



Client Alert



Contact Attorneys Regarding
This Matter:

Hedy S. Rubinger
404.873.8724 - direct
404.873.8725 - fax
hedy.rubinger@agg.com

Jessica Tobin Grozine
404.873.8526 - direct
404.873.8527 - fax
jessica.grozine@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

House Bill 1040 Aims to Make Home Health Care More Accessible to Disabled Individuals

Unlicensed individuals who have been trained by a registered nurse can now provide “health maintenance activities” to a specific disabled person, provided those activities are ordered by certain licensed professionals. This concept of a “proxy caregiver” stems from House Bill 1040, signed into law by Governor Sonny Perdue this summer.

The new law defines the scope and circumstances of when a proxy caregiver can provide health maintenance activities. Health maintenance activities are defined as “those activities that do not include complex care such as administration of intravenous medications, central line maintenance, and complex wound care; do not require complex observations or critical decisions; can be safely performed and have reasonably precise, unchanging directions; and have outcomes or results that are reasonably predictable.”

The legislation amends the Official Code of Georgia Annotated (OCGA) § 43-26-12 and provides that licensure as a registered professional nurse is not required for the “performance of health maintenance activities by a proxy caregiver pursuant to a written plan of care for a disabled individual when [the following requirements are met]”:

- The disabled individual, or a person legally authorized to act on his or her behalf, has designated a proxy caregiver in writing and delegated the proxy caregiver to receive training and provide health maintenance activities pursuant to the order of an attending physician or advanced practice registered nurse or physician assistant working under a nurse protocol agreement or job description;
- The health maintenance activities are provided outside of a hospital or nursing home and are not provided by a medicare-certified home health agency or hospice organization and if alternative sources are available, Medicaid is the payor of last resort; and
- The written plan of care implements the written orders of the attending physician, advanced practice registered nurse or physician assistant and specifies the frequency of training and evaluation requirements for the proxy caregiver; a written plan of care may be established by a registered professional nurse.

The legislation provides that regulations will be promulgated regarding training requirements for proxy caregivers and also contains liability protections for physicians, advanced practice registered nurses and physician assistants who write orders and plans of care for the provision of health maintenance activities to a disabled person. The law provides that such individuals “shall not be vicariously liable for a proxy caregiver’s negligent performance of health maintenance activities unless the proxy caregiver is an employee of that physician, advanced practice registered nurse, or physician assistant.” However, any individual who trains a proxy caregiver “may be held liable for negligently training that proxy caregiver if such training deviated from the applicable standard of care and was a proximate cause of injury to the disabled individual.”

Proponents believe this legislation will lower the costs of home health for people with disabilities. Governor Perdue stated that “[t]his legislation will allow thousands of Georgians to be cared for at home that currently cannot afford home-care by a licensed nurse. As a result of HB 1040 healthcare will be more affordable and more accessible. It will allow more disabled Georgians to stay in their homes.”

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