

The House Committee on Health and Human Services offers the following substitute to HB 535:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to the
2 administration of mental health, developmental disabilities, addictive diseases, and other
3 disability services, so as to create the state ombudsman for mental health, developmental
4 disabilities, and addictive disease; to provide for the appointment, qualifications, and term
5 of the ombudsman; to provide for a nominating committee for selecting the ombudsman; to
6 provide for the organization of the office the ombudsman; to provide for the duties of the
7 ombudsman; to provide that certain matters be reported to the ombudsman; to provide for the
8 ombudsman to investigate complaints and make recommendations to agencies and other
9 officials and programs; to provide for immunity; to provide for the membership, terms,
10 selection, and duties of an ombudsman committee; to provide for related matters; to provide
11 for an effective date; 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 Chapter 2 of Title 37 of the Official Code of Georgia Annotated, relating to the
15 administration of mental health, developmental disabilities, addictive diseases, and other
16 disability services, is amended by revising Article 2, relating to administration of mental
17 disability services, in its entirety, as follows:

18 style="text-align:center">"ARTICLE 2

19 37-2-30.

20 As used in this article, the term:

21 (1) 'Agency' means the divisions, officials, or employees of the department, the
22 Department of Education, and of local school districts and county social service agencies
23 engaged in monitoring, providing, or regulating services or treatment for mental illness,
24 developmental disabilities, or addictive diseases.

1 (2) 'Client' means a person served by an agency, facility, or program who is or has been
 2 receiving services or treatment for mental illness, developmental disabilities, or addictive
 3 diseases.

4 (3) 'Facility' or 'program' means an acute care inpatient facility that provides services or
 5 treatment for mental illness, developmental disabilities, or addictive diseases and a
 6 nonresidential or residential program that is required to be licensed by the department.

7 (4) 'Ombudsman' means the state ombudsman for mental health, developmental
 8 disabilities, and addictive diseases.

9 (5) 'Regional hospital' means one of the state operated hospitals in this state serving
 10 clients of the division.

11 (6) 'Serious injury' means:

12 (A) Fractures;

13 (B) Dislocations;

14 (C) Evidence of internal injuries;

15 (D) Head injuries with loss of consciousness;

16 (E) Lacerations involving injuries to tendons or organs and other lacerations for which
 17 complications are present;

18 (F) Extensive second degree or third degree burns and other burns for which
 19 complications are present;

20 (G) Extensive second degree or third degree frostbite and others for which
 21 complications are present;

22 (H) Irreversible mobility or avulsion of teeth;

23 (I) Injuries to the eyeball;

24 (J) Ingestion of foreign substances and objects that are harmful;

25 (K) Near drowning;

26 (L) Heat exhaustion or sunstroke; and

27 (M) All other injuries considered serious by a physician.

28 37-2-31.

29 There is created the state ombudsman for mental health, developmental disabilities, and
 30 addictive diseases. The ombudsman shall have the powers and duties set forth in this
 31 article. The ombudsman shall be a resident of this state and shall serve a term of seven
 32 years. The ombudsman may be removed for good cause by the nominating committee
 33 created in Code Section 37-2-32. The ombudsman may be appointed to serve successive
 34 terms and shall serve until a successor is appointed and qualified.

1 37-2-32.

2 (a) The Governor shall appoint an attorney qualified by education, training, and experience
3 to perform the duties of the ombudsman as set forth in this article. The appointment shall
4 be made from a list of at least three persons prepared and submitted by a nominating
5 committee appointed by the Governor and consisting of:

6 (1) One former client of the division;

7 (2) One representative of the division;

8 (3) One representative of an advocacy organization for clients served by an agency,
9 facility, or program;

10 (4) One representative of the Georgia Bureau of Investigation;

11 (5) One psychiatrist;

12 (6) One psychologist;

13 (7) One physician whose specialty is internal medicine; and

14 (8) One forensic pathologist.

15 (b) Five members of the committee shall constitute a quorum. The nominating committee
16 shall elect from among the members a chairperson and a vice chairperson.

17 37-2-33.

18 (a) The ombudsman shall act independently of any state official, department, or agency
19 in the performance of his or her duties. The ombudsman shall be assigned to the Office of
20 Planning and Budget for administrative purposes only.

21 (b) The General Assembly shall annually appropriate those sums it deems necessary for
22 the payment of the salaries and related costs of qualified staff and for the payment of office
23 expenses and other actual expenses incurred by the ombudsman.

24 (c) Any advocacy function performed on behalf of any mental health, developmental
25 disability, or addictive diseases client of the department shall be transferred to the
26 ombudsman.

27 37-2-34.

28 (a) The ombudsman shall have the following duties:

29 (1) To communicate privately with any client;

30 (2) At the request of a client, or upon receiving a complaint or other information
31 affording reasonable grounds to believe that the rights of a client who is not capable of
32 requesting assistance have been adversely affected, to gather information about and
33 analyze, on behalf of the client, the actions of an agency, facility, or program;

34 (3) To examine, on behalf of a client, records of an agency, facility, or program if the
35 records relate to a matter that is within the scope of the ombudsman's authority. If the

1 records are private and the client is capable of providing consent, the ombudsman shall
2 first obtain the client's consent. The ombudsman shall not be required to obtain consent
3 for access to private data on clients with developmental disabilities. The ombudsman
4 shall not be required to obtain consent for access to private data on decedents who were
5 receiving services for mental illness, developmental disabilities, or addictive diseases. All
6 records of the ombudsman pertaining to the care and treatment of a client shall be
7 confidential. Information contained in such records may not be disclosed publicly in any
8 manner that would identify individuals;

9 (4) To subpoena a person to appear, give testimony, or produce documents or other
10 evidence that the ombudsman considers relevant to a matter under inquiry. The
11 ombudsman may petition the appropriate court to enforce the subpoena. A witness who
12 is at a hearing or is part of an investigation possesses the same privileges that a witness
13 possesses in the courts or under the laws of this state. Data obtained from a person under
14 this paragraph shall be considered private data;

15 (5) Without advance notice, but at reasonable times in the course of conducting a review,
16 to enter and inspect premises within the control of an agency, facility, or program;

17 (6) To access data of agencies, facilities, or programs classified as private or confidential
18 regarding services provided to clients with developmental disabilities;

19 (7) To prescribe the methods by which complaints to the ombudsman's office are to be
20 made, reviewed, and acted upon;

21 (8) To mediate or advocate on behalf of a client;

22 (9) To investigate the quality of services provided to clients and determine the extent to
23 which quality assurance mechanisms within state and county government work to
24 promote the health, safety, and welfare of clients;

25 (10) To prepare and distribute to each facility, program, and regional hospital in this state
26 a written notice describing the office of ombudsman and the procedure to follow in
27 making a complaint, including the address and telephone number of the ombudsman. The
28 administrator or person in charge of such facility, program, and regional hospital shall
29 give the written notice required by this paragraph to each client and his or her legally
30 appointed guardian, if any, upon first providing services. The administrator or person in
31 charge shall also post such written notice in conspicuous public places in the facility,
32 program, and regional hospital in accordance with procedures provided by the
33 ombudsman and shall give such notice to any client and his or her legally appointed
34 guardian, if any, who did not receive it upon first receiving services;

35 (11) To attend proceedings regarding the transfer of patients or residents between
36 institutions operated by the department and, subject to the consent of the affected client,
37 other proceedings affecting the rights of clients. The ombudsman shall not be required

1 to obtain consent to attend meetings or proceedings and to have access to private data on
2 clients with developmental disabilities;

3 (12) To take all possible action including, but not limited to, programs of public
4 education and legislative advocacy to secure and ensure the legal, civil, and special rights
5 of clients; and

6 (13) To apply for and accept grants, gifts, and bequests of funds from other states,
7 federal and interstate agencies and independent authorities, and private firms, individuals,
8 and foundations for the purpose of carrying out his or her lawful responsibilities.

9 (b)(1) In selecting matters for review, the ombudsman shall give particular attention to
10 unusual deaths or injuries of a client or actions of an agency, facility, or program that:

11 (A) May be contrary to law or rule;

12 (B) May be unreasonable, unfair, oppressive, or inconsistent with a policy or order of
13 an agency, facility, or program;

14 (C) May be mistaken in law or arbitrary in the ascertainment of facts;

15 (D) May be unclear or inadequately explained, when reasons should have been
16 revealed;

17 (E) May result in abuse or neglect of a person receiving treatment;

18 (F) May disregard the rights of a client or other individual served by an agency or
19 facility;

20 (G) May impede or promote independence, community integration, and productivity
21 for clients; or

22 (H) May impede or improve the monitoring or evaluation of services provided to
23 clients.

24 (2) The ombudsman shall have access to all records associated with other investigations,
25 regulatory actions, and other relevant information as the ombudsman deems necessary
26 to address complaints.

27 37-2-35.

28 Within 24 hours after a client suffers death or serious injury, the agency, facility, or
29 program director shall notify the ombudsman of such death or serious injury.

30 37-2-36.

31 The ombudsman may receive a complaint from any source concerning an action of an
32 agency, facility, or program. After completing a review, the ombudsman shall inform the
33 complainant and the agency, facility, or program of the results of the ombudsman's
34 investigation. No client shall be punished nor may the general condition of the client's
35 treatment be unfavorably altered as a result of an investigation or a complaint by the client

1 or by another person on the client's behalf. An agency, facility, or program shall not
 2 retaliate or take adverse action against a client or other person who in good faith makes a
 3 complaint or assists in an investigation. The ombudsman shall classify as confidential the
 4 identity of a complainant.

5 37-2-37.

6 (a) If, after reviewing a complaint or conducting an investigation and considering the
 7 response of an agency, facility, or program and any other pertinent material, the
 8 ombudsman determines that the complaint has merit or the investigation reveals a problem,
 9 the ombudsman may recommend that the agency, facility, or program:

- 10 (1) Consider the matter further;
- 11 (2) Modify or cancel its actions;
- 12 (3) Alter a rule, order, or internal policy;
- 13 (4) Explain more fully the action in question; or
- 14 (5) Take other action.

15 (b) At the ombudsman's request, the agency, facility, or program shall, within a reasonable
 16 time, inform the ombudsman about the action taken on the recommendation or the reasons
 17 for not complying with it.

18 37-2-38.

19 The ombudsman and commissioner shall obtain federal financial participation for eligible
 20 activity by the ombudsman. The ombudsman shall maintain and transmit to the department
 21 documentation that is necessary in order to obtain federal funds which shall be applied to
 22 the budget of the ombudsman.

23 37-2-39.

24 (a) The ombudsman may send conclusions and suggestions concerning any matter
 25 reviewed to the Governor and General Assembly.

26 (b) In addition to whatever conclusions or recommendations the ombudsman may make
 27 to the Governor and General Assembly on an ad hoc basis, the ombudsman shall report to
 28 the Governor and General Assembly biennially concerning the exercise of the
 29 ombudsman's functions during the preceding years, including a detailed report analyzing
 30 the work of the office and any recommendations resulting therefrom.

31 37-2-40.

32 (a) Any person who, in good faith, makes a complaint or provides information as
 33 authorized in this article shall incur no civil or criminal liability therefor.

1 (b) The state of Georgia shall protect and hold harmless the ombudsman and employees
2 of the office of ombudsman, including legal fees and costs, if any, arising out of any claim,
3 demand, or suit for damages resulting from acts or omissions committed in the discharge
4 of his or her duties for any action taken under this article if the action was taken in good
5 faith, was within the scope of the ombudsman's authority, and did not constitute willful or
6 reckless misconduct.

7 37-2-41.

8 (a) The ombudsman committee shall consist of 15 members who shall be appointed by the
9 Governor, Lieutenant Governor, and Speaker of the House of Representatives.
10 Ombudsman committee members shall serve three-year terms and may be reappointed.

11 (1) The Governor shall appoint:

12 (A) An attorney who is a member of the Elder Law Section of the State Bar of
13 Georgia;

14 (B) One former client of the division;

15 (C) One representative of the division;

16 (D) One representative of an advocacy organization for clients served by an agency,
17 facility, or program;

18 (E) One representative of the Georgia Bureau of Investigation;

19 (F) One psychiatrist; and

20 (G) One psychologist.

21 (2) The Lieutenant Governor shall appoint:

22 (A) A registered nurse who practices in the area of mental health, developmental
23 disabilities, or addictive diseases;

24 (B) One psychiatrist;

25 (C) One physician whose specialty is internal medicine; and

26 (D) One representative of an advocacy organization for clients and other individuals
27 served by an agency, facility, or program.

28 (3) The Speaker of the House of Representatives shall appoint:

29 (A) One former client of the division;

30 (B) One forensic pathologist;

31 (C) One medical doctor who is a general practitioner; and

32 (D) One citizen representative with no affiliation or connection to the mental health,
33 developmental disabilities, or addictive diseases system in any manner.

34 (b) Members shall not receive compensation, but shall be entitled to receive
35 reimbursement for reasonable and necessary expenses incurred. The ombudsman

1 committee shall elect a chairperson and vice chairperson at its first meeting who shall serve
2 in those roles for their terms on the committee.

3 (c) The ombudsman committee shall meet at least four times a year at the request of the
4 chairperson or the ombudsman.

5 (d) The ombudsman committee shall advise and assist the ombudsman in selecting matters
6 for attention; developing policies, plans, and programs to carry out the ombudsman's
7 functions and powers; and making reports and recommendations for changes designed to
8 improve standards of competence, efficiency, justice, and protection of clients' rights. The
9 ombudsman committee shall function as an advisory body.

10 (e) Five members of the committee, including at least three physicians, one of whom is a
11 psychiatrist, shall be designated by the ombudsman to serve as a medical review
12 subcommittee. The ombudsman shall designate one of the members to serve as chairperson
13 of the subcommittee. The medical review subcommittee may:

14 (1) Make a preliminary determination of whether the death of a client that has been
15 brought to its attention is unusual or reasonably appears to have resulted from causes
16 other than natural causes and warrants investigation;

17 (2) Review the causes of and circumstances surrounding the death;

18 (3) Request the county coroner or medical examiner to conduct an autopsy;

19 (4) Assist an agency in its investigations of unusual deaths and deaths from causes other
20 than natural causes; and

21 (5) Submit a report regarding the death of a client to the ombudsman committee, the
22 ombudsman, the client's next of kin, and the facility where the death occurred and, where
23 appropriate, make recommendations to prevent recurrence of similar deaths to the head
24 of each affected agency, facility, or program."

25 **SECTION 3.**

26 Section 1-8 of the Act creating the state ombudsman for mental health, developmental
27 disabilities, and addictive disease, approved May 16, 2002 (Ga. L. 2002, p. 1324) is repealed
28 in its entirety.

29 **SECTION 4.**

30 This Act shall become effective only if funds are specifically appropriated for the purposes
31 of this Act in a General Appropriations Act making specific reference to this Act and shall
32 become effective when funds so appropriated become available for expenditure.

33 **SECTION 5.**

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