



House Bill 228 Summary And Analysis¹

Origins of House Bill 228

House Bill 228 (“HB 228”), sponsored by Representative Marc Butler, was introduced on January 30 in the 2009 Session of the Georgia General Assembly. The bill reflects the recommendations of the Governor’s Health and Human Services Task Force that investigated possible beneficial changes to the organizational structure of the Department of Human Resources. The bill was amended several times throughout the 2009 Legislative Session, was ultimately passed by both chambers, and was signed by Governor Perdue on May 4, 2009.

Legislative Purpose

Since the creation of the Department of Human Resources in 1972, Georgia has grown, its population has gotten older, and the department has not been adjusted to address these changes.² Some have expressed concern that the Department of Human Resources has become unwieldy, and it is unable to efficiently discharge its widely varying duties.³ HB 228 represents an effort to restructure and streamline the Department of Human Resources by shifting some of its responsibilities to other departments.

Summary of Changes

HB 228 amends various titles of the Official Code of Georgia Annotated (“O.C.G.A.”), most prominently Titles 31, 49, and 37, relating to the Division of Public Health of the Department of Human Resources, the Department of Human Resources, and the Division of Mental Health, Developmental Disabilities, and Addictive Disease of the Department of Human Resources, respectively. The Bill primarily changes the names, structure, and duties of the Department of Human Resources and the Department of Community Health, and creates a new agency, the Department of Behavioral Health and Developmental Disabilities.

The primary proposed changes in the bill are to create, from the existing powers, duties, and assigned resources of the Department of Human Resources and the Department of Community Health, three Departments:

1. The Department of Community Health,
2. The Department of Human Services, and
3. The Department of Behavioral Health and Developmental Disabilities.

¹ May 15, 2009 by Joseph Records, Student Attorney, Emory University School of Law Class of 2009.

² Tom Rawlings, *Needed Change is Coming to State Government*, available at:

http://gachildadvocate.org/vgn/images/portal/cit_1210/55/32/125522201Change%20in%20State%20Govt.pdf.

³ *Id.*



Specifically, HB 228 makes the following changes:

1. The Department of Community Health

- a. Adding of Division of Public Health and health-related grant of authority.
 - i. Under current law, the Division of Public Health is within the Department of Human Resources, and the Department of Human Resources' statutory grant of authority includes "safeguard[ing] and promoting the health of the people of this state" and provides a non-exhaustive list specific actions that fall within that authority.⁴
 - ii. The bill moves the Division of Public Health to the Department of Community Health and grants authority for the promotion of health to the Department of Community Health instead of the Department of Human Resources.
- b. Adding of Office of Regulatory Services.
 - i. Under current law, the Office of Regulatory Services is within the Department of Human Resources.
 - ii. The bill moves the Office of Regulatory Services to the Department of Community Health, with one exception. Regulatory functions related to the licensing and regulation of licensed child welfare agencies are retained by the Department of Human Services.
- c. Creating of Advisory Council for Public Health and Public Health Commission.
 - i. The bill creates a new entity, the Advisory Council for Public Health.
 1. The Advisory Council for Public Health is to be composed of nine members, appointed by the Governor in staggered three-year terms.
 2. The Advisory Council for Public Health must meet at least quarterly.
 3. The Advisory Council for Public Health is to advise the Division of Public Health on all relevant matters.
 - ii. The bill also creates the Public Health Commission.
 1. The Public Health Commission is to be composed of nine members, five of whom are to be appointed by the Governor, two by the Lieutenant Governor, and two by the Speaker of the House of Representatives.
 2. The Public Health Commission shall study the efficacy of housing the Division of Public Health in the Department of Community Health, compared to the Division of Public Health being an attached agency, an independent agency, or part of another organizational structure.

⁴ O.C.G.A. § 31-2-1 (2009).



3. The Public Health Commission shall advise the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives as to its findings.
 4. The Public Health Commission shall be abolished on December 31, 2010.
- d. Creating of the office of the State Health Officer.
- i. The bill creates the office of the State Health Officer.
 - ii. The State Health Officer performs emergency preparedness duties at the Governor's direction.
 - iii. The State Health Officer is designated by the Governor, and is either the commissioner of Department of Community Health or the director of Division of Public Health.
- e. Adopting procedures of the Georgia Administrative Procedure Act.
- i. Under current law, the Department of Community Health is exempted from the procedures of the Georgia Administrative Procedure Act in the following ways:
 1. When promulgating rules under Chapter 6 of Title 31, pertaining to State Health Planning and Development, the Department of Community Health must follow the procedures laid out in O.C.G.A. § 31-6-21.1 instead of those in the Georgia Administrative Procedure Act.⁵
 2. When conducting quasi-judicial actions where hearings are required, those hearings are held according to the procedures of O.C.G.A. § 31-5-2, not those of the Georgia Administrative Procedure Act.⁶
 - ii. The bill retains the procedures in O.C.G.A. § 31-6-21.1 instead of the Georgia Administrative Procedure Act, but repeals the procedures of O.C.G.A. 31-5-2 for quasi-judicial hearings in favor of the Georgia Administrative Procedure Act.

⁵ The special procedures require the Department to submit three copies of notice of the intended action to legislative counsel, instead of only one as the Georgia Administrative Procedure Act requires at O.C.G.A. § 50-13-4(c)-(g), and grants legislative counsel five days, instead of three, to forward the notice to leadership in the General Assembly. Both the Georgia Administrative Procedure Act and the special procedures of O.C.G.A. § 31-6-21.1 provide that if a member of the appropriate committee of the General Assembly objects to a proposed rule, that rule will not be promulgated. Under the special procedures, if both the House and Senate committees object, the Department may override such an objection by notifying the appropriate committee of the General Assembly within fifteen days of the start of the next legislative session, whereas the Georgia Administrative Procedure Act allows such notice to be filed within thirty days of the beginning of the session. If only one committee objects, the special procedures also permit notice to be filed within thirty days. Such an override can be blocked by a two-thirds majority of each chamber of the General Assembly or by a simple majority and the approval of the Governor.

⁶ The special procedures require notice to interested parties and the opportunity to present evidence, and the Georgia Administrative Procedure Act includes notice and opportunity to present evidence as well as the requirement of a record, oaths, subpoenas, and other processes resembling a judicial trial.



2. The Department of Human Services

- a. Renaming and removing Division of Public Health, health-related authority, and the Office of Regulatory Services.
 - i. Under current law:
 1. Title 49 of the Georgia Code lays out the duties, powers, and responsibilities of the Department of Human Resources.
 2. The Division of Public Health is a division within the Department of Human Resources.
 3. The Department of Human Resources is granted authority to “safeguard and promoting the health of the people of this state,” and specific actions that fall within that authority are listed.⁷
 4. The Office of Regulatory Services is an office within the Department of Human Resources.
 5. The Division of Mental Health, Developmental Disabilities, and Addictive Disease is a division within the Department of Human Resources.
 - ii. The bill makes the following changes:
 1. Renames the department created by Title 49 as the Department of Human Services;
 2. Moves the Division of Public Health out of the Department of Human Resources;
 3. Removes the Department of Human Resources’ authority over health-related matters in Georgia;
 4. Moves Office of Regulatory Services out of the Department of Human Resources; and
 5. Moves the Division of Mental Health, Developmental Disabilities, and Addictive Disease out of the Department of Human Resources.
 - iii. The Department of Human Services will have the following internal divisions and offices:⁸
 1. Division of Aging Services
 2. Division of Family and Children Services
 3. Office of Audits
 4. Office of Child Support Services
 5. Office of Communications
 6. Office of Facilities and Support Services
 7. Office of Financial Services
 8. Office of Human Resources Management and Development
 9. Office of Information Technology
 10. Office of Inspector General
 11. Office of Investigative Services

⁷ O.C.G.A § 31-2-1 (2009).

⁸ See [www.dhr.georgia.gov/about us>divisions & offices](http://www.dhr.georgia.gov/about-us/divisions-&-offices).



- 3. The Department of Behavioral Health and Developmental Disabilities**
- a. Creating the Department of Behavioral Health and Developmental Disabilities, board of the Department of Behavioral Health and Developmental Disabilities, and commissioner of the Department of Behavioral Health and Developmental Disabilities.
 - i. Under current law, the Division of Mental Health, Developmental Disabilities, and Addictive Disease is within the Department of Human Resources.
 - ii. The bill creates a new agency, the Department of Behavioral Health and Developmental Disabilities, and moves the powers, duties, and responsibilities of the Division of Mental Health, Developmental Disabilities, and Addictive Disease to the new agency.
 - iii. The bill also creates the board of the Department of Behavioral Health and Developmental Disabilities.
 1. The board shall have nine members, appointed by the Governor, with staggered, three-year terms.
 2. The board shall set the general policy to be followed by the Department of Behavioral Health and Developmental Disabilities.
 - iv. The bill also creates the office of the commissioner of behavioral health and developmental disabilities.
 1. The commissioner shall be selected by the board of the Department of Behavioral Health and Developmental Disabilities and approved by the Governor.
 2. The commissioner shall supervise, direct, account for, organize, plan, administer, and execute functions vested in the Department of Behavioral Health and Developmental Disabilities, subject to the policy established by the board.
 - b. Creating of the Behavioral Health Coordinating Council.
 - i. Under current law, the Governor's Advisory Council for Mental Health, Developmental Disabilities, and Addictive Diseases advises the Governor, the board of the Department of Human Resources, the Department of Human Resources, and the Division of Mental Health, Developmental Disabilities, and Addictive Disease on the state of existing service programs, the need for legislation, the need for expansion or reduction of service programs, and the need for other changes to service programs.
 - ii. The bill replaces the Governor's Advisory Council for Mental Health, Developmental Disabilities, and Addictive Disease with a new group, the Behavioral Health Coordinating Council to develop solutions to systemic barriers, establish and evaluate goals, and establish outcome measures.
 - iii. The new Council will be comprised of:
 1. The Commissioner of Behavioral Health and Developmental Disabilities;
 2. The Commissioner of Community Health;



3. The Commissioner of Human Services;
 4. The Commissioner of Juvenile Justice;
 5. The Commissioner of Corrections;
 6. An adult consumer of behavioral health services, appointed by the Governor;
 7. A family member of a consumer of behavioral health services, appointed by the Governor;
 8. A parent of a child who receives behavioral health services, appointed by the Governor;
 9. A member of the Georgia House of Representatives, appointed by the Speaker of the House; and
 10. A member of the Georgia Senate, appointed by the Lieutenant Governor.
- c. Adding the Suicide Prevention Program.
- i. Under current law, the Department of Human Resources operates the Suicide Prevention program.
 - ii. The bill reestablishes the Program under the Department of Behavioral Health and Developmental Disabilities.
- d. Using and defining the term “developmental disability.”
- i. Under current law, the term “mental retardation” is used to describe “a state of significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior and originating in the developmental period.”⁹
 - ii. The bill discontinues use of the term “mental retardation,” and replaces it with “developmental disability,” the definition of which is similar to the federal definition.¹⁰
 - iii. A developmental disability is “a severe, chronic disability of an individual that”¹¹ is attributed to physical or intellectual disability, is manifested by age 22, is likely to continue, results in severe functional limitations, and reflects a need for services.
- e. Providing for coordinated treatment of multiple conditions.
- i. Current law does not require delivery of comprehensive treatment to individuals with multiple mental health, developmental disability, or addictive disease related conditions, who instead must secure treatment for each condition separately.

⁹ O.C.G.A. § 37-4-1(11) (2009).

¹⁰ 42 U.S.C. § 15002(8) (2009).

¹¹ HB 228 § 3-1. The definition of developmental disability is at O.C.G.A. § 37-1-1(8) (2009).



- ii. The bill provides for the integration and coordination of treatment of conditions of both the brain and the body “to promote recovery, health, and well-being.”

4. Other Changes

- a. Repealing the sunset provision for the State Commission on Family Violence.
 - i. Under current law, the State Commission on Family Violence is scheduled to cease to exist, or sunset, on January 1, 2010.¹²
 - ii. The bill repeals the provision that would dissolve the Commission, therefore continuing its existence indefinitely.
- b. Throughout the bill, masculine pronouns in the O.C.G.A. are replaced with both masculine and feminine pronouns.

Analysis of Changes

HB 228 addresses compliance with the Georgia Administrative Procedure Act

Under current law, the Department of Community Health is not always bound by the Georgia Administrative Procedure Act.¹³ HB 228 brings the Department more closely in line with the Georgia Administrative Procedure Act, but declines to apply all of the uniform procedures. Although complete application of the Georgia Administrative Procedure Act to the Department of Human Services, the Department of Community Health, and the Department of Behavioral Health and Developmental Disabilities would have been preferable, this change is positive. By more closely adhering to the standards set forth in the Georgia Administrative Procedure Act, decisions made by Department of Community Health will be entitled to greater deference,¹⁴ and may more accurately reflect policy preferences of interested parties.¹⁵

The language of HB 228 corrects dated verbiage in the Code

By adding gender-neutral pronouns and changing the term “mental retardation” to “developmental disability,” the bill brings part of the O.C.G.A. up to date. The definition of developmental disability is similar to the federal definition,¹⁶ which moves Georgia toward the national standard. These changes represent commendable action on the part of the Georgia General Assembly to make its statutory law respectful to all Georgians.

¹² O.C.G.A. § 19-13-35 (2009).

¹³ The current exceptions from the Georgia Administrative Procedure Act both currently apply to the Department of Human Resources; however, the applicable code sections are among those moved from the Department of Human Resources to the Department of Community Health by HB 228.

¹⁴ See *Pruitt Corp. v. Georgia Dept. of Community Health*, 664 S.E.2d 223 (2008).

¹⁵ See O.C.G.A. § 50-13-4 (2009) (providing for notice and comment rulemaking procedures).

¹⁶ See 42 U.S.C. § 15002(8) (2009).



Coordinated Treatment of Multiple Conditions

This bill mandates that the Department of Behavioral Health and Developmental Disabilities ensure that mental health, developmental disability, and addictive disease related service providers coordinate with health care providers to offer integrated treatment. Individuals with conditions relating to both developmental disabilities and mental health, for example, can therefore access care and services more easily. Because developmental disabilities, by definition, affect people while they are young,¹⁷ delivery of coordinated services is likely to directly benefit children.

Accountability and Flexibility

HB 228 simplifies the structure of the Department of Human Resources, which makes its budget and its priorities more transparent. Proponents of HB 228 have noted that the Department of Human Resources oversees every activity in the state from foster care to septic tanks,¹⁸ making it difficult to monitor. The structure enacted with HB 228 removes a substantial portion of the duties and responsibilities of the Department of Human Resources, assigning all general health-related services and regulation to the Department of Community Health and all behavioral health-related services and regulation to the Department of Behavioral Health and Developmental Disabilities. Because each department's range of responsibility will be limited, the efficacy of the departments' efforts and allocation of funding and resources will be more ascertainable; the departments will therefore be more accountable.

The creation of the Public Health Commission addresses criticisms of the enacted structure. Relying on the Department of Community Health to deliver services is risky because that Department has not been a service delivery agency before, but rather an insurance agency.¹⁹ The bill does not mandate that the Public Health Commission use any specific metric to determine the efficacy of the Division of Public Health during its operation within the Department of Community Health. However, by establishing immediate review of the placement of the Division of Public Health in the Department of Community Health, HB 228 helps to ensure that, if the passed structure of the Department of Community Health, the Department of Human Services, and the Department of Behavioral Health and Developmental Disabilities proves unsatisfactory, the General Assembly can address corrective measures in future sessions.

¹⁷ Under the definition in HB 228, a developmental disability manifests itself by age 22.

¹⁸ See O.C.G.A. § 31-2-7(b) (2009) (granting the Department of Human Resources authority to promulgate regulations to address sewage management systems).

¹⁹ See O.C.G.A. § 31-5A-1 (2009) (establishing and outlining the authority of the Department of Community Health “(1) to serve as the lead planning agency for all health issues in the state . . . (2) to permit the state to maximize its purchasing power [of health care purchases] . . . (3) to minimize duplication and maximize administrative efficiency in the state’s health care systems . . . (4) to allow the state to develop a better health care infrastructure that is more responsive to the consumers it serves while improving access to and coverage for health care; and (5) to focus more attention and departmental procedures on the issue of wellness”); O.C.G.A. § 31-5A-4(f)(1) (2009) (naming the Department of Community Health as the “lead agency” in coordinating the purchasing of health care).



EMORY
LAW

Barton Child Law and Policy Clinic

Conclusion

Overall, HB 228 takes short but positive steps. The reorganization addresses faults in the current system and maps out some avenues of progress, but falls short of squarely solving the problems it faces. The reorganized structure of DCH, DHS, and DBHDD is better aligned with the GAPA, more up to date, and potentially more efficient. The bill includes the added security of a commission to measure performance, which offers the General Assembly the opportunity to follow-up in the Legislative Session of 2011.

If the system operates more efficiently and effectively, children who interact with the system are better able to receive the services they need. HB 228 therefore benefits children.