

POLICY

SUBJECT: Operation of the Office of Disability Services Ombudsman	POLICY NO.: 1
ISSUED BY: Office of Disability Services Ombudsman	DATE OF ISSUE: October 1, 2009

I. Policy

It is the policy of the Disability Services Ombudsman (DSO) Office to promote the safety, well-being and rights of consumers, including before governmental agencies, and to investigate and attempt to resolve complaints made by or on behalf of consumers concerning any act, omission to act, practice, policy or procedure of a service provider that may adversely affect the safety, well-being, and right of consumers. The ombudsman will act independently of any state official, department or agency in receiving, investigating and attempting to resolve complaints made by or on behalf of said consumers.

II. Definitions

Advance directive for health care

A written document voluntarily executed by a patient in accordance with the requirements of Georgia law pertaining to living wills and the appointment of health care agents with the requirements of Code Section 31-32-5.

Clinical record

A written record pertaining to an individual consumer, which shall include all medical records, progress notes, charts, admissions and discharge data, and all other information which is recorded by a services provider or other entity responsible for a consumer's care and treatment and which pertains to the consumer's hospitalization, treatment or habilitation.

Consumer

A natural person who has a mental or emotional illness, developmental disability, addictive disease, or a combination of such conditions and who is, has been, or is seeking to be, a recipient of services designed to prevent or ameliorate the condition through community service boards, hospitals or private entities contracting with the State for the provision of these services.

Department

The Georgia Department of Behavioral Health and Developmental Disabilities.

Estate Representative

An executor, executrix, administrator or administratrix of the estate of a deceased consumer.

Guardian

An individual appointed on behalf of a consumer as outlined by the definitions set forth in Georgia law pertaining to Guardians and Wards, as set forth in Title 21 of the Official Code of Georgia Annotated.

Health care agent

An agent under a durable power of attorney for health care, or health care agent under an advance directive for health care.

Office

The Office of Disability Services Ombudsman.

Ombudsman

An official appointed by the Governor who acts independently of any state official, department or agency to promote the safety, well-being and rights of consumers.

Rights

Such rights as are provided by law, rule or regulation for a consumer of a services provider.

Services provider

A public or private person, corporation or business, which provides disability services operated by the Department, under letter of agreement with the Department, or under contract with the Department.

Safety

Freedom from physical harm and emotional abuse.

Well-being

Quality of life of a consumer, including the environment of care.

III. PROCEDURES

A. Intake

Concerns or complaints received from consumers or individuals acting on their behalf which involve the actions of an agency, facility or program will be reviewed by the Disability Services Ombudsman. Matters given priority are:

- Acts or omissions, by service providers, which adversely affect the health, safety or welfare of consumers.
- Policies and practices that diminish consumer dignity or independence.
- A disregard of consumer rights.
- Situations of abuse or neglect.
- The death or serious injury of a consumer.
- The quality of services provided.

B. Assessment

The Office attempts to resolve concerns or complaints in a way that improves the quality of care consumers receive. Possible actions by the office include the following:

- Mediate or advocate on behalf of a consumer.
- Consult with providers about policies, practices and procedures.
- Gather and analyze information.

- Conduct investigations.
 - Examine records.
 - Make site visits.
 - Review deaths and serious injuries.
 - Make recommendations, issue reports and monitor results.
1. The ombudsman will attempt to resolve complaints using, whenever possible, informal techniques of mediation and conciliation.
 2. When a complaint is made against a services provider, the ombudsman will first notify the administrator or person in charge in writing and give such person an opportunity to correct any alleged defect. If so notified, and the person in charge fails to take corrective action within fifteen working days, or if the defect seriously threatens the safety or well-being of any consumer, the ombudsman may refer the complaint to the Department of Behavioral Health and Developmental Disabilities and/or any other appropriate agency. When deemed appropriate, the ombudsman may refer complaints back to the services provider for resolution.

C. Investigations

The ombudsman, of his or her initiative or in response to complaints made by or on behalf of consumers, may conduct investigations, which will be prioritized based on the seriousness and pervasiveness of the allegations.

1. Access to Facility: The ombudsman has the authority to enter any facility, premises or property where disability services are provided. Upon entering such facility, the ombudsman will notify the administrator or person in charge before speaking to any consumer. After notification, the ombudsman may communicate privately and confidentially with consumers individually or in groups or staff of the facility.
2. Inspection of Facility: The ombudsman has the authority to inspect the entire facility, premises or property and have access to administrative records, policies and documents of the facility. Entry and investigation will be conducted in a manner which will not significantly disrupt the provision of services to consumers.
3. Access to Records:
 - a. The ombudsman can access clinical records of any consumer with written consent of the consumer, parent of a minor consumer, guardian or health care agent of the consumer if the agent is authorized to make such a decision and the consumer is unable to do so. The ombudsman can access clinical records of a consumer who lacks the capacity to consent to the review and has no guardian or health care agent who is authorized to make such a decision.
 - b. The ombudsman has the authority to obtain data and access to such files and records as deemed necessary to enable the ombudsman to properly perform his or her duties and exercise his or her powers, provided such information is not privileged under any law.
4. Communication with Consumer. The ombudsman will identify himself or herself as such to the consumer, and the consumer has the right to communicate or refuse to communicate with the ombudsman. The consumer (parent of a minor, guardian or health care agent) has the right to participate in planning any course of action and has the right to approve or disapprove any action to be taken on their behalf by the ombudsman.

5. If, at any time during the course of the investigation, the ombudsman finds evidence of criminal activity, suspected abuse, neglect, exploitation or abandonment of a consumer or suspected violation of any professional code of conduct, reports will be made to the appropriate law enforcement, regulatory authority or licensing board.

D. Resolution

Following an investigation, the ombudsman will submit a written report which will include his or her opinions and recommendations to the following, as applicable:

- Consumer (parent of minor consumer, guardian, health care agent, estate representative);
- Services provider;
- Department of Behavioral Health and Developmental Disabilities.

IV. MEDICAL REVIEW OF CONSUMER DEATHS

A. Within 24 hours after a consumer suffers death, the Department, other governmental agency, or services provider shall notify the ombudsman of such death. Additionally, a death occurring within two weeks following the consumer's discharge from a state hospital or state operated community residential services shall be reported to the ombudsman within 24 hours of knowledge of such death.

B. A medical review group appointed by the Governor will conduct medical reviews of all deaths of consumers in state hospitals or state operated community residential services, as peer reviews. The group will be comprised of the ombudsman and four board certified physicians, one of whom shall be a psychiatrist. The ombudsman will serve as the chairperson and will appoint a vice chairperson. The medical review group:

(1) Shall review, within 60 days notice of the death, all deaths of consumers:

- occurring on site of a state hospital or state operated community residential services;
- in the company of staff of a state hospital or state operated community residential services;
- occurring within two weeks following the consumer's discharge from a state hospital or state operated community residential services.

(2) Shall have access to all clinical records of the consumer, all investigations conducted by the Department, state hospitals or state operated community residential services regarding the death, and all reviews of the death, including peer reviews.

(3) May interview staff of the state hospitals and state operated community residential services, and other persons involved in the events immediately preceding and involving the death.

(4) Shall determine whether the death was the result of natural causes or may have resulted from other than natural causes.

(5) Shall determine whether the death requires further investigation or review.

(6) May make confidential recommendations to the ombudsman, the department, state hospitals and state operated community residential services regarding consumer treatment and care, policies and procedures, which may assist in the prevention of death.

(7) Shall report to the appropriate law enforcement agency any suspected criminal activity or suspected abuse, and shall report any suspected violation of any professional code of conduct to the appropriate licensing board.

V. CONFIDENTIALITY

- A. The identity of any complainant or individual providing information on behalf of the consumer or complainant relevant to the investigation of a complaint shall be confidential and shall not be disclosed without the express written permission of such person, unless such disclosure is necessary for the Department or services provider to protect the safety, well-being or rights of a consumer. However, if the complaint becomes the subject of a judicial or administrative proceeding, the identity of such persons may be disclosed for the purpose of the proceeding.
- B. The identity of any and all consumers involved in or mention in an investigation, whether as a complainant or otherwise, shall be confidential and shall not be disclosed without the express written consent of the consumer or person legally authorized to consent for the consumer.
- C. The ombudsman (and persons employed by or acting as agents of the ombudsman) shall have access to confidential clinical records and protected health information and shall protect said records from further disclosure. The ombudsman will adhere to the provisions of federal and state law relating to the confidentiality of patient records. The ombudsman will comply with the federal Health Insurance Portability and Accountability Act of 1996, and the Standards for Privacy of Individually Identifiable Health Information promulgated pursuant thereto.
- D. All peer review records submitted to, or produced or created by the medical review group, and the findings and recommendations of the medical review group, shall remain confidential and shall not be considered public records under Article 4, Chapter 18 of Title 50 of the Official Code of Georgia Annotated.

Approved:

Date:

Jewel W. Norman

October 1, 2009

Jewel W. Norman
Ombudsman for Disability Services