

HOUSE SUBSTITUTE TO SENATE BILL 210:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 24, 31, and 45 of the Official Code of Georgia Annotated, relating to
2 evidence, health, and public officials, respectively, so as to provide for the release of medical
3 records; to clarify the procedures for subpoenaing medical records; to provide for legislative
4 findings; to reconcile federal privacy regulations with state judicial decisions; to define a
5 certain term; to provide conditions under which a provider shall be required to release
6 medical records concerning a patient pursuant to a subpoena; to provide for exceptions; to
7 provide for applicability; to change the definition of a certain term; to define additional
8 terms; to provide conditions under which a provider may release copies of medical records
9 of deceased and living persons; to provide that, upon written request from the personal
10 representative of the patient or survivor of the patient, a provider having custody and control
11 of the patient's record shall furnish a complete and current copy of that record; to provide
12 that any record requested under certain provisions of law shall be furnished to any personal
13 representative of the patient or any survivor of the patient; to provide that a provider shall not
14 be required to release records to any personal representative of the patient or any survivor
15 of the patient under this Act unless and until the requesting person has furnished the provider
16 with a signed written statement certifying that he or she is either a personal representative
17 or a survivor; to provide that any provider or person who in good faith releases copies of any
18 medical records pursuant to this Act shall not be found to have violated any criminal law or
19 to be civilly liable to the patient, the deceased patient's estate, or to any other person; to
20 provide for subpoenas by medical examiners from the office of chief medical examiner and
21 for confidentiality and costs; to include certain medical records; to provide for related
22 matters; to provide for severability; to repeal conflicting laws; and for other purposes.

23 WHEREAS, the General Assembly finds and declares that access to patients' medical
24 records pursuant to lawful discovery procedures and other means is necessary and
25 appropriate, with certain conditions, for the orderly progression and disposition of litigation
26 and other administrative proceedings; and

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

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

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

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

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

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

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

18 WHEREAS, the General Assembly finds and declares that the State of Georgia has a
19 compelling interest in enhancing the quality of health care provided in the state, in ensuring
20 the orderly disposition of deceased bodies and investigations of possible causes of death, in
21 preventing and investigating fraud and abuse by providers in the Georgia Medicaid program,
22 in protecting elderly and vulnerable patients from abuse and neglect and in investigating
23 allegations of abuse and neglect, and in ensuring the fitness of physicians, dentists,
24 pharmacists, and other health care providers to render treatment and care to the citizens of
25 this state and that these compelling state interests, when balanced against patients' interests
26 in privacy, warrant limited exceptions for the disclosure of medical records without notice
27 to or involvement of a patient or a 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:

1 ~~or by his or her parents or duly appointed guardian ad litem in the case of a minor, or upon~~
2 ~~appropriate court order or subpoena shall not be liable to the patient or any other person;~~
3 ~~provided, further, that the privilege shall be waived to the extent that the patient places his~~
4 ~~or her care and treatment or the nature and extent of his or her injuries at issue in any~~
5 ~~administrative, civil, or criminal proceeding.~~

6 (d) If a patient places his or her care and treatment or the nature and extent of his or her
7 injuries in issue in any criminal proceeding, a medical record shall only be released upon
8 court order, following a hearing in a court of competent jurisdiction to determine whether
9 the requested information shall be released. In the event of a hearing, the patient shall be
10 given notice and an opportunity to be heard on the issue of the release of his or her medical
11 record.

12 (e) This Code section shall not apply to, and a provider shall be authorized to release
13 medical records in, the following situations:

14 (1) A subpoena issued under authority of law by a coroner, chief medical examiner, or
15 medical examiner;

16 (2) A subpoena issued by the division director of the professional licensing boards
17 division of the office of the Secretary of State pursuant to Code Section 43-1-19;

18 (3) A subpoena issued by the Composite State Board of Medical Examiners pursuant to
19 Code Section 43-34-37;

20 (4) A request for production of documents under subsection (c) of Code Section 9-11-34;

21 (5) A subpoena issued by the commissioner of community health pursuant to Code
22 Section 49-4-151;

23 (6) A subpoena issued by the Attorney General pursuant to Code Section 45-15-17;

24 (7) The Department of Human Resources, its divisions, agents, or successors when
25 required in the administration of public health programs pursuant to Code Section
26 31-12-2 or in connection with licensing and certification responsibilities of the
27 department or where the department is authorized or required by law, statute, or lawful
28 regulation by means other than a subpoena; or

29 (8) A subpoena issued by the Office of the Child Advocate for the Protection of Children
30 pursuant to Code Section 15-11-174.

31 (f) The provisions of this Code section shall not apply to psychiatric, psychological,
32 mental health, AIDS confidential information, or substance abuse records of a patient, none
33 of which may be released pursuant to a subpoena except when issued by the division
34 director of the professional licensing boards division of the office of the Secretary of State
35 pursuant to Code Section 43-1-19 or the Composite State Board of Medical Examiners
36 pursuant to Code Section 43-34-37.

1 (g) Nothing in this Code section shall be deemed to abrogate or modify in any way the
 2 provisions of Code Sections 6-2-5.1, 17-5-21, 19-7-5, 27-3-7, 30-5-4, 31-2-6, 31-7-9,
 3 34-9-207, 40-5-55, and 52-7-12.

4 (h) Any provider releasing information under written authorization or other waiver by the
 5 patient, or by his or her parents or guardian ad litem in the case of a minor, or pursuant to
 6 law, statute, or lawful regulation, or under court order or subpoena pursuant to this Code
 7 section shall not be liable to the patient or any other person."

8 SECTION 2.

9 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by striking
 10 Code Section 31-33-1, relating to definitions, and inserting the following:

11 "31-33-1.

12 As used in this chapter, the term:

13 (1) 'Patient' means any person who has received health care services from a provider.

14 (2) 'Personal representative' means any person appointed as the administrator or executor
 15 of a decedent's estate, any person appointed as the guardian or temporary guardian of the
 16 person of a patient, any administrator or temporary administrator, or any person
 17 appointed as an attorney in fact by the patient.

18 ~~(2)~~(3) 'Provider' means all hospitals, including public, private, osteopathic, and
 19 tuberculosis hospitals; other special care units, including podiatric facilities, skilled
 20 nursing facilities, and kidney disease treatment centers, including freestanding
 21 hemodialysis units; intermediate care facilities; ambulatory surgical or obstetrical
 22 facilities; health maintenance organizations; and home health agencies. It shall also mean
 23 any person licensed to practice under Chapter 9, 11, 26, 34, 35, or 39 of Title 43 or under
 24 Chapter 4 of Title 26.

25 ~~(3)~~(4) 'Record' means a patient's health record, including, but not limited to, evaluations,
 26 diagnoses, prognoses, laboratory reports, X-rays, prescriptions, and other technical
 27 information used in assessing the patient's condition, or the pertinent portion of the
 28 record relating to a specific condition or a summary of the record.

29 (5) 'Survivor' means any person entitled to bring an action for wrongful death of a
 30 decedent under Code Section 51-4-2, 51-4-4, or 51-4-5."

31 SECTION 3.

32 Said title is further amended by striking in its entirety Code Section 31-33-2, relating to
 33 furnishing copy of records to patient or provider, and inserting in lieu thereof a new Code
 34 Section 31-33-2 to read as follows:

35 "31-33-2.

1 (a) Upon written request from the patient, personal representative of the patient, or
 2 survivor of the patient, the provider having custody and control of the patient's record shall
 3 furnish a complete and current copy of that record, in accordance with the provisions of
 4 this Code section.

5 (b) Any record requested under subsection (a) of this Code section shall be furnished to
 6 the patient, any other provider designated by the patient, ~~or~~ any other person designated by
 7 the patient, any personal representative of the patient, or any survivor of the patient.

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

12 (d) A provider shall not be required to release records to any personal representative of the
 13 patient or any survivor of the patient under this Code section unless and until the requesting
 14 person has furnished the provider with a signed written authorization indicating that he or
 15 she is either a personal representative or a survivor as defined in Code Section 31-33-1.
 16 Any provider shall be justified in relying on such written authorization.

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

20 SECTION 4.

21 Title 45 of the Official Code of Georgia Annotated, relating to public officials, is amended
 22 in Code Section 45-16-27, relating to coroner inquests, by striking subsection (c) and
 23 inserting in its place the following:

24 "(c) When a coroner or a medical examiner or a medical examiner from the office of chief
 25 medical examiner, as established in Code Section 35-3-153, conducts an investigation into
 26 the death of an individual, the coroner, ~~or~~ medical examiner, or medical examiner from the
 27 office of chief medical examiner shall be authorized to issue subpoenas to compel the
 28 production of any books, records, including but not limited to medical records from
 29 hospitals, medical clinics, psychiatric hospitals, physicians' offices, chiropractors' offices,
 30 and any other health care delivery facility, or papers relevant to the cause of death
 31 including without limitation AIDS confidential information as defined by Code Section
 32 31-22-9.1. Any books, records, or papers received by the coroner, ~~or~~ medical examiner,
 33 or medical examiner from the office of chief medical examiner pursuant to the subpoena
 34 must be regarded as confidential information and privileged and not subject to disclosure
 35 under Article 4 of Chapter 18 of Title 50. The actual costs of copying any books, records,
 36 or papers for the purposes of responding to a subpoena under this subsection shall be paid

1 out of county funds to the person or entity required to respond to that subpoena, and the
2 governing authority of the county of which that coroner or county medical examiner is a
3 public officer shall pay those costs within 30 days after a bill therefor is submitted to the
4 county. A medical examiner from the office of chief medical examiner shall pay the costs
5 of copying from state funds within 30 days after a bill therefor is submitted to the state."

6 SECTION 5.

7 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
8 or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other
9 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
10 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
11 adjudged invalid or unconstitutional were not originally a part hereof. The General
12 Assembly declares that it would have passed the remaining parts of this Act if it had known
13 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

14 SECTION 6.

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