

Senate Bill 210

By: Senators Tanksley of the 32nd, Thompson of the 33rd, Ray of the 48th, Hecht of the 34th, Meyer von Bremen of the 12th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 2 of Chapter 9 of Title 24 of the Official Code of Georgia
2 Annotated, relating to medical information, so as to clarify the procedures for subpoenaing
3 medical records; to provide for legislative findings; to reconcile federal privacy regulations
4 with state judicial decisions; to define a certain term; to provide conditions under which a
5 provider shall be required to release medical records concerning a patient pursuant to a
6 subpoena; to provide for notice to a patient who is the subject of medical records being
7 subpoenaed; to provide for objections by patients; to provide for medical records of minors;
8 to provide conditions under which a provider is not required to make a personal appearance
9 with respect to subpoenaed medical records; to provide for exceptions; to provide for
10 applicability; to amend Chapter 33 of Title 31 of the Official Code of Georgia Annotated,
11 relating to health records, so as to change the definition of a certain term; to define additional
12 terms; to provide conditions under which a provider may release copies of medical records
13 of deceased and living persons; to provide that, upon written request from the personal
14 representative of the patient or survivor of the patient, a provider having custody and control
15 of the patient's record shall furnish a complete and current copy of that record; to provide
16 that any record requested under certain provisions of law shall be furnished to any personal
17 representative of the patient or any survivor of the patient; to provide that a provider shall not
18 be required to release records to any personal representative of the patient or any survivor
19 of the patient under this Act unless and until the requesting person has furnished the provider
20 with a signed written statement certifying that he or she is either a personal representative
21 or a survivor; to provide that any provider or person who in good faith releases copies of any
22 medical records pursuant to this Act shall not be found to have violated any criminal law or
23 to be civilly liable to the patient, the deceased patient's estate, or to any other person; to
24 provide for related matters; to repeal conflicting laws; and for other purposes.

25 WHEREAS, the General Assembly finds and declares that access to patients' medical
26 records pursuant to lawful discovery procedures and other means is necessary and

1 appropriate, with certain conditions, for the orderly progression and disposition of litigation
2 and other administrative proceedings; and

3 WHEREAS, the General Assembly finds that hospitals, nursing homes, and other health care
4 providers in the State of Georgia have a legitimate interest in having clear guidelines for the
5 release and handling of medical records; and

6 WHEREAS, the Supreme Court of Georgia has recently recognized a constitutional right of
7 privacy in medical records that is qualified by only three limited exceptions:

8 (1) The patient has consented to the release of his or her medical records or has placed
9 his or her medical condition in controversy;

10 (2) The patient has received notice of a person's efforts to gain access to the medical
11 records and the patient fails to object; or

12 (3) The state has shown a compelling interest for obtaining the medical records without
13 the patient's consent; and

14 WHEREAS, pursuant to the Health Insurance Portability and Accountability Act of 1996,
15 the United States Department of Health and Human Services recently published
16 comprehensive regulations governing the confidentiality of patients' medical records; and

17 WHEREAS, the General Assembly finds that there is a need to reconcile the holdings of the
18 Supreme Court of Georgia with the provisions of the new federal privacy regulations and to
19 foster consistency between state and federal law in the treatment of medical records; and

20 WHEREAS, the General Assembly finds and declares that the State of Georgia has a
21 compelling interest in enhancing the quality of health care provided in the state, in ensuring
22 the orderly disposition of deceased bodies and investigations of possible causes of death, and
23 in ensuring the fitness of physicians, dentists, pharmacists, and other health care providers
24 to render treatment and care to the citizens of this state and that these compelling state
25 interests, when balanced against patients' interests in privacy, warrant limited exceptions for
26 the disclosure of medical records without notice to or involvement of a patient or a
27 decedent's personal representative or survivors; and

28 WHEREAS, the General Assembly desires to protect the health, safety, and welfare of the
29 citizens of the State of Georgia.

30 NOW, THEREFORE, BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 2 of Chapter 9 of Title 24 of the Official Code of Georgia Annotated, relating to medical information, is amended by adding between Code Sections 24-9-40.2 and 24-9-41 a new Code Section 24-9-40.3, to read as follows:

"24-9-40.3.

(a) For purposes of this Code section, the term 'provider' shall have the same meaning as provided by paragraph (3) of Code Section 31-33-1.

(b) No provider shall be required to release any medical records concerning a patient pursuant to a subpoena validly issued during the course of litigation, administrative proceeding, or investigation unless the provider receives satisfactory assurance from the person seeking the records that reasonable efforts have been made by such person to ensure that the patient who is the subject of the medical records being subpoenaed has been given notice of the subpoena and an opportunity to object. Any subpoena issued in compliance with this Code section shall be deemed an appropriate subpoena for the purposes of Code Section 24-9-40.

(c) A provider receives satisfactory assurance from a person subpoenaing medical records if the provider receives from such person a written statement and accompanying documentation, which shall include, but not be limited to, a certificate of service signed by the person seeking such records, demonstrating that:

(1) The person seeking to subpoena such records has made a good faith attempt to deliver to the patient or to the patient's attorney of record a copy of the subpoena by hand delivery, by United States mail, or by statutory overnight delivery or, if the patient's location is unknown, to mail a copy of the subpoena by registered or certified mail or by statutory overnight delivery to the patient's last known address;

(2) The subpoena or accompanying notice to the patient included sufficient information about the litigation, proceeding, or investigation in which the medical records are subpoenaed to permit the patient to raise an objection to a court, administrative agency, or hearing officer having jurisdiction to hear such objection; and

(3) Thirteen days after the date a copy of the subpoena was hand delivered, mailed, or deposited for statutory overnight delivery to the patient have passed before the subpoena was issued to the provider and

(A) No objections were filed by the patient; or

(B) All objections filed by the patient have been resolved by a court, administrative agency, or hearing officer having jurisdiction over the matter and the disclosures being sought are consistent with such resolution.

1 (d) A patient's failure to file a timely written objection to the release of medical records
2 as provided in paragraph (3) of subsection (c) of this Code section shall be deemed a
3 waiver of all privileges afforded the requested medical records under state law and shall
4 constitute a consent to the release of the patient's medical records as described in the notice
5 to the patient.

6 (e) When the medical records being subpoenaed relate to an unemancipated minor, the
7 person requesting such records shall, in addition to the requirements of subsection (b) of
8 this Code section, provided satisfactory assurance to the provider that the parent or parents
9 or legal guardian of such unemancipated minor has also been given notice of the subpoena.

10 (f) Notwithstanding the time for compliance specified in a subpoena or required by any
11 other Code section, a provider and such provider's personnel shall be in compliance with
12 a subpoena if, within 30 days after the receipt of satisfactory assurance or payment of the
13 costs of production, whichever is later, it delivers a copy of the medical records and a
14 certificate issued in accordance with Code Section 24-10-71 to the clerk of court or other
15 authorized person by any means, including, but not limited to, certified or registered mail
16 or statutory overnight delivery. The length of time permitted under this subsection for the
17 delivery of medical records may be shortened or lengthened by court order.

18 (g) A certificate issued in accordance with Code Section 24-10-71 shall excuse the
19 personal appearance of any person responsible for keeping medical records. No sanction
20 or remedy for contempt shall be applied against any such person or institution unless a
21 subpoena or order expressly commanding the person's presence has been issued by
22 authority of the court or body for good cause shown, such cause and authority appearing
23 of record and on the face of the subpoena or order.

24 (h) This Code section shall not apply to the following:

25 (1) A subpoena issued under authority of law by a coroner or by a provider licensing
26 board that is authorized by law to subpoena medical records;

27 (2) A request for production of documents under subsection (c) of Code Section 9-11-34;
28 or

29 (3) Where a court, administrative agency, or hearing officer having jurisdiction over the
30 matter has determined that the patient has placed his or her care and treatment or the
31 nature and extent of his or her injuries at issue in any civil or criminal proceeding and a
32 copy of such determination is attached to or included in the subpoena.

33 (i) The provisions of this Code section shall not apply to psychiatric, psychological, mental
34 health, AIDS confidential information, or substance abuse records of a patient, none of
35 which may be released pursuant to a subpoena.

36 (j) Nothing in this Code section shall be deemed to abrogate or modify in any way the
37 provisions of Code Sections 40-5-55 and 52-7-12."

1 (c) If the provider reasonably determines that disclosure of the record to the patient will
2 be detrimental to the physical or mental health of the patient, the provider may refuse to
3 furnish the record; however, upon such refusal, the patient's record shall, upon written
4 request by the patient, be furnished to any other provider designated by the patient.

5 (d) A provider shall not be required to release records to any personal representative of the
6 patient or any survivor of the patient under this Code section unless and until the requesting
7 person has furnished the provider with a signed written authorization indicating that he or
8 she is either a personal representative or a survivor as defined in Code Section 31-33-1.

9 (e) Any provider or person who in good faith releases copies of any medical records
10 pursuant to this Code section shall not be found to have violated any criminal law or to be
11 civilly liable to the patient, the deceased patient's estate, or to any other person."

12 **SECTION 4.**

13 All laws and parts of laws in conflict with this Act are repealed.