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HEALTH Care and Protection of Indigent and Elderly Patients: Provide for Written Disclosure by Entities that Specialize in Care of Alzheimer's Patients; Provide for Standard Disclosure Form; Provide that Failure to Disclose is Violation of Fair Business Practices Act of 1975; Provide for Remedies

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HEALTH

Care and Protection of Indigent and Elderly Patients: Provide for Written Disclosure by Entities that Specialize in Care of Alzheimer's Patients; Provide for Standard Disclosure Form; Provide that Failure to Disclose is Violation of Fair Business Practices Act of 1975; Provide for Remedies

CODE SECTIONS: O.C.G.A. §§ 31-8-180 to -184, 31-42-1 to -3 (new)

BILL NUMBER: HB 558

ACT NUMBER: Act 391

GEORGIA LAWS: 1995 Ga. Laws 841

SUMMARY: The Act requires that facilities, programs, or state instrumentalities or political subdivisions that advertise, market, offer to provide or provide specialized care, treatment, or activities for persons with Alzheimer's disease or Alzheimer's related dementia provide written disclosure of certain information. The Act requires that this written disclosure be made on a standardized form to any person seeking information concerning treatment from covered facilities. The Act further requires that the written disclosure explain the specialized care, treatment, or therapeutic activities provided to patients, residents, or participants. The Act makes failure to disclose this information a violation of the Fair Business Practices Act of 1975 and makes all public and private remedies under that Act available.

EFFECTIVE DATE: July 1, 1995

History

Approximately 84,000 Georgians have a probable diagnosis of Alzheimer's disease.¹ Since an absolute diagnosis requires an

1. Ann Hardie, *Age of Discovery for Alzheimer's*, ATLANTA CONST., Nov.

autopsy, only estimates are available.² Ten percent of Americans sixty-five years old and over are believed to suffer from Alzheimer's disease, and fifty percent of individuals eighty-five years old and over have been diagnosed with the disease.³ Eventually, most families caring for a person with a mentally debilitating illness "look for outside help in obtaining information, making decisions, and planning for the long-term care of their afflicted family member."⁴ While considering care alternatives "[f]amily members may feel great sadness and grief at having to accept the inevitable decline of their spouse, parent, or sibling."⁵

Alzheimer's has become a buzz word, and many facilities market an Alzheimer's-specific program.⁶ Emotionally burdened family members sift through the offers of specialized care and may make care choices based exclusively on oral representations.⁷ Unfortunately, as the disease progresses, many consumers have found that the program that claimed to provide care for Alzheimer's patients could not handle their family member's needs and have been left to sift through marketing claims once again.⁸

In July 1994, the Coalition for Advocates of Georgia Elderly (COAGE) recognized that consumers faced a problem of incomplete and sometimes misleading information regarding available services and determined that the passage of a disclosure bill was a priority.⁹ COAGE lobbied for a bill requiring entities that advertise services for patients suffering

12, 1994, at E1.

2. *Id.*

3. *Id.*

4. NANCY L. MACE & PETER V. RABINS, M.D., *THE 36-HOUR DAY: A FAMILY GUIDE TO CARING FOR PERSONS WITH ALZHEIMER'S DISEASE, RELATED DEMENTING ILLNESSES, AND MEMORY LOSS IN LATER LIFE* 129 (1981).

5. *Id.* at 201.

6. Record of Proceedings in the Senate Health & Human Services Committee (Mar. 1, 1995) (remarks by Ellen Jeager, Georgia Council on Aging) [hereinafter Proceedings] (available in Georgia State University College of Law Library).

7. Telephone Interview with Ellen Jeager, Georgia Council on Aging (Apr. 25, 1995) [hereinafter Jeager Interview].

8. *Id.*

9. *Id.*

from Alzheimer's disease or Alzheimer's related dementia to provide details about the services and provide the advertised services.¹⁰

Representative Tom Sherrill sponsored this bill for three primary reasons: (1) some facilities falsely claim that they have special Alzheimer's facilities; (2) people make decisions regarding care of Alzheimer's victims under stressful conditions and need detailed information; and (3) consumers need the empowerment provided by written standardized disclosure.¹¹

HB 558

Introduction

The Georgia General Assembly referred HB 558 to the House Committee on Human Relations and Aging.¹² Several substantive changes were made to the bill in committee¹³ before it passed on the House floor.¹⁴ After the bill was transferred to the Senate, it was referred to the Senate Health and Human Services Committee, which also made changes to the bill regarding organization and substantive matters.¹⁵ The Act's language reflects many compromises between health care providers and advocates for the elderly.¹⁶

Definitions

The Act defines the term "Alzheimer's disease or Alzheimer's related dementia" as "a progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior."¹⁷ The Act covers any entity offering "specialized care, treatment, or therapeutic activities for one or

10. *Id.*

11. Telephone Interview with Rep. Tom Sherrill, House District No. 62 (Apr. 27, 1995) [hereinafter Sherrill Interview].

12. Final Composite Status Sheet, Mar. 17, 1995; *see also* HB 558, as introduced, 1995 Ga. Gen. Assem.

13. *Compare* HB 558, as introduced, 1995 Ga. Gen. Assem. *with* HB 558 (HCS), 1995 Ga. Gen. Assem.

14. Final Composite Status Sheet, Mar. 17, 1995.

15. *Compare* HB 558 (HCS), 1995 Ga. Gen. Assem. *with* HB 558 (SCS), 1995 Ga. Gen. Assem.

16. Sherrill Interview, *supra* note 11; Jeager Interview, *supra* note 7.

17. O.C.G.A. § 31-8-180 (Supp. 1995).

more persons with a probable diagnosis of Alzheimer's disease or Alzheimer's related dementia."¹⁸ HB 558, as introduced, and the House Committee's version, provided broader coverage, including persons with "Alzheimer's disease or related disorders."¹⁹ The Act's more limited definition reflects a compromise between health care providers and advocates for the elderly.²⁰

Originally, HB 558 covered "activities," and the House Committee version changed "activities" to "services" in an effort to address concerns that the term was too broad because it might be construed to include the prescription of medication.²¹ The Senate Committee's version of the bill added a section of definitions that specifically addressed this problem²² and replaced the term "services" with "therapeutic activities."²³ Thus, the Act's definitions of "care," "treatment," and "therapeutic activities" expressly exclude prescribing, manufacturing, or selling medications and related information or support services.²⁴ However, the Act purposely does not include an exhaustive list of covered activities because the intent was to maintain language that was broad enough to cover currently unknown activities.²⁵

Applicability

The Act explicitly provides that article 7 does not apply to individuals licensed to practice medicine and their employees, or to hospitals.²⁶ However, this exclusion does not extend to "any nursing home, personal care home . . . , hospice . . . , respite care service . . . , adult day program, or home health agency owned, operated, managed, or controlled by a person licensed to practice medicine."²⁷ Further, the Act applies to a hospital's nursing

18. *Id.* § 31-8-182(a).

19. HB 558, as introduced, 1995 Ga. Gen. Assem.; HB 558 (HCS), 1995 Ga. Gen. Assem.

20. Sherrill Interview, *supra* note 11.

21. *See* Proceedings, *supra* note 6 (remarks by LeAnn Rigors, Senior Citizen Advocacy Program); *compare* HB 558, as introduced, 1995 Ga. Gen. Assem. *with* HB 558 (HCS), 1995 Ga. Gen. Assem.

22. Sherrill Interview, *supra* note 11.

23. HB 558 (SCS), 1995 Ga. Gen. Assem.

24. O.C.G.A. § 31-8-180(2) (Supp. 1995).

25. Sherrill Interview, *supra* note 11.

26. O.C.G.A. § 31-8-181 (Supp. 1995).

27. *Id.* § 31-8-181(1).

home, personal care home, hospice, respite care service, adult day program, or home health agency if it "holds itself out as providing care, treatment, or therapeutic activities for persons with Alzheimer's disease or Alzheimer's related dementia as part of a specialty unit."²⁸ Neither HB 558, as introduced, nor the House committee substitute contained the exclusions provided in the Act.²⁹ The bill was never intended to cover physicians providing treatment, and the Senate Health and Human Services Committee added this exclusionary language to provide clarity.³⁰

Specific Disclosure Requirements

If those covered by the Act advertise, market, or offer to provide specialized care, treatment, or therapeutic activities for persons with a probable diagnosis of Alzheimer's disease or Alzheimer's related dementia, they are required to disclose how their services go beyond what is offered to persons not afflicted by those conditions.³¹ Both the bill, as introduced, and the House committee substitute contained similar language requiring this disclosure.³²

The Act requires that the disclosure contain certain information relating to philosophy, acceptance, discharge, emergency situations, response to changes in needs, staffing and training, physical environment, activities, involvement with the family, and program costs.³³ Further, the Act provides that the disclosure must be in writing on the standard department disclosure form.³⁴ Those entities covered by the Act must provide this disclosure form to any person inquiring about placement, care, treatment, or therapeutic activities provided in their facility.³⁵ Moreover, those covered by the Act must update the disclosure form whenever they make significant changes.³⁶

28. *Id.* § 31-8-181(2).

29. *See* HB 558, as introduced, 1995 Ga. Gen. Assem.; HB 558 (HCS), 1995 Ga. Gen. Assem.

30. Sherrill Interview, *supra* note 11.

31. O.C.G.A. § 31-8-182(a) (Supp. 1995).

32. *Compare id. with* HB 558, as introduced, 1995 Ga. Gen. Assem. *and* HB 558 (HCS), 1995 Ga. Gen. Assem.

33. O.C.G.A. § 31-8-183 (Supp. 1995).

34. *Id.* § 31-8-182(b)-(c).

35. *Id.* § 31-8-182(b).

36. *Id.* § 31-8-182(c).

HB 558, as introduced, required that disclosure be made to either the Governor's Office of Consumer Affairs or the Department of Human Resources (DHR).³⁷ This mandatory reporting reflected the bill's provision for mandatory review and verification of the disclosure form by the DHR.³⁸ The House committee substitute deleted the mandatory review and verification language and added elective review and verification language³⁹ because legislators thought that the DHR's administrative burden would be too great.⁴⁰ Further, elective review could occur approximately once a year and adequately addressed the need for review.⁴¹ The Senate committee substitute retained the elective review and verification language.⁴² However, the Senate changed the requirement from a determination that the services listed were provided to a determination that the form itself was accurate.⁴³

Violation and Remedies

The Act provides that failure to provide the disclosure "shall be considered a violation of . . . the 'Fair Business Practices Act of 1975,' and all public and private remedies available under such [Act] shall be available."⁴⁴ Specifically, the Fair Business Practices Act of 1975 provides that "[a]ny person who suffers injury or damages as a result of consumer acts or practices . . . may bring an action . . . to recover his general and exemplary damages sustained as a consequence . . .; provided, however, exemplary damages shall be awarded only in cases of intentional violation."⁴⁵ Further, if the plaintiff proves an intentional

37. HB 558, as introduced, 1995 Ga. Gen. Assem.

38. *See id.*

39. HB 558 (HCS), 1995 Ga. Gen. Assembly (changing the language in HB 558, as introduced, from "[t]he department shall review" to "[t]he department may review").

40. Sherrill Interview, *supra* note 11.

41. Sherrill Interview, *supra* note 11.

42. *Compare* HB 558 (HCS), 1995 Ga. Gen. Assem. *with* HB 558 (SCS), 1995 Ga. Gen. Assem.

43. *Compare* HB 558 (HCS), 1995 Ga. Gen. Assem. *with* HB 558 (SCS), 1995 Ga. Gen. Assem.

44. O.C.G.A. § 31-8-184(a) (Supp. 1995).

45. 1987 Ga. Laws 794, § 3, at 796 (codified at O.C.G.A. § 10-1-399(a) (1994)).

violation, the court will award treble damages.⁴⁶ Should the DHR discover that an inaccurate disclosure was made, the DHR must require the entity either to provide the services listed on the disclosure form or to modify the disclosure form to reflect services actually offered.⁴⁷

Finally, the Act specifically provides that action by the DHR related to discovered inaccuracies shall not affect the licensing process for those covered by the Act.⁴⁸ This provision is in sharp contrast to the House committee substitute, which provided that “[f]ailure to provide the specialized care, treatment, or services listed in the disclosure . . . may constitute a violation of licensing requirements” for those covered by the bill.⁴⁹ This change reflected concern regarding the vague language as well as a compromise between health care providers and advocates for the elderly.⁵⁰

Floor Amendment on Osteoporosis

To facilitate understanding and awareness of osteoporosis, Senator Charles W. Walker added a floor amendment to the House committee substitute.⁵¹ Senator Walker’s amendment added new chapter 42, the “Osteoporosis Prevention and Treatment Education Act.”⁵² Code section 31-42-3 provides that “[t]he department shall establish strategies to promote and maintain an osteoporosis prevention and treatment education program in order to raise public awareness, educate consumers, and train health professionals, teachers, and human service providers.”⁵³

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46. 1975 Ga. Laws 376 (codified at O.C.G.A. § 10-1-399(c) (1994)).

47. O.C.G.A. § 31-8-184(b) (Supp. 1995).

48. *Id.*

49. HB 558 (HCS), 1995 Ga. Gen. Assem.

50. Sherrill Interview, *supra* note 11.

51. O.C.G.A. § 31-42-2 (Supp. 1995).

52. *Id.* §§ 31-42-1 to -3.

53. *Id.* § 31-42-3.