

GEORGIA

Georgia statutorily grants a patient the right of access to his medical records in the possession of health care providers, insurance companies and others. The state does not have comprehensive provisions prohibiting the disclosure of confidential medical information. Rather, these privacy protections are addressed in statutes governing specific entities or medical conditions.

I. PATIENT ACCESS

A. Health Care Providers including Physicians, Hospitals, and HMOs

A patient must be provided access to his health records including, but not limited to, evaluations, diagnoses, laboratory reports, prescriptions and X-rays maintained by a health care provider. [Ga. Code Ann. §§ 31-33-2; 31-33-1 (defining “record” for purposes of this chapter).] This requirement is applicable to all physicians, pharmacists, hospitals, special care units, including kidney disease treatment centers, intermediate care facilities, ambulatory surgical and obstetrical facilities, health maintenance organizations, home health agencies, osteopaths, physician assistants, dentists and dental hygienists, nurses, podiatrists, and others. [Ga. Code Ann. § 31-33-1 (defining “provider” for purposes of this chapter).] It does not apply to psychiatric, psychological or other mental health records of a patient. [Ga. Code Ann. § 31-33-4.]

Upon written request, a patient is entitled to a complete and current copy of his health record maintained by a health care provider. [Ga. Code Ann. §§ 31-33-2; 31-33-3.] The record must be provided to the patient or any provider or person designated by the patient within a reasonable period of time. [Ga. Code Ann. § 31-33-2.] When dealing with a patient’s agent appointed under a durable power of attorney, a health care provider must give the agent the same right as the patient to examine and copy any part or all of the patient’s medical records that are relevant to the exercise of the agent’s powers. [Ga. Code Ann. § 31-37-7.]

The provider may require that copying and mailing costs be paid prior to furnishing the records. As of 2002, providers may charge a fee of up to \$20 for search, retrieval and other administrative costs associated with providing the copy, and up to \$7.50 for certifying the copy. Additionally, the provider can impose copying costs as follows: 75¢ for the first 20 pages, 65¢ for pages 21-100, and 50¢ for each page beyond page 100. [Ga. Code Ann. § 31-33-3.] When a medical record is not in paper format, the provider may charge the reasonable costs of copying the item. [*Id.*]

If the provider reasonably determines that disclosure of the record to the patient would be detrimental to the physical or mental health of the patient, he may refuse to disclose the record. [Ga. Code Ann. § 31-33-2.] However, the patient then has the right to designate in writing another provider to receive his health records. [*Id.*]

B. Insurance Entities, Including HMOs

1. Scope

Georgia insurance law requires insurers and others to provide persons access to their own information, including health information. The statute applies to insurance institutions including any entity or person engaged in the business of insurance, medical service corporations, hospital service corporations, health care plans, health maintenance organizations (HMOs), agents and insurance-support organizations. [Ga. Code Ann. § 33-39-2; (detailing entities and persons covered); 33-39-3(12)(defining “insurance institutions”).]

The provisions cover “personal information,” including most “medical record information,” which is gathered in connection with an insurance transaction. [Ga. Code Ann. § 33-39-3(20) (defining “personal information”).] “Medical record information” is personal information that (1) relates to an individual’s physical or mental condition, medical history, or medical treatment, and (2) is obtained from a medical professional, medical care institution, or an individual, the individual’s spouse, parent or legal guardian. [Ga. Code Ann. § 33-39-3 (18) (defining “medical record information”).] The Act does not apply to medical information that has had all individually identifiable information removed. [Ga. Code Ann. § 33-39-3(20).]

With respect to health insurance, the rights granted by the Act extend to Georgia residents who are the subject of the information collected, received or maintained in connection with insurance transactions and those who engage in or seek to engage in insurance transactions. [Ga. Code Ann. § 33-39-2.]

2. Requirements

An insurance company, HMO or other insurance entity must permit the individual to inspect and copy his personal information, including medical record information, that is reasonably locatable and retrievable. Within 30 business days of receiving a written request and proper identification from an individual, the insurer must permit the individual to review the information in person or obtain a copy of it by mail, whichever the individual prefers. [Ga. Code Ann. § 33-39-9(a).] If the personal information is in coded form, an accurate translation in plain language must be provided in writing. [Ga. Code Ann. § 33-39-9(a)(2).]

Fees. The insurance entity can impose a reasonable fee to cover copying costs. [Ga. Code Ann. § 33-39-9(d).]

In addition to giving the individual a copy of his personal information, the insurance entity must also give the individual a list, if recorded, of the persons to whom it has disclosed such personal information within two years prior to the request for access, if that information is recorded. If such an accounting of disclosures is not recorded, the entity must inform the individual of the names of those persons to whom it normally discloses personal information. [Ga. Code Ann. § 33-39-9(a)(3).]

Right to Amend. An individual has a statutory right to request the correction, amendment or deletion of his personal information, in accordance with stated procedures. [Ga. Code Ann. §§ 33-39-10; 33-39-9(a)(4).] Within 30 business days from

the date of receipt of an individual's written request, the insurance institution, agent or support organization must either: (1) correct, amend or delete the portion of recorded personal information in dispute; or (2) notify the individual of its refusal to make the correction, amendment or deletion, the reasons for the refusal, and the individual's right to file a statement of disagreement. [*Id.*]

If the insurance entity corrects, amends or deletes any of the individual's recorded personal information, the entity must notify in writing and furnish the amendment, correction or fact of the deletion to: (1) any person designated by the individual, who may have received the individual's personal information within the preceding two years; (2) to insurance support organizations (such as the Medical Information Bureau) that systematically receive the individual's personal information from the insurance institution within the preceding seven years, unless the organization no longer maintains information about the individual; and (3) insurance support organizations that furnished the personal information that was corrected, amended or deleted. [Ga. Code Ann. § 33-39-10(c).]

3. Remedies and Penalties

Right to Sue. A person whose rights under this statute are violated has the right to file a civil action seeking equitable relief within two years of the violation. [Ga. Code Ann. § 33-39-21.] The court may award the cost of the action and reasonable attorney's fees to the prevailing party. [*Id.*] The statutory remedy is the sole legal remedy for these violations. [*Id.*]

Fines and Penalties. Additionally, the Insurance Commissioner may hold hearings and impose administrative remedies, including, issuing cease and desist orders. [Ga. Code Ann. § 33-39-16.] Where a hearing results in a finding of a knowing violation, the Commissioner may also order payment of a monetary penalty of up to \$500 per violation, not to exceed \$10,000 in the aggregate for multiple violations. [Ga. Code Ann. § 33-39-19.] A person who violates a cease and desist order may be subject to: a monetary fine of not more than \$10,000; a fine not more than \$50,000 for violations the Commissioner finds have occurred with such frequency as to constitute a general business practice; or the suspension or revocation of the insurance institution's or agent's license. [*Id.*]

II. RESTRICTIONS ON DISCLOSURE

A. HMOs

Generally, health maintenance organizations (HMOs) may not disclose any information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from that person or from any provider without the patient's or applicant's express consent. [Ga. Code Ann. § 33-21-23.] Disclosure is allowed to the extent it is necessary to carry out the purposes of the statutory provisions governing HMOs, pursuant to statute or court order for the production or the discovery of evidence, or in the event of claim or litigation between the person and the HMO to the extent such information is pertinent. [*Id.*]

Remedies and Penalties

Fines and Penalties. The Insurance Commissioner may suspend or revoke an

HMO's certificate of authority for violation of this provision. [Ga. Code Ann. § 33-21-5.] In lieu of suspension or revocation, the Commissioner may place the HMO on probation or impose a fine. He may also issue a cease and desist order. [Ga. Code Ann. § 33-21-27.]

B. Hospitals, Physicians, Health Care Facilities and Pharmacists

Georgia has a physician shield law that protects physicians and others from liability when they disclose medical information in compliance with the statute. [Ga. Code Ann. § 24-9-40.] Under the terms of this statute, physicians, hospitals, health care facilities and pharmacists generally may not be required to release any medical information concerning a patient except upon written authorization. [*Id.*] This section does not apply to psychiatrists or hospitals in which the patient is being or has been treated for mental illness. [*Id.*]

A provider may disclose medical information to the extent a patient has waived his right to confidentiality by placing his care and treatment or the nature and extent of his injuries at issue in any civil or criminal proceeding. [*Id.*] Disclosure *without* prior authorization is also permitted to the Department of Human Resources when required to administer the public health programs that require the reporting of certain diseases; where authorized or required by law, statute or lawful regulation; or pursuant to court order or subpoena. [*Id.*] Persons who receive confidential or privileged medical information pursuant to a limited consent to disclosure, under a law requiring disclosure, or in order to evaluate claims for reimbursement may use the information only for the purpose(s) for which they received the information. They are generally prohibited from redisclosing this information, except where otherwise authorized by law. [Ga. Code Ann. §§ 24-9-42; 24-9-43.] These provisions do not prevent the customary and usual audit, discussion, and presentation of cases in connection with medical and public education. [Ga. Code Ann. § 24-9-45.]

Research. Any hospital, health care facility, medical or skilled nursing home, or other organization rendering patient care may provide information, reports and other data related to an individual's condition and treatment to: research groups approved by the medical staff of the institution; governmental health agencies; medical associations and societies; or to any in-hospital medical staff committee, to be used in any study for the purpose of reducing morbidity or mortality rates. [Ga. Code Ann. § 31-7-6(a).] The recipients of the information may use or publish it only for the purpose of advancing medical research or medical education or to achieve the most effective use of health manpower and facilities. [Ga. Code Ann. § 31-7-6(b).] The identity of the individuals whose information has been studied must be confidential and may not be revealed under any circumstances. [Ga. Code Ann. § 31-7-6(c).]

C. Insurance Entities, Including HMOs

1. Scope

Georgia statutorily limits the disclosure of personal information, including medical record information, by insurers. The statute applies to insurance institutions including any entity or person engaged in the business of insurance, medical service corporations, hospital service corporations, health care plans, health maintenance organizations, agents and insurance-support organizations. [Ga. Code Ann. § 33-39-2; (detailing entities and persons covered); 33-39-3(12) (defining "insurance institutions").]

The Act covers “personal information,” including most “medical record information,” which is gathered in connection with an insurance transaction. [Ga. Code Ann. § 33-39-3(20) (defining “personal information”).] “Medical record information” is personal information that (1) relates to an individual’s physical or mental condition, medical history, or medical treatment, and (2) is obtained from a medical professional, medical care institution, pharmacy, pharmacist or an individual, the individual’s spouse, parent or legal guardian. [Ga. Code Ann. § 33-39-3 (18) (defining “medical record information”).] The Act does not apply to medical information that has had all individually identifiable information removed. [Ga. Code Ann. § 33-39-3(20).]

With respect to health insurance, the rights granted by the Act extend to Georgia residents who are the subject of the information collected, received or maintained in connection with insurance transactions and applicants, individuals or policyholders who engage in or seek to engage in insurance transactions. [Ga. Code Ann. § 33-39-2.]

2. Requirements

a. Authorizations for Obtaining Health Information

If an insurance entity uses an authorization form to obtain health information in connection with an insurance transaction, the authorization form must conform to the requirements of the IIPPA. The authorization form must be written in plain language, specify the types of persons authorized to disclose information concerning the individual, specify the nature of the information authorized to be disclosed, identify who is authorized to receive the information, specify the purposes for which the information is collected, and specify the length of time that the authorization shall remain valid. [Ga. Code Ann. § 33-39-7.] The length of time the authorization remains valid varies with the purpose of obtaining the requested information. An authorization signed in support of an application for health insurance remains valid for 30 months while an authorization signed for the purpose of collecting information in connection with a claim for health benefits is effective for the term of coverage of the policy. [*Id.*]

b. Disclosure Authorization Requirements and Exceptions

Generally, an insurance entity may not disclose medical information about a person that it collected or received in connection with an insurance transaction without that person’s written authorization. [Ga. Code Ann. § 33-39-14.] Authorizations submitted by those *other* than insurance entities must be in writing, signed and dated. [Ga. Code Ann. § 33-39-14(1).] These authorizations are effective for one year. [*Id.*]

An insurance entity may not disclose information to another insurance entity pursuant to an authorization form unless the form meets the detailed requirements of the statute. [*Id.*] See Authorizations for Obtaining Health Information above.

Authorization Exceptions. There are numerous circumstances under which an insurance entity can disclose information without the individual’s authorization including: determining or verifying insurance coverage benefits or payment; for the purpose of conducting business when the disclosure is reasonably necessary; to law enforcement agencies in order to prevent or prosecute fraud; in response to a facially valid search warrant or subpoena or other court order; and others. [Ga. Code Ann. § 33-39-14.]

Medical record information generally may not be disclosed to third parties for marketing purposes without the individual's authorization. However, such information may be disclosed without authorization to an affiliate of the insurer for the marketing of an insurance product provided the affiliate agrees not to share the information with others. [Ga. Code Ann. § 33-39-14(12).]

c. Notice Requirements

The insurance entity must provide to all applicants and policyholders written notice of its information practices. [Ga. Code Ann. § 33-39-5.] The insurance entity has the option of providing a detailed notice or an abbreviated notice. The abbreviated notice must advise the individual that (1) personal information may be collected from persons other than the individual proposed for coverage; (2) such information as well as other personal information collected by the insurance entity may in certain circumstances be disclosed to third parties without authorization; (3) a right of access and correction exists with respect to all personal information collected; and (4) that a detailed notice of information practices must be furnished to the individual upon request. [*Id.*]

3. Remedies and Penalties

Right to Sue. A person whose information is disclosed in violation of these provisions has a statutory right to bring a civil action for actual damages sustained as a result of the disclosure. [Ga. Code Ann. § 33-39-21.] In such an action, the court may award the cost of the action and reasonable attorney's fees to the prevailing party. [*Id.*] If false information is disclosed with malice or willful intent to injure a person, a civil cause of action may arise. [Ga. Code Ann. § 33-39-22.]

Fines and Penalties. The Insurance Commissioner may hold hearings and impose administrative remedies, including, issuing cease and desist orders. [Ga. Code Ann. § 33-39-16.] Where a hearing results in a finding of a knowing violation, the Commissioner may also order payment of a monetary penalty of up to \$500 per violation, not to exceed \$10,000 in the aggregate for multiple violations. [Ga. Code Ann. § 33-39-19.] A person who violates a cease and desist order may be subject to: a monetary fine of not more than \$10,000; a fine not more than \$50,000 for violations the Commissioner finds have occurred with such frequency as to constitute a general business practice; or the suspension or revocation of the insurance institution's or agent's license. [*Id.*]

D. Insurers - Disclosure of Medical Information Obtained from Pharmacies

The Georgia Code imposes additional restrictions on certain insurers' disclosure of information obtained from pharmacies. [See Ga. Code Ann. § 33-24-59.4.] These restrictions apply to accident and sickness insurers, fraternal benefit societies, HMOs, provider sponsored health corporations, the administrators of these organizations and others. [Ga. Code Ann. § 33-24-59.4 (defining "insurer").] Generally, any medical information about a patient that was obtained by or released to an insurer from a pharmacy or pharmacists is confidential and privileged. [*Id.*] The information may not be released by the insurer to a third party without the explicit written consent of the patient. Prior to obtaining such an authorization, the insurer must provide notice to the patient of the purpose of the release, the party or parties to whom the information will be released, and any consideration paid or to be paid to the insurer for the release of the information. [*Id.*]

Medical information may be released to a third party without notice to or the written consent of the patient, however, for appropriate medical research, provided that it does not identify the patient, prescriber, pharmacy or pharmacist. [Ga. Code Ann. § 33-24-59.4.]

Remedies and Penalties

Fines and Penalties. A violation of this section constitutes an unfair trade practice. [Ga. Code Ann. § 33-24-59.4(d); see Ga. Code Ann. §§ 33-6-8; 33-6-9 (for specific penalties).] The Insurance Commissioner may, after a hearing, issue a cease and desist order. [Ga. Code Ann. §§ 33-6-8.] A person who violates a cease and desist order may be subject to additional penalties: a monetary penalty not more than \$10,000 for each violation, suspension or revocation of his license, or any other reasonable or appropriate relief. [Ga. Code Ann. § 33-6-9.]

E. Long-Term Care Facilities

Residents of long-term care facilities have a right to privacy in their medical, personal and bodily care programs. Residents' case discussions, consultations, examinations, treatments, and care are confidential and are to be conducted in privacy. Persons not directly involved in the resident's care must have the resident's permission to be present during these activities. [Ga. Code Ann. § 31-8-114(6).]

Additionally, residents have the right to the confidential treatment of their personal and medical records. [Ga. Code Ann. § 31-8-114(7).] Only a resident or his guardian may approve the release or disclosure of his records outside the facility, except in the case of: the resident's transfer to another facility; during a Medicare, Medicaid, licensure peer review survey; or as otherwise provided by law or a third party payment contract. [*Id.*]

F. State Government

Medical records prepared and maintained or received in the course of operation of a public office or agency are not subject to public inspection or disclosure. [Ga. Code Ann. § 50-18-72(a)(2).]

III. PRIVILEGES

Georgia recognizes a mental health care provider-patient privilege that allows a patient, in legal proceedings, to refuse to disclose and to prevent other persons from disclosing confidential communications made for the purpose of treatment and diagnosis. [Ga. Code Ann. § 24-9-21.] This privilege extends to the patients of psychiatrists, licensed psychologists, licensed clinical social workers, licensed marriage counselors and others who render psychotherapy. [*Id.*] An HMO is entitled to claim any statutory privileges against disclosures that the provider who furnished the information to the HMO is entitled to claim. [Ga. Code Ann. § 33-21-23; see also, Ga. Code Ann. § 24-9-21 (listing privileges).] Georgia does not recognize the physician-patient privilege.

IV. CONDITION-SPECIFIC REQUIREMENTS

A. Alcohol and Drug Abuse

A patient receiving treatment for alcohol or drug abuse has the right to examine his medical information kept by the department or facility where the patient was hospitalized or treated. [Ga. Code Ann. § 37-7-167.] The patient has the right to request correction of any inaccurate notation. [*Id.*]

B. Genetic Testing

Information derived from genetic testing is confidential and may be released only to the individual tested and to persons specifically authorized by such individual in writing. [Ga. Code Ann. § 33-54-3.] Genetic testing includes laboratory tests of human DNA or chromosomes to identify the presence or absence of inherited alterations in genetic material that are associated with a disease or illness that is not yet symptomatic at the time of testing. For purposes of these provisions, genetic testing does not include routine physical measurements; chemical, blood, and urine analysis; tests for abuse of drugs; and tests for the presence of HIV. [Ga. Code Ann. § 33-54-3 (defining “genetic testing”).]

Insurers may not seek information derived from genetic testing, and any insurer that possesses such information may not release it to any third party without the explicit written consent of the individual tested. [*Id.*] An insurer that receives information derived from genetic testing may not use the information for any nontherapeutic purpose. [Ga. Code Ann. § 33-54-4.]

There are a few enumerated circumstances where genetic testing information may be disclosed without the test subject’s authorization. Information derived from genetic testing regarding the identity of any individual who is the subject of a criminal investigation or a criminal prosecution may be disclosed to appropriate legal authorities conducting the investigation or prosecution without authorization. [Ga. Code Ann. § 33-54-5.]

A research facility may conduct genetic testing and use the information derived from the tests for scientific research purposes as long as the identity of individuals is not disclosed to a third party. The individual’s identity may be disclosed to his physicians with the consent of the individual. [Ga. Code Ann. § 33-54-6.]

Remedies and Penalties

Right to Sue. An insurer that violates the provisions of this chapter is liable to the individual for actual damages. The court may award costs and reasonable attorney’s fees. [Ga. Code Ann. § 33-54-8.] An individual who suffers injury or damages as a result of a violation of these provisions may bring an action against that person for equitable injunctive relief and general and exemplary damages. [*Id.*; Ga. Code Ann. § 10-1-399.]

Fines and Penalties. A violation of these provisions by an insurer constitutes an unfair trade practice under the Georgia Insurance Code. [Ga. Code Ann. § 33-54-8; *see* Ga. Code Ann. §§ 33-6-8; 33-6-9 (for specific penalties).] The Insurance Commissioner may, after a hearing, issue a cease and desist order. [Ga. Code Ann. §§ 33-6-8.] A person who violates a cease and desist

order may be subject to additional penalties: a monetary penalty not more than \$10,000 for each violation, suspension or revocation of his license, or any other reasonable or appropriate relief. [Ga. Code Ann. § 33-6-9.]

A violation by any person other than an insurer constitutes an unfair practice under the Fair Business Practices Act of 1975. [Ga. Code Ann. §§ 33-54-8; 10-1-397.] The Office of the Administrator may impose administrative penalties, such as issuing a cease and desist order or imposing a civil penalty up to \$2,000 per violation. [*Id.*]

C. HIV/AIDS

A person or entity that is responsible for recording, reporting, or maintaining AIDS confidential information or that receives that information as permitted by law may not intentionally or knowingly disclose that information to another. [Ga. Code Ann. § 24-9-47(b).] Nor may they be compelled by subpoena, court order, or other judicial process to disclose that information. [*Id.*] The results of an HIV test may be released to the subject of the test. [Ga. Code Ann. § 24-9-47(f).] AIDS confidential information may be disclosed to a parent or guardian if the subject is a minor or is incompetent and to persons designated by the individual in writing. [Ga. Code Ann. § 24-9-47(c) and (d).] A person who receives AIDS confidential information that he knows was improperly disclosed is prohibited from redisclosing that information. [Ga. Code Ann. § 24-9-47(b).]

There are a number of enumerated circumstances when it is considered appropriate to disclose that an individual is infected with HIV, such as to the spouse, sexual partner or child of the infected patient if the physician reasonably believes they are at risk of being infected and the physician has made an attempt to notify the patient that disclosure is going to be made; or when the disclosure is authorized by other state or federal law. [Ga. Code Ann. § 24-9-47.]

Remedies and Penalties

Fines and Penalties. Any person who violates Ga. Code Ann. § 24-9-47(b) is guilty of a misdemeanor. [Ga. Code Ann. § 24-9-47(o).]

D. Mental Health Records

Patient Access. A patient receiving treatment from a mental health facility has the right of reasonable access to review his medical file unless it is determined that disclosure would be detrimental to his health and a notation of such a determination is entered in his record. [Ga. Code Ann. §§ 37-3-162; 37-3-167.] A patient also has the right to request that inaccurate information in his record be corrected. [Ga. Code Ann. § 37-3-167.] When dealing with a patient's agent appointed under a durable power of attorney, a health care provider must give the agent the same right as the patient to examine and copy any part or all of the patient's medical records that are relevant to the exercise of the agent's powers. [Ga. Code Ann. § 31-37-7.]

Restrictions on Disclosure. The clinical record is not a public record and may not be released except under circumstances specified in the statute, including, but not limited to:

- **Treatment.** To physicians or psychologists when and as necessary for treatment of the patient.
- **Patient Authorization.** To any person or entity designated in writing by the patient, or if appropriate, the parent of a minor, or legal guardian.

- **Emergency.** To the treating physician or patient's psychologist in a bona fide emergency.
- **Judicial and administrative proceedings.** Pursuant to a valid subpoena or court order, except for matters that are privileged under state law.
- **Law enforcement.** To law enforcement officers in the course of a criminal investigation. The officer is informed as to whether the individual is or has been a patient at the state facility and the patient's current address, if known.

Examination of mental health clinical records pursuant to an authorized release of the records must be conducted on hospital premises at reasonable times. [Ga. Code Ann. § 37-3-166.]

E. Sexually Transmitted Diseases

Reports to government agencies identifying persons with sexually transmitted diseases are confidential and are not open to the public. The department of health may release the information for valid research purposes. [Ga. Code Ann. §§ 31-12- 2; 31-17- 2.]