

Senate Bill 269

By: Senators Hatchett of the 50th, Watson of the 1st and Kirkpatrick of the 32nd

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 3 of Title 37 of the Official Code of Georgia Annotated, relating to
2 examination, treatment, etc., for mental illness, so as to provide certain procedures and
3 notifications for involuntary outpatient commitments; to provide for a definition; to provide
4 for a nurse examiner to determine and certify that a patient admitted to or examined at a
5 facility is a mentally ill person requiring involuntary treatment; to provide for a nurse
6 examiner to discharge a patient meeting outpatient care criteria; to provide for written
7 notification of certain information; to provide for obligations of referring facilities and
8 receiving facilities; to provide for a nurse examiner to update a patient's individualized
9 service plan, prepare a report, and petition the hearing examiners; to provide for related
10 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 3 of Title 37 of the Official Code of Georgia Annotated, relating to examination,
14 treatment, etc., for mental illness, is amended in Code Section 37-3-1, relating to definitions,
15 by adding a new paragraph to read as follows:

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16 "(12.05) 'Nurse examiner' means a clinical nurse specialist in psychiatric/mental health
 17 or nurse practitioner licensed or authorized to practice nursing in this state pursuant to
 18 Chapter 26 of Title 43 and approved by the department to conduct certain examinations,
 19 determinations, and certifications under Code Sections 37-3-90, 37-3-91, and 37-3-91.1."

20

SECTION 2.

21 Said chapter is further amended in Code Section 37-3-81.1, relating to disposition of patient
 22 upon hearing, by revising paragraph (2) of subsection (a) as follows:

23 "(2) That the patient is an outpatient, the court shall further determine, based upon either
 24 the individualized service plan required to be prepared under subsection (c) of Code
 25 Section 37-3-64, ~~or~~ subsection (b) of Code Section 37-3-91, or subsection (b) of Code
 26 Section 37-3-91.1 or the individualized service plan proposed by the physician or
 27 psychologist chosen by the patient, whether there is available outpatient treatment for the
 28 patient which meets the requirements of the plan chosen by the court and whether the
 29 patient will likely obtain that such treatment so as to minimize the likelihood of the
 30 patient's becoming an inpatient. If the court determines that there is such available
 31 outpatient treatment which the patient will likely obtain so as to minimize the likelihood
 32 of the patient's becoming an inpatient, then the court shall order the patient to obtain that
 33 such treatment and shall discharge the patient subject to such order;"

34

SECTION 3.

35 Said chapter is further amended in Code Section 37-3-90, relating to physician's or
 36 psychologist's determination and certification as to necessity of involuntary care, treatment
 37 of patient as inpatient or outpatient, and minors, by revising subsections (a) and (b) as
 38 follows:

39 "(a) When a physician, ~~or~~ psychologist ~~at a~~, or nurse examiner at an emergency receiving
 40 facility, evaluating facility, or treatment facility or on behalf of a such facility determines

41 and certifies under this article that there is reason to believe a patient admitted to or
 42 examined at the facility is a mentally ill person requiring involuntary treatment, ~~that such~~
 43 physician, or psychologist, or nurse examiner shall further determine and certify whether
 44 there is reason to believe the patient is:

45 (1) An inpatient or outpatient; and

46 (2) If an outpatient, whether there is available outpatient treatment.

47 (b) Unless otherwise specifically provided, the determination and certification ~~as to~~
 48 ~~paragraphs (1) and (2) of~~ pursuant to subsection (a) of this Code section shall be made
 49 within the time period required for determining whether a patient is a mentally ill person
 50 requiring involuntary treatment, ~~except that if such determination is made by a physician~~
 51 ~~or psychologist at or on behalf of a community mental health center, the determination and~~
 52 ~~certification shall be made within four hours after the patient is examined by the physician~~
 53 ~~or psychologist."~~

54 SECTION 4.

55 Said chapter is further amended by revising Code Section 37-3-91, relating to discharge of
 56 persons meeting outpatient care criteria, as follows:

57 "37-3-91.

58 (a) A person who is in the physical custody of ~~a community mental health center,~~
 59 ~~emergency receiving facility;~~ or evaluating facility and who is determined by a physician,
 60 ~~or a psychologist, or nurse examiner~~ at or on behalf of ~~that such~~ facility, to meet all of the
 61 outpatient treatment requirements ~~of paragraphs (1) and (2) of~~ provided in subsection (c)
 62 of Code Section 37-3-90 shall be discharged from ~~that such~~ facility as provided in this
 63 Code section pending a full and fair hearing or waiver thereof under Code Section 37-3-92.
 64 ~~That discharge from a community mental health center shall occur within four hours after~~
 65 ~~the patient is examined by a physician or a psychologist at or on behalf of that center. That~~
 66 Such discharge from an emergency receiving facility shall occur within 48 hours after the

67 patient's admission ~~thereto. That~~ to such facility. Such discharge from an evaluating
68 facility shall occur no later than the expiration of the five-day evaluation period established
69 under Code Section 37-3-64.

70 (b) Prior to a psychologist's or nurse examiner's discharging the patient under
71 subsection (a) of this Code section, ~~the treating such~~ psychologist or nurse examiner shall
72 obtain the concurrence of a physician. In addition, within the time period the facility is
73 authorized to retain the patient, the facility at which or on behalf of which the patient was
74 examined, which facility shall be the 'referring facility' for purposes of this part, shall
75 prepare an individualized service plan for the patient. ~~Such~~ This plan shall be prepared in
76 consultation with the facility at which available outpatient treatment is to be provided the
77 patient, which facility shall be the 'receiving facility' for purposes of this part. The
78 referring facility shall also make arrangements with the receiving facility to provide interim
79 outpatient treatment, in accordance with the individualized service plan, to the patient
80 pending the full and fair hearing or waiver thereof. Nothing in this Code section shall
81 prevent a referring facility for a patient from also being the receiving facility for ~~that~~ such
82 patient.

83 (c) Prior to discharge, the referring facility shall provide to the patient written notification
84 of:

85 (1) The time, date, place, and address for an appointment with the receiving facility;

86 (2) The consequences if the patient does not obtain the treatment or attend the
87 appointment with the receiving facility; and

88 (3) That a full and fair hearing under Code Section 37-3-92 shall be provided at a future
89 time and date unless waived.

90 (d) At any appointment during the interim outpatient treatment, the receiving facility shall
91 provide to the patient:

92 (1) A written copy of the individualized service plan for such patient; and

93 (2) Written notification of the consequences if the patient does not follow the
94 individualized service plan.

95 ~~(c) A patient for whom interim outpatient treatment is arranged pursuant to subsection (b)~~
96 ~~of this Code section shall obtain that treatment or be subject to the provisions of Code~~
97 ~~Section 37-3-82. Written notice of the time, date, place, and address for that interim~~
98 ~~outpatient treatment shall be provided the patient prior to the patient's discharge, along with~~
99 ~~written notification that if the patient does not comply with the interim outpatient treatment~~
100 ~~or attend or waive a hearing, the time and date of which hearing will later be provided the~~
101 ~~patient, the patient may be involuntarily admitted for examination, treatment, or both.~~

102 (e) Notice of the discharge shall be provided to persons other than the patient in the same
103 manner and under the same conditions as required by subsection (c) of Code
104 Section 37-3-43 and subsection (d) of Code Section 37-3-64, and that. Such notice shall
105 also include a notice regarding the interim outpatient treatment and the consequences if the
106 patient does not obtain the treatment or attend or waive the hearing.

107 ~~(d)~~(f) Within three days after a referring facility has discharged a patient pursuant to
108 subsection (a) of this Code section, ~~that~~ such facility shall transmit to the receiving facility
109 a copy of the referring facility's examination report, individualized service plan, and such
110 other necessary clinical information the referring facility may have regarding the patient.
111 Within five days after receiving such report, plan, and information, the receiving facility
112 shall petition the court of the county in which the patient is located for a full and fair
113 hearing pursuant to Code Section 37-3-92 and shall include with the petition a copy of the
114 examination report, the individualized service plan, and the address to which the patient
115 was discharged by the referring facility.

116 ~~(e)~~(g) Notwithstanding the provisions of subsection (a) of this Code section, a patient
117 detained in a treatment facility pursuant to a certificate and petition under Code
118 Section 37-3-81, whether or not ~~that~~ such patient is subsequently determined by ~~that~~ such
119 facility during the time of such detention to meet all of the outpatient treatment

120 requirements of paragraphs (1) and (2) of provided in subsection (c) of Code Section
121 37-3-90, may not be discharged from ~~that~~ such facility until a full and fair hearing is held
122 pursuant to Code Section 37-3-81.1, which hearing may not be waived by any patient so
123 determined to meet all of such outpatient treatment requirements."

124 **SECTION 5.**

125 Said chapter is further amended by adding a new Code section to read as follows:

126 "37-3-91.1.

127 (a) When a physician, psychologist, or nurse examiner on behalf of a community mental
128 health center determines and certifies under this article that there is reason to believe a
129 patient examined outside of an emergency receiving facility, evaluating facility, or
130 treatment facility is a mentally ill person requiring involuntary treatment, such physician,
131 psychologist, or nurse examiner shall further determine and certify whether there is reason
132 to believe the patient is:

133 (1) An inpatient or outpatient; and

134 (2) If an outpatient, whether there is available outpatient treatment.

135 (b) Within three days of the determination and certification that a patient is an outpatient
136 pursuant to subsection (a) of this Code section, the community mental health center at
137 which or on behalf of which the person was examined, which shall be the 'referring facility'
138 for purposes of this part, shall prepare an individualized service plan for such patient. This
139 plan shall be prepared in consultation with the facility at which available outpatient
140 treatment is to be provided the patient, which facility shall be the 'receiving facility' for
141 purposes of this part. The referring facility shall also make arrangements with the receiving
142 facility to provide interim outpatient treatment, in accordance with the individualized
143 service plan, to such patient pending the full and fair hearing or waiver thereof. Nothing
144 in this Code section shall prevent a referring facility for a patient from also being the
145 receiving facility for such patient.

- 146 (c) The referring facility shall provide to the patient written notification of:
147 (1) The time, date, place, and address for an appointment with the receiving facility;
148 (2) The consequences if the patient does not obtain the treatment or attend the
149 appointment with the receiving facility; and
150 (3) That a full and fair hearing under Code Section 37-3-92 shall be provided at a future
151 time and date unless waived.
- 152 (d) At any appointment during the interim outpatient treatment, the receiving facility shall
153 provide to the patient:
154 (1) A written copy of the individualized service plan for the patient; and
155 (2) Written notification of the consequences if the patient does not follow the
156 individualized service plan.
- 157 (e) Within three days of the determination and certification that a patient is an outpatient
158 pursuant to subsection (a) of this Code section, the referring facility shall transmit to the
159 receiving facility a copy of the referring facility's examination report, the individualized
160 service plan, and such other necessary clinical information the referring facility has
161 regarding such patient. Within five days of receiving such report, plan, and information,
162 the receiving facility shall petition the court of the county in which the patient is located
163 for a full and fair hearing pursuant to Code Section 37-3-92 and shall include with such
164 petition a copy of the examination report, the individualized service plan, and the last
165 known address for the patient.
- 166 (f) A determination and certification made pursuant to subsection (a) of this Code section
167 shall not authorize a facility to detain such patient. Nothing in this Code section shall
168 prevent a certification by a physician under Code Section 37-3-41."

169

SECTION 6.

170 Said chapter is further amended in Code Section 37-3-92, relating to hearing, notice, waiver
171 of hearing, apprehension and detention of patient failing to appear, and treatment upon
172 waiver, by revising subsection (a) as follows:

173 "(a) Except when a hearing is waived as provided in this subsection, within 30 days after
174 the filing of the petition under subsection ~~(d)~~ (f) of Code Section 37-3-91 or subsection (e)
175 of Code Section 37-3-91.1, the court shall hold a full and fair hearing. At least ten days
176 prior to ~~that~~ such hearing, the court shall have served on the patient and ~~the~~ such patient's
177 representatives the same notices and information required by paragraphs (1) through (4)
178 of subsection (a) of Code Section 37-3-81, as well as a notice that the patient may waive
179 in writing the hearing but if the patient does not either attend or waive the hearing the court
180 may order the patient to be taken into custody, hospitalized, evaluated, and treated. The
181 patient and such patient's representatives shall have the rights specified in those notices.
182 Hearings held pursuant to this subsection shall be held as provided in Code
183 Section 37-3-81.1, and the court holding the hearing may issue any order authorized by and
184 subject to the limitations of ~~that Code Section 37-3-81.1~~ such Code section."

185

SECTION 7.

186 Said chapter is further amended in Code Section 37-3-93, relating to court order for
187 outpatient treatment, physician's or psychologist's petition to extend order, review of petition,
188 hearing on extension petition, and patients under juvenile court jurisdiction, by revising
189 subsection (b) as follows:

190 "(b) If it is necessary to continue available outpatient treatment beyond the period
191 authorized pursuant to subsection (a) of this Code section, at least 60 days prior to the
192 expiration of that period the physician, ~~or psychologist,~~ or nurse examiner responsible for
193 ~~that~~ such treatment or the person responsible for the patient's treatment under the direction

194 and with approval of ~~the physician or psychologist~~ such physician, psychologist, or nurse
195 examiner shall:

196 (1) Update the patient's individualized service plan;

197 (2) Prepare a report containing evidence that the patient meets all the requirements for
198 available outpatient treatment ~~under paragraphs (1) and (2) of~~ provided in subsection (c)
199 of Code Section 37-3-90; and

200 (3) Petition the hearing examiners appointed to hold hearings under Code
201 Section 37-3-83 for an order requiring the patient to obtain available outpatient treatment
202 beyond the period previously ordered for the patient.

203 The petition shall contain a plain and simple statement that the patient or ~~the~~ such patient's
204 representatives may file a request for a hearing with a hearing examiner appointed to hold
205 hearings pursuant to Code Section 37-3-83 within 15 days after service of the petition, that
206 the patient has a right to counsel at the hearing, that the patient or ~~the~~ such patient's
207 representatives may apply immediately to the court to have counsel appointed if the patient
208 cannot afford counsel, and that the court will appoint counsel for the patient unless the
209 patient indicates in writing that ~~the patient~~ he or she does not desire to be represented by
210 counsel or has made ~~the patient's~~ his or her own arrangements for counsel."

211 **SECTION 8.**

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

214 **SECTION 9.**

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