

The House Committee on Human Relations and Aging offers the following substitute to HB 486:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 43-26-12 of the Official Code of Georgia Annotated, relating to  
2 exceptions to operation of the Georgia Registered Professional Nurse Practice Act and  
3 burden of proof, so as to provide for training of proxy caregivers; to provide for selection of  
4 curricula by the Department of Behavioral Health and Developmental Disabilities; to provide  
5 for select providers to train proxy caregivers in accordance with selected curriculum; to  
6 provide for professional delegation exceptions; to revise good faith efforts; to provide for  
7 related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Code Section 43-26-12 of the Official Code of Georgia Annotated, relating to exceptions to  
11 operation of the Georgia Registered Professional Nurse Practice Act and burden of proof, is  
12 amended by revising paragraph (9) of subsection (a) as follows:

13 "(9)(A) The performance of health maintenance activities by a proxy caregiver  
14 pursuant to a written plan of care for a disabled individual when:

15 (i) Such individual or a person legally authorized to act on behalf of such individual  
16 has executed a written informed consent designating a proxy caregiver and delegating  
17 responsibility to such proxy caregiver to receive training and to provide health  
18 maintenance activities to such disabled individual pursuant to the written orders of an  
19 attending physician, or an advanced practice registered nurse or physician assistant  
20 working under a nurse protocol agreement or job description, respectively, pursuant  
21 to Code Section 43-34-25 or 43-34-23;

22 (ii) Such health maintenance activities are provided outside of a hospital or nursing  
23 home and are not provided by a medicare-certified home health agency or hospice  
24 organization and if alternative sources are available, Medicaid is the payor of last  
25 resort; and

26 (iii) The written plan of care implements the written orders of the attending  
 27 physician, advanced practice registered nurse, or physician assistant and specifies the  
 28 frequency of training and evaluation requirements for the proxy caregiver, including  
 29 additional training when changes in the written plan of care necessitate added duties  
 30 for which such proxy caregiver has not previously been trained. A written plan of  
 31 care may be established by a registered professional nurse.

32 Rules, regulations, and policies regarding training for proxy caregivers pursuant to this  
 33 paragraph shall be promulgated by the Department of Behavioral Health and  
 34 Developmental Disabilities or the Department of Community Health, as applicable. Such  
 35 rules shall include selection by the Department of Behavioral Health and Developmental  
 36 Disabilities and the Department of Community Health for approval of training curricula  
 37 specifically designed for the purpose of implementing the health maintenance activity of  
 38 medication administration to be implemented by such proxy caregivers employed or  
 39 contracted to providers of home and community based services, community residential  
 40 alternative services, or community living services. With such rules, providers shall train  
 41 proxy caregivers in accordance with the selected curriculum or otherwise provided for  
 42 in rules, regulations, and policies.

43 (B) An attending physician, advanced practice registered nurse, or physician assistant  
 44 whose orders or written plan of care provide for the provision of health maintenance  
 45 activities to a disabled person shall not be vicariously liable for a proxy caregiver's  
 46 negligent performance of health maintenance activities unless the proxy caregiver is an  
 47 employee of the physician, advanced practice registered nurse, or physician assistant.  
 48 Any person who trains a proxy caregiver to perform health maintenance activities for  
 49 a disabled individual may be held liable for negligently training that proxy caregiver  
 50 if such training deviated from the applicable standard of care and was a proximate  
 51 cause of injury to the disabled individual.

52 (C) For purposes of this paragraph, the term:

53 (i) 'Disabled individual' means an individual who has a physical or mental  
 54 impairment that substantially limits one or more major life activities and who meets  
 55 the criteria for a disability under state or federal law.

56 (ii) 'Health maintenance activities' are limited to those activities that, but for a  
 57 disability, a person could reasonably be expected to do for himself or herself. Such  
 58 activities are typically taught by a registered professional nurse, but may be taught by  
 59 an attending physician, advanced practice registered nurse, physician assistant, or  
 60 directly to a patient and are part of ongoing care. Health maintenance activities are  
 61 those activities that do not include complex care such as administration of intravenous  
 62 medications, central line maintenance, and complex wound care; do not require

63 complex observations or critical decisions; can be safely performed and have  
64 reasonably precise, unchanging directions; and have outcomes or results that are  
65 reasonably predictable. Health maintenance activities conducted pursuant to this  
66 paragraph shall not be considered the practice of nursing.

67 (iii) 'Proxy caregiver' means an unlicensed person or a licensed health care facility  
68 who has been selected by a disabled individual or a person legally authorized to act  
69 on behalf of such individual to serve as such individual's proxy caregiver, provided  
70 that such person shall receive training and shall demonstrate the necessary knowledge  
71 and skills to perform documented health maintenance activities, including identified  
72 specialized procedures, for such individual.

73 (iv) 'Training' means teaching proxy caregivers the necessary knowledge and skills  
74 to perform health maintenance activities for disabled individuals. ~~Good faith efforts~~  
75 ~~by an attending physician, advanced practice registered nurse, physician assistant, or~~  
76 ~~registered professional nurse to provide training to a proxy caregiver to perform~~  
77 ~~health maintenance activities shall not be construed to be professional delegation.~~

78 (D) Good faith efforts by an attending physician, advanced practice registered nurse,  
79 physician assistant, registered professional nurse, or providers of home and community  
80 based services and other persons approved by the department to provide training to a  
81 proxy caregiver to perform health maintenance activities shall not be construed to be  
82 professional delegation.

83 (E) Such rules and regulations shall be promulgated pursuant to this paragraph no later  
84 than September 1, 2017."

85 **SECTION 2.**

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