

House Bill 86 (AS PASSED HOUSE AND SENATE)

By: Representatives Benton of the 31st, Dempsey of the 13th, England of the 116th, and Frye of the 118th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 6 of Title 49 of the Official Code of Georgia Annotated, relating to
2 services for the aging, so as to provide for the transfer of the Division of Aging Services to
3 the Georgia Adult and Aging Services Agency; to provide for definitions; to provide for the
4 Georgia Adult and Aging Services Board; to provide for membership, powers, and duties;
5 to provide for an executive director; to provide for transfer of rights, duties, and obligations;
6 to amend various provisions of the Official Code of Georgia Annotated so as to make
7 conforming changes; to provide for legislative findings; to provide for related matters; to
8 provide for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 The General Assembly finds that:

- 12 (1) Georgia has the eleventh fastest growing population in the United States of individuals
13 60 years of age and older;
- 14 (2) Georgia has the tenth fastest growing population in the United States of individuals 85
15 years of age and older; and
- 16 (3) Georgia's population of individuals 60 years of age and older is expected to increase
17 by 65 percent from 2010 to 2030.

18 style="text-align:center">**SECTION 2.**

19 Chapter 6 of Title 49 of the Official Code of Georgia Annotated, relating to services for the
20 aging, is amended by adding new Code sections to read as follows:

21 "49-6-1.1.

22 As used in this article, the term:

- 23 (1) 'Agency' means the Georgia Adult and Aging Services Agency.
- 24 (2) 'Board' means the Georgia Adult and Aging Services Board.
- 25 (3) 'Director' means the executive director of the agency.

26 49-6-1.2.

27 (a) There is created the Georgia Adult and Aging Services Board. The board shall consist
28 of seven members who work or have worked in the area of adult or aging services, who are
29 recipients of adult or aging services, or who are eligible to receive services provided by the
30 agency; provided, however, that two members shall be individuals who are 60 years of age
31 or older.

32 (b) The members of the board shall be appointed as follows: three members shall be
33 appointed by the Governor, two members shall be appointed by the Speaker of the House
34 of Representatives, and two members shall be appointed by the Lieutenant Governor. The
35 first members shall be appointed to take office on July 1, 2015, for initial terms as follows:
36 three such members shall be appointed for terms of one year, two such members shall be
37 appointed for terms of two years, and two such members shall be appointed for terms of
38 three years. Thereafter, the successors shall be appointed by the respective appointing
39 authority upon the expiration of the respective terms of office for terms of three years. All
40 such members shall serve until their successors are appointed and qualified. Such members
41 shall be eligible for reappointment to successive terms of office as members of the board.

42 (c) Vacancies in office shall be filled by appointment by the respective appointing
43 authority in the same manner as the appointment to the position on the board. An
44 appointment to fill a vacancy other than by expiration of a term of office shall be for the
45 balance of the unexpired term. If a vacancy remains unfilled for six months, the board
46 shall be authorized to fill the vacancy in accordance with the process described in this Code
47 section.

48 (d) Members of the board may be removed from office under the same conditions for
49 removal from office of members of professional licensing boards provided for in Code
50 Section 43-1-17.

51 (e) There shall be a chairperson of the board elected by and from the membership of the
52 board who shall be the presiding officer of the board. The term of the chairperson shall be
53 established by rules of the board.

54 (f) A quorum for transacting business shall be determined by the members of the board.

55 (g) The members of the board shall receive a per diem allowance and expenses as shall be
56 set and approved by the Office of Planning and Budget in conformance with rates and
57 allowances set for members of other state boards.

58 (h) The board shall approve policies to be implemented by the agency.

59 49-6-1.3.

60 The board shall appoint a director. The director shall serve at the pleasure of the board.
 61 The director shall have experience with adult or aging services provided by the agency with
 62 particular, demonstrated experience with home and community based services.

63 49-6-1.4.

64 (a) The Georgia Adult and Aging Services Agency is created and established to perform
 65 the functions and assume the duties, powers, and authority exercised by the former
 66 Division of Aging Services within the Department of Human Services on June 30, 2015.
 67 On July 1, 2015, the powers, functions, duties, programs, institutions, and authority of the
 68 agency relating to the former Division of Aging Services within the Department of Human
 69 Services shall be transferred to the agency pursuant to this article.

70 (b) The agency shall be assigned to the Department of Community Health for
 71 administrative purposes only, as prescribed in Code Section 50-4-3 except that the agency
 72 shall not be subject to paragraph (2) of subsection (a) and paragraph (4) of subsection (b)
 73 of such Code section providing for budget submission through the department. The agency
 74 shall submit its budget separately and directly to the Governor and the General Assembly."

75 **SECTION 3.**

76 Said chapter is further amended by revising Code Section 49-6-5, relating to the creation of
 77 the Division of Aging Services within the department, as follows:

78 "49-6-5.

79 (a) The agency shall succeed to all rules, regulations, policies, procedures, and
 80 administrative orders of the Department of Human Services which are in effect on June 30,
 81 2015, and which relate to the functions of the former Division of Aging Services. Such
 82 rules, regulations, policies, procedures, and administrative orders shall remain in effect
 83 until amended, repealed, superseded, or nullified by proper authority or as otherwise
 84 provided by law.

85 (b) The rights, privileges, entitlements, and duties of parties to contracts, leases,
 86 agreements, and other transactions entered into before July 1, 2015, by the Department of
 87 Human Services or the Division of Aging Services pertaining to the Division of Aging
 88 Services shall continue to exist, and none of such rights, privileges, entitlements, and duties
 89 is impaired or diminished by reason of the transfer of the functions to the agency provided
 90 for in this article. In all such instances, the agency shall be substituted for the Department
 91 of Human Services or the Division of Aging Services, and the agency shall succeed to the
 92 rights, privileges, entitlements, and duties under such contracts, leases, agreements, and
 93 other transactions.

94 (c) All persons employed by the Division of Aging Services who, on June 30, 2015, are
 95 engaged in the performance of a function or duty which is transferred to the agency as of
 96 July 1, 2015, by this article shall be automatically transferred to the agency on July 1, 2015.
 97 An equivalent number of positions or funds of the Department of Human Services which
 98 provide administrative support to the Division of Aging Services shall be transferred to the
 99 agency on July 1, 2015. Such persons shall be subject to the employment practices and
 100 policies of the agency on and after July 1, 2015, but the compensation and benefits of such
 101 transferred employees shall not be reduced. Employees who are subject to the rules of the
 102 State Personnel Board and who are transferred to the agency shall retain all existing rights
 103 under such rules. Accrued annual and sick leave shall be retained by such employees as
 104 employees of the agency.

105 (d) On July 1, 2015, the agency shall receive custody of any state owned property in the
 106 custody of the Department of Human Services on June 30, 2015, which pertains to the
 107 functions transferred from the Division of Aging Services to the agency.

108 ~~The Division of Aging Services, administratively established previously within the~~
 109 ~~department, is statutorily established. The Division of Aging Services established by this~~
 110 ~~Code section shall have those functions, duties, powers, and responsibilities heretofore~~
 111 ~~assigned by the board and the commissioner and as hereafter so assigned or as provided by~~
 112 ~~law."~~

113 SECTION 4.

114 Said chapter is further amended by revising Code Section 49-6-61, relating to definitions
 115 regarding community care and services for the elderly, as follows:

116 "49-6-61.

117 As used in this article, the term:

118 (1) ~~'Aging section' means the single organizational unit within the Department of Human~~
 119 ~~Services responsible for the planning and administration of services under the Older~~
 120 ~~Americans Act of 1965. 'Agency' means the Georgia Adult and Aging Services Agency.~~

121 (2) ~~'Department' means the Department of Human Services.~~

122 (3)(2) 'Functionally impaired elderly person' means any person 60 years of age or older
 123 with physical or mental limitations that restrict individual ability to perform the normal
 124 activities of daily living and which impede individual capacity to live independently.

125 (4)(3) The 'Georgia Medical Assistance Act of 1977' means Article 7 of Chapter 4 of this
 126 title.

127 (5)(4) 'Lead agency' means one or more agencies designated by the ~~Department of~~
 128 ~~Human Services~~ Georgia Adult and Aging Services Agency to assess services needed by
 129 functionally impaired elderly persons, to coordinate and provide community care services

130 to those persons, provide case management, and, where necessary, subcontract with
 131 providers of service. A lead agency shall be either a private nonprofit entity or any public
 132 entity, including but not limited to any organizational unit of the department Georgia
 133 Adult and Aging Services Agency.

134 ~~(6)~~(5) 'Older Americans Act of 1965' means P.L. 92-258, as amended, on July 1, 1982."

135 **SECTION 5.**

136 Said chapter is further amended by revising paragraph (4) of Code Section 49-6-72, relating
 137 to definitions regarding the "Georgia Family Caregiver Support Act," as follows:

138 "(4) ~~'Department' means the Department of Human Services.~~ Reserved."

139 **SECTION 6.**

140 Said chapter is further amended by striking "department" wherever such term occurs in the
 141 following Code sections and inserting in its place "agency":

142 (1) Code Section 31-8-50, relating to long-term care ombudsman program declaration of
 143 policy;

144 (1.1) Code Section 31-8-63, relating to state ombudsman rules and regulations;

145 (2) Code Section 49-6-2, relating to the designated agency for federal programs;

146 (3) Code Section 49-6-3, relating to the powers of the department;

147 (4) Code Section 49-6-4, relating to acceptance of federal and other grants;

148 (5) Code Section 49-6-6, relating to annual report;

149 (6) Code Section 49-6-21, relating to duties and powers of council;

150 (7) Code Section 49-6-22, relating to staff and facilities;

151 (8) Code Section 49-6-40, relating to the creation of the Silver-Haired Legislature;

152 (9) Code Section 49-6-62, relating to the establishment of community care unit;

153 (10) Code Section 49-6-63, relating to the establishment of community care service
 154 system;

155 (11) Code Section 49-6-64, relating to adoption of rules and regulations;

156 (12) Code Section 49-6-73, relating to eligibility for benefits;

157 (13) Code Section 49-6-74, relating to provision of services; and

158 (14) Code Section 49-6-77, relating to rules and regulations.

159 **SECTION 7.**

160 Code Section 49-1-7 of the Official Code of Georgia Annotated, relating to home delivered
 161 meals, transportation, services for the elderly, and preschool children with special needs trust,
 162 is amended by adding a new subsection to read as follows:

163 "(a.1) As used in this Code section, the term 'department' means the Georgia Adult and
 164 Aging Services Agency."

165 **SECTION 8.**

166 The following Code sections of the Official Code of Georgia Annotated are amended by
 167 striking "Division of Aging Services", "Division of Aging Services within the Department
 168 of Human Services", "Division of Aging Services of the department", "Division of Aging
 169 Services of the Department of Human Services", "Department of Human Resources (now
 170 known as the Department of Human Services)", or "department through the Division of
 171 Aging Services" wherever such terms occur and inserting in their place "Georgia Adult and
 172 Aging Services Agency":

- 173 (1) Code Section 10-1-855, relating to referral procedures to provide intervention and
 174 assistance with respect to unfair or deceptive practices toward the elderly;
- 175 (2) Code Section 29-10-3, relating to qualifications and requirements of public guardians;
- 176 (3) Code Section 29-10-4, relating to registration of public guardians;
- 177 (4) Code Section 29-10-10, relating to compensation of public guardians;
- 178 (5) Code Section 29-10-11, relating to appropriation of funds for compensation of public
 179 guardians in certain circumstances;
- 180 (6) Code Section 30-5-3, relating to definitions relative to the "Disabled Adults and Elder
 181 Persons Protection Act";
- 182 (7) Code Section 31-8-302, relating to the composition of the Georgia Alzheimer's and
 183 Related Dementias State Plan Task Force;
- 184 (8) Code Section 31-8-303, relating to meetings of the task force;
- 185 (9) Code Section 37-1-27, relating to legislative findings of the Suicide Prevention
 186 Program;
- 187 (10) Code Section 49-1-7, relating to home delivered meals, transportation, services for
 188 the elderly, and preschool children with special needs trust;
- 189 (11) Code Section 49-4-162, relating to the establishment of the Georgia Qualified
 190 Long-term Care Partnership Program;
- 191 (12) Code Section 49-6-20, relating to the creation of the Council on Aging;
- 192 (13) Code Section 49-6-60, relating to legislative intent regarding community care and
 193 services for the elderly;
- 194 (14) Code Section 49-6-71, relating to purpose of the "Georgia Family Caregiver Support
 195 Act";
- 196 (15) Code Section 49-6-72, relating to definitions; and
- 197 (16) Code Section 50-8-50, relating to the creation of the Commission on Regional
 198 Planning.

199 **SECTION 9.**

200 Article 3 of Chapter 8 of Title 31 of the Official Code of Georgia Annotated, relating to
 201 long-term care ombudsman program, is amended by revising Code Section 31-8-51, relating
 202 to definitions, as follows:

203 "31-8-51.

204 As used in this article, the term:

205 (1) ~~'Community ombudsman' means a person certified as a community ombudsman~~
 206 ~~pursuant to Code Section 31-8-52~~ 'Agency' means Georgia Adult and Aging Services
 207 Agency.

208 (1.1) ~~'Department' means the Department of Human Services~~ 'Community ombudsman'
 209 means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

210 (2) 'Long-term care facility' means any skilled nursing home, intermediate care home,
 211 private home care provider, assisted living community, or personal care home now or
 212 hereafter subject to regulation and licensure by the Department of Community Health.

213 (3) 'Resident' means any person who is receiving treatment or care in any long-term care
 214 facility who seeks admission to such facility or who has been discharged or transferred
 215 from such facility.

216 (4) 'State ombudsman' means the state ombudsman established under Code Section
 217 31-8-52."

218 **SECTION 10.**

219 Said article is further amended by revising Code Section 31-8-52, relating to establishment
 220 of long-term care ombudsman program, as follows:

221 "31-8-52.

222 Pursuant to the Older Americans Act of 1965 (P.L. 89-73, 79 Stat. 219), as amended, and
 223 as a condition of receiving funds under that act for various programs for older citizens of
 224 this state, the ~~Department of Human Services~~ agency has been required to establish and
 225 operate a long-term care ombudsman program. In order to receive such funds, the
 226 ~~department~~ agency has already established a position of state ombudsman within the state
 227 Office of Special Programs. The state ombudsman shall be under the direct supervision
 228 of the ~~commissioner of human services~~ director of the agency or his or her designee and
 229 shall be given the powers and duties hereafter provided by this article. The state
 230 ombudsman shall be a person qualified by training and experience in the field of aging or
 231 long-term care, or both. The state ombudsman shall promote the well-being and quality
 232 of life of residents in long-term care facilities and encourage the development of
 233 community ombudsman activities at the local level. The state ombudsman may certify
 234 community ombudsmen, and such certified ombudsmen shall have the powers and duties

235 set forth in Code Sections 31-8-54 and 31-8-55. The state ombudsman shall require such
 236 community ombudsmen to receive appropriate training as determined and approved by the
 237 ~~department~~ agency prior to certification. Such training shall include an internship of at
 238 least seven working days in a nursing home and at least three working days in a personal
 239 care home. Upon certification, the state ombudsman shall issue an identification card
 240 which shall be presented upon request by community ombudsmen whenever needed to
 241 carry out the purposes of this article. Two years after first being certified and every two
 242 years thereafter, each such community ombudsman, in order to carry out his or her duties
 243 under this article, shall be recertified by the state ombudsman as continuing to meet the
 244 ~~department's~~ agency's standards as community ombudsman."

245

SECTION 11.

246 Said article is further amended by revising Code Section 31-8-53, relating to the duties of
 247 state ombudsman, as follows:

248 "31-8-53.

249 The state ombudsman shall:

250 (1) Establish policies and procedures, subject to approval by the ~~commissioner of human~~
 251 ~~services~~ director of the agency, for receiving, investigating, referring, and attempting to
 252 resolve complaints made by or on behalf of residents of long-term care facilities
 253 concerning any act, omission to act, practice, policy, or procedure that may adversely
 254 affect the health, safety, or welfare of any resident;

255 (2) Investigate and make reports and recommendations to the ~~department~~ agency and
 256 other appropriate agencies concerning any act or failure to act by any government agency
 257 with respect to its responsibilities and duties in connection with long-term care or
 258 residents of long-term care facilities;

259 (3) Establish a uniform state-wide reporting system to record data about complaints and
 260 conditions in long-term care facilities and shall collect and analyze such data in order to
 261 identify significant problems affecting the residents of such facilities;

262 (4) Promote the development of community ombudsmen activities and provide technical
 263 assistance as necessary; and

264 (5) Make an annual written report, documenting the types of complaints and problems
 265 reported by residents, to the director of the Office of Special Programs for his or her
 266 recommendations to the ~~commissioner~~ director of the agency concerning needed policy
 267 and regulatory and legislative changes."

268 **SECTION 12.**

269 Said article is further amended by revising Code Section 31-8-59, relating to notice to
270 residents, as follows:

271 "31-8-59.

272 The state ombudsman shall prepare and distribute to each long-term care facility in the
273 state a written notice describing the long-term care ombudsman program and the procedure
274 to follow in making a complaint, including the address and telephone number of the state
275 ombudsman and community ombudsman, if any. The administrator shall give the written
276 notice required by this Code section to each resident and his legally appointed guardian,
277 if any, upon admission. The administrator shall also post such written notice in conspicuous
278 public places in the facility in accordance with procedures provided by the state
279 ombudsman and shall give such notice to any resident and his legally appointed guardian,
280 if any, who did not receive it upon admission. The failure to provide the notices required
281 by this Code section shall be a ground upon which the ~~department~~ Department of
282 Community Health may revoke any permit issued to a long-term care facility under Code
283 Section 31-7-1."

284 **SECTION 13.**

285 This Act shall become effective upon its approval by the Governor or upon its becoming law
286 without such approval.

287 **SECTION 14.**

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