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COMMITTEE REPORT

May 3, 2017

**S. 325**

Introduced by Senator Sheheen

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Read the first time March 28, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 325) to amend Section 43-33-350 of the 1976 code, relating to the powers and duties of the South Carolina Protection and Advocacy System for the Handicapped, to provide, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 43-33-350 OF THE 1976 CODE, RELATING TO THE POWERS AND DUTIES OF THE SOUTH CAROLINA PROTECTION AND ADVOCACY SYSTEM FOR THE HANDICAPPED, TO PROVIDE THAT PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC., FORMERLY KNOWN AS THE SOUTH CAROLINA PROTECTION AND ADVOCACY SYSTEM FOR THE HANDICAPPED, SHALL ADMINISTER THE CLIENT ASSISTANCE PROGRAM; TO REPEAL SECTION 1-11-10(A)(9); AND TO PROVIDE FOR THE TRANSITION OF THE PROGRAM’S ADMINISTRATION FROM THE DEPARTMENT OF ADMINISTRATION.

Whereas, in Act 121 of 2014, the South Carolina Restructuring Act of 2014, many offices and programs located within the former Office of Executive Policy and Programs were devolved upon the Department of Administration;

Whereas, Act 121 of 2014 recognized that the various offices and programs within the Office of Executive Policy and Programs would be more appropriately administered by entities other than the Department of Administration and therefore directed the Department of Administration to report to the General Assembly concerning the appropriate placement of those offices and programs;

Whereas, the Department of Administration’s report recommended that the administration of the Client Assistance Program should be devolved upon Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped; and

Whereas, the General Assembly concurs with the Department of Administration’s recommendation with regard to the Client Assistance Program, and this act implements that recommendation.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 43‑33‑310 of the 1976 Code is amended to read:

“Section 43‑33‑310. The General Assembly finds that by executive order in 1977 the Governor designated an eleemosynary corporation now known as ~~Advocacy for Handicapped Citizens, Inc., and located in Charleston~~ Protection and Advocacy for People with Disabilities, Inc., as the organization to perform the function of advocate for ~~developmentally disabled~~ citizens with developmental disabilities as required by Section 113 of Public Law 94‑103, as amended, ~~by 95‑602,~~ and that organization has been ~~adequately~~ performing that function and has qualified for certain assistance under Section 113 of Public Law 94‑103, as amended. ~~by 95‑602, of the United States Congress.~~

~~It further finds that the Joint Legislative Committee created to study problems of the handicapped, pursuant to the mandate of the resolution which created the committee, proposed a concurrent resolution in 1978, which was adopted, to continue the designation of that organization as advocate for the developmentally disabled and such resolution included an expression of the desire of the General Assembly that the principal office be moved to Columbia by October 1, 1978. It further finds that the joint committee has determined, based on numerous hearings, that without intended criticism to the designated organization, the functions of protection and advocacy can be better performed by an organization with a statewide Board of Directors which can monitor and supervise the four regional offices in Charleston, Greenville, Columbia and Florence from a central office in Columbia.~~ It is the purpose of this act to permanently establish as advocate under Section 113 of Public Law 94‑103, as amended, ~~by 95‑602,~~ an eleemosynary corporation ~~already formed under the corporate name, South Carolina Protection and Advocacy System for the Handicapped, Inc.~~ now known as Protection and Advocacy for People with Disabilities, Inc. It is the further purpose of this act to express the desire of the General Assembly that ~~South Carolina Protection and Advocacy System for the Handicapped, Inc.,~~ Protection and Advocacy for People with Disabilities, Inc. exercise protection and advocacy functions not only for the ~~developmentally disabled~~ citizens of South Carolina with developmental disabilities but also for all other ~~handicapped~~ citizens of the State with disabilities.”

SECTION 2. Section 43‑33‑330 of the 1976 Code is amended to read:

“Section 43‑33‑330. ~~The South Carolina Protection and Advocacy System for the Handicapped, Inc.,~~ Protection and Advocacy for People with Disabilities, Inc. is governed by a board consisting of a minimum of twelve members and a maximum of sixteen members. Four members must be appointed by the Governor, one member from each of the system’s four regions. Eight members must be elected by the board upon recommendation by the system’s nominating committee which shall consult with advocacy groups of the State representing persons with ~~handicaps~~ disabilities. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the original manner for the unexpired portion of the term. A vacancy must be filled not later than sixty days after the date on which the vacancy occurs. Up to four members who serve as chair of advisory councils or committees to the system may be elected by the board to serve ex officio as considered appropriate to the needs of the system or as mandated by law. No appointed board member may serve more than two successive four‑year terms.

The board may change its corporate name in the same manner as any other nonprofit corporation, and if the board changes its corporate name, the powers and duties of ~~the South Carolina Protection and Advocacy System for the Handicapped, Inc.,~~ Protection and Advocacy for People with Disabilities, Inc. are considered to be the powers and duties of the successor nonprofit corporation.”

SECTION 3. Section 43‑33‑340 of the 1976 Code is amended to read:

“Section 43‑33‑340. As used in this article, unless the context requires otherwise:

(1) ‘System’ means ~~the South Carolina Protection and Advocacy System for the Handicapped, Inc.~~ Protection and Advocacy for People with Disabilities, Inc.

(2) ‘Developmental disability’ means a severe, chronic disability of a person which:

(a) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) is manifested before the person attains age twenty‑two;

(c) is likely to continue indefinitely;

(d) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self‑care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self‑direction, (vi) capacity for independent living and (vii) economic sufficiency;

(e) reflects the person’s need for a combination and sequence of special, interdisciplinary or generic ~~care, treatment or other services which~~ services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(3) ~~‘Developmentally disabled person’~~ ‘Person with a developmental disability’ means a person who has a developmental disability and who receives or is entitled to receive ~~treatment. services or habilitation~~ a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated within the State.

(4) ~~‘Handicapped person’~~ ‘Person with a disability’ means a person defined by Section 2‑7‑35.

(5) ‘Complaint’ means an oral or written allegation by a ~~developmentally disabled or handicapped~~ person with a developmental or other disability, the parent or legal guardian of such person, a state agency or any other responsible person to the effect that the ~~developmentally disabled or handicapped~~ person with a developmental or other disability is being subjected to injury or deprivation with regard to his health, safety, welfare, rights or level of care.

(6) ‘Abuse’ means the definition defined by Section 43‑30‑20.

(7) ‘Threatened abuse’ means the definition defined by Section 43‑30‑20.

(8) ‘Ombudsman’ means the office provided for pursuant to Section 43‑38‑10, et seq.”

SECTION 4. Section 43‑33‑350 of the 1976 Code is amended to read:

“Section 43‑33‑350. The system has the following powers and duties:

(1) It shall protect and advocate for the rights of all ~~developmentally disabled~~ persons with a developmental or other disability, including the requirements of Section 113 of Public Law 94‑103, Section 105 of Public Law 99‑319, and Section 112 of Public Law 98‑221, all as amended, and for the rights of other ~~handicapped~~ persons with disabilities by pursuing legal, administrative, and other appropriate remedies to insure the protection of the rights of these persons.

(2) It may investigate complaints by or on behalf of any ~~developmentally disabled or handicapped~~ person with a developmental or other disability.

(3) It may establish a priority for the delivery of protection and advocacy services according to the type, severity, and number of ~~handicapping conditions~~ disabilities of the person making a complaint or on whose behalf a complaint has been made.

(4) It may conduct team advocacy inspections of a facility providing residence to a ~~developmentally disabled or handicapped~~ person with a developmental or other disability. Inspections must be completed by the system’s staff and trained volunteers. Team advocacy inspections are unannounced visits to review the living conditions of a residential facility, including the plans of care for individuals in a residential care facility and a community mental health center day program. Only the coordinator of the team advocacy project or the coordinator’s designee is authorized to perform reviews of plans of care. ~~The designee must meet criteria developed by the Joint Legislative Committee on Mental Health and Mental Retardation, after consultation with the system and the South Carolina Association of Residential Care Homes.~~ The system shall prepare a report based on the inspection which must be submitted to the ~~Joint Legislative Committee on Mental Health and Mental Retardation,~~ South Carolina Department of Health and Environmental Control~~,~~ and State Department of Mental Health.

(5) It shall administer the Client Assistance Program, as established pursuant to 29 U.S.C. Section 732.”

SECTION 5. Section 43‑33‑370 of the 1976 Code is amended to read:

“Section 43‑33‑370. Upon (A) the receipt of a written request to investigate a complaint that has been signed by a ~~developmentally disabled or handicapped~~ person with a developmental or other disability, his parent, legal guardian, any relative or a state agency; or upon (B) the receipt of a complaint of abuse or threatened abuse to a ~~developmentally disabled or handicapped~~ person with a developmental or other disability who is not capable of giving informed consent for the system to investigate the complaint and who does not have a parent or legal guardian to sign a written request to investigate the complaint, the system may:

(1) Interview any member of the staff of the program or facility which is providing or did provide treatment, services or habilitation to the person making the complaint or on whose behalf the complaint is made.

(2) Inspect and copy any documents, records, files, books, charts or other writings which are maintained in the regular course of business by the program or facility and which bear upon the subject matter of the individual complaint, except for the individual medical, treatment or other personal records of other persons in the program or facility.

(3) Request the assistance of any rights protection or advocacy services provided by the program or facility.

(4) Refer a complaint to the ombudsman, law enforcement agencies or any other public or private programs or facilities, as it deems appropriate.”

SECTION 6. Section 43‑33‑380 of the 1976 Code is amended to read:

“Section 43‑33‑380. The system shall not disclose the name or identity of any person, complainant, witness or subject of a complaint or any information or writing relating thereto unless the person or his parent or legal guardian authorizes in writing the release of such information but the system may make such disclosures as may be necessary to protect or advocate for the rights of the ~~developmentally disabled or handicapped~~ concerned person with a developmental or other disability ~~concerned~~.”

SECTION 7. Section 43‑33‑400 of the 1976 Code is amended to read:

“Section 43‑33‑400. All departments, officers, agencies and institutions of the State shall cooperate with the system in carrying out its duties. Notwithstanding any other provision of law, all departments, officers, agencies and institutions of the State may, on the behalf of a ~~developmentally disabled or handicapped~~ person with a developmental or other disability, request the system to provide protection and advocacy services. Notwithstanding any other provision of law, any program or facility shall permit the System to inspect and copy any record or documents provided for in Section 43‑33‑370(2).”

SECTION 8. Section 1‑11‑10(A)(9) is amended to read:

“(9) ~~Client Assistant Program~~ Reserved”

SECTION 9. Section 43‑33‑320 is repealed.

SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, as the South Carolina administrator of the Client Assistance Program.

SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped.

SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.

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