

TEMPORARY HEALTH CARE PLACEMENT DECISION MAKER FOR AN ADULT ACT



Georgia Department
of Human Services



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of Human Services
Division of Aging Services

INTRODUCTION

The legislature recognizes that there may be times when adults have not made advance arrangements for situations in which they are unable to consent to their admission to or discharge from -- or placement in or transfer to -- other health care facilities or placements. When those times arise, it may be necessary and in these adults' best interests for family members or other interested persons to make such provisions on their behalf.

The purpose of this law is to provide assistance to these family members or other interested persons. This law establishes an order of priority for those who may make the decision to transfer, admit, or discharge such adults at the appointed times. It also establishes a procedure for obtaining authorization from the court in the absence of a person authorized to consent.

Legal Reference: O.C.G.A. 3136A1 et seq.

This law became effective July 1, 1999.

This information is provided only as community education. It is not intended as nor should it be considered as legal advice. For specific legal advice, contact an attorney or call the **Georgia Senior Legal Hotline at 1-888-257-9519 or (404) 657-9915.**

For questions about this document, call the **Department of Human Services Division of Aging Services' State Legal Services Developer at, (404) 657-5328 or 1-866-552-4464.**

TEMPORARY HEALTH CARE PLACEMENT DECISION MAKER FOR AN ADULT ACT

What are some of the definitions of the words used in this law?

“Absence of a person authorized to consent” means that:

- After diligent efforts for a reasonable period of time, no person authorized to consent under the provisions of this law has been located; **or**
- All such authorized persons located who have chosen to give up their right under this law to say ‘yes’ or ‘no’ to the person’s admission to or discharge from a health care facility or placement or transfer to an alternative health care facility or placement. If a person who is listed in this law as having the authority to say yes or no gives an answer of “No” to a proposed admission, discharge, or transfer, the answer stands and it shall not be taken as a waiver of their right.

“Unable to consent” means that an adult is unable to:

- Make rational and competent decisions regarding his or her placement options for health or personal care; or
- Communicate such decisions by any means.

When does this law not apply?

This law does not give anyone the right to admit another person to involuntary examination and hospitalization for treatment of mental illness, which is covered under another law entirely. (See Title 37 of the Official Code of Georgia)

How does this law work?

First there has to be a certification by a physician, attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, who, after having personally examined an adult, certifies in the adult’s medical records that:

1. The adult is unable to consent for himself or herself; and
2. The doctor believes that it is in the adult’s best interest to be discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition and to be transferred to or admitted to an alternative facility or placement.

Does the transfer or admission have to be to a hospital?

No. Other types of facilities include, but are not limited to, nursing facilities, assisted living communities, personal care homes, rehabilitation facilities, and home and community based programs.

May anyone give consent to the transfer, admission or discharge?

No. The law provides a list of the persons authorized to say ‘yes’ or ‘no’ to the transfer, admission or discharge.

Does it matter who is asked to provide the consent as long as they are on the list?

Yes, it does matter. The law also provides the priority order in which one is selected as the one authorized to answer for the loved one.

What is the order of those authorized persons?

1. Any adult, for himself or herself;
2. Any person authorized to give consent for the adult under an advance directive for health care or durable power of attorney for health care;
3. Any guardian of the person for his or her ward;
4. Any spouse for his or her spouse;
5. Any adult child for such person's parent;
6. Any parent for such person's adult child;
7. Any adult for such person's adult brother or sister;
8. Any grandparent for such person's adult grandchild;
9. Any adult grandchild for such person's grandparent;
10. Any adult uncle or aunt for such person's adult nephew or niece; or
11. Any adult nephew or niece for such person's adult uncle or aunt.

May the authorized person transfer, admit or discharge the patient to any location he or she chooses?

No. The relative must act in good faith to consent to a transfer, admission, or discharge which the patient would have wanted had the patient been able to consent for him or herself under the same circumstances.

What if no one knows what the patient would have wanted?

If the patient's preferences are unknown, then the authorized person must choose what he or she believes the patient would have wanted had the patient been able to consent under these circumstances which such transfer, admission, or discharge is considered.

Does the person with the authority to choose for the patient have to find a facility on his or her own?

No. The current health care facility's discharge planner, social worker, or other designated personnel is required by this law to assist the person authorized to consent.

What does the law require the health care personnel to do?

They must help with identifying the most appropriate, least restrictive level of care available, including home and community based services and available placements.

Does it matter where the facility is?

The selection must be as close as possible to where the patient lives.

What else is the authorized person allowed to do besides agree to the transfer, admission or discharge and help select the place where the patient is going?

The relative is also allowed and authorized by law to assist with applications for financial assistance and insurance benefits for health or personal care.

How long does the law allow the authorized person to act for the patient?

The authorization to consent to such transfer, admission, or discharge expires upon the earliest of the following:

- When the transfer, admission, or discharge and such responsibilities associated with such transfer, admission, or discharge is complete; including but not limited to assisting with applications for financial assistance and insurance benefits for health or personal care;
- When a doctor certifies that the adult is able to consent to decisions regarding his or her placements for health or personal care; or
- When it is discovered that another relative higher on the list has been located and wants to take over this responsibility.

Since the patient is unable to do things for him or herself, can the authorized person continue to do other things for him or her like you can when there is a power of attorney?

No. The authorization does not include the power or authority to perform any other acts on behalf of the adult not expressly authorized in this law.

What if there is no authorized person on the list to be found or the authorized person refuses to get involved, does the person have to stay where he or she is, or can someone else help?

No, the patient is not necessarily without help. The law also provides an alternate way for other interested persons, including health care facilities to ask the court for help.

How does one go about asking the court for help?

If there is no person authorized to consent, any interested person or persons, including, but not limited to, any authority, corporation, partnership, or other entity operating the health care facility where the adult who is unable to consent is then present, may petition the probate court for a health care placement transfer, admission, or discharge order.

Does an attorney have to be involved?

No. This may be done with or without the assistance of legal counsel.

Is there anything special about this petition?

The petition must be verified, which means the truth of the petition has to be declared or sworn to under oath. Generally, this is done in the presence of a notary public, the clerk of the court or in some cases in the presence of a judge.

Where is it filed?

The petition must be filed in the county where the adult requiring an alternative placement or transfer, admission, or discharge resides or is found.

May someone move an adult to another county to make it easier to get a petition filed?

No. The probate court of the county where the adult is found shall not have jurisdiction to grant the order if it appears that the adult was removed to that county solely for the purpose of filing such a petition.

What goes in the petition?

1. The name, age, address, and county of the residence of the adult, if known;
2. The name, address, and county of residence of the petitioner;
3. The relationship of the petitioner to the adult;
4. The current location of the adult;
5. A physician's certification that the person is unable to consent and needs to be transferred, admitted or discharged;
6. Information indicating that no authorized person has been located or wishes to accept the authorization to consent to such transfer, admission, or discharge;
7. Name and address of the recommended alternative health care facility or placement; and
8. A statement of the reasons for such transfer, admission, or discharge.

Does anything else have to be filed with the petition?

The petition must be supported by the affidavit of an attending physician, treating physician, or other physician licensed according to the laws of the State of Georgia, attesting to the following:

1. The adult is unable to consent for himself or herself;
2. It is the physician's belief that it is in the adult's best interest to be admitted to or discharged from a hospital, institution, medical center, or other health care institution providing health or personal care for treatment of any type of physical or mental condition or to be transferred to an alternative facility or placement, including, but not limited to, nursing facilities, assisted living communities, personal care homes, rehabilitation facilities, and home and community based

programs; and

3. The identified type of health care facility or placement will provide the adult with the recommended services to meet the needs of the adult and is the most appropriate, least restrictive level of care available.

And, the petition must also be accompanied by an affidavit of the discharging health care facility's discharge planner, social worker, or other designated personnel attesting to and explaining the following:

- That no authorized person has been located who can or is willing to accept the authorization to consent to such transfer, admission, or discharge;
- That the recommended alternative facility or placement is the most appropriate facility or placement available that provides the least restrictive and most appropriate level of care and the reasons why; and
- That alternative facilities or placements were considered, including home and community based placements and available placements, if any, that were in reasonable proximity to the adult's residence.

Does there have to be a court hearing?

No. The court will review the petition and accompanying affidavits and other information to make sure that all of the necessary information required by this law has been provided to the court.

If the court finds that everything has been provided and believes that it is all true, the court will then enter what is called an "instanter order" which means the court will issue a decision and an order approving the request of the petition immediately if the following information is provided:

1. The adult is unable to consent for himself or herself;

2. There is an absence of any person to consent to such transfer, admission, or discharge as authorized in this law;
3. It is in the adult's best interest to be discharged from a hospital, institution, medical center, or other health care institution or placement providing health or personal care for treatment for any type of physical or mental condition and to be admitted or transferred to an alternative facility or placement;
4. The recommended alternative facility or placement is the most appropriate facility or placement available that provides the least restrictive and most appropriate level of care; and
5. Alternative facilities or placements were considered, including home and community based placements and available placements, if any, in reasonable proximity to the adult's residence.

Will the order say that the petitioner can help with applications like the authorized persons are allowed to do?

Yes. The order authorizes the petitioner or the petitioner's designee to do all things necessary to accomplish the discharge from a hospital, institution, medical center, or other health care institution and the transfer to or admission to the recommended facility or placement and to assist with the completion of applications for financial coverage and insurance benefits for the health and personal care.

Is this a permanent court order?

No. The order authorizing such transfer, admission, or discharge expires upon the earliest of the following:

- The completion of the transfer, admission, or discharge and such responsibilities associated with such transfer, admission,

or discharge, including, but not limited to, assisting with the completion of applications for financial coverage and insurance benefits for the health or personal care;

- Upon a physician's certification that the adult is able to understand and make decisions regarding his or her placements for health or personal care and can communicate such decisions by any means; or
- At a time specified by the court not to exceed 30 days from the date of the order.

Does the order provide any other authority?

No. It does not include the authority to perform any other acts on behalf of the adult not expressly authorized in this law.

Shouldn't we just get an emergency guardianship to move patients like we used to?

No. Because of this law, there is no need to petition the court for an emergency, temporary or permanent guardianship just to be able to transfer, admit or discharge from or to a health care facility or other placement for health or personal care, an adult who is unable to make this decision for him or herself.

Is the state going to investigate these situations or get involved somehow?

No. As long as the process is followed, and there is no reason to believe that the adult who is unable to consent is in any danger or risk of harm, there is no reason for state agency involvement; and presumably, if a patient is in a health care facility/ environment, there is no expected danger or risk of harm. However, to ensure that there is follow-up for the benefit of the adult who is not able to consent, at the same time as issuing the order, the court will send a copy 7

of the order to the commissioner of the department of public health.

Does this law have anything to do with a resident's rights concerning transfer, admission or discharge from nursing homes or personal care homes?

No. This law does not cancel or otherwise change any federal or state laws which govern the transfer, admission, or discharge of a person to or from a health care facility or placement. Further, the adult retains all rights and protections provided under laws, both federal and state, as a result of an involuntary transfer, admission, or discharge.

What if you do what the law says and the adult or someone else complains about it, can you get in trouble or get sued?

No. Each certifying physician, discharge planner, social worker, or other hospital personnel or authorized person who acts in good faith pursuant to the authority of this code section shall not be subject to any civil or criminal liability or disciplined for unprofessional conduct.

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