

Senate Bill 505

By: Senators Bethel of the 54th and Hamrick of the 30th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 5-6-34 and Article 2 of Chapter 9 of Title 9 of the Official Code of
2 Georgia Annotated, relating to judgments and rulings deemed directly appealable and
3 medical malpractice arbitration, respectively, so as to substantially revise the law relating to
4 arbitration of medical malpractice claims; to provide for direct appeal; to change and provide
5 for definitions; to provide for qualifications, terms, and conditions in order for a medical
6 malpractice arbitration agreement to be enforceable; to provide for persons other than a
7 patient to enter into binding arbitration on behalf of a patient; to provide for construction of
8 arbitration agreements; to provide for related matters; to provide an effective date; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and
13 rulings deemed directly appealable, is amended in subsection (a) by deleting "and" at the end
14 of paragraph (10), by replacing the period with "; and" at the end of paragraph (11), and by
15 adding a new paragraph to read as follows:

16 "(12) All judgments or orders refusing to recognize or enforce an arbitration agreement
17 for medical malpractice claims as provided for in Code Section 9-9-62."

18 **SECTION 2.**

19 Article 2 of Chapter 9 of Title 9 of the Official Code of Georgia Annotated, relating to
20 medical malpractice arbitration, is amended by revising Code Section 9-9-60, relating to the
21 definition of "medical malpractice claim," as follows:

22 "9-9-60.

23 For the purposes of this article, the term:

24 (1) 'Consumer health care transaction' means any transaction between a patient and a
25 health care provider.

26 (2) 'Health care provider' means any public or private hospital, nursing home, clinic,
 27 hospital authority, ambulatory surgery center, pharmacy, physician practice, physician,
 28 physician assistant, nurse practitioner, dialysis clinic, obstetrical facility, home health
 29 agency, hospice provider, dietitian, nurse, nursing assistant, any diagnostic, treatment, or
 30 rehabilitation center as such term is defined in Code Section 31-6-2, and any of the
 31 affiliates, members, officers, employees, agents, or partners of any of the foregoing
 32 providers. Such term specifically includes any person or entity providing the types of
 33 services described in division (3)(A)(i) of this Code section.

34 (3) 'Medical ~~medical~~ malpractice claim' means any claim for damages resulting from or
 35 derived from the death of or injury to any person arising, including claims for wrongful
 36 death and loss of consortium, when such claim:

37 (A) Arises out of:

38 (1)(i) Health, medical, dental, or surgical service, diagnosis, prescription, treatment,
 39 or care, rendered by a person authorized by law to perform such service or by any
 40 person acting under the supervision and control of a lawfully authorized person; or

41 (2)(ii) Care or service rendered by ~~any public or private hospital, nursing home,~~
 42 ~~clinic, hospital authority, facility, or institution,~~ a health care provider or by any
 43 officer, agent, or employee thereof acting within the scope of his or her employment;
 44 or

45 (B) Alleges that:

46 (i) Any services rendered by a health care provider to a patient were unnecessary or
 47 unauthorized or were improperly, negligently, or incompetently rendered;

48 (ii) A patient was injured or damaged as a result of negligent credentialing, hiring,
 49 or retention; or

50 (iii) A patient was injured or damaged as a result of a failure or breach by a health
 51 care provider to act, diagnose, or treat.

52 (4) 'Patient' means any person who contracts with a health care provider for, or who is
 53 the recipient of, health care services as identified in division (3)(A)(i) of this Code
 54 section. Such term includes any person who contracts with a health care provider for, or
 55 who is the recipient of, health care services or a recipient of services from one or more
 56 of the facilities identified in division (3)(A)(ii) of this Code section. Unless otherwise
 57 specified, such term includes a patient's agent, representative, spouse, family member,
 58 or other person who executes an arbitration agreement under the authority provided for
 59 in subsection (f) of Code Section 9-9-62."

60

SECTION 3.

61 Said article is further amended by revising Code Section 9-9-62, relating to a petition for
62 arbitration, as follows:

63 "9-9-62.

64 ~~If the parties to a medical malpractice claim agree in writing to arbitrate the claim pursuant
65 to this article, they shall file a petition in the superior court of the county where any party
66 resides for an order authorizing the arbitration of the claim in accordance with this article
67 and for the appointment of a referee for the arbitration. If the judge determines that the
68 claim is a medical malpractice claim subject to this article, within 30 days of the filing of
69 the petition for such order he shall issue an order authorizing the arbitration and appointing
70 a referee. However, no agreement to arbitrate shall be enforceable unless the agreement
71 was made subsequent to the alleged malpractice and after a dispute or controversy has
72 occurred and unless the claimant is represented by an attorney at law at the time the
73 agreement is entered into.~~

74 (a) Arbitration agreements between health care providers and patients entered into in
75 compliance with the provisions of this Code section shall be valid and enforceable and
76 shall be submitted to arbitration in accordance with the provisions of this article.

77 (b) An agreement to arbitrate medical malpractice claims that meets the following
78 qualifications shall not be deemed invalid, revokable, or unenforceable upon such grounds
79 as exist at law or in equity for the revocation of any contract:

80 (1) Be a writing signed by the patient, his or her agent, guardian, or someone with the
81 authority to act on his or her behalf, as specified in subsection (f) of this Code section;

82 (2) Be a stand-alone agreement or an addendum to an admission agreement;

83 (3) Be titled in 14 point or larger, boldface print, 'Voluntary Arbitration Agreement';

84 (4) Include a provision that the patient has the right to consult with legal counsel
85 concerning the arbitration agreement at his or her own expense;

86 (5) Include a provision that the patient has the right to rescind the arbitration agreement
87 within ten days after the arbitration agreement has been signed by the patient or his or her
88 representative;

89 (6) Identify one or more institutions to administer the arbitration agreement or a means
90 for selection of an arbitrator;

91 (7) Include a provision that the patient has the right, upon written request, to access
92 information about the designated arbitration administering institution, its rules, and its
93 fees. This requirement may be fulfilled by providing contact information, including, but
94 not limited to, a website, telephone number, and mailing address with respect to the
95 designated arbitration administering institution;

96 (8) Include a provision that the agreement shall not limit the patient's rights with respect
 97 to filing a grievance with the facility, the long-term care ombudsman, or any appropriate
 98 state or federal regulatory agency, including a nursing home resident's right to challenge
 99 a discharge under Code Section 31-8-116;

100 (9) Include a provision that the agreement shall not reduce or affect in any way the health
 101 care provider's duties and obligations with respect to the provision of care and treatment
 102 of the patient;

103 (10) Include a description of the types of claims covered by the arbitration agreement;
 104 and

105 (11) Include immediately above the signature line the following language in at least 12
 106 point boldface type: 'THIS AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS.
 107 PLEASE READ THIS AGREEMENT IN ITS ENTIRETY BEFORE SIGNING IT. THE
 108 PARTIES UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES
 109 THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS
 110 WAIVING THE RIGHT TO TRIAL BY JURY OR BY JUDGE, AND INSTEAD
 111 DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED BY BINDING
 112 ARBITRATION.'

113 (c) Patients shall be provided with a copy of the arbitration agreement and shall sign a
 114 written acknowledgment of receipt of a copy of the arbitration agreement. The signed
 115 receipt may be included as a separate signature line at the conclusion of the arbitration
 116 agreement. The signed receipt shall be conclusive proof that the patient received a copy
 117 of the arbitration agreement.

118 (d) For the convenience of the parties, unless otherwise agreed to by the parties after
 119 initiation of arbitration or as otherwise ordered in the discretion of the arbitrator, the
 120 hearing location shall be as near to the health care provider as is reasonably practicable for
 121 the parties and the arbitrator.

122 (e) The following provisions contained in an arbitration agreement shall be void and
 123 unenforceable and shall, to the greatest extent possible, be severed from the agreement
 124 rather than rendering the entire agreement void and unenforceable:

125 (1) Limitations on the amount of damages the arbitrator may award, other than a
 126 statement that the arbitrator is bound by any damage limitations which may be imposed
 127 by law;

128 (2) Limitations on the times for filing a medical malpractice claim other than limitations
 129 applicable in an arbitration agreement action for similar claims; and

130 (3) Waivers or releases of any claims or alteration of the burden of proof for any claims.

131 (f) In addition to the patient, the following persons shall be authorized and empowered to
 132 execute an arbitration agreement on the patient's behalf:

- 133 (1) A guardian of the patient's person;
 134 (2) Any person authorized to act for the patient under an advance directive for health
 135 care or durable power of attorney for health care;
 136 (3) Any person authorized to act for the patient under a general power of attorney;
 137 (4) In the absence or unavailability, for whatever reason, of a person authorized pursuant
 138 to paragraphs (1) through (3) of this subsection, any married person for his or her spouse;
 139 (5) In the absence or unavailability, for whatever reason, of a person authorized pursuant
 140 to paragraphs (1) through (4) of this subsection, any adult child for his or her parent;
 141 (6) In the absence or unavailability of a living spouse, any parent, whether an adult or
 142 a minor, for his or her minor child;
 143 (7) Any person temporarily standing in loco parentis, whether formally serving or not,
 144 for the minor under his or her care;
 145 (8) Any female, regardless of age or marital status, for herself when given in connection
 146 with pregnancy, or the prevention thereof, or childbirth; and
 147 (9) Upon the inability of a patient to consent for himself or herself to an arbitration
 148 agreement, the following persons shall be authorized to execute an arbitration agreement
 149 on the patient's behalf, in the following order of priority:
- 150 (A) Any parent for his or her adult child;
 - 151 (B) Any adult for his or her brother or sister;
 - 152 (C) Any grandparent for his or her grandchild;
 - 153 (D) Any adult grandchild for his or her grandparent; or
 - 154 (E) Any adult niece, nephew, aunt, or uncle of the patient who is related to the patient
 155 in the first degree.
- 156 (g) If the patient or his or her representative under subsection (f) of this Code section is
 157 unable to read or to physically sign an arbitration agreement, the agreement may be read
 158 to them or to a person assisting the patient in signing the arbitration agreement, provided
 159 that a witness signs the agreement.
- 160 (h) If a person specified in subsection (f) of this Code section signs an arbitration
 161 agreement, the patient shall be deemed to have ratified such agreement upon the patient's
 162 receipt of services from the health care provider.
- 163 (i) If the designated arbitration administering institution or such alternative institutions
 164 designated in the arbitration agreement are unavailable for any reason and if there is no
 165 other method available for selecting an arbitrator under the arbitration agreement, then
 166 upon petition of either party, a substitute arbitration administering institution shall be
 167 appointed by a court of competent jurisdiction and such substitute arbitration administering
 168 institution shall select an arbitrator pursuant to its policies or agreement of the parties. No

169 arbitration agreement otherwise consistent with this Code section shall fail for want of an
 170 administering institution or arbitrator.

171 (j) Unless rescinded within ten days following its execution, an arbitration agreement
 172 consistent with this Code section shall remain effective and govern the consumer health
 173 care transaction for which the contract was signed and all reasonably related consumer
 174 health care transactions between the parties, including courses of treatment for an illness
 175 or injury. If a patient is formally discharged from a health care provider, a new arbitration
 176 agreement shall be required to cover any subsequent consumer health care transactions
 177 between the parties; provided, however, that short-term transfers out of a health care
 178 facility for consultations, therapeutic leaves of absence, or otherwise with the expectation
 179 of return shall not trigger a requirement for a new arbitration agreement, and any existing
 180 arbitration agreement shall remain in effect upon the patient's return to the health care
 181 facility.

182 (k) The mutual obligations to arbitrate by each party shall constitute adequate
 183 consideration for the enforcement of an arbitration agreement under this Code section.

184 (l) The provisions of this Code section shall be interpreted and applied at all times so as
 185 to favor the existence and enforcement of an arbitration agreement. An arbitration
 186 agreement that complies with this Code section shall be enforceable under 9 U.S.C.
 187 Sections 1-16, the Federal Arbitration Act, or under this article, and this Code section shall
 188 be interpreted to the greatest extent possible so as to harmonize with the Federal
 189 Arbitration Act.

190 (m) Upon the filing of a motion to compel arbitration in a court of this state, all discovery
 191 and all proceedings not related to the determination of arbitrability shall be automatically
 192 stayed until such time as such motion to compel is resolved.

193 (n) Any arbitration agreement pertaining to a consumer health care transaction already in
 194 effect as of the effective date of this Code section shall not be invalidated by this Code
 195 section."

196 **SECTION 4.**

197 Said article is further amended by repealing in their entirety Code Sections 9-9-63 through
 198 9-9-83, respectively relating to the tolling of statute of limitations and when action permitted
 199 after filing of petition for arbitration; appointment of reporter, duties, and compensation;
 200 arbitration submission and irrevocability absent consent; qualifications and status of referee;
 201 arbitrators - how chosen; arbitrators - how vacancy filled; arbitrators - oath and affidavit;
 202 postponement of arbitration; adjournments by arbitrators and no meeting outside group;
 203 discovery; subpoena power of referee and compensation of witnesses; powers of referee to
 204 compel production of documentary evidence; competency of witnesses; rules governing

205 examination of witnesses and admission of evidence; administration of oaths by referee;
206 findings by arbitrators and the concurrence of two sufficient; copy of findings furnished
207 parties, entry of original on court's minutes, effect and enforcement, and clerk's fees; finality
208 of findings absent appeal, appeals to superior courts, transmittal of record, when findings set
209 aside, disposition of case, and supersedeas; costs and how taxed; compensation of arbitrators
210 and referee; and civil and criminal immunity of arbitrators.

211 **SECTION 5.**

212 This Act shall become effective upon its approval by the Governor or upon its becoming law
213 without such approval.

214 **SECTION 6.**

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