

Senate Bill 202

By: Senators Unterman of the 45th, Mullis of the 53rd and Chance of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 8 of Title 31 of the Official Code of Georgia Annotated,
2 relating to the bill of rights for residents of long-term care facilities; to provide for
3 definitions; to provide for an effective date; to repeal conflicting laws; and for other
4 purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 SECTION 1.

7 Article 5 of Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to the
8 bill of rights for residents of long-term care facilities, is amended by revising Code Section
9 31-8-102, relating to definitions, as follows:

10 "31-8-102.

11 As used in this article, the term:

12 (1) 'Administrator' means a person, duly licensed as a nursing home administrator under
13 Chapter 27 of Title 43, who operates or manages or is in charge of a long-term care
14 facility.

15 ~~(1)(2)~~ (2) 'Department' means the Department of Community Health.

16 ~~(2)(3)~~ (3) 'Guardian' means a resident's legal guardian or conservator, or the parent of a
17 minor representative who does not have a duly appointed guardian.

18 ~~(3)(4)~~ (4) 'Long-term care facility' or 'facility' means any intermediate care home, skilled
19 nursing home, or intermingled home subject to regulation and licensure by the
20 department.

21 (5) 'Nursing home malpractice claim' means any claim for damages or recovery allegedly
22 resulting from or being derivative of the death of or injury to a resident, specifically
23 including claims for wrongful death and loss of consortium, where such claim is against
24 a long-term care facility, its parent, subsidiary, affiliate, member, manager, operator,
25 service provider, or an administrator, officer, agent, or employee of any of the foregoing.

26 The term shall include, but not be limited to, any claim that:

27 (A) Arises out of care or service rendered by a long-term care facility or by any officer,
 28 agent, or employee thereof;

29 (B) Alleges that any services rendered by a long-term care facility to a resident were
 30 unnecessary or unauthorized or were improperly, negligently, or incompetently
 31 rendered;

32 (C) Alleges that a resident was injured or damaged as a result of negligent
 33 credentialing, supervision, hiring, or retention;

34 (D) Alleges that a resident was injured or damaged as a result of a failure or breach by
 35 a long-term care facility to act, diagnose, intervene, notify, or treat;

36 (E) Alleges that a resident was injured or damaged as a result of a breach, violation,
 37 noncompliance with, or failure to comply with a federal or state statute, regulation, or
 38 rule, including allegations of negligence per se; or

39 (F) Seeks damages under subsection (a) of Code Section 31-8-126.

40 The term shall not encompass any claims under subsection (b) of Code Section 31-8-126,
 41 any claims by the department, any claims by state or federal agencies, or federal or state
 42 false claims law violation claims.

43 ~~(4)~~(6) 'Representative' means a person authorized by a resident or his or her guardian to
 44 act for ~~the~~ such resident as an official delegate or agent.

45 ~~(5)~~(7) 'Resident' means any person who is receiving treatment or care in any long-term
 46 care facility. Such resident shall be entitled to exercise all rights provided under this
 47 article except as limited by a court of competent jurisdiction or by applicable law."

48 **SECTION 2.**

49 Said article is further amended by redesignating Code Section 31-8-127, relating to rules and
 50 regulations, as Code Section 31-8-128 and adding a new Code section to read as follows:

51 "31-8-127.

52 (a) An arbitration agreement between a long-term care facility and a resident entered into
 53 in compliance with the provisions of this Code section shall be valid and enforceable and
 54 shall be submitted to arbitration.

55 (b) An agreement to arbitrate nursing home malpractice claims shall meet the following
 56 qualifications and requirements in order to be effective and enforced:

57 (1) Consist of a writing signed by the resident or his or her representative, agent,
 58 guardian, or someone with authority to act on his or her behalf, as specified in subsection
 59 (f) of this Code section;

60 (2) Be a stand-alone agreement or an addendum to an admission agreement;

61 (3) Be titled in 12 point or larger boldface type, 'Voluntary Arbitration Agreement' or
 62 'Voluntary Alternative Dispute Resolution Agreement';

63 (4) Include the following terms:

64 (A) A provision that the resident has the right to consult with legal counsel concerning
 65 the arbitration agreement at the resident's own expense;

66 (B) A provision that the resident has the right to rescind the arbitration agreement
 67 within 30 days after its execution;

68 (C) The identity of one or more institutions to administer the arbitration or a means for
 69 selection of an arbitrator;

70 (D) A provision that the resident has a right, upon written request, to access
 71 information about the designated administering arbitration institution, its rules, and its
 72 fees. This requirement may be fulfilled by providing the contact information, website,
 73 telephone number, and mailing address of the designated administering arbitration
 74 institution;

75 (E) A provision that the agreement shall not limit the resident's rights with respect to
 76 filing a grievance with the facility, the long-term care ombudsman, or any appropriate
 77 state or federal regulatory agency, including a resident's right to challenge a discharge
 78 under Code Section 31-8-116;

79 (F) A provision that the agreement shall not reduce or affect in any way the facility's
 80 duties and obligations with respect to the provision of care and treatment of the
 81 resident; and

82 (G) A description of the claims covered by the arbitration agreement; and

83 (5) Immediately above the signature line, the following language shall appear in 12 point
 84 or larger boldface type: 'THIS AGREEMENT GOVERNS IMPORTANT LEGAL
 85 RIGHTS. PLEASE READ THE AGREEMENT IN ITS ENTIRETY BEFORE
 86 SIGNING. BY SIGNING, THE PARTIES UNDERSTAND AND ACKNOWLEDGE
 87 THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT,
 88 EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY OR BY
 89 JUDGE, AND INSTEAD, DISPUTES BETWEEN THE PARTIES SHALL BE
 90 RESOLVED BY BINDING ARBITRATION.'

91 (c) The resident or the person signing the arbitration agreement on behalf of the resident
 92 shall be provided with a copy of the arbitration agreement and shall sign a written
 93 acknowledgment of receipt of a copy of the arbitration agreement. The signed receipt may
 94 be included as a separate signature line at the conclusion of the arbitration agreement. The
 95 signed acknowledgment shall be conclusive proof that the facility provided a copy of the
 96 agreement.

97 (d) For the convenience of the parties, unless otherwise agreed to by the parties after
 98 initiation of arbitration or as otherwise ordered in the discretion of the arbitrator, the

99 hearing location should be as near to the long-term care facility as is reasonably practicable
 100 for the parties and the arbitrator.

101 (e) The following provisions contained in an arbitration agreement shall be deemed void
 102 and unenforceable and shall, to the greatest extent possible, be severed from the agreement
 103 rather than rendering the entire agreement void and unenforceable:

104 (1) Limitations on the amount of damages the arbitrator may award, other than a
 105 statement that the arbitrator is bound by any damage limitations which may be imposed
 106 by law;

107 (2) Limitations on the times for filing of a claim other than limitations that would be
 108 applicable in a court action for similar claims; and

109 (3) Waivers or releases of any claims or alteration of the burden of proof for any claims.

110 (f) The following persons shall be authorized and empowered to execute an arbitration
 111 agreement on the resident's behalf:

112 (1) Any adult resident for himself or herself;

113 (2) The resident's guardian;

114 (3) Any person authorized to act for the resident under an advance directive for health
 115 care or power of attorney for health care under Chapter 32 of this title;

116 (4) Any person authorized to act for the resident under a general power of attorney;

117 (5) Any married person for his or her spouse;

118 (6) Any adult child for his or her parent, if he or she admitted the resident into the
 119 long-term care facility;

120 (7) Any adult for his or her brother or sister, if he or she admitted the resident into the
 121 long-term care facility; or

122 (8) Any adult grandchild for his or her grandparent, if he or she admitted the resident into
 123 the long-term care facility.

124 (g) For arbitration agreements executed under authority of paragraph (5), (6), (7) or (8) of
 125 subsection (f) of this Code section, if in the 30 days prior to admission, a licensed
 126 physician, after having personally examined the resident, has documented that the resident
 127 is unable to make rational and competent decisions regarding his or her placement options
 128 for health care, the resident may, within 30 days after regaining the ability to make rational
 129 and competent decisions, terminate the arbitration agreement by delivering a written
 130 termination to the facility. Any termination under this subsection shall only apply
 131 prospectively, such that any nursing home malpractice claims arising prior to the
 132 termination shall remain covered by the arbitration agreement.

133 (h) Unless rescinded within 30 days following its execution or terminated in accordance
 134 with subsection (g) of this Code section, an arbitration agreement consistent with this Code
 135 section shall remain effective and govern all matters set forth in the arbitration agreement

136 and all reasonably related dealings between the parties. If a resident is formally discharged
137 from a long-term care facility, a new arbitration agreement shall be required to cover any
138 subsequent interactions between the parties; provided, however, that short-term transfers
139 out of a long-term care facility for consultations, therapeutic leaves of absence, or
140 otherwise with the expectation of return shall not trigger a requirement for a new
141 arbitration agreement, and any existing arbitration agreement shall remain in effect upon
142 such resident's return to such long-term care facility.

143 (i) Unless expressly prohibited by this Code section, the arbitration agreement may contain
144 such other provisions related to the arbitration, including, but not limited to, limitations on
145 the number of fact and expert depositions, as determined reasonable by the arbitrator and
146 subject to modification by the arbitrator to allow sufficient discovery while expeditiously
147 advancing the arbitration proceeding.

148 (j) If the designated administering arbitration institution and any such alternative
149 institutions designated in the arbitration agreement are unavailable for any reason and if
150 there is no other method available for selecting an arbitrator under the arbitration
151 agreement, then upon petition of either party, a substitute administering institution shall be
152 appointed by a court of competent jurisdiction, and such substitute administering institution
153 shall select an arbitrator pursuant to its policies or agreement of the parties. No arbitration
154 agreement otherwise consistent with this Code section shall fail for want of an
155 administering institution or arbitrator.

156 (k) An arbitration agreement consistent with this Code section and signed by an authorized
157 person under subsection (f) of this Code section shall be binding upon the estate and the
158 survivors of the resident and shall extend to any wrongful death claims derivative of or
159 relating to the resident's relationship with the long-term care facility.

160 (l) The mutual obligations to arbitrate by each party shall constitute adequate consideration
161 for the enforcement of arbitration agreements under this Code section.

162 (m) The provisions of this Code section shall be interpreted and applied at all times so as
163 to favor the existence and enforcement of an arbitration agreement. If the relationship
164 between the long-term care facility and the resident affects interstate commerce, arbitration
165 agreements under this Code section shall be enforceable under the Federal Arbitration Act,
166 and this Code section shall be interpreted to the greatest extent possible so as to harmonize
167 with the Federal Arbitration Act.

168 (n) Arbitration agreements consistent with this Code section shall not be subject to the
169 provisions of Article 2 of Chapter 9 of Title 9, relating to limitations and procedures for
170 arbitration of medical malpractice claims.

171 (o) Unless the parties otherwise specify in the arbitration agreement, the expert affidavit
172 requirements of Code Section 9-11-9.1 shall continue to apply to the initiation of an
173 arbitration proceeding involving a nursing home malpractice claim.

174 (p) Upon the filing of a motion to compel arbitration of a nursing home malpractice claim
175 in a court of this state, all discovery and all proceedings not directly related to the
176 determination of arbitrability shall be automatically stayed until such time as such motion
177 to compel arbitration is resolved.

178 (q) Any decision of a court of this state refusing to recognize or enforce an arbitration
179 agreement covering nursing home malpractice claims, including a refusal to stay the action
180 in accordance with subsection (p) of this Code section, shall be immediately appealable as
181 provided in Code Section 5-6-34, without requirement of a certificate of immediate review
182 or requirement of an application for discretionary review to the Supreme Court or Court
183 of Appeals.

184 (r) Any arbitration agreement pertaining to a nursing home malpractice claim already in
185 effect as of the effective date of this Code section shall not be invalidated by this Code
186 section; provided, however, that to the extent an existing arbitration agreement contains
187 provisions which conflict with subsection (e) of this Code section, then those provisions
188 may be severed as provided for in said subsection.

189 (s) Any writings, documents, or signatures required under this Code section shall be valid
190 in electronic format the same as if in paper format."

191 **SECTION 3.**

192 This Act shall become effective upon its approval by the Governor or upon its becoming law
193 without such approval.

194 **SECTION 4.**

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