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## HEALTH Comprehensive Nursing Home Legislation

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## HEALTH

### *Comprehensive Nursing Home Legislation*

CODE SECTIONS: O.C.G.A. §§ 31-7-2.1 (amended), 31-7-3.2 (new), 31-7-263 (amended), 31-8-85 to -86, -115 (amended)

BILL NUMBERS: HB 389, SB 186, SB 212, SB 213

ACT NUMBERS: 359, 467, 535, 536

SUMMARY: This package of nursing home legislation amends and adds several new Code sections relating to nursing home abuse, management, licensure, and safety. The Acts provide immunity and confidentiality for employees who report nursing home abuse; availability of a list of nursing homes that have been sanctioned; and irrevocable letters of credit to secure residents' personal funds. In addition, hearing officers in contested licensure cases were given the power to consider mitigating factors before imposing sanctions. Also, funds were set aside in the budget for the installation of automatic fire suppression sprinkler systems in nursing homes.

EFFECTIVE DATE: July 1, 1991

#### *History*

Nursing home reform was a major campaign theme of the Lieutenant Governor in the 1990 election.<sup>1</sup> The former Chairman of the Senate Human Resources Committee was a strong advocate of nursing home reform, and was opposed by the nursing home industry in the 1990

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1. Charles Walston, *Howard Unveils Nursing Home Bills*, ATLANTA J. & CONST., Feb. 5, 1991, at D3. The Lieutenant Governor's advocacy of nursing home legislation is a natural extension of his advocacy for the elderly during his years in the Georgia Senate. "In this aging society, the quality of institutional and community care for the elderly is becoming increasingly important." Telephone Interview with Lieutenant Governor Pierre Howard (Apr. 22, 1991) [hereinafter Howard Interview].

campaign for lieutenant governor.<sup>2</sup> The Lieutenant Governor's promise to tighten nursing home regulation resulted in the introduction of four bills in the 1991 legislative session.<sup>3</sup> These bills sought to eliminate "transfer trauma" by providing for temporary receivership as an alternative to closing of nursing homes, and to provide for fire sprinklers in all nursing homes, for immunity and confidentiality in order to encourage reporting of abuse, and for public notice of nursing homes with violations.<sup>4</sup>

Thousands of elderly Georgia citizens<sup>5</sup> and dozens of firefighters<sup>6</sup> visited the Georgia State Capitol during the session to express their support for the nursing home legislation. One of the issues attracting public attention was a tragic fire at a Colorado Springs retirement home in March 1991.<sup>7</sup> Nine residents died in the fire, and twenty-seven others were injured. The home did not have fire suppression sprinklers.<sup>8</sup> Nursing home industry lobbyists had strong support in the House.<sup>9</sup>

Over 300 residents faced the possibility of being transferred when Crestview Nursing Home<sup>10</sup> was cited by the Department of Human Resources in 1988 for rodent infestation, a leaky roof, general unsanitary conditions, and poor nursing care.<sup>11</sup> This situation brought to light the condition of "transfer trauma" that afflicts many elderly patients when their residence is changed.<sup>12</sup> Many residents have to be transferred to nursing homes out of the area and away from their relatives.<sup>13</sup> The

2. *Id.* The nursing home industry contributed more than \$30,000 to Pierre Howard's opponent, Joe Kennedy, in the 1990 campaign for lieutenant governor. *Id.* Senate committee assignments for the 1991 legislative session reflected the Lieutenant Governor's agenda for nursing home reform. Sen. David Scott is chair of the Senate Youth, Aging, and Human Ecology Committee, and Sen. Cathey Steinberg is vice chair of the Committee and chair of the Subcommittee. Tom Baxter, *Politics*, ATLANTA CONST., Dec. 10, 1990, at D2.

3. SB 182, SB 211, SB 212, SB 213, as introduced, 1991 Ga. Gen. Assem.

4. Telephone Interview with Sen. Cathey Steinberg, Senate District No. 42 (Mar. 27, 1991) [hereinafter Steinberg Interview].

5. Charles Walston, *Ga.'s Elderly Seek Change in Nursing Home Laws*, ATLANTA CONST., Feb. 15, 1991, at G3.

6. Charles Walston, *Firefighters Back Nursing Home Bills*, ATLANTA CONST., Mar. 12, 1991, at C1.

7. *Id.*

8. *Id.*

9. *Id.* Two members of the House Human Relations and Aging Committee have associations with nursing homes, and House Speaker Tom Murphy indicated his support of nursing homes during the 1991 session. *Id.*

10. Crestview is owned by Fulton County and managed by a private company. David Corvette, *Traumatic Transfer, Most of Crestview's Elderly to Move Far From Families*, ATLANTA CONST., Nov. 2, 1988, at A1.

11. *Id.*

12. *Id.*

13. *Id.* Inability to provide an alternate to transfer of their elderly relatives also causes many families of elderly patients distress. *Id.*

disruption causes both emotional and physical trauma.<sup>14</sup> Federal law provides for temporary management of homes receiving federal aid that are cited for serious violations;<sup>15</sup> however, there is no similar provision for private homes.<sup>16</sup>

*SB 212*

SB 212 amends Code section 31-8-85 to provide immunity for the Department of Human Resources (DHR) and its employees when acting in good faith and with reasonable diligence<sup>17</sup> in gathering and releasing information related to nursing home abuse.<sup>18</sup> The Omnibus Reconciliation Act of 1987 established requirements for centralized abuse reporting for homes receiving federal funds.<sup>19</sup> The Act establishes immunity for the DHR for releasing the information as required by federal law. Immunity extends to liability for defamation, invasion of privacy, negligence, and any other claims.<sup>20</sup>

Code section 31-8-86 is amended by SB 212, and provides confidentiality in reporting nursing home abuse.<sup>21</sup> The names of the resident, alleged perpetrator, and person reporting the abuse cannot be publicly disclosed without written consent of the person whose name is to be revealed or as required in a court proceeding.<sup>22</sup> An allegedly abused resident or her representative who is authorized in writing or by court order may request a copy of the report, but the report may not reveal the names of any other residents, the people who provided information, or the people who made the report.<sup>23</sup>

A Youth, Aging, and Health Committee amendment deleted reference to a new Code section which would have granted authority to the Board of the DHR to adopt rules and regulations to prevent conflict with

14. *Id.*

15. Omnibus Reconciliation Act, Pub. L. No. 96-499, § 314, 94 Stat. 2599 (1980).

16. Steinberg Interview, *supra* note 4.

17. O.C.G.A. § 31-8-85 (1991). The terms "good faith" and "reasonable diligence" are not defined in the Code section. Thus, the actions by the DHR or its employees that would satisfy the requirement of good faith and reasonable diligence are unclear.

18. *Id.*

19. Omnibus Reconciliation Act, 42 U.S.C. § 1396R (1987).

20. O.C.G.A. § 31-8-85 (1991). The predecessor Code section 31-8-85 provided that "any agency or person who in good faith makes a report or provides information or evidence pursuant to this article shall be immune from liability for such actions." 1980 Ga. Laws 1261 (formerly found at O.C.G.A. § 31-8-85 (1985)).

21. O.C.G.A. § 31-8-85 (1991).

22. *Id.* The previous Code section, O.C.G.A. § 31-8-86 (1985), provided for confidentiality of the name of the facility involved in the abuse; however, this portion was omitted consistent with SB 213, which provides notice of nursing homes with sanctions.

23. O.C.G.A. § 31-8-85 (1991). If a resident is deceased or unable to provide consent due to a physical or mental impairment, family members may request a copy of the report if they are authorized to access the resident's medical records under Code section 31-33-1. *Id.*

federal laws or loss of federal funds.<sup>24</sup> Such a grant of authority was thought to be improper and an intrusion into the domain of the legislature, so the language was deleted.<sup>25</sup>

*SB 213*

The intent behind SB 213 is to increase public awareness of nursing home abuses and deficiencies that pose a threat to the health, safety, or welfare of residents.<sup>26</sup> The DHR must compile a list each month of the nursing homes that are cited for deficiencies during the month.<sup>27</sup> All interested parties must be provided with a list upon request, and the process for obtaining specific information regarding deficiencies or sanctions is included in the list.<sup>28</sup> A House Committee on Human Relations and Aging Substitute added the proviso that the list be provided only upon request, and removed the requirement that a summary of the sanctions imposed be included with the list.<sup>29</sup> As a result of the Substitute, interested parties must make an additional inquiry to discover why the nursing home was sanctioned.

A new Code section<sup>30</sup> requires that notice of citations for deficiencies and the sanctions imposed must be posted in a visible location in the nursing home within fourteen days of the citation.<sup>31</sup> The notice must be visible to the residents of the nursing homes and their representatives, and remain until the DHR determines that the conditions warranting the citation no longer exist.<sup>32</sup> Originally, SB 213 provided that notice of the deficiency be sent to all residents, their legal representatives, family members, and to social service agencies and hospitals.<sup>33</sup> The version of the bill that eventually passed included a notice provision that was perceived to be much more favorable to nursing homes because nursing homes are not required to actively seek out interested parties to notify them of sanctions.<sup>34</sup>

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24. *Id.*

25. Steinberg Interview, *supra* note 4.

26. *Id.*

27. O.C.G.A. § 31-7-2.1(b) (1991).

28. *Id.*

29. SB 213 (HCS), 1991 Ga. Gen. Assem.

30. O.C.G.A. § 31-7-3.2 (1991).

31. *Id.* The posting period was increased from 10 days to 14 by the Committee Substitute. SB 213 (HCS), 1991 Ga. Gen. Assem.

32. O.C.G.A. § 31-7-3.2 (1991).

33. SB 213, as introduced, 1991 Ga. Gen. Assem.

34. Steinberg Interview, *supra* note 4. The notice provision requiring only a posting of notice within the facility was Speaker of the House Tom Murphy's preferred version. *Id.*

A provision for imposing daily fines for violation of the notice requirement<sup>35</sup> was replaced by sanctions as provided in the Georgia Administrative Procedure Act.<sup>36</sup>

### *SB 186*

SB 186 was backed by the nursing home industry.<sup>37</sup> Prior law required that nursing homes purchase a surety bond to guarantee the personal assets of nursing home residents.<sup>38</sup> Nursing homes found it difficult and costly to obtain the bonds, and requested a bill to allow the alternative of an irrevocable letter of credit to secure belongings of residents.<sup>39</sup> SB 186 gives nursing homes the choice of acquiring either an irrevocable letter of credit or a surety bond.<sup>40</sup>

### *HB 389*

HB 389 amends Code section 31-7-263 relating to contested cases for licensure of directors and employees of personal care homes.<sup>41</sup> Under previous law, felons were prohibited from working in personal care homes without regard to the kind or circumstances of the conviction.<sup>42</sup> The Act provides that a hearing officer may consider circumstances such as character, employment history, and lack of physical harm to the victim as mitigating factors in a motion for exempting a felon from the restrictions in this Code section.<sup>43</sup>

### *SB 182*

SB 182 attracted the most public attention of the nursing home package. Although nursing homes felt that sprinkler systems were needed, financing of the sprinklers became a major issue.<sup>44</sup> The bill, as introduced, would have required that sprinkler systems be installed in the eighty-four nursing homes without such systems by July 1, 1993.<sup>45</sup>

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35. SB 213, as introduced, 1991 Ga. Gen. Assem. The amount was \$5 per day per bed for the first violation and \$7.50 per day per bed, thereafter. *Id.*

36. SB 213 (HCS), 1991 Ga. Gen. Assem.

37. Steinberg Interview, *supra* note 4.

38. O.C.G.A. § 31-8-115(6) (1985).

39. Steinberg Interview, *supra* note 4.

40. O.C.G.A. § 31-8-115 (1991).

41. HB 389 (CSFA), 1991 Ga. Gen. Assem.

42. Telephone Interview with Rep. David Lucas, House District No. 102, Chairman Human Aging and Relations Committee (Apr. 6, 1991) [hereinafter Lucas Interview].

43. *Id.*

44. Steinberg Interview, *supra* note 4.

45. *Law Makers '91* (WGTV television broadcast, Feb. 14, 1991) (statement of Sen. Cathey Steinberg, Senate District No. 42, who sponsored the bill).

Nursing homes sought to obtain Medicaid reimbursement for the cost of installing the systems that would vary by facility.<sup>46</sup> SB 182 provided that nursing homes would be reimbursed by the Department of Medical Assistance using a formula that determined the amount of reimbursement on the number of Medicaid residents in the nursing home.<sup>47</sup> The amount of reimbursement was not enough to get the bill through the House; however, through some "creative maneuvering" on the part of one senator on the Budget Conference Committee, the funding for nursing home sprinklers was set aside in the State budget.<sup>48</sup>

An additional bill, SB 211, which would have allowed appointment of a receiver for mismanaged nursing homes, never emerged from the House Judiciary Committee.<sup>49</sup> This bill garnered the most resistance from the nursing home industry.<sup>50</sup> The legislative intent of SB 211 was to provide the alternative of appointment of a receiver to prevent closings of nursing homes that are mismanaged, thus reducing the incidence of "transfer trauma."<sup>51</sup>

SB 211 would have added a new article to designate legislative intent, definitions, and requirements for appointment of a receiver.<sup>52</sup> Circumstances that would have warranted appointment of a receiver are the existence of conditions posing a threat to the lives, health, safety, or welfare of the residents such as substandard care, unsanitary conditions, natural disaster, financial ineptness, absence of relocation arrangements thirty days before closure of a facility, and violation of state or federal licensing or regulatory statutes.<sup>53</sup> SB 211 set forth requirements for notice and hearing before appointment of a receiver.<sup>54</sup> Powers of the receiver would have included managing day-to-day operations, hiring consultants, making expenditures for repairs, and

46. *Id.*

47. SB 182 (SCS), 1991 Ga. Gen. Assem.

48. Steinberg Interview, *supra* note 4. Sen. Garner, Senate District No. 30, was also the sponsor of SB 182. SB 182, as introduced, 1991 Ga. Gen. Assem. The budget included \$2.5 million as a separate line item for nursing home sprinklers. *Id.*

49. Final Composite Status Sheet, Mar. 15, 1991.

50. *Id.*

51. *Id.* See *supra* notes 9–15. SB 211 states as its purpose:

The General Assembly finds that a closure of a long-term care facility and subsequent relocation of residents present a danger to the lives, health, safety, and welfare of such residents. In addition to the physical and emotional trauma of relocation, residents and their families suffer when residents must be moved a long distance to other available facilities. The purpose of this article is to provide for the alternative of a court-appointed receivership for a facility while deficiencies are corrected.

SB 211 (SCS), 1991 Ga. Gen. Assem.

52. *Id.*

53. *Id.*

54. *Id.*

hiring or firing employees.<sup>55</sup> With court approval, the receiver could incur debt, encumber the property, or close the facility.<sup>56</sup> The nursing home industry expressed concern that the receiver could incur debt for the facility beyond the term of the receivership.<sup>57</sup> SB 211 stalled in the House due to pressure exerted from the nursing home lobby.<sup>58</sup>

### *Conclusion*

Only two of the four bills backed by the Lieutenant Governor passed in the 1991 legislative session. The package "made strong inroads" in the areas of reporting abuse in nursing homes and providing notice of deficiencies.<sup>59</sup> Nursing home employees and the DHR can report incidents of abuse and poor conditions without fear of legal reprisals.<sup>60</sup> Although the bill requiring fire suppression sprinklers did not pass, mandatory language in the State budget secured financing for sprinklers in the eighty-four homes without such sprinklers. Nursing home lobbyists were successful in blocking the receivership bill that received the most opposition this session. Of the bills introduced this year, the receivership bill was the most intrusive into the daily management of nursing homes. Notwithstanding financial disagreements, both the nursing home lobby and advocates of the elderly have expressed and acted upon concerns for improving the quality of human services in Georgia.

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55. *Id.*

56. *Id.*

57. Steinberg Interview, *supra* note 4.

58. *Id.*

59. Howard Interview, *supra* note 1.

60. *Id.*