WEST VIRGINIA CODE: §9-6-8

§9-6-8. Confidentiality of records.

(a) Except as otherwise provided in this section, all records of the department, state and regional long-term care ombudsmen, nursing home or facility administrators, the Office of Health Facility Licensure and Certification, and all protective services agencies concerning an adult or facility resident under this article are confidential and may not be released, except in accordance with the provisions of §9-6-11 of this code.

(b) Unless the vulnerable adult concerned is receiving adult protective services, or unless there are pending proceedings regarding the vulnerable adult, the records maintained by the adult protective services agency shall be destroyed 30 years following their preparation.

(c) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning reports of abuse, neglect, or financial exploitation of a vulnerable adult, including all records generated as a result of such reports, may be made available to:

(1) Employees or agents of the department who need access to the records for official business;

(2) Any law-enforcement agency investigating a report of known or suspected abuse, neglect, or financial exploitation of a vulnerable adult;

(3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect, or financial exploitation occurred;

(4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court shall, before permitting use of the records in connection with any court proceeding, review the records for relevancy and materiality to the issues in the proceeding. The court may issue an order to limit the examination and use of the records or any part of the record;

(5) A grand jury, by subpoena, upon its determination that access to the records is necessary in the conduct of its official business;

(6) The recognized protection and advocacy agency for the disabled of the State of West Virginia;

(7) The victim; and

(8) The victim’s legal representative, unless he or she is the subject of an investigation under this article.

(d) Notwithstanding the provisions of subsection (a) of this section or any other provision of

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this code to the contrary, summaries concerning substantiated investigative reports of abuse, neglect, or financial exploitation of vulnerable adults may be made available to:

Any person who the department has determined to have abused, neglected, or financially exploited the victim.

(e) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, summaries concerning substantiated and unsubstantiated investigative reports of abuse, neglect, or financial exploitation of vulnerable adults may be made available to:

(1) Any appropriate official of the state or regional long-term care ombudsman investigating a report of known or suspected abuse, neglect or financial exploitation of a vulnerable adult;

(2) Any person engaged in bona fide research or auditing, as defined by the department. However, information identifying the subjects of the report may not be made available to the researcher;

(3) Employees or agents of an agency of another state that has jurisdiction to investigate known or suspected abuse, neglect, or exploitation of vulnerable adults;

(4) A professional person when the information is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult; and

(5) A department administrative hearing officer when the hearing officer determines the information is necessary for the determination of an issue before the officer.

(f) Notwithstanding the provisions of subsection (a), subsection (e), or any other provision of this code to the contrary, all records concerning substantiated and unsubstantiated referrals of financial exploitation of a vulnerable adult may be made available to the State Auditor's Office in order to carry out any investigations which that office or its appropriate divisions are required or authorized to undertake.

(g) The identity of any person reporting abuse, neglect, or financial exploitation of a vulnerable adult may not be released without that person's written consent to any person other than employees of the department responsible for protective services or the appropriate prosecuting attorney or law-enforcement agency. This subsection grants protection only for the person who reported the abuse, neglect, or financial exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect, or financial exploitation when deemed necessary by the prosecuting attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.

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