requester by the appropriate Department Head/Director/Division Head.

Exceptions to the Open Records law are provided below. If there is a question as to whether or not information requested is subject to the Open Records law, the Department Head/Director/Division Head shall immediately contact the City Clerk. **In all cases, the City Attorney shall make the final decision if information is to be withheld and will provide a written response citing the appropriate code section, which exempts the records from being released.**

VI. INSPECTION OF RECORDS; FEES, COSTS – Pursuant to O.C.G.A. § 50-18-71, if an individual has the right to inspect a record, he/she also has the right to make extracts or to make copies of the records under the supervision of the custodian of the records. If information is to be released, the requester will be allowed access, during normal business hours, to the documents containing the requested information. Departments should decide what hours to make documents available and monitor and supervise the inspection of approved records.

City employees do **not** have to prepare reports, summaries or compilations of public records not in existence at the time of the request. However, city employees cannot refuse to produce electronic records, data, or data fields on the grounds that exporting data or redaction of exempted information will require inputting range, search, filter, report parameters, or similar commands or instructions into the city's computer system so long as such commands or instructions can be executed using existing computer programs that the city uses in the ordinary course of business to access, support, or otherwise manage the records or data.

A requester may request that electronic records, data, or data fields be produced in the format in which such data or electronic records are kept by the city, or in a standard export format such as a flat file electronic American Standard Code for Information Interchange (ASCII) format, if the city's existing computer programs support such an export format. In such instance, the data or electronic records shall be downloaded in such format onto suitable electronic media.

Copies must be furnished, if requested, at a charge of \$.10 cents per page. A written response to all formal requests must be prepared indicating the time and place the records may be inspected and the approximate cost involved. A fee may be charged for research, redaction, retrieval, monitoring, and other administrative costs involved with the request, after the first fifteen minutes of employee time expended. This fee should represent the salary of the lowest paid

Government in the Sunshine

full-time employee who possesses the necessary skill and training to perform the request.

Redaction of Information: Many documents/materials are exempted from release in their entirety and these items may be completely removed from the record. Other documents/materials contain only specific information, which is exempted from release. In these instances, a photocopy of the document will be made and the specific exempted information will be blacked out with a heavy ink marker. The document photocopy will then be recopied to insure it cannot be read.

VII. **EXEMPTIONS**

Types of exempted documents that are not subject to disclosure are defined in O.C.G.A. § 50-18-72. *(In all cases, the City Attorney shall make the final decision if information is to be withheld and will provide a written response citing the appropriate code section, which exempts the records from being released)* These are a few types of exempted documents:

1. Any record required by federal law or regulation to be kept confidential.
2. An individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, and day and month of birth.
3. Medical files.
4. Records compiled for law enforcement or prosecution purposes to the extent that

production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material, which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation.

5. Records of law enforcement prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports, accident reports, and incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated.
6. Records that consist of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee, and records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged.
7. Real estate appraisals, engineering or feasibility estimates made relative to the acquisition of real property until such time as the property has been acquired or the proposed transition has been terminated or abandoned.
8. Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the city council takes a public vote regarding the sealed bid or sealed proposal, whichever comes first.

Government in the Sunshine

9. Those portions of records which would identify persons applying for or under consideration for employment or appointment as executive head of an agency ("agency" is defined as a department, commission, board or authority, not just the city government); provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position, the agency shall release all documents which came into its possession with respect to as many as three persons under consideration whom the agency has determined to be the best qualified for the position and from among whom the agency intends to fill the position. Prior to the release of these documents, an agency may allow such a person to decline from being considered further for the position rather than have the documents pertaining to the person released. If the agency has conducted its hiring or appointment process open to the public, it shall not be required to delay 14 days prior to taking final action. The agency shall not be required to release such records with respect to other applicants or persons under consideration. Upon request, the agency shall furnish the number of applicants and the composition of the list by such factors as race and sex.

10. Records that would reveal the names, home addresses, telephone numbers, security codes, or any other information collected by the city in connection with the operation of its alarm systems.

11. Records of public employees that would reveal the home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, or the identity of immediate family members or dependents of the public employee.

12. Records that would reveal the name, home address, home telephone number, employment telephone number, or hours of employment for any individual who is participating in, or has expressed interest in participating in a rideshare program.

Examples of those records considered exempt from being open are as follows:

1. Portions of personnel files that include medical records, evaluations and exams, and materials obtained to investigate disciplinary action until 10 days after issue is resolved.
2. Documents concerning on-going criminal investigations, the informants and, in exceptional cases, names of complainants other than the initial arrest reports, accident reports and incident reports.
3. Names or addresses of juvenile offenders.
4. Real Estate documents pending acquisition.

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This model open records ordinance is provided only for general informational purposes and to assist Georgia cities in identifying issues to address in a local open records ordinance. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this model. This model ordinance has been developed to help cities designate an Open Records Officer and to comply with Georgia's Open Records Law, codified in O.C.G.A. § 50-18-70, et seq. Special thanks is given to the City of Griffin, Georgia for allowing GMA to borrow heavily from the city's Open Records Ordinance.

MODEL OPEN RECORDS ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF _____, GEORGIA, AT CHAPTER _____, ADMINISTRATION, BY ESTABLISHING A NEW ARTICLE VI, OPEN RECORDS, TO COMPLY WITH O.C.G.A. §50-18-70, ET SEQ., "THE GEORGIA OPEN RECORDS LAW", AS AMENDED IN THE 2012 SESSION OF THE GEORGIA GENERAL ASSEMBLY; DESIGNATING AN "OPEN RECORDS OFFICER" AND "ASSISTANT OPEN RECORDS OFFICER(S)" FOR SAID CITY; DEFINING THE DUTIES AND COMPENSATION THEREOF; PROVIDING FOR PUBLIC RECORD REQUESTS TO BE SERVED UPON THE OPEN RECORDS OFFICER OR, IN THE OFFICER'S ABSENCE OR UNAVAILABILITY, UPON AN ASSISTANT OPEN RECORDS OFFICER; PROVIDING FOR THE MANNER OF SERVING PUBLIC RECORDS REQUESTS ON THE OPEN RECORDS OFFICER; PROVIDING FOR NOTICE OF THE CITY'S OPEN RECORDS PROCEDURES; PROVIDING REASONABLE CHARGES FOR COMPLIANCE WITH PUBLIC RECORDS REQUESTS; TO REPEAL CONFLICTING CODE PROVISIONS, ORDINANCES, OR PORTIONS THEREOF, IN CONFLICT WITH THE FOREGOING; TO RESTATE THE CODE OF _____, GEORGIA, AS MODIFIED HEREIN; TO ESTABLISH AND EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Georgia's Open Records Law, O.C.G.A. §50-18-70, *et seq.*, was amended in the 2012 Session of the General Assembly to enact new procedures for local governments (defined therein as "agencies") to comply with said law and to provide greater transparency in making public records available to the public for inspection and copying, which instills greater public trust in government;

WHEREAS, under the amended law, agencies may designate one or more "Open Records Officers" for the purpose of accepting service of written requests in order to assure timely response if made to the proper officer, who has been trained in the law and procedures for public records compliance;

WHEREAS, the City of _____, a Georgia municipal corporation, is an "agency" as defined at O.C.G.A. §50-18-70; and

WHEREAS, this City Council adopts as City public policy the statement of the General Assembly found at O.C.G.A. §50-18-70 (a);

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, GEORGIA, AND IT IS ESTABLISHED AS FOLLOWS:

SECTION ONE

Chapter _____ of the Municipal Code of the City of _____ is amended by adding a new Article, to be numbered Article _____, which shall include the following language:

Article _____

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Sec. _____. Short Title.

This Article shall be known as the “_____ Open Records Ordinance.”

Sec. _____. Open Records Officer.

There is hereby created the office of Open Records Officer. The City Manager is hereby designated as the City’s Open Records Officer; the Open Records Officer may designate, in writing, Assistant Open Records Officer(s) as required to perform the duties of his or her office. Before undertaking the duties of the office, the Open Records Officer and Assistant Open Records Officers shall take an oath, in writing, to diligently perform such duties. Compensation for the Open Records Officer and his or her Assistant Open Records Officers shall be initially recommended by the City Manager , approved by the City Council and scheduled on the City’s Pay Classification Plan, as from time to time amended. The Open Records Officer shall serve at the pleasure of the Board of Commissioners.

Sec. _____. Duties.

It shall be the duty of the Open Records Officer and his or her duly designated Assistant Open Records Officer(s) to accept written requests to inspect and copy public records, pursuant to O.C.G.A. §50-18-70, *et seq.*, and to produce to the requester all records responsive to a request within a reasonable amount of time not to exceed three (3) business days of receipt of a request, unless the time for response is extended in accordance with law. No request shall be deemed filed until served upon the Open Records Officer, either by hand delivery to the Officer at _____, Georgia _____; by certified United States mail, return receipt requested; by statutory overnight delivery; by email to _____; or by facsimile transmission to _____. Oral requests and requests, whether oral or in writing, served upon any other officer or employee of the City shall not be deemed filed, until the requester has filed his or her request, in writing, with the Open Records Officer. In

the absence or unavailability of the Open Records Officer¹, an Assistant Open Records Officer shall perform the duties of the Open Records Officer. The absence or unavailability of a designated Open Records Officer shall not delay the City's response to a properly served request².

Sec. _____. Request Response.

Upon receipt of a request³, it shall be the duty of the Open Records Officer to promptly ascertain the availability of all public records responsive to the request and to produce to the requester those records that can be located and produced within a reasonable time, not to exceed three (3) business days of receipt of a request. For purposes of computing the time within which a response must be made, the Open Records Officer shall not count the business day on which a request is received, nor any intervening Saturday, Sunday, or designated holiday on which City offices are closed for general business. Upon intake of a request, the Open Records Officer shall stamp the request with the date and time of receipt, and initial the request. In any instance where records are unavailable within three (3) business days of the request, it shall be the duty of the Open Records Officer to provide the requester with a written description of such records and a timeline for when the records will be available for inspection or copying and to provide the responsive records to the requester as soon thereafter as practicable. Such response shall also contain a good faith estimate of the cost to the requester for the search, retrieval, redaction, and production and copying of records. .

¹ It is the intent that the Open Records Officer be accessible within City Hall during the normal hours of general operation of the City's administrative staff, i.e. 8:30 a.m. to 5:00 p.m. Monday through Friday, except on recognized holidays and those days when City Hall is closed. The Open Records Officer shall coordinate his or her work schedule with the Assistant Open Records Officers to assure coverage within City Hall during normal hours at all times when the Open Records Officer is scheduled to be absent or unavailable for extended periods of time. Backup procedures will be implemented by the City Manager to assure such coverage by Assistant Open Records Officers during the Open Records Officer's unplanned absence or unavailability.

² By law, notice of the designation of Open Records Officers shall be posted on the official bulletin board at City Hall, in _____ as legal organ of _____ County, and on the City's website. In addition, City officers, department managers, and administrative staff will be instructed on how to assist and direct persons desiring to request inspection and copying of public records.

³ To further assist persons desiring to inspect records, a request form will be available at City Hall and on the City's website.

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The Open Records Officer shall confer with every officer or department manager of the City, as necessary, to ascertain the existence of public records responsive to a request (including electronically-stored information), and it shall be the duty of every City officer and department manager to confer with and provide records, or true and correct copies of the originals thereof, to the Open Records Officer promptly, time being of the essence. Upon receipt of a public record responsive to a request, the Open Records Officer shall determine, in consultation with the City Attorney, if the record is exempt from disclosure by order of a court of this state or by law; if the record is exempt from disclosure, the written response by the Open Records Officer shall set forth the specific legal authority under which withholding of inspection of the record is claimed. The Open Records Officer shall maintain a log or other documentation of his or her due diligence to comply with a proper request.

Sec. _____. Fees.

The Open Records Officer shall further have the duty to collect from a requester a reasonable charge for the search, retrieval, redaction, and production/copying of records, utilizing the most economical means available to identify and produce non-excluded records. The charge for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid full-time employee who, in the reasonable discretion of the Open Records Officer, has the necessary skill and training to perform the request; provided, however, no charge shall be made for the first quarter hour. In addition thereto, where certified copies of specific records are sought, the fees for certified copies prescribed by law shall apply; otherwise, a fee for the copying of records shall not exceed 10¢ per page for letter or legal size documents or, in the case of other documents and electronic records, the actual cost of reproducing the document or media on which the records or media are produced. It shall be the right of the requester, at the time of inspection, to make photographic copies or other electronic reproductions of records, at his or her own expense, using suitable portable devices brought to the place of inspection. Whenever any person has requested to inspect and copy public records and received a written response estimating the cost of the search, retrieval, redaction, and production/copying of the

records responsive to the request, and the City has actually incurred such costs but the requester fails to inspect or accept copies of the records, the Open Records Officer shall be authorized to collect such charges in any manner authorized by law.

In any instance in which the Open Records Officer has estimated costs in excess of \$25.00 for responding to a request, the Open Records Officer may defer the search, retrieval, redaction, and production/copying of the records until the requester has stated, in writing, his or her willingness to pay an amount equal to the estimate of costs. In any instance in which the estimated costs exceed \$500.00, the Open Records Officer shall insist, in writing, upon prepayment of the estimated costs prior to beginning search, retrieval, redaction, production or copying of the records. In any instance in which a requester has outstanding costs owing to the City for a previous records request, the Open Records Officer shall insist upon prepayment of the outstanding costs and estimated costs prior to beginning search and retrieval.

Sec. _____. Litigation.

Requests by civil litigants, or their counsel of record, in any ongoing civil action or administrative proceeding shall be made in writing and shall include the style of the action or proceeding, the names and addresses of all parties and, if a party is represented by counsel, the name, address, and telephone number of the party's attorney; a copy of the request shall be served by the requester upon all parties or their counsel of record in the action or proceeding contemporaneous to filing the written request with the Open Records Officer. The Open Records Officer shall make duplicate set(s) of records provided in response to the request available to all parties or their counsel for the cost of copies only, unless a party or its counsel elects not to receive the records and pay the copying charge. If the City is a party to the action or proceeding, a set of responses shall be provided to counsel for the City at no charge.

Sec. _____. Training.

The Open Records Officer and Assistant Open Records Officer(s) shall, prior to assuming the duties of their office, undergo a course of training in public records

Government in the Sunshine

management and specifically compliance with the Georgia Open Records Law, O.C.G.A. §50-18-70, *et seq.*, as approved by the City Manager, in consultation with the City Attorney. It shall be the responsibility of the City Manager, as the City's Public Records Manager designated at Sec. _____ of the Code of _____, Georgia, and the Open Records Officer, at least annually, to conduct a workshop for City officers and department managers on the minimum requirements and procedures for public records management and open records disclosure, including the penalties or civil fines that may be imposed for violating Georgia's public records laws.

Sec. _____ - _____. Reserved.

SECTION TWO

All ordinances and Code sections, or parts thereof, in conflict with the foregoing are expressly repealed.

SECTION THREE

Should any provision of this ordinance be rendered invalid by any court of law, the remaining provisions shall continue in force and effect until amended or repealed by action of the municipal governing authority.

SECTION FOUR

Except as modified herein, The Code of _____, Georgia, is hereby reaffirmed and restated. The codifier is hereby granted editorial license to include this amendment in future supplements of said Code by appropriate section, division, article or chapter.

SECTION FIVE

This ordinance shall become effective immediately upon its adoption by the City Council.

SO ORDAINED, this ____ day of _____, 2012

Mayor

City of _____

ATTEST:

Clerk of Council

Government in the Sunshine

be well be strong



Albany, Georgia

HAADC – Financial and Cost Training Session Materials

be caring



Overview of Financial Documents
Presented to HAADC

• 2



HAADC - Financial Reporting Items

HAADC - Financial Reporting Items

Required Report from PPMH	Timeframe	Due Again	Comments
Summary of charges per 31-7-11	Annual	November 2019	Provided per requirement (Brian Church emails report annually to HAADC Counsel – Also listing of PPMH charges is Publically available on phoebehealth.com
Annual HAADC Budget for current fiscal year	Annual	August 2019	Reported at scheduled HAADC Board meeting and approved by HAADC
Audited financial statement of PPMH	Annual	February 2020	Available on Phoebe's website at www.phoebehealth.com / Hard copies available upon request / Presented by PPMH CFO at scheduled HAADC Meeting
Report to Authority AND County Commission a financial report for PPMH including a statement of changes in the financial position of PPMH and audited revenues and expenses	Annual	February 2020	Available on Phoebe's website at www.phoebehealth.com / Hard copies available upon request / Hard Copies provided to HAADC and County Commission annually
Charity and Indigent Care Provided	Annual	February 2020	Part of Audited Financial Statements / Available on Phoebe's website at www.phoebehealth.com / Hard copies available upon request

Phoebe Putney Health System Rating Agency Presentation • 3



HAADC - Financial Reporting Items

Copies of annual Community Benefit Report	Annual	February 2020	The Community Benefit report is part of the Audited Financial Statements packet.
Community Health Needs Assessment	every 3 years	August 2019	Available on Phoebe's website at www.phoebehealth.com / Hard copies available upon request
Report of any plan for unmet health needs	Annual	August 2019	Available on Phoebe's website at www.phoebehealth.com / Hard copies available upon request / Also includes CBIS report from August 2018 meeting
Report addressing performance on making additional facilities and care available to the community and/or lowering cost of healthcare in the community	Annual	February 2020	Reported at regularly scheduled HAADC board meetings
Bond Payments Current	Annual	February 2020	Part of Audited Financial Statements / Available on Phoebe's website at www.phoebehealth.com / Hard copies available upon request
Tax Exempt Compliance - Form 990	Annual	Spring	Required by IRS/ Provided to HAADC at regular Scheduled Board meeting / Available on Phoebe's website at www.phoebehealth.com / Hard copies available upon request

Phoebe Putney Health System Rating Agency Presentation • 4

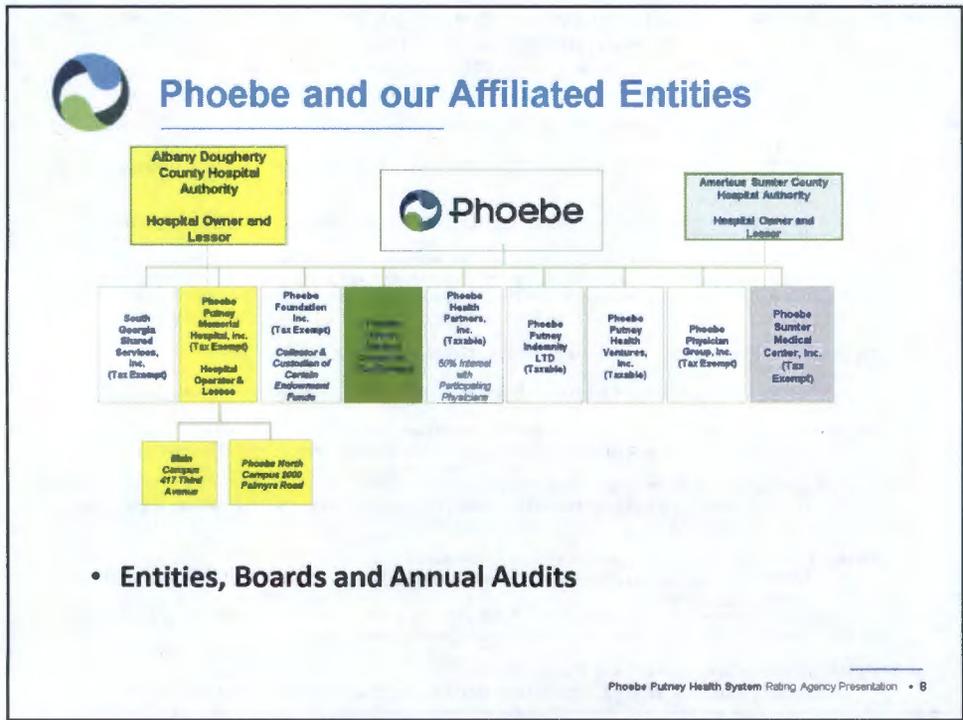
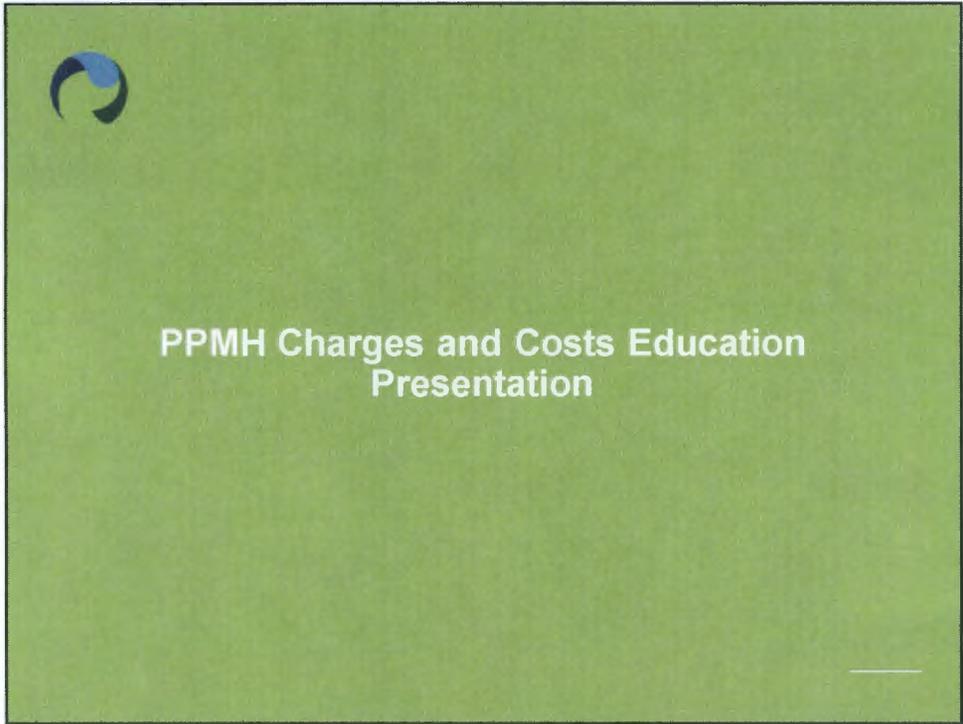


Where all the above Financial Data is located
(Web-Sites) for the Public Inspection

•5

**The following items may be found on Phoebe's website at
www.phoebehealth.com
Hard copies provided upon request**

- Copies of annual Community Benefit Report (included in Audited Financial Statements)
 - <http://www.phoebehealth.com/about-us/about-us-financials>
- Audited Financial Statement of PPMH
 - <http://www.phoebehealth.com/about-us/about-us-financials>
- Report to Authority and County Commission a financial report for PPMH including a statement of changes in the financial position of PPMH and audited revenues and expenses (included in Audited Financial Statements)
 - <http://www.phoebehealth.com/about-us/about-us-financials>
- Charity and Indigent Care Provided (included in Audited Financial Statements)
 - <http://www.phoebehealth.com/about-us/about-us-financials>
- Bond Payment Current (included in Audited Financial Statements)
 - <http://www.phoebehealth.com/about-us/about-us-financials>
- Community Health Needs Assessment
 - <http://www.phoebehealth.com/health-matters/building-healthy-communities>
- Report of any plan for unmet health needs
 - <http://www.phoebehealth.com/health-matters/building-healthy-communities>
 - See attached Community Benefit Implementation Strategies FY2018 presentation from August 16, 2018 meeting
- Tax Exempt Compliance – Form 990
 - <http://www.phoebehealth.com/about-us/about-us-financials>





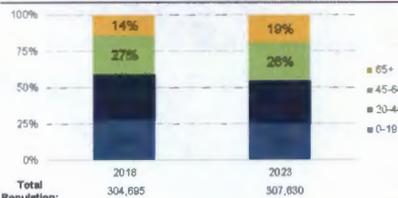
Market Demographics

- Phoebe's primary, secondary, and regional service areas' median household incomes were **below** the income levels of Georgia and the U.S. in 2018
- Similarly, the median household income growth rate of Phoebe's PSA and RSA trail the national rates; however...
- Population by age cohort is projected to remain relatively similar from 2018 to 2023

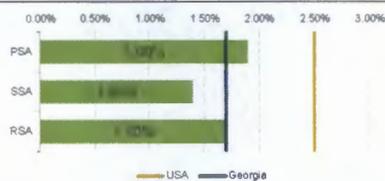
Median Household Income (2018)



Population by Age Cohort - RSA (2018 - 2023)



Median Household Income Growth (2018 - 2023)



Note: Primary Service Area, Secondary Service Area, and Regional Service Area are abbreviated as PSA, SSA, and RSA, respectively. Phoebe's regional service area consists of the 22 surrounding counties around Dougherty County, Georgia. Source: ESRI

Phoebe Putney Health System Rating Agency Presentation • 9



Phoebe Property Taxes – FY2019 (Dougherty County)

VPILOT (Voluntary Payment In Lieu of Taxes)	\$573,085 (Phoebe North)
Other Dougherty County Properties	\$316,197
Total Dougherty County Property Taxes	\$889,282

** This is based on prior year assessed taxes and projected out for FY 2019



PPMH Budget - Indigent & Charity Write-offs by County

County/State	Total Amount
DOUGHERTY	\$ (57,036,535)
Terrell, Lee, Worth Mitchell Counties	\$ (21,320,137)
Total Primary Service Area	\$ (78,356,672)

• 11



Indigent Care Contract PPMH-DOCO

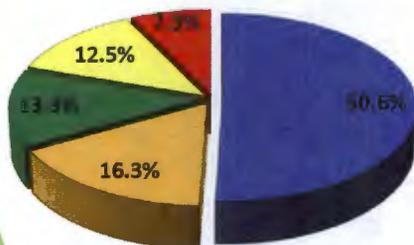
- In effect 1990 thru 2002 – 2 mils of tax support
- Contract ended 2002 – *“The hospital Board and Management have been extremely successful in bringing financial stability to the Hospital...Hospital Authority believes that the Hospital can be operated on a independent basis **without the requirement of further taxation of Dougherty County citizen's** to provide for the indigent sick”*
- *Dougherty County Budget FY2001-2002 – Indigent Care Contract =*
 – \$2,453,650.00 in annual tax support to Phoebe
- 15 Years of savings that Phoebe has provided to Dougherty County =
\$36,795,000.00

• 12



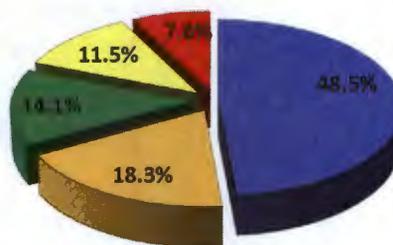
Phoebe Payer Mix -74% Government / No Pay

Gross Revenue 2018



- Medicare
- Medicaid
- Blue Cross
- Commercial
- No payer source

Gross Revenue 2017

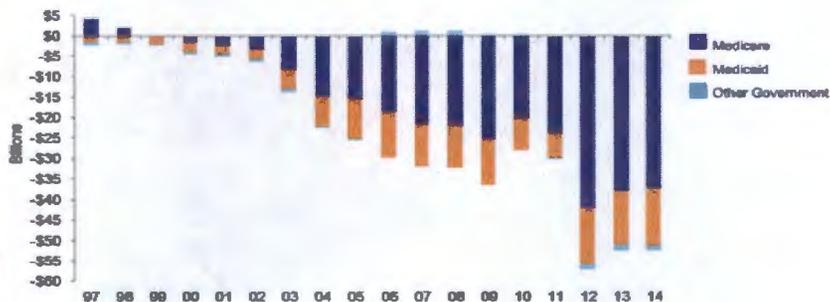


- Medicare
- Medicaid
- Blue Cross
- Commercial
- No payer source

• 13

THE IMPORTANCE OF THE COMMERCIALLY INSURED PATIENT

Hospital Payment **Shortfall** Relative to Costs for Medicare, Medicaid and Other Government, 1997 - 2014(1)



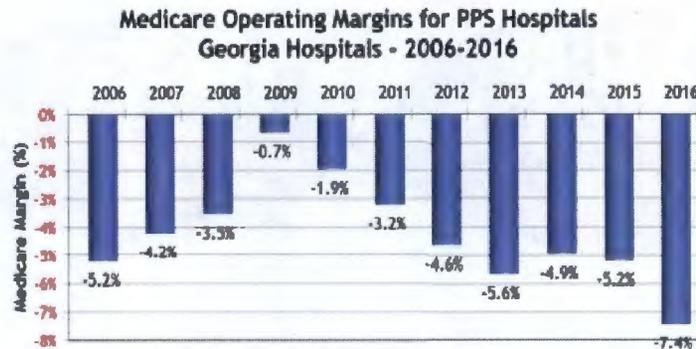
Source: Analysis of American Hospital Association Annual Survey data, 2014, for community hospitals.
 (1) Costs reflect a cap of 1.0 on the cost-to-charge ratio.

14



GHA – Medicare Margins 2006 to 2016

Figure 6



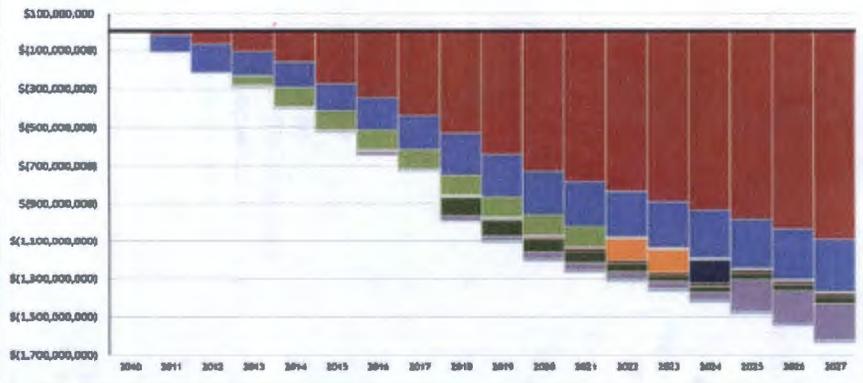
Prospective Payment System Hospital – GHA Hospitals 101

Phoebe Putney Health System Rating Agency Presentation • 15

Figure 7

Medicare Cuts By Legislative and Regulatory Action Cumulative Impact on Georgia Hospitals

- Patient Protection and Affordable Care Act of 2010
- Budget Control Act of 2011
- American Taxpayer Relief Act of 2012
- Veteran's CDLA (February 2014)
- Medicare and CHIP Reauthorization Act of 2015
- Republican Budget Act of 2018
- CMS Regulatory Changes
- Middle Class Tax Relief and Job Creation Act of 2012
- Bipartisan Budget Act of 2013
- Protecting Access to Medicare Act of 2014
- Bipartisan Budget Agreement Act of 2015



GHA Hospitals 101

Phoebe Putney Health System Rating Agency Presentation • 16



PPMH – ACA & Sequester Reductions in Reimbursement (Cumulative)



• 17



Commercial Insurance Plans

Types of Plans

The major differences between the most common types of plans are:

- **Health Maintenance Organizations (HMO)** are separately licensed and generally have higher financial reserve requirements than other health insurance plans. HMOs often have closed provider networks which means that, except for emergency care, services are covered only when rendered by providers within the HMO network. HMOs may also require that a covered person have a primary care provider coordinate his or her care.
- **Point of Service (POS)** plans are typically very similar to HMOs, except they will cover care for providers that are not in the plan's network. Many POS plans fall under an HMO license, although they may also be offered by non-HMO health insurers.
- **Preferred Provider Organization (PPO)** plans do not require separate licenses in most states, although the insurers that use PPOs for their benefit plans must meet licensure requirements. Typically, plan rules are not as stringent for PPOs as for HMO and POS plans; out-of-network care is usually, but not always, covered.
- **High Deductible Health Plans (HDF or HDHP)** combine a Health Savings Account (HSA) or a Health Reimbursement Arrangement (HRA) with medical coverage that has higher deductibles than traditional insurance plans. The HSA or HRA may be funded by either employer or employee contributions, or both, and are designed to encourage patients to be better consumers of care.

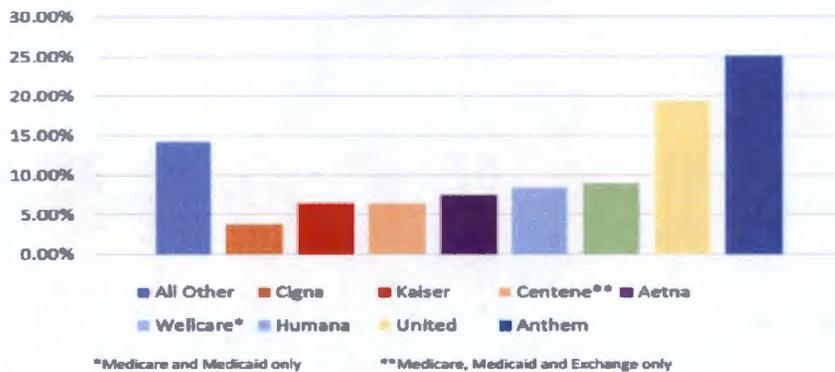
Phoebe Putney Health System Rating Agency Presentation • 18



GHA Health Insurer Market Share

Figure 12

GA Accident & Health Insurer Market Share 2017



GHA 101

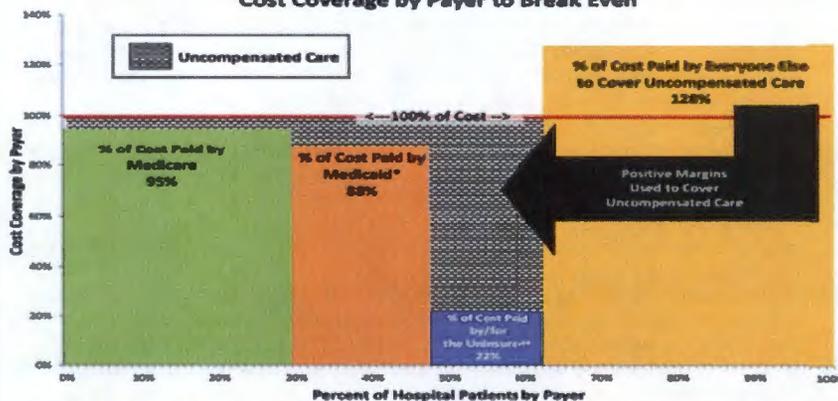
Phoebe Putney Health System Rating Agency Presentation • 19



Georgia Hospital Assoc. Cost Coverage

Figure 4

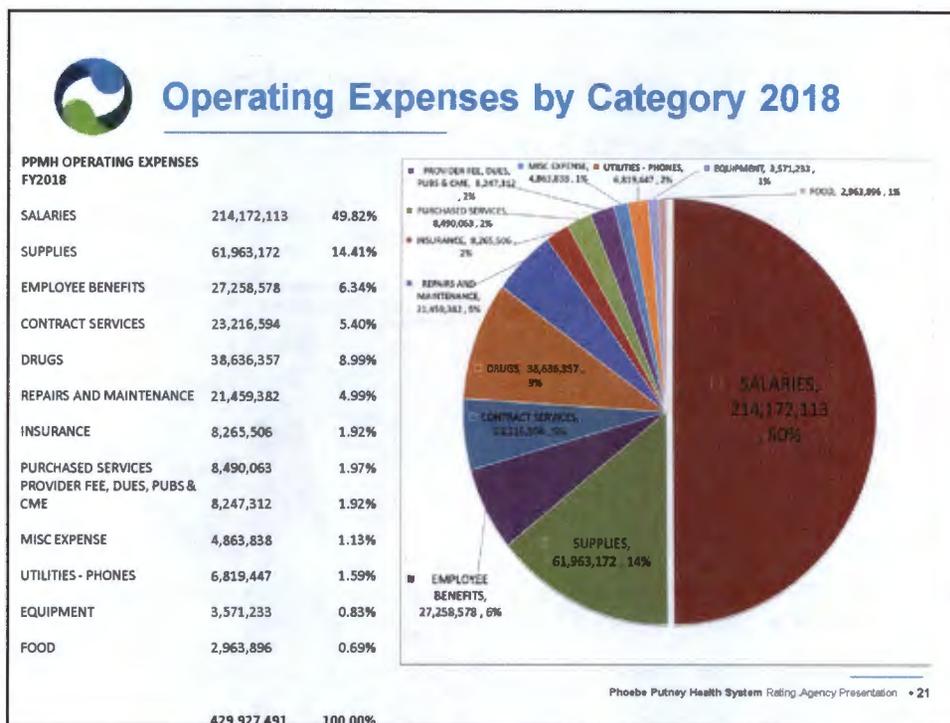
2016 - Georgia PPS Hospitals Cost Coverage by Payer to Break Even



GHA Hospitals 101 (page 14)

Prospective Payment System

Phoebe Putney Health System Rating Agency Presentation • 20

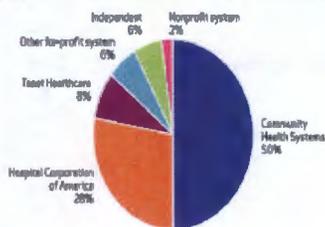


- ### Market Forces Driving Costs & Reducing Reimbursement
- **Increased financial pressure** on retaining and recruiting a high quality workforce.
 - **Nursing recruitment/retention** and cost has been an ongoing challenge across Georgia and the country as nurses age and retire
 - **Assistive personnel (CNA, techs)** recruitment and retention
 - **Drug Cost Increases**
 - **Lack of Medicaid Expansion in Georgia**
 - Georgia is one of the states with highest uninsured % and lowest reimbursed Medicaid program.
 - Georgia has forgone Billions of Dollars in reimbursement since ACA passage
 - **Commercial Payer reimbursement** shifts to "less costly" settings
 - **Government Payment Reductions** (Medicare, DSH, 340b)
 - **Medicare population** continued growth (Baby Boomers)
 - **Increased Administration Burdens/Cost/Regulations**
 - **Annual Inflationary Increases** for Salaries, Supplies, Utilities, etc.

The Fifty US Hospitals with the Highest Charge-To-Cost Ratios

- 2015 Study based on 2012 Medicare Cost Report Data
- Using Medicare cost reports, Authors examined the fifty US hospitals with the **highest charge-to-cost ratios in 2012**

EXHIBIT 3
Distribution Of The Fifty Hospitals With The Highest Charge-To-Cost Ratios, By System Affiliation, 2012



- **49 of the 50 hospitals are For Profit (98%)**
- 46 are owned by For Profit systems (92%)
- 25 CHS (Community Health Systems)
- 14 HCA (Hospital Corporation of America)
- Study reflects Statistically High Mark-ups that could affect uninsured or underinsured
- This study has limitations and is not a perfect measure of "Overcharging"

Source: Extreme Markup: The Fifty US Hospitals With the Highest Charge-To-Cost Ratios
Health Affairs 34, No.6 (2015):922-928 The People-to-People Health Foundation, Inc
<https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2014.1414>



2018 County Health Rankings, Robert Wood Johnson Foundation

Georgia 2018 [Facebook](#) [Like it](#) [X](#)

Overview Rankings Measures Downloads Compare Counties [Print](#) [Help](#)

Select a Measure

ADDITIONAL MEASURES
HEALTH CARE COSTS

Health care costs

Amount of price-adjusted Medicare reimbursements per enrollee.

Data | [Description](#) | [Data Source](#)

Health Care Costs are the price-adjusted Medicare reimbursements (Parts A and B) per enrollee.

Reason for Inclusion as Additional Measure

Health care costs are an important measure of the efficiency of a health care system. However, in order to rank a measure, an "ideal" value must be known. Research shows that "too little" or "too much" health care spending is not good for health care outcomes. However, it is not yet known what the "ideal" level of spending on patients should be.

Summary Information

Years of Data Used: 2015

Range in Georgia (Min-Max): \$7,465-13,394

Overall in Georgia: \$9,582

2018 County Health Rankings, Robert Wood Johnson Foundation

Georgia 2018 Select another state

Overview **Rankings** Measures Downloads Compare Counties Select a county Print Help

Select a Measure:

ADDITIONAL MEASURES
HEALTH CARE COSTS

Health care costs

Amount of price-adjusted Medicare reimbursements per enrollee.

Data | Description | [Data Source](#)

Summary Information

Years of Data Used: 2015

Range in Georgia (Min-Max): \$7,465-13,394

Overall in Georgia: \$9,582

Dartmouth Atlas of Health Care

Since 1996, the Dartmouth Atlas of Health Care has examined patterns of health care delivery and practice across the United States, and evaluated the quality of health care Americans receive. The research has revealed striking variations in the amount of health care you are likely to receive depending on where you live. This is true not only across states and regions, but within individual states and cities. The very large claims databases used in the Dartmouth Atlas Project come from the Centers for Medicare and Medicaid Services (CMS), the federal agency that collects data for every person and provider using Medicare health insurance. Access to this data is made available for research purposes.

Website to download data
For more detailed methodological information

How does Dougherty County compare to the rest of Georgia?

Metric	Dougherty County	Georgia	Comparison	Icon
Population to Primary Care Physician Ratio	1,140:1	1,520:1	Better	Thumbs up
Non-Physician Primary Care Ratio	657:1	1,146:1	Better	Thumbs up
Healthcare Cost	\$8,725	\$9,582	Better	Thumbs up
Diabetes Monitoring Rate	88%	85%	Better	Thumbs up
Mammography Rate	66%	62%	Better	Thumbs up

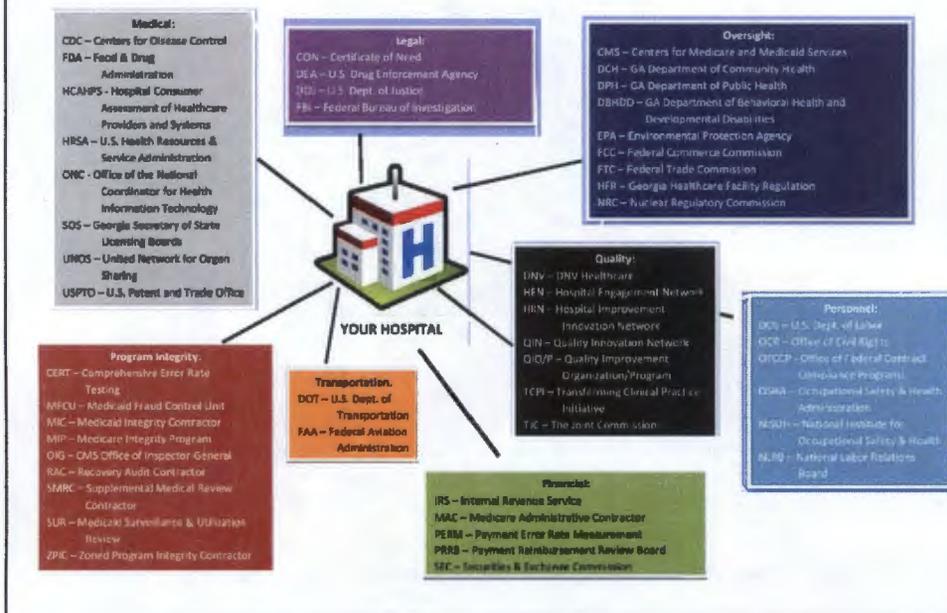
Source: 2018 County Health Rankings, Robert Wood Johnson Foundation Phoebe Putney Health System Rating Agency Presentation • 26

ACA Monthly Premium After Tax Credit for the Lowest Cost Silver and Gold Plan for a 40-year old with an income of \$35,000 (290% of poverty)

Silver Plan		Gold Plan	
County	2018	County	2018
Dekalb	\$270	Tift	\$814
Cobb	\$270	Camden	\$740
Chatham	\$258	Bibb	\$674
Muscogee	\$257	Dekalb	\$318
Harris	\$257	Cobb	\$318
Dougherty	\$253	Dougherty	\$314
Bibb	\$249	Muscogee	\$304
Camden	\$245	Harris	\$304
Tift	\$241	Chatham	\$301
Floyd	\$223	Floyd	\$193
Hall	\$219	Hall	\$186

- Source : Henry J Kaiser Family Foundation "How Premiums are Changing in 2018"
- Published 11/14/2017 Updated 11/29/2017
- <https://www.kff.org/health-reform/issue-brief/how-premiums-are-changing-in-2018/>

Regulatory Cost and Burden in Hospitals





Medicare Spending Per Beneficiary 2018 Report from CMS

1 INTRODUCTION TO THE MSPB HOSPITAL-SPECIFIC REPORT

This Hospital-Specific Report (HSR) provides information on your hospital's performance on the Medicare Spending Per Beneficiary (MSPB) Measure that CMS intends to make public on the Hospital Compare website and to include in the Hospital Value-Based Purchasing (VBP) Program. The MSPB Measure assesses Medicare Part A and B payments for services provided by hospitals and other healthcare providers during an MSPB episode, which comprises the periods 3 days prior to, during, and 30 days following a patient's inpatient stay. More specifically, an MSPB episode encompasses all claims with a start date falling between 3 days prior to an Inpatient Prospective Payment System (IPPS) hospital admission through 30 days post-discharge from that stay. The payments included in this measure are payment-standardized and risk-adjusted to remove sources of variation not directly related to care decisions. Your hospital's MSPB Measure is the ratio of your hospital's payment-standardized, risk-adjusted MSPB Amount to the episode-weighted median MSPB Amount across all hospitals. Detailed measure specifications, including exclusions, the payment standardization methodology (also known as price standardization), and an MSPB Measure calculation example, can be found at [this MSPB QualityNet web page](#).

Phoebe Putney Health System Rating Agency Presentation • 29

PPMH-Medicare Spending per Beneficiary

- The Medicare Spending Per Beneficiary (MSPB or "Medicare hospital spending per patient") measure shows whether Medicare spends more, less, or about the same on an episode of care for a Medicare patient treated in a specific inpatient hospital compared to how much Medicare spends on an episode of care across all inpatient hospitals nationally. **This measure includes all Medicare Part A and Part B payments made for services provided to a patient during an episode of care, which includes the 3 days prior to the hospital stay, the inpatient hospital stay, and the 30 days after discharge from the hospital.**
- A ratio that is less than the national average means that Medicare spends LESS per patient for an episode of care initiated at this hospital than it does per episode of care across all inpatient hospitals nationally.

	PHOEBE PUTNEY MEMORIAL HOSPITAL RATIO	GEORGIA AVERAGE	NATIONAL AVERAGE
Medicare Spending Per Beneficiary (displayed in ratio)	0.95	0.95	0.99

Source: Medicare.gov Hospital Compare

<https://www.medicare.gov/hospitalcompare/profile.html#profTab=6&vwgrph=0&ID=110007&loc=ALBANY%2C%20GA&lat=31.5785074&lng=-84.155741&name=PHOEBE%20PUTNEY%20MEMORIAL%20HOSPITAL&Distn=1.0>



A Patient Bill Example and Patient "Cost"

3/15/2019		ACTUAL BILL FROM MOHS SURGERY (deductible paid prior)	
MEDICARE IS PRIMARY INSURANCE PERSONAL INSURANCE IS SECONDARY			
ACTUAL CHARGES (all)			\$ 1,843.00
MEDICARE ALLOWABLE CHARGES		\$ 876.54	
MEDICARE PAID		\$ 701.23	
OUT-OF-POCKET & SECONDARY INSURANCE PAID		\$ 175.31	
	TOTAL PAID		\$ 876.54
WRITE-OFF			\$ 966.46
	CHECK		\$ 1,843.00

Phoebe Putney Health System Rating Agency Presentation • 31



Community Care Clinic - Right Care. Right Place. Right Time.

....at the *Right Cost.*

Top 5 Diagnosis	Average CCC charge per case	Average Emergency Center charge	Community Savings per case
Respiratory infection	\$122.83	\$1,187.28	\$1,064.45
Pharyngitis	\$131.08	\$1,176.31	\$1,045.23
Low back pain	\$145.18	\$1,999.00	\$1,853.82
Disorders of teeth	\$117.72	\$842.08	\$724.36
Removal of sutures	\$233.82	\$811.02	\$377.20
Avg. Savings per case			\$1,013.01



Community Savings
March 2016 – Sept 2018
40,007 cases = **\$40.5 million**

Phoebe Putney Health System Rating Agency Presentation • 32

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Phoebe Putney Memorial Hospital
Pricing Defensibility Analysis
 Completed March 2019

Prepared by
Cleverley + Associates
 438 East Wilson Bridge Road
 Worthington OH 43085
 888-779-5663
www.thinkcleverley.com

Think Cleverley

William Cleverley

Chairman & Founder

William O. Cleverley, Ph.D., has been the President of Cleverley & Associates since its formation in January 2000 until 2014 when he assumed the role of Chairman. Prior to forming Cleverley & Associates, Dr. Cleverley was the President and Founder of CHIPS (Center for Healthcare Industry Performance Studies). United Healthcare acquired the firm in March 1998 and Dr. Cleverley remained on staff as a part-time employee until December 1999. He is also Professor Emeritus at The Ohio State University where he has taught courses in healthcare finance since 1973.

Dr. Cleverley is the author of over 40 books dealing with the application and use of financial management principles and data in healthcare organizations. In addition, he has authored over 200 articles on healthcare financial issues in a wide variety of both academic and professional journals. Dr. Cleverley received his Ph.D. from the University of California-Berkeley.

 438 E Wilson Bridge Rd
 Worthington, OH 43085

 www.thinkcleverley.com

 888-779-5663

 wcleverley@cleverleyassociates.com



Think Cleverley

We Are Cleverley + Associates

Helping Hospitals Provide Value To Their Communities

National Reach

400 Clients Across the Country

Hospital System Clients

- Providence Swedish Health System WA
- Catholic Health Partners, OH
- Centura Health, CO
- CHRISTUS Health, TX
- Hospital Sisters Health System, IL
- Sisters of St. Francis Health System, IN
- SSM Health Care, MO
- St. Joseph Health System, CA



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Competitive Position

Sections

-  Pricing Factors
-  Your Current Pricing
-  Summary

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Pricing Factors

- The **REQUIRED PROFIT** needed by the hospital. Including debt service, working capital, and funded depreciation requirements will impact this target.
- The **COSTS** of providing care
- The **PAYER MIX AND PAYER TERMS** at the hospital
- As examples, higher levels of Medicaid and indigent patients will necessitate higher prices. Conversely, favorable commercial contract payment terms will permit lower prices.

PRICE

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Pricing Factors

Two Ways to Defend Pricing

ROI Model

Relate your pricing to Return On Investment (ROI)

We will examine a model used in setting rates for public utilities.

Peer Position

Relate your pricing to those of peer hospitals

Facility level
Department level
Inpatient case level
Outpatient case level
CPT®/procedure level

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Current Pricing

Peer hospitals, selected for this report, are listed below. All hospital data on each slide is from the year specified and is not inflation adjusted:

<i>Hospital Name</i>	<i>City</i>	<i>Net Patient Revenue (millions)</i>	<i>Cost Report Year</i>
Phoebe Putney Memorial Hospital	Albany	500	2017
Tift Regional Medical Center	Tifton	367	2017
Midtown Medical Center	Columbus	308	2017
John D. Archbold Memorial Hospital	Thomasville	269	2017
Medical Center of Central Georgia	Macon	670	2017
South Georgia Medical Center	Valdosta	315	2017
Tallahassee Memorial Hospital	Tallahassee	686	2017

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Current Pricing

Two Ways to Defend Pricing



ROI Model

Relate your pricing to Return On Investment (ROI)

We will examine a model used in setting rates for public utilities.



Peer Position

Relate your pricing to those of peer hospitals

- Facility level
- Department level
- Inpatient case level
- Outpatient case level
- CPT®/procedure level

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Current Pricing

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Price Defense

Relating pricing to ROI: the public-utility approach

Public utilities have used a Return on Investment (ROI) model to justify price increases to rate regulatory boards. The approach isolates the price variable from the ROI formula (below) and "tests" the remaining elements. If it can be proved that ROI, Cost, and Investment are not excessive, then price must also not be excessive. In the following pages, we present these tests.

ROI Formula	Tests
ROI =	1. Is ROI excessive?
$\frac{(\text{volume} \times \text{price}) - (\text{volume} \times \text{cost})}{\text{investment}}$	2. Is cost excessive?
	3. Is investment excessive?
	<i>If "no" to all three, price is not excessive.</i>



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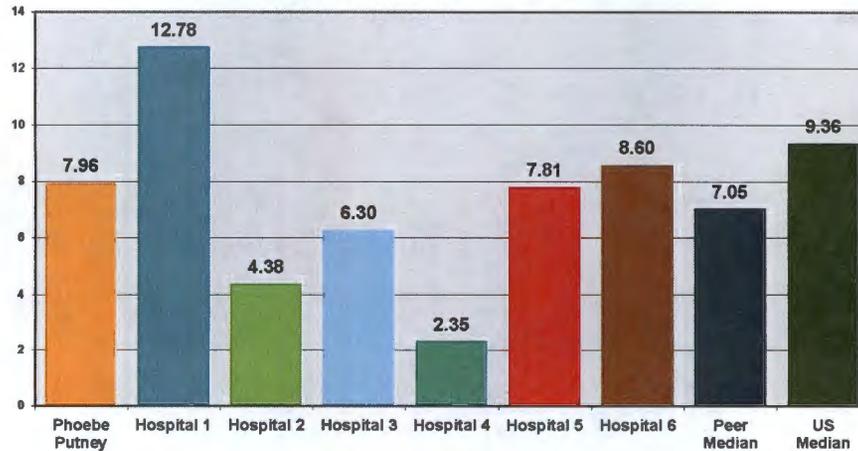


Current Pricing

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Is ROI Excessive?

EBIDA to Assets %



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Current Pricing



Facility-level cost measure:
Hospital Cost Index®

Inpatient Costs
Inpatient Cost Index

Formula:
Your Medicare Cost per Discharge (CMI/WI adj)
US Median Medicare Cost per Discharge (CMI/WI adj)

Outpatient Costs
Outpatient Cost Index

Formula:
Your Medicare Cost per Visit (RW/WI adj)
US Median Medicare Cost per Visit (RW/WI adj)

The Hospital Cost Index®, developed by Cleverley + Associates, compares the Medicare Cost per discharge and Medicare cost per visit at the hospital (both adjusted for case complexity and wage index differences) to the US median value for each measure. The result is the most objective overall cost comparison available. A high index score indicates a higher relative cost position.

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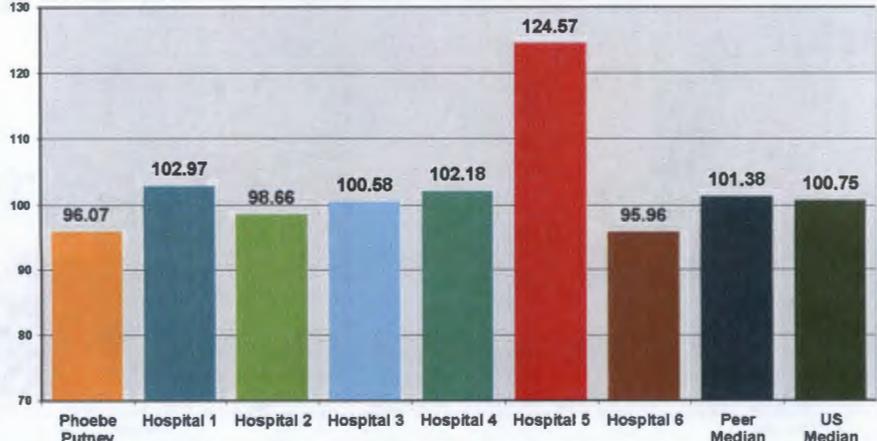
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Current Pricing

Competitive Position – Facility Level

Hospital Cost Index® – 2017



Facility	Hospital Cost Index (2017)
Phoebe Putney	96.07
Hospital 1	102.97
Hospital 2	98.66
Hospital 3	100.58
Hospital 4	102.18
Hospital 5	124.57
Hospital 6	95.96
Peer Median	101.38
US Median	100.75

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Current Pricing

Two Ways to Defend Pricing



<p>ROI Model</p> <p>Relate your pricing to Return On Investment (ROI)</p> <p>We will examine a model used in setting rates for public utilities.</p>	<p>Peer Position</p> <p>Relate your pricing to those of peer hospitals</p> <p>Facility level Department level Inpatient case level Outpatient case level CPT®/procedure level</p>
---	--

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Current Pricing

Price Defense

Comparing your pricing to peer facilities

The second method used to assess the defensibility of your pricing is direct comparison with peers. The following pages will highlight comparison at these levels:

- 1) Facility level
- 2) Department level
- 3) Inpatient case level
- 4) Outpatient case level
- 5) CPT®/procedure level

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Current Pricing

Facility-level charge measure:
Hospital Charge Index®

Inpatient Charges
Inpatient Charge Index
Formula:
Your Medicare Charge per Discharge (CMI/WI adj)
US Median Medicare Charge per Discharge (CMI/WI adj)

Outpatient Charges
Outpatient Charge Index
Formula:
Your Medicare Charge per Visit (RW/WI adj)
US Median Medicare Charge per Visit (RW/WI adj)

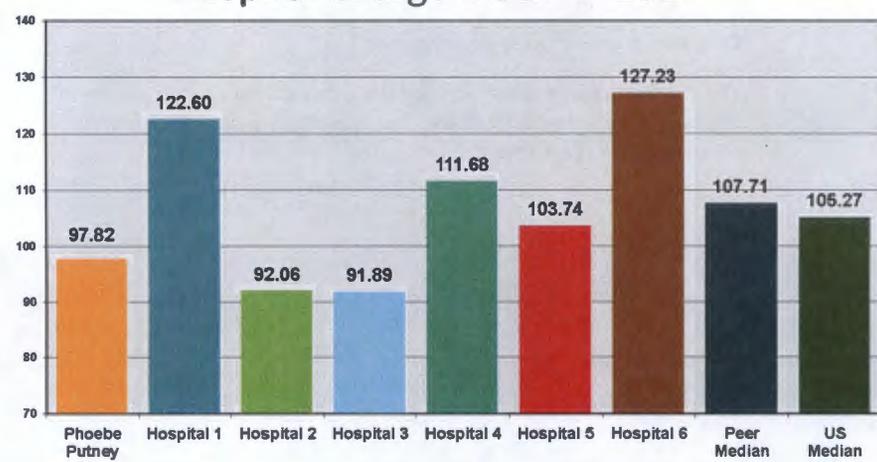
The Hospital Charge Index®, developed by Cleverley + Associates, compares the Medicare Charge per discharge and Medicare charge per visit at the hospital (both adjusted for case complexity and wage index differences) to the US median value for each measure. The result is the most objective overall charge comparison available. A high index score indicates a higher relative charge position.

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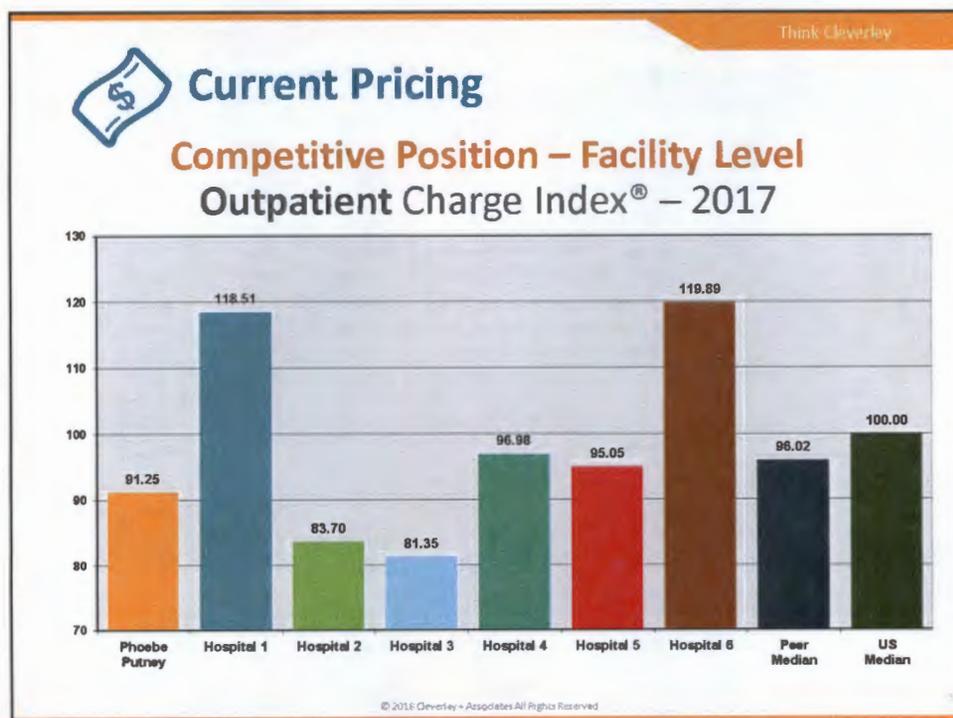
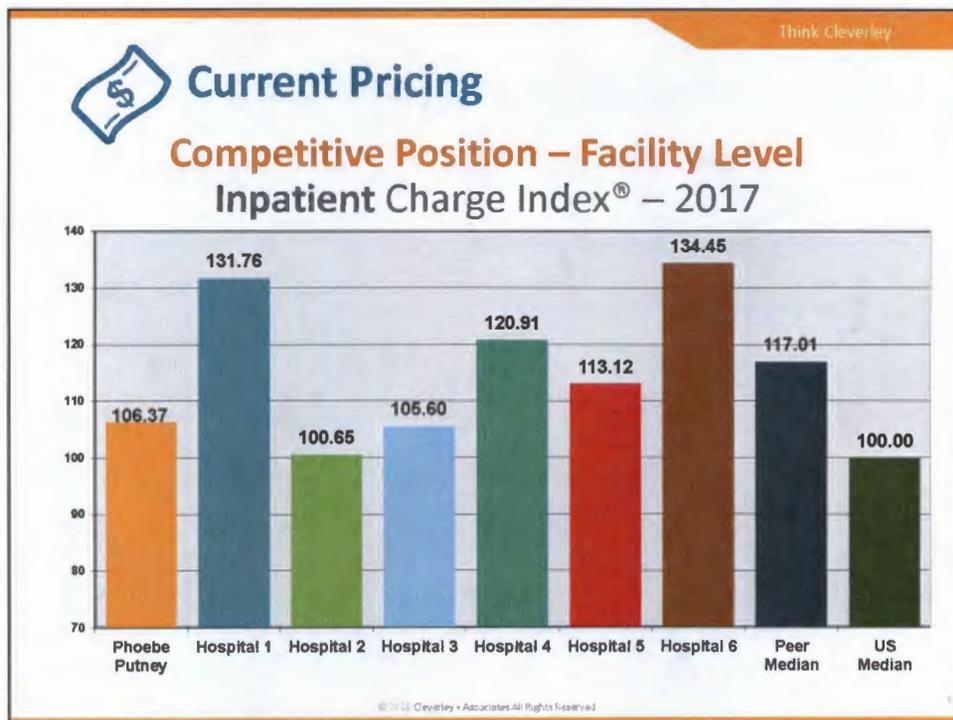
Current Pricing

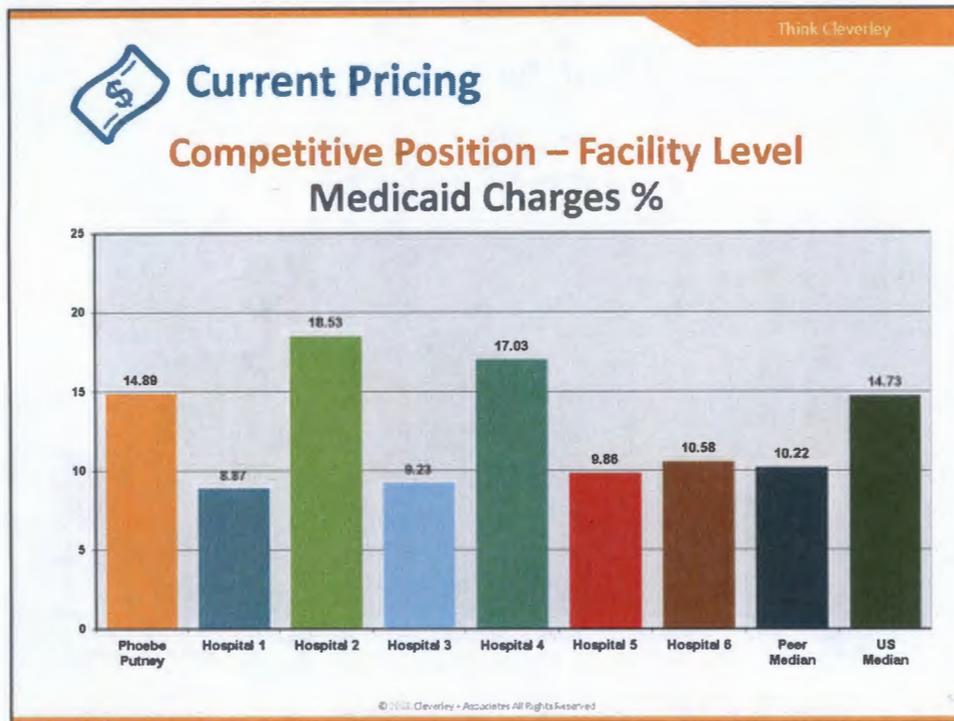
Competitive Position – Facility Level Hospital Charge Index® – 2017



Facility	Hospital Charge Index (2017)
Phoebe Putney	97.82
Hospital 1	122.60
Hospital 2	92.06
Hospital 3	91.89
Hospital 4	111.68
Hospital 5	103.74
Hospital 6	127.23
Peer Median	107.71
US Median	105.27

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Current Pricing
Department Level – 2017

	Phoebe Putney Memorial Hospital	Competitor Average	Percent of Competitor Average
Imaging			
Imaging - Breast/Chest	227.76	291.21	78.21%
Imaging - CT/CTA Scan Brain/Head/Neck	894.82	1,124.18	79.60%
Imaging - CT/CTA Scan Other	871.64	982.20	88.74%
Imaging - Echography/Ultrasonography Cardiac	404.93	360.92	112.19%
Imaging - Echography/Ultrasonography Other	462.24	459.10	100.68%
Imaging - MRI/MRA Brain/Head/Neck	655.39	653.20	100.34%
Imaging - MRI/MRA Other	384.13	492.89	77.93%
Imaging - Musculoskeletal	365.47	363.74	100.47%
Imaging - Nuclear Medicine	323.43	263.26	122.86%
Imaging - Other	335.52	320.97	104.53%
Imaging - Procedures	146.78	169.26	86.72%
Total	434.74	483.20	89.97%

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Current Pricing

Department Level – 2017

Tests

	Phoebe Putney Memorial Hospital	Competitor Average	Percent of Competitor Average
Lab tests - Chemistry	327.49	621.11	52.73%
Lab tests - Drug Testing	101.73	446.14	22.80%
Lab tests - Hematology and Coagulation	464.20	935.36	49.63%
Lab tests - Immunology	310.77	451.84	68.78%
Lab tests - Microbiology	374.97	855.56	43.83%
Lab tests - Molecular Pathology	200.69	169.44	118.44%
Lab tests - Organ or Disease-Oriented Panels	377.89	1,074.38	35.17%
Lab tests - Other	310.44	473.46	65.57%
Lab tests - Pathology	254.26	273.36	93.01%
Lab tests - Routine venipuncture	676.16	488.89	138.31%
Lab tests - Transfusion Medicine	115.32	180.79	63.79%
Lab tests - Urinalysis	998.43	1,899.97	52.55%
Tests - Cardiac	284.58	252.37	112.76%
Tests - Other	313.48	245.75	127.56%
Tests - Sleep	384.54	308.99	124.45%
Total	306.58	518.23	59.16%

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Current Pricing

Inpatient Case Level

Medicare Charge per Inpatient Case – Top 10 Total Charge MSDRGs – 2017

(1) Medicare Charge per Inpatient Case – Top 10 Total Charge MSDRGs – 2017

DRG	Description	Phoebe Putney Memorial Hospital Volume	Phoebe Putney Memorial Hospital Average Charge	Competitor Average Charge
470	Major Joint Replacement Or Reattachment Of Lower Extremity W/O Mcc	132	52,216	52,831
871	Septicemia Or Severe Sepsis W/O Mv >96 Hours W Mcc	286	47,299	48,509
853	Infectious & Parasitic Diseases W O.R. Procedure W Mcc	67	145,876	129,362
291	Heart Failure & Shock W Mcc	353	26,294	33,117
190	Chronic Obstructive Pulmonary Disease W Mcc	220	31,395	30,155
460	Spinal Fusion Except Cervical W/O Mcc	51	117,622	86,996
247	Perc Cardiovasc Proc W Drug-Eluting Stent W/O Mcc	81	65,657	72,168
064	Intracranial Hemorrhage Or Cerebral Infarction W Mcc	109	48,573	45,569
236	Coronary Bypass W/O Cardiac Cath W/O Mcc	38	137,619	124,658
870	Septicemia Or Severe Sepsis W Mv >96 Hours	30	155,462	152,351

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Current Pricing

Outpatient Case Level

Medicare Charge per Outpatient Case – Top 10 Total Charge APCs 2017

<i>APC</i>	<i>Description</i>	<i>Phoebe Putney Memorial Hospital Volume</i>	<i>Phoebe Putney Memorial Hospital Average Charge</i>	<i>Competitor Average Charge</i>
5604	Level 4 Drug Administration	1,136	38,827	32,771
5193	Level 3 Endovascular Procedures	309	41,830	49,883
5192	Level 2 Endovascular Procedures	680	18,831	22,372
5024	Level 4 Type A ED Visits	3,155	3,257	3,688
5693	Level 3 Drug Administration	823	9,955	9,160
8011	Comprehensive Observation Services	631	12,328	13,538
5692	Level 2 Drug Administration	1,271	6,062	5,992
5593	Level 3 Nuclear Medicine and Related Services	813	8,514	8,995
5312	Level 2 Lower GI Procedures	1,274	5,368	6,251
5012	Clinic Visits and Related Services	13,478	486	675

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- 
- ## Summary
- We believe prices at Phoebe Putney Memorial Hospital are reasonable when compared to local market hospitals:
 - ✓ Current prices are lower than the peer average via the Hospital Charge Index¹. In addition, Medicaid Charge % is higher than the peer median which creates additional pricing pressure to recover payment deficiencies.
 - ✓ The ROI model illustrates that Phoebe Putney Memorial Hospital is not excessive in profit, investment, or cost.
 - ✓ Rate changes were limited in areas in which current prices were high.
 - ✓ Continued focus on pricing defensibility in the future will strengthen market position.
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Outstanding Bonds Review

• 57

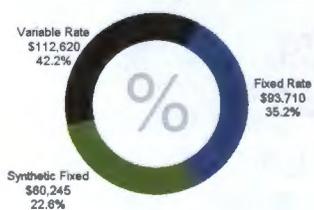


Bond PPMH Debt Profile

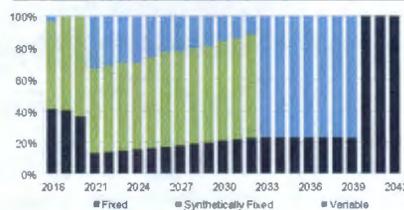
Outstanding Debt • \$ in thousands

Series	Par Outstanding	Underlying Mode	Interest Rate	Current Rate ⁽¹⁾	Final Maturity	Call Date	Wtd Avg Life	Bond Owner	DP Expiration
Series 2012A	\$93,710	Fixed Rate	3.00% - 5.00%	4.00%	12/1/2042	9/1/2022	17.7	-	-
Series 2018A	78,100	Variable	79% 1ML + 30 bps	2.28%	9/1/2032	Anytime	8.2	SunTrust	2025
Series 2018B	98,765	Variable	79% 1ML + 37 bps	2.35%	9/1/2039	Anytime	15.5	SunTrust	2028
Total	\$266,575			2.88%			14.6		

Summary

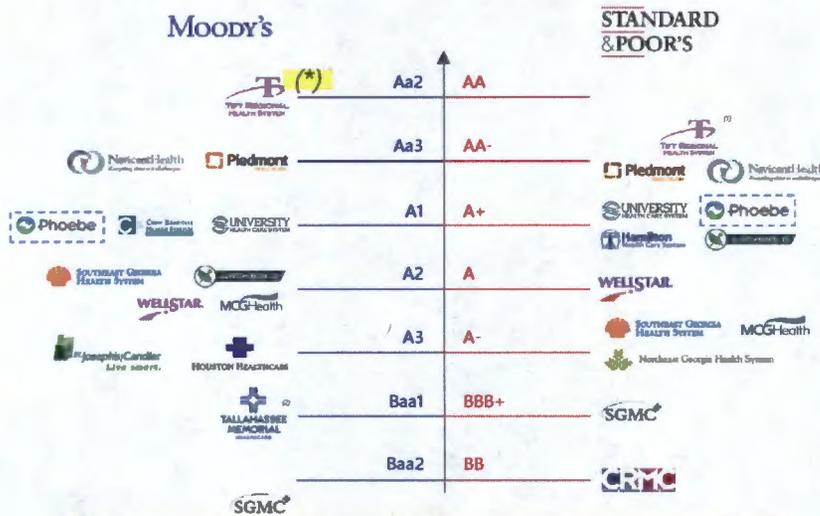


Underlying Fixed / Variable Rate Percentage⁽²⁾



(1) Spot Rate as of January 23, 2018.
 (2) Percentages representative of total debt service.
 Source: Official Statements, Swap Documents, Audited Financial Statements

Georgia Hospital and Health Systems' Rating Landscape



(*)Rating associated with General Obligation ("GO") Bonds
 Source: Moody's, Standard & Poor's

Thank You for your Time

- Takeaway : GHA Hospitals 101
<https://www.gha.org/Hospitals101>

Questions ??

- Bchurch@ppmh.org
- Cell – 239-699-5958
- Office – 229-312-4066

HOSPITALS

a resource guide for policy makers

101

EIGHTH EDITION



Georgia Hospital Association



Georgia's hospitals are vital to local and state economies. Hospitals provide 150,000 jobs and more than \$49 billion in economic development. Most of all, Georgia hospitals provide quality, life-saving care.

WELCOME TO HOSPITALS 101

Each day, thousands of individuals pass by one of Georgia's 170-plus hospitals. Many of us may not consider the crucial role hospitals serve until we, or people we know, require emergency care, surgery, outpatient treatment, or one of many other hospital services. For most of us, hospitals exist "just-in-case."

Hospitals play a unique role in serving the health and well-being of their communities. Other health care providers may provide similar services as hospitals; however, only hospitals offer access to care 24 hours a day, seven days a week. They provide emergency care to all patients who come through their doors, regardless of ability to pay. Hospitals also respond at a moment's notice to care for victims of disasters through their disaster readiness and response programs.

I believe one of the best ways to make sure that the public and stakeholders understand, and are supportive of, our issues is to make certain they have a thorough understanding of hospitals and the world of health care. This new edition of *Hospitals 101* is an excellent way to achieve this, as it serves as an important reference guide that can be used when explaining the complexities of the hospital environment. It can also provide education to board members who are leaders in their communities and understand the vital role their hospitals play, yet work outside of our industry. We must ensure that everyone tasked with making decisions on behalf of hospitals is as informed as possible.

Hospitals 101 offers a clear explanation on a number of relevant hospital topics. This edition contains information you have come to expect, such as an explanation of the roles of different governmental payers and a breakdown of indigent care trust fund revenues. It also has new and updated sections, such as the new provisions regarding the Rural Hospital Tax Credit Program, which has been very beneficial to our rural hospitals by providing much needed lifelines to ensure they remain viable for their communities.

Thank you for making this publication your leading reference on Georgia hospital issues and for your continued support of the Georgia hospital community. Together, we can continue to ensure that all Georgians have access to the highest quality of hospital care available.



Earl V. Rogers

**President and CEO
Georgia Hospital Association**

GHA Mission Statement

To advance the health of individuals and communities by serving as the leading advocate for all Georgia hospitals and health care systems.

Table of Contents

3	HOSPITAL QUICK FACTS
4	THE UNIQUE ROLE OF A HOSPITAL
5	TYPES OF HOSPITALS
7	ECONOMIC IMPACT
9	COMMUNITY BENEFIT
11	POPULATION HEALTH
12	HOSPITAL FINANCIAL MANAGEMENT
18	GOVERNMENTAL PAYERS
30	NON-GOVERNMENTAL PAYERS
37	HOSPITAL PROVIDER PAYMENT PROGRAMS
39	INDIGENT CARE TRUST FUND
40	RURAL HEALTH
43	EMERGENCY AND TRAUMA CARE
46	HEALTH CARE WORKFORCE
49	HEALTH INFORMATION
51	QUALITY AND PATIENT SAFETY
56	STATE REGULATORY REQUIREMENTS
58	PROGRAM INTEGRITY
61	GLOSSARY
66	ENDNOTES

GHA Vision Statement

Georgia, where all achieve the highest potential for health through healthy hospitals, communities and individuals.

HOSPITAL QUICK FACTS

Number of Georgia Hospitals (May 2018)

General Acute Care Hospitals.....	103
Critical Access Hospitals.....	30
Psychiatric/Behavioral Health Hospitals.....	25
Specialty Hospitals.....	23
Veterans Affairs Hospitals.....	3
Total	184

Georgia Counties with a Hospital 105

Hospital Employment (2017)

Number of Full-Time Hospital Jobs.....	150,500
Salaries and Benefits.....	\$9.8 billion

Hospital Auxiliaries (2018)

Number of Volunteers.....	5,828
Hours of Service.....	1,427,742
Contributions to Hospitals and Local Communities	\$3.3 million

Patient Utilization (CY 2017)

Inpatient Admissions	1.1 million
Outpatient Visits	10.1 million
Total	11.2 million

Patient Utilization by Insurance Status (CY 2017)

Visits and Discharges

Employer/Private Insurance.....	3.2 million
Medicare.....	3.5 million
Medicaid.....	2.0 million
Uninsured.....	1.6 million
Other	0.9 million
Total	11.2 million

Hospital Uncompensated Care (2017)

Indigent, Charity and Free Care	\$1.46 billion
Bad Debt.....	\$0.73 billion
Total	\$2.19 billion

Average Margins (2017)

Patient Care Margin.....	0.56 percent
Total Margin	1.64 percent

Percent of Hospitals with Operating Losses (2017) considering:

Patient Care Revenue Only	50 percent
All Revenues.....	43.5 percent

Hospital Closures (2013-2018)..... 10

THE UNIQUE ROLE OF A HOSPITAL

America's hospitals are vital to meeting the health care needs of the communities they serve by providing a wide range of acute care and diagnostic services, supporting public health needs, and offering a myriad of other services to promote the health and well-being of the community.

Other types of health care providers may also deliver some of these services; however, three things make the role of the hospital unique:

- **24/7 ACCESS TO CARE:** The provision of health care services, including specialized resources, 24 hours a day, seven days a week (24/7), 365 days a year;
- **THE SAFETY-NET ROLE:** Caring for all patients who seek emergency care, regardless of ability to pay; and
- **DISASTER READINESS AND RESPONSE:** Ensuring that staff and facilities are prepared to care for victims of large-scale accidents, natural disasters, epidemics and terrorist actions.

These critical roles, collectively known as the "standby" role, represent an essential component of our nation's health and public safety infrastructure.¹ The standby role of hospitals is not explicitly funded; instead, the funding is built into a hospital's overall cost structure and supported by certain revenues received from providing direct patient care.

Open 24 Hours a Day



Seven Days a Week

TYPES OF HOSPITALS

The following definitions provide additional clarification on the various types of hospitals that exist in Georgia. Georgia law defines health care institutions, including hospitals, under O.C.G.A. § 31-7-1(4) (A); however, the classification of a health care institution as a hospital is determined by rules promulgated by the Georgia Department of Community Health.²

Acute Care Hospital

An acute care hospital provides treatment for a brief but severe injury, episode of illness, conditions that result from disease or trauma, or during recovery from surgery. Acute care is generally provided by a variety of clinical staff. There are 103 general acute care hospitals in Georgia.

Non-Profit or Not-for-Profit Hospital

A not-for-profit hospital is an organization that can demonstrate that no part of its net earnings is given to a shareholder or individual.

This type of hospital is exempt from most federal and state taxes due to its charitable status but is not exempt from employment taxes (e.g., Social Security and Medicare taxes). The term “non-profit” does not mean that the hospital does not make a profit. Instead, profits of the hospital are returned to the control of the hospital for operations rather than to shareholders.

Hospitals Affiliated with a Hospital Authority

A hospital authority is a local governmental entity and statutorily created public corporation that is authorized to create and operate a hospital in a county or municipality. Many hospital authorities utilize a not-for-profit management company to handle daily operations.

Investor-Owned (or For-Profit) Hospital

The profit or loss of the hospital is a direct profit or loss for the shareholders (owners) of the hospital. In 2017, 48 Georgia hospitals reported being for-profit. These facilities in Georgia may be publicly traded or privately owned. These hospitals pay taxes on hospital property and purchases.

Prospective Payment System (PPS) Hospitals

PPS hospitals are acute care hospitals that are reimbursed by Medicare based on a predetermined, fixed amount. The payment amount for a particular service is derived based on the classification system of that service (for example, diagnosis-related groups for inpatient hospital services).



Critical Access Hospitals (CAH)

Established under the federal *Balanced Budget Act* of 1997, CAHs are limited-service, acute care hospitals located in rural areas. CAH is a special Medicare designation for payment that is limited to hospitals with no more than 25 beds and an average length of stay fewer than four days. There is a state and federal approval process required by the Georgia Department of Community Health and the Centers for Medicare and Medicaid Services for this designation. Under Medicare, CAHs are paid at 101 percent of Medicare cost instead of a diagnosis-related group (DRG) as with other hospitals. DRGs are discussed in more detail on page 18 of this publication. Further, there are some differences in regulatory requirements. There are 30 critical access hospitals in Georgia compared with 34 only a few years ago.

Specialty Hospitals

These are acute care hospitals that provide a limited service for one of the following types of care: children's medical; long-term acute care; psychiatric; or rehabilitative.

System Hospitals

A hospital system is a collection of hospitals previously described, such as for-profit, not-for-profit, acute medical surgical, specialty or critical access, that are all operating under a single corporate entity. Additionally, a hospital system may also own or operate other lines of business, like a skilled nursing facility, pharmacy, or physicians' practice.

State and Federal Hospitals

State hospitals are owned by the State of Georgia. Likewise, federal hospitals, such as veterans affairs hospitals, are owned by the federal government. Georgia owns five state regional hospitals for behavioral health;³ one acute care hospital⁴ and two specialty hospitals.⁵ Georgia has three Veterans Administration (VA) hospitals.⁶

Teaching Hospitals

These are facilities that have been approved to participate in residency training by the Accreditation Council for Graduate Medical Education⁷ and/or have a residency or internship program(s) approved by the American Osteopathic Association and/or are members of the Council of Teaching Hospitals.

Psychiatric Hospitals

These are facilities that provide care and treatment to patients affected with acute or chronic mental illness.⁸

Hospital Closures

With declining reimbursement rates and the continual efforts to do more with less, several hospitals have had to shut down, leaving many communities without access to a hospital in close proximity. In addition, many hospitals have had to eliminate vital services. Since 2013, there have been 10 hospital closures (listed below). However, the Rural Hospital Tax Credit Program has greatly benefited other rural hospitals in helping them keep their doors open to continue to provide vital services to their communities. More detail on the tax credit can be found on page 40.

Calhoun Memorial Hospital

Stewart-Webster Hospital

Charlton Memorial Hospital

Lower Oconee Community Hospital

Emory-Adventist Hospital

North Georgia Medical Center

Lake Bridge Behavioral Health

Select Specialty Hospital - Northeast Atlanta

Chestatee Regional Hospital

Southern Crescent Hospital for Specialty Care

ECONOMIC IMPACT

The Health Care Industry in Georgia

In 2017, the health care and social assistance industry was the third largest employment sector in Georgia.⁹ It is a major economic engine for Georgia and is considered key to the state's efforts to recruit and retain new and expanding businesses. The health care industry:

- Directly contributed \$32 billion, or 6 percent, to Georgia's Gross State Product (GSP);¹⁰ and
- Provided 9.3 percent, or 563,000, of the state's jobs.¹¹

Economic Impact of Georgia Hospitals

In 2016, Georgia's hospitals:

- Spent \$21.7 billion to operate;
- Directly provided approximately 150,500 full-time jobs; and
- Paid salaries and wages of \$9.8 billion.¹²

The *GHA Annual Economic Impact Report* details the economic impact of Georgia's hospitals and quantifies the level of community benefits provided statewide. GHA uses data from the U.S. Department of Commerce's Bureau of Economic Analysis to calculate a multiplier effect, which measures the change in output for a given change in demand. An increase in demand for health care services will elicit increases that support health care as well as its ancillary industries.

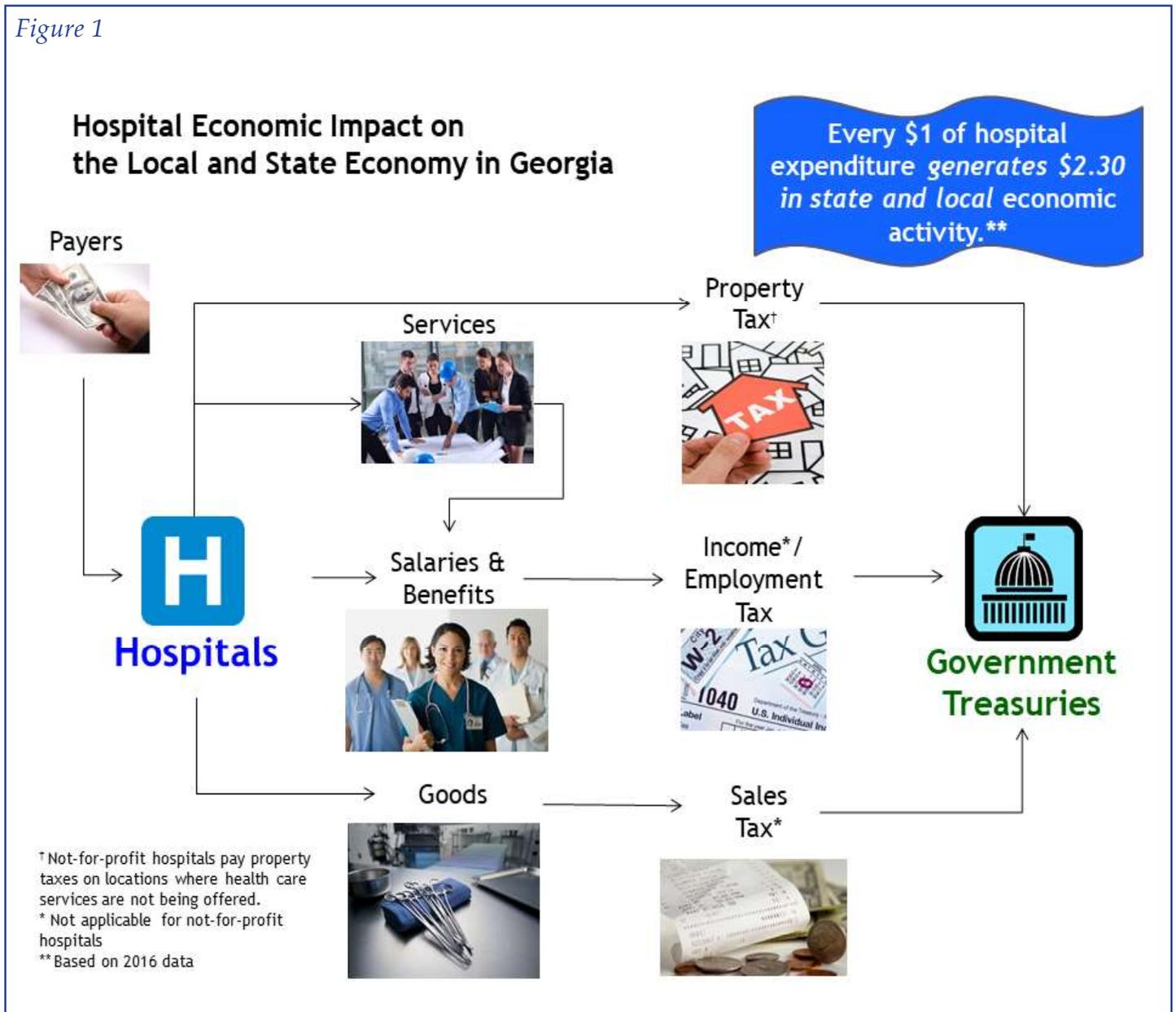
Considering the multiplier effect, the industry's \$21.7 billion in expenditures in 2016 generated an estimated \$49 billion in state and local economic activity (or \$2.30 for every \$1 of hospital expenditure) and indirectly supported more than 366,000 full-time jobs. In addition, hospitals often outsource responsibilities for support areas such as dietary, housekeeping, pharmacy and physician coverage. These people are still essential to operations and are employed due to the services provided by the hospital. Since they are not on the hospital payroll, their employment is neither reflected in the total jobs reported, nor accounted for in the multiplier effect.



Since a majority of revenue received by hospitals is spent on wages and salaries as well as goods and services necessary to operate a hospital, these funds are distributed throughout the local community and are subject to various state and local taxes, which in turn support governmental treasuries.

See Figure 1 for a diagram of this flow of funds.

Figure 1



COMMUNITY BENEFIT

Being part of the community is a key component in the vision and mission statements of Georgia's hospitals. Because health is about more than the absence of sickness or disease, Georgia hospitals reach out to their communities through their day-to-day operations and with programs and services that address community health needs. Hospitals look at both short-term and long-term health improvement; promoting healthy living;



access and coverage; and quality of life. Health screenings, clinical services, support groups, research, subsidized health services, in-kind contributions, and the provision of indigent and charity care are just a few instances of hospitals' efforts to improve the health of their communities. In 2016, Georgia not-for-profit hospitals provided more than \$956 million in community benefit.¹³

Indigent, Charity and Free Care

In 2016, hospitals cumulatively provided \$1.06 billion in financial assistance through indigent, charity and free care.¹⁴ This number is calculated based on the actual cost to provide that care, which is provided to patients who typically do not have insurance and have family incomes that qualify for a hospital's indigent or charity care policies. In some cases, the hospital covers the entire amount of the patient's bill. In other cases, the hospital will subsidize the cost of the bill and require the patient to pay some amount based on his or her income and a pre-established sliding scale.

Not-For-Profit Hospital Requirements

In exchange for their tax-exempt status, not-for-profit hospitals are expected to provide additional health benefits to their communities above and beyond indigent and charity care. Not-for-profit hospitals are federally required to report the value of these benefits annually on Schedule H of the IRS Form 990.

Generally, the IRS categorizes community benefits for not-for-profit hospitals as follows:

- Community health improvement services;
- Health professions education;
- Subsidized health services;
- Research; and
- Cash and in-kind contributions to community groups.

Schedule H separately captures community-building activities that a hospital engages in to protect or improve the community's health or safety (e.g., leadership development and training for community members or coalition building). Some community building activities may also meet the definition of community benefit but can only be reported as one or the other.

While there are currently no federally mandated or state-mandated requirements related to the amount of community benefit provided by hospitals, these amounts are closely watched by the IRS and other taxpayer advocacy groups to ensure not-for-profit hospitals are accountable for their tax-exempt status.

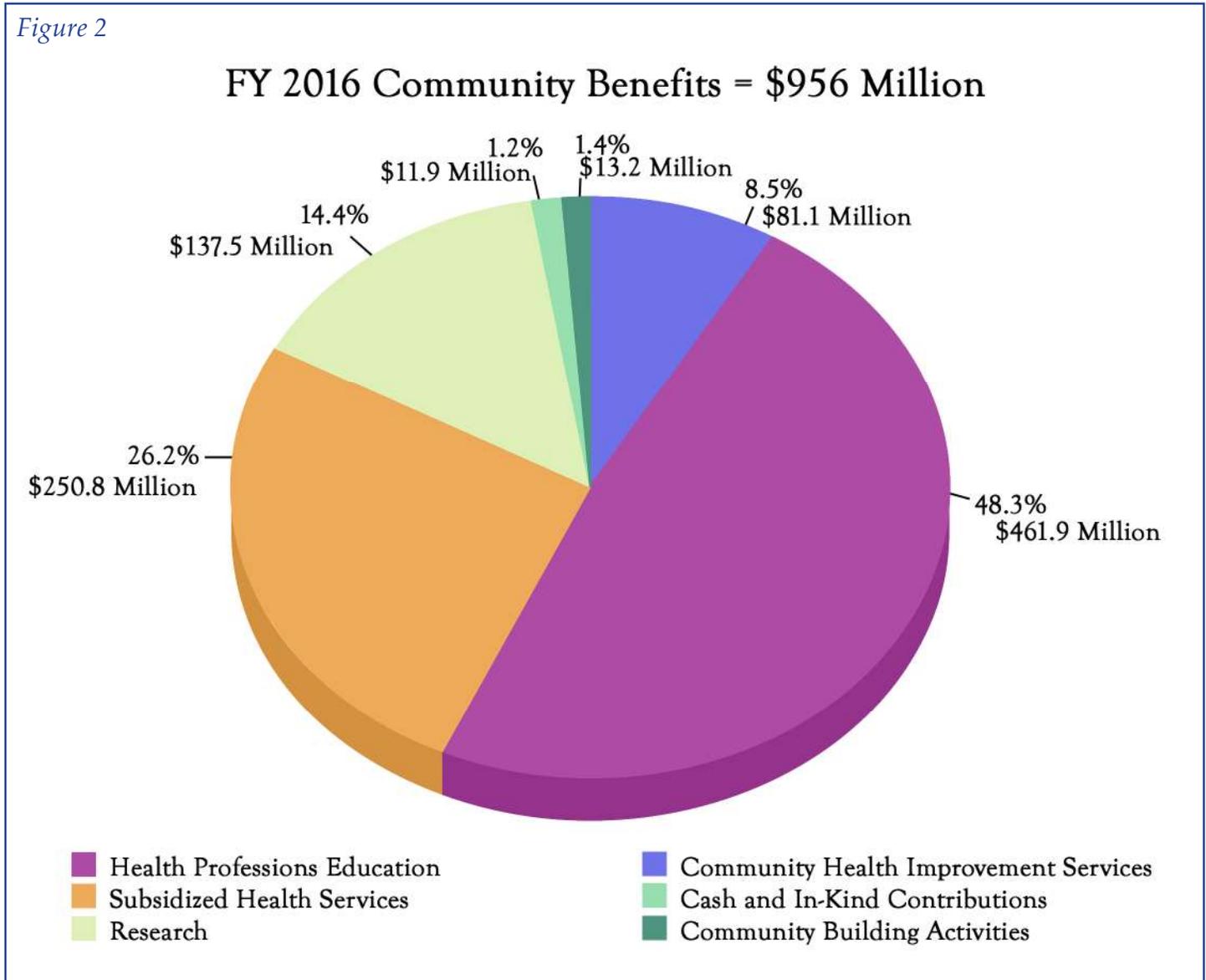
As reported on the 2016 Schedule H, Georgia's not-for-profit hospitals provided \$956 million in community benefit.¹⁵ This is in addition to amounts provided by these same hospitals in financial assistance for indigent and charity care. *See Figure 2 for further detail.*

The federal *Patient Protection and Affordable Care Act* of 2010 (ACA) placed additional community benefit mandates on not-for-profit hospitals. These hospitals are required to:

- Conduct a community health needs assessment at least once every three years and adopt an implementation strategy for all community needs identified in the assessment;
- Adopt and publicize a financial assistance policy;¹⁶
- Limit amounts charged to uninsured individuals eligible for financial assistance to no more than they generally bill to patients who have insurance; and
- Forego extraordinary collection actions before the hospital has made reasonable efforts to determine whether the individual is eligible for financial assistance.

In order to track compliance with these new community benefit requirements, in 2011, the Internal Revenue Service significantly expanded the annual reporting requirements for tax-exempt hospitals on Schedule H.

Figure 2



POPULATION HEALTH

The most fundamental objective of any hospital is to improve the health of those it serves. Hospitals are increasingly tasked with improving the health of those among the community beyond the hospital's campus. Recent payment reforms are now shifting to at-risk payment models whereby a portion of the hospital's reimbursement is associated with improving the health and wellness of a particular population or group of patients.

In order to succeed under this scenario, hospitals must be able to enhance their long-standing missions for improving health with sophisticated information technology that enables them to coordinate care and track and manage the health of a population. Hospital-based Population Health Management aims to improve a population's health, enhance individual patient satisfaction and reduce the per capita cost of health care.

Hospitals are tying together their community improvement efforts through their community health needs assessments and community health improvement plans to change the culture to one of health. Hospitals must collaborate with a wide variety of community partners and engage with the community to build an infrastructure for health.¹⁷



HOSPITAL FINANCIAL MANAGEMENT

Payer Types

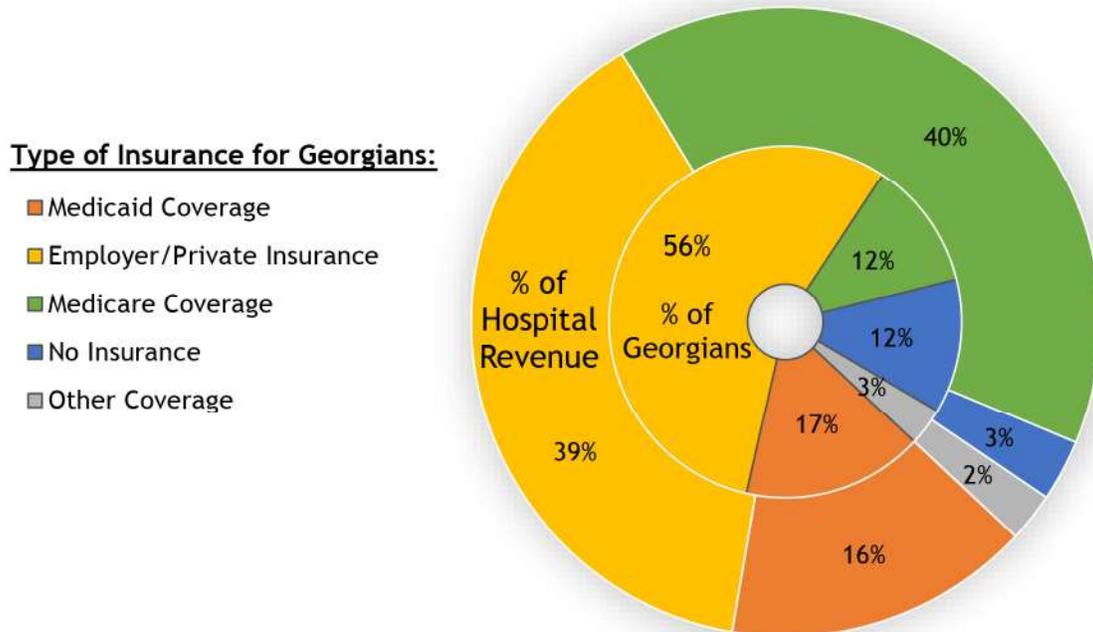
Hospitals charge the same prices to all patients as a requirement of Medicare participation. While charges are the same regardless of the patient being served, the hospital receives different payment amounts depending on the payer source. Hospitals negotiate actual payments with some payers and receive predetermined amounts from programs like Medicare and Medicaid.

- **Non-governmental or private (commercial) health plans** pay rates that are negotiated between the payer and the hospital through contracts, thus creating a network of providers that offer health services to patients who are insured by a particular health plan.
- **Government payers** usually pay the lowest rates and often do not cover the cost of the service. Types of government payers include, but are not limited to, Medicare, Medicaid, the U.S. Department of Veterans Affairs, and state and local correctional agencies.
- Patients who have no insurance coverage (i.e., the uninsured) are considered **self-pay**. Patients who have insurance that does not cover the entire cost of their care (e.g., deductibles or copayments) or that does not cover a particular service may also be considered self-pay. These types of patients are often referred to as “underinsured.”
 - o Hospitals may work out payment plans with self-pay patients to receive some payment for the cost of care that was provided. A self-pay patient may qualify for the hospital’s indigent and charity care policy based on family income. In these cases, the hospital may cover the entire amount of the patient’s bill or will subsidize the cost of the bill and require the patient to pay some amount based on his or her income and a pre-established sliding scale.
 - o Hospitals may also provide financial assistance on a case-by-case basis to patients who have exhausted their insurance benefits, who are underinsured and/or whose income or assets exceed financial eligibility criteria but face extraordinary medical costs.
- Hospitals may also receive payments from **other sources**, such as automobile insurance policies or workers’ compensation for patients who were injured in an accident.

Figure 3 reflects the distribution of patients by payer types and the amounts received by hospitals.

Figure 3

Georgia Health Insurance Status and Hospital Patient Revenue Sources 2016



Patient Billing

The format of a hospital bill may vary by hospital; however, the elements of the bill are universal. A hospital bill will begin with the amounts the hospital charges for the services that were rendered. Hospitals are required to charge the same amount for any particular service regardless of the patient's payment source. Patients with insurance that has made a payment on the claim will likely see an adjustment reflecting the difference in the hospital's charges and the amount the insurance company has negotiated for the services rendered. This is known as a contractual adjustment and is the base amount used to determine the patient's cost sharing. Patients who qualify for the hospital's indigent or charity care programs would see similar adjustments showing the value of the financial aid being provided. Any residual amount left after considering these adjustments would typically be the amount owed by the patient. These amounts may comprise a combination of deductible, coinsurance, copayments and non-covered charges due as determined by the insurance plan.

Bad Debt

Hospitals incur bad debt, which occurs when a patient does not pay his or her bill and does not qualify for the hospital's indigent or charity care programs. Hospitals must cover bad debt losses from positive margins gained from other payers. According to the 2016 Georgia Department of Community Health's Hospital Financial Survey, Georgia hospitals reported \$775 million in bad debt cost, or about 3.6 percent of their total expenditures. In recent years, hospitals have seen escalating increases in bad debt due to higher patient cost sharing under most private insurance plans. Average bad debt increased 15 percent from 2015 to 2016, but declined slightly (by 0.4 percent) in 2017.

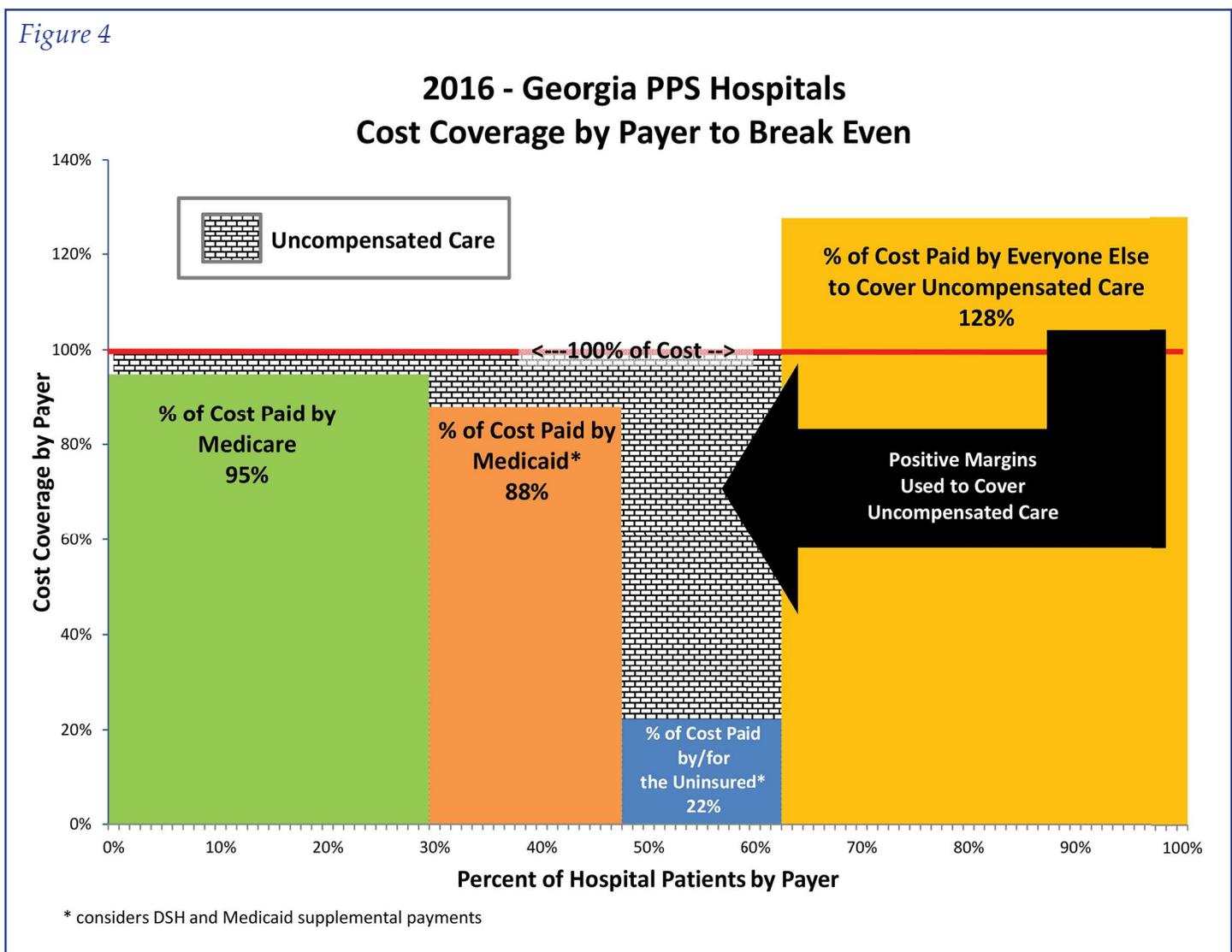
Subsidizing Uncompensated Care

To make up for deficits from Medicare, Medicaid and the uninsured, hospitals must make positive margins from other payers. Together, Medicare, Medicaid and uninsured patients account for 63 percent of all Georgia's hospital encounters.¹⁸ As shown in Figure 4, PPS hospitals need to make a 28 percent profit on the remaining encounters from other payers to offset their uncompensated care.¹⁹

One way the state helps protect hospitals from the financial burdens of uncompensated care is through the Certificate of Need (CON) program. GHA supports CON as an important component of Georgia's health planning process because it discourages unfair competition from facilities that serve few, if any, patients with payer sources that don't cover cost. Discussed in more detail on page 56 of this publication, CON helps control costs by requiring all applicants wanting to build new health care facilities to demonstrate the need for additional health care capacity, thus preventing overutilization and unnecessary duplication of services.

Hospital Expense

In 2016, 46 percent of Georgia hospitals' expenses covered payroll and employee benefit payments for 150,500 full-time employees.²⁰ The average cost of a 2016 hospital admission in Georgia was around \$10,800; however, costs varied widely depending on the services provided during the admission.²¹



Hospital Fiscal Health

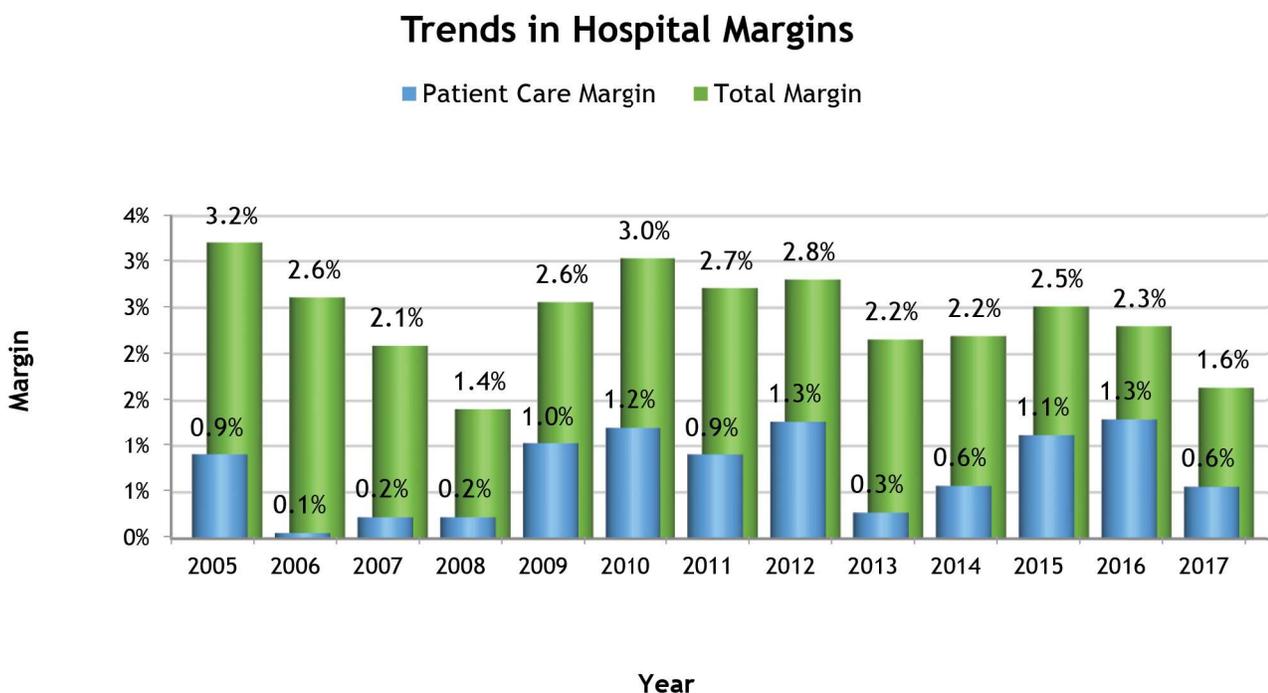
As discussed in other sections of *Hospitals 101*, hospitals incur costs in providing some health care services but don't get paid as a result. This can occur for various reasons; some are out of the hospital's control (e.g., fixed reimbursement by governmental payers that is less than cost, emergency care for the uninsured). Regardless of the cause, these situations can present a challenge to a hospital's fiscal health.

At the most fundamental level, hospitals measure their fiscal health by their ability to remain in business to provide services to patients in their communities. A more accounting-based measure is the use of the operating margin, which is the difference between net operating revenue divided by total operating revenue. The goal is for a facility to have a positive operating margin.

Hospitals with positive operating margins are able to enhance their community benefit and charitable care programs as well as invest in technology upgrades and capital improvements. Positive margins also allow them to weather future economic downturns through the use of reserve funds, much like the state does with its Shortfall Reserve Fund.

GHA annually calculates operating margins for patient care (i.e., revenue and expenses only from patient care) as well as total margins (i.e., revenue and expenses from all sources of the hospital's operations).²² In 2017, the patient care margin for acute care hospitals in Georgia was 3.7 percent, with half of Georgia's hospitals losing money based on the payments they received for taking care of patients. (See Figure 5 for more details on trends in hospital margins.) Hospitals must rely on other sources of revenue to achieve even exceedingly modest margins (especially by Wall Street standards). Revenue from supplemental governmental payments, investment income and other non-patient sources added 4.3 percent to the average margin in 2017.

Figure 5



While Georgia's hospital industry is, on average, achieving modest margins, 44 percent of Georgia's hospitals still lost money in 2017.²³ This situation is significantly worse for rural hospitals, as 64 percent had negative total margins. GHA predicts margins will continue to be negatively impacted, primarily due to accelerating reductions in payments from governmental programs like Medicare and the Medicaid Disproportionate Share Hospital (DSH) Program. Hospitals can cope with negative operating margins in the short term by carefully controlling cash flow, utilizing revenue from other lines of business the hospital may own (e.g., a nursing home), delaying capital improvements and, of course, reducing expenses. These are only short-term solutions, and hospitals that are unable to realize and maintain positive operating margins will likely face closure sooner or later. Unfortunately, this was the case for eight Georgia hospitals since 2013.



Reserves

Hospitals must maintain financial reserves in order to ensure their long-term financial viability. Reserves are required by financial institutions as a condition to lending hospitals money to pay for capital improvements that support an adequate infrastructure, replace old buildings and purchase the latest medical technologies. Bond covenants often include a requirement to maintain reserves and a violation of this requirement could result in the lender demanding immediate repayment.

In addition, the amount of reserves a hospital maintains directly impacts the costs of borrowing money. The healthier the hospital is financially, the lower the interest rates the hospital can obtain. Finally, many Georgia hospitals rely on investment income to stay in the black. In times of economic downturns and extreme market fluctuations like those in recent years, financial reserves are critical to enable some hospitals to meet their everyday financial obligations, fund their employee pensions and continue their charitable missions.

Captives

A captive is, quite simply, an insurance company or a formalized risk financing plan. Hospitals, like all businesses, purchase insurance to protect themselves when things go wrong or mistakes are made. Health care facilities face many risks and purchase insurance for financial protection. Insurance coverage is available in the commercial marketplace; however, health care facilities can choose to provide their own insurance program or self-insured risk financing plan by creating a captive. **Captives can provide savings on insurance costs and allow hospitals to invest those savings back into providing affordable, high-quality health care services to every person who needs them.** Furthermore, captives provide broader risk coverage that may not be insured by traditional commercial insurance carriers. Hospitals that make sound business decisions are better positioned to provide excellent health care, employ a growing workforce, offer preventive services that benefit the community and provide a huge economic boost to the community and state.

A captive insurance company is a licensed insurance company. There are approximately 5,000 captive companies worldwide, of which almost 70 percent are owned by U.S. entities and 17 percent were formed by health care organizations. Captives can be a "pure captive," meaning it insures the risk of its parent; a "group captive" that shares risk with its participants or owners; or a "rent-a-captive" that offers a segregated cell to another entity. These companies are commonly known as segregated portfolio companies (SPCs).

Many industries use insurance captives because underwriting profit and investment income can be retained by the owner instead of an insurance company under an insured program. Additional benefits include:

- Flexibility and freedom to utilize the company's own strategy and select its own counsel;
- Stabilization and insulation from pricing swings;
- Broader coverage terms to cover risks not traditionally insured by commercial insurers;
- Ability to write third-party business, such as non-employed physicians and allied health care providers;
- Reinforce Senior Management engagement and support Risk Management and Risk Mitigation initiatives; and
- Ability to access worldwide reinsurance companies.

Captive domiciles exist in numerous U.S. states, along with the established offshore domiciles of the Cayman Islands and Bermuda. Georgia has its own captive law. The selection of the most appropriate domicile would be undertaken as part of the initial captive feasibility study. Generally accepted accounting principles require that the captive's financial statements be consolidated with the hospital's financial statement and the offshore regulator requires that all captives have an independent audit of their own financial statements.

Captives are flexible in program design and can provide coverage for several insurance product lines, such as:

- Professional Liability
- General Liability
- Employed Physicians Liability
- Directors & Officers Liability
- Employment Practices Liability
- Auto Physical Damages/Liability
- Medical Stop Loss
- Third Party Liability such as non-employed physicians
- Cyber Risk

Executive Compensation

Hospital CEOs are responsible for ensuring the mission of a hospital is achieved. Activities that support the delivery of quality care to patients include day-to-day operations as well as long-term strategic planning. CEOs must also cultivate and maintain good relationships with physician groups, primary care clinics, nursing homes, home health agencies and other health care providers that provide the continuum of care needed by patients and the community.

CEOs are accountable for the quality of care provided to the patients being treated in their hospitals. They are also accountable to the hospital's Board of Directors for the financial well-being of the hospital so it can continue to support the health care and economic needs of the community. CEOs must also ensure their hospitals are compliant with the requirements of accreditation organizations and both state and federal regulatory agencies.

As a result of this expansive scope of responsibilities, hospitals compete with other industries to attract the best and brightest executives. Volunteer boards composed of community leaders determine executive compensation of hospital leaders and, in the case of not-for-profit hospitals, the IRS requires reasonable executive compensation. Failure to do so can result in "excess benefit penalties" or even the revocation of tax-exempt status.

GOVERNMENTAL PAYERS

Most Georgia hospitals depend heavily on payments for services provided to patients insured by governmental programs. For example, the Medicare and Medicaid programs account for more than half of the typical hospital's net patient revenue.²⁴

1. Medicare

Established in 1965, Medicare is available to most people beginning at age 65 and to those with end stage renal (kidney) disease or total disability. The Medicare program is funded by a combination of contributions made by employers and their employees while the employee is actively working, premiums paid by Medicare participants and federal funds. More than 1.6 million Georgians were enrolled in Medicare coverage in 2017.²⁵

Medicare
Serves most people age 65 or older
regardless of income

Medicaid
Serves the low income and disabled

Medicare is made up of:

- Part A, which covers hospital benefits;
- Part B, which covers outpatient and physician services;
- Part C, an option to receive benefits through private insurance plans known as "Medicare Advantage" plans; and
- Part D, Medicare's prescription drug plan.

Medicare is overseen at the federal level by the Centers for Medicare and Medicaid Services (CMS) and is administered through contractors known as Medicare Administrative Contractors (MACs). The MAC for Georgia, as of early 2018, is Palmetto GBA and is located in Columbia, South Carolina.

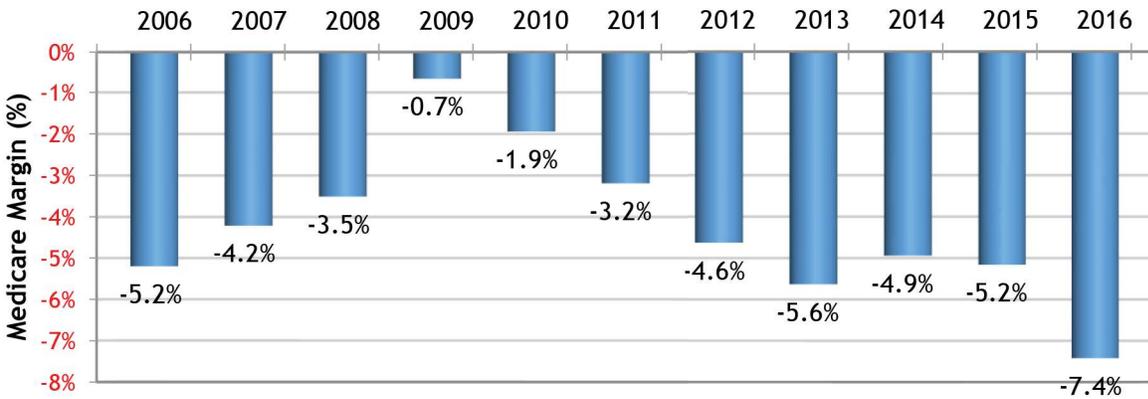
Medicare pays predetermined, non-negotiable fixed amounts for hospital services based on the patient's diagnosis and treatment. For inpatient services, this is known as a DRG, or diagnosis-related group. For outpatient services, Medicare uses Ambulatory Payment Classifications (APCs). Services in each DRG or APC are similar clinically and require the use of similar resources. A payment rate is established for each DRG and APC.²⁶ This Medicare payment methodology for inpatient and outpatient services is considered by Medicare as a Prospective Payment System (PPS).

Medicare payments vary among geographic regions to reflect local wage rates. For example, PPS hospitals in Georgia's rural areas receive lower payment rates from Medicare than urban facilities. Likewise, southern states like Georgia receive lower payment rates from Medicare as compared to their northern peers, generally due to higher wages in that region of the country.

Overall, Medicare pays less than cost to most hospitals. In FY 2016, Medicare paid 93 percent of cost to PPS hospitals for inpatient and outpatient services.²⁷ *Medicare payments have been less than Medicare costs since 2002 and continue to remain below break-even, as shown in Figure 6.*

Figure 6

Medicare Operating Margins for PPS Hospitals Georgia Hospitals - 2006-2016

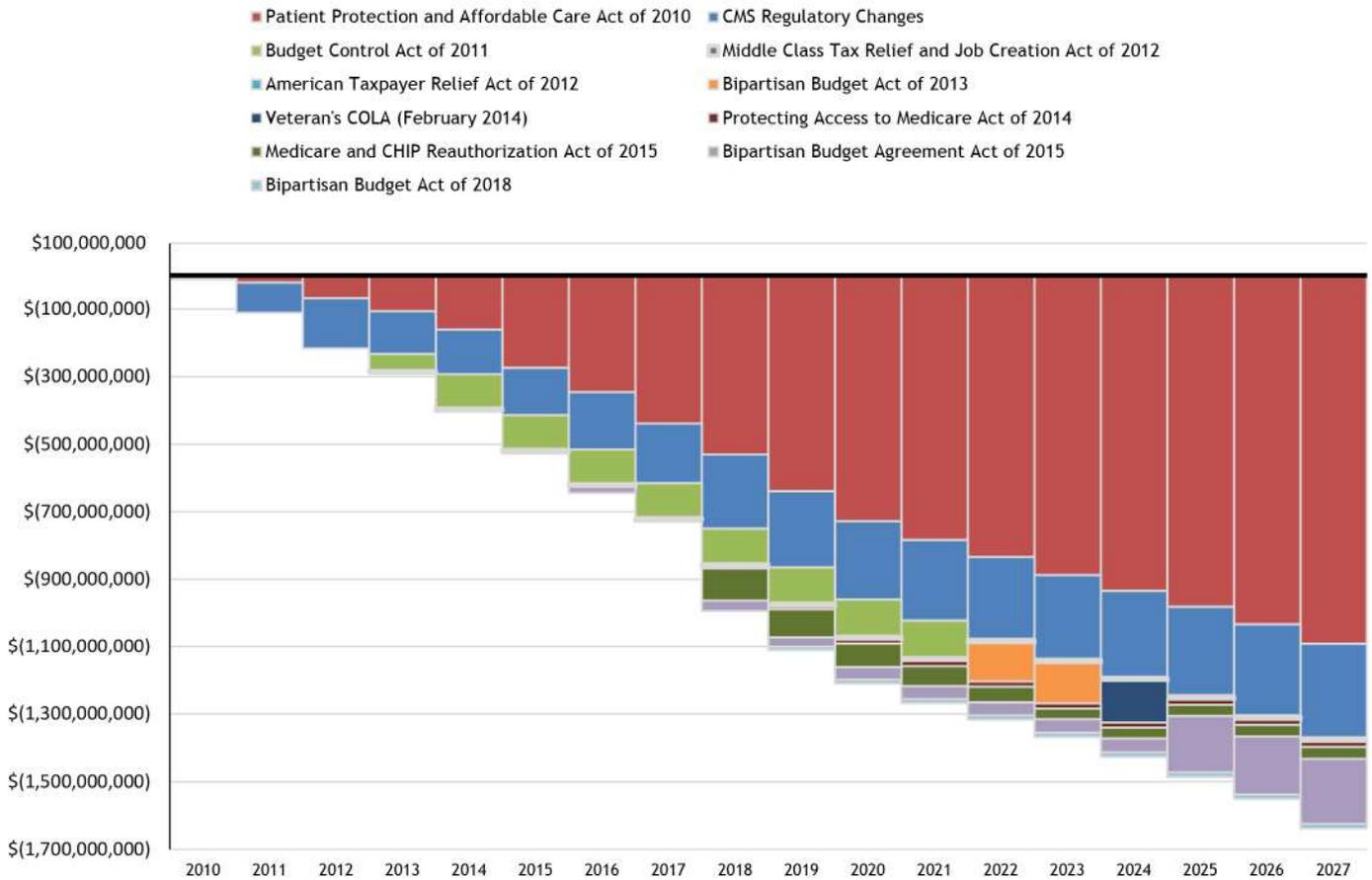


Through aggressive cost cutting and efficiency improvements, hospitals were able to slowly reverse the downward negative Medicare margin trend beginning in 2007. Margins were on track to return to a positive status by 2010; however, additional federal budget-cutting measures that year eroded that improvement. The 2010 *Patient Protection and Affordable Care Act (ACA)*, the *Budget Control Act* of 2011, the *American Taxpayer Relief Act* of 2012, the *Bipartisan Budget Act* of 2013, the *Medicare Access and CHIP Reauthorization Act* of 2015, the *Bipartisan Budget Act* of 2015 and the *Bipartisan Budget Act* of 2018 are expected to reduce future Medicare reimbursement to Georgia's hospitals by up to 16.3 percent, accounting for \$17.3 billion in revenue reductions between 2010 and 2027.²⁸ *Figure 7 reflects the reduction of Medicare revenue due to federal budget-cutting measures.*



Figure 7

Medicare Cuts By Legislative and Regulatory Action Cumulative Impact on Georgia Hospitals



2. Medicaid

Established in 1965, Medicaid is available to low-income individuals, pregnant women, and the aged, blind or disabled. Jointly funded by the federal and state governments, the program is operated by the states and overseen at the federal level by the Centers for Medicare and Medicaid Services (CMS). Georgia's Medicaid program is administered by the Georgia Department of Community Health.

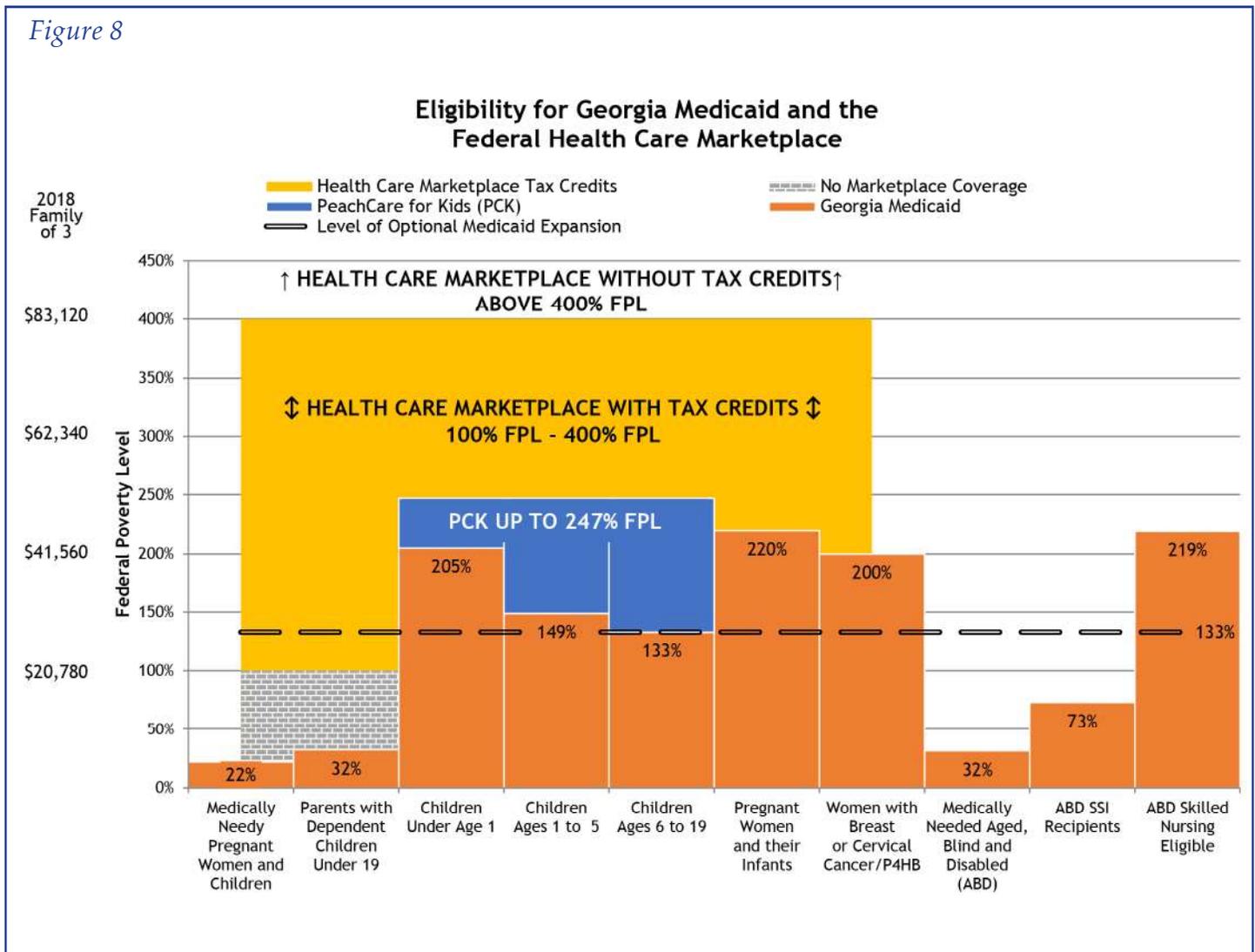
Who is Eligible for Medicaid?

Contrary to popular belief, Medicaid does not provide coverage to all low-income people. To qualify for Medicaid coverage, persons must meet:

- Income eligibility criteria;
- Certain clinical or categorical criteria such as being under age 19, pregnant, aged, blind or disabled;
- Resource eligibility limits;
- Immigration criteria;²⁹ and
- State residency requirements.

The federal government sets minimum standards, but states can choose to cover people at higher income levels and define additional eligible populations. Georgia Medicaid covered an average of 1.9 million beneficiaries each month during FY 2016.³⁰ See Figure 8 for an overview of the populations who are eligible for Medicaid in Georgia.

As of January 2014, the federal *Patient Protection and Affordable Care Act (ACA)* provides enhanced federal funding to states that elected to expand Medicaid coverage to 133 percent of the Federal Poverty Level for all legal U.S. residents.³¹ As of 2018, the state of Georgia had not elected to expand Medicaid. The state originally estimated that almost 570,000 uninsured children and adults would have been eligible for new Medicaid coverage in 2014 had the state decided to expand.³²



How Does Medicaid Pay?

Georgia Medicaid covers both inpatient and outpatient hospital services under two different payment arrangements: fee-for-service (FFS) and through Care Management Organizations (CMOs).

Under the FFS arrangement, a hospital bills the state directly for each covered service provided to a Medicaid patient and is paid based on uniform and predetermined Medicaid payment policies.

- **Inpatient Services** - Georgia Medicaid pays predetermined fixed amounts for services based on the patient's diagnosis and treatment (i.e., DRGs). Hospitals are assigned to peer groups. Each peer group has a unique base payment that is multiplied by the applicable DRG to determine a claim-specific payment. Hospitals with graduate medical education programs may receive additional payments to cover Medicaid's share of cost for these programs. Base payments are calculated using past operating and capital costs; however, payments are not guaranteed to cover current costs. DRG base payments were last updated in July 2015 and based on hospital costs from 2011 through 2013.³³
- **Outpatient Services** - Georgia Medicaid makes interim payments to hospitals based on the hospital's charge for an outpatient service and later uses actual cost to settle the difference between the interim payment and the final payment. Final payments for cost-based services to critical access hospitals and state hospitals are paid at 100 percent of cost, while all other hospitals are currently paid at 85.6 percent of cost. This means that hospitals paid at 85.6 percent of cost are guaranteed by policy to lose 14.4 percent of their costs on Medicaid patients served in outpatient settings. There are some services that are not subject to cost-based payment. Examples include non-emergent use of the emergency room, injectable drugs and certain laboratory procedures. Hospitals are paid using a fee schedule for these kinds of services.

Under the CMOs, Georgia Medicaid pays a fixed monthly payment to a CMO based on the number of Medicaid members enrolled in the CMO's plan. The CMO is then responsible for paying providers, including hospitals, for covered services provided to the CMO's enrolled members. The hospital bills the CMO for services based on contractual payment terms that have been negotiated between the hospital and the CMOs in order for the hospital to participate in the CMO's provider network. The CMOs are required by state law to pay hospitals that do not participate in the CMO's provider network 100 percent of the fee-for-service Medicaid rate for emergency services. However, non-emergency services may be covered at 90 percent of the fee-for-service Medicaid rate if there have been three failed attempts by the CMO to negotiate a contract with the hospital. The CMOs may require authorization for non-emergent services and if it is not obtained may deny the claim entirely.

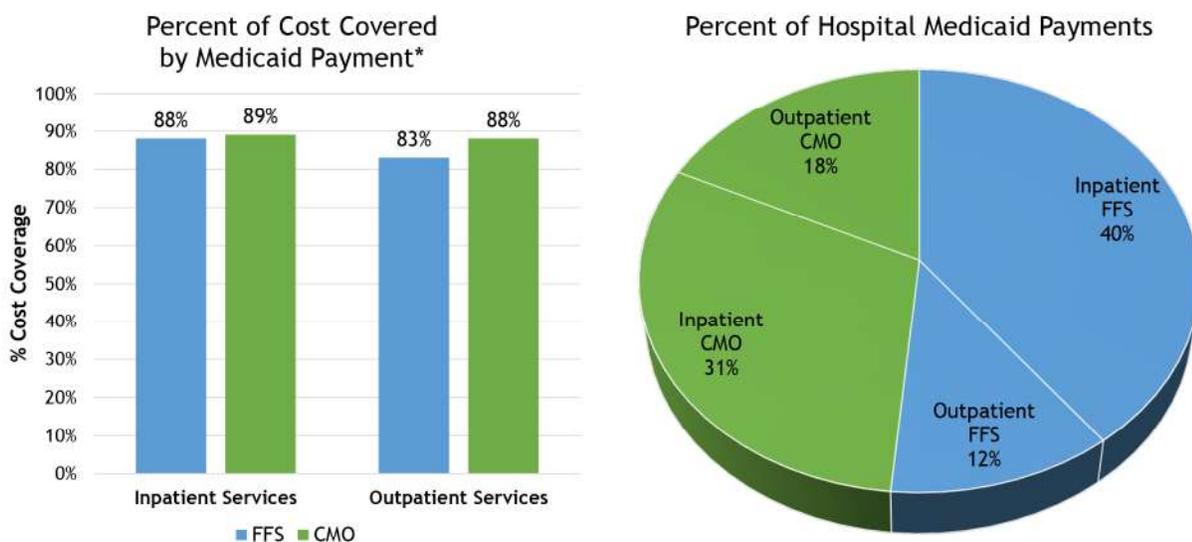
Because CMOs negotiate with each hospital, payment methodologies for inpatient and outpatient services vary by hospital. The percentage of cost paid by the CMOs has been historically lower than FFS. Most CMOs are for-profit entities that are paid fixed payments by the state. Therefore, in addition to covering payments to providers for medical services, they must also:

- Cover their own administrative costs; and
- Earn a profit for their shareholders.

In FY 2016, Georgia Medicaid, under both payment arrangements, paid 13 percent less than cost for Medicaid inpatient and outpatient hospital services.³⁴ *See Figure 9 for more details.*

Figure 9

FY 2016 Georgia Medicaid Cost Coverage



*Considers that hospitals financed a rate adjustment through the use of the Hospital Provider Payment Program. Medicaid payments were reduced by the amount of the Provider Payment cost not reimbursement by Medicaid. Does not include supplemental payments.

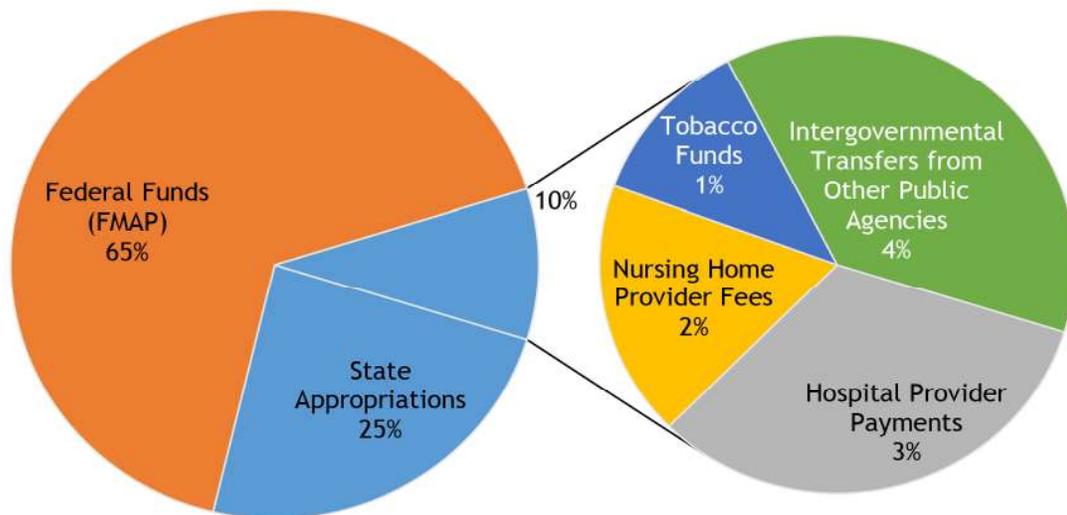
How is Medicaid Funded?

Medicaid is jointly funded by the federal and state governments. Generally, for each dollar paid to providers serving Medicaid patients, the federal government provides funding for about two-thirds of the payment while the State of Georgia pays the remaining one-third.

- **FEDERAL SHARE:** The federal share is called the Federal Medical Assistance Percentage (FMAP) and the exact amount is determined annually by CMS based on each state's per capita income. The lower the per capita income, the higher the FMAP. For FFY 2019, Georgia's FMAP for Medicaid is 67.62 percent. Other states' FMAPs range from 50.0 percent (multiple states) to 76.39 percent (Mississippi).³⁵ As of January 2014, states that elected to expand Medicaid coverage up to 138 percent of the federal poverty level received 100 percent FMAP for the expansion population's expenditures through 2016. Beginning in 2017, FMAP will be reduced for this population each year, reaching 90 percent by 2020 and remaining at that level.
- **STATE SHARE:** The state share is made available through the General Assembly's annual appropriation to the Department of Community Health and other state agencies that pay for health care services for Medicaid members. Most state appropriations for Medicaid come from general state funds; however, a portion of the state share is paid for by fees or payments made to the state from (a) hospitals and nursing homes; (b) proceeds from the Tobacco Master Settlement Agreement; and (c) local Intergovernmental Transfers (IGTS).³⁶ See Figure 10 for more details on the sources of Medicaid funding.³⁷

Figure 10

**FY 2019 Appropriated
Fund Sources for Medicaid
= \$10.3 Billion**



3. Special Supplemental Payments

Because hospitals do not receive sufficient payment to cover the costs of serving Medicaid and uninsured patients, some hospitals are eligible for special supplemental payments. In 2016, one-third of Georgians were either uninsured (12 percent) or enrolled in Medicaid (17 percent).³⁸

Medicaid Disproportionate Share Hospital Program

The Disproportionate Share Hospital (DSH) program is a federal program that provides hospitals payment toward the cost of care for the uninsured and any remaining uncompensated Medicaid costs after Upper Payment Limit (UPL) payments are considered. (See page 26 for more information on UPL payments.) In FY 2016, uninsured patients paid only about 7 percent toward their cost of care.³⁹

Generally, to qualify for a DSH payment in Georgia, a hospital must meet the federal criteria of having at least a 1 percent Medicaid utilization rate and have an ongoing capability to do non-emergent delivery of newborns. Once eligible for DSH, the amount of DSH funds paid to a hospital depends on the burden of uncompensated Medicaid and uninsured care relative to other eligible hospitals. It is also dependent on the amount of federal funding made available to the state in the annual DSH allotment.

The Uninsured in Georgia:

- 1 in 8 Georgians, or 12 percent (1,266,000), is uninsured.
- Georgia ranks 3rd highest in the nation for the percentage of its citizens who are uninsured.
- 1 in 15 children in Georgia, or 6 percent (166,100), is uninsured.

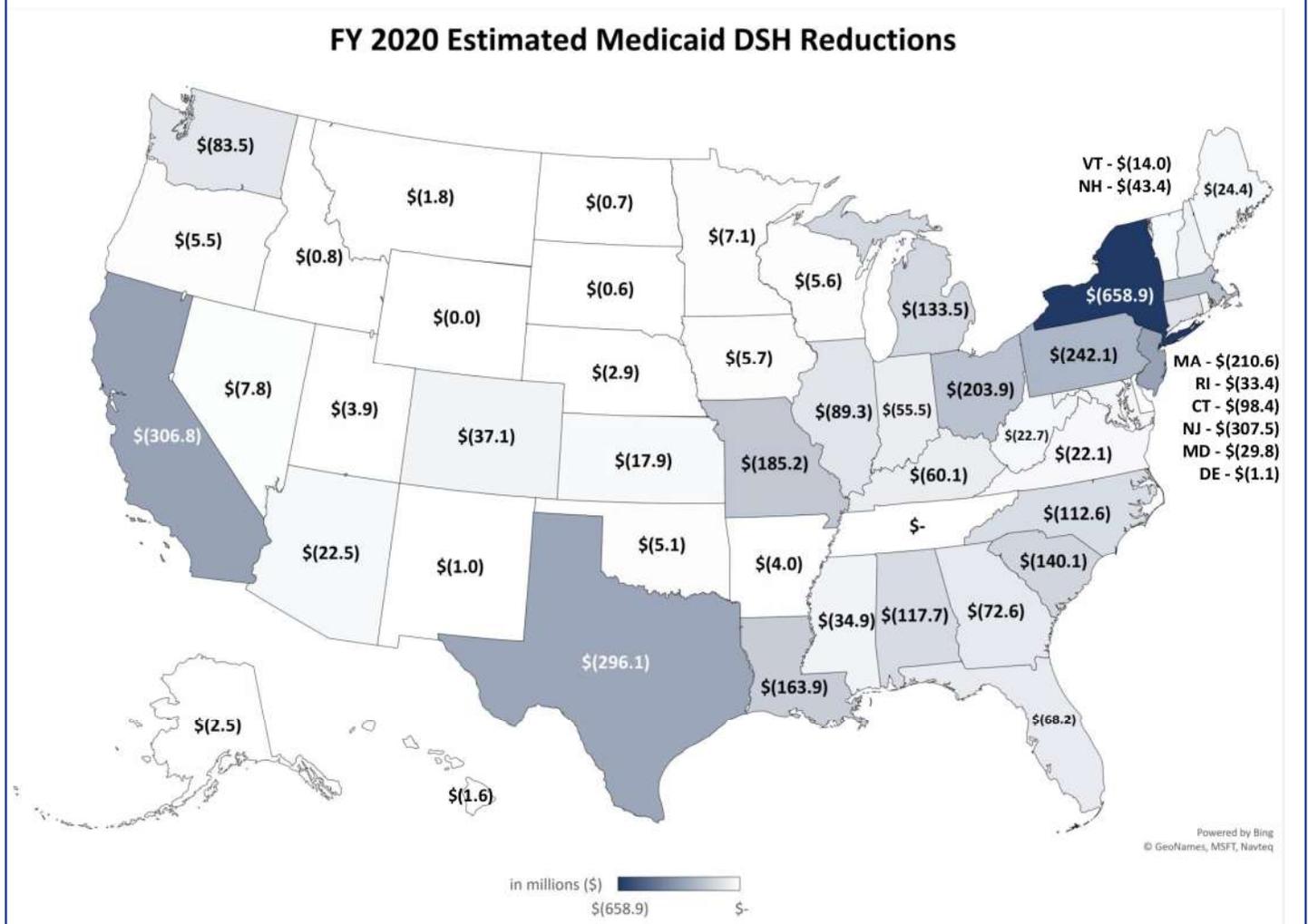
SOURCE: Kaiser Commission on Medicaid and the Uninsured, 2016

After considering all payment sources for Medicaid and the uninsured, hospitals were paid 91 percent of cost for Medicaid and 23 percent of costs for the uninsured in FY 2016.³⁹ To offset these remaining cost deficits, hospitals need to receive payments from other payers in excess of cost to break even.

The state must provide state matching funds to draw down the annual federal allotment. The state's share is based on the state's FMAP rate. In Georgia, public hospitals provide the state matching funds via intergovernmental transfers. Private hospitals must depend on an annual state fund appropriation for their state matching funds. The 2010 Patient Protection and Affordable Care Act (ACA) included significant cuts to the Medicaid DSH program beginning in 2014 through 2020, based on the premise that more patients will be insured due to the provisions of the ACA (e.g.,

participation in the Health Insurance Marketplace and Medicaid expansion) and, therefore, hospitals will not incur as much uncompensated care. Subsequent federal legislation delayed these cuts until 2020 but extended them through 2025.⁴⁰ These cuts will occur regardless of a state's decision to expand Medicaid. Nationally, available DSH funds will decrease by 24 percent beginning in FY 2020 and escalate to a 48 percent reduction by 2021. Georgia's reductions are estimated to start at \$73 million in FY 2020 (See Figure 11 for the estimated FY 2020 reductions by state) and increase to \$145 million by 2021. In FFY 2018, Georgia's federal DSH allotment was \$302 million.⁴¹

Figure 11



Medicaid Upper Payment Limit Payments

Certain hospitals qualify for supplemental payments to help subsidize regular Medicaid payments that are less than cost. These payments are paid in addition to regular Medicaid payments and are often referred to as Upper Payment Limit (UPL) payments, where the maximum that Medicaid can pay (i.e., the UPL) is either cost or what Medicare would have paid for a service provided to a Medicaid patient. Supplemental payment levels are determined by calculating the difference between the UPL and what Medicaid actually paid hospitals for inpatient and outpatient services under fee-for-service.

Since UPL payments are capped and therefore limited, the state categorizes hospitals into two groups, with priority given to the following types of hospitals based on their specific roles in the state or community: regional perinatal centers, hospitals with poison control centers, teaching hospitals, critical access hospitals and hospitals with sickle cell treatment centers. After these targeted payments have been made, the state pays any residual funds to public and certain private hospitals. For UPL payment purposes, public hospitals are defined as hospitals owned or operated by state or local governmental entities.

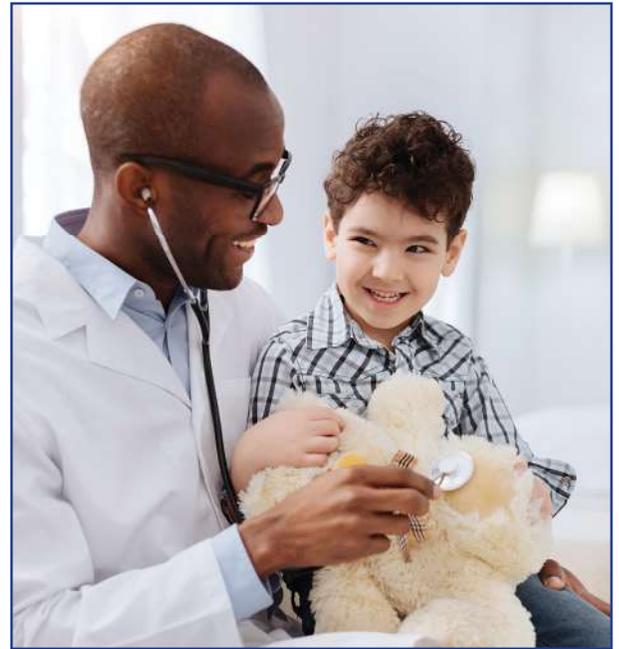
In FY 2018, supplemental payments to all hospitals totaled \$256 million, with \$89 million made for targeted payments and \$129 million made in residual payments to public and certain private hospitals.⁴² In the future, supplemental payments under the current UPL program are expected to decline due to ongoing reductions in Medicare payments (resulting in reductions in the maximum amount of Medicaid funds that can be paid).

UPL payments are funded with a combination of federal and state matching funds based on the FMAP for each state. In Georgia, the source of the state matching funds for residual UPL payments to public hospitals is intergovernmental transfers (IGTs) made by the local governmental entity affiliated with the public hospital. For targeted UPL payments and residual payments to critical access hospitals, the state matching funds have been made available through state appropriations. State matching funds for the residual payments to other private hospitals come from provider payments made by hospitals participating in the Hospital Medicaid Financing Program.



4. PeachCare for Kids

The State Children's Health Insurance Program (SCHIP) was a 1997 expansion of the federal Medicaid program. If authorized by an act of a state legislature, SCHIP allowed states to cover additional children in families with incomes that were modest but too high to qualify for Medicaid. SCHIP funding used a federal funding formula that assigned a higher share of the program's cost to the federal government than the Medicaid program; however, each state was capped at an annual allotment. Like Medicaid, states were required to match federal funds with state funds but at a lower rate as compared to Medicaid.



The *Children's Health Insurance Program Reauthorization Act (CHIPRA)* of 2009 extended and expanded the State Children's Health Insurance Program (now referred to as CHIP) through 2013. Under the Act, CHIP continued as a capped program with enhanced matching rates. Each state received an annual allotment and states could receive federal funds for CHIP up to the allotted amount. A state match was still required. In 2010, the *Patient Protection and Affordable Care Act (ACA)* extended CHIP funding through 2015. Though funding was only appropriated through 2015, the ACA contains a Maintenance of Effort (MOE) clause that will require states to continue offering Medicaid and CHIP at 2010 levels until 2019. In 2015, the *Medicare Access and CHIP Reauthorization Act (MACRA)* once again extended CHIP funding through 2017. More recently, Congress passed a six-year extension of CHIP funding as part of a broader continuing resolution to fund the federal government.⁴³

In Georgia, the CHIP program is referred to as the PeachCare for Kids (PCK) program and covers children not eligible for Medicaid in families with annual incomes up to 247 percent of the federal poverty level (about \$51,330 for a family of three).⁴⁴ In FY 2018, Georgia covered an average of almost 132,500 children each month.⁴⁵ This is down considerably from the FY 2014 average monthly level of 218,000 children. Effective January 1, 2014, PCK members ages six through 19 with incomes between 100 percent and 133 percent of the federal poverty level were transitioned to Medicaid as required by the ACA. Premiums are required for children ages 6 and over and are based on a sliding scale dependent on a family's income as a percentage of the federal poverty level. For FY 2019, premiums range from a maximum of \$36 for one child up to a maximum of \$72 per family.⁴⁶

Historically, Georgia's enhanced FMAP for CHIP has been around 75 percent; however, beginning on October 1, 2015 through September 30, 2019, the CHIP FMAP will be increased by 23 points (up to a maximum of 100 percent) as a result of the ACA. Georgia's enhanced FMAP will be at 100 percent for most program expenditures.⁴⁷

Hospitals providing care to PCK members are subject to the same payment methodologies used for Georgia Medicaid.

5. State Health Benefit Plan

The State Health Benefit Plan (SHBP) is self-insured and provides health care insurance coverage for Georgia's active and retired state employees, teachers and school personnel. It is considered a government payer since the plan is self-insured by the state, but it offers one fully insured HMO plan and uses private plans for administrative services.

As of January 2018, the plan provided coverage for more than 663,000 members statewide at a cost of nearly \$3.2 billion in SFY 2018.⁴⁸ The Plan is financed by premiums paid by members as well as employer contributions, which come from state agencies (for state employees) as well as local boards of education (for teachers and non-certificated school service personnel). The amount of premiums and employer contributions are set annually by the Board of Community Health.

The Plan offers the following options:⁴⁹

- Health Reimbursement Arrangement (HRA) - To align with plan options offered by the federal Health Insurance Marketplace, SHBP members can select from Bronze, Silver or Gold options. Members selecting one of these "metal" options are required to pay deductibles and coinsurance. Members get a starting balance in an HRA account funded by the plan. HRA funding ranges from \$100 (Bronze Individual) to \$800 (Gold Family) depending on the plan and coverage level. Members can earn additional HRA funds by participating in well-being activities (up to \$480 for individuals and \$960 for families). HRA plans are offered exclusively by Anthem Blue Cross and Blue Shield.
- Health Maintenance Organization (HMO) – HMO members pay copayments but must use providers within the HMO network to receive coverage. Statewide, members can select from two vendors (Anthem Blue Cross and Blue Shield or United HealthCare), while members in the Atlanta region have a third option with Kaiser Permanente.⁵⁰
- High Deductible Health Plan (HDHP) - Members selecting the HDHP option are required to pay coinsurance and have higher deductibles in exchange for lower premiums. Enrollment in a HDHP also allows a member to utilize a Health Savings Account. The HDHP option is offered exclusively by United HealthCare.

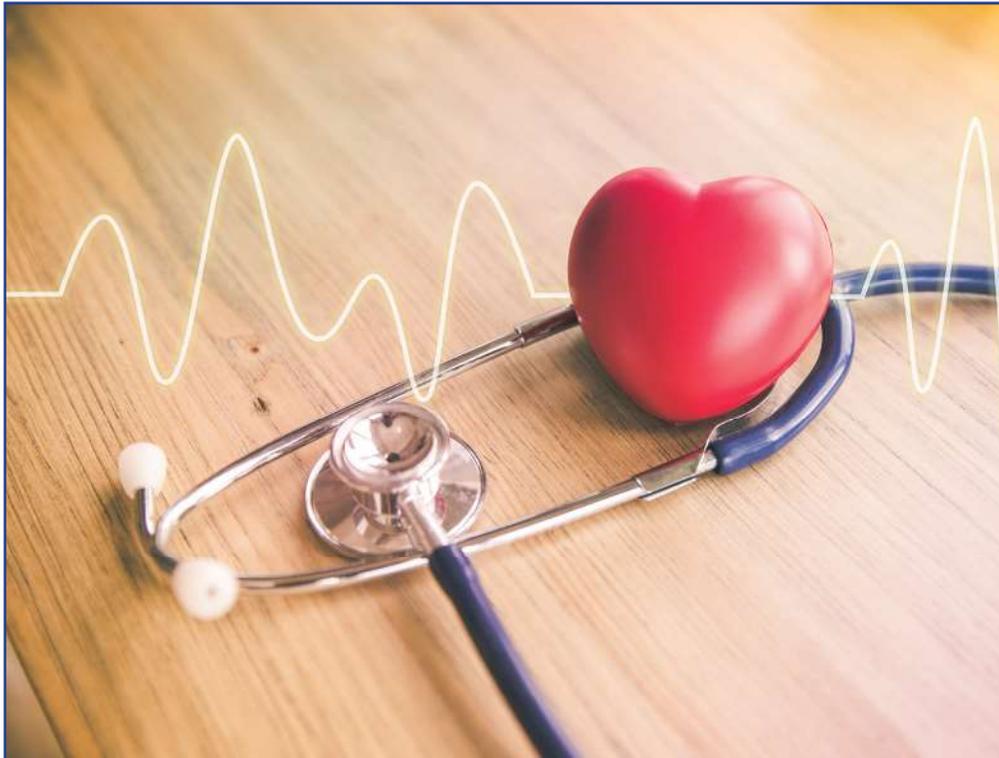
The Plan utilizes separate vendors for pharmacy benefit management (Express Scripts) and wellness programs (Healthways, Inc.).

Premiums and member cost-sharing differ by option, with the HDHP option having the lowest premiums but highest member cost-sharing. The HMO and Gold HRA plans have the most expensive premiums but have the lowest member cost-sharing. All plans have a maximum out-of-pocket that varies depending on the plan. Members can pay additional premiums to cover a spouse and any dependents. Tobacco users are assessed a surcharge to promote tobacco cessation and use of the Tobacco Cessation Telephonic Coaching Program. Members can have the tobacco surcharge removed by completing certain wellness requirements.

Providers serving SHBP members must collect deductibles, copayments and coinsurance amounts from members to subsidize insurance benefit payments received from the SHBP. Members who can afford to pay but fail to may be subject to the provider's collection efforts. Unpaid cost-sharing by members may be written off by the provider as either indigent/charity care or bad debt. As discussed previously, these losses must be made up by the provider by making a profit on payments received from other payers.

When available, the SHBP encourages members to utilize other insurance options:

- To receive a premium subsidy, members ages 65 and older are required to participate in one of two SHBP Medicare Advantage Plans (MAP). The MAP options are offered by United HealthCare and Anthem Blue Cross and Blue Shield.
- Members of SHBP can elect to enroll their dependent children in the PeachCare for Kids (PCK) program if their family income is less than 247 percent of the Federal Poverty Level (FPL). Parents of such children are likely to find this option financially attractive due to much lower premiums and cost sharing in the PCK program as compared to the SHBP. Additionally, the PCK program offers some benefits not provided in the SHBP, like dental services. From a provider's perspective, payments for services from the PCK program are much lower than those available from the State Health Benefit Plan and typically do not cover the cost of care provided.
- The SHBP offers a TRICARE Supplement Plan to employees and dependents who are eligible for SHBP coverage and enrolled in TRICARE.⁵¹ The TRICARE Supplement Plan works with TRICARE, the health care program serving Uniformed Service members, retirees and their families worldwide, to pay the balance of covered medical expenses after TRICARE pays.

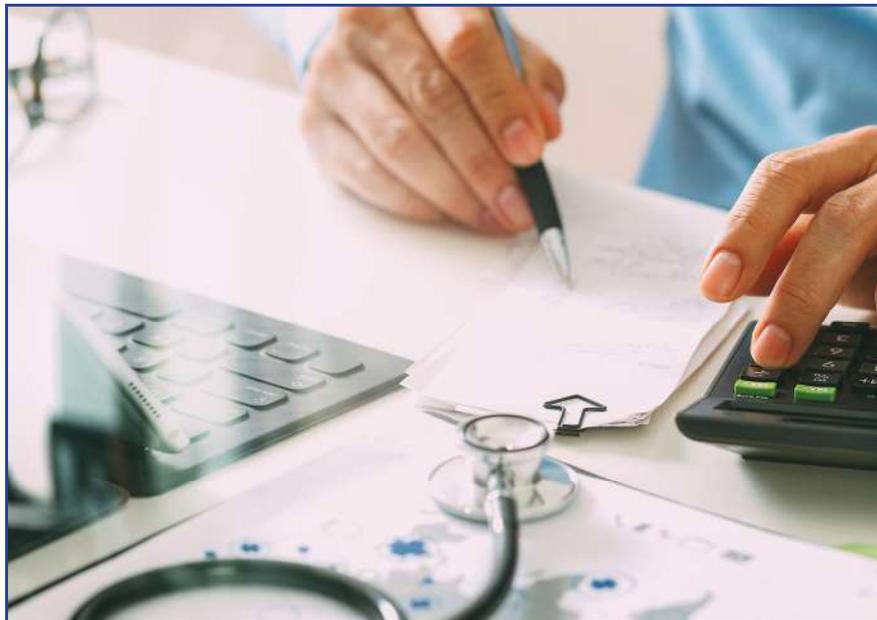


NON-GOVERNMENTAL PAYERS

1. Fully Insured Accident and Health Insurance Plans

Accident and health insurance plans are regulated by both state and federal law. The *Patient Protection and Affordable Care Act* of 2010 (ACA) made sweeping changes to the health insurance industry and imposed a number of requirements intended to control cost and expand the availability and quality of health insurance to consumers. In 2017, the current administration unsuccessfully attempted to repeal the ACA; however, there are ongoing efforts to make changes to parts of the law. In early 2017 the Department of Health and Human Services cut funding for outreach and education and in December 2017, Congress passed the Tax Cuts and Jobs Act, which eliminated the individual mandate penalty, effective January 1, 2019. Uncertainty about the future of the ACA and continued losses by plans offered on healthcare.gov led to major premium increases and withdrawal of many plans from the Exchange in 2018. For 2019, however, plans appear to be expanding their presence and premiums have shown smaller increases and even some decreases.

An insurance company in the United States must be licensed by the state in which it issues coverage. It is possible for an insurer to issue coverage in one state that covers members that live in another. The Georgia Office of Insurance and Fire Safety Commissioner (OIC) is responsible for the licensing of companies to transact business in Georgia and for ensuring that those companies remain solvent and comply with all the requirements of Georgia laws and regulations. There are separate licensure requirements for certain types of health insurance, such as Health Maintenance Organizations (HMO) and Provider Sponsored Health Care Plans (PSHCP).



The majority of health insurance offered in the United States today is considered “managed care.” This term generally means a system for financing and, sometimes, delivery of health care that is intended to control cost, utilization and quality of care. For plans licensed in Georgia, there are a number of state regulations that address the way they can do business, including the time within which the plan must pay claims, late payment interest and rules related to authorizations for services and appeals. There are many types of managed care plans, although the distinction between types has become more and more blurred over the past few years. All tend to share common characteristics to varying degrees, including:

- Networks of contracted providers that agree to accept reduced rates for services in exchange for an expected higher volume of patients or the ability to have coverage for patients in some plans;
- Requirements for authorization of many services;
- Tiered cost share amounts for prescription drugs;
- Scrutiny of medical necessity of care;
- Payment policies that may dictate the setting or other prerequisites for coverage of some services; and
- Variability in the patient’s share of cost for health care services.
 - Some plans may have no benefits for providers not in the network.
 - When covered, cost share amounts are typically higher for lower-tier or out-of-network providers.
 - Regardless of network participation, state and federal law require that emergency care be covered.
 - The ACA requires that specified preventive care be covered in full when provided by in-network providers.

In recent years, the trend has been toward significantly increasing patient cost share amounts for both in- and out-of-network care to the point that the financial responsibility has become unaffordable for many patients and contributes to higher hospital bad debt.

Types of Plans

The major differences between the most common types of plans are:

- **Health Maintenance Organizations (HMO)** are separately licensed and generally have higher financial reserve requirements than other health insurance plans. HMOs often have closed provider networks which means that, except for emergency care, services are covered only when rendered by providers within the HMO network. HMOs may also require that a covered person have a primary care provider coordinate his or her care.
- **Point of Service (POS)** plans are typically very similar to HMOs, except they will cover care for providers that are not in the plan’s network. Many POS plans fall under an HMO license, although they may also be offered by non-HMO health insurers.
- **Preferred Provider Organization (PPO)** plans do not require separate licenses in most states, although the insurers that use PPOs for their benefit plans must meet licensure requirements. Typically, plan rules are not as stringent for PPOs as for HMO and POS plans; out-of-network care is usually, but not always, covered.
- **High Deductible Health Plans (HDP or HDHP)** combine a Health Savings Account (HSA) or a Health Reimbursement Arrangement (HRA) with medical coverage that has higher deductibles than traditional insurance plans. The HSA or HRA may be funded by either employer or employee contributions, or both, and are designed to encourage patients to be better consumers of care.

Plan Billing and Payment

Billing and payment of claims for members of health plans can be very confusing to providers and patients and is determined by contract terms and benefit plan design as well as federal and state law. The degree to which hospitals and other providers can negotiate rates in a managed care contract varies considerably. Efforts to find new ways to reduce medical costs have led insurers to sometimes use “narrow networks,” which have a limited choice of providers that are considered in-network even though other providers have contracts with the same insurance company. A provider must be diligent in verifying eligibility and benefits before rendering non-emergent services to a patient in order to ensure that full insurance benefits will be available.

For providers in a network, the patient can be billed only for the patient cost share amount (copayments, coinsurance and deductibles) and for services not covered by the plan, regardless of the “allowed amount” determined by the insurer (which should be consistent with the provider’s contract rate). Even then, the provider is often required to obtain the patient’s consent prior to rendering non-covered services in order to bill for them.

When a provider is not in the plan’s network, of course, there is no contract to dictate the amount that the plan must pay or the amount that can be billed to the patient. However, both aspects of the claim may be addressed by federal or state law. Many insurers will set the allowed amount at what they consider to be a “reasonable” fee for the service and then pay a portion of that at the lower out-of-network percentage. It is called “balance billing” when an in-network provider bills the patient for the discount he or she has agreed to in his or her contract or when an out-of-network provider bills the patient for the difference between the allowed amount and the provider’s charges. The latter situation has received a great deal of attention in the media and among legislators recently as the financial burden for patients has increased. It is very likely there will be increasing regulation of the amount paid or the amount billed to the patient in the next few years.

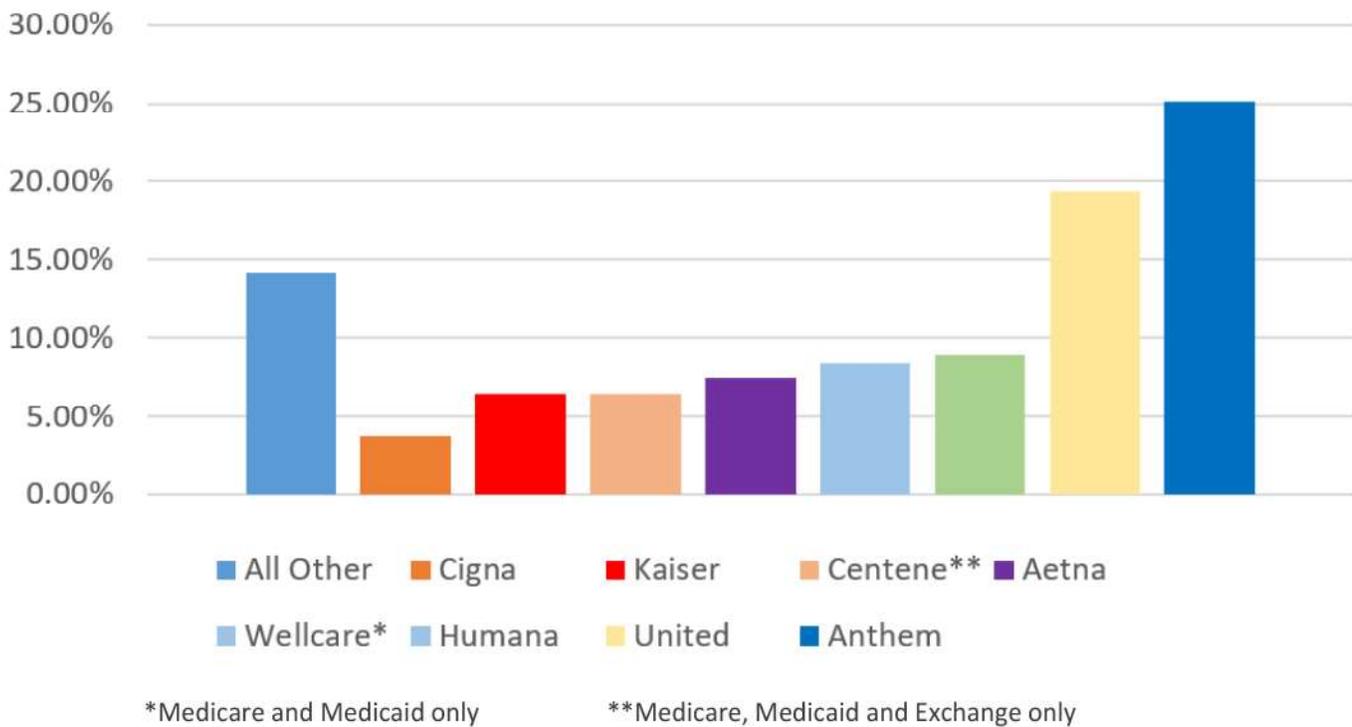
Insurance Industry Evolution

Merger and acquisition activity in the insurance industry took a different turn after the U.S. Department of Justice (DOJ) blocked large consolidation efforts in 2016. While there have been a few mergers of smaller plans, the industry has moved toward more vertical integration with a focus on reducing cost through new opportunities to improve care management and customer experience. CVS and Aetna announced a \$69 billion merger in December 2017. In March 2018, Cigna and ExpressScripts announced a \$52 billion deal. In July 2018, Humana, along with two private equity firms, finalized the purchase of Kindred’s home health and hospice services unit. Optum, a sister company of United Healthcare, has long focused on vertical integration, acquiring surgery, urgent care and physician practices over the past two years.

The most current market share information published by the National Association of Insurance Commissioners for Georgia health insurers is shown in Figure 12.⁵²

Figure 12

GA Accident & Health Insurer Market Share 2017



2. Health Insurance Marketplace

As a requirement of the 2010 *Patient Protection and Affordable Care Act (ACA)*, most U.S. citizens and legal residents were required to have health insurance beginning in 2014. In Georgia, residents can purchase insurance coverage through the federally operated Health Insurance Marketplace. Individuals or families with incomes between 100 percent and 400 percent of the federal poverty level who purchase coverage through the Health Insurance Marketplace are eligible for tax credits, which will help offset their premium costs. (See Appendix A for an overview of Marketplace eligibility.)

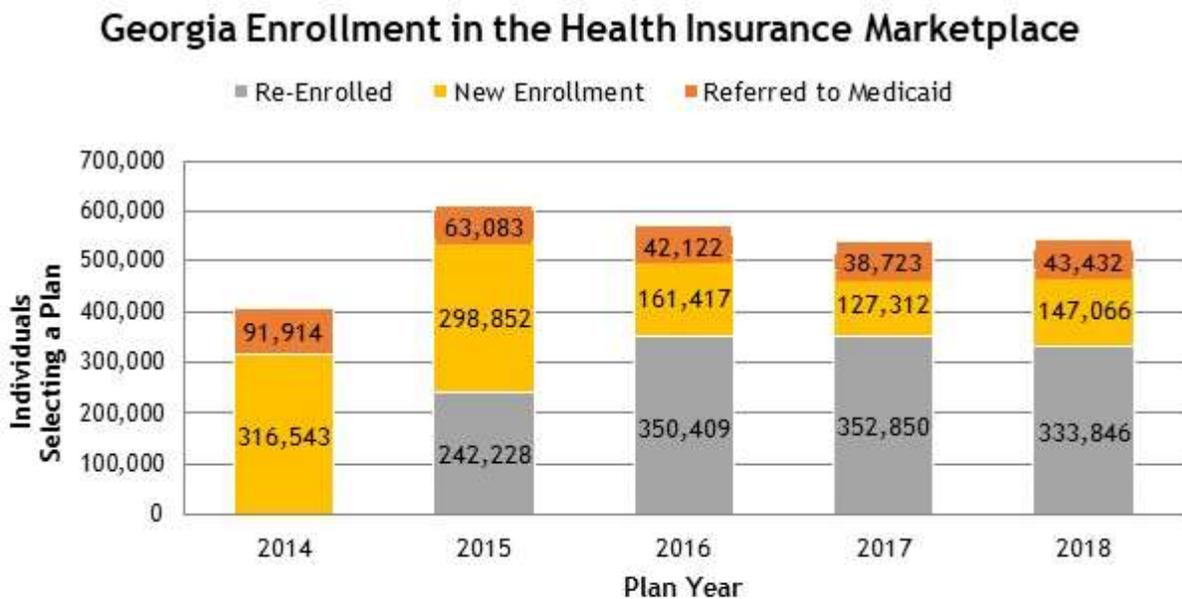
In 2014, 317,000 Georgians enrolled in a Health Insurance Marketplace plan offered by one of five insurers.⁵³ *In more recent years, enrollment has been relatively stable after a spike in 2015 (see Figure 13).* For the 2018 plan year, enrollment was the same as compared to 2017 with 480,000⁵⁴ Georgians enrolled in Marketplace plans offered by one of four insurers.⁵⁵ One out of four of the 2017 enrollees are new to the Marketplace while the remaining enrollees were previously covered by the Marketplace in 2017. A majority of Georgia's 2018 enrollees (85 percent) are eligible for tax credits to help offset their premium costs and 65 percent will receive cost sharing reductions. On average, available tax credits reduced monthly premiums by \$545 per month.⁵⁶

Health Insurance Marketplace consumers in Georgia have access to multiple benefit plan designs offered by different insurers. Insurers do not offer their products in all counties of the state and for 2019, almost 75 percent of the counties in the state must pick from plans offered by only one insurer.⁵⁷ Although the federal government operates the Marketplace, the plans are offered by insurance companies licensed in Georgia. All plans are required to offer the same set of essential health benefits but may have different networks of providers. Plans are classified into four categories: Bronze, Silver, Gold, and Platinum. Plan designs differ by the percentage of health care costs paid by the consumer, which range from 10 percent (Platinum) to 40 percent (Bronze).

A consumer’s share of the cost is paid through premiums, deductibles, and copayments or coinsurance. In general, the more a consumer is willing and able to pay each time for a health care service, the lower the plan’s premium. For example, premiums for Bronze plans are typically lower than the other plan types; however, the consumer’s share of cost is much higher when he or she actually accesses services.

Except for premiums (which are paid to the insurer on a monthly basis), providers must collect the consumer’s share of the cost directly from the consumer when health care services are rendered. Consumers who cannot pay their share may be eligible for indigent or charity care (in which case they may pay a discounted amount or nothing at all). Consumers who can afford to pay but fail to may be subject to the provider’s collection efforts. In either case, a consumer’s failure to pay the provider for the care received results in increased uncompensated care that must be covered by other payer sources.

Figure 13



3. Self-Insured Employee Benefit Plans

In the United States, about two-thirds of the people that are not covered by government programs obtain their health care coverage through an employer.⁵⁸ Employers that offer health benefits may either purchase insurance from a licensed insurer or set up their own plans in accordance with state and federal law.

The *Employee Retirement Income Security Act* of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry. The motivation behind ERISA is to provide uniform oversight under a set of national standards for employee benefits. Prior to the passage of ERISA, self-insured employee benefit plans were governed by state insurance law. Employers complained of the high administrative costs associated with maintaining plans that were subject to the laws of multiple states.

To make the regulation of these plans consistent throughout the country, ERISA pre-empts state laws that “relate to” employee benefit plans. Whether a law “relates to” an employee benefit has been a frequent subject in federal court.⁵⁹ In general, ERISA does not cover benefit plans established or maintained by governmental entities, churches for their employees, or plans that are maintained solely to comply with applicable workers’ compensation, unemployment or disability laws. ERISA also does not cover plans maintained outside the United States primarily for the benefit of nonresident aliens or unfunded excess benefit plans.

Under self-insured employee benefit plans, the employer or employer organization funds the plan but may have a Third Party Administrator (TPA) or an insurer provide the provider network, care management services and claims processing. For an insurer, this is referred to as “Administrative Services Only” or ASO business. This can be confusing to hospitals because it is difficult to tell whether a patient is covered by a fully insured plan or an ASO plan. The reason this is important is that state law and the plan’s rules, including payment policies, may vary significantly between the different types of plans. For example, Georgia law specifies a timely payment period for claims and requires interest on late payment. However, ERISA plans are not subject to these or other provisions Georgia lawmakers have put in place to ensure fair business practices between insurance companies and providers.

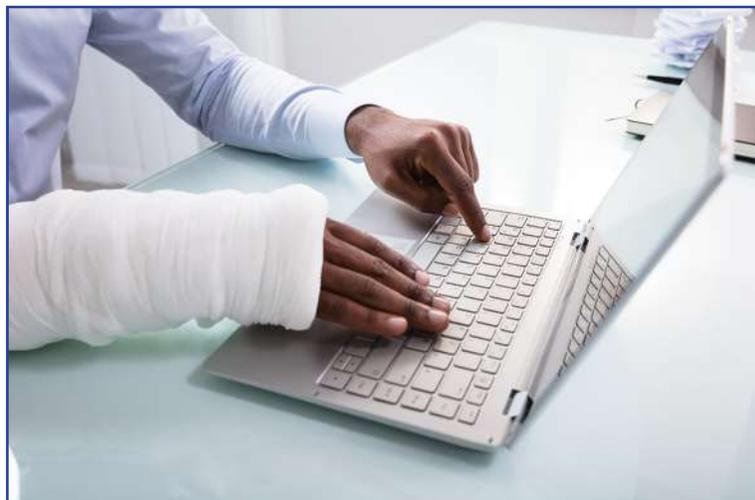


4. Workers' Compensation

In Georgia, state law requires that any employer with three or more regular employees have workers' compensation coverage for disability, rehabilitation and medical care for a worker who is injured on the job. Georgia law allows employers to require injured employees with a non-emergent condition to obtain treatment from designated providers as long as the employer has followed state law regarding notice to the providers. That may be done through either prominently posting (1) a list or panel of providers or (2) a Workers' Compensation Managed Care Organization (WC/MCO) certified by the Board.

While workers' compensation is highly regulated by state law, the coverage for disability, rehabilitation and medical services is typically provided by property and casualty insurance companies or self-insured employers. Coverage of an injured worker's care may be contingent on both the employee and the employer following the rules promulgated by the Georgia State Board of Workers' Compensation. The Board publishes an annual Medical Fee Schedule that sets the rates for hospital and physician payments. Inpatient payments depend on the patient's diagnosis and treatment, much like Medicare rates. Additional payment is made for implanted devices based on the device's cost.

Because workers' compensation has its own statutory requirements, it is generally excluded from any legislative provisions enacted with respect to other insurance plans or health plans.



HOSPITAL PROVIDER PAYMENT PROGRAMS

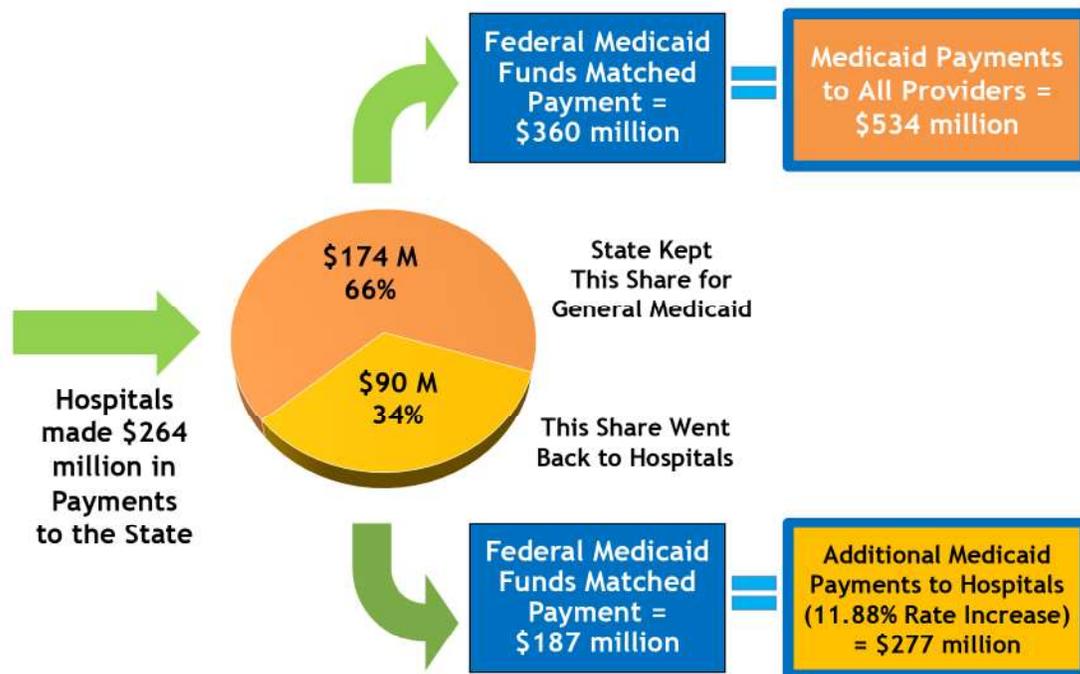
The Hospital Provider Payment Program (HPPP) was originally enacted in 2010 with the passage of House Bill (H.B.) 1055 and was effective for a three-year period through June 30, 2013. The General Assembly passed Senate Bill (S.B.) 24 in early 2013 that allowed for the continuation of the program through June 30, 2017. S.B. 70, passed in 2017, continues the program through June 30, 2020. S.B. 70 authorizes the Department of Community Health to assess one or more provider payments on hospitals for the purpose of obtaining federal financial participation for Medicaid. The department promulgated rules in the spring of 2013 to continue the HPPP program and created a new program, the Hospital Medicaid Financing Program (HMFP). The HMFP is designed to increase Medicaid payments to help a subset of private hospitals participating in the HPPP and is often referred to as the "Tier 2" Program.

The Hospital Provider Payment Program

The Hospital Provider Payment Program (HPPP) requires that most Georgia hospitals make quarterly payments to the state based on a percentage of their annual net patient revenue. There are three types of hospitals that are exempt from making the payment: critical access hospitals, state-owned or state-operated hospitals, and free-standing psychiatric hospitals. Trauma hospitals have a lower payment rate at 1.40 percent of net patient revenue, while all other hospitals are subject to the payment rate of 1.45 percent. Hospitals may count their provider payment toward any indigent care requirements they have related to their Certificates of Need.

Figure 14

Hospital Provider Payment Program - FY 2016



Payments made by hospitals are deposited into the state's Indigent Care Trust Fund and, per state statute, used strictly for the Medicaid program. *As shown in Figure 14, in FY 2016, approximately 34 percent of the payments were used to finance the state share of a hospital Medicaid payment add-on of 11.88 percent while the remaining 66 percent was used as one of the fund sources for the state's share of Medicaid payments to all providers.*⁶⁰ The hospital Medicaid payment add-on is intended to help offset the cost of the program payments for hospitals serving the Medicaid population. In FY 2019, hospitals will pay an aggregate of \$315 million to the state in Hospital Provider Payments.

Because the amount a hospital pays to the state has no direct correlation to its Medicaid payments, the fiscal impact to an individual hospital can vary greatly. Based on a GHA analysis of FY 2016 program activity, 47 hospitals had a cumulative net positive impact of \$78 million, while almost two-thirds, or 77, had a cumulative net negative impact of \$65 million. The individual hospital net impact in FY 2016 ranged from a loss of \$7.7 million to a gain of \$23.7 million.⁶¹

The Hospital Medicaid Financing Program

Participation in the Hospital Medicaid Financing Program (i.e., the Tier 2 Program) is currently limited to a subset of private hospitals. Specialty hospitals, public hospitals, critical access hospitals and free-standing psychiatric hospitals are exempt from the Tier 2 program. Participating hospitals make periodic contributions to the state based on their non-Medicare inpatient bed days. These contributions are used to finance the state share of federally funded supplemental payments made to those hospitals making the contributions as well as private Long Term Acute Care hospitals participating in the Medicaid program. Contributions vary depending on the level of supplemental payments available and the amount of state share needed.

Tier 2 hospital payment amounts are determined based on the hospital's annual volume of Medicaid business. Participating hospitals may receive additional payments if they meet one or more of the following criteria:

- Treat higher acuity Medicaid beneficiaries;
- Provide organ transplant services;
- Operate as an American College of Surgeons certified cancer center or breast cancer center;
- Have a large capacity to treat inpatient psychiatric patients; or
- Are rural hospitals serving as a telemedicine presenting site.

In FY 2016, the third year of the Tier 2 program, 45 participating private hospitals received a total of \$29 million after making \$9 million in contributions.⁶² For the 34 Tier 2-eligible hospitals with net negative losses in the HPPP in FY 2016, Tier 2 payments eliminated the losses for eight hospitals and cumulatively reduced the losses of the remaining 26 hospitals by 41 percent.⁶³ In FY 2018, 45 participating private hospitals received a total of \$54 million after making \$17 million in contributions.⁶⁴

INDIGENT CARE TRUST FUND

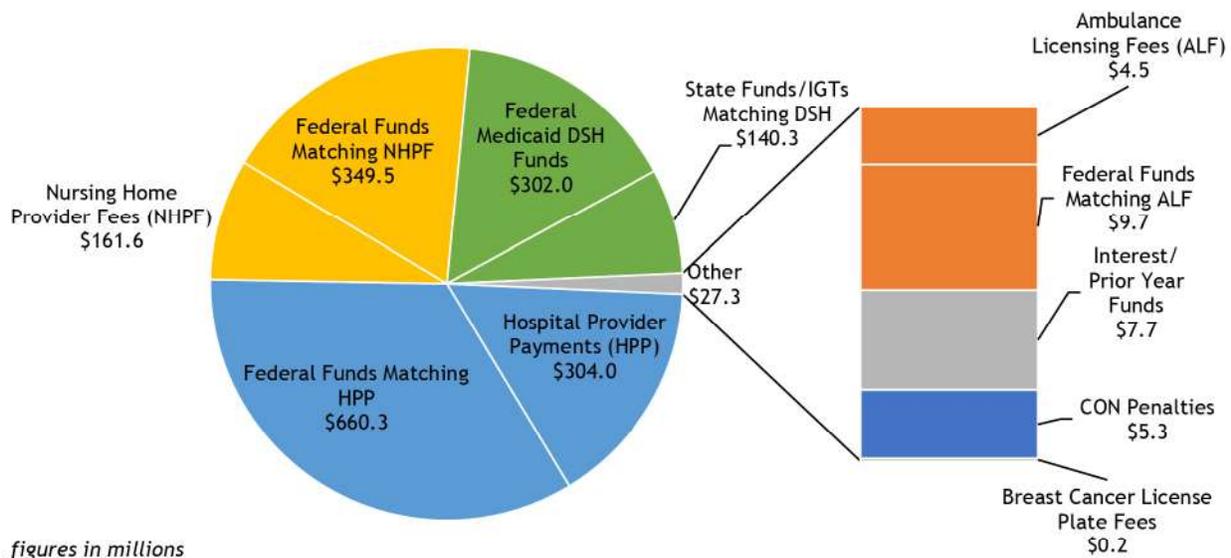
The Indigent Care Trust Fund (ICTF) was established via passage of a state constitutional amendment in 1990. The use of funds deposited in the ICTF are limited to the following purposes:

- Expand Medicaid eligibility and services;
- Support rural and other health care providers, primarily hospitals, which serve the medically indigent;
- Fund primary health care programs for medically indigent Georgians; and
- Promote healthy pregnancies and childbirth by awarding grants to nonprofit organizations that provide pregnancy support services.

It is a common misconception that hospitals can submit unpaid bills of indigent patients to the ICTF and receive payment. Instead, the ICTF is a dedicated fund used to house and spend revenues received from the federal Medicaid Disproportionate Share Hospital program, provider fees, breast cancer car license plate fees, ambulance licensing fees, and Certificate of Need (CON) penalties. (See Figure 15 for the distribution of funds types in the ICTF in 2018.)⁶⁵ The specific uses of ICTF revenues are dictated by various state statutes and reflected in the annual appropriations act; however, they must be compliant with the general provisions of the state constitutional amendment.

Figure 15

FY 2018 Indigent Care Trust Fund Revenues = \$1.9 Billion



RURAL HEALTH

Rural Georgians are often older, poorer, and sicker than their urban counterparts, which makes rural health critically important to the state's overall health. Many more Georgians live in urban areas (70 percent) than in rural areas (30 percent). Although the state's smaller rural population masks its social circumstance, the conditions in rural areas significantly affect the state's overall productivity, health, and health care costs.⁶⁶ Given these unique challenges, there are a variety of programs and entities that support rural health improvement.

Rural Hospital Tax Credit Program

In 2016, the General Assembly passed Senate Bill (S.B.) 258 to provide tax credits for individuals and corporations that contribute to rural hospital organizations. The contributions are to be used for (1) the provision of health care services for residents in a rural county or (2) residents of the area served by a critical access hospital. In 2017, the General Assembly modified the program to (1) expand the number of rural hospitals eligible to participate, (2) increase the amount of tax credits, and (3) change the aggregate limits on the amount of tax credits available annually. In order for a rural hospital organization to be eligible to receive donations under the tax credit program, it must:

1. Be a licensed acute care hospital;
2. Provide inpatient hospital services in a rural county having a population of less than 50,000 or be designated as a critical access hospital;
3. Participate in Medicare and Medicaid and provide health care services to indigent patients;
4. Have at least 10 percent of its annual net revenue categorized as indigent care, charity care, or bad debt;
5. Annually file IRS Form 990 (Return of Organization Exempt from Income Tax) or the equivalent with the Department of Community Health; and
6. Be operated by a local hospital authority or be designated as a 501(c)(3) organization by the IRS.

Further changes made during the 2018 General Assembly included increasing the tax credit to 100 percent and making S-Corps eligible donors. Individual tax payers are allowed a tax credit equal to 100 percent of their contribution up to a maximum of \$5,000 (single filer) or \$10,000 (married couple filing jointly). Corporate tax payers are allowed a tax credit up to 100 percent of their contribution or 75 percent of the corporation's income tax liability, whichever is less.

The legislation limits the annual aggregate amount of tax credits for all rural hospital organizations to \$60 million. As of late 2018, the Georgia Department of Revenue was working to certify the exact amount donated to hospitals.

Tax credits per individual rural hospital organization are limited to \$4 million annually. The Rural Hospital Tax Credit Program is automatically repealed on December 31, 2021.

State Office of Rural Health

The Georgia Department of Community Health's State Office of Rural Health (SORH) works to improve access to health care in rural and underserved areas and to reduce health status disparities. SORH provides funding for an institutional framework that links small rural communities with state and federal resources to help develop long-term solutions to rural health problems. The SORH administers four primary programs: Primary Care Office; Hospital Services; Migrant Health, Homeless and Special Projects; and the Breast Cancer License Plate Program.⁶⁷

Rural Hospital Stabilization Committee

Governor Nathan Deal created the Rural Hospital Stabilization Committee in March 2014 to identify the needs of the rural hospital community and provide potential solutions. The committee works to increase the flow of communication between hospitals and the state, and improve Georgia citizens' access to health care.⁶⁸

Based on recommendations of the Committee, the General Assembly appropriated funding beginning in FY 2016 to fund a pilot-site program. Based upon an integrated "hub-and-spoke" model, pilot sites test rural health delivery models designed to relieve cost pressures on emergency departments and ensure that the best, most efficient treatment is received by patients. The program aims to increase the utilization of new and existing technology and infrastructure in smaller critical access hospitals, Wi-Fi- and telemedicine-equipped ambulances, telemedicine-equipped school clinics, federally qualified health centers, public health departments and local physicians.⁶⁹ To date, 11 rural hospitals have served as sites for the program.

Healthcare Georgia Foundation Initiatives

The Healthcare Georgia Foundation (HGF) distinguishes that Georgia's economy has two distinct areas: a vibrant metropolitan Atlanta area and the other rural communities throughout the state. This "two Georgias" distinction also applies to the growing disparities in health and health care between the state's metropolitan areas and rural communities. As HGF's mission is to advance the health of all Georgians and to expand access to affordable, quality health care for underserved individuals and communities, the Foundation developed *The Two Georgias Initiative* in 2016. The goal of the Initiative is to foster health care innovation by supporting local partnerships seeking to improve health and expand access to quality health care services in Georgia's rural communities. As a component of the Initiative, the HGF made grant funding available to support local partnerships working to improve access to affordable, quality health care in rural Georgia communities.

The Healthcare Georgia Foundation's mission is to advance the health of all Georgians and to expand access to affordable, quality health care for underserved individuals and communities.

Rural Development Council

Recognizing Georgia's low rural rankings in health status nationally, during the 2017 Legislative Session, the Georgia General Assembly passed House Resolution (H.R.) 389 to establish the House Rural Development Council. The Council is a two-year working group whose members examine the unique issues impairing the stabilization and growth of rural communities in Georgia. The group meets on a regular basis across the state to hear from citizens, businesses and organizations about challenges rural Georgians face.

At the end of the first year, the group released several recommendations for improving health care in rural areas of the state. These include streamlining health care services billing; requiring telehealth capability in nursing homes; providing premium relief for rural practitioners who live and have a practice in rural counties and accept Medicare and Medicaid; and expanding the scope of practice for health care workers who are not physicians to allow them to provide certain services for minor care, chronic case management, urgent care, telemedicine, and post-hospital visits to avoid readmissions.

Many of these recommendations were addressed with the passage of House Bill (H.B.) 769 during the 2018 General Assembly. The bill was the culmination of work completed by the Council in 2017 and contains multiple provisions aimed at addressing the ongoing shortage of health care providers in rural Georgia. It eases restrictions on the use of remote order entry in hospital pharmacies when a pharmacist is not available to be physically present in the facility; directs the state Medicaid agency to streamline the provider credentialing and billing processes and to update its payment policies for telehealth services; and creates a new grant program for physicians who practice in underserved rural areas of the state.

Areas of focus during 2018 included economic development, Certificate of Need, and increasing the health care workforce.

GHA Center for Rural Health

The Center for Rural Health is a department within the Georgia Hospital Association that represents the interests of Georgia's small rural hospitals with an average daily (inpatient) census of 75 or fewer and located in a county with a population of 75,000 or fewer. The Center for Rural Health represents the needs of Georgia's small and rural hospitals to promote accessibility to high-quality and cost-efficient health care, and to act as a central agency for the study, discussion, resolution, and dissemination of ideas and information that addresses problems faced by small and rural hospitals. There are 74 hospital members of the Center for Rural Health.

The Center for Rural Health is a department within the Georgia Hospital Association that represents the interests of Georgia's small rural hospitals with an average daily (inpatient) census of 75 or fewer and located in a county with a population of 75,000 or fewer.

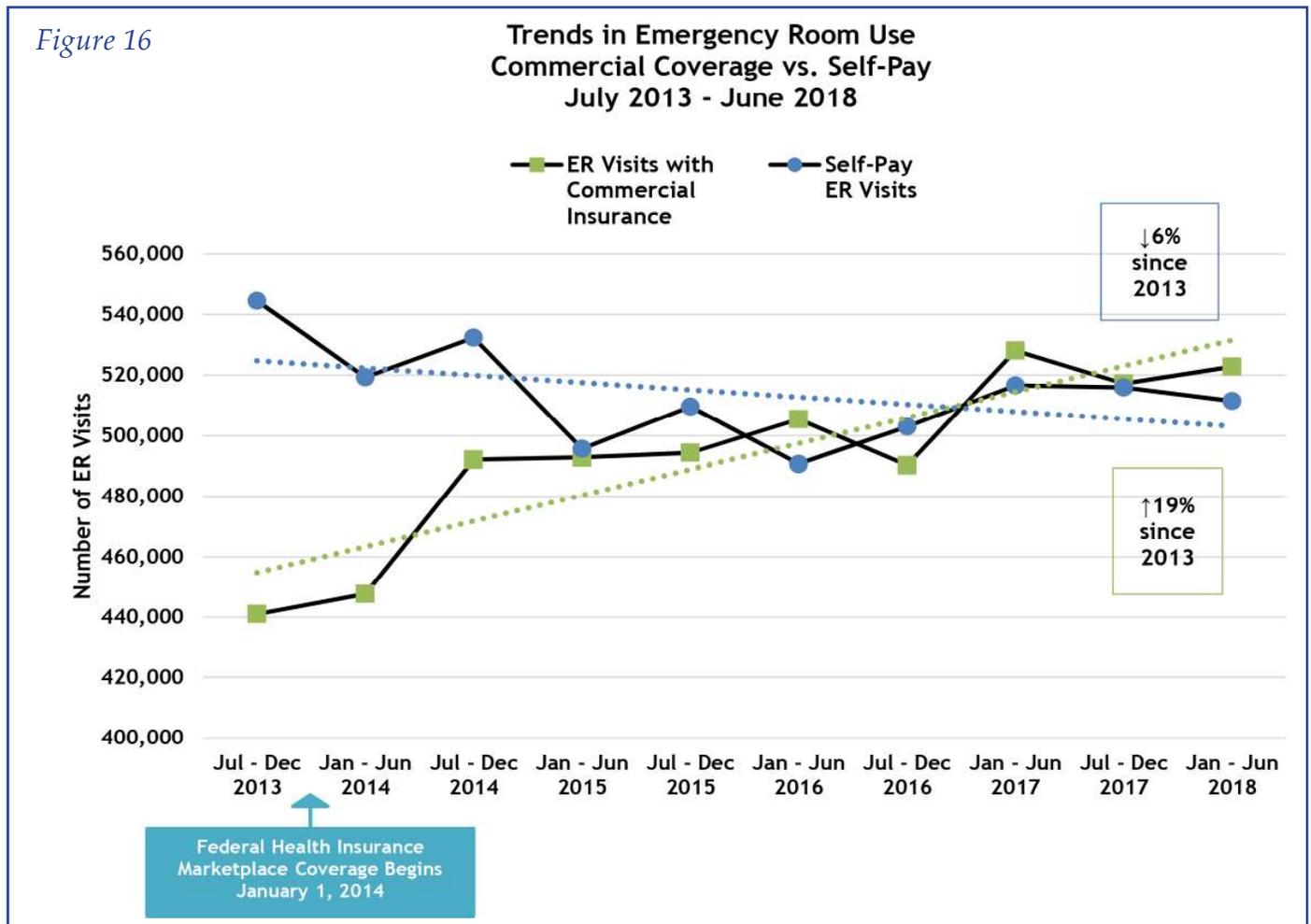
EMERGENCY AND TRAUMA CARE

Emergency Care

In the event of a medical emergency, a hospital is typically the first place where assistance is sought. The *Emergency Medical Treatment and Active Labor Act (EMTALA)*, a federal law passed in 1986, ensures that hospitals provide care to anyone needing emergency treatment, regardless of citizenship, legal status or ability to pay. EMTALA requires that anyone who comes to the hospital requesting emergency care must be given a medical screening examination to determine whether an emergency medical condition exists.

If an emergency does exist, the hospital must do everything within its capability to stabilize the patient. If the patient needs a specialized service that is not available at the hospital, such as the services of a burn unit, shock-trauma unit or neonatal intensive care unit, the hospital must arrange for the patient's transfer to another hospital that does have the needed specialized capability and capacity. EMTALA also requires hospitals with these types of specialized services to accept any requested transfer and to provide the services needed to stabilize the patient.

In 2017, Georgia hospitals were conservatively estimated to have provided at least \$658 million in care to uninsured patients in their emergency departments.⁷⁰ *The number of emergency room (ER) visits by patients without insurance (also known as "self-pay") has decreased by 6 percent since new commercial health insurance coverage is available through the Health Insurance Marketplace (see Figure 16); however, these self-pay visits still account for a quarter of all visits to the ER.*⁷¹



Trauma Care

Most hospitals are capable of providing some level of trauma care; however, only 28 of the state's 105 acute care hospitals are designated trauma centers. This small number is likely due to the significant ongoing financial investment necessary to be designated as a trauma center and insufficient funding levels available to offset the cost. Of Georgia's trauma centers, five are Level I centers, nine are Level II centers, six are Level III centers and six are Level IV centers. There are two pediatric trauma centers and designated burn centers.⁷² See Figure 17 for a map of the trauma centers as of January 2019.

In 2009, the Super Speeder law was enacted to discourage trauma-causing behavior by increasing fines for dangerous drivers. The law adds an additional \$200 fine for driving faster than 85 mph anywhere in the state and for driving 75 mph or more on a two-lane road. The Super Speeder law also increases driver's license reinstatement fees for drivers committing a second and third offense for violations that result in a suspended license and for other negligent behaviors. The Georgia Trauma Network Commission received a total of \$21.8 million in Super Speeder funds in the AFY 2018 budget and \$16.7 million in FY 2019.⁷³ The Super Speeder law has generated \$164.3 million in revenue since its inception. This is an average of approximately \$20 million per year after the full implementation.⁷⁴

In 2016, the Georgia General Assembly passed legislation that called for a constitutional amendment to dedicate funds from the excise tax for the sale of fireworks to the Georgia Trauma Commission, fire services and local public safety services. It is estimated that \$177,000 was collected for these services in FY 2018 and \$354,000 in FY 2019 from the tax.⁷⁵

Trauma Commission

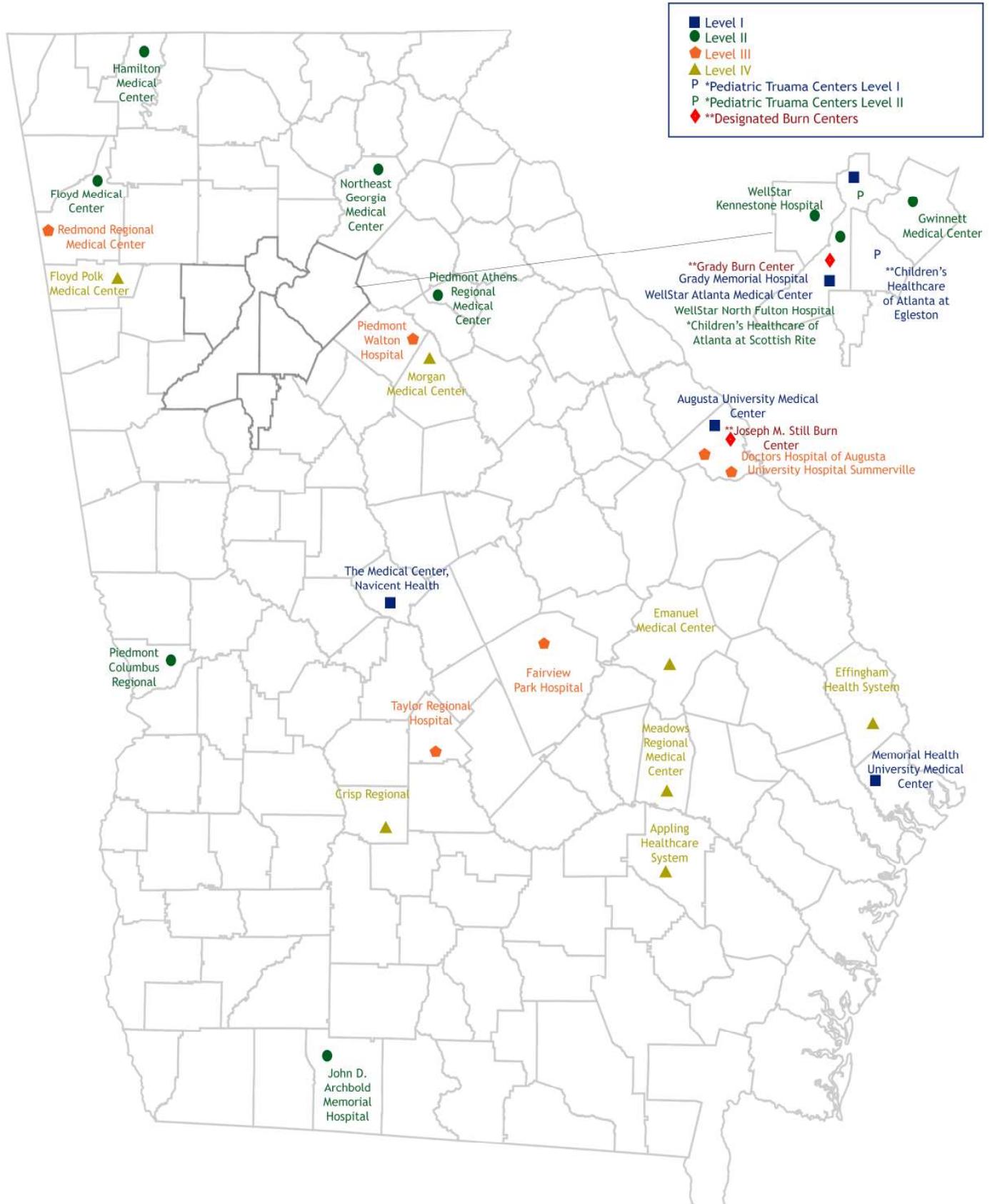
In 2007, the General Assembly passed Senate Bill (S.B.) 60. The bill established a nine-member Georgia Trauma Care Network Commission and authorized the Commission to create a trauma system for the State of Georgia and to act as the accountability mechanism for distribution of trauma system funds appropriated each fiscal year by the legislature.⁷⁶ Members of the Commission include representatives from the hospital, physician and emergency medical services (EMS) industries who are involved in trauma care throughout the state.

The Commission's FY 2018 budget is \$16.4 million.⁷⁷ The Commission utilizes its funding to pay trauma providers for their readiness costs, to provide grants for new trauma provider start-ups and to help offset the uncompensated costs of providing trauma care.



Figure 17

Georgia Trauma Hospitals



HEALTH CARE WORKFORCE

Georgia's Shortage of Nurses

Health care is the fastest-growing industry. It represents 18 percent of the nation's Gross Domestic Product (GDP) and employs 12 percent of the U.S. workforce.⁷⁸ The ratio of job openings to available workers in the health care industry was 2-1 in 2017. More than 1 million health care jobs were open in 2017 and one-third of new jobs added between 2016 and 2024 is expected to be in the health care industry.⁷⁹

Hospital employee turnover has been rising since 2011, from 13.5 percent to 18.2 percent in 2017. The total hospital turnover for the Southeast region was 18.4 percent. Turnover for registered nurses (RN) has also increased, from 11.2 percent in 2011 to 17.2 percent in 2015. Turnover for bedside RNs ranges from 6.8 percent to 28.7 percent with the average turnover rate at 16.8 percent.⁸⁰

The 2018 GHA Compdata Survey for Georgia showed a statewide RN turnover rate of 12.4 percent. A survey of newly licensed RNs shows that 17.5 percent leave their job in the first year, 33.5 percent in the second year and 43 percent within three years of employment. Turnover for each RN is estimated to cost hospitals an average of \$46,500.⁸¹

The reason health care workers quit is not much different than other industries; however, the demand and cost of health care turnover is higher than other industries, placing a significant financial drain on already diminishing financial resources. Voluntary terminations accounted for 91.1 percent of all hospital separations and 75 percent of those terminations are considered preventable. The top five reasons cited for RNs leaving their positions in 2017 included career development, work-life balance, manager behavior, relocation, and well-being.⁸²

Revamping the approach to tackling hospital turnover is critical in addressing the labor shortage in health care. Every hospital faces the challenge of retention, from entry level positions to professional RN positions, making the willingness to improve and innovate increasingly important. Retention strategies need to be developed in collaboration with the current workforce by seeking to understand what drives the different generations to find purpose, meaning and fulfillment. Millennials are becoming the largest part of the health care workforce, valuing freedom, mission and technology and having a place where they want to come to work. Incorporating the ideas and expectations of the employees in developing retention strategies will have a positive impact on reducing turnover and improving recruitment.

Long-term retention and recruitment strategies are imperative to building a sustainable health care workforce pipeline. As the health care industry faces unprecedented challenges and continual change, value must be placed less on competition and more on collaboration with workforce partners, university systems, community providers, chambers of commerce, economic development groups, philanthropic funders and government organizations. These partnerships will allow hospitals to leverage the resources that are available to recruit, train, and prepare the health care workforce of the future. Moving beyond everyday problem solving and envisioning what is needed, now and in the future, expands the realm of infinite solutions for developing and retaining the health care workforce of the future.

Additionally, the physician workforce supply and demand issue is a national concern. Physician demand is continuing to grow faster than the supply, with the increasing demand coming from population growth, aging, the prevalence of chronic disease, physician retirement, the trend toward physicians working fewer hours, fewer medical school applications and the physician burnout crisis. The projected physician shortfall is estimated to be between 42,000 and 121,300 physicians by 2030.⁸³

With the uncertainties in health care, the physician workforce supply and demand information is continually monitored and updated. Multiple approaches are being taken to address the shortage, including delivery innovations, team-based care, improved technology use and training more physicians.

Georgia's Shortage of Physicians

Georgians' access to physician care is limited relative to citizens of other states. According to America's Health Rankings, Georgia ranked 41st in the nation in 2017 in the number of primary care physicians per 100,000 in population and had approximately 19 percent fewer primary care physicians per capita than the average.⁸⁴ An estimated 3 million, or 28 percent, of Georgians live in counties designated as medically underserved by the federal Health Resources and Services Administration (HRSA). Medically Underserved Areas are areas designated as having too few primary care providers, high infant mortality, high poverty or a high elderly population.⁸⁵

Physician workforce shortages can threaten a hospital's ability to provide a full spectrum of care to its community. In Georgia, physician shortages have the most impact on primary care in rural communities; however, shortages in specialty and subspecialty areas impact the entire state.

Hospitals play a significant role in physician recruitment and retention. In more rural areas, the hospital often does the physician recruiting for an entire community. Hospitals actively work with residency programs and medical schools to identify new physicians who can replace current physicians as they retire or move or can add capacity to a growing patient community. A hospital's acquisition of a struggling physician practice is an emerging trend in rural areas of Georgia. It is also becoming more common for a hospital to hire a private-practicing physician as an employee of the hospital. In many cases, these actions are the only way a hospital can help to maintain necessary physician services for the community.



Georgia Board for Physician Workforce

The Georgia Board for Physician Workforce (GBPW) is a state agency responsible for advising the Governor and the General Assembly on physician workforce and medical education policy and issues. The 15-member Board works to identify the physician workforce needs of Georgia communities and to meet those needs through the support and development of medical education programs.

The Board's responsibilities include monitoring and forecasting the supply and distribution of physicians in Georgia; assuring an adequate supply, specialty mix, and geographic distribution of physicians to meet the health care needs of Georgia; coordinating physician workforce planning with state funding for medical education; and developing and supporting medical education programs required to meet physician workforce needs.⁸⁶

Preceptor Tax Incentive Program

In 2014, legislation was enacted that creates tax deductions of up to \$10,000 for uncompensated community-based faculty physicians who provide training to medical, physician assistant, and nurse practitioner students.

Under Senate Bill (S.B.) 391, Georgia physicians who provide clinical training to health professions students for a minimum of three (to a maximum of 10) rotations, and who are not compensated through any other source, can claim a tax deduction of \$1,000 for every 160 hours of training provided. Students must be enrolled in one of the state's public or private medical/osteopathic, physician assistant, or nurse practitioner programs.

Georgia's public and private colleges and universities must be able to utilize the full cadre of Georgia community-based physicians in order to educate the students matriculating in Georgia programs. The tax deduction provides a reward to the community-based physician without creating an in-state bidding war for these valuable community resources.⁸⁷

Hospitals' Financial Support of Health Care Education

Georgia hospitals have contributed millions of dollars to support health care education. In 2016, not-for-profit hospitals alone reported \$462 million in community support of health professions education.⁸⁸ Key areas of support include offering scholarships and tuition reimbursement; providing paid internships/part-time jobs to health care students; funding faculty positions; donating hospital staff to serve as part-time or full-time faculty; providing clinical preceptors for students; and funding the expansion of classrooms, laboratory space, or equipment and supplies needed for student education and training. In addition, hospitals and schools are beginning to develop partnerships to purchase and maintain simulation equipment that can be shared.

Many hospitals not only support local post-secondary health career education, but also partner with local school systems to provide clinical education opportunities for secondary students through the Health Occupations programs at local high schools. They also support their local Health Occupations Students of America (HOSA) organizations and offer volunteer programs that provide health care experience to interested individuals.

HEALTH INFORMATION

HIPAA and the HITECH Act

The Health Insurance Portability and Accountability Act (HIPAA) is a federal law, passed in 1996, which, among other things, included new laws regarding the privacy and security of health care data that eventually led to the development of extensive rules that now govern how “covered entities,” including hospitals, use and disclose a patient’s health information. For example, a hospital may use or disclose a patient’s health information to enable providers to treat the patient, to obtain payment for services and for certain purposes of the hospital’s own operations, such as its quality and patient safety initiatives.

HIPAA requires hospitals to use and disclose only the minimum amount of health information necessary to accomplish the intended purpose and to create safeguards to ensure the privacy and security of health information. HIPAA also limits the amounts hospitals and other providers may charge patients for copies of their medical records and creates new rights for patients, such as the right to request restrictions on how their health information is used and disclosed and the right to receive an account from hospitals of certain types of disclosures of their health information.

In 2009, Congress passed a new law, the Health Information Technology for Economic and Clinical Health Act (HITECH), which significantly expanded the HIPAA privacy and security requirements. For example, the HITECH Act requires hospitals to inform patients when there is a security breach involving their unsecured health information and more directly regulates subcontractors or “business associates” that handle protected health information.

Electronic Health Records (EHR)

An Electronic Health Record (EHR) is an electronic version of a patient’s medical history that is maintained by the provider over time. It may include all key administrative clinical data relevant to that person’s care under a particular provider, including demographics, progress notes, problems, medications and other treatments, vital signs, past medical history, immunizations, laboratory data and radiology reports. The EHR automates access to information and has the potential to streamline the clinician’s workflow. The EHR also has the ability to support other care-related activities, directly or indirectly, through various interfaces, including evidence-based decision support, quality management and outcomes reporting.

EHRs are the next step in the continued progress of health care that can strengthen the relationship between patients and clinicians. The data, and the timeliness and availability of it, will enable providers to make better decisions and provide better care. For example, the EHR can improve patient care by:

- Making health information available;
- Reducing duplication of tests and delays in treatment;
- Ensuring patients are well informed to make better decisions; and
- Reducing medical errors by improving the accuracy and clarity of medical records.⁸⁹

In one of its many provisions, the HITECH Act made federal incentive payments available to doctors and hospitals when they adopt EHRs and demonstrate use that can improve quality, safety and effectiveness of care. These funds were first available to eligible providers serving Medicare and Medicaid patients in September 2011 and will continue through 2021. As of August 2018, Medicare had paid Georgia hospitals more than \$681 million and Medicaid had paid Georgia hospitals more than \$320 million in incentive payments for EHR adoption.⁹⁰

Many hospitals will use these payments to help cover the cost of their investment in EHR technology and its meaningful use. As of 2015, hospitals that are not meaningful users of EHR technology are subject to reductions in their Medicare payments.

Georgia Health Information Exchange

A Health Information Exchange (HIE) allows physicians, nurses, certain qualified health care professionals and patients to securely access and share a patient's electronic health record. In Georgia, the Georgia Health Information Network (GaHIN) serves with the Georgia Department of Community Health (DCH) and the Georgia Health Information Technology Extension Center (GA-HITEC) in a public-private collaborative to enable Georgia's statewide health information exchange. The statewide HIE interconnects regional area HIEs, large integrated health systems, payers, wellness partners, state agencies and other health care organizations. The state HIE will ultimately serve as the vehicle for data sharing across state lines through the Nationwide Health Information Network (NwHIN). The meaningful use of EHRs, patient engagement, as well as patient safety and quality improvements are key to the state HIE success.



QUALITY AND PATIENT SAFETY

Ensuring quality and patient- and family-centered safe care is the top priority in every hospital. Georgia hospitals continually strive to raise their quality standards and enhance their patient safety efforts.

Hospitals spend significant resources on monitoring the quality and safety of care provided to patients. Approximately 105 of Georgia's hospitals are accredited by The Joint Commission, the nation's oldest and largest standards-setting and accrediting health care body.⁹¹ Forty-two hospitals are accredited by DNV Healthcare, a Centers for Medicare and Medicaid Services (CMS)-approved company conferring the National Integrated Accreditation for Healthcare Organizations to qualified health care providers.⁹²

Quality in a hospital can be broken down into three areas: clinical quality, patient safety and patient perception. Clinical quality is the actual medical care that a patient receives. Core measures are one way to measure this type of quality, which are founded on proven evidence-based medicine. These measures assess the process of care a patient receives based on a disease-specific category. For example, did a heart attack patient receive an aspirin upon arrival in the emergency room? Did a stroke patient receive blood clot prevention treatment within two days of arriving at the hospital? Clinical quality also considers outcome measures such as length of stay, infection and/or mortality.

Patient safety is defined as keeping patients safe from harm. Hospitals must monitor and track events such as medication errors, infections and injuries to continually make environments safe for patients and families. Staff members are also surveyed as to their perception of patient safety in the hospital in order to find gaps and improve overall patient safety.

Patient perception of care while in the hospital is measured by the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) survey. The survey includes 32 questions in seven areas. Some examples include: doctor communication, cleanliness of the hospital, pain management and discharge planning.

There are multiple efforts to monitor, assess and ensure that hospitals provide safe and quality care. *Figure 19 depicts the significant number of entities that are involved in this process and the following sections further discuss these efforts.*

Hospital Improvement Innovation Network (HIIN)

GHA partners with the American Hospital Association (AHA) Hospital Research and Educational Trust (HRET) on the Centers for Medicare and Medicaid Services (CMS) Partnership for Patients Hospital Improvement Innovation Network (HIIN) initiative. Through the HIIN, GHA works with 97 hospitals to reduce all-cause inpatient harm by 20 percent and readmissions by 12 percent by 2019. GHA develops learning collaboratives for hospitals; conducts intensive training programs to help hospitals make patient care safer; and tracks and monitors hospitals' progress in meeting quality improvement goals.

Proprietary Voluntary Quality and Safety Programs

Many hospitals seek voluntary accreditation from national entities recognized in the health care industry as having developed exceptional standards to which a hospital can be compared. Hospitals utilize these accreditation organizations to show that (1) they have passed a rigorous external inspection and (2) the care they provide meets the highest and most current quality and patient safety standards.

Hospitals also voluntarily participate in the CMS Medicare Quality Improvement Program (QIP). The Medicare Quality Innovation Network – Quality Improvement Organizations (QIN - QIOs) are organizations that contract with Medicare to set goals and implement new data-driven quality improvement projects with health care providers. The Beneficiary and Family-Centered Care (BFCC) QIOs respond to the appeals of Medicare beneficiaries and monitor the quality of care provided, including the investigation of complaints.⁹³

Alliant Quality is the Georgia QIN – QIO.⁹⁴ Alliant Quality assists hospitals, nursing homes, home health agencies, physician offices, and communities with redesigning processes and developing organizational cultures to accelerate the rate of quality improvement. A key strategy involves building trusted relationships, forming partnerships with other professional organizations and collaborating with others to extend the reach and broaden the effectiveness of quality improvement efforts.

Partnership for Health and Accountability (PHA)

PHA brings the health care field together with agencies and individuals to ensure quality and safety in healthy communities. PHA assists in strengthening collaboration between providers, community members, and other stakeholders by providing education and data-driven tools to facilitate improvement. Since being established by GHA's Research and Education Foundation in 1999, PHA has become a state and national leader in patient safety and quality health care issues.



In 2018, 11 hospitals and four health systems received GHA/PHA Quality & Patient Safety Awards for their outstanding initiatives and three hospitals received the Josh Nahum Award for Infection Prevention and Control. PHA works with Georgia hospitals to improve safety across the board in order to eliminate preventable health care-associated infections (HAI).

Physician Quality Payment Program

The *Medicare Access and CHIP Reauthorization Act* of 2015 (MACRA) requires all physicians who are not part of an Accountable Care Organization or other alternative payment model to adopt standardized quality improvement practices to avoid a 4 percent payment penalty.

In 2017, the Centers for Medicare and Medicaid Services (CMS) implemented the Quality Payment Program (QPP) to help physicians comply with the provisions of MACRA. The QPP analyzes hospital data and offers feedback and resources to help physicians provide the best possible care. Physicians can choose how to participate based on their practice sizes, specialties, locations, or patient populations.

The QPP has two tracks available for eligible professionals to choose: Advanced Alternative Payment Models (APMs) give added incentive payments to provide high-quality and cost-efficient care.

The Merit-based Incentive Payment System (MIPS) will adjust payments based on individual performance. It is a payment mechanism that will provide annual updates to physicians beginning in 2019. These updates are based on performance in four categories: quality, resource use, clinical practice improvement activities, and meaningful use of an EHR system. Both APMs and MIPS required physician practices to submit performance data since 2017, which will impact their payments in 2019.⁹⁵

Transforming Clinical Practice Initiative

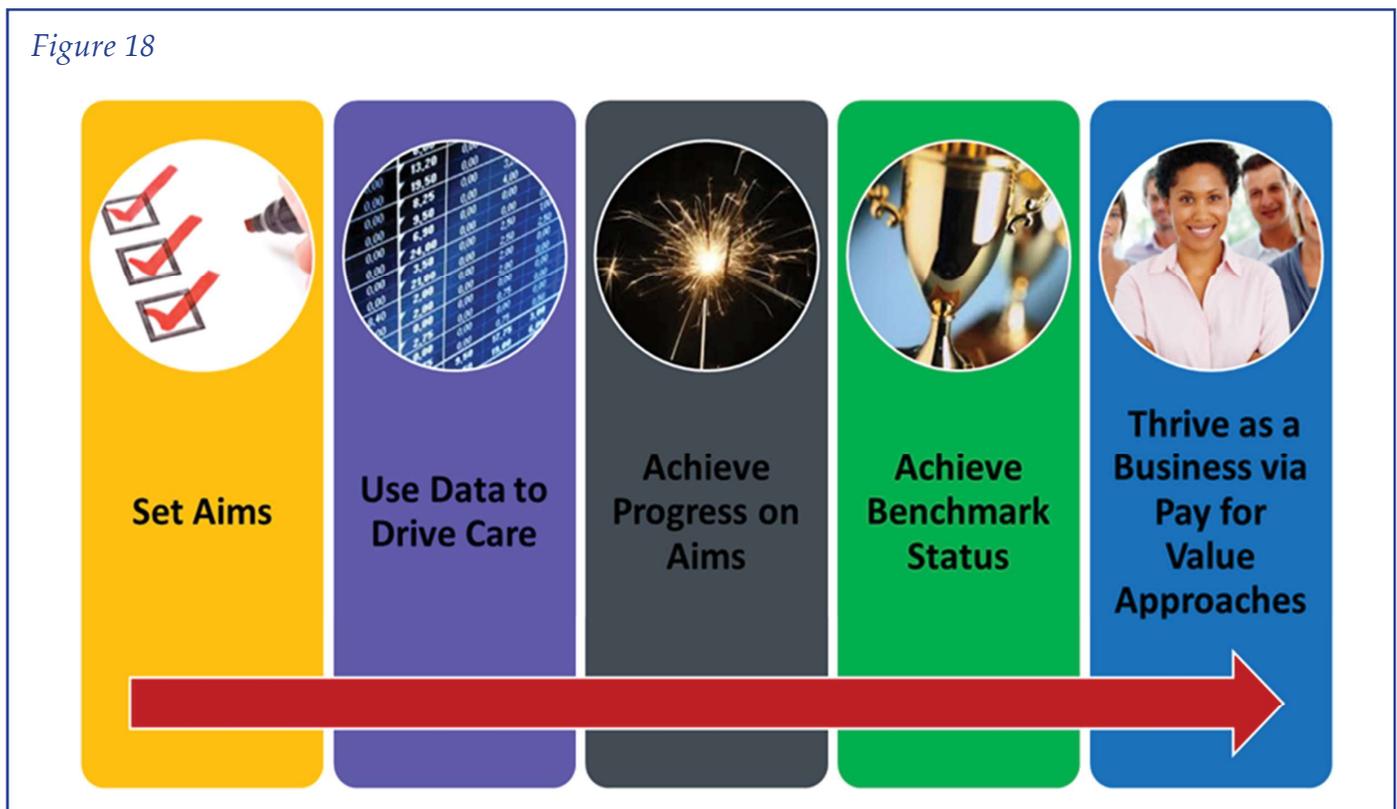
The Transforming Clinical Practice Initiative (TCPI) is the single largest demonstration initiative from the Center for Medicare & Medicaid Innovation in the nation’s history. Designed to support more than 140,000 clinician practices over a four-year period, it includes Practice Transformation Networks (PTN), which help clinicians transition from fee-for-service payment models to value-based, advanced payment models.

The Compass PTN is one of 31 awarded by the Center for Medicare & Medicaid Innovation. Formed in September 2015 by the Iowa Healthcare Collaborative and several other health care organizations, it includes more than 7,000 primary and specialty care clinicians across Georgia, Iowa, Kansas, Nebraska, Oklahoma, South Dakota, North Dakota and Wisconsin.

The Georgia Hospital Research and Education Foundation is implementing TCPI with a variety of clinicians, such as primary and specialty physicians, nurse practitioners, physician assistants, and their practices. The TCPI focuses on helping reduce unnecessary testing, costs, and emergency department utilization. More than 1,000 clinicians in Georgia are participating in the Compass PTN.

The PTNs are peer-based learning networks designed to assist clinicians in moving through the TCPI Five Phases of Practice Transformation (see Figure 18).

Figure 18



The TCPI Five Phases of Transformation approach allows clinician practices to become actively engaged in the transformation and ensures collaboration among a broad community of practices that create, promote, and sustain learning and improvement across the health care system. Compass PTN quality improvement advisors work with clinicians to coach, mentor and assist in the identification and development of core competencies necessary to transform their practices. Additionally, Compass PTN helps clinicians thrive in the value-based environment, meet quantifiable improvement outcomes, and achieve the Triple Aim of providing better care, lower costs and improved health. Clinicians and practices also receive assistance on how to participate in shared savings and other pay-for-value programs.

Clinicians also have access to Support and Alignment Networks, a system for workforce development using national and regional professional associations and public-private partnerships currently working in practice transformation efforts. These networks help ensure the sustainability of the practice transformation efforts.

In the final year of Compass PTN, Georgia clinicians continue to receive evidence-based resources to improve their provision of health care. Quality improvement advisors are working with the practices to provide access to quality improvement and patient engagement resources designed to help streamline clinical processes and improve patient safety. Clinicians are able to implement clinical performance measurement and reporting, quality improvement, patient-centered care and population health management now, before they are mandated through payment mechanisms. The Compass PTN positions clinicians to lead, guide and influence the future of health care.

Care Coordination Council

The Georgia Care Coordination Council was created to support a patient- and family-centered health collaborative where every Georgian experiences a seamless continuum of care. The purpose of the Council is to identify care coordination opportunities and develop an annual plan to improve health outcomes. The council meets quarterly.

When the Care Coordination Council was established in 2007, its focus was readmission reduction. Since then, it has expanded into population health. The Council has reached out to Georgia communities and local health groups to demonstrate the value of inclusivity and care collaboration in the State of Georgia. In 2019, the Care Coordination Council will focus on patient and family engagement and the benefits of health care organizations partnering with patients and families to improve quality and safety.

The Care Coordination Council consists of individuals who represent the spectrum of health and health care. Members are individuals who have been patients; providers such as hospitals, home health, physicians, palliative care, hospice, long term care facilities, pharmacists; agencies and entities such as departments of community health, private health plans, care management organizations, quality improvement networks; and the community such as academia, area agencies on aging, the regional commission, and area health education centers.

Roles and responsibilities of the Care Coordination Council are based on an annual action plan that includes targets to accelerate readmission reduction in the state of Georgia. The Council offers guidance on collaborative models that promote a seamless patient- and family-centered continuum of care and support transparency and public information related to care coordination. There are two workgroups within the Council. The Medication Management workgroup focuses on how to improve care coordination through medication adherence. The Education workgroup hosts 30-minute webinars throughout the year on various evidence-based topics to show organizations how to improve the continuum of care.

The Care Coordination Council encourages the engagement of frontline staff to ensure care coordination processes are standardized, systematic and reliable. The council also reviews and endorses appropriate metrics to drive care coordination and readmission reduction efforts.

Physician Credentialing

Credentialing is the basis for appointing health care professionals to the medical staff of a hospital or other health care organizations. The process of credentialing is used by hospitals to ensure the qualifications of a licensed physician or other health care providers. Credentialing includes an evaluation of the provider's education, training, experience, competence and judgment, as well as his or her scope of practice. A credentialed staff member is permitted to perform certain clinical duties or privileges within the organization. Specific clinical duties are defined by the institution's medical staff.

Credentialing is also performed by health plans before facilities and providers are accepted into a plan's provider network. Many hospitals and health systems that have a large number of employed providers prefer to have delegated credentialing contracts with the plans in which they participate in order to simplify the process of adding providers to a plan's network. Delegated credentialing usually requires that the hospital or health system contractually agree to perform the components described above for hospital credentialing as well as other activities required by the National Committee for Quality Assurance (NCQA) and the plan.

Physician credentialing is the basis for appointing health care professionals to the medical staff of a hospital or other health care organizations.



STATE REGULATORY REQUIREMENTS

Certificate of Need

Georgia, like most states, has a health planning law known as Certificate of Need (CON), which is administered by the Department of Community Health (DCH). The CON law plays an essential role in helping the state promote geographic and financial access to health care services, contain health care costs and promote quality of care. It also supports the continued availability of unprofitable, but essential, services provided by hospitals 24 hours a day, 7 days a week. These include emergency services, trauma services, intensive care services, neonatal intensive care services and the most complex inpatient surgical services.

The CON law requires that the development of a “new institutional health service,” or the construction or expansion of an existing facility such as a hospital, skilled nursing facility or home health agency be subject to the CON review process and obtain approval from DCH. The law often requires an applicant to commit to provide a specified amount of indigent and charity care, to demonstrate that a need exists for the proposed service or facility and to consider the impact of the proposal on existing providers in the same health planning area. This process recognizes the unique role hospitals play in their communities, both by offering a wide range of services unavailable elsewhere and by providing care to anyone who comes to the emergency department, regardless of his or her ability to pay.

In 2008, following a lengthy and exhaustive review of the existing CON laws, the General Assembly passed Senate Bill (S.B.) 433, a bill that revised and streamlined the CON process, while reaffirming the critical role it plays in ensuring access to quality health care services for Georgia’s citizens. Since the passage of S.B. 433, a Senate study committee, as well as the Governor’s Rural Hospital Stabilization Committee, have recommended no changes to the CON program. However, in 2018, the General Assembly, with the support of the hospital community, passed House Bill (H.B.) 769, creating a new CON exemption for micro-hospitals. A micro-hospital is defined as a 24/7 facility that provides stabilization services, contains two to seven inpatient hospital beds, and is located in a county with a population of 50,000 or less. The exemption would be allowed only when an existing hospital purchases a closing hospital in a contiguous county in order to repurpose the facility as a micro-hospital. The goal of this change to the CON law was to create additional options for rural communities to maintain access to health care for their residents. Importantly, the legislation was able to accomplish this goal without eroding the CON program.

Health Care Facility Licensure and Regulation

DCH is the state agency responsible for licensing many of Georgia's health care facilities, including hospitals. In 2010, the General Assembly passed House Bill (H.B.) 994, which authorized DCH to establish annual licensure fees for hospitals and other licensed facilities to cover the cost of licensure activities. DCH's Health Care Facility Regulation Division surveys hospitals for compliance with both state licensure requirements and Medicare's Conditions of Participation (COPs). Hospitals that are accredited by The Joint Commission or DNV Healthcare are deemed by DCH and Medicare to be in compliance with the state licensure requirements and Medicare's COPs. However, DCH conducts periodic validation surveys of such hospitals to ensure compliance.

Practitioner Licensure

Licensure of individual health care providers such as physicians, physician assistants and nurses is a function of the state. In Georgia, the Composite Board of Medical Examiners licenses physicians, physician assistants (including anesthesiologist assistants), physician residents in training, perfusionists, respiratory care professionals, acupuncturists, orthotists, prosthetists, and auricular (ear) detoxification specialists. Many other providers, including nurses, nurse practitioners, physical therapists, occupational therapists, pharmacists and others are regulated by boards under the Secretary of State Professional Licensing Board Division or attached to the Georgia Department of Community Health. Licensure boards are partially funded by fees paid by the licensees. In addition to licensure and the investigation of complaints, each board makes rules and policies in conformity with the stated purpose of the board and the mission mandated by state law.

For More Information

Composite Board of Medical Examiners
medicalboard.georgia.gov

Secretary of State
Professional Licensing Board Division
sos.georgia.gov/plb

Board of Pharmacy
www.gbp.georgia.gov

Board of Dentistry
www.gbd.georgia.gov

PROGRAM INTEGRITY

Like all health care providers, hospitals are subject to billing and payment scrutiny by the administrators of the Medicare and Medicaid programs as well as by commercial insurers. The following sections discuss some of these federal and state efforts.

Medicare and Medicaid Audit Contractors

In the *Tax Relief and Health Care Act* of 2006, Congress required the Centers for Medicare and Medicaid Services (CMS) to establish a national Recovery Audit Contractor (RAC) program to be in place by January 1, 2010. The goal of the program is to identify overpayments made on claims of health care services provided to Medicare beneficiaries and to identify underpayments by Medicare to providers. Medicare RACs are paid on a contingency fee basis— a fact many providers believe creates perverse incentives to aggressively deny claims. Georgia's RAC is Cotiviti, which is headquartered in Atlanta. The Medicare RAC is just one of many entities with the authority to audit Medicare claims. Others include Medicare Administrative Contractors (MACs), Zone Program Integrity Contractors (ZPICs), Comprehensive Error Rate Testing (CERT) contractors, Supplemental Medical Review Contractors (SMRCs), and the U.S. Department of Health and Human Services Office of Inspector General (OIG).

Federal Medicaid Integrity Program

Section 1936 of the *Social Security Act* requires the Secretary of Health and Human Services to establish a Comprehensive Medicaid Integrity Plan to safeguard the integrity of the Medicaid program. Under the current plan for fiscal years 2014 through 2018, the agency plans to expand the use of Medicaid data, provide additional program integrity resources to state Medicaid programs, and streamline the federal program integrity contractors.

In 2010, as part of the *Patient Protection and Affordable Care Act* (ACA), Congress expanded the RAC to Medicaid. In 2012, Georgia selected Myers and Stauffer as its RAC contractor to implement the Medicaid RAC program. Like the Medicare RAC program, federal law requires the state to pay the Medicaid RAC contractor(s) on a contingency fee based on the amount of claims denied. Initially, Medicaid RAC audits were solely focused on claims paid under the fee-for-service program; however, the Georgia Department of Community Health Program Integrity Unit (DCH Program Integrity), which oversees the Medicaid RAC program, expanded it to include claims paid by the Medicaid CMOs, even though the CMOs conduct their own audits.

It is important to note that Medicaid RACs supplement, rather than replace, other auditors, including the DCH Program Integrity Unit and the federal auditors discussed above, even though all are charged with reviewing Medicaid claims to identify overpayments. This level of seemingly parallel oversight adds to the administrative costs hospitals incur to demonstrate regulatory compliance to multiple entities.

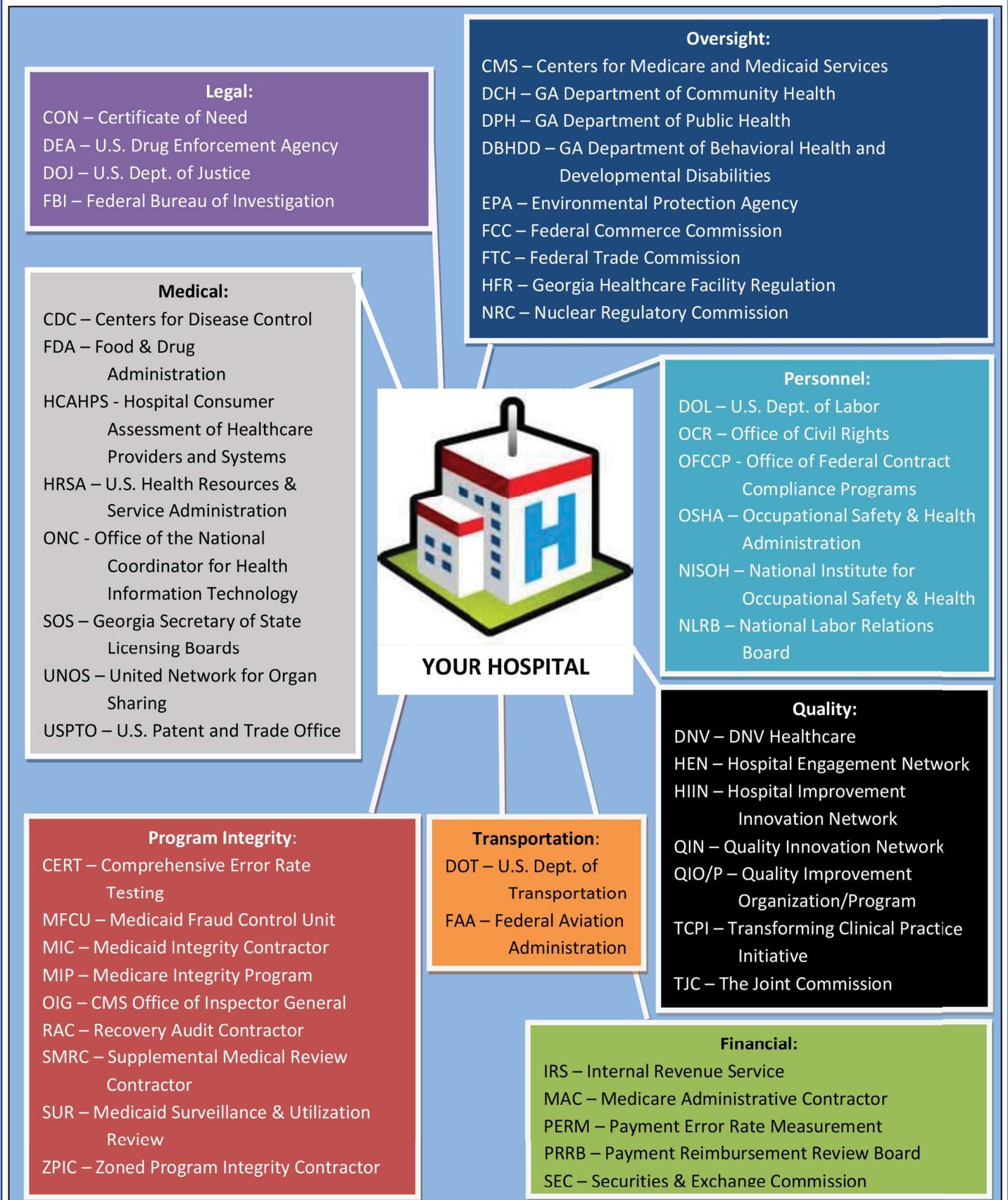
State Medicaid Surveillance and Utilization Review

The Georgia Department of Community Health's Office of the Inspector General Program Integrity Unit performs Medicaid Surveillance and Utilization Review (SUR) activities. The state's SUR teams generate profiles based on patterns of Medicaid provider billing. By analyzing and comparing providers to their respective peer groups, abnormal patterns of practice can be identified. SUR staff members identify aberrant behaviors; conduct hospital, physician and other provider type audits to educate providers on program guidelines; and recover inappropriately reimbursed funds. The Program Integrity Unit works in conjunction with a number of regulatory agencies, including the Medicaid Fraud Control Unit (MFCU), Medicare Zone Program Integrity Contractors (ZPICs), and the Georgia Bureau of Investigation (GBI).

In summary, there are multiple efforts to regulate, assess and ensure that hospitals provide safe and quality care. *Figure 19 depicts a summary of all the entities that are involved in these efforts.*



Figure 19



GLOSSARY

Accreditation - Certification by a recognized organization that an individual, a service or a facility has met a set of standardized criteria typically determined by a process set by the certifying organization.

Acute Care Hospital - A facility that provides services designed to meet the needs of patients who require short-term care for a period of less than 30 days.

Allied Health Professional - Persons who are not nurses or physicians but have special training and are licensed when necessary. They work under the supervision of a health professional and provide direct patient care. They include, but are not limited to, respiratory, physical and occupational therapists; radiology technologists and technicians; medical laboratory technologists and technicians; and surgical technologists.

Ambulatory Care - Health care services provided on an outpatient basis, where no overnight stay in a health care facility is required.

American College of Radiology (ACR) - The recognized organization for imaging (radiology) accreditation.

American Hospital Association - The nation's principal trade association for hospitals, with offices in Washington, D.C., and Chicago.

Ancillary Care Services - Diagnostic or therapeutic services, such as laboratory, radiology, pharmacy and physical therapy, performed by non-nursing departments.

Any Willing Provider - Terminology relating to legislation that would require managed care plans to allow any individual physician or other provider to participate on the provider panels he or she does business with.

Authorization - A process by which a managed care plan determines that care is medically necessary.

Bad Debt - The costs absorbed by hospitals or physicians for care provided to patients from whom payment was expected but no payment was received. Bad debt differs from charity care.

Balance Billing - A practice typically prohibited by managed care plan contracts in which the provider bills the patient for the amount of the billed charge that exceeds the payment by the insurer plus the member cost share.

Captive - A licensed insurance company owned by a parent company that underwrites the insurance risks of that parent company's operations.

Certificate of Need (CON) - A method of confirming the need for, and ensuring access to, health care facilities, services and technology in which the approval of a government agency or other empowered entity is required for a health care organization to engage in a construction or remodeling project, make a significant capital expenditure or provide a new service. CON helps control costs by requiring all applicants to demonstrate the need for services and facilities in order to prevent overutilization and unnecessary duplication of services, while also discouraging unfair competition from facilities that serve few, if any, Medicaid and uninsured patients.

Charge - The dollar amount that a health care provider assigns to a specific unit of service to a patient. A "charge" may not be totally reflective of the actual cost involved in providing that service.

Charity Care - Charity care presents that portion of health care services that are provided by a hospital under a hospital's charitable care program and where payment is not expected because the patient has a demonstrated inability to pay for some or all of the services.

Clinical Laboratory Improvement Amendments (CLIA) - The recognized organization for laboratory accreditation.

Coinsurance - The percentage of either billed charges or the plan's contract rate that a member is required to pay for covered services.

College of American Pathologists (CAP) - CAP is an internationally recognized program designed to help laboratories achieve the highest standards of excellence to impact patient care positively.

Community Benefit - Programs or services that address community health needs, particularly those of the poor, minorities and other underserved groups, and provide measurable improvement in health access, health status and use of health care resources.

Community-Building Activities - Activities that are proactive, strategic investments in prevention, and that will reduce the burden of preventable illness. These activities address what is often referred to as social and economic determinants of health such as education, employment, income, housing, and social supports.

Conditions of Participation - Conditions health care organizations must meet in order to begin and continue participating in the Medicare and Medicaid programs. These health and safety standards are the foundation for improving quality and protecting the health and safety of beneficiaries.

Copayment or Copay - A defined amount of payment per visit that a member must pay for health care services under an insurance plan.

Cost Share - The portion of the fee for health care services that an insurer requires the plan member to pay, including copayments, coinsurance and deductible.

Cost Shifting - A phenomenon occurring in the U.S. health care system in which providers are inadequately reimbursed for their costs by some payers and subsequently raise their prices for other payers in an effort to recoup costs.

Covered Services - Those health care services for which a member is entitled to benefits under the terms of their insurance policy.

Credentialing - Generally used as the basis for appointing health care professionals to a hospital's staff, it is the process used to analyze the qualifications of a licensed practitioner's education, training, experience, competence and judgment. A credentialed staff member is permitted to perform clinical duties at the hospital.

Critical Access Hospital (CAH) - Established under the *Balanced Budget Act* of 1997, CAHs are limited-service hospitals located in rural areas with no more than 25 acute-care beds. They receive cost-based payment for Medicare patients and are relieved from some Medicare regulations.

CSR Orion - A joint effort between the Joint Commission Resources (JCR) and GHA to structure and implement a program by which hospitals can receive education, consulting and feedback on an ongoing basis for standard requirements for accreditation.

Deductible - The amount that a member must pay for covered services during a specified period (usually a policy year) before benefits will be paid by the insurer.

Delegated Credentialing - A formal process by which an organization, such as a managed care plan, gives another entity the authority to perform credentialing functions on its behalf.

Diagnosis Related Group (DRG) - A method of classifying inpatients into groupings based on common characteristics, each of which can be expected to require similar services. Used as the basis of the Medicare and Medicaid inpatient payment system.

Disproportionate Share Hospital (DSH) - A hospital with a disproportionately large share of low-income or uninsured patients. Under Medicaid, states augment payment to these hospitals. Medicare inpatient hospital payments are also adjusted for this added burden.

DNV Healthcare (DNV) - DNV is a voluntary accreditation agency that surveys enrolled hospitals regarding many aspects of quality.

EMTALA - Emergency Medical Treatment and Active Labor Act, a federal law passed in 1986, ensures hospitals provide care to anyone needing emergency treatment, regardless of citizenship, legal status or ability to pay.

ERISA - *Employee Retirement Income Security Act* of 1974, a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry.

EOB, Explanation of Benefits, EOMB, Explanation of Medical Benefits or Remittance Advice - A document that summarizes how reimbursement was determined in the payment of a health plan claim.

Health Information Technology for Economic and Clinical Health Act (HITECH) - Part of the *American Recovery and Reinvestment Act* of 2009 (ARRA), the HITECH Act contains incentives related to health care information technology in general (e.g. creation of a national health care infrastructure) and contains specific incentives designed to accelerate the adoption of electronic health record (EHR) systems among providers.

Health Insurance Portability and Accountability Act (HIPAA) - Title I of HIPAA protects health insurance coverage for workers and their families when they change or lose their jobs. Title II of HIPAA requires the establishment of national standards for electronic health care transactions and national identifiers for providers, health insurance plans and employers and also addresses the security and privacy of health data.

Hospital Acquired Condition - A condition that develops while a patient is in the hospital, such as an infection, a pressure ulcer or some type of injury.

Hospital Authority - A statutorily created public corporation in a county or municipality that is authorized to exercise certain specified public and essential governmental functions, including the acquisition, construction and equipping of hospitals and other health care facilities to promote the public health needs of the community.

Hospital Authority (Restructured) - A hospital that is owned by a hospital authority that has delegated its management authority and responsibilities to a nonprofit corporation via a restructuring process whereby the authority maintains ownership of the lands, buildings, facilities and other assets that constitute the hospital and the nonprofit corporation is responsible for operating the hospital. Georgia law requires that at least one member of the hospital authority serve on the governing body of the nonprofit entity and that the nonprofit entity provides the hospital authority with an annual financial statement.

Hospital Provider Payment Program - Implemented in FY 2011 and reauthorized in FY 2014, and again in FY 2017, to create an additional funding source for the state's share of Medicaid costs and to fund a rate increase for hospitals serving Medicaid recipients. This program is scheduled to end on June 30, 2020.

Hospital Medicaid Financing Program - Created in March 2013 to provide additional Medicaid payments to hospitals participating in the Hospital Provider Payment Program.

Indigent Care - Unpaid charges for services to patients whose family income is less than or equal to 125 percent of the Federal Poverty Level.

Indigent Care Trust Fund (ICTF) - Established in 1990 to expand Medicaid eligibility and services; support rural and other health care providers, primarily hospitals, which serve the medically indigent; and fund primary health care programs for medically indigent Georgians. The ICTF is an umbrella program that contains the Disproportionate Share Hospital (DSH) program, nursing home and hospital provider fees, breast cancer tag fees, ambulance rates and other uninsured/indigent initiatives.

Intergovernmental Transfer (IGT) - Local governmental funds transferred to the state on behalf of a public provider to provide the state matching funds for supplemental payments made to that public provider.

The Joint Commission (TJC) - TJC is a voluntary accreditation agency that surveys enrolled hospitals regarding many aspects of quality.

Licensed Beds - The maximum number of beds authorized by a government agency for a health care organization to admit patients.

Long-Term Acute Care Hospital (LTAC) - A hospital providing specialized care to medically complex patients who usually require an extended hospital stay.

Long-Term Care Facility (LTCF) - Any residential health care facility that administers health, rehabilitative or personal services for a prolonged period of time.

Managed Care - A mechanism for financing and/or delivery of health care that is intended to control cost, utilization and quality of care.

Medicaid Integrity Contractor (MIC) - An auditor hired by the Centers for Medicare and Medicaid Services (CMS) to review Medicaid claims for mispayment.

Member or Covered Person - Someone that has insurance coverage through a health plan. May also be referred to as an Enrollee or Beneficiary.

National Committee for Quality Assurance (NCOA) - A non-profit organization that sets quality standards, evaluates and accredits managed care plans and other healthcare organization.

Out-of-Network Care - Health care services provided to a health plan member by a provider who does not participate in that plans' contracted provider network.

Outpatient Prospective Payment System (OPPS) - A determined payment methodology for a Medicare outpatient procedure.

Other Free Care - Other uncompensated care provided as a result of employee discounts, administrative adjustments, courtesy discounts, small bill write-offs, or other similar write-offs not based on a patient's inability to pay.

Payer - An organization (such as the federal government for Medicare or a commercial insurance company) or person who directly reimburses health care providers for their services.

Present On Admission (POA) - Whether or not a patient has a certain condition at the time of being admitted to a hospital. These conditions include different types of infections and pressure ulcers.

Prospective Payment System (PPS) - A system in which payment for services is determined before the services are actually provided and that amount is reimbursed to the provider regardless of the actual cost of services.

Provider Network or Network - A group of providers that have contracted with a managed care plan under which they agree to accept reduced rates and abide by other plan rules in exchange for either increased volume of patients or the ability to receive payment for care provided to insurance plan members.

Quality Measure - A tool that helps measure or quantify health care processes, outcomes, patient perceptions, and organizational structure and/or systems that are associated with the ability to provide high-quality health care and/or that relate to one or more quality goals for health care.

Recovery Audit Contractor (RAC) - An auditor hired by the Centers for Medicare and Medicaid Services (CMS) to review Medicare claims for mispayment.

Serious Adverse Event - An unexpected event that happens during a hospital admission that results in harm or injury to a patient.

Specialty Hospital - A limited-service hospital designed to provide one medical specialty such as orthopedic or cardiac care.

Surveillance and Utilization Review (SUR) - A Georgia Department of Community Health program designed to identify aberrant Medicaid claiming behavior of providers and identify and recover Medicaid overpayments.

Swing Beds - Acute care hospital beds that can also be used for long-term care, depending on the needs of the patient and the community. Only those hospitals with fewer than 100 beds and located in a rural community, where long-term care may be inaccessible, are eligible to have swing beds.

Tobacco Master Settlement Agreement - In 1998, Georgia was one of 46 states to participate in a Master Settlement Agreement (MSA) with the four largest tobacco companies in the U.S. The MSA was a result of multiple state lawsuits against the tobacco companies that sought recovery for Medicaid and other public health expenses incurred in the treatment of smoking-induced illnesses.

Trauma - An injury or injuries caused by external force or violence. Trauma injuries may range from minor to severe, from obvious to non-apparent, and may include single or multiple injuries.

Trauma System - An organized approach to facilitating and coordinating a multidisciplinary system response to severely injured patients.

TRICARE - TRICARE is the Department of Defense's worldwide health care program available to eligible beneficiaries from any of the seven uniformed services—the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard, Commissioned Corps of the U.S. Public Health Service, and the National Oceanic and Atmospheric Administration.

Uncompensated Care - Care given for which payment is not received, or for which only a portion of the cost is reimbursed. Includes charity care and indigent care, Medicaid underpayments, legislated care underpayments and bad debt.

Utilization Review - The process by which a managed care company controls the provision of health care services through determination of medical necessity of care, including pre-certification, prior authorization, concurrent review and retrospective review.

ENDNOTES

- ¹ *Prepared to Care – The 24/7 Standby Role of America’s Hospitals*. American Hospital Association. November 2012.
- ² O.C.G.A. § 31-7-1 (4) (A), 2009.
- ³ Georgia Department of Behavioral Health and Developmental Disabilities. <http://dbhdd.georgia.gov/hospitals>.
- ⁴ <https://www.augustahealth.org/roosevelt-warm-springs/rwsh>
- ⁵ <http://www.augustahealth.org/locations-and-maps/locations-map?category=1>.
- ⁶ U.S. Department of Veteran’s Affairs; see also <https://www.va.gov/directory/guide/state.asp?STATE=GA&dnum=ALL>.
- ⁷ The Accreditation Council for Graduate Medical Education (ACGME) is responsible for the Accreditation of post-MD medical training programs within the United States. Accreditation is accomplished through a peer review process and is based upon established standards and guidelines. Source: www.acgme.org.
- ⁸ <http://medical-dictionary.thefreedictionary.com/>
- ⁹ Bureau of Economic Analysis. Regional Economic Accounts: 2017 Total Full Time and Part Time Employment by NAICS Industry for the Health Care and Social Assistance Industry. www.bea.gov.
- ¹⁰ Bureau of Economic Analysis. Regional Economic Accounts: 2017 Gross Domestic Product by State. www.bea.gov.
- ¹¹ Bureau of Economic Analysis. Regional Economic Accounts: 2017 Total Full Time and Part Time Employment by NAICS Industry for the Health care and Social Assistance Industry. www.bea.gov.
- ¹² *State of Georgia. Economic Impact on the State and Local Economy. Calendar Year 2016*. Georgia Hospital Association.
- ¹³ GHA: <https://www.gha.org/Initiatives/Community-Health>.
- ¹⁴ Derived from the 2017 Department of Community Health Hospital Financial Survey.
- ¹⁵ The 2016 Form 990 and related Schedule H are reflective of financial activities of the fiscal year beginning in 2015. These figures are reflective of the financial activities of 83 Georgia not-for-profit hospitals.
- ¹⁶ Hospitals participating in the Disproportionate Share Hospital program are already required to do this per state rules and regulations.
- ¹⁷ *2016 Committee on Research - Next Generation of Community Health*. American Hospital Association. <https://www.aha.org/guidesreports/2018-03-06-2016-committee-research-next-generation-community-health>
- ¹⁸ Source: Georgia Discharge Data System. FY 2016 patient encounters for inpatient admissions and outpatient visits by payer category.
- ¹⁹ Based on average cost per case type for each payment source. Calculated using 2016 patient counts and cost coverage. FY 2016 cost coverages for Medicaid and self-pay patients from FY 2018 Medicaid Disproportionate Share Hospital calculations. 2016 Medicare cost coverages from DataGen 4Q2017 Medicare Margins Analysis for PPS Hospitals in Georgia. Cost coverage for all other payers extrapolated to break even.
- ²⁰ *State of Georgia. Economic Impact on the State and Local Economy. Calendar Year 2016*. Georgia Hospital Association.
- ²¹ *AHA Hospital Statistics*. 2017 Edition.
- ²² These figures are only reflective of hospital expenses and revenues. They do not consider other hospital-owned health care providers (e.g., the revenue and expense of a hospital-based nursing home). In 2018, GHA changed the methodology for calculating margins to more accurately reflect contractual adjustments.
- ²³ GHA’s analysis of the Georgia Department of Community Health’s 2017 Hospital Financial Survey.
- ²⁴ American Hospital Association (AHA), 2016 Hospital Survey.
- ²⁵ Health Insurance Coverage of the Total Population. 2016. Kaiser Family Foundation. <http://kff.org/other/state-indicator/total-population/>.
- ²⁶ Centers for Medicare and Medicaid Services (CMS). Medicare Hospital Outpatient Prospective Payment System (PPS) Overview. <http://www.cms.gov/HospitalOutpatientPPS/>.
- ²⁷ Data Gen. *Medicare Margin Analysis* for 79 Georgia PPS Hospitals from 2016 Medicare cost reports on file with CMS as of October 2017.
- ²⁸ Data Gen. *2018 Enacted Medicare Cut Analysis*. March 2018 for Georgia.
- ²⁹ For individuals who do not meet immigration criteria, Medicaid provides coverage only for emergency medical services, so long as the individual meets all other Medicaid eligibility requirements.
- ³⁰ Department of Community Health. *Annual Report FY 2016*.
- ³¹ The text of the ACA says 133 percent, but the law also calls for a new methodology of calculating income, which will make the effective minimum threshold 138 percent.
- ³² Department of Community Health Estimates of Newly Eligible Medicaid Adult and Children. June 2012.
- ³³ *Medicaid Part II Policies and Procedures for Hospital Services*. Appendix C. Georgia Department of Community Health.
- ³⁴ Source: www.dch.georgia.gov - FY 2018 Disproportionate Share Hospital (DSH) calculations from the Department of Community Health. Figures do not consider the impact of supplemental Medicaid payments or Medicaid payments paid to Georgia hospitals by out-of-state Medicaid programs.
- ³⁵ Federal Register. Vol. 82, No. 223. Wednesday, November 21, 2017, Pages 55383-55386.

³⁶ In 1998, Georgia was one of 46 states to participate in a Master Settlement Agreement (MSA) with the four largest tobacco companies in the U.S. The MSA was a result of multiple state lawsuits against the tobacco companies that sought recovery for Medicaid and other public health expenses incurred in the treatment of smoking-induced illnesses.

³⁷ HB 684, FY 2019 Appropriations Act. 2018 General Assembly.

³⁸ <http://kff.org/other/state-indicator/total-population/?state=GA>.

³⁹ Source: www.dch.georgia.gov - FY 2018 Disproportionate Share Hospital (DSH) calculations from the Department of Community Health.

⁴⁰ The *Budget Control Act* of 2012 and the *American Taxpayer Relief Act* of 2013 extended the ACA cuts through 2022. In December 2013, Congress passed the *Bipartisan Budget Act* of 2013, which eliminated Medicaid DSH reductions in 2014 and delayed 2015 scheduled reductions until 2016. The DSH cuts were also extended one more year to 2023. The *Protecting Access to Medicare Act* of 2014 delayed DSH scheduled reductions once again to 2017 and extended them through 2024. The *Medicare Access and CHIP Reauthorization Act* of 2015 delayed DSH reductions once again to 2018, extended them through 2025 and restructured the level of annual reductions from 2018 through 2025.

⁴¹ Federal Register. Volume 83, Number 130. Friday, July 6, 2018 Page 31544.

⁴² Department of Community Health and www.dch.georgia.gov – FY 2016 UPL payments.

⁴³ <https://www.kff.org>. January 2018 Fact Sheet. “Summary of the 2018 CHIP Funding Extension.”

⁴⁴ 2018 Poverty Guidelines for the 48 Contiguous States and the District of Columbia. <https://aspe.hhs.gov/poverty-guidelines>

⁴⁵ Department of Community Health. FY 2018 Budget Highlights to DCH Board. August 23, 2018.

⁴⁶ Department of Community Health. <http://dch.georgia.gov/frequently-asked-questions>

⁴⁷ *Implications of the ACA MOE if CHIP Funding Expires*. Alison Mitchell and Evelyne Baumrucker. Congressional Research Office. August 22, 2014.

⁴⁸ Department of Community Health Annual Report. SHBP Stats and Info as of January 2018. <http://shbp.georgia.gov/member-stats>

⁴⁹ 2019 Decision Guides. State Health Benefit Plan. <https://shbp.georgia.gov>

⁵⁰ United Healthcare and Kaiser Permanente offer credits toward cost sharing when members complete certain wellness activities.

⁵¹ The TRICARE Supplement Plan is sponsored by the American Military Retirees Association (AMRA) and is administered by the Association & Society Insurance Corporation.

⁵² National Association of Insurance Commissioners Accident & Health Insurance 2016 Market Share Report

⁵³ *Profile of Affordable Care Act Coverage Expansion Enrollment for Medicaid/CHIP and the Health Insurance Marketplace 10-1-2013 to 3-31-2014*. ASPE Marketplace Summary Enrollment Report.

⁵⁴ *2018 OEP State-Level Public Use File*. August 8, 2018. Department of Health and Human Services Centers for Medicare and Medicaid Services. https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018_Open_Enrollment.html

⁵⁵ Health Plan Choice and Premiums in the 2018 Federal Health Insurance Exchange. October 30, 2017. Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation. <http://aspe.hhs.gov>.

⁵⁶ *2018 OEP State-Level Public Use File*. August 8, 2018. Department of Health and Human Services Centers for Medicare and Medicaid Services. https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018_Open_Enrollment.html

⁵⁷ GHA analysis of 2019 Qualified Health Plan landscape data from <https://data.healthcare.gov/dataset/OHP-PY19-Medical-Individual-Landscape-Zip-File/m2uk-wyvvh/>

⁵⁸ <http://kff.org/other/state-indicator/total-population/>

⁵⁹ Hinda Ripps Chaikind, Cong. Research Serv., RS20315, *ERISA Regulation of Health Plans: Fact Sheet* (2003).

⁶⁰ Previous GHA *Hospital 101* publications utilized data reported by the Department of Community Health through February 2017 to calculate the fiscal impact of the Hospital Provider Payment Program (HPP) and the Medicaid Hospital Financing Program. In the spring of 2017, DCH identified an issue with the reporting that resulted in an understatement of the amounts returned to hospitals in the Hospital Provider Payment Program. Beginning in the fall of 2017, the Georgia Hospital Association began using alternate data sources to estimate fiscal impact pending the correction of HPP data reported by DCH. The most recent year of alternate data available for the HPP is state fiscal year 2016 (as of December 2018).

⁶¹ Georgia Hospital Association analysis of the Department of Community Health *Hospital Provider Payment Program Tracking Report*, July 2018 and FY 2018 Medicaid DSH Limit Calculations for 2016. Provider Payments made to the state available on <https://dch.georgia.gov/hospital-providers>.

⁶² Department of Community Health, Hospital Medicaid Financing Program Payment Model, SFY 2018.

- ⁶³ Georgia Hospital Association analysis of the Department of Community Health *Hospital Provider Payment Program Tracking Report*, July 2018; FY 2018 Medicaid DSH Limit Calculations for 2016; Provider Payments made to the state available on <https://dch.georgia.gov/hospital-providers>; and FY 2018 Hospital Medicaid Financing Program Payment Model.
- ⁶⁴ Department of Community Health, Hospital Medicaid Financing Program Payment Model, SFY 2018.
- ⁶⁵ FY 2018 ICTF Financial – Revenue and Expenditure Activities (Unaudited). Department of Community Health.
- ⁶⁶ *State of Georgia Rural Health Plan*. Georgia State Office of Rural Health. Department of Community Health. September 2007.
- ⁶⁷ <http://dch.georgia.gov/state-office-rural-health>
- ⁶⁸ <http://dch.georgia.gov/rural-hospital-stabilization-committee>
- ⁶⁹ http://dch.georgia.gov/sites/dch.georgia.gov/files/Governor%27s%20Press%20Release__Rural%20Health%20Stabilization.pdf
- ⁷⁰ Georgia Hospital Association analysis of FY 2016 emergency room utilization and charges for the uninsured from the Georgia Discharge Data System and the 2015 Hospital Financial Survey.
- ⁷¹ Georgia Discharge Data System. May 2017 Query of Emergency Room Patients by Primary Payer Category.
- ⁷² Georgia Designated Trauma & Specialty Care Centers. Georgia Department of Public Health. October 2016.
- ⁷³ HB 684. FY 2019 Appropriations Act and HB 683. Amended FY 2018 Appropriations Act.
- ⁷⁴ Source: Department of Driver Services, HB 160 Notice and Revenue Tracking, September 2018.
- ⁷⁵ *The Governor's Budget Report*. Amended FY 2018 Budget Report. FY 2019 Budget Report.
- ⁷⁶ Georgia Trauma Care Network Commission. <http://georgiatraumacommission.org/about/governance>.
- ⁷⁷ HB 44. FY 2018 Appropriations Act. 2017 General Assembly.
- ⁷⁸ *2018 Retention Report: Truth & Trends in Turnover*. The Work Institute. <https://workinstitute.com>
- ⁷⁹ *2018 Georgia Workforce Report*. Compdata Surveys & Consulting.
- ⁸⁰ *2018 National Health Care Retention & RN Staffing Report*. Nursing Solutions, Inc. <http://nsinursingsolutions.com/files/assets/library/retention-institute/nationalhealthcarernretentionreport2018.pdf>
- ⁸¹ Streamline Verify Study. Streamline Verify. www.streamlineverify.com
- ⁸² *2018 Retention Report: Truth & Trends in Turnover*. The Work Institute. <https://workinstitute.com>.
- ⁸³ The Complexities of Physician Supply and Demand: Projections from 2016 to 2030. March 2018. Association of American Medical Colleges. https://aamc-black.global.ssl.fastly.net/production/media/filer_public/85/d7/85d7b689-f417-4ef0-97fb-ecc129836829/aamc_2018_workforce_projections_update_april_11_2018.pdf
- ⁸⁴ <https://www.americashealthrankings.org/learn/reports/2017-annual-report>
- ⁸⁵ Department of Health and Human Services. Health Resources and Services Administration (HRSA). MUA Find. April 27, 2017.
- ⁸⁶ <http://gbpw.georgia.gov/>
- ⁸⁷ <http://www.augusta.edu/ahec/ptip/>
- ⁸⁸ Source: 2016 IRS Form 990, Schedule H for 83 not-for-profit hospitals and health systems.
- ⁸⁹ <http://www.cms.gov/Medicare/E-Health/EHealthRecords/index.html>
- ⁹⁰ Combined Medicare and Medicaid Payments by State – January 2011 to August 2018. Centers for Medicare and Medicaid Services. <http://www.cms.gov/Regulations-and-Guidance/Legislation/EHRIncentivePrograms/DataAndReports.html>.
- ⁹¹ <http://www.qualitycheck.org/>. Accreditation for Inpatient Units in Georgia as of December 3, 2018.
- ⁹² <http://dnvglhealthcare.com> as of December 3, 2018.
- ⁹³ <https://qioprogram.org/about/what-are-qios>
- ⁹⁴ <http://www.alliantquality.org>
- ⁹⁵ <https://qpp.cms.gov/>

*All information in this guide is current as of January 2019.

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