

House Bill 1364

By: Representatives Sheldon of the 105th, Walker of the 107th, Cox of the 102nd, Graves of the 137th, and Carter of the 159th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 30 of the Official Code of Georgia Annotated, relating to handicapped
2 persons, so as to provide for assistance in matters relating to the medicare prescription drug
3 insurance plan; to provide a short title; to provide for legislative findings; to provide for
4 definitions; to provide for other related matters; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 This Act shall be known and may be cited as the "Georgia Medicare Part D Authorized
9 Decision Makers Act."

10 **SECTION 2.**

11 The General Assembly finds that:

12 (1) Some disabled adults and elder persons who need to purchase an insurance product to
13 provide for their prescription drugs lack the capacity to do so on their own and have no
14 authorized representative to do so on their behalf;

15 (2) Failure to enroll in the appropriate plan may lead to barriers to access to needed
16 medications and can have a dire effect on the health and well-being of such disabled adults
17 and elder persons;

18 (3) Certain individuals are appropriate to be authorized to act on behalf of such disabled
19 adults and elder persons to choose a Medicare Part D prescription drug plan or a Medicare
20 Advantage Plan, file drug coverage exceptions and appeals, and pursue grievances with
21 Medicare Part D plan sponsors and the federal Centers for Medicare and Medicaid Services;
22 and

23 (4) Legislative action is needed to meet the pharmaceutical needs of these disabled adults
24 and elder persons.

SECTION 3.

Title 30 of the Official Code of Georgia Annotated, relating to handicapped persons, is amended by adding a new chapter to read as follows:

"CHAPTER 5A

30-5A-1.

As used in this chapter, the term:

(1) 'Authorized representative' means:

(A) A staff member or volunteer of the state health insurance assistance program, commonly known as 'Georgia Cares';

(B) A case manager or care coordinator; and

(C) An employee of any health care provider licensed by the Department of Human Resources or of any community services provider funded by the Department of Human Resources or the Department of Community Health.

(2) 'Case manager' or 'care coordinator' means an employee, contractor, or designee of the Department of Human Resources or Department of Community Health that provides case management services to those eligible, including but not limited to: caseworkers for Medicaid eligibility, adult protective services, mental health developmental disability and addictive diseases, the Service Options Using Resources in a Community Environment Program, and the community care services program.

(3) 'Eligible person' means an individual who is eligible to receive Medicare Part D drug benefits.

(4) 'Enroll' and 'enrollment' means the act of enrolling an eligible person into a Medicare Part D Prescription Drug Plan or Medicare Advantage Plan or the act of changing plans.

(5) 'Incapable' means that the eligible person's ability to receive and evaluate information effectively or communicate decisions is impaired or diminished to such an extent that the person currently lacks the capacity to make Medicare Part D decisions as determined by an authorized representative.

(6) 'Legal representative' means:

(A) A legal guardian or conservator appointed by a court of competent jurisdiction;

(B) A legal surrogate who is a duly appointed person authorized to act, within the scope of the authority granted under the legal surrogate's appointment, such as through a statutory financial power of attorney or a durable power of attorney for health care; and

(C) Any other entity authorized in state or federal law or by order of a court of competent jurisdiction.

(7) 'Medicare Part D' refers to the national prescription drug plan for all Medicare beneficiaries created by Congress in the Medicare Modernization Act of 2003, P. L. 108-173 and implemented January 1, 2006.

(8) 'Medicare Part D decision' means a decision to enroll in or disenroll from a Medicare Part D plan or any other postenrollment decision.

(9) 'Medicare Part D Plan,' 'Medicare Prescription Drug Plan,' and 'Medicare Advantage Plan' all mean a program under contract with the federal Centers for Medicare and Medicaid Services to provide prescription drug insurance to people enrolled in the medicare program.

(10) 'Postenrollment action' or 'postenrollment decision' means determining whether and how to do any of the following within the Medicare Part D program:

(A) File a grievance;

(B) Submit a complaint to the quality improvement organization;

(C) Request and obtain a coverage determination, including exception requests and requests for expedited procedures;

(D) File and request an appeal and direct any part of the appeals process; and

(E) Disenroll from a Medicare Part D Plan.

30-5A-2.

(a) If the eligible person is incapable and has a legal representative, the legal representative shall be authorized to make Medicare Part D decisions within the scope of his or her authority as a legal representative of the eligible person.

(b)(1) If the eligible person is incapable and does not have a legal representative, an authorized representative may act on behalf of the eligible person solely for the purpose of making Medicare Part D Decisions to the extent permitted by state and federal law.

(2) The authorized representative shall provide the eligible person a written copy of the enrollment or disenrollment action taken that includes a statement that if the eligible person does not agree with the action taken by the authorized representative, the eligible person may reject the action of such person and request the assistance of a different authorized representative. In addition to providing the written information, this information may also be provided to the eligible person orally or in some other appropriate manner.

(3) Medicare Part D decisions made by an authorized representative shall be clearly guided by the eligible person's expressed wishes or in the eligible person's best interest in selecting a drug benefit that will appropriately meet the eligible person's pharmaceutical needs.

(4) An authorized representative shall not:

1 (A) Receive monetary remuneration or any other compensation from a pharmacy or
2 a Medicare Part D plan based on Medicare Part D plan enrollment or postenrollment
3 activities;

4 (B) Make Medicare Part D decisions for the sole benefit of a facility, pharmacy, or
5 plan; or

6 (C) Serve as an agent of a Medicare Part D plan."

7 **SECTION 2.**

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