

House Bill 931

By: Representative Gardner of the 42nd, Post 3

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 4 of Title 37 of the Official Code of Georgia Annotated, relating to
2 habilitation of the mentally retarded generally, so as to authorize persons designated as
3 representatives of persons with mental retardation to provide certain consents to treatment,
4 habilitation services, and behavioral interventions; to provide for appointment of a guardian
5 ad litem for hearings; to authorize certain designated representatives to provide consent for
6 clients lacking capacity to consent; to provide for notice to a client's representative; to
7 provide for emergency intervention without consent under certain circumstances; to provide
8 for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Chapter 4 of Title 37 of the Official Code of Georgia Annotated, relating to habilitation of
12 the mentally retarded generally, is amended by striking paragraph (15) of Code Section
13 37-4-2, relating to definitions, and inserting in its place the following:

14 "(15) 'Representatives' means the persons ~~appointed~~ designated as provided in Code
15 Section 37-4-107 to receive any notice under this chapter and authorized to provide
16 certain consents as described in this chapter."

17 **SECTION 2.**

18 Said chapter is further amended by striking Code Section 37-4-44, relating to periodic review
19 of individualized program plan, discharge or transfer to another facility upon change in
20 client's needs, and notice of discharge or transfer, and inserting in its place the following:

21 "37-4-44.

22 (a) Each individualized program plan shall be reviewed at regular intervals to determine
23 the client's progress toward the stated goals and objectives of the plan and to determine
24 whether the plan should be modified because of the client's present level of performance.

25 These reviews should be based upon relevant progress notes in the client's clinical record

1 and upon other related information, and a reasonable effort shall be made to obtain and
 2 utilize input from the client and his or her representatives and to obtain consent from the
 3 client, if the client has the capacity to consent, or from the client's guardian or
 4 representative as specified in subsection (f) of Code Section 37-4-107, if the client lacks
 5 the capacity to consent.

6 (b) Any time a client is found by the person in charge of the client's habilitation no longer
 7 to be in need of services from the department, the client shall be discharged.

8 (c) At least 14 days before discharge of the client or transfer of the client pursuant to a
 9 modification of his or her program plan, notice of such action shall be given to the client,
 10 his or her representatives, and, if the client's program plan was ordered by a court, to the
 11 court which entered such order."

12 SECTION 3.

13 Said chapter is further amended by striking Code Section 37-4-107, relating to appointment
 14 of client representatives and guardians ad litem, notification provisions, and duration and
 15 scope of guardianship ad litem, and inserting in its place the following:

16 "37-4-107.

17 (a) At the time a client is admitted to any facility under this chapter, that facility shall
 18 make diligent efforts to secure the names and addresses of at least two representatives,
 19 which names and addresses shall be entered in the client's clinical record.

20 (b) The client may designate one representative; the second representative or, in the
 21 absence of designation of one representative by the client, both representatives shall be
 22 selected by the facility. If the facility is to select both representatives, it must make one
 23 selection from among the following persons in the order of listing: the client's legal
 24 guardian, the person designated by the client as a health care agent under a durable power
 25 of attorney for health care pursuant to Chapter 36 of Title 31, spouse, adult child, parent,
 26 attorney, adult next of kin, or adult friend. The second representative shall also be selected
 27 from the above list but without regard to the order of listing, provided that the second
 28 representative shall not be the person who filed the petition seeking an order for the client
 29 to receive services from the department.

30 (c) If the facility is unable to secure at least two representatives after diligent search ~~or if~~
 31 ~~the department is the guardian of the client,~~ that fact shall be entered in the client's clinical
 32 record ~~and the facility shall apply to the court in the county of the client's residence for the~~
 33 ~~appointment of a guardian ad litem, which guardian ad litem shall not be the department.~~
 34 ~~On application of any person or on its own motion, the court may also appoint a guardian~~
 35 ~~ad litem for a client for whom two representatives have been named whenever the~~
 36 ~~appointment of a guardian ad litem is deemed necessary for protection of the client's rights.~~

1 ~~Such guardian ad litem shall act as representative of the client on whom notice is to be~~
2 ~~served under this chapter and shall have the powers granted to representatives by this~~
3 ~~chapter.~~

4 (d) In the event of any hearings under this chapter, if the client does not have at least two
5 designated representatives, or if the department is the guardian of the client, the facility
6 shall apply to the court in the county of the client's residence for the appointment of a
7 guardian ad litem, which guardian ad litem shall not be the department. On application of
8 any person or on its own motion, the court may also appoint a guardian ad litem for a client
9 for whom two representatives have been named whenever the appointment of a guardian
10 ad litem is deemed necessary for protection of the client's rights. Such guardian ad litem
11 shall act as representative of the client on whom notice is to be served under this chapter
12 and shall have the powers granted to representatives by this chapter. In every instance in
13 which a court shall appoint a guardian ad litem for any person pursuant to the terms of this
14 chapter, such guardianship shall be for the limited purpose stated in the order of the court
15 and shall expire automatically after 90 days or after a lesser time stated in the order. The
16 responsibility of the guardian ad litem shall not extend beyond the specific purpose of the
17 appointment, including representation of the client's interests during the hearing and
18 implementation of any court orders.

19 (e) At any time notice is required by this chapter to be given to the client's representatives,
20 such notice shall be served on the representatives designated under this Code section. The
21 client's guardian ad litem, if any, shall likewise be served. Unless otherwise provided,
22 notice may be served in person or by ~~first class~~ first-class mail. When notice is served by
23 mail, a record shall be made of the date of mailing and shall be placed in the client's
24 clinical record. Service shall be completed upon mailing.

25 ~~(e)(f)~~ At any time notice is required by this chapter to be given to the client, the date on
26 which notice is given shall be entered on the client's clinical record. If the client is unable
27 to comprehend a written notice, a reasonable effort shall be made to explain the notice to
28 him. In the event that the client lacks the capacity to consent to treatment or habilitation
29 services under the individualized program plan and the client does not have a guardian or
30 health care agent, any other designated representative, except the client's attorney or adult
31 friend, is authorized to provide consent for such treatment or habilitation services,
32 including behavioral interventions contained in the client's individualized program plan.
33 In the event the client lacks the capacity to consent to treatment or habilitation services
34 under the individualized program plan and the client does not have a guardian, health care
35 agent, or other designated representative, the facility shall notify the Division of Family
36 and Children Services of the Department of Human Resources and shall file or cause to be
37 filed a petition for appointment of a guardian for the client.

1 ~~(f)(g)~~ At the time a court enters an order pursuant to this chapter, such order and notice of
 2 the date of entry of the order shall be served on the client and his representatives as
 3 provided in subsection (d) of this Code section. At any time notice is required by this
 4 chapter to be given to the client's representatives, such notice shall be served on the
 5 representatives designated under this Code section. The client's guardian ad litem, if any,
 6 shall likewise be served. Unless otherwise provided, notice may be served in person or by
 7 first class mail. When notice is served by mail, a record shall be made of the date of
 8 mailing and shall be placed in the client's clinical record. Service shall be completed upon
 9 mailing.

10 ~~(g)(h)~~ Notice of a client's admission to a facility shall be given to his representatives in
 11 writing. At any time notice is required by this chapter to be given to the client, the date on
 12 which notice is given shall be entered on the client's clinical record. If the client is unable
 13 to comprehend a written notice, a reasonable effort shall be made to explain the notice to
 14 him or her.

15 ~~(h)(i)~~ In every instance in which a court shall appoint a guardian ad litem for any person
 16 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose
 17 stated in the order of the court and shall expire automatically after 90 days or after a lesser
 18 time stated in the order. The responsibility of the guardian ad litem shall not extend beyond
 19 the specific purpose of the appointment. At the time a court enters an order pursuant to this
 20 chapter, such order and notice of the date of entry of the order shall be served on the client
 21 and his or her representatives as provided in subsection (e) of this Code section.

22 (j) Notice of a client's admission to a facility shall be given to his or her representatives
 23 in writing."

24 SECTION 4.

25 Said chapter is further amended by striking Code Section 37-4-122, relating to client's care
 26 and treatment rights, and inserting in its place the following:

27 "37-4-122.

28 (a) Each client in a facility and each person receiving services for mental retardation shall
 29 receive habilitation that is suited to his or her needs and is the least restrictive appropriate
 30 habilitation. Such habilitation shall be administered skillfully, safely, and humanely with
 31 full respect for his or her dignity and personal integrity.

32 (b) In order to assure proper habilitation, it shall be the duty of the superintendent or
 33 regional state hospital administrator of a facility to ensure that each client receives such
 34 medical attention as is suitable to his or her condition.

35 (c) Each client shall have the right to participate in his or her habilitation. Treatment,
 36 habilitation services, and behavioral interventions described in the individualized program

1 plan may be provided upon the consent of the client having capacity to consent or, if
 2 applicable, his or her guardian, health care agent, or representative as described in
 3 subsection (f) of Code Section 37-4-107. The department shall issue regulations to ensure
 4 that each client participates in his or her habilitation to the maximum extent possible.
 5 Unless the disclosure to the client is determined by the superintendent or regional state
 6 hospital administrator or person having charge of the client's habilitation to be detrimental
 7 to the physical or mental health of the client and unless a notation to that effect is made a
 8 part of the client's record, the client shall have the right to reasonable access to review his
 9 or her medical file, to be told his or her diagnosis, to be consulted on the habilitation
 10 recommendation, and to be fully informed concerning his or her medication, including its
 11 side effects and available treatment alternatives.

12 (d) If a client admitted to a facility under this chapter is able to secure the services of a
 13 private physician or psychologist, ~~he~~ the client shall be allowed to see his or her physician
 14 or psychologist at any reasonable time. The superintendent or regional state hospital
 15 administrator is authorized and directed to establish regulations designed to facilitate
 16 examination and treatment which a client may request from such private physician or
 17 psychologist.

18 (e) Every client admitted to a facility under this chapter shall be examined by the staff of
 19 the admitting facility as soon as possible after his or her admission."

20 SECTION 5.

21 Said chapter is further amended by striking Code Section 37-4-123, relating to recognition
 22 of clients' physical integrity, rights to refuse medication, obtaining consent to treatment and
 23 surgery, performance of emergency surgery, immunity of physician, and direction of notice
 24 of actions taken under this Code section, and inserting in its place the following:

25 "37-4-123.

26 (a) It shall be the policy of this state to recognize the personal physical integrity of all
 27 clients.

28 (b) It shall be the policy of this state to protect reasonably the right of every individual to
 29 refuse medication, except in cases where a physician determines that refusal would be
 30 unsafe to the client or others. If the client continues to refuse medication after such initial
 31 emergency treatment, a concurring opinion from a second physician must be obtained
 32 before medication can be continued without the client's consent. Further, in connection
 33 with any hearing under this chapter, the client has the right to appear and testify as free
 34 from any side effects or adverse effects of the medication as is reasonably possible.

35 (b.1) Pursuant to subsection (f) of Code Section 37-4-107, the representative of a client
 36 who has no guardian or health care agent and lacks the capacity to consent to medical

1 treatment, habilitation services, or an individualized program plan shall have the authority
 2 to provide such consent for the client for so long as the client continues to lack capacity to
 3 consent. The representative shall act in good faith to consent to medical treatment,
 4 habilitation services, or an individualized program plan which the client would have
 5 wanted had the client understood the circumstances under which such treatment, services,
 6 or plan are provided.

7 (c) Any client objecting to the treatment being administered to him or her shall have a right
 8 to request a protective order pursuant to Code Section 37-4-108.

9 (d) Except as provided in subsections (b), (b.1), and (e) of this Code section, consent to
 10 medical treatment and surgery shall be obtained and regulated by Chapter 9 of Title 31.

11 (e) In cases of grave emergency where the medical staff of the facility in which a mentally
 12 retarded person has been accepted for habilitation determines that immediate surgical or
 13 other intervention is necessary to prevent serious physical consequences or death and
 14 where delay in obtaining consent would create a grave danger to the physical health of such
 15 person, as determined by at least two physicians, then essential surgery or other
 16 intervention may be administered without the consent of the person, the spouse, next of kin,
 17 ~~attorney~~, guardian, or any other person. In such cases, a record of the determination of the
 18 physicians shall be entered into the medical records of the client and this will be proper
 19 consent for such surgery or other intervention. Such consent will be valid, notwithstanding
 20 the type of admission of the client, and it shall also be valid whether or not the client has
 21 been adjudged incompetent. This Code section is intended to have application to those
 22 individuals who, as a result of their advanced age, impaired thinking, or other disability,
 23 cannot reasonably understand the consequences of withholding consent to surgery or other
 24 intervention as contemplated by this Code section. Any physician, agent, employee, or
 25 official who obtains consent or relies on such consent as authorized by this Code section
 26 and who acts in good faith and within the provisions of this chapter shall be immune from
 27 civil or criminal liability for his or her actions in connection with said obtaining or relying
 28 upon such consent. Actual notice of any action taken pursuant to this Code section shall be
 29 given to the client and the spouse, next of kin, attorney, guardian, or representative of the
 30 client as soon as practically possible."

31 SECTION 6.

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