

HOUSE BILL 290¹: HOSPITALS AND NURSING HOMES; POLICY DURING A DECLARED
PUBLIC HEALTH EMERGENCY THAT LIMITS PATIENTS' ABILITIES TO BE VISITED BY
DESIGNATED FAMILY MEMBERS AND FRIENDS; PROVISIONS

Amending O.C.G.A. § 31-7-1

First Signature: Representative Ed Setzler (35th)

Co-Sponsors: Representative Mark Newton (123rd), Representative Matt Hatchett (150th), Representative Bonnie Rich (97th), Representative Mack Jackson (128th), and Representative Patty Bentley (139th)

Summary: “A BILL to be entitled an Act to amend Article 1 of Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to regulation of hospitals and related institutions, so as to prohibit hospitals and nursing homes from instituting any policy during a declared public health emergency that limits patients' abilities to be visited by designated family members or friends as a condition precedent to obtaining or maintaining a permit to operate a hospital or nursing home; to provide for reasonable safety precautions; to provide for limited liability; to provide for related matters; to provide for a short title; to repeal conflicting laws; and for other purposes.”²

Status: Senate Tabled on March 31, 2021.³

TEXT OF HOUSE BILL 290 (COMMITTEE SUBSTITUTE LC 33 88185)⁴

A BILL TO BE ENTITLED AN ACT

To amend Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to regulation and construction of hospitals and other health care facilities, so as to provide for visitor policies; to provide for definitions; to provide for reasonable safety precautions; to provide for statutory construction; to provide for rules and regulations; to provide for enforcement; to provide for related matters; to provide for short title; to repeal conflicting laws; and for other purposes

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

¹ Senate Substitute to H.B. 290, 156th Gen. Assemb., 1st Reg. Sess. (Ga. 2021), <https://www.legis.ga.gov/api/legislation/document/20212022/201431> (last visited Nov. 6, 2021).

² 2020-2021 Regular Session-H.B. 290 Hospitals and nursing homes; policy during a declared public health emergency that limits patients' abilities to be visited by designated family members and friends; provisions, GA GEN. ASSEMB., <https://www.legis.ga.gov/legislation/59302> [hereinafter H.B. 290 Status Sheet].

³ *Id.*

⁴ Senate Substitute to H.B. 290, *supra* note 1.

SECTION 1.

This Act shall be known and may be cited as the “Patient and Resident Representation Act.”

SECTION 2.

Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to regulation and construction of hospitals and other health care facilities, is amended by adding a new article to read as follows:

“ARTICLE 16

31-7-430.

As used in this article, the term:

(1) ‘Long-term care facility’ means a skilled nursing home, intermediate care home, personal care home, assisted living community, community living arrangement, or inpatient hospice facility

(2) ‘Visitor’ means an individual authorized by a patient or resident to have access to in-person visitation in a hospital or long-term care facility.

31-7-431.

(a) On and after July 1, 2021, hospitals and long-term care facilities shall institute visitor policies, appropriate to their clinical and residential settings, that are no more restrictive to visitation than the minimum standards promulgated by the federal Centers for Medicare and Medicaid Services.

(b) Hospitals and long-term care facilities shall not be prevented from imposing reasonable safety requirements relating to the in-person physical contact of visitors with patients or residents. Such general safety requirements shall be posted on the hospital or long-term care facility’s website and be made available upon request in physical form.

31-7-432.

(a) The department shall establish rules and regulations narrowly tailored to implement the provisions of the article.

(b) The department shall be authorized to take civil, disciplinary, or administrative action against any hospital or long-term care facility for noncompliance with this article.

(c) Nothing in this article shall be construed to limit any right of a patient or resident recognized under any provision of state or federal law or regulation.

(d) The provisions of this article shall be construed to comply with the requirements of the federal Centers for Medicare and Medicaid Services to obtain funding for patients, residents, hospitals, or long-term care facilities.”

SECTION 3.

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

SPONSOR'S RATIONALE

House Bill 290 (the “Bill”) was introduced by Representative Ed Setzler in response to the restrictions set by Governor Brian Kemp (“Governor Kemp”) during the height of the COVID-19 pandemic.⁵ During the early stages of the COVID-19 pandemic, Governor Kemp issued an executive order prohibiting all visitation from non-essential persons in hospitals and nursing homes, in an attempt to limit patient exposure to the virus.⁶ “This Bill recognizes the basic human right that family members and patients shouldn’t only be able to communicate through the iPhone” explained Representative Setzler.⁷ Those who have sponsored the Bill believe that it is important for a loved one to be with the patient during a very critical time.⁸ Several senators expressed the concern that many of their constituents, or even their own family members, were suffering in solitude while staying at a hospital or care facility.⁹ Additionally, there have been several stories of people who have passed away in hospitals without getting to see their family members in person due to the pandemic.¹⁰ Representative Bonnie Rich commented that “people have things they need to say” with regards to their loved ones.¹¹

The Bill originally focused on allowing family and friends to visit their loved ones during the pandemic.¹² After several amendments to the Bill, the focus shifted from friends and families to legal representatives of the patients.¹³

⁵ Jeff Amy, *House Bill: Allow at Least 1 Visitor in Medical Facilities*, ASSOCIATED PRESS (Mar. 8, 2021), <https://www.usnews.com/news/best-states/georgia/articles/2021-03-08/House-Bill-Allow-at-Least-1-Visitor-in-Medical-Facilities>.

⁶ See State of Georgia, Exec. Order 04.08.20.03, *Ensuring the safety of employees and residents of nursing homes and long-term care facilities in response to COVID-19* (April 8, 2020, 2:41 p.m.), <https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders> [hereinafter Exec. Order]. (This order was in response to the Georgia Department of Public Health’s determination that COVID-19 was rapidly spreading through hospitals and nursing homes. *Id.* The Center of Disease Control found that elderly patients of COVID-19 were more susceptible to serious complications from the virus. *Id.*).

⁷ Michael Seiden, *Georgia Bill Aims to Reunite Families Unable to Visit Relatives in Nursing Homes, Hospitals*, WSB-TV (Feb. 14, 2021, 11:21 PM), <https://www.wsbtv.com/news/local/house-bill-aims-reunite-families-who-are-unable-visit-sick-relatives/IGL5EECBM5G53CXO4A26HZFHWY/>.

⁸ Amy, *supra* note 5.

⁹ GPB Lawmakers, *Day 28, Afternoon Part One* (beginning at 31:20), YOUTUBE (March 8, 2021) https://www.youtube.com/watch?v=fR2CGUZOaiw&list=PLtnbuO1Wh9L4OBgXMYH_ifNsbr0WS97X_&index=143 [hereinafter GPB Lawmakers].

¹⁰ Seiden, *supra* note 7.

¹¹ GPB Lawmakers, *supra* note 9, at 1:27:58.

¹² *Id.* at 54:10.

¹³ *Id.* at 38:00.

This shift towards legal representatives was done to address the concerns that the Bill failed to take into account the possibility of a future pandemic and the challenges that strict guidelines might create for hospitals.¹⁴ Sponsors of the Bill believe that this is the proper balance between the needs of the patients in these facilities and the precautions needed to adhere to the requirements of the pandemic.¹⁵ It was important for the sponsors of the Bill to establish a patient's right to visits from legal representatives even when a pandemic might otherwise restrict their visitation rights.¹⁶

OPPOSITION'S RATIONALE

In opposition to the Bill, hospital representatives believe that the Bill could "heighten the risk[s]" posed by the virus due to the increase in visitation allowed by the Bill.¹⁷ When the executive order was enacted on April 8, 2020, the average number of hospitalizations related to COVID-19 was 794.¹⁸ The number of people who have been hospitalized since then has steadily increased, and average hospital admissions due to COVID-19 spiked on August 2, 2020, with roughly 4,312 patients; on January 15, 2021, to roughly 6,319 patients; and again on September 7, 2021, to roughly 6,417 patients.¹⁹ Since the pandemic is still ongoing, these visits could endanger the patients that the Bill is meant to benefit.²⁰ Opponents to the Bill also believe that "allowing additional people into health care facilities no matter the circumstances could further exacerbate the problem during a pandemic."²¹ Many opponents believe that some concessions are necessary to protect patients in these facilities, especially the right to receive visitors.²²

Representatives who have spoken out against the Bill, such as Representative Rebecca Mitchell, have stated that "HB 290 does not acknowledge infection control as an essential element to keeping Georgians safe[.]"²³

¹⁴ *Id.* at 42:40.

¹⁵ *Id.* at 43:10.

¹⁶ *Id.* at 35:40.

¹⁷ Amy, *supra* note 5.

¹⁸ *Tracking Coronavirus in Georgia: Latest Map and Case Count*, THE NEW YORK TIMES, <https://www.nytimes.com/interactive/2021/us/georgia-covid-cases.html> (last visited Dec. 27, 2021, 1:02 PM).

¹⁹ *Id.*

²⁰ Andy Miller, *Showdown with the House looms After Senate Panel Guts Patient Visit Bill*, GEORGIA HEALTH NEWS (Mar. 25, 2021), <http://www.georgiahealthnews.com/2021/03/Showdown-House-Looms-Senate-Panel-Guts-Patient-Visit-Bill/>.

²¹ Maya T. Prabhu, *Georgia Senate Panel Guts Bill to Allow Visitors at Hospitals, Nursing Homes*, ATLANTA JOURNAL-CONSTITUTION (Mar. 25, 2021), <https://www.ajc.com/politics/Georgia-Senate-Panel-Guts-Bill-to-Allow-Visitors-at-Hospitals-Nursing-Homes/QJ7BMW2RUNFQPFY7R2CHGS6SHY/>.

²² GPB Lawmakers, *supra* note 9, at 55:45.

²³ Amy, *supra* note 5.

The Bill has a lack of regulation in regards to the screening and regulating of hospital/nursing home visitation.²⁴ Other proposed legislation, such as HB 649, provides for specific measures that need to be taken before a person can visit those in the facility.²⁵ These measures include temperature checks, health screening, social distancing, and any other requirements deemed appropriate by the departments.²⁶ The Bill is silent on any visitor screening, simply requiring hospitals to not institute unreasonable visitation policies.²⁷

IMPLICATIONS IN GEORGIA

Jeff Amy of the Associate Press reported that, “[e]very Georgia hospital or nursing home patient could designate at least one person who would have at least one hour of access each day.”²⁸ This would go against the original executive order that only allowed visitation for Compassionate Care visits.²⁹ Instead of limiting visitation to “end of life” or “psychological need” situations, these visits would be available as per the requirements of the Bill.³⁰ Hospitals and nursing homes in Georgia would be instructed to create visitation policies that “are no more restrictive to visitation than the minimum standards promulgated by the federal Centers for Medicare and Medicaid Services.”³¹ In addition to the visitation requirements, the Bill also includes provisions that would protect hospitals and nursing homes from certain COVID-19 related liabilities.³²

The Bill focuses more on the visitation rights of patients and does not mention regulations for patient screening.³³ The wording of the Bill gives the hospital/long-term care facility the ability to set their own reasonable safety requirements relating to in-person visits, even though they would be forced to follow the visitation guidelines established in the Bill.³⁴ Due to the fluctuation of COVID-19 cases in Georgia, it is difficult to determine if these restrictions will have the desired safety effect sought out by the sponsors.³⁵

²⁴ GPB Lawmakers, *supra* note 9, at 1:08:40.

²⁵ See H.B. 649, 156th Gen. Assemb., 1st Reg. Sess. (Ga. 2021), <https://www.legis.ga.gov/legislation/60092> (last visited Oct. 7, 2021).

²⁶ *Id.*

²⁷ Senate Substitute to H.B. 290, *supra* note 1.

²⁸ Amy, *supra* note 5.

²⁹ See Exec. Order, *supra* note 6.

³⁰ Senate Substitute to H.B. 290, *supra* note 1.

³¹ *Id.*

³² *Id.*

³³ Senate Substitute to H.B. 290, *supra* note 1.

³⁴ GPB Lawmakers, *supra* note 9, at 40:30.

³⁵ See N.Y. TIMES, *supra* note 18.

Along with the problems originating from COVID-19, other lawmakers have expressed concerns about how this Bill will affect future pandemics.³⁶ There is no way to predict what the next pandemic will be, so there is a danger in establishing regulations that will continue after the COVID-19 pandemic has hopefully passed.³⁷ Many of Georgia's lawmakers want to find a solution to the problems faced by COVID-19, but there are still questions about the way to safely address this pandemic along with any future pandemics the state may face.³⁸

The Bill would also have an impact on the case law that has involved hospital visitation policies.³⁹ While there have been few cases regarding visitation policies in the state of Georgia, the United States District Court for the Northern District of Georgia, Atlanta Division, has ruled that the hospitals are private actors who may set their own policies.⁴⁰ This classification as a private party limits a majority of constitutional claims that can be brought against a hospital for preventing visitation.⁴¹ The Bill would provide a means for visitation policies to be challenged in court if they are not in compliance with the regulations established by the Centers for Medicare and Medicaid.⁴²

LEGISLATIVE GENEALOGY

The Bill was first introduced on a House Hopper in February, 2021.⁴³

The House first read it on February 4, 2021.⁴⁴ The second House readers occurred on February 8, 2021.⁴⁵ House Committee Favorably Reported by Substitute on March 3, 2021.⁴⁶ The third House readers occurred on March 8, 2021.⁴⁷ The house committee favorably reported the Bill by substitute on March 8, 2021.⁴⁸

³⁶ GPB Lawmakers, *supra* note 9, at 1:07:20.

³⁷ *Id.*

³⁸ *Id.*

³⁹ See *Trimble v. Emory Healthcare, Inc.*, 2021 U.S. Dist. LEXIS 67263 (N.D. Ga. Jan. 21, 2021). *Trimble* involved a patient who was not allowed to bring in a visitor for their appointment at Emory Hospital based on their COVID-19 visitation policies. *Id. see also*, *Tanda Lane As Adm'r of the Estate of John Paul Booher v. Piedmont Healthcare*, 2021 U.S. Dist. LEXIS 213990 (N.D. Ga. Oct. 13, 2021). Booher was a COVID-19 patient at Piedmont whose family was barred from visiting based on the hospital's COVID-19 visitation policies. *Id.* Booher passed away without getting to see his family. *Id.*

⁴⁰ *Trimble*, 2021 U.S. Dist. LEXIS 67263, at *4-5.

⁴¹ *Piedmont Healthcare*, 2021 U.S. Dist. LEXIS 213990, at *6-10.

⁴² Senate Substitute to H.B. 290, *supra* note 1.

⁴³ H.B. 290 Status Sheet, *supra* note 2.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

The Senate read and referred the Bill on March 9, 2021.⁴⁹ The Senate committee favorably reported the Bill by substitute on March 25, 2021.⁵⁰ The second Senate readers occurred on March 25, 2021.⁵¹ The Senate tabled the Bill on March 29, 2021.⁵² The Senate took the Bill from the table on March 29, 2021.⁵³ The third Senate readers occurred on March 29, 2021.⁵⁴ The Senate committee favorably reported the Bill by substitute on March 29, 2021.⁵⁵ The House agreed to the Senate amendment on March 31, 2021, but the Senate tabled the Bill on March 31st, 2021.⁵⁶

Prepared by: *Austin O'Neill*

⁴⁹ H.B. 290 Status Sheet, *supra* note 2.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ H.B. 290 Status Sheet, *supra* note 2.

⁵⁶ *Id.*