

House Bill 486

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

A BILL TO BE ENTITLED  
AN ACT

To amend Code Section 43-26-12 of the Official Code of Georgia Annotated, relating to exceptions to operation of the Georgia Registered Professional Nurse Practice Act and burden of proof, so as to provide for training of proxy caregivers; to provide for selection of curricula by the Department of Behavioral Health and Developmental Disabilities; to provide for select providers to train proxy caregivers in accordance with selected curriculum; to provide for professional delegation exceptions; to revise good faith efforts; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Code Section 43-26-12 of the Official Code of Georgia Annotated, relating to exceptions to operation of the Georgia Registered Professional Nurse Practice Act and burden of proof, is amended by revising paragraph (9) of subsection (a) as follows:

- "(9)(A) The performance of health maintenance activities by a proxy caregiver pursuant to a written plan of care for a disabled individual when:
- (i) Such individual or a person legally authorized to act on behalf of such individual has executed a written informed consent designating a proxy caregiver and delegating responsibility to such proxy caregiver to receive training and to provide health maintenance activities to such disabled individual pursuant to the written orders of an attending physician, or an advanced practice registered nurse or physician assistant working under a nurse protocol agreement or job description, respectively, pursuant to Code Section 43-34-25 or 43-34-23;
  - (ii) Such health maintenance activities are provided outside of a hospital or nursing home and are not provided by a medicare-certified home health agency or hospice organization and if alternative sources are available, Medicaid is the payor of last resort; and

(iii) The written plan of care implements the written orders of the attending physician, advanced practice registered nurse, or physician assistant and specifies the frequency of training and evaluation requirements for the proxy caregiver, including additional training when changes in the written plan of care necessitate added duties for which such proxy caregiver has not previously been trained. A written plan of care may be established by a registered professional nurse.

Rules, regulations, and policies regarding training for proxy caregivers pursuant to this paragraph shall be promulgated by the Department of Behavioral Health and Developmental Disabilities or the Department of Community Health, as applicable. Such rules shall include selection by the Department of Behavioral Health and Developmental Disabilities approval of training curricula specifically designed for the purpose of implementing the health maintenance activity of medication administration to be implemented by such proxy caregivers employed or contracted to providers of home and community based services, community residential alternative services, or community living services. Such rules may permit providers to train proxy caregivers in accordance with the selected curriculum or otherwise provided for in rules, regulations, and policies.

(B) An attending physician, advanced practice registered nurse, or physician assistant whose orders or written plan of care provide for the provision of health maintenance activities to a disabled person shall not be vicariously liable for a proxy caregiver's negligent performance of health maintenance activities unless the proxy caregiver is an employee of the physician, advanced practice registered nurse, or physician assistant. Any person who trains a proxy caregiver to perform health maintenance activities for a disabled individual may be held liable for negligently training that proxy caregiver if such training deviated from the applicable standard of care and was a proximate cause of injury to the disabled individual.

(C) For purposes of this paragraph, the term:

(i) 'Disabled individual' means an individual who has a physical or mental impairment that substantially limits one or more major life activities and who meets the criteria for a disability under state or federal law.

(ii) 'Health maintenance activities' are limited to those activities that, but for a disability, a person could reasonably be expected to do for himself or herself. Such activities are typically taught by a registered professional nurse, but may be taught by an attending physician, advanced practice registered nurse, physician assistant, or directly to a patient and are part of ongoing care. Health maintenance activities are those activities that do not include complex care such as administration of intravenous medications, central line maintenance, and complex wound care; do not require complex observations or critical decisions; can be safely performed and have

reasonably precise, unchanging directions; and have outcomes or results that are reasonably predictable. Health maintenance activities conducted pursuant to this paragraph shall not be considered the practice of nursing.

(iii) 'Proxy caregiver' means an unlicensed person or a licensed health care facility who has been selected by a disabled individual or a person legally authorized to act on behalf of such individual to serve as such individual's proxy caregiver, provided that such person shall receive training and shall demonstrate the necessary knowledge and skills to perform documented health maintenance activities, including identified specialized procedures, for such individual.

(iv) 'Training' means teaching proxy caregivers the necessary knowledge and skills to perform health maintenance activities for disabled individuals. ~~Good faith efforts by an attending physician, advanced practice registered nurse, physician assistant, or registered professional nurse to provide training to a proxy caregiver to perform health maintenance activities shall not be construed to be professional delegation.~~

(D) Good faith efforts by an attending physician, advanced practice registered nurse, physician assistant, registered professional nurse, or providers of home and community based services and other persons approved by the department to provide training to a proxy caregiver to perform health maintenance activities shall not be construed to be professional delegation."

## SECTION 2.

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