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Health

Amend Title 31 of the Official Code of Georgia Annotated, Relating to Health, so as to Create the Hemophilia Advisory Board; Provide for a Short Title; Provide for Legislative Findings; Provide for Duties, Reporting, Membership, and the Selection of Officers; Establish the Department of Public Health; Reassign Functions of the Division of Public Health of the Department of Community Health to the Department of Public Health; Provide for Transition to the New Agency; Create a Board of Public Health and a Commissioner of Public Health; Amend Various Titles for Purposes of Conformity; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A. §§ 4-4-69 (amended); 4-10-10 (amended); 8-2-24 (amended); 10-1-393 (amended); 12-2-8 (amended); 12-3-9 (amended); 12-5-4, -175, -524 (amended); 12-8-1, -41 (amended); 15-11-66.1, -154 (amended); 15-21-142, -143 (amended); 16-6-13.1 (amended); 16-12-141, -141.1 (amended); 17-10-15 (amended); 17-18-1 (amended); 19-3-35.1, -40, -41 (amended); 19-13-32 (amended); 19-15-1, -4 (amended); 20-2-142, -143, -144, -260, -770, -771, -772, -778 (amended); 21-2-231 (amended); 24-9-40, -47 (amended); 25-2-40 (amended); 25-3-6 (amended); 26-2-371, -372, -373, -374, -375, -376, -377, -393 (amended); 26-3-18 (amended); 26-4-85, -116, -192 (amended); 29-4-18 (amended); 31-1-1, -3.1, -3.2, -10 (amended), -12 (new); 31-2-1, -4, -6, -7, -8, -9, -10, -11, -12,

-13; -14, -15, -16, -17, -17.1, -18, -19 (amended); 31-2A-1, -2, -3, -4, -5, -6, -7, -8, -9, -10, -11, -12, -13; -14, -15 (new); 31-3-4, -5, -5.1, -11 (amended); 31-5-1, -9, -20, -21 (amended); 31-7-2.1, -302; 31-8-2, -31, -41, -52, -60, -81, -102, -132, -135, -180, -192, -193 (amended); 31-9A-2, -4, -6 (amended); 31-10-1 (amended); 31-11-1, -2, -3, -9, -31.1, -36, -50, -53.1, -81, -100, -101, -102, -110 (amended); 31-12-1, -14 (amended); 31-12A-9, -10 (amended); 31-13-3 (amended); 31-14-2, -9 (amended); 31-15-2, -4 (amended); 31-16-2, -3 (amended); 31-17-2, -3, -4.2 (amended); 31-17A-2, -3 (amended); 31-18-4 (amended); 31-22-1, -9.1 (amended); 31-23-1 (amended); 31-24-4 (amended); 31-26-2 (amended); 31-27-2, -7 (amended); 31-28-2, -5, -6 (amended); 31-30-9 (amended); 31-34-5 (amended); 31-35-10 (amended); 31-36A-7 (amended); 31-40-2, -5, -6, -8 (amended); 31-41-11, -12, -13, -14, -16, -17, -19 (amended); 31-43-3 (amended); 31-44-1, -11 (amended); 31-45-8, -9, -10, -11 (amended); 31-46-4 (amended); 31-47-1, -2, -3 (amended); 32-12-4 (amended); 33-24-59.2, -59.7 (amended); 33-44-3 (amended); 34-9-1 (amended); 35-1-8 (amended); 37-1-27 (amended); 37-2-2, -3, -4, -5, -6, -6.1, -6.2, -6.4, -11.2 (amended); 37-2-11.2 (amended); 37-10-2 (amended); 38-2-10 (amended); 38-3-22, -51 (amended); 40-5-25 (amended); 40-6-392 (amended); 42-1-

	7 (amended); 42-4-6, -32 (amended); 42-5-52, -52.2 (amended); 42-9-12 (amended); 43-1A-4 (amended); 43-7-9 (amended); 43-10-6 (amended); 43-10A-7 (amended); 43-11-74 (amended); 43-14-2 (amended); 43-18-46 (amended); 43-34-23, -25, -26.1, -103 (amended); 43-45-3 (amended); 45-9-1, -73, -83, -110 (amended); 45-18-1, -32 (amended); 46-11-4 (amended); 49-5-225 (amended); 49-6-84 (amended); 50-5-69 (amended); 50-13-4 (amended); 50-16-3 (amended); 50-18-72, -76 (amended)
BILL NUMBER:	HB 214
ACT NUMBER:	244
GEORGIA LAWS:	2011 Ga. Laws 705
SUMMARY:	The Act establishes the Department of Public Health by reassigning functions of the Division of Public Health of the Department of Community Health, thereby creating a cabinet level position with the Commissioner of Public Heath reporting directly to the Governor.
EFFECTIVE DATE:	July 1, 2011

History

In 1875 the Georgia General Assembly created the Department of Health.[1] Mental Health Services was added to the Department of Health in 1959 when an exposé of inhumane care at Central State Hospital in Milledgeville resulted in transferring the oversight of state psychiatric hospitals from the Department of Welfare to the

1. GA. DEP'T OF HUMAN RES., DIV. OF PUB. HEALTH, THE HISTORY OF PUBLIC HEALTH NURSING IN GEORGIA 1898–2002 at 31 (June 2006), *available at* http://health.state.ga.us/pdfs/nursing/Hist.Pub.Hlth.Nurse.Web.pdf.

Department of Health.[2] "The State Department of Human Resources (DHR) was created in 1972 to 'efficiently deliver comprehensive programs and services for the physical, mental, and social well-being of Georgia's citizens.'"[3] The new DHR combined the Department of Public Health, the Department of Family and Children Services, and several other child, youth, and aging agencies—creating a super health and social services agency that, in theory, would be able to serve a family's needs all in one place.[4] In 1999, the General Assembly created the Department of Community Health (DCH) as the lead agency for the purchasing and planning of health care.[5] There was a consensus at the time that DCH would not provide any direct services, and therefore only very select parts of public health (minority health and rural health) were incorporated into DCH at its formation.[6]

As of 2008, DHR was the largest state agency in Georgia, employing over 20,000 people across 100 different human services programs, and with a budget of $3.8 billion.[7] In 2008, Governor Sonny Perdue commissioned a task force to study the possible reorganization of health and human services in Georgia.[8]

In 2009, House Bill (HB) 228 was introduced and passed, which resulted in the largest reorganization of DHR since Governor Jimmy Carter. HB 228, codified in various sections of Title 31 of the

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2. W. Douglas Skelton, M.D., District Health Director for the Coastal Health District, Testimony before the Public Health Commission meeting (Aug. 9, 2010), http://dch.georgia.gov/vgn/images/portal/cit_1210/45/26/163077259DrWTestimony.pdf.

3. HEALTH AND HUMAN SERVS. TASK FORCE, TOGETHER . . . A HEALTHIER GEORGIA (INTERIM REPORT) at 3 (Aug. 26, 2008), *available at* http://gov.georgia.gov/vgn/images/portal/cit_79369762/120819700HHS%20Taskforce%20Interim%20Report%20v8-26-08.pdf [hereinafter HEALTHIER GEORGIA].

4. *Id.*

5. 1998 Ga. Laws 623; *see generally* GA. DEP'T OF COMMUNITY HEALTH, http://dch.georgia.gov (last visited June 26, 2011).

6. Russ Toal, MPH, Testimony before the Public Health Commission (Aug. 9, 2010), http://www.georgia.gov/vgn/images/portal/cit_1210/63/35/163079892RussToalTestimony.pdf.

7. *Governor Perdue Proposes Largest Shakeup of State's Health and Human Services Agencies Since Carter*, STATEMENT, Oct. 2008, http://www2.team.georgia.gov/portal/site/GeorgiaStatement/menuitem.202115a834a974fcb2755310da1010a0/?vgnextoid=1ca26678be17c110VgnVCM100000bf01010aRCRD&vgnextchannel=5577375cbf34d110VgnVCM100000bf01010aRCRD.

8. Healthier Georgia, *supra* note 3, at 23. The 2010 Public Health Commission Report noted similar findings. *See infra* note 13.

Georgia Code, among other things, created a new Department of Behavioral Health and Developmental Disabilities (BHDD), renamed DHR to Department of Human Services (DHS), and moved the Division of Public Health (Division) from DHR to the Department of Community Health (DCH).[9] Two additional provisions in HB 228 are relevant to the Division and its eventual move in HB 214. First, one provision specifically prohibited the Commissioner of DCH, the Division's new agency home, from making any changes to the functions of the Division.[10] The second important provision in HB 228 was the creation of a Public Health Commission.[11] During the 2008 and 2009 General Assembly sessions, there were several bills introduced and much discussion about the reorganization of DHR and DCH. Among the concerns was the question of what to do with the Division. A compromise was struck by agreeing to move the Division to DCH for the near future and by establishing a study commission to look at what the best organizational placement was for the Division.[12]

The Public Health Commission was created on July 1, 2010, and met six times over the next six months. The Commission heard stakeholder, expert, and public testimony as it gathered information for its recommendation to the Governor and Speaker of the House. The Commission considered four options for the Division:

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9. 2009 Ga. Laws 453.

10. "There shall be created in the department such divisions as may be found necessary for its effective operation. Except for the Division of Public Heath, the commissioner shall have the power to allocate and reallocate functions among the divisions within the department." O.C.G.A. § 31-2-6(b) (2010).

11. "(a) Effective July 1, 2010, there is created the Public Health Commission to be composed of nine members as follows: two members shall be appointed by the Speaker of the House of Representatives, two members shall be appointed by the Lieutenant Governor, and five members shall be appointed by the Governor. The purpose of the commission shall be to examine whether the interests of this state are best served with the Division of Public Health being a part of the Department of Community Health, an attached agency pursuant to Code Section 50-4-3, an independent agency, or as part of another organizational structure to be determined by the commission. The commission shall have the authority to contract with third parties subject to appropriations by the General Assembly. The commission shall make its recommendations to the Governor, the Speaker of the House of Representatives, and the Lieutenant Governor by December 1, 2010. The commission shall stand abolished on December 31, 2010. (b) This Code section shall stand repealed on December 31, 2010." O.C.G.A. § 31-2-20 (2010), 2009 Ga. Laws 453, 473.

12. Scott Maxwell, *Capitol Corner: July 9, 2010*, GA. PUB. HEALTH ASS'N, (July 9, 2010), https://www.gapha.org/the-capitol-corner-july-9-2010/.

> 1) The Division of Public Health remains a part of the Department of Community Health, as it has been since July 1, 2009; 2) The Division of Public Health becomes an attached agency pursuant to Code Section 50-4-3; 3) The Division of Public Health becomes an independent agency; or 4) The Division of Public Health becomes a part of another organizational structure (within state government).[13]

On December 1, 2010, the Commission made its final, and unanimous, recommendation: "that the Division of Public Health become an independent, cabinet-level state agency—the Georgia Department of Public Health, with a Commissioner directly reporting to the Governor and acting, by statute, as the state's chief health officer."[14]

Thus, with the recommendation in hand and the support of Governor Nathan Deal, Representative Mickey Channell (R-116th) introduced HB 214 during the 2011 Georgia General Assembly Session.[15]

Bill Tracking of HB 214

Consideration and Passage by House

Representatives Mickey Channell (R-116th), Butch Parrish (R-156th), Terry England (R-108th), Donna Sheldon (R-105th), Sharon Cooper (R-41st), and Hank Huckaby (R-113th) sponsored HB 214.[16] The House read the bill for the first time on February 10, 2011.[17] The House read the bill for the second time on February 15, 2011.[18] Speaker of the House David Ralston (R-7th) assigned it to the House Committee on Health and Human Services, which favorably reported

13. Georgia Public Health Commission, Report to the Governor, the Speaker, and the Lieutenant Governor: O.C.G.A. 31-2-10 at 11–12 (Dec. 1, 2010), *available at* https://www.gapha.org/wp-content/uploads/2010/12/CommissionReport.pdf. [hereinafter Commission Report].
14. *Id.* at 3.
15. HB 214, as introduced, 2011 Ga. Gen. Assem.
16. *Id.*
17. *Id.*; State of Georgia Final Composite Status Sheet, HB 214, May 24, 2011.
18. State of Georgia Final Composite Status Sheet, HB 214, May 24, 2011.

a Committee substitute on February 24, 2011.[19] Differing only slightly from the bill as introduced, the Committee substitute contained one substantive change, which was offered by Representative Channell per the request of Governor Nathan Deal.[20] Language in the original bill required that the Commissioner of Public Health also be the State Health Officer, but the bill was changed to allow the Governor the discretion to have one individual serving both roles, or have two separate individuals in these roles.[21] The Committee Chair, Representative Cooper, offered an amendment to ensure that the Health Share Volunteers in Medicine Act would be placed under the Department of Public Health instead of the Department of Community Health, which was adopted.[22] The House read the Committee substitute as amended on March 4, 2011. During the floor debate, Representative Channell offered an amendment that made some minor technical changes to the bill, which was adopted without objection.[23] The House adopted the Committee substitute with the floor amendment by a vote of 151 to 9.[24]

Consideration and Passage by Senate

Senator Renee Unterman (R-45th) sponsored HB 214 in the Senate, and the bill was first read on March 7, 2011.[25] Lieutenant Governor Casey Cagle (R) assigned it to the Senate Health and Human Services Committee.[26] While in the Health and Human Services Committee, language was attached to the bill to create a

19. *Id*.

20. Video Recording of House Health and Human Services Committee, Feb. 23, 2011 at 25 min., 25 sec., (remarks by Rep. Mickey Channell (R-116th)), *available at* www1.legis.ga.gov/legis/2011_12/house/Committees/healthHuman/healthArchives.htm.

21. *Compare* HB 214, as introduced, § 1-6, p. 15, ln. 500–03, 2011 Ga. Gen. Assem., *with* HB 214 (HCS), § 1-6, p. 14, ln. 497–502, 2011 Ga. Gen. Assem.

22. HB 214 (HCS), § 4-3, p. 45, ln. 1560–61, 2011 Ga. Gen. Assem.

23. Video Recording of House Floor Debate, Mar. 4, 2011 at 1 hr., 25 min., 45 sec. (remarks by Rep. Mickey Channell (R-116th)), *available at* http://mediam1.gpb.org/ga/leg/2011/ga-leg-house_030411_AM.wmv.

24. HB 214 (HCS), § 4-3, p. 45, ln. 1560–61, 2011 Ga. Gen. Assem.; Georgia House of Representatives Voting Record, HB 214 (Mar. 4, 2011).

25. State of Georgia Final Composite Status Sheet, HB 214, May 24, 2011.

26. *Id*.

Hemophilia Advisory Board.[27] The Senate Committee on Health and Human Services favorably reported the Committee substitute on March 29, 2011.[28] The bill was read a second time in the Senate on March 30, 2011, and a third time on March 31, 2011.[29] Also on March 31, 2011, the Senate passed the substitute to the bill by a vote of 46 to 7 and transmitted it back to the House of Representatives, where the House agreed to the Senate substitute.[30]

The Act

The Act amends Title 31 of the Official Code of Georgia Annotated with the purpose of establishing the Department of Public Health by reassigning functions of the Division of Public Health in DCH, thereby creating a cabinet level position with the Commissioner reporting directly to the Governor of Georgia.[31]

Part I of the Act presents the General Assembly's findings and intent behind creating the Hemophilia Advisory Board, and stating the "intent of the General Assembly to establish an advisory board to provide expert advice to the state on health and insurance policies, plans, and programs that impact individuals with hemophilia and other bleeding disorders."[32] Section 2-1 creates a new Code section, 31-1-12, which establishes that the Commissioner of Public Health together with the Commissioner of Community Health shall establish the Hemophilia Advisory Board.[33] This section further defines the nonvoting and voting members of the advisory board, the procedures for meetings, and the functions of the board.[34]

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27. *See* Student Observation of the Senate Health and Human Services Committee (Mar. 29, 2011) (on file with the Georgia State University Law Review). The Hemophilia Advisory Board was initially part of another bill, which was not passed by Crossover Day. *Id.* The Senate Health and Human Services Committee used HB 214 as a vehicle to pass the study, as it was filed under the same Code section. *Id.* The Hemophilia Advisory Board was added unanimously to HB 214 as it was an uncontroversial study. *Id.* Senator Renee Unterman (R-45th) expressed concern that she did not want HB 214 to be bogged down by additional riders, but this one exception was permitted because it was so uncontroversial. *Id.*

28. State of Georgia Final Composite Status Sheet, HB 214, May 24, 2011.

29. *Id.*

30. *Id.*; Georgia State Senate Voting Record, HB 214 (Mar. 31, 2011).

31. O.C.G.A. § 31-2A-2 (Supp. 2011).

32. O.C.G.A. § 31-1-12 (Supp. 2011).

33. *Id*.

34. *Id.*

Section 3-1 of the Act adds a new Chapter 2A to Title 31 of the Code, codified as sections 31-2A-1 through 31-2A-7. Code section 31-2A-1 creates the Board of Public Health, which will establish the general policy that should be followed by the new Department of Public Health.[35] This section transfers all "powers, functions, and duties" of the Board of Community Health (as they existed on June 30, 2011) regarding the Division of Public Health and the Office of Health Improvement to the new Board of Public Health, effective July 1, 2011.[36] The section goes on to discuss appointments of the nine members of the Board of Public Health and the terms each shall serve. Code section 31-2A-2 creates the Department of Public Health and the position of the Commissioner of Public Health. Code section 31-2A-3 binds the new Department of Public Health to "all rules, regulations, policies, procedures, and administrative orders of the Department of Community Health that are in effect June 30, 2011."[37] Code section 31-2A-4 defines the powers of the new department.[38] Code section 31-2A-5 creates within the Department the Office of Women's Health, and 31-2A-6 authorizes the Department to adopt and promulgate rules and regulations.[39] Code section 31-2A-7 authorizes the Department to use conviction data in its employment decisions.[40] The rest of the changes discussed in the Act go forth to change the phrase "Division of Public Health" to "Department of Public Health" and correct cross-references to the revised Code sections.

Analysis

Function of a State Public Health Agency

Public health serves a unique function in society. The Institute of Medicine has defined public health as "what we, as a society, do collectively to assure the conditions in which people can be

35. O.C.G.A. § 31-2A-1 (Supp. 2011).
36. *Id.*
37. O.C.G.A. § 31-2A-3 (Supp. 2011).
38. O.C.G.A. § 31-2A-4 (Supp. 2011).
39. O.C.G.A. §§ 31-2A-5, -6 (Supp. 2011).
40. O.C.G.A. § 31-2A-7 (Supp. 2011).

healthy."[41] Public health is not the same as public medicine or public hospitals, nor is it the same as public health financing (e.g., Medicaid, Medicare, and State Children's Health Insurance Program).[42] Public health is primarily concerned with the health of populations of people and often emphasizes prevention.

Public health is also a core function and responsibility of state governments—a "police power" reserved to the states.[43] A comprehensive state survey published in 2009 highlighted some of the core functions of state public health agencies.[44] It found that more than ninety percent of state public health agencies directly performed the following functions: childhood vaccine order management and inventory distribution, maintenance of vaccine registry, laboratory testing for likely bioterrorism agents (e.g., anthrax), data collection and analysis, vital records and data on reportable diseases, epidemiology and surveillance activities on injuries, chronic and communicable diseases, perinatal events and risk factors, tobacco control and prevention, food safety education, and bioterrorism event response.[45]

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41. James Curran, M.D., M.P.H., Testimony before the Public Health Commission (Oct. 18, 2010), http://dch.georgia.gov/vgn/images/portal/cit_1210/38/37/164903585Dr.JamesCurransTestimony.pdf (citing to The Future of Public Health (National Academy Press 1988)).

42. *Id.*

43. *See* Jacobson v. Massachusetts, 197 U.S. 11 (1905). "The authority of the State to enact this [vaccination] statute is to be referred to what is commonly called the police power—a power which the State did not surrender when becoming a member of the Union under the Constitution. Although this court has refrained from any attempt to define the limits of that power, yet it has *distinctly recognized the authority of a State to enact quarantine laws and 'health laws of every description;'* indeed, all laws that relate to matters completely within its territory and which do not by their necessary operation affect the people of other States. *According to settled principles the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.* It is equally true that the State may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety. *The mode or manner in which those results are to be accomplished is within the discretion of the State,* subject, of course, so far as Federal power is concerned, only to the condition that no rule prescribed by a State, nor any regulation adopted by a local governmental agency acting under the sanction of state legislation, shall contravene the Constitution of the United States or infringe any right granted or secured by that instrument." *Id.* at 24–25 (internal citations omitted) (emphasis added).

44. 1 The Ass'n of State and Territorial Health Officials, Profile of State Public Health 11 (2009), *available at* http://www.astho.org/Display/AssetDisplay.aspx?id=4078.

45. *Id.*

Different Models of State Public Health Agency Structures

The same national survey examined the activities and structures of state health agencies across the county.[46] Overall, the most common "top activities" of the state public health agencies included: 1) disease prevention; 2) preparedness; 3) epidemiology, data, surveillance and monitoring; and 4) wellness, health promotion, and health communication.[47] Less than one-fifth of states placed "health insurance and health care" in the top three activities of their public health agencies.[48]

In terms of structure, more than half of states (twenty-eight) operate their public health agency as a freestanding/independent agency, with the remaining states operating it under a larger, umbrella organization.[49] Within the umbrella organization states, the Association of State and Territorial Health Officials (ASTHO) further divides and organizes the agencies by three sub-categories reflecting the agencies' missions and divisions: Primary Public Health (with some mental health, social services, developmental disabilities and/or facility services) (four states); Public Health and Medicaid (with some mental health, social services, developmental disabilities and/or facility services) (five states, including Georgia, pre-Act); and Health and Human Services (large agency with multiple divisions including public health) (fourteen states).[50] For these umbrella agency states, ASTHO collected additional data on the major areas of responsibility of those larger agencies—the areas that are separate from the statutory responsibility of the public health agency within the organization. Ninety percent of those agencies

46. 1 The Association of State and Territorial Health Officials, Chartbook of State Public Health (2009), *available at* http://www.astho.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=4888 [hereinafter ASTHO Chartbook].

47. *Id.* at 5.

48. *Id.*

49. *Id.* at 31 (the survey included all fifty states plus the District of Columbia, for a total of fifty-one "states").

50. Karen Minyard, Ph.D., Testimony before Public Health Commission (Oct. 18, 2010), http://dch.georgia.gov/vgn/images/portal/cit_1210/54/9/164903582PresentationGeorgiaHealthPolicyCenter.pdf. (Primary Public Health: New Mexico, Rhode Island, Texas, Vermont; Public Health and Medicaid: Georgia, Louisiana, Maryland, Michigan, Wisconsin; Health and Human Services: Alaska, California, Delaware, Idaho, Kentucky, Maine, Massachusetts, Montana, North Carolina, Nebraska, Nevada, New Hampshire, Oregon, West Virginia).

were responsible for Medicaid, 81% were responsible for public assistance generally, 76% included long-term care, 67% included mental health and substance abuse, 33% included substance abuse alone, and 24% included mental health, without substance abuse.[51]

Finally, more than half (fifty-seven percent) of state public health agencies report directly to the governor and nearly seventy percent of states place public health as a cabinet level agency. Prior to the Act, Georgia's public health agency was neither a cabinet level agency, nor did it report directly to the Governor.[52]

State of Public Health in Georgia

Georgia's dismal health indicators are well documented.[53] Georgia consistently ranks at the bottom of states in overall health. Georgia's life expectancy of 73.9 years is significantly below the national average of 76.5.[54] Furthermore, almost one in five Georgia counties has a life expectancy below seventy years, which means residents of those counties will be outlived by people in Thailand, the Gaza Strip, El Salvador and the Dominican Republic.[55] As an overview, consider Georgia's national ranking in a few key health categories (the bigger the number, the worse Georgia performed as compared to other states):[56]

- 31st for percentage of adults who smoke
- 37th for percentage of adults who do not exercise regularly
- 38th for percentage of overweight high school students
- 39th for percentage of adults who are obese
- 41st for percentage of adults with diabetes
- 40th for infant mortality rates
- 41st for teen birth rates

51. ASTHO Chartbook, *supra* note 46, at 41.
52. *Id.* at 35.
53. *See*, *e.g.*, Healthcare Ga. Found., 2008 Health Rankings: Georgia and Georgia's Children (2008), http://www.healthcaregeorgia.org/uploads/publications/2008_GA_Child_rankings.pdf [hereinafter Healthcare Georgia Foundation].
54. James Hataway, *The State of Georgia's Health: Not Good*, Georgia Public Health Association, Aug. 26, 2010, https://www.gapha.org/the-state-of-georgia%E2%80%99s-health-not-good/.
55. Commission Report, *supra* note 13, at 9.
56. Healthcare Georgia Foundation, *supra* note 53, at 7–9.

- 43rd for pre-term births
- 45th for low birth weight babies
- 47th for prevalence of infectious diseases (like hepatitis, tuberculosis and AIDS).

This problem has been exacerbated by drastic cuts to the state's public health budget over the years. Although Georgia's population has increased by twenty-percent since 2000, the state public health budget has *decreased* by twenty percent.[57] In contrast, state spending on direct healthcare services has increased approximately 100% over the same time period.[58] While "[m]edicine is primarily a private good—the patient receives the main benefit of any care provided . . . [p]ublic health, on the other hand, provides public goods—such as a good sewer system [or safe food supply]—and relies almost exclusively on government funding."[59] Yet, in comparison to the large and rapidly increasing cost of mandatory entitlement healthcare spending programs, the relatively small public health budget is seen as discretionary.[60] The consequence of shifting funds from prevention to treatment results in higher costs and higher morbidity and mortality rates.[61]

There are many reasons why public health is chronically underfunded both in Georgia and nationwide, a couple of which are worth highlighting in the context of this article. First, the benefits of public health lie in the future.[62] We want immediate satisfaction from our spending as individuals, and certainly politicians do not want to bear the burden of increased costs while some future administration reaps the reward of the improved health outcomes.[63] And second, the beneficiaries of public health are generally unknown.[64] You receive medication as an individual, but public health programs and outcomes deal in "statistical lives"—"when people benefit from

57. Commission Report, *supra* note 13, at 9.
58. *Id.*
59. David Hemenway, *Why We Don't Spend Enough on Public Health*, 362 NEW ENG. J. MED. 1657, 1657 (2010), *available at* http://www.nejm.org/doi/pdf/10.1056/NEJMp1001784.
60. Commission Report, *supra* note 13, at 8–9.
61. Hemenway, *supra* note 59.
62. *Id.*
63. *Id.*
64. *Id.*

public health measures, they often don't recognize that they have been helped."[65] Thus it is even harder for people, let alone politicians responding to constituencies, to forgo the current needs and desires for some intangible benefit that will occur in the future.

What Does a Department of Public Health Mean for Georgia Going Forward?

Proponents of the Act consistently remarked that the Division of Public Health was being neglected as part of an umbrella state agency, both in terms of public awareness and fund allocation. As Dr. Phillip Williams, Dean of the University of Georgia's College of Public Health, noted, "If you don't have a voice at that table, how can you compete to get your slice of the pie?"[66] Another challenge faced by the Division was its subjugation to the overall priorities of a super-agency, including an always present threat of being raided for funds.[67] As Representative Mickey Channell (R-116th) noted, "public health in this state is a mess."[68]

The consequences of that neglect are evident, as discussed above. But what impact can agency structure have on improving public health in Georgia? One study in 2010 considered state public health agencies' emergency preparedness because, for example, in the event of a pandemic flu outbreak state public health agencies will be the first responders.[69] The study suggested that agency structure was significantly correlated to how well-prepared a state agency was to

65. *Id.* at 1657–58.

66. Andy Miller, *Public Health a Separate Agency?*, Ga. Health News, Nov. 5, 2010, *available at* http://www.georgiahealthnews.com/2010/11/05/public-health-a-separate-agency.

67. *See, e.g.*, Timothy Sweeny, Ga. Budget and Policy Inst., Overview of Georgia's Public Health Budget and Activities (2009), *available at* http://gbpi.org/documents/20090113.pdf. ("One proposal in the DHR submission would redirect . . . $10 million in FY 2010 from Family Planning services in [the Division of Public Health] to other services in the Division of Family and Children Services (DFCS). This move would be a cut to the overall [Division of Public Health] budget, while these federal funds would be used to offset a state funds reduction in DFCS.").

68. Carrie Teegardin & April Hunt, *Bill to Create Public Health Department Heads to Governor*, ATLANTA J.-CONST., Mar. 31, 2011, *available at* http://www.ajc.com/news/georgia-politics-elections/bill-to-create-public-893354.html.

69. Tamar Klaiman & Jennifer K. Ibrahim, *State Health Department Structure and Pandemic Planning*, 16 J. PUB. HEALTH MGMT. PRAC. E1, E1 (2010).

respond to an emergency.[70] Specifically, the authors noted that, "strong, multilevel hierarchies may impede pandemic planning comprehensiveness as each alteration to a plan may encounter multiple layers of bureaucracy before changes can be made."[71] The authors consistently noted that reducing "red-tape" or "bureaucracy" are key factors in increasing a state public health agency's ability to prepare for emergencies.[72] This is consistent with Representative Channell's argument that "being in an umbrella agency slows things down, and you waste time and money in the process."[73] Georgia's new independent, more flexible state agency, with direct access to the Governor's Office, may improve the state's overall ability to address public health concerns, beyond just emergency preparedness.

Another way the new structure might improve public health in Georgia is by increasing interneutral, future funding from both state and federal sources might see an increase.[74] Georgia's per capita state funding for public health is $19.66.[75] This amount is well below both the average per capita for umbrella-agency states, $34.25, and the standalone-agency states, $46.06.[76] Georgia's $19.66 per capita contribution is complimented by $39.29 per capita in federal matching money, for a total of $58.95 per capita public health spending in Georgia.[77] However, the top twenty states in per capita public health spending average $124.45 total per capita, with $59.58 of that money coming from federal sources.[78] Additionally, Senator Renee Unterman (R-45th), during her presentation of the bill on the Senate floor, said, "I'll be at the table arguing to give public health more money because I believe that the cuts have been so detrimental that they have become a shell of a department, and I feel like our

70. *Id.* at E5.
71. *Id.*
72. *Id.* at E5–E6.
73. Teegardin & Hunt, *supra* note 68.
74. *See* Student Observation of the Senate Health and Human Services Subcommittee (Mar. 23, 2011) (remarks by Rep. Mickey Channell (R-116th)) (on file with the Georgia State University Law Review).
75. Robert Stolarick, M.D., Testimony before Public Health Commission (Aug. 9, 2010), http://dch.georgia.gov/vgn/images/portal/cit_1210/63/36/163079889drstolaricktestimony.pdf.
76. *Id.*
77. *Id.*
78. *Id.*

welfare could be better protected."[79] Given the combination of the increased presence of a cabinet level official advocating for her Department (rather than being subordinate to a larger agency's budget priorities) and the commitment from legislators to increase the funding (and the correlating increase in federal funds), a stand-alone agency may provide a much needed increase in state public health resources.

Raising the Division of Public Health's profile in Georgia by making it a stand-alone department with a cabinet-level appointment also will increase transparency for the state's public health activities. As part of a larger umbrella agency, the Division of Public Health was barely a footnote in the DCH or DHR meetings.[80] For example, during the March 2010 DCH meeting, there were ten agenda items, and public health was one of those items.[81] When it was the Division's turn, the Division Director stood up and talked about a building that needed to be sold.[82] The new Department will be the thirteenth largest state agency, yet under DCH, the Division was buried as one of nine divisions and six offices. [83] The public should be able to access more information and witness more transparency in meetings where public health is the only agenda item.

There was concern among some legislators that the move of the Division would facilitate the implementation of the federal health care reform law.[84] Both Senator Unterman and Representative

79. Video Recording of Senate Proceedings, Mar. 31, 2011 at 1 hr., 37 min., 40 sec. (remarks by Sen. Renee Unterman (R-45th)), http://mediam1.gpb.org/ga/leg/2011/ga-leg-senate_033111_AM.wmv.

80. *See* Telephone Interview with Scott Matthews, Co-Founder, Mathews & Maxwell, Inc., Lobbyist, Georgia Public Health Association (Mar. 30, 2011) (on file with the Georgia State University Law Review).

81. *Id.*

82. *Id.*

83. *Id.*

84. *See*, *e.g.*, Telephone Interview with Rep. Paulette Braddock (R-19th) (Apr. 18, 2011) (on file with the Georgia State University Law Review); Telephone Interview with Rep. Jason Spencer (R-180th) (Apr. 19, 2011) (on file with the Georgia State University Law Review); Electronic Mail Interview with Rep. David Casas (R-103rd) (Apr. 20, 2011) (on file with the Georgia State University Law Review). An email was sent out by Bill Evelyn, Director of the State of Georgia Tea Party, stating that approval of the bill "is 'the first step' in implementing the health care reform law in Georgia." Andy Miller, *A Tea Party Threat to Public Health Bill?*, Ga. Health News (Mar. 17, 2011), *available at* http://www.georgiahealthnews.com/2011/03/17/tea-party-threat-public-health-bill. The federal health care reform law, officially titled the Patient Protection and Affordable Care Act, was passed by Congress in 2010 and was hugely controversial, particularly among conservatives.

Channell disagreed and argued the Act has "nothing to do with ObamaCare."[85] First, Senator Unterman noted that this change has been over two years in the making.[86] The reorganization of DHR started in 2009 with breaking out BHDD into its own department and moving the Division of Public Health to DCH.[87] Because it was felt at the time that creating two new agencies was "too much of an infrastructure change" at one time, the move of the Division was postponed.[88] Therefore, Senator Unterman argued that there is no connection between the new Department of Public Health and the federal health care law.[89] Second, moving public health from a division within DCH to a standalone agency is unlikely to affect the implementation of the federal health care law at all. As Representative Channel points out, the "heart of the reform changes—the expansion of Medicaid—would be run by the Department of Community Health."[90] Finally, any requirements for implementing the federal law that might fall into the sphere of public health would have been handled by the entity dealing with public health regardless of whether it was a division within DCH or its own department.[91]

85. Miller, *supra* note 84. "ObamaCare" is one of the popular nicknames given to the Patient Protection and Affordable Care Act.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *See* Matthews Interview, *supra* note 80.

Georgia is just one among many states that have restructured their public health agencies since the Institute of Medicine's report in 1988 highlighting the crumbling public health system.[92] The new Department of Public Health should not have any effect on the implementation of the federal health care law, and should increase both the profile and transparency of public health in Georgia. Public health advocates are hopeful that establishing the new Department of Public Health will save the state money in healthcare costs, result in an increase in funding, and, in time, improve the health of Georgia's citizens.[93]

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92. *See* Susan Wall, *Transformations in Public Health Systems*, 17 Health Aff. 64, 64 (1998).

93. *E.g.*, *id.*; Georgians for a Healthy Future, http://healthyfuturega.org/advocacy/2011-legislative-session (last visited Aug. 24, 2011).