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HEALTH

Health Care for the Elderly: Establish New Requirements for the Operation of Nursing Homes and Personal Care Homes

CODE SECTIONS:	O.C.G.A. §§ 10-1-393 (amended), 31-6-40.2, -45.2, 31-7-176.1, 49-4-146.2 (new)
BILL NUMBERS:	SB 680, SB 681, SB 693, HB 1640
ACT NUMBERS:	829, 819, 1024, 1209
SUMMARY:	SB 680 provides penalties against nursing homes which cease to participate in the Medicaid program without good cause. SB 681 requires nursing homes to continue providing care to their current Medicaid residents after the nursing home chooses, without cause, to discontinue Medicaid participation. HB 1640 prohibits unlicensed personal care home operators from advertising services which they are not licensed to offer and prohibits licensed nursing care home operators from offering or soliciting services which are outside the scope of services which they are permitted to provide.
EFFECTIVE DATE:	July 1, 1992

History

A number of nursing home laws have been enacted over the past several years.[1] In 1991, a north Atlanta nursing home decided to withdraw from Georgia's Medicaid program and require sixty-five of its residents whose expenses were paid by the Medicaid program to leave.[2] The decision by the nursing home to stop participating in the Medicaid program was sparked by a desire to attract more residents who could afford to pay private rates.[3] As a result, the sixty-five residents who

1. *See Legislative Review*, 8 GA. ST. U. L. REV. 74 (1992). This legislative history discusses legislation which was enacted in the 1991 Session and explains how nursing home reform was a major concern of the Lieutenant Governor in 1991. The legislation enacted in 1991 dealt with issues such as nursing home abuse, safety, and licensing. *Id*

2. *See* Ann Hardie, *Growing Elderly Population Further Strains Medicaid: Legislature Seeks Way to Push Nursing Homes to Keep Welfare Cases*, ATLANTA CONST., Mar. 2, 1992, at A1; Telephone Interview with Sen. Cathey Steinberg, Senate District No. 42 (June 15, 1992) [hereinafter Steinberg Interview].

3. Hardie, *supra* note 2. The article explains that approximately 80% of Georgia's nursing home residents are covered by the Medicaid program. When the program was created in 1965, it was never intended for such widespread use but was meant,

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were supported by the Medicaid program faced the possibility of expulsion from the nursing home.[4] In the face of immediate public outcry, the General Assembly sought to prohibit nursing homes from taking in patients under Medicaid coverage and then deciding later to make them leave if the nursing homes decided to withdraw from the program.[5]

SB 680

The Act amends chapter 6 of title 31 of the Georgia Code by providing that "[a] new perinatal service shall provide uncompensated indigent or charity care in an amount which meets or exceeds the agency's established minimum at the time the agency issued the certificate of need of approval for such service for each of the service's first three years of operation."[6] The Act further provides a number of definitions related to the application of nursing homes for licenses.[7]

The portion of the Act relevant to health care for the elderly imposes a monetary penalty on any nursing home which provides assurances that it will participate in a medical assistance program such as Medicaid but later withdraws from such program without meeting certain exceptions.[8] The penalty is calculated as "the amount of the difference between the Medicaid covered services which the facility agreed to provide in its certificate of need application and the amount

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instead, to provide health care for indigent mothers and children. *Id.* The article states that "[while] Medicaid provides a steady source of income, [nursing] homes, especially upscale ones such as [the one at issue here], make their money on private pay residents." *Id.* One commentator explained the problem in the following terms:

> Here's how nursing-home financing works: At $100 a day, you pay as long as you have money in the bank. One hundred dollars a day is $36,000 a year, so you may not have money in the bank for long. When your money runs out, Medicaid kicks in. But should you have to change nursing homes at that point? You would if all nursing homes did what a Dunwoody facility did to its Medicaid patients the other day: It gave them thirty days to pack their belongings and go. [The nursing home] notified state officials that it will no longer provide care for Medicaid patients. It did so because the state cut its reimbursements for Medicaid patients from $98.04 a day to $62.74. The state reduced the reimbursements because [the nursing home] no longer had a large number of patients who required more expensive care and attention. Rather than accept the lower reimbursements, [the nursing home] opted out of the Medicaid program.

Don't Let Nursing Homes Walk Away From Obligation, ATLANTA J., Feb. 6, 1992, at A14.

4. Hardie, *supra* note 2.
5. *Id.*
6. *Id.* § 31-6-40.2(b)(1) (Supp. 1992).
7. *Id.* § 31-6-40.2(a)(1) (Supp. 1992).
8. *Id.* § 31-6-45.2(a)(1) (Supp. 1992).

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actually provided."[9] A facility will not face such a penalty if its certificate of need was approved prior to the effective date of the Act or is ultimately confirmed on appeal,[10] if the facility's participation in a program is terminated by the state or federal government,[11] or if the nursing home can show "good cause" for terminating its participation in the program.[12] Good cause is defined to include inadequate medical assistance payments,[13] changes in the ability of the facility to cover its costs if such failure threatens the viability of the facility,[14] and changes in State or federal medical assistance programs which "adversely affect the financial viability of the facility in a substantial manner."[15]

The Act further requires facilities that desire to terminate their participation in a medical assistance program to show good cause in a written request to the Department of Medical Assistance.[16] Should such a request be denied, an appeals process is available.[17] This "good cause" language was included in the Act as a result of a compromise with the nursing home industry.[18]

Another way a facility can avoid the requirements of the Act is if its "certificate of need application was approved by the planning agency prior to the effective date of [the Act]."[19] This "grandfather clause" was not included in the bill when it was introduced,[20] but was later added via a House Substitute to SB 680 when the sponsors of the bill were made aware that such a provision could be placed in the bill without compromising its integrity.[21]

The Act, by eliminating the right of nursing homes to arbitrarily terminate participation in medical assistance programs, seeks to prevent the type of incident which occurred with a north Atlanta

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9. *Id.*
10. *Id.*
11. *Id.* § 31-6-45.2(a)(2) (Supp. 1992).
12. *Id.* § 31-6-45.2(a)(3) (Supp. 1992).
13. O.C.G.A. § 31-6-45.2(a)(3) (Supp. 1992). The Act also requires that, in order to utilize the good faith exception, a nursing home must also meet the following conditions: 10% of the nursing home's services during the twelve months preceding the request must be attributable to recipients of medical assistance, and the facility must have operated at a loss in the preceding year. *Id.* The section also provides a method of computing the costs of Medicaid for each resident when measuring the total costs of care for determining whether a nursing home has good cause to terminate its program. *Id.*
14. *Id.* § 31-6-45.1(a)(3)(B) (Supp. 1992).
15. *Id.* § 31-6-45.2(a)(3)(C) (Supp. 1992).
16. *Id.* § 31-6-45.2(b) (Supp. 1992).
17. *Id.*
18. Steinberg Interview, *supra* note 2.
19. O.C.G.A. § 31-6-45.2 (Supp. 1992).
20. SB 680, as introduced, 1992 Ga. Gen. Assem.
21. Steinberg Interview, *supra* note 2.

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nursing home.[22] It is an attempt by the General Assembly to provide secure and reliable health care for elderly persons in Georgia.[23] The sponsors hope the Act will prevent elderly persons from being forced out of their nursing homes after they have been led to believe that they will be covered by a medical assistance program.[24]

SB 681

The Act requires nursing homes to continue to provide care to individuals who were accepted into the nursing home under a medical assistance program.[25] The Act also requires nursing homes that withdraw from such programs to enter into limited provider agreements, assist residents who desire to leave, and provide extensive notice to residents concerning the decision to terminate the provider agreement.[26] The intent behind the Act was identical to that behind SB 680.[27] The General Assembly sought to protect residents of nursing homes from unexpected removal from their facilities and to ensure that adequate assistance and alternatives were presented to residents whose nursing homes made the decision to terminate medical assistance.[28]

HB 1640

Continuing its emphasis on providing better health care for elderly persons, the General Assembly enacted HB 1640.[29] The Act places new regulations on private care homes which fall under the Georgia Hospice Law.[30]

This Act amends the Fair Business Practices Act of 1975[31] by amending Code section 10-1-393 to restrict unlicensed individuals and facilities from "formally or informally offering, advertising to, or soliciting the public for residents or referrals."[32] In addition, the Act prohibits licensed personal care homes from "offering, advertising, or soliciting services . . . which are outside the scope of personal care services [or] for which it has not been specifically authorized."[33]

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22. *Id.*
23. *Id.*
24. *Id.*
25. O.C.G.A. § 49-4-146.2 (Supp. 1992).
26. *Id.*
27. Steinberg Interview, *supra* note 2.
28. *Id.*
29. O.C.G.A. §§ 10-1-393, 31-7-12, 31-7-176, (Supp. 1992).
30. *Id.*
31. 1975 Ga. Laws 376 (formerly found at O.C.G.A. § 10-1-390 to -407 (1989)).
32. O.C.G.A. § 10-1-393(b)(26)(A) (Supp. 1992).
33. *Id.* § 10-3-393(b)(26)(B) (Supp. 1992). Legislation related to these provisions was passed in SB 693. That Act provides that the Georgia Department of Human

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Private care homes differ from nursing homes in that the scope of services which they may offer is much more limited.[34] The services which a personal care home is authorized to provide are defined as "protective care and watchful oversight of a resident who needs a watchful environment but who does not have an illness, injury, or disability which requires chronic or convalescent care including medical and nursing services."[35] There are now approximately 1300 licensed personal care homes in the state and they constitute one of the fastest growing health industries in Georgia.[36] Unfortunately, many such facilities were found to be operating without a license, and some were offering services which they were not permitted to offer.[37] In an effort to address these concerns, reduce abuses within the personal care home industry, and draw the line between personal care homes and nursing homes, the General Assembly enacted HB 1640.[38]

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Resources shall set standards for granting variances from the regulations imposed on personal care homes. O.C.G.A. § 31-7-12 (Supp. 1992). In addition, it permits registered nurses to make determinations of death in relation to terminally ill patients unless the patient is an organ donor. *Id.*

34. Telephone Interview with Rep. David Lucas, House District No. 102 (Apr. 10, 1992) [hereinafter Lucas Interview].

35. O.C.G.A. § 10-1-393(b)(26)(C) (Supp. 1992).

36. Ann Hardie, *Long-Term Safeguards for the Elderly: Bills to Tighten Hold on Growing Health Industry*, ATLANTA J. & CONST., Mar. 6, 1992, at D3. The article discusses the proposed participation of Georgia's Department of Human Resources in a federal ombudsman program in order to more closely regulate the licensing of personal care homes. *Id.* The article further outlines the concern over the considerable number of unlicensed personal care homes which operate in Georgia and explains that even the Personal Care Home Association, which represents about 100 licensed nursing homes, supports new regulations on the industry in order to insure its credibility. *Id.*

37. Lucas Interview, *supra* note 34.

38. *Id.*

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