

House Bill 486 (AS PASSED HOUSE AND SENATE)

By: Representatives Benton of the 31st, Petrea of the 166th, Spencer of the 180th, and Kirby of the 114th

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 January 1, 2018."

85 **SECTION 2.**

86 All laws and parts of laws in conflict with this Act are repealed.