

House Bill 535

By: Representative Butler of the 18<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 37 of the Official Code of Georgia Annotated, relating to mental health, so  
2 as to create a patient advocacy board and the position of Patient Advocate General to  
3 investigate fatalities and allegations of abuse, neglect, or improper treatment occurring in  
4 facilities operated by, subjection to certification by, or under contact with the Division of  
5 Mental Health, Developmental Disabilities, and Addictive Diseases; to provide for  
6 definitions; to provide for appointment of board members, qualifications of board members,  
7 terms, vacancies, removal, and immunity; to provide for oath of office and certificate of  
8 appointment; to provide for board meetings, procedure, and expenses; to provide for the  
9 powers and duties of the Patient Advocate General; to provide for confidentiality of certain  
10 information and exceptions; to provide for reporting of certain information; to provide for  
11 related matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by  
15 adding a new chapter to read as follows:

16 style="text-align:center">"CHAPTER 11

17 37-11-1.

18 (a) As used in this chapter, the term:

19 (1) 'Board' means the Patient Advocacy Board.

20 (2) 'Investigation' in the context of a death includes all of the following:

21 (A) A post-mortem examination which may be limited to an external examination or  
22 may include an autopsy;

1 (B) An inquiry by law enforcement agencies having jurisdiction into the circumstances  
2 of the death, including reviewing the scene and interviewing the decedent's children,  
3 guardian, or caregiver and the person who reported the death; and

4 (C) A review of information regarding the decedent and family from relevant agencies,  
5 professionals, and providers of medical care.

6 37-11-2.

7 (a) There is created the Patient Advocacy Board, to consist of five members who shall be  
8 United States citizens and residents of this state who have been engaged in the active  
9 practice of his or her profession within this state for a period of at least five years. The  
10 Governor shall appoint three members of the board: one appointee shall be a psychiatrist  
11 duly authorized to practice medicine in this state under Chapter 34 of Title 43, one shall  
12 be a physician, and one shall be a pharmacist licensed by the State Board of Pharmacy  
13 under Chapter 4 of Title 26. The Lieutenant Governor shall appoint one member who shall  
14 be a registered professional nurse or licensed practical nurse licensed pursuant to Chapter  
15 26 of Title 43. The Speaker of the House of Representatives shall appoint one member  
16 who shall practice any of the professions identified for the other appointees. All of the  
17 physician members shall be practicing physicians of integrity and ability.

18 (b) All five members of the board shall serve for terms of four years and until their  
19 successors are appointed and qualified. Vacancies on the board shall be filled by the  
20 appointing authority for the unexpired term in the same manner as the original  
21 appointment, and members shall serve until their successors are appointed and qualified.  
22 Any board member may be removed after notice and hearing for incompetence, neglect of  
23 duty, malfeasance in office, or commission of a crime involving moral turpitude.

24 (c) Immediately and before entering upon the duties of their office, the members of the  
25 board shall take the constitutional oath of office and shall file the same in the office of the  
26 Governor who, upon receiving said oath of office, shall issue to each member a certificate  
27 of appointment.

28 (d) Each member of the board shall be reimbursed as provided for in subsection (f) of  
29 Code Section 43-1-2.

30 (e) No member of the board shall be liable to civil action for any act performed in good  
31 faith in the performance of that member's duties as prescribed by law.

32 37-11-3.

33 (a) The board is created for the purpose of investigating fatalities and allegations of abuse,  
34 neglect, or improper treatment occurring at facilities operated by, subject to certification  
35 by, or under contract with the division. The board shall be administratively attached to the

1 Composite State Board of Medical Examiners which is administratively attached to the  
2 Department of Community Health.

3 (b) The chief administrative officer of the board shall be the Patient Advocate General.

4 (c) The board shall hold at least one regular meeting each year. Meetings may be called  
5 and held at the discretion of the Patient Advocate General or at the written request of any  
6 two members of the board.

7 (d) The board shall from time to time adopt such rules and regulations as it may deem  
8 necessary for the performance of its duties.

9 37-11-4.

10 The board shall have the following powers and duties:

11 (1) Appoint the Patient Advocate General who shall be an attorney admitted to practice  
12 in this state with a minimum of three years' experience;

13 (2) Supervise the Patient Advocate General who may be dismissed only for cause;

14 (3) Review and approve the reports submitted by the Patient Advocate General of  
15 investigations of fatalities and allegations of abuse, neglect, or improper treatment at  
16 facilities operated by, subject to certification by or under contract with the division;

17 (4) Determine whether a report shall be referred to the Georgia Bureau of Investigation;

18 (5) Make recommendations of policy or procedural changes to the division which it  
19 believes will reduce the likelihood of the reoccurrence of fatalities or incidents of abuse,  
20 neglect, or improper treatment in facilities operated by, subject to certification by, or  
21 under contract with the division; and

22 (6) Make recommendations of licensure changes to the department that it believes will  
23 reduce the likelihood of the reoccurrence of fatalities or incidents of abuse, neglect, or  
24 improper treatment in facilities operated by, subject to certification by, or under contract  
25 with the division.

26 37-11-5.

27 (a) The Patient Advocate General shall have the following powers and duties:

28 (1) Employ such investigative and other personnel as may be necessary to carry out the  
29 purposes of this chapter;

30 (2) Access facilities operated by, subject to certification by, or under contract with the  
31 division and the records of such facilities, including peer reviews. Reasonable access  
32 shall be granted for the purposes of conducting investigations of fatalities and allegations  
33 of abuse, neglect, or improper treatment;

34 (3) Access the records of individuals who received services from facilities operated by,  
35 subject to certification by, or under contract with the division. Records that are

1 confidential under state and federal law shall be maintained as confidential and shall not  
2 be redisclosed by the Patient Advocate General;

3 (4) Prepare a root cause analysis;

4 (5) Submit a report of the results of investigations to the board and, if necessary,  
5 recommend that the board refer the matter to the Georgia Bureau of Investigation if the  
6 Patient Advocate General has a reasonable belief that a crime was committed;

7 (6) Submit a report of the results of investigations to the appropriate custodial state  
8 agency if the individual is a juvenile in the custody of a state agency or if the individual  
9 is a ward of a state agency;

10 (7) Submit a report of the results of investigations to the board and, if necessary,  
11 recommend that the Patient Advisory Board make recommendations to the director of the  
12 division or the commissioner of the department;

13 (8) Provide regular or special reports regarding investigations to the director of the  
14 division or the commissioner of the department as directed by the board; and

15 (9) Perform such other investigative duties as assigned by the board.

16 (b) The Patient Advocate General and staff shall not act as attorneys on behalf of  
17 individuals receiving services from facilities operated by, subject to certification by, or  
18 under contract with the division.

19 37-11-6.

20 (a) Except as otherwise specifically provided in this Code section and as otherwise  
21 provided by state or federal laws, the information, records, materials, and reports related  
22 to investigations by the Patient Advocate General or the board shall be confidential and  
23 contain privileged information. All such reports and information and the contents thereof  
24 shall be treated as confidential, shall not be disclosed to any person outside of the board,  
25 and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records, or  
26 subject to subpoena, discovery, or introduction into evidence in any civil or criminal  
27 proceeding. Such records and the contents thereof shall be maintained by the board and  
28 Patient Advocated General in a confidential file not available to the public.

29 (b) A court order authorizing the inspection, release, or disclosure of information, records,  
30 materials, and reports related to investigations by the Patient Advocate General or the  
31 board shall be entered by a court only after an in camera review of such records and a  
32 determination, with due regard for the confidentiality of such records and the privilege of  
33 the persons identified in such records, that a compelling reason exists, any applicable  
34 privilege has been waived, and such inspection, release, or disclosure is necessary for the  
35 protection of a legitimate public or private interest.

1 (c) This Code section shall not be construed as prohibiting the division, the board, or the  
2 Patient Advocate General from summarizing the outcome of an investigation stating the  
3 allegation and finding. The summary may be provided to the following individuals and  
4 entities provided that the individuals or entities agree to protect the summary from  
5 disclosure:

- 6 (1) The person suspected of abuse, neglect, or improper treatment,
- 7 (2) The state and federal oversight, licensing, or accrediting agency, and
- 8 (3) The administrator of a facility certified by, subject to licensing by, or under contract  
9 with the division at which the alleged abuse, neglect, or improper treatment occurred.

10 31-11-7.

11 The administrator of a facility certified by, subject to licensing by, or under contract with  
12 the division shall report fatalities or allegations of abuse, neglect, or improper treatment to  
13 the Patient Advocate General. Notification of a fatality shall be completed within 48 hours  
14 of the administrator's learning of such death. Notification of allegations of abuse, neglect,  
15 or improper treatment shall be completed within 72 hours of the administrator's learning  
16 of such acts."

17 **SECTION 2.**

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