

House Bill 535 (COMMITTEE SUBSTITUTE)

By: Representative Butler of the 18th

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 disorders and
4 co-occurring disorders; to provide for the appointment, qualifications, and term of the
5 ombudsman; to provide for a nominating committee for selecting the ombudsman; to provide
6 for the organization of the office of 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 a contingent 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 systems and county social service agencies
23 engaged in monitoring, providing, or regulating services or treatment for mental health
24 disorders and co-occurring disorders.

1 (2) 'Consumer' means a person served by an agency, facility, or program who is or has
2 been receiving services or treatment for mental health disorders and co-occurring
3 disorders.

4 (3) 'Facility' or 'program' means an acute care inpatient facility that provides services or
5 treatment for mental health disorders and co-occurring disorders and a nonresidential or
6 residential program that is required to be licensed by the department.

7 (4) 'Mental health disorder and co-occurring disorder' means:

8 (A) Both a mental health disorder and a substance abuse disorder; or

9 (B) Both a mental health disorder and a developmental disability.

10 The term is also known as a 'dual diagnosis' or 'co-morbidity.'

11 (5) 'Ombudsman' means the state ombudsman for mental health disorders and
12 co-occurring disorders.

13 (6) 'Regional hospital' means one of the state operated hospitals in this state serving
14 consumers of the division.

15 (7) 'Serious injury' means:

16 (A) Fractures;

17 (B) Dislocations;

18 (C) Evidence of internal injuries;

19 (D) Head injuries with loss of consciousness;

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

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

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

26 (H) Irreversible mobility or avulsion of teeth;

27 (I) Injuries to the eyeball;

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

29 (K) Near drowning;

30 (L) Heat exhaustion or sunstroke; and

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

32 37-2-31.

33 There is created the state ombudsman for mental health disorders and co-occurring
34 disorders. The ombudsman shall have the powers and duties set forth in this article. The
35 ombudsman shall be a resident of this state and shall serve a term of five years. The
36 ombudsman shall not be eligible to hold public office. The ombudsman may be removed

1 for good cause by the ombudsman committee created in Code Section 37-2-41. The
 2 ombudsman may be appointed to serve successive terms and shall serve until a successor
 3 is appointed and qualified.

4 37-2-32.

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

9 (1) One consumer currently in recovery;

10 (2) One representative of the division;

11 (3) One representative of an advocacy organization for consumers served by an agency,
 12 facility, or program;

13 (4) One representative of law enforcement; and

14 (5) One psychologist with a Ph.D.

15 (b) Three members of the committee shall constitute a quorum. The nominating
 16 committee 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
 20 Governor's Office of Consumer Affairs 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 disorder and co-occurring
 25 disorder consumer of the department shall be transferred to the ombudsman.

26 37-2-34.

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

28 (1) To communicate privately with any consumer;

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

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

1 the records are private and the consumer is capable of providing consent, the ombudsman
2 shall first obtain the consumer's consent. The ombudsman shall not be required to obtain
3 consent for access to private data on consumers with developmental disabilities. The
4 ombudsman shall not be required to obtain consent for access to private data on decedents
5 who were receiving services for mental health disorders and co-occurring disorders. All
6 records of the ombudsman pertaining to the care and treatment of a consumer 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 consumers 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 consumer;

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

25 (10) To place trained ombudsman advocates in each regional board district which shall
26 be phased-in with a pilot program in two regions and rolled out in accordance with a time
27 frame established by the ombudsman;

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

1 (12) To attend proceedings regarding the transfer of patients or residents between
 2 institutions operated by the department and, subject to the consent of the affected
 3 consumer, other proceedings affecting the rights of consumers. The ombudsman shall not
 4 be required to obtain consent to attend meetings or proceedings and to have access to
 5 private data on consumers with developmental disabilities;

6 (13) To take all possible action including, but not limited to, programs of public
 7 education and legislative advocacy to secure and ensure the legal, civil, and special rights
 8 of consumers; and

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

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

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

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

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

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

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

21 (F) May disregard the rights of a consumer or other individual served by an agency or
 22 facility;

23 (G) May impede or promote independence, community integration, and productivity
 24 for consumers; or

25 (H) May impede or improve the monitoring or evaluation of services provided to
 26 consumers.

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

30 37-2-35.

31 Within 24 hours after a consumer suffers death or serious injury, the agency, facility, or
 32 program director shall notify the ombudsman of such death or serious injury.

33 37-2-36.

34 The ombudsman may receive a complaint from any source concerning an action of an
 35 agency, facility, or program. After completing a review, the ombudsman shall inform the

1 complainant and the agency, facility, or program of the results of the ombudsman's
 2 investigation. No consumer shall be punished nor may the general condition of the
 3 consumer's treatment be unfavorably altered as a result of an investigation or a complaint
 4 by the consumer or by another person on the consumer's behalf. An agency, facility, or
 5 program shall not retaliate or take adverse action against a consumer or other person who
 6 in good faith makes a complaint or assists in an investigation. The ombudsman shall
 7 classify as confidential the identity of a complainant.

8 37-2-37.

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

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

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

21 37-2-38.

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

26 37-2-39.

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

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

1 (c) The ombudsman shall also provide the biennial report made pursuant to subsection (b)
2 of this Code section to the commissioner and to the director of the division.

3 37-2-40.

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

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

12 37-2-41.

13 (a) The ombudsman committee shall consist of 12 members who shall be appointed by the
14 Governor, Lieutenant Governor, and Speaker of the House of Representatives.
15 Ombudsman committee members shall serve three-year terms and may be reappointed.

16 (1) The Governor shall appoint:

- 17 (A) One consumer currently in recovery;
- 18 (B) One representative of the division;
- 19 (C) One representative of law enforcement; and
- 20 (D) One psychologist with a Ph.D.

21 (2) The Lieutenant Governor shall appoint:

- 22 (A) A registered nurse who practices in the area of mental disorders and co-occurring
23 disorders;
- 24 (B) One psychiatrist;
- 25 (C) One physician whose specialty is internal medicine; and
- 26 (D) One representative of an advocacy organization for consumers and other
27 individuals served by an agency, facility, or program.

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

- 29 (A) One former consumer 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 disorders
33 and co-occurring disorders 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 consumers' rights.
9 The ombudsman committee shall function as an advisory body except as otherwise
10 provided in this Code section.

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

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

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

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

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

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

26 (6) Remove the ombudsman from office for good cause."

27 SECTION 2.

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

31 SECTION 3.

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

- 1 **SECTION 4.**
- 2 All laws and parts of laws in conflict with this Act are repealed.