

The Senate Committee on Judiciary offered the following substitute to HB 470:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 24 of the Official Code of Georgia Annotated, relating to
2 medical and other confidential information, so as to allow for voluntary open
3 communications related to healthcare under rules of evidence; to provide for definitions; to
4 provide that certain open communications shall not be subject to future disclosure; to provide
5 for a short title; to provide for related matters; to amend Chapter 33 of Title 31 of the Official
6 Code of Georgia Annotated, relating to health records, so as to revise definitions; to revise
7 provisions relating to the furnishing of copies of health records; to revise provisions relating
8 to the costs of furnishing health records; to provide for related matters; to provide for an
9 effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA

11 PART I

12 SECTION 1-1.

13 This part shall be known and may be cited as the "Georgia Candor Act."

SECTION 1-2.

Chapter 12 of Title 24 of the Official Code of Georgia Annotated, relating to medical and other confidential information, is amended by adding a new article to read as follows:

"ARTICLE 5

24-12-40.

As used in this article, the term:

(1) 'Additional people' means attorneys, insurance representatives, family members, friends, or facilitators.

(2) 'Adverse healthcare incident' means an objective and definable outcome arising from or related to patient care that results in the death or injury of a patient.

(3) 'Health facility' means a facility, hospital, institution, or other healthcare related business entity with a permit or license issued by the Department of Community Health pursuant to Title 31.

(4) 'Healthcare provider' means any person who is licensed, certified, registered, or otherwise permitted by the laws of this state to administer healthcare in the ordinary course of business or in the practice of a profession. Such term shall include a professional corporation, limited liability company, or limited liability partnership organized pursuant to the laws of this state for the practice of a healthcare profession.

(5) 'Open discussion' means the process in which the healthcare provider, health facility, or the healthcare provider jointly with the health facility, communicate or facilitate communication with the patient regarding an adverse healthcare incident and related matters.

(6) 'Open discussion communications' means:

(A) All communications that are made in the course of an open discussion, including but not limited to: agreements, records, memoranda, work product, documents, offers

of compensation, compensation, and other materials that are prepared for, or submitted in the course of, or in connection with open discussion.

(B) Such term shall not include: communication, agreements, records, memoranda, work product, documents, offers of compensation, or compensation, that were not prepared specifically for use in an open discussion and are otherwise subject to discovery, or other such materials.

(7) 'Open discussion invitation' means written notice of the desire of the healthcare provider, the health facility, or of the healthcare provider jointly with the health facility, to enter into an open discussion.

(8) 'Patient' means a person who receives healthcare from a healthcare provider or health facility; the person's legal representative if the person is an unemancipated minor under the age of 18, incapacitated, or deceased; or the parties recognized as entitled to bring action for wrongful death under Chapter 4 of Title 51 if the patient is deceased.

(9) 'Pro se notice' means the following written notice, in at least 16 point Arial font and placed at least two inches apart from any other text:

'Right to Your Own Attorney

The healthcare provider and health facility are not permitted to provide you any legal advice.

You have the right to have an attorney of your choice represent and advise you regarding an offer of compensation. You are strongly encouraged to seek representation by an attorney to ensure your rights, interests, and legal obligations are protected.

Please be informed that receipt of compensation without adequate and appropriate legal protections in place may make you ineligible or disqualify you from Medicaid or other means tested benefits, now or in the future.

Please also be informed that you may be legally required to repay medical and other expenses that were paid by a third party, including private health insurance, Medicare, or Medicaid.

A legal representative may be required to be appointed by a probate court in order to negotiate, approve, or accept, any compensation or resolution where the patient is deceased, is a minor child, or an incapacitated adult.'

24-12-41.

(a) If an adverse healthcare incident occurs, a healthcare provider, health facility, or healthcare provider jointly with a health facility, involved in the adverse healthcare incident, may provide the patient with an open discussion invitation.

(b) A healthcare provider or health facility that chooses to provide an open discussion invitation shall send the open discussion invitation within 150 days after the date on which the healthcare provider or health facility knew, or through the use of diligence should have known, of the adverse healthcare incident.

(c) An open discussion invitation shall include:

(1) A reference to Code Section 31-33-2 and 45 C.F.R. 164.524 with an explanation of the patient's right to receive a complete and certified copy of his or her medical records within 30 days of request, and of his or her right to authorize the release of his or her medical records to any other person designated by the patient;

(2) A reference to Code Sections 9-3-71, 9-3-72, and 9-3-73, as applicable, with notice that the time for a patient to bring a lawsuit is limited and will not be extended merely by engaging in an open discussion;

(3) If a healthcare provider or health facility is a state, county, or municipal government entity, or an officer or employee of such state, county, or municipal government entity, a reference to Code Section 36-11-1, 36-33-5, or 50-21-26, as applicable, together with

the statement that the deadline for filing the ante litem notice required under any such Code section is limited and cannot be extended; and
(4) A separate written notice, in at least 16 point Arial font and placed at least two inches apart from any other text, stating the following:

'Right to Your Own Attorney

You have the right to have an attorney of your choice present throughout the open discussion process. You are strongly encouraged to seek representation by an attorney to ensure that your rights, interests, and legal obligations are protected throughout the open discussion process, including any resolution and any necessary court approval.

Please know if you choose to engage in an open discussion, all communications made in the course of the open discussion, including the open discussion invitation, are:

(A) Privileged and confidential;

(B) Not subject to discovery, subpoena, or other means of legal compulsion for release; and

(C) Not admissible as evidence in a proceeding arising out of the adverse healthcare incident, including a judicial, administrative, or arbitration proceeding.

Communications not prepared specifically for use in the open discussion are admissible in any subsequent legal action, subject to the rules of evidence.'

(d) An open discussion invitation to the patient that fails to comply with subsection (c) of this Code section shall:

(1) Be admissible and shall not have the legal protections set forth in subsections (a) and (d) of Code Section 24-12-43; and

(2) Make any resolution with the patient voidable by the patient.

(e) If the patient agrees in writing to engage in an open discussion under this article:

(1) The patient, healthcare provider, or health facility engaged in the open discussion may include additional people in the open discussion, provided the healthcare provider or health facility participating in the open discussion process shall have the duty to:

(A) Advise all additional people in writing of the nature of communications made in accordance with this article as specified in Code Section 24-12-43; and

(B) Have each execute a written acknowledgment of the advisement provided for in subsection (c) of this Code section;

(2) The healthcare provider or health facility shall:

(A) Investigate how the adverse healthcare incident occurred and gather information regarding the medical care or treatment provided and disclose the results of such investigation to the patient; and

(B) In the event of an offer of compensation as provided in Code Section 24-12-42, disclose the results of such investigation to the patient prior to or at the same time as such offer of compensation;

(3) If applicable, provide the patient the steps the healthcare provider or health facility will take to prevent future occurrences of the adverse healthcare incident; and

(4) If applicable, where the patient is not represented by an attorney, the statute of limitations for a claim related to an adverse healthcare incident forming the basis of the open discussion and any applicable ante litem provision shall be tolled for any healthcare provider or health facility that participates in open discussion to the date of resolution of the open discussion or the date the patient retains an attorney regarding the adverse healthcare incident, whichever occurs first; provided, however, that such tolling shall

138 only begin one year from the date the patient knew of the adverse healthcare incident, or,
139 through the use of diligence, should have known of the adverse healthcare incident.

140 24-12-42.

141 (a) If a healthcare provider or health facility determines that an offer of compensation is
142 warranted, the healthcare provider or health facility shall provide the patient with a written
143 offer of compensation within 60 days of the date of the patient agreeing in writing to
144 engage in an open discussion, unless the parties otherwise agree to an extension in writing.

145 (b) When a healthcare provider or health facility desires to make an offer of compensation
146 under subsection (a) of this Code section and the patient is not represented by an attorney,
147 such healthcare provider or health facility shall provide such patient a pro se notice prior
148 to making an offer of compensation, and failure to comply with this subsection shall:

149 (1) Result in the offer of compensation being admissible and not having the legal
150 protections set forth in subsections (a) and (d) of Code Section 24-12-43; and

151 (2) Make any resolution with the patient voidable by the patient.

152 (c) Except for an offer of compensation under subsection (a) of this Code section, open
153 discussion communications between the healthcare provider or health facility and the
154 patient about the compensation offered under subsection (a) of this Code section shall not
155 be in writing.

156 (d) Any compensation made by a healthcare provider or health facility to a patient under
157 this article shall not be construed as compensation resulting from:

158 (1) A written claim or demand for payment; or

159 (2) A medical malpractice claim, judgment, arbitration award, or settlement.

160 (e) As a condition of an offer of compensation under this Code section, a healthcare
161 provider or health facility may require a patient to execute all documents and obtain any
162 necessary court approval to resolve an adverse healthcare incident.

24-12-43.

(a) An open discussion invitation in compliance with subsection (c) of Code Section 24-12-41 and open discussion communications:

(1) Shall not constitute an admission of liability;

(2) Are privileged and confidential and shall not be disclosed;

(3) Are not admissible as evidence in any subsequent judicial, administrative, or arbitration proceeding arising out of the adverse healthcare incident;

(4) Are not subject to discovery, subpoena, or other means of legal compulsion for release; and

(5) Shall not be disclosed by any party or person in any subsequent judicial, administrative, or arbitration proceeding arising out of the adverse healthcare incident.

(b) The decision of a healthcare provider or health facility to not send an open discussion invitation or to not make an offer of compensation to a patient shall not be admissible in any subsequent judicial, administrative, or arbitration proceeding arising out of the adverse healthcare incident and shall not be grounds for the recovery of attorney's fees and expenses of litigation.

(c) This Code section shall not be construed to:

(1) Require the exclusion of any evidence otherwise discoverable merely because it is presented or learned of in the course of an open discussion; or

(2) Create a valid objection to a discovery request of otherwise discoverable information under Code Section 9-11-26 merely because the subject matter of such discovery request was presented or learned of during open discussion.

(d) The limitation on disclosure imposed by subsection (a) of this Code section includes such disclosure during any discovery conducted as part of a subsequent adjudicatory proceeding arising out of the adverse healthcare incident, and a court or other adjudicatory body shall not compel any party or person who engages in open discussion under this

189 article to disclose the open discussion invitation or the open discussion communications
190 made pursuant to this article.

191 (e) This Code section shall not be construed to affect any other law, rule, or requirement
192 with respect to confidentiality or privilege.

193 24-12-44.

194 (a) A healthcare provider or health facility that participates in open discussion under this
195 article may provide de-identified information about an adverse healthcare incident to any
196 patient safety centered nonprofit organization for use in patient safety research and
197 education.

198 (b) Disclosure of de-identified information under subsection (a) of this Code section:

199 (1) Does not constitute a waiver of the privilege specified in Code Section 24-12-43; and

200 (2) Is not a violation of the confidentiality requirements of Code Section 24-12-43.

201 24-12-45.

202 No person or entity, whether the patient, a healthcare provider, or a health facility, shall be
203 compelled to participate in the open discussion. Participation is strictly voluntary, and no
204 employer may exert pressure or coercion of any kind on an employee for participation.
205 Any employee who is asked to participate shall also be given access, at the employer's
206 expense, to an independent attorney for consultation. All participants have a right to have
207 an attorney with them during the open discussion. Any participants may disengage at any
208 time before a resolution."

PART II

SECTION 2-1.

Chapter 33 of Title 31 of the Official Code of Georgia Annotated, relating to health records, is amended by revising the definitions in Code Section 31-33-1, as follows:

"31-33-1.

As used in this chapter, the term:

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

(2) 'Provider' means all hospitals, including public, private, osteopathic, and tuberculosis hospitals; other special care units, including podiatric facilities, skilled nursing facilities, and kidney disease treatment centers, including freestanding hemodialysis units; intermediate care facilities; ambulatory surgical or obstetrical facilities; health maintenance organizations; ~~and~~ home health agencies; diagnostic testing and imaging centers; and surgery centers. It shall also mean any person licensed to practice under Chapter 9, 11, 26, 34, 35, or 39 of Title 43, including any health care entity where such person rendered treatment, care, or testing.

(3) 'Record' means a patient's health record, including, but not limited to, evaluations, diagnoses, prognoses, laboratory reports, biopsy slides, X-rays, prescriptions, and other such items or technical information used in assessing the patient's condition, or the pertinent portion of the record relating to a specific condition or a summary of the record, or medical bills for health care services provided to the patient by the provider."

SECTION 2-2.

Said chapter is further amended by revising subsections (a) and (b) of Code Section 31-33-2, relating to furnishing copy of health records, and adding a new subsection as follows:

"(a)(1)(A) A provider having custody and control of any ~~item evaluation, diagnosis, prognosis, laboratory report, or biopsy slide~~ in a patient's record shall retain such item for a period of not less than ten years from the date such item was created.

(B) The requirements of subparagraph (A) of this paragraph shall not apply to:

(i) An individual provider who has retired from or sold his or her professional practice if such provider has notified the patient of such retirement or sale and offered to provide such items in the patient's record or copies thereof to another provider of the patient's choice and, if the patient so requests, to the patient; or

(ii) A hospital which is an institution as defined in subparagraph (A) of paragraph (4) of Code Section 31-7-1, which shall retain patient records in accordance with rules and regulations for hospitals as issued pursuant to Code Section 31-7-2.

(2) Upon written request from the patient or a person authorized to have access to the patient's record under an advance directive for health care, a psychiatric advance directive, or a durable power of attorney for health care for such patient, the provider having custody and control of the patient's record shall furnish a complete and current copy of that record, in accordance with the provisions of this Code section. If the patient is deceased, such request may be made by the following persons:

(A) The executor, administrator, or temporary administrator for the decedent's estate if such person has been appointed;

(B) If an executor, administrator, or temporary administrator for the decedent's estate has not been appointed, by the surviving spouse;

(C) If there is no surviving spouse, by any surviving child; and

(D) If there is no surviving child, by any parent.

~~(b)(1)~~ Any record requested under subsection (a) of this Code section shall within 30 days of the receipt of a request for records be furnished to the patient, any other provider designated by the patient, any person authorized by paragraph (2) of subsection (a) of this

Code section to request a patient's or deceased patient's medical records, or any other person designated by the patient;

(2) Such record shall be furnished in electronic form, if so requested, to the extent the provider retains the record in electronic form, and provide the remainder, if any, within a reasonable time not to exceed ten days after the date the record in electronic form was due; and

(3) Such record request shall be accompanied by:

~~(1)~~(A) An authorization in compliance with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations implementing such act; and

~~(2)~~(B) A signed written authorization as specified in subsection ~~(d)~~(e) of this Code section.

(c) Receipt of a request for records shall be deemed conclusive by any of the following:

(1) A signed return receipt for certified mail correctly addressed;

(2) Confirmation of email or facsimile transmission to the correct email address or telephone number, or

(3) Proof of delivery via overnight delivery service.

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

~~(d)~~(e) A provider shall not be required to release records in accordance with this Code section unless and until the requesting person has furnished the provider with a signed written authorization indicating that he or she is an authorized person entitled ~~authorized~~ to have access to the patient's records ~~by paragraph (2) of subsection (a) of~~ pursuant to this Code section. Any provider shall be justified in relying upon such written authorization.

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

SECTION 2-3.

Said chapter is further amended by revising Code Section 31-33-3, relating to the cost of copying and mailing health records, as follows:

"31-33-3.

(a)(1) ~~Except as provided in subsection (d) of this Code section, the~~ The party requesting the patient's records shall be responsible to the provider for the costs of ~~copying and mailing producing the patient's record, and payment of such costs may be required by the~~ provider prior to the records being furnished.

~~(2)(A) A charge of up to \$20.00 may be collected for search, retrieval, and other direct administrative costs related to compliance with the such request under this chapter. A fee for certifying the medical records may also be charged not to exceed \$7.50 for each record certified.~~ A fee for certifying all records produced pursuant to a request may also be charged not to exceed \$7.50;

~~(B) The actual cost of postage incurred in mailing the such requested records may also be charged. In addition, the;~~

~~(C) The copying production costs for such a record which is in paper form shall not exceed;~~

~~(i) \$.75 per page for the first 20 pages of the patient's records which are copied produced;~~

~~(ii) \$.65 per page for pages 21 through 100; and~~

~~(iii) \$.50 for each page copied produced in excess of 100 pages; and~~

~~(D) The provider shall, upon request, provide a cost estimate before producing such records.~~

(E) Notwithstanding any other provision of this Code section to the contrary, for records requested to be furnished in electronic form, and to the extent the provider retains such records in electronic form, a provider may charge:

(i) A fee not to exceed \$20 for search, retrieval, or other direct administrative costs related to compliance with such request;

(ii) A fee not to exceed \$7.50 for certifying all records produced pursuant to a request; and

(iii) A per-page fee as provided under subparagraph (C) of this paragraph.

(F) Notwithstanding any other provisions of this Code section to the contrary, the fees allowed under this Code Section may not exceed the limits imposed by federal law.

(b) All of the fees allowed by this Code section may be adjusted annually in accordance with the medical component of the consumer price index. The Department of Community Health shall be responsible for calculating this annual adjustment, which will become effective on July 1 of each year.

(c) To the extent the request for medical records includes portions of records which are not in paper or electronic form, including but not limited to radiology films, models, or fetal monitoring strips, the provider shall:

(1) Be ~~be~~ entitled to recover the full reasonable cost of such reproduction; and

(2) Upon request, provide a cost estimate before producing such records.

~~Payment of such costs may be required by the provider prior to the records being furnished.~~

(d) Notwithstanding any provision to the contrary, no provider shall charge a fee for record requests made ~~This subsection shall not apply to records requested~~ in order to make or complete an application for a disability benefits program.

~~(b)~~(e) The rights granted to a patient or other person under this chapter are in addition to any other rights such patient or person may have relating to access to a patient's records; however, nothing in this chapter shall be construed as granting to a patient or person any

336 right of ownership in the records, as such records are owned by and are the property of the
337 provider.
338 ~~(c)~~(f) This Code section shall apply to psychiatric, psychological, and other mental health
339 records of a patient."

340 **PART III**
341 **SECTION 3-1.**

342 This Act shall become effective on July 1, 2023.

343 **SECTION 3-2.**
344 All laws and parts of laws in conflict with this Act are repealed.