

The Senate Health and Human Services Committee offered the following substitute to HB 1040:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 43-26-12 of the Official Code of Georgia Annotated, relating to
2 exceptions to the operation of the "Georgia Registered Professional Nurse Practice Act," so
3 as to provide that the performance of health maintenance activities by a designated caregiver
4 to a proxy caregiver under certain conditions shall not require licensure as a registered
5 professional nurse; to provide for definitions; to provide for related matters; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Code Section 43-26-12 of the Official Code of Georgia Annotated, relating to exceptions to
9 the operation of the "Georgia Registered Professional Nurse Practice Act," is amended by
10 revising subsection (a) as follows:
11

12 "(a) No provision in this article shall be construed to require licensure in Georgia as a
13 registered professional nurse in:

14 (1) The practice of nursing by students that is an integral part of a curriculum in a board
15 approved nursing education program leading to initial licensure;

16 (2) The rendering of assistance by anyone in the case of an emergency or disaster;

17 (3) The incidental care of the sick by members of the family, friends, or persons
18 primarily utilized as housekeepers, provided that such care does not constitute the
19 practice of nursing within the meaning of this article;

20 (4) Caring for the sick in accordance with tenets or practices of any church or religious
21 denomination which teaches reliance upon spiritual means through prayer for healing;

22 (5) The performance of auxiliary services in the care of patients when such care and
23 activities do not require the knowledge and skill required of a person practicing nursing
24 as a registered professional nurse and when such care and activities are performed under
25 orders or directions of a licensed physician, licensed dentist, licensed podiatrist, or person
26 licensed to practice nursing as a registered professional nurse;

27 (6) The practice of nursing as a registered professional nurse, by a person licensed so to
 28 practice in another state, who is employed by the United States government or any
 29 bureau, division, or agency thereof while in the discharge of that person's official duties;

30 (7) The practice of nursing as a registered professional nurse, by a person currently
 31 licensed so to practice in another state, who is employed by an individual, agency, or
 32 corporation located in another state and whose employment responsibilities include
 33 transporting patients into, out of, or through this state for a period not to exceed 24 hours;
 34 and

35 (8) The practice of nursing as a registered professional nurse by a person currently
 36 licensed so to practice in another state, who is visiting Georgia as a nonresident, in order
 37 to provide specific, nonclinical, short-term, time limited services including, but not
 38 limited to, consultation, accreditation site visits, and the participation in continuing
 39 education programs; and

40 (9)(A) The performance of health maintenance activities by a proxy caregiver pursuant
 41 to a written plan of care for a disabled individual when:

42 (i) Such individual or a person legally authorized to act on behalf of such individual
 43 has executed a written informed consent designating a proxy caregiver and delegating
 44 responsibility to such proxy caregiver to receive training and to provide health
 45 maintenance activities to such disabled individual pursuant to the written orders of an
 46 attending physician, or an advanced practice registered nurse or physician assistant
 47 working under a nurse protocol agreement or job description, respectively, pursuant
 48 to Code Section 43-34-25 or 43-34-23;

49 (ii) Such health maintenance activities are provided outside of a hospital or nursing
 50 home and are not provided by a medicare-certified home health agency or hospice
 51 organization and if alternative sources are available, Medicaid is the payor of last
 52 resort; and

53 (iii) The written plan of care implements the written orders of the attending
 54 physician, advanced practice registered nurse, or physician assistant and specifies the
 55 frequency of training and evaluation requirements for the proxy caregiver, including
 56 additional training when changes in the written plan of care necessitate added duties
 57 for which such proxy caregiver has not previously been trained. A written plan of
 58 care may be established by a registered professional nurse, or may be established by
 59 an attending physician, advanced practice registered nurse, or physician assistant.

60 Rules, regulations, and policies regarding training for proxy caregivers pursuant to this
 61 paragraph shall be promulgated by the Department of Behavioral Health and
 62 Developmental Disabilities or the Department of Community Health, as applicable.

63 (B) An attending physician, advanced practice registered nurse, or physician assistant
64 whose orders or written plan of care provide for the provision of health maintenance
65 activities to a disabled person shall not be vicariously liable for a proxy caregiver's
66 negligent performance of health maintenance activities unless the proxy caregiver is an
67 employee of the physician, advanced practice registered nurse, or physician assistant;
68 provided, however, such attending physician, advanced practice registered nurse, or
69 physician assistant may be held liable for authorizing or ordering a proxy caregiver to
70 perform health maintenance activities for a disabled individual, if the physician,
71 advanced practice registered nurse, or physician assistant failed to meet the applicable
72 standard of care in assessing the proxy caregiver's qualifications or capability of
73 performing the health maintenance activities or if the physician, advanced practice
74 registered nurse, or physician assistant failed to meet the applicable standard of care in
75 assessing whether the health maintenance activities could appropriately be performed
76 for the disabled individual outside a hospital or nursing home setting. Any person who
77 trains a proxy caregiver to perform health maintenance activities for a disabled
78 individual may be held liable for negligently training that proxy caregiver if such
79 training deviated from the applicable standard of care and was a proximate cause of
80 injury to the disabled individual.

81 (C) For purposes of this paragraph, the term:

82 (i) 'Disabled individual' means an individual that has a physical or mental impairment
83 that substantially limits one or more major life activities and who meets the criteria
84 for a disability under state or federal law.

85 (ii) 'Health maintenance activities' are limited to those activities that, but for a
86 disability, a person could reasonably be expected to do for himself or herself. Such
87 activities are typically taught by a registered professional nurse, but may be taught by
88 an attending physician, advanced practice registered nurse, physician assistant, or
89 directly to a patient and are part of ongoing care. Health maintenance activities are
90 those activities that do not include complex care such as administration of intravenous
91 medications, central line maintenance, and complex wound care; do not require
92 complex observations or critical decisions; can be safely performed and have
93 reasonably precise, unchanging directions; and have outcomes or results that are
94 reasonably predictable. Health maintenance activities conducted pursuant to this
95 paragraph shall not be considered the practice of nursing.

96 (iii) 'Proxy caregiver' means an unlicensed person who has been selected by a
97 disabled individual or a person legally authorized to act on behalf of such individual
98 to serve as such individual's proxy caregiver, provided that such person shall receive
99 training and shall demonstrate the necessary knowledge and skills to perform

100 documented health maintenance activities, including identified specialized
101 procedures, for such individual.
102 (iv) 'Training' means teaching proxy caregivers the necessary knowledge and skills
103 to perform health maintenance activities for disabled individuals. Good faith efforts
104 by an attending physician, advanced practice registered nurse, physician assistant, or
105 registered professional nurse to provide training to a proxy caregiver to perform
106 health maintenance activities shall not be construed to be professional delegation."

107 **SECTION 2.**

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