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MENTAL HEALTH Treatment of Mentally Ill Persons / Alcoholics / Drug Abusers: Outpatient / Inpatient Procedures

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MENTAL HEALTH

Treatment of Mentally Ill Persons/Alcoholics/Drug Abusers: Outpatient/Inpatient Procedures

CODE SECTIONS:	O.C.G.A. §§ 37-3-1 (amended), 37-3-43 (amended), 37-3-44 (amended), 37-3-64 (amended), 37-3-81 (amended), 37-3-81.1 (new), 37-3-82 (amended), 37-3-83 (amended), 37-3-85 (amended), 37-3-90—37-3-95 (new), 37-7-1 (amended), 37-7-43 (amended), 37-7-44 (amended), 37-7-64 (amended), 37-7-81 (amended), 37-7-81.1 (new), 37-7-82 (amended), 37-7-83 (amended), 37-7-85 (amended), 37-7-90—37-7-95 (new)
BILL NUMBER:	SB 318
ACT NUMBER:	1554
SUMMARY:	The Act extensively revises the criteria and procedures for inpatient and outpatient commitment of mentally ill persons, alcoholics, and drug abusers. It allows physicians at community mental health facilities and state hospitals to initiate outpatient treatment for persons not meeting the inpatient criteria but requiring regular treatment to avoid the need for hospitalization. It provides procedures to remove an outpatient who fails to comply with a treatment plan to a mental health facility for treatment before his or her condition requires hospitalization.

History

Early Georgia law relating to commitment of the mentally ill provided "asylum" for "lunatics, idiots, epileptics, or demented inebriates."[1] This approach emphasized protecting society from the patient and the patient from himself or herself by isolating the patient from society. Initial reforms of the commitment procedures focused on devising court proce-

1. Ga. Code § 1353 (1882).

dures to guarantee patients' basic liberties such as the right to due process.[2]

These improvements were largely accomplished by 1900. The law remained relatively static until the middle of the century when increasing emphasis on the illness aspect of insanity and medical treatment of the patient instigated a series of sweeping changes.[3] In 1958, legislation entitled "Treatment of Mentally Ill Persons" defined a mentally ill person as one "who is afflicted with a psychiatric disorder which substantially impairs his mental health; and, because of such psychiatric disorder, requires care, treatment, training or detention in the interest of the welfare of such person or the welfare of others of the community in which such person resides."[4] This emphasis on the medical aspects is in marked contrast to the former language, which defined the mentally ill as: "Insane persons, deaf and dumb persons when incapable of managing their estates, habitual drunkards, and persons imbecile from old age or other cause and incapable of managing their estates."[5]

The 1958 law established new admission procedures which were "supplemental" to the existing commitment laws.[6] In 1960, the Legislature repealed a number of the Code sections previously governing admission procedures, replaced the 1958 Act, and emplaced procedures which focused on diagnosis, treatment, and curability of mental illness while continuing to provide for notice and due process.[7]

In 1964, procedures for hospitalization of the mentally ill were codified at Chapter 88-5 of the Georgia Health Code, and the definition of "mentally ill persons" was expanded to include "alcoholism, or drug addiction when due to or accompanied by mental illness or mental disease."[8] The 1964 enactment also addressed for the first time the possibility of outpatient treatment of the mentally ill. Section 88-512 allowed a mental hospital superintendent to put an improved patient on "convalescent status" under "a plan of treatment on an out-patient status," with continuing responsibility by the hospital.[9] However, the patient could be rehospitalized by court order upon the superintendent's recommendation. The superintendent was allowed to discharge the convalescent patient upon a

2. Neal, Rottersman & Moore, *Hospitalization of the Mentally Ill*, 23 GA. B.J. 191 (1960). For example, § 1365 of the 1882 Georgia Code provided any patient a right to demand a lunacy trial by jury.

3. *See* Ga. Code §§ 35-202—35-247 and 49-601—49-619 (1933).

4. 1958 Ga. Laws 697, 698.

5. Ga. Code § 49-601 (1933). The definition in the 1958 law also contrasted with the then current law governing the admission and discharge of patients at the Milledgeville State Hospital. *See* Ga. Code § 35-202 (1933) ("lunatics, epileptics, idiots and demented inebriates may become inmates of the hospital").

6. 1958 Ga. Laws 697, 700-05.

7. 1960 Ga. Laws 837.

8. 1964 Ga. Laws 499, 531.

9. *Id.* at 541.

determination that no further hospitalization was required.[10]

The Georgia Health Code created by the 1964 Act established a separate Code Chapter 88-4 to address the treatment of alcoholics,[11] but it did not address drug dependency or drug abuse. The Code's separate coverage of mental illness and alcohol abuse has continued to the present.

New legislation in 1969 redefined "mentally ill" as "having a psychiatric disorder which substantially impairs the person's mental health,"[12] and criteria for involuntary hospitalization were met "if [a person was] mentally ill and [was] (a) likely to injure himself or others if not hospitalized or (b) incapable of caring for his physical health and safety."[13] The provisions for outpatient treatment of patients on "convalescent status" were described in greater detail but were largely unchanged.[14] The 1969 Act emphasized patient rights and established procedures for voluntary and involuntary admission which remained essentially the same for the next nine years.[15]

In 1971 the Legislature amended Chapter 88-4, comprehensively revising the provisions for hospitalization and discharge of alcoholics and drug abusers.[16] The revisions recognized drug dependence, drug abuse, and alcoholism as "illnesses subject to treatment and improvement and the sufferer . . . as one worthy of hospitalization, treatment, and rehabilitation."[17] The 1971 Act established provisions to protect patient rights and procedures for voluntary and involuntary admission which were similar to those found in Chapter 88-5 relating to the mentally ill.[18]

The 1978 Legislature extensively revised both Chapters 88-4 and 88-5 and made their respective provisions completely parallel in content and structure.[19] Changes in both chapters reflected a new emphasis and direction, providing that "[i]t is the policy of the State that the *least restrictive* alternative placement be secured for every patient at every stage of his medical treatment and care. It shall be the duty of the facility to assist the patient in securing placement in noninstitutional community facilities and programs."[20] This policy is still in effect and is presently codified at O.C.G.A. §§ 37-3-161 and 37-7-161.[21]

These enactments provided increased impetus for outpatient treatment. Both required a hearing to determine whether a patient retained in

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10. *Id.*
11. *Id.* at 523.
12. 1969 Ga. Laws 505.
13. *Id.* at 507. *Compare supra* text accompanying footnotes 4, 5, & 9.
14. *Id.* at 525.
15. *Id.* at 519-35.
16. *Id.* at 531. *Compare supra* text accompanying footnote 10.
17. 1971 Ga. Laws 273.
18. *Id.* at 277.
19. 1978 Ga. Laws 1856; 1978 Ga. Laws 1789.
20. 1978 Ga. Laws 1856, 1874; 1978 Ga. Laws 1789, 1806 (emphasis supplied).
21. O.C.G.A. §§ 37-3-161, 37-7-161 (1982).

an evaluation facility was mentally ill and in need of involuntary treatment. If the court found affirmatively, it then determined whether an alternative to hospitalization existed which also involved an outpatient service plan reasonably expected to be effective. If so, the court ordered the patient to follow the outpatient plan.[22]

If the patient failed to comply with the service plan or if his or her condition deteriorated so that hospitalization became the least restrictive alternative, the treating physician or the facility's chief medical officer could petition the court for an order to have the patient taken into custody and delivered and admitted to a treatment facility pending a required hearing.[23]

The next significant revision to the involuntary admission and treatment procedures for mentally ill persons, alcoholics, or drug abusers occurred in 1985.[24] The 1985 enactment, which revised corresponding sections in both Chapters 3 and 7 of Code Title 37, constituted the initial and interim steps toward creating a viable, involuntary outpatient treatment alternative to hospitalization.[25] It provided that a mentally ill person, an alcoholic, or a drug dependent individual admitted to an emergency facility could be detained for up to forty-eight hours, instead of the previously permitted twenty-four.[26] It amended O.C.G.A. §§ 37-3-81(c), (d) and 37-7-81(c), (d) to allow for the involuntary outpatient treatment of a person already institutionalized; such outpatient treatment was limited to a period of six months or less.[27]

The 1985 revisions were consistent with the policy of selecting the least restrictive alternative, but they were limited in scope. As these revisions were being implemented, the Legislature continued to draft a comprehensive bill that would make enforceable involuntary outpatient treatment available for patients who were not already institutionalized, and that would allow a non-complying outpatient to be brought into the community center for treatment before his or her condition deteriorated to the point of requiring hospitalization. When enacted, SB 318 absorbed and replaced the 1985 amendments.[28]

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22. 1978 Ga. Laws 1856, 1884-85; 1978 Ga. Laws 1789, 1816-17.

23. 1978 Ga. Laws 1856, 1886; 1978 Ga. Laws 1789, 1817.

24. 1985 Ga. Laws 1024.

25. Telephone interview with Paul Shanor, Aide, Senate Human Resources Committee, (May 6, 1986) [hereinafter cited as Shanor Interview].

26. 1985 Ga. Laws 1025.

27. *Id.* at 1027. If the patient failed to comply with his or her involuntary outpatient treatment plan, the treating physician could petition the court for an order to have the patient taken into custody and delivered to the community health center responsible for the patient's outpatient treatment plan or to the nearest emergency receiving facility (as opposed to being admitted to a treatment facility as the law previously specified). *Id.* at 1028.

28. Shanor Interview, *supra* note 25.

SB 318

The Act amends O.C.G.A. § 37-3-1 by adding several definitions and changing others. Newly defined terms are "inpatient", "outpatient", "inpatient treatment" (synonym, "hospitalization"), "outpatient treatment", "available outpatient treatment", and "involuntary treatment".[29]

Prior law defined a "mentally ill person requiring involuntary treatment" as one who "(A) presents a substantial risk of imminent harm to himself or others . . . or (B) who is so unable to care for his own physical health and safety as to create an imminently life-endangering crisis."[30] The former definition required inpatient hospitalization for all involuntary mental patients. The Act redefined a "mentally ill person requiring involuntary treatment" as either an "inpatient" or an "outpatient", and "involuntary treatment" now includes both inpatient and outpatient treatment.[31] "Inpatient" has assumed a definition nearly identical to the former "mentally ill person requiring involuntary treatment,"[32] and "inpatient treatment" means treatment within a hospital.[33]

An "outpatient" is defined as a mentally ill person "[w]ho is not an inpatient but who . . . will require outpatient treatment in order to avoid predictably and imminently becoming an inpatient; [w]ho . . . is unable voluntarily to seek or comply with outpatient treatment; and . . . [w]ho is in need of involuntary treatment."[34] Under the new Act, "outpatient treatment" is a treatment program taking place outside a hospital setting and including therapy, monitoring of medication, and other services, thereby maintaining the outpatient's abililty to function and remain unhospitalized.[35] "Available outpatient treatment" is outpatient treatment available in the patient's community and may include supervision and support by family or friends.[36]

O.C.G.A. § 37-7-1, containing definitions relating to treatment of alcoholics and drug abusers, was similarly amended to define the "alcoholic, drug dependent individual, or drug abuser requiring involuntary treatment" identically to a "mentally ill person requiring involuntary treatment" in Chapter 3.[37] Similarly, "available outpatient treatment", "inpatient", "outpatient", "inpatient treatment", "outpatient treatment", and "involuntary treatment" are analagous to the same terms in Chapter

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29. O.C.G.A. § 37-3-1 (Supp. 1986).
30. O.C.G.A. § 37-3-1(12) (1982).
31. O.C.G.A. § 37-3-1(12) (Supp. 1986).
32. *Cf.* O.C.G.A. § 37-3-1(12) (1982) and O.C.G.A. § 37-3-1(9.1) (Supp. 1986).
33. O.C.G.A. § 37-3-1(9.2) (Supp. 1986).
34. O.C.G.A. § 37-3-1(12.1) (Supp. 1986).
35. O.C.G.A. § 37-3-1(12.2) (Supp. 1986).
36. O.C.G.A. § 37-3-1(.1) (Supp. 1986).
37. *See* O.C.G.A. § 37-7-1(3) (Supp. 1986) *and* O.C.G.A. § 37-3-1(12) (Supp. 1986) (both are defined as "a person who is an inpatient or an outpatient").

3.[38]

O.C.G.A. § 37-3-43 requires that a patient examined at an emergency receiving facility be discharged within forty-eight hours of admission unless he or she is under criminal charges or the examining physician certifies "that the patient may be a mentally ill person requiring involuntary treatment . . . ."[39] Under prior law, if a physician's certificate was executed, the patient would be transported and admitted within twenty-four hours to an evaluating facility.[40] The Act amends O.C.G.A. § 34-3-43 to provide outpatient admission procedures as an alternative to admission to an evaluating facility. The new O.C.G.A. § 37-3-43 provides that, if the examining physician at the emergency receiving facility determines and certifies that the patient needing involuntary treatment meets the requirements for outpatient treatment, the patient must be discharged under an outpatient treatment program.

The Act amended O.C.G.A. § 37-3-44 to reflect the fact that, with the advent of involuntary outpatient treatment, a physician's certification that a person may be mentally ill and in need of involuntary treatment no longer inevitably results in admission to a mental health facility.[41] Under prior law, O.C.G.A. § 37-3-44 specified procedures for notifying the patient of his right to petition for habeas corpus "[i]mmediately upon arrival of a patient at an emergency receiving facility under Code Section 37-3-41 [a doctor's certification or court order]."[42] Since such notification is no longer called for at that point, the Act amended that portion of O.C.G.A. § 37-3-44 to read "[i]mmediately upon arrival of a patient at an emergency facility under Code Section 37-3-43 [general admission]."[43] The Act made identical revisions to O.C.G.A. §§ 37-7-43 and 37-7-44, relating to the emergency examination and admission of alcoholics and drug users.

Under prior law, a mentally ill patient admitted to an evaluating facility under emergency admission or a court order had to be discharged after a maximum of five weekdays unless he or she were admitted as a voluntary patient, an involuntary patient, or under criminal charges.[44] During this five-day detention period, the evaluating facility developed an individualized treatment plan for patients admitted for involuntary treatment.[45] The Act amended O.C.G.A. § 37-3-64 to allow a "mentally ill person requiring involuntary treatment" to be discharged as an outpa-

38. *Compare* O.C.G.A. § 37-3-1 (Supp. 1986) *with* O.C.G.A. § 37-7-1 (Supp. 1986).

39. 1985 Ga. Laws 1024.

40. O.C.G.A. § 37-3-43(b) (Supp. 1986).

41. O.C.G.A. § 37-3-44(a) (Supp. 1986). The provision permitting any physician in the state to execute such a certificate is set forth in O.C.G.A. § 37-3-41.

42. O.C.G.A. § 37-3-43 (1982).

43. O.C.G.A. § 37-3-43 (Supp. 1986).

44. O.C.G.A. § 37-3-64(a) (1982).

45. *Id.* § 37-3-64(c).

tient if he or she meets the requirements for outpatient treatment.[46] An identical revision was made to Chapter 7 regarding alcoholics and drug abusers.[47]

The Act also substantially revised the rules for determining the disposition of a patient at a commitment hearing.[48] Prior to the 1986 Act, if the court found a patient mentally ill and in need of involuntary treatment, it would order the patient to participate in an alternative outpatient treatment program. If no alternative outpatient treatment program existed, the patient would be hospitalized.[49] O.C.G.A. § 37-3-81(d) formerly provided that the court could order hospitalization for up to six months, and the chief medical officer could seek an order from the court to continue the hospitalization after that period. It further provided that the court could order involuntary outpatient treatment for up to six months, but it provided no mechanism for seeking continuation of the involuntary outpatient treatment.[50]

These procedures have been substantially changed and are now found at O.C.G.A. § 37-3-81.1. Under this new Code section, the court must determine if a patient is mentally ill and in need of involuntary treatment. If he or she is, then the court must determine if he or she is an inpatient or outpatient and the kind of involuntary treatment to be ordered. If the court determines there is an available outpatient treatment program that satisfies the patient's individualized treatment plan and the patient is likely to obtain that treatment, then the court will discharge the patient under an order to obtain treatment.[51]

The court may determine that the patient is an outpatient but that he or she does not meet the requirements for discharge (that is, either there is no available outpatient treatment meeting the requirements of the treatment plan or the patient is not likely to comply with it). In that case, whether the court discharges the patient depends upon the provision under which the hearing was required. If the hearing was required under the new O.C.G.A. § 37-3-81, such a determination must result in discharge of the patient. If the hearing was required under O.C.G.A. § 37-3-92, the court must order the patient admitted to an evaluating facility.

If the court finds the patient to be an inpatient, the patient must be transported and admitted to a treatment facility.[52] O.C.G.A. § 37-3-81.1(c) retains provisions previously found in O.C.G.A. § 37-3-81(c), limiting such hospitalization to six months with the possibility of

46. O.C.G.A. § 37-7-64 (Supp. 1986).
47. *Id.*
48. O.C.G.A. § 37-3-81(c) (Supp. 1986).
49. O.C.G.A. § 37-3-81(d) (Supp. 1986).
50. *Id.*
51. O.C.G.A. § 37-3-81.1 (Supp. 1986).
52. *Id.* § 37-3-81.1(a)(4).

continuation.[53]

The Act has also extensively revised O.C.G.A. § 37-3-82, the procedure for rehospitalization in cases of noncompliance with or ineffectiveness of the involuntary outpatient care. Under prior law, if the outpatient's condition deteriorated to the point of requiring hospitalization, the treating physician could *petition the court for an order* to have the patient taken into custody and taken to a treatment facility pending a hearing. The prior law also provided that if the outpatient failed or refused to comply with his or her involuntary outpatient treatment, the treating physician could *petition the court for an order* to have the patient taken into custody and delivered to the community mental health center or to an emergency receiving facility for examination and emergency treatment.[54] The 1986 Act expedited these procedures by allowing a physician to execute a physician's certificate under these circumstances without obtaining a court order.[55] The physician's certificate is valid for seventy-two hours and authorizes any peace officer to take the patient into custody and deliver him or her to the nearest available emergency receiving facility.[56] The court may issue an order authorized under O.C.G.A. § 37-3-41(b) if the court has determined that a patient has not complied with his or her involuntary outpatient treatment.

The new O.C.G.A. § 37-3-83, which concerns efforts by a treatment facility's chief medical officer to seek continuation of treatment, was amended by substituting "treatment" and "involuntary treatment" for "hospitalization" throughout the section and by providing that an order may now be sought for continuation of "involuntary treatment involving inpatient treatment, outpatient treatment or both . . . ." Previously, the section addressed only "continuation of involuntary hospitalization."[57]

The Act also amended O.C.G.A. § 37-3-85, concerning the review of individualized service plans and discharge of improved patients. The amended O.C.G.A. § 37-3-85 provides that an inpatient may be discharged from inpatient treatment or involuntary outpatient treatment or both, or he or she may be discharged from involuntary inpatient treatment and be required to obtain available outpatient treatment as long as he or she meets the requirements for outpatient treatment. The Act made identical revisions and additions to O.C.G.A. §§ 37-7-81—37-7-85, concerning alcoholic or drug dependent individuals.

The Act establishes six new Code sections, O.C.G.A. §§ 37-3-90—37-3-95, dealing with involuntary outpatient care. O.C.G.A. § 37-3-90 requires that whenever an examining physician at or on behalf of a mental health

53. For provisions concerning the duration of involuntary outpatient treatment and continuation of treatment, the section now refers to O.C.G.A. § 37-8-93.

54. 1985 Ga. Laws 1024 (emphasis added).

55. O.C.G.A. § 37-3-82(a) (Supp. 1986).

56. *Id.* The duration is the same as specified in O.C.G.A. § 37-3-41 (1982).

57. O.C.G.A. § 37-3-83 (1982).

facility certifies that a patient is mentally ill and in need of involuntary treatment, he or she must also determine whether the patient meets the criteria for involuntary *outpatient* treatment. The criteria are: 1) the patient must be an outpatient, 2) there must be available outpatient treatment, and 3) it must be probable that the patient will comply with his or her outpatient treatment program.

O.C.G.A. § 37-3-91 provides for the discharge of mentally ill persons qualifying for outpatient care. If a patient meets the outpatient requirements given in O.C.G.A. § 37-3-90, he or she must be discharged, as an outpatient, pending a full hearing pursuant to O.C.G.A. § 37-3-92. Such a discharge may occur from a community health center (within four hours of the examination), from an emergency receiving facility (within forty-eight hours of admission), or from an evaluating or treatment facility (in accordance with the five-day time frame set forth in O.C.G.A. § 37-3-64).[58] While the examining facility holds the patient prior to the hearing, the facility (the "referring facility") must "prepare an individualized service plan . . . in consultation with the facility"[59] which will be providing the outpatient treatment (the "receiving facility"). The referring and receiving facilities must also arrange for the latter to provide "interim outpatient treatment" pending the hearing.[60]

O.C.G.A. § 37-3-91(c) mandates that the patient must comply with the interim outpatient treatment. If he or she does not, the physician responsible for his or her outpatient treatment may, under the provisions of O.C.G.A. § 37-3-82, execute a certificate as described in O.C.G.A. § 37-3-41 to have the patient taken into custody and delivered to an emergency receiving facility for examination. O.C.G.A. § 37-3-91(c) also provides notification procedures regarding interim outpatient requirements and the consequences of non-compliance and of not attending or waiving the hearing.

O.C.G.A. § 37-3-91(d) requires that within three days of the discharge of an involuntary outpatient pending a hearing, a referring facility must send the receiving facility a copy of the examination report, treatment plan, and any other relevant clinical information. Within five days of receipt, the receiving facility must petition the court where the patient resides to hold a "full and fair hearing" pursuant to O.C.G.A. § 37-3-92.

In short, O.C.G.A. § 37-3-91 changes the law in two important ways. It allows physicians to initiate involuntary outpatient treatment for patients who have not first been hospitalized as inpatients, thus selecting the least restrictive treatment alternative at an earlier stage. It also secures the participation of the community-based mental health care centers in planning the treatment programs they will be administering.[61]

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58. O.C.G.A. § 37-3-90(a) (Supp. 1986).
59. *Id.* § 37-3-91(b).
60. *Id.*
61. Shanor Interview, *supra* note 25.

O.C.G.A. § 37-3-92(a) requires that, unless waived, a hearing must be held within thirty days of the filing of a petition pursuant to O.C.G.A. § 37-3-91(d). The court must provide the patient and his or her representatives notice of the hearing at least ten days before the hearing. Hearings will be conducted in accordance with O.C.G.A. § 37-3-81.1. It also allows the court to order any peace officer to take into custody an involuntary outpatient who fails to appear at the hearing and to deliver him or her to an emergency receiving facility or the referring facility.[62] If the patient waives the hearing, the court will order him or her to obtain available outpatient treatment.[63]

O.C.G.A. § 37-3-93 provides for court-ordered outpatient treatment. The court may order a patient to obtain available outpatient treatment for up to a year; however, the total of involuntary outpatient and inpatient treatment may not exceed one year. Additionally, a procedure for seeking a continuation of the involuntary outpatient treatment is specified. The continuation procedure requires that the treating physician update the individualized treatment plan, prepare evidence that the requirements for available outpatient treatment are met, and seek an order from the hearing examiners to require the patient to continue the available outpatient treatment. The treating physician must complete this process no later than sixty days prior to the expiration date of the patient's previous treatment plan.[64]

O.C.G.A. § 37-3-94 requires the periodic review of individualized service plans for involuntary outpatients and the discharge of any such patient found "no longer to be a mentally ill person requiring involuntary treatment."[65] O.C.G.A. § 37-3-95 provides that a criminally charged patient may be discharged from the custody of a facility only if the facility notifies the law enforcement agency which originally had custody of the patient and discharges the patient into the custody of that agency.[66]

The Act created analogous new sections in Chapter 7 of Title 37, concerning treatment of alcoholics, drug dependent individuals, and drug abusers. These new Code sections are O.C.G.A. §§ 37-7-90—37-7-95.

62. O.C.G.A. § 37-3-92(b) (Supp. 1986).
63. *Id.* § 37-3-92(c).
64. O.C.G.A. § 37-3-93(b) (Supp. 1986).
65. O.C.G.A. § 37-3-94 (Supp. 1986).
66. Previously found at O.C.G.A. § 37-3-85(b)(1) (1982).