The Senate Committee on Judiciary offered the following substitute to HB 470:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 24 of the Official Code of Georgia Annotated, relating to
2 medical and other confidential information, so as to allow for voluntary open
3 communications related to healthcare under rules of evidence; to provide for definitions; to
4 provide that certain open communications shall not be subject to future disclosure; to provide
5 for a short title; to amend Chapter 33 of Title 31 of the Official Code of Georgia Annotated,
6 relating to health records, so as to revise definitions; to revise provisions relating to the
7 furnishing of copies of health records; to revise provisions relating to the costs of furnishing
8 health records; to provide for related matters; to provide for an effective date; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA

11 **PART I**
12 **SECTION 1-1.**

13 This part shall be known and may be cited as the "Georgia Candor Act."

14 **SECTION 1-2.**

15 Chapter 12 of Title 24 of the Official Code of Georgia Annotated, relating to medical and
16 other confidential information, is amended by adding a new article to read as follows:

17 "ARTICLE 5

18 24-12-40.
19 As used in this article, the term:
20 (1) 'Additional people' means attorneys, insurance representatives, family members, or
21 friends.
22 (2) 'Adverse healthcare incident' means an objective and definable outcome arising from
23 or related to patient care that results in the death or injury of a patient.
24 (3) 'Health facility' means a facility, hospital, institution, or other healthcare related
25 business entity with a permit or license issued by the Department of Community Health
26 pursuant to Title 31.
27 (4) 'Healthcare provider' means any person who is licensed, certified, registered, or
28 otherwise permitted by the laws of this state to administer healthcare in the ordinary
29 course of business or in the practice of a profession. Such term shall include a
30 professional corporation, limited liability company, or limited liability partnership
31 organized pursuant to the laws of this state for the practice of a healthcare profession.
32 (5) 'Open discussion' means the process in which the healthcare provider, health facility,
33 or the healthcare provider jointly with the health facility, communicate or facilitate
34 communication with the patient regarding an adverse healthcare incident and related
35 matters.
36 (6) 'Open discussion communications' means:
37 (A) All communications that are made in the course of an open discussion, including
38 but not limited to: agreements, records, memoranda, work product, documents, offers

39 of compensation, compensation, and other materials that are prepared for, or submitted
40 in the course of, or in connection with open discussion; and
41 (B) Such term shall not include communication, agreements, records, memoranda,
42 work product, documents, offers of compensation, or compensation that were not
43 prepared specifically for use in an open discussion and are otherwise subject to
44 discovery, or other such materials.
45 (7) 'Open discussion invitation' means written notice of the desire of the healthcare
46 provider or the health facility, or of the healthcare provider jointly with the health facility,
47 to enter into an open discussion.
48 (8) 'Patient' means a person who receives healthcare from a healthcare provider or health
49 facility; the person's legal representative if the person is an unemancipated minor under
50 the age of 18, incapacitated, or deceased; or the parties recognized as entitled to bring
51 action for wrongful death under Chapter 4 of Title 51 if the patient is deceased.
52 (9) 'Pro se notice' means the following written notice, in at least 16 point Arial font and
53 placed at least two inches apart from any other text:
54 **'Right to Your Own Attorney**
55 The healthcare provider and health facility are not permitted to provide you
56 any legal advice.

57 You have the right to have an attorney of your choice represent and advise you
58 regarding an offer of compensation. You are strongly encouraged to seek
59 representation by an attorney to ensure your rights, interests, and legal
60 obligations are protected.

61 Please be informed that receipt of compensation without adequate and
62 appropriate legal protections in place may make you ineligible or disqualify
63 you from Medicaid or other means tested benefits, now or in the future.

64 Please also be informed that you may be legally required to repay medical and
65 other expenses that were paid by a third party, including private health
66 insurance, Medicare, or Medicaid.

67 A legal representative may be required to be appointed by a probate court in
68 order to negotiate, approve, or accept, any compensation or resolution where
69 the patient is deceased, is a minor child, or an incapacitated adult.'

70 24-12-41.
71 (a) If an adverse healthcare incident occurs, a healthcare provider, health facility, or
72 healthcare provider jointly with a health facility, involved in the adverse healthcare
73 incident, may provide the patient with an open discussion invitation.
74 (b) A healthcare provider or health facility that chooses to provide an open discussion
75 invitation shall send the open discussion invitation within 150 days after the date on which
76 the healthcare provider or health facility knew, or through the use of diligence should have
77 known, of the adverse healthcare incident.
78 (c) An open discussion invitation shall include:
79 (1) A reference to Code Section 31-33-2 and 45 C.F.R. 164.524 with an explanation of
80 the patient's right to receive a complete and certified copy of his or her medical records
81 within 30 days of request, and of his or her right to authorize the release of his or her
82 medical records to any other person designated by the patient;
83 (2) A reference to Code Sections 9-3-71, 9-3-72, and 9-3-73, as applicable, with notice
84 that the time for a patient to bring a lawsuit is limited and will not be extended merely by
85 engaging in an open discussion;
86 (3) If a healthcare provider or health facility is a state, county, or municipal government
87 entity, or an officer or employee of such state, county, or municipal government entity,
88 a reference to Code Section 36-11-1, 36-33-5, or 50-21-26, as applicable, together with

89 the statement that the deadline for filing the ante litem notice required under any such
90 Code section is limited and cannot be extended; and
91 (4) A separate written notice, in at least 16 point Arial font and placed at least two inches
92 apart from any other text, stating the following:
93 **'Right to Your Own Attorney**
94 You have the right to have an attorney of your choice present throughout the
95 open discussion process. You are strongly encouraged to seek representation
96 by an attorney to ensure that your rights, interests, and legal obligations are
97 protected throughout the open discussion process, including any resolution and
98 any necessary court approval.

99 Please know if you choose to engage in an open discussion, all
100 communications made in the course of the open discussion, including the open
101 discussion invitation, are:
102 (A) Privileged and confidential;
103 (B) Not subject to discovery, subpoena, or other means of legal compulsion
104 for release; and
105 (C) Not admissible as evidence in a proceeding arising out of the adverse
106 healthcare incident, including a judicial, administrative, or arbitration
107 proceeding.

108 Communications not prepared specifically for use in the open discussion are
109 admissible in any subsequent legal action, subject to the rules of evidence.'

110 (d) An open discussion invitation to the patient that fails to comply with subsection (c) of
111 this Code section shall:

112 (1) Be admissible and shall not have the legal protections set forth in subsections (a)
113 and (c) of Code Section 24-12-43; and
114 (2) Make any resolution with the patient voidable by the patient.
115 (e) If the patient agrees in writing to engage in an open discussion under this article:
116 (1) The patient, healthcare provider, or health facility engaged in the open discussion
117 may include additional people in the open discussion, provided the healthcare provider
118 or health facility participating in the open discussion process shall have the duty to:
119 (A) Advise all additional people in writing of the nature of communications made in
120 accordance with this article as specified in Code Section 24-12-43; and
121 (B) Have each execute a written acknowledgment of the advisement provided for in
122 subsection (c) of this Code section;
123 (2) The healthcare provider or health facility shall:
124 (A) Investigate how the adverse healthcare incident occurred and gather information
125 regarding the medical care or treatment provided and disclose the results of such
126 investigation to the patient; and
127 (B) In the event of an offer of compensation as provided in Code Section 24-12-42,
128 disclose the results of such investigation to the patient prior to or at the same time as
129 such offer of compensation;
130 (3) If applicable, provide the patient the steps the healthcare provider or health facility
131 will take to prevent future occurrences of the adverse healthcare incident; and
132 (4) If applicable, where the patient is not represented by an attorney, the statute of
133 limitations for a claim related to an adverse healthcare incident forming the basis of the
134 open discussion and any applicable ante litem provision shall be tolled from the date such
135 patient agrees in writing to engage in an open discussion to the date of resolution of the
136 open discussion or the date the patient retains an attorney regarding the adverse
137 healthcare incident, whichever occurs first.

138 24-12-42.
139 (a) If a healthcare provider or health facility determines that an offer of compensation is
140 warranted, the healthcare provider or health facility shall provide the patient with a written
141 offer of compensation within 60 days of the date of the patient agreeing in writing to
142 engage in an open discussion, unless the parties otherwise agree to an extension in writing.
143 (b) When a healthcare provider or health facility desires to make an offer of compensation
144 under subsection (a) of this Code section and the patient is not represented by an attorney,
145 such healthcare provider or health facility shall provide such patient a pro se notice prior
146 to making an offer of compensation, and failure to comply with this subsection shall:
147 (1) Result in the offer of compensation being admissible and not having the legal
148 protections set forth in subsections (a) and (c) of Code Section 24-12-43; and
149 (2) Make any resolution with the patient voidable by the patient.
150 (c) Except for an offer of compensation under subsection (a) of this Code section, open
151 discussion communications between the healthcare provider or health facility and the
152 patient about the compensation offered under subsection (a) of this Code section shall not
153 be in writing.
154 (d) Any compensation made by a healthcare provider or health facility to a patient under
155 this article shall not be construed as compensation resulting from:
156 (1) A written claim or demand for payment; or
157 (2) A medical malpractice claim, judgment, arbitration award, or settlement.
158 (e) As a condition of an offer of compensation under this Code section, a healthcare
159 provider or health facility may require a patient to execute all documents and obtain any
160 necessary court approval to resolve an adverse healthcare incident.

161 24-12-43.
162 (a) An open discussion invitation in compliance with subsection (c) of Code
163 Section 24-12-41 and open discussion communications:

164 (1) Shall not constitute an admission of liability;
165 (2) Are privileged and confidential and shall not be disclosed;
166 (3) Are not admissible as evidence in any subsequent judicial, administrative, or
167 arbitration proceeding arising out of the adverse healthcare incident;
168 (4) Are not subject to discovery, subpoena, or other means of legal compulsion for
169 release; and
170 (5) Shall not be disclosed by any party or person in any subsequent judicial,
171 administrative, or arbitration proceeding arising out of the adverse healthcare incident.
172 (b) This Code section shall not be construed to:
173 (1) Require the exclusion of any evidence otherwise discoverable merely because it is
174 presented or learned of in the course of an open discussion; or
175 (2) Create a valid objection to a discovery request of otherwise discoverable information
176 under Code Section 9-11-26 merely because the subject matter of such discovery request
177 was presented or learned of during open discussion.
178 (c) The limitation on disclosure imposed by subsection (a) of this Code section includes
179 such disclosure during any discovery conducted as part of a subsequent adjudicatory
180 proceeding arising out of the adverse healthcare incident, and a court or other adjudicatory
181 body shall not compel any party or person who engages in open discussion under this
182 article to disclose the open discussion invitation or the open discussion communications
183 made pursuant to this article.
184 (d) This Code section shall not be construed to affect any other law, rule, or requirement
185 with respect to confidentiality.

186 24-12-44.
187 (a) A healthcare provider or health facility that participates in open discussion under this
188 article may provide de-identified information about an adverse healthcare incident to any

189 patient safety centered nonprofit organization for use in patient safety research and
190 education.
191 (b) Disclosure of de-identified information under subsection (a) of this Code section:
192 (1) Does not constitute a waiver of the privilege specified in Code Section 24-12-43; and
193 (2) Is not a violation of the confidentiality requirements of Code Section 24-12-43.

194 24-12-45.
195 No person or entity, whether the patient, a healthcare provider, or a health facility, shall be
196 compelled to participate in the open discussion. Participation is strictly voluntary, and no
197 employer may exert pressure or coercion of any kind on an employee for participation.
198 Any employee who is asked to participate shall also be given access, at the employer's
199 expense, to an independent attorney for consultation. All participants have a right to have
200 an attorney with them during the open discussion. Any participants may disengage at any
201 time before a resolution.″

202 **PART II**
203 **SECTION 2-1.**

204 Chapter 33 of Title 31 of the Official Code of Georgia Annotated, relating to health records,
205 is amended by revising the definitions in Code Section 31-33-1, as follows:
206 ″31-33-1.
207 As used in this chapter, the term:
208 (1) 'Patient' means any person who has received health care services from a provider.
209 (2) 'Provider' means all hospitals, including public, private, osteopathic, and tuberculosis
210 hospitals; other special care units, including podiatric facilities, skilled nursing facilities,
211 and kidney disease treatment centers, including freestanding hemodialysis units;
212 intermediate care facilities; ambulatory surgical or obstetrical facilities; health

213 maintenance organizations; ~~and~~ home health agencies; diagnostic testing and imaging
214 centers; and surgery centers. It shall also mean any person licensed to practice under
215 Chapter 9, 11, 26, 34, 35, or 39 of Title 43, including any health care entity where such
216 person rendered treatment, care, or testing.
217 (3) 'Record' means a patient's health record, including, but not limited to, evaluations,
218 diagnoses, prognoses, laboratory reports, biopsy slides, X-rays, prescriptions, and other
219 such items or technical information used in assessing the patient's condition, or the
220 pertinent portion of the record relating to a specific condition or a summary of the record,
221 or medical bills for health care services provided to the patient by the provider."

222 **SECTION 2-2.**

223 Said chapter is further amended by revising subsections (a) and (b) of Code Section 31-33-2,
224 relating to furnishing copy of health records, and adding a new subsection as follows:
225 "(a)(1)(A) A provider having custody and control of any item ~~evaluation, diagnosis,~~
226 ~~prognosis, laboratory report, or biopsy slide~~ in a patient's record shall retain such item
227 for a period of not less than ten years from the date such item was created.
228 (B) The requirements of subparagraph (A) of this paragraph shall not apply to:
229 (i) An individual provider who has retired from or sold his or her professional
230 practice if such provider has notified the patient of such retirement or sale and offered
231 to provide such items in the patient's record or copies thereof to another provider of
232 the patient's choice and, if the patient so requests, to the patient; or
233 (ii) A hospital which is an institution as defined in subparagraph (A) of paragraph (4)
234 of Code Section 31-7-1, which shall retain patient records in accordance with rules
235 and regulations for hospitals as issued pursuant to Code Section 31-7-2.
236 (2) Upon written request from the patient or a person authorized to have access to the
237 patient's record under an advance directive for health care, a psychiatric advance
238 directive, or a durable power of attorney for health care for such patient, the provider

239 having custody and control of the patient's record shall furnish a complete and current
240 copy of that record, in accordance with the provisions of this Code section. If the patient
241 is deceased, such request may be made by the following persons:
242 (A) The executor, administrator, or temporary administrator for the decedent's estate
243 if such person has been appointed;
244 (B) If an executor, administrator, or temporary administrator for the decedent's estate
245 has not been appointed, by the surviving spouse;
246 (C) If there is no surviving spouse, by any surviving child; and
247 (D) If there is no surviving child, by any parent.
248 (b)(1) Any record requested under subsection (a) of this Code section shall within 30
249 days of the receipt of a request for records be furnished to the patient, any other provider
250 designated by the patient, any person authorized by paragraph (2) of subsection (a) of this
251 Code section to request a patient's or deceased patient's medical records, or any other
252 person designated by the patient;
253 (2) Such record shall be furnished in electronic form, if so requested, to the extent the
254 provider retains the record in electronic form, and provide the remainder, if any, within
255 a reasonable time not to exceed ten days after the date the record in electronic form was
256 due.
257 (3) Such record request shall be accompanied by:
258 ~~(1)~~(A) An authorization in compliance with the federal Health Insurance Portability
259 and Accountability Act of 1996, 42 U.S.C. Section 1320d-2, et seq., and regulations
260 implementing such act; and
261 ~~(2)~~(B) A signed written authorization as specified in subsection (d) of this Code
262 section.
263 (c) Receipt of a request for records shall be deemed conclusive by any of the following:
264 (1) A signed return receipt for certified mail correctly addressed;

265 (2) Confirmation of email or facsimile transmission to the correct email address or
266 telephone number, or
267 (3) Proof of delivery via overnight delivery service.
268 ~~(c)~~(d) If the provider reasonably determines that disclosure of the record to the patient will
269 be detrimental to the physical or mental health of the patient, the provider may refuse to
270 furnish the record; however, upon such refusal, the patient's record shall, upon written
271 request by the patient, be furnished to any other provider designated by the patient.
272 ~~(d)~~(e) A provider shall not be required to release records in accordance with this Code
273 section unless and until the requesting person has furnished the provider with a signed
274 written authorization indicating that he or she is an authorized person entitled ~~authorized~~
275 to have access to the patient's records ~~by paragraph (2) of subsection (a) of~~ pursuant to this
276 Code section. Any provider shall be justified in relying upon such written authorization.
277 ~~(e)~~(f) Any provider or person who in good faith releases copies of medical records in
278 accordance with this Code section shall not be found to have violated any criminal law or
279 to be civilly liable to the patient, the deceased patient's estate, or to any other person.″

280 **SECTION 2-3.**

281 Said chapter is further amended by revising Code Section 31-33-3, relating to the cost of
282 copying and mailing health records, as follows:
283 ″31-33-3.
284 (a)(1) Except as provided in subsection (d) of this Code section, the ~~The~~ party requesting
285 the patient's records shall be responsible to the provider for the costs of ~~copying and~~
286 ~~mailing~~ producing the patient's record, and payment of such costs may be required by the
287 provider prior to the records being furnished.
288 (2)(A) A charge of up to $20.00 may be collected for search, retrieval, and other direct
289 administrative costs related to compliance with ~~the~~ such request under this chapter. ~~A~~
290 ~~fee for certifying the medical records may also be charged not to exceed $7.50 for each~~

291 ~~record certified.~~ A fee for certifying all records produced pursuant to a request may
292 also be charged not to exceed $7.50.
293 (B) The actual cost of postage incurred in mailing ~~the~~ such requested records may also
294 be charged. ~~In addition, the~~
295 (C) The ~~copying~~ production costs for such a record which is in paper form shall not
296 exceed:
297 (i) $.75 per page for the first 20 pages of the patient's records which are ~~copied~~
298 produced;
299 (ii) $.65 per page for pages 21 through 100; and
300 (iii) $.50 for each page ~~copied~~ produced in excess of 100 pages.
301 (D) The provider shall, upon request, provide a cost estimate before producing such
302 records.
303 (E) Notwithstanding any other provision of this Code section to the contrary, for
304 records requested to be furnished in electronic form, and to the extent the provider
305 retains such records in electronic form, a provider may charge:
306 (i) A fee not to exceed $20 for search, retrieval, or other direct administrative costs
307 related to compliance with such request;
308 (ii) A fee not to exceed $7.50 for certifying all records produced pursuant to a
309 request; and
310 (iii) A per-page fee as provided under subparagraph (C) of this paragraph.
311 (F) Notwithstanding any other provisions of this Code section to the contrary, the fees
312 allowed under this Code Section may not exceed the limits imposed by federal law.
313 (b) All of the fees allowed by this Code section may be adjusted annually in accordance
314 with the medical component of the consumer price index. The Department of Community
315 Health shall be responsible for calculating this annual adjustment, which will become
316 effective on July 1 of each year.

317 (c) To the extent the request for medical records includes portions of records which are not
318 in paper or electronic form, including but not limited to radiology films, models, or fetal
319 monitoring strips, the provider shall:
320 (1) Be ~~be~~ entitled to recover the full reasonable cost of such reproduction; and
321 (2) Upon request, provide a cost estimate before producing such records.
322 ~~Payment of such costs may be required by the provider prior to the records being furnished.~~
323 (d) Notwithstanding any provision to the contrary, no provider shall charge a fee for record
324 requests made ~~This subsection shall not apply to records requested~~ in order to make or
325 complete an application for a disability benefits program.
326 ~~(b)~~(e) The rights granted to a patient or other person under this chapter are in addition to
327 any other rights such patient or person may have relating to access to a patient's records;
328 however, nothing in this chapter shall be construed as granting to a patient or person any
329 right of ownership in the records, as such records are owned by and are the property of the
330 provider.
331 ~~(c)~~(f) This Code section shall apply to psychiatric, psychological, and other mental health
332 records of a patient.″

333 **PART III**

334 **SECTION 3-1.**

335 This Act shall become effective on July 1, 2024.

336 **SECTION 3-2.**

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