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HEALTH, MENTAL HEALTH Regulation and Construction of Hospitals and Other Health Care Facilities: Expand Definition and Confidentiality Provisions Regarding Peer Review Organizations; Examination, Treatment etc., for Mental Illness: Clarify Definition of When Outpatient Treatment is Necessary

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HEALTH, MENTAL HEALTH

*Regulation and Construction of Hospitals and Other Health
Care Facilities: Expand Definition and Confidentiality
Provisions Regarding Peer Review Organizations; Examination,
Treatment, etc., for Mental Illness: Clarify Definition
of When Outpatient Treatment is Necessary*

CODE SECTIONS: O.C.G.A. §§ 31-7-131 to -133, 37-3-90, -167
(amended)
BILL NUMBER: SB 93
ACT NUMBER: 327
GEORGIA LAWS: 1995 Ga. Laws 612
SUMMARY: The Act amends Georgia's outpatient
commitment law, increases protection of
involuntary commitment records, and
expands the definitions of "health care
provider" and "review organization." The
Act also expands the confidentiality
provisions that apply to review
organizations.
EFFECTIVE DATE: July 1, 1995

History

In 1975, the Georgia General Assembly, recognizing the need for confidentiality of peer review committee records, adopted Code section 31-7-132.¹ Peer review is the procedure by which a health care facility or organization evaluates the quality and efficiency of services performed by physicians and other health care providers.² The analysis includes "practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review, [and] underwriting assistance."³

Medical review committees are established to enhance the delivery of quality health care services by providing in-house

1. 1975 Ga. Laws 739 (formerly found at O.C.G.A. § 31-7-132 (1991)); see also *Eubanks v. Ferrier*, 267 S.E.2d 230 (Ga. 1980).

2. O.C.G.A. § 31-7-131(1) (Supp. 1995).

3. *Id.*

review of hospital procedures.⁴ Review proceedings must be confidential to facilitate the candor essential to this type of proceeding.⁵

The bill was introduced to expand the peer review confidentiality protection to include communications between hospitals in the same network.⁶ Under prior law, communications with other hospitals were unprotected by the confidentiality provision.⁷ Due to the growing number of health care networks, the need arose to broaden and clarify the definition of peer review to include communications between sister hospitals.⁸ Thus, SB 93 was introduced to allow hospitals within the same network to communicate freely with each other without fear of losing confidentiality.⁹

SB 93

Upon introduction, SB 93 made only minor changes to Georgia's outpatient commitment law.¹⁰ In the House, additional changes were made regarding confidentiality of records.¹¹ Conflicts developed in the Senate, and the bill was sent to conference committee.¹² In conference committee, new provisions relating to peer review were added.¹³

Outpatient Commitment

Under Code section 37-3-90, a physician or psychologist must believe that a patient admitted to a facility is mentally ill and that involuntary outpatient treatment is necessary. This Act requires the physician or psychologist to determine and certify that "there is reason to believe the patient is: (1) [a]n inpatient or

4. *Eubanks*, 267 S.E.2d at 232.

5. *Id.*; see also *Scott v. McDonald*, 70 F.R.D. 568, 573 (N.D. Ga. 1976).

6. Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (Apr. 5, 1995) [hereinafter Oliver Interview].

7. *Id.*

8. Telephone Interview with Holly Bates, Georgia Hospital Association (Apr. 7, 1995) [hereinafter Bates Interview].

9. Oliver Interview, *supra* note 6.

10. See SB 93, as introduced, 1995 Ga. Gen. Assem.

11. Compare SB 93, as introduced, 1995 Ga. Gen. Assem. with SB 93 (HFSFA), 1995 Ga. Gen. Assem.

12. Final Composite Status Sheet, Mar. 17, 1995.

13. SB 93 (CCS), 1995 Ga. Gen. Assem.

outpatient; and (2) [i]f an outpatient, whether there is available outpatient treatment."¹⁴ However, the former requirement that "[t]he patient will likely comply with the outpatient treatment so as to minimize the likelihood of the patient's becoming an inpatient" was deleted from this section of the Code.¹⁵ Probate judges thought that the "likely comply" language was not appropriate or clear and that a more realistic standard would be "that outpatient treatment exists."¹⁶

Judicial Supervision of Confidential Records

The House substitute added one additional provision to the bill by floor amendment.¹⁷ Representative Jim Martin introduced the amendment to provide a more formal procedure that probate court judges must follow to protect the confidentiality of pre-1978 mental health records.¹⁸ The revision was an attempt to strike the appropriate balance between protecting a person's confidential records and public access.¹⁹

The original proposal for this legislation was made by the Gwinnett, Rockdale, and Newton (GRN) Regional Board of Mental Health, Mental Retardation, and Substance Abuse.²⁰ The proposed version would have sealed *all* files and records regarding involuntary commitment proceedings that occurred prior to September 1, 1978 and would have required a court order to access these files.²¹ However, probate judges were

14. O.C.G.A. § 37-3-90(a)(1)-(d)(2) (1995).

15. *Compare id.* § 37-3-90 with 1986 Ga. Laws 1098, § 5, at 1118 (formerly found at O.C.G.A. § 37-3-90(a)(2)(B) (Supp. 1994)).

16. Oliver Interview, *supra* note 6.

17. See SB 93 (HSFA), 1995 Ga. Gen. Assem.

18. Telephone Interview with Rep. Jim Martin, House District No. 47 (Apr. 7, 1995) [hereinafter Martin Interview]. Rep. Martin discussed a prior incident in which an individual, for political reasons, researched old probate records and discovered that someone had been involuntarily committed to a mental hospital. At that time, there was no procedure to protect these records. This amendment was an attempt to prevent that type of situation from happening again. *Id.*

19. *Id.*

20. *Id.*

21. See GRN Regional Board of Mental Health, Mental Retardation, and Substance Abuse, Proposed Revision of O.C.G.A. § 37-3-167(d) (concerning Access to Mental Health Records) (undated) (available in Georgia State University College of Law Library).

concerned with the expense involved in this procedure.²² Two categories of records were involved: (1) records dealing only with mental health, which could be sealed easily; and (2) records containing both mental health records and other non-confidential information, which could not be sealed easily.²³ Representative Martin's substitute bill was a compromise between the two categories.²⁴

Under the Act, when a probate court receives a request for a record, the court will determine if it contains confidential information.²⁵ If portions of the record relate to treatment or commitment for mental illness, and none of the information in the record is normally made public, the probate court must seal the record and inform the person seeking access to the file that it is only available pursuant to a court order.²⁶ When the person seeking access is the subject of the record, the court should permit access "unless there are compelling reasons why it should not."²⁷ Anyone other than the subject of the record should be denied access, unless that party can show "compelling reasons" why the record should be opened.²⁸ If a court order is granted to review the records, it "shall restrict dissemination of the information to certain persons or for certain purposes or both."²⁹

Peer Review

The conference committee substitute added new provisions relating to peer review.³⁰ Prior to the Act, Code section 31-7-131 defined "professional health care provider" to include "[a] corporation or other organization operating a hospital, a nursing or convalescent home, or other health care facility."³¹ The Act expands the definition of "professional health care provider" to

22. See Letter from Floyd E. Propst, Probate Judge, to Rep. Jim Martin (Feb. 14, 1995) (available in Georgia State University College of Law Library).

23. *Id.*

24. Martin Interview, *supra* note 18.

25. See O.C.G.A. § 37-3-167(d)(2) (1995).

26. *Id.*

27. *Id.* § 37-3-167(d)(3).

28. *Id.*

29. *Id.*

30. See SB 93 (CCS), 1995 Ga. Gen. Assem.

31. 1991 Ga. Laws 1016, § 1, at 1017 (formerly found at O.C.G.A. § 31-7-131(2)(K) (1991)).

include such organizations' "officers, directors, or employees," or any members of their governing boards conducting a peer review.³² Additionally, occupational therapists are now included as professional health care providers under this Code section.³³

The definition of "review organization" is expanded to include "an insurer, self-insurer, health maintenance organization, preferred provider organization, provider network, or other organization engaged in managed care."³⁴ This new language broadens and clarifies the peer review definitions.³⁵ The new language ensures that peer review protection applies to communications between sister hospitals within the same networks.³⁶ Communications between these hospitals are still privileged.³⁷

The Act adds two additional purposes for which review organizations may gather patient care and treatment information.³⁸ First, the review organization can gather the information to assess the quality and efficiency of health care services.³⁹ Second, the review organization can collect the data to evaluate "a professional health care provider in connection with participation as a provider in or for an insurer, self-insurer, health maintenance organization, preferred provider organization, provider network, or other organization engaged in managed care."⁴⁰ In the health care industry, the quality of data is very important.⁴¹ This pooling of information helps peer review boards set quality standards.⁴²

The Act amends Code section 31-7-133 to include a confidentiality provision for shared information.⁴³ This Code section provides that the proceedings and records of review organizations are confidential and cannot be introduced in any civil action.⁴⁴ However, an additional provision allows a health

32. O.C.G.A. § 31-7-131(2)(K) (Supp. 1995).

33. *Id.* § 31-7-131(2)(M).

34. *Id.* § 31-7-131(3)(A)(ii).

35. Oliver Interview, *supra* note 6.

36. Oliver Interview, *supra* note 6.

37. Oliver Interview, *supra* note 6.

38. *See* O.C.G.A. § 31-7-131(3)(B)(iv)-(v) (Supp. 1995).

39. *Id.* § 31-7-131(3)(B)(iv).

40. *Id.* § 31-7-131(3)(B)(v).

41. Bates Interview, *supra* note 8.

42. Bates Interview, *supra* note 8.

43. *See* O.C.G.A. § 31-7-133(a) (1995).

44. *Id.* The Act provides: "The confidentiality provisions of this article

care provider to obtain these records if the provider has brought a civil suit against a health care organization for wrongful exclusion or termination.⁴⁵ The confidentiality provision was added to ensure that the confidentiality requirement extends to communications between sister hospitals.⁴⁶

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shall also apply to any proceedings, records, actions, activities, evidence, findings, recommendations, evaluations, opinions, data, or other information shared between review organizations which are performing a peer review function." *Id.*

45. *Id.* § 31-7-133(b)(3).

46. Oliver Interview, *supra* note 6.