

House Bill 290 (COMMITTEE SUBSTITUTE)

By: Representatives Setzler of the 35<sup>th</sup>, Newton of the 123<sup>rd</sup>, Hatchett of the 150<sup>th</sup>, Rich of the 97<sup>th</sup>, Jackson of the 128<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to  
2 regulation and construction of hospitals and other health care facilities, so as to prohibit  
3 hospitals and long-term care facilities from instituting any policy that limits patients' or  
4 residents' abilities to be visited by a designated legal representative as a condition precedent  
5 to obtaining or maintaining a permit to operate a hospital or long-term care facility; to require  
6 the institution of policies by hospitals and long-term care facilities; to prohibit long-term care  
7 facilities from instituting any policy that limits residents' abilities to be visited by essential  
8 caregivers as a condition precedent to obtaining or maintaining a permit to operate a  
9 long-term care facility; to provide for visitor policies; to provide for definitions; to provide  
10 for reasonable safety precautions; to authorize the resident to change essential caregivers; to  
11 authorize temporary suspension or termination of access of a legal representative or essential  
12 caregiver; to provide for civil action; to provide for statutory construction; to provide for  
13 limited liability; to provide for rules and regulations; to provide for enforcement; to provide  
14 for related matters; to provide for a short title; to repeal conflicting laws; and for other  
15 purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 290 (SUB)

17 **SECTION 1.**

18 This Act shall be known and may be cited as the "Patient and Resident Representation and  
19 Visitation Act."

20 **SECTION 2.**

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

24 "ARTICLE 16

25 31-7-430.

26 (a) As used in this article, the term:

27 (1) 'Essential caregiver' means an individual age 18 years old or older who is a support  
28 person or caregiver designated by a patient or resident to assist with such patient or  
29 resident's activities and support their health, health care, long-term care, and overall  
30 well-being.

31 (2) 'Legal representative' means an individual 21 years old or older designated by a  
32 patient or resident to assist in exercising such patient or resident's fundamental right to  
33 make informed decisions regarding care, be informed of his or her health status, be  
34 involved in care planning and treatment, request or refuse treatment, access medical or  
35 personal information, manage financial matters, or act on behalf of such patient or  
36 resident. Unless otherwise designated by the patient or resident, such legal representative  
37 shall be the person authorized and empowered to act on behalf of the patient or resident  
38 pursuant to Code Section 31-9-2.

39 (3) 'Long-term care facility' means a skilled nursing home, intermediate care home,  
40 personal care home, assisted living community, community living arrangement, or  
41 inpatient hospice facility.

42 (4) 'Visitor' means an individual authorized by a patient or resident to have access to  
43 in-person visitation in a hospital or long-term care facility.

44 31-7-431.

45 (a) On and after July 1, 2021, each hospital and long-term care facility shall institute  
46 distinct and independent policies relating to:

47 (1) Legal representatives;

48 (2) Essential caregivers; and

49 (3) Visitors.

50 (b) Such policies shall:

51 (1) Be posted prominently on such hospital or long-term care facility's website and be  
52 made immediately available in physical form on the premises upon request; and

53 (2) Require that an individual or group of individuals be designated by the hospital or  
54 long-term care facility to provide information or receive formal complaints regarding  
55 policies or decisions relating to legal representatives, essential caregivers, and visitors as  
56 provided for in this article. The names and contact information for such designated  
57 individual or group of individuals shall be published on the hospital or long-term care  
58 facility's website and shall include, but shall not be limited to, the physical address, email  
59 address, and direct phone number to which questions or complaints may be directed as  
60 provided in this article.

61 31-7-432.

62 (a) On and after July 1, 2021, as a condition precedent to obtaining or maintaining a permit  
63 under this article to operate, a hospital or long-term care facility shall not institute any

64 policy that limits any patient or resident's ability to have access to in-person physical  
65 contact with the designated legal representative of such patient or resident for less than one  
66 hour per day during any period of hospitalization, treatment, or residence that lasts for a  
67 period exceeding 12 hours, whether or not the patient or resident is competent.

68 (b) Notwithstanding Code Section 38-3-51, it shall be the policy of this state regarding the  
69 patient's exercise of rights under 42 C.F.R. 482.13(b)(2) that the fundamental right of  
70 patients or residents to make informed decisions regarding care, be informed of his or her  
71 health status, be involved in care planning and treatment, request or refuse treatment,  
72 access medical or personal information, manage financial matters, or have a designated  
73 legal representative act on behalf of such patient or resident depends upon the patient or  
74 resident having access to in-person physical contact with their designated legal  
75 representative in accordance with subsection (a) of this Code section; furthermore, such  
76 access to in-person physical contact with his or her designated legal representative is  
77 deemed equally essential to the provision of health care as access to the services of medical  
78 professionals, staff, or agents of the hospital or long-term care facility; provided, however,  
79 that on an individual case-by-case basis, for patients in operating rooms, transplant wards,  
80 or requiring physical isolation for exceptional immunocompromised conditions, the  
81 patient's attending physician may, upon medical necessity, restrict or postpone a patient's  
82 access to in-person physical contact with their designated legal representative for up to 48  
83 hours, and the standing orders of a hospital or acute care unit shall not satisfy this  
84 exception.

85 (c) Hospitals and long-term care facilities shall not be prevented from imposing reasonable  
86 safety requirements relating to the in-person physical contact of legal representatives with  
87 patients or residents. Safety requirements imposed by a hospital or long-term care facility  
88 pursuant to this Code section shall be posted on the hospital or long-term care facility's  
89 website and be made available upon request in physical form.

90 (d) Reasonable costs of complying with the safety requirements of subsection (c) of this  
91 Code section may be borne by the legal representative.

92 (e) The Governor shall not be authorized to waive or otherwise limit the provisions of this  
93 Code section pursuant to Code Section 38-3-51.

94 (f) Nothing in this Code section shall be construed to establish that a legal representative  
95 is an employee or agent of the hospital or long-term care facility.

96 (g) A hospital or long-term care facility may temporarily suspend or terminate the access  
97 of a legal representative:

98 (1) For failure to comply with reasonable safety requirements; or

99 (2) To any patient or resident who is under the custody of a law enforcement agency or  
100 a correctional institution.

101 (h) Any patient may bring a civil action in court for the failure of a hospital, long-term care  
102 facility, or governmental entity to comply with the provisions of this Code section.

103 (i)(1) No hospital or long-term care facility shall be held liable for damages for any  
104 injuries or death arising from the compliance of such hospital or long-term care facility  
105 with the provisions of this Code section, unless the individual proves that the actions of  
106 the hospital or long-term care facility showed gross negligence, willful and wanton  
107 misconduct, reckless infliction of harm, or intentional infliction of harm.

108 (2) The immunity set forth in paragraph (1) of this subsection shall be provided in  
109 addition to, and shall in no way limit, any other immunity protections that may apply in  
110 state or federal law.

111 31-7-433.

112 (a) On and after July 1, 2021, as a condition precedent to obtaining or maintaining a permit  
113 under this article to operate, a long-term care facility shall not institute any policy that  
114 limits any resident's ability to have in-person physical contact with an essential caregiver  
115 during any period of treatment or residence that lasts for a period exceeding 24 hours,

116 whether or not the resident is competent, subject to the limitations set forth by the  
117 Governor in any emergency declaration issued pursuant to Code Section 38-3-51.

118 (b) Long-term care facilities shall not be prevented from imposing reasonable safety  
119 requirements relating to the physical presence of any essential caregivers in the long-term  
120 care facility. Any such safety requirements shall provide that at least a total of two such  
121 legal representatives or essential caregivers are authorized to have in-person physical  
122 contact with such resident for no less than a single period of two hours per day.

123 (c) Safety requirements imposed by a long-term care facility pursuant to subsection (b) of  
124 this Code section shall be posted on the long-term care facility's website and be made  
125 available upon request in physical form.

126 (d) Reasonable costs of complying with the safety requirements of subsection (b) of this  
127 Code section may be borne by the essential caregiver.

128 (e) The resident shall have discretion to designate and change his or her list of essential  
129 caregivers in accordance with reasonable guidelines established by the department.

130 (f) Nothing in this Code section shall be construed to establish that an essential caregiver  
131 is an employee or agent of the hospital or long-term care facility.

132 (g) A long-term care facility may temporarily suspend or terminate the access of an  
133 essential caregiver:

134 (1) For failure to comply with reasonable safety requirements; or

135 (2) To any patient or resident who is under the custody of a law enforcement agency or  
136 a correctional institution.

137 (h) Any patient may bring a civil action in court for the failure of a long-term care facility  
138 or governmental entity to comply with the provisions of this Code section.

139 (i)(1) No hospital or long-term care facility shall be held liable for damages for any  
140 injuries or death arising from the compliance of such hospital or long-term care facility  
141 with the provisions of this Code section, unless the individual proves that the actions of

142 the hospital or long-term care facility showed gross negligence, willful and wanton  
143 misconduct, reckless infliction of harm, or intentional infliction of harm.

144 (2) The immunity set forth in paragraph (1) of this subsection shall be provided in  
145 addition to, and shall in no way limit, any other immunity protections that may apply in  
146 state or federal law.

147 31-7-434.

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

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

156 (c) Reasonable costs of complying with the safety requirements of subsection (b) of this  
157 Code section may be borne by the visitor.

158 31-7-435.

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

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

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

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

168 **SECTION 3.**

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