WEST VIRGINIA CODE CHAPTER 9 ARTICLE 6

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§9-6-1. Definitions.

As used in this article:

(1) "Adult protective services agency" means any public or nonprofit private agency, corporation, board, or organization furnishing protective services to adults;

(2) "Adult protective services" means services provided to vulnerable adults as the secretary may specify and may include, but are not limited to, services such as:

(A) Receiving reports of adult abuse, neglect, or exploitation;

(B) Investigating the reports of abuse, neglect, or exploitation;

(C) Case planning, monitoring, evaluation, and other case work and services; and

(D) Providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services;

(3) "Abuse" means the infliction or threat of physical or psychological harm, including the use of undue influence or the imprisonment of any vulnerable adult or facility resident;

(4) "Neglect" means the unreasonable failure by a caregiver to provide the care necessary to maintain the safety or health of a vulnerable adult or self-neglect by a vulnerable adult, including the use of undue influence by a caregiver to cause self-neglect;

(5) "Vulnerable adult" means any person over the age of 18, or an emancipated minor, who by reason of physical or mental condition is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health and protection;

(6) "Emergency" or "emergency situation" means a situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to a vulnerable adult;

(7) "Financial exploitation" means the intentional misappropriation, misuse, or use of undue influence to cause the misuse of funds or assets of a vulnerable adult or facility resident, but does not apply to a transaction or disposition of funds or assets where a person made a good-faith effort to assist the vulnerable adult or facility resident with the management of his or her money or other things of value;

(8) "Legal representative" means a person lawfully invested with the power, and charged with the duty, of taking care of another person or with managing the property and rights of another person, including, but not limited to, a guardian, conservator, durable power of attorney representative, springing power of attorney representative, financial power of attorney representative, medical power of attorney representative, trustee, or other duly appointed person;

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(9) "Nursing home" or "facility" means any institution, residence, intermediate care facility for individuals with an intellectual disability, care home, or any other adult residential facility, or any part or unit thereof, that is subject to the provisions of §16-5C-1 *et seq.*, §16-5D-1 *et seq.*, §16-5E-1 *et seq.*, or §16-5H-1 *et seq*. of this code;

(10) "Regional long-term care ombudsman" means any paid staff of a designated regional long-term care ombudsman program who has obtained appropriate certification from the Bureau of Senior Services and meets the qualifications set forth in §16-5L-7 of this code;

(11) "Facility resident" means an individual living in a nursing home or other facility, as that term is defined in subdivision (9) of this section;

(12) "State long-term care ombudsman" means an individual who meets the qualifications of §16-5L-5 of this code and who is employed by the State Bureau of Senior Services to implement the State Long-term Care Ombudsman Program;

(13) "Secretary" means the Secretary of the Department of Human Services;

(14) "Caregiver" means an individual who is responsible for the care of a vulnerable adult or a facility resident, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an adult with disabilities or a facility resident who needs supportive services in any setting; and

(15) "Fiduciary" means a person or entity with the legal responsibility to make decisions on behalf of and for the benefit of another person; to act in good faith and with fairness; and includes a trustee, a guardian, a conservator, an executor or an agent under a financial power of attorney.

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§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

(a) There is continued within the Department of Human Services the system of adult protective services.

(b) The secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code regarding the organization and duties of the adult protective services system and the procedures to be used by the department to effectuate the purposes of this article. The rules may be amended and supplemented from time to time.

(c) The secretary shall design and arrange such rules to attain, or move toward the attainment of, the following goals to the extent that the secretary believes feasible under the provisions of this article within the state appropriations and other funds available:

(1) Assisting vulnerable adults who are abused, neglected, or financially exploited in achieving or maintaining self-sufficiency and self-support and preventing, reducing, and eliminating their dependency on the state;

(2) Preventing, reducing, and eliminating neglect, financial exploitation, and abuse of adults who are unable to protect their own interests;

(3) Preventing and reducing institutional care of adults by providing less intensive forms of care, preferably in the home;

(4) Referring and admitting abused, neglected, or financially exploited vulnerable adults to institutional care only where other available services are inappropriate;

(5) Providing services and monitoring to adults in institutions designed to assist adults in returning to community settings;

(6) Preventing, reducing, and eliminating the exploitation of vulnerable adults and facility residents through the joint efforts of the various agencies, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, and county prosecutors;

(7) Preventing, reducing, and eliminating abuse, neglect, and financial exploitation of residents in nursing homes or facilities; and

(8) Coordinating investigation activities for complaints of financial exploitation, abuse, and neglect of vulnerable adults and facility residents among various agencies, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, if necessary, and other state or federal agencies or officials, as appropriate.

(d) An adult protective services caseworker may not be held personally liable for any

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professional decision or action arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated: *Provided*, That nothing in this subsection protects any adult protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by willful and wanton misconduct or intentional misconduct.

(e) The rules proposed by the secretary shall provide for the means by which the department shall cooperate with federal, state, and other agencies to fulfill the objectives of the system of adult protective services.

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§9-6-3. Cooperation among agencies; termination and reduction of assistance by commissioner.

The secretary shall direct the coordination of the investigation of complaints of abuse, neglect, or financial exploitation made pursuant to this article, and the various agencies of the department, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, and any other applicable state or federal agency shall cooperate among each other for the purposes of observing, reporting, investigating, and acting upon complaints of abuse, neglect, or financial exploitation of any vulnerable adult or facility resident in this state.

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§9-6-4. Action to abate abuse, neglect, emergency, or financial exploitation.

The department or any reputable person may bring and maintain an action against any person having actual care, custody, or control of a vulnerable adult, for injunctive relief, including a preliminary injunction, to restrain and abate any abuse, neglect, or financial exploitation of a vulnerable adult or to abate an emergency situation. In any such proceeding the court shall appoint a guardian ad litem, to protect the interests of the vulnerable adult, who shall not be an employee of the state, nor be a party to the proceeding, nor be selected by, or in the employ of, any party to the proceeding: *Provided*, That the court may by order terminate assistance granted or paid to any person found to have abused, neglected, or financially exploited a vulnerable adult and order any such assistance to be paid to another person solely for the use and benefit of such abused, neglected, or financially exploited person, and grant such other equitable relief as may be appropriate in the circumstances to restrain and abate such abuse or neglect: *Provided, however*, That in the case of an action to abate an emergency situation, the court may grant the relief authorized in §9-6-5 of this code.

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§9-6-5. Emergency immediate remedial treatment; procedure.

Whenever a circuit court shall find in an action to abate an emergency situation that there is probable cause to believe that a vulnerable adult is in an emergency situation and that the person or persons having the immediate care, custody, and control of such vulnerable adult refuses to take necessary steps to alleviate such emergency, or that such vulnerable adult is without the actual care, custody, and control of any persons, it may issue an order of attachment for such vulnerable adult and direct that the peace officer executing the same deliver such vulnerable adult in his custody to a hospital or other safe place except a jail, for immediate remedial treatment to reduce or avoid the risk of death or serious injury. In the event that an order of attachment is issued pursuant to this section, any peace officer executing the order, and such employees of the department the peace officer directs to accompany him, may enter into the place of abode to remove such vulnerable person, notwithstanding the residence therein of other persons.

If any employee or officer of the department shall by direct observation of a vulnerable adult not in the immediate care, custody, or control of another, have reasonable cause to believe that such vulnerable person is then and there in an emergency situation, then such officer or employee may offer transportation to a hospital or other safe place, other than a jail, to such vulnerable adult for immediate remedial treatment to reduce or avoid the risk of death or serious injury.

Immediately upon delivery of any vulnerable person to such hospital or other safe place, such officer or employee shall apply to the circuit court for and the court shall appoint, and in the case of an attachment the court shall contemporaneously with its issuance appoint, a guardian ad litem who shall not be an employee of the state, nor be an interested party, nor be selected by, nor in the employ of, any interested party, to represent the interests of such vulnerable adult, and the court shall fix a time, not later than one judicial day later, to determine if such remedial treatment shall continue or such vulnerable adult should be released. A copy of that attachment and notice of such hearing shall be served on any person in whose actual care, custody, and control such vulnerable adult is found. If further remedial treatment is required, application shall be promptly made to the county commission or such other proper tribunal for appropriate relief: *Provided,* That the commitment for further remedial treatment may be continued until proceedings for such appropriate relief be concluded: *Provided, however,* That application for release from such remedial treatment may be made and granted at any time that the emergency ceases.

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§9-6-6. Payment and termination of payment for services to a vulnerable adult.

If any vulnerable adult requires and is granted remedial treatment for an emergency, or the department determines that a vulnerable adult is abused, neglected, or financially exploited, the department may pay any assistance granted for the use and benefit of such vulnerable adult to the person actually providing care for such adult, and terminate payments to any person alleged or shown to have abused, neglected, or financially exploited such vulnerable adult, or to whom such payments were made prior to such remedial treatment, for so long as such remedial treatment continues, or until such abuse, neglect, or financial exploitation is abated, and such vulnerable adult continues to be in the immediate care, custody, and control of such person.

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§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

The department shall develop a plan for a comprehensive system of adult protective services, including social casework, medical and psychiatric services, home care, day care, counseling, research, and others to achieve the goals of this article.

It shall offer such services as are available and appropriate in the circumstances to persons who, other than for compensation, have or intend to have the actual, physical custody and control of a vulnerable adult and to such vulnerable adults or to adults who may request and be entitled to such protective services: *Provided*, That except as expressly provided in this article, the department may not directly or indirectly compel the acceptance of such services by any person or discriminate against a person who refuses such services.

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

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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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§9-6-9. Mandatory reporting of incidences of abuse, neglect, financial exploitation, or emergency situation.

(a) If any medical, dental, or mental health professional, Christian Science practitioner, religious healer, social service worker, law-enforcement officer, humane officer, any employee of any nursing home or other residential facility, has reasonable cause to believe that a vulnerable adult or facility resident is or has been neglected, abused, financially exploited or placed in an emergency situation, or if such person observes a vulnerable adult or facility resident being subjected to conditions that are likely to result in abuse, neglect, financial exploitation, or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of §9-6-11 of this code: *Provided*, That nothing in this article is intended to prevent individuals from reporting on their own behalf.

(b) In addition to those persons and officials specifically required to report situations involving suspected abuse, neglect, or financial exploitation of a vulnerable adult or facility resident, or the existence of an emergency situation, any other person may make such a report.

(c) The Department of Human Services shall develop and implement a procedure to notify any person mandated to report suspected abuse and neglect of a vulnerable adult or facility resident of whether an investigation into the reported suspected abuse, neglect, or financial exploitation has been initiated and when the investigation is completed.

(d) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4(13) of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

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§9-6-9a. Mandatory reporting suspected of animal cruelty by adult protective service workers.

In the event an adult protective service worker, in response to a report mandated by section nine of this article, forms a reasonable suspicion that an animal is the victim of cruel or inhumane treatment, he or she shall report the suspicion and the basis therefor to the county humane officer provided under section one, article ten, chapter seven of this code within twenty-four hours of the response to the report.

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§9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.

(a) Any person or official who is required under §9-6-9 of this code to report cases of suspected abuse, neglect, or financial exploitation, and who has probable cause to believe that a vulnerable adult or facility resident has died as a result of abuse or neglect, shall report that fact to the appropriate medical examiner or coroner.

(b) Upon the receipt of such a report, the medical examiner or coroner shall cause an investigation to be made and shall report the findings to the local law-enforcement agency, the local prosecuting attorney, the department's local adult protective services agency, and, if the institution making a report is a hospital, nursing home, or other residential facility, to the administrator of the facility, the state and regional long-term care ombudsman, and the Office of Health Facility Licensure and Certification.

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§9-6-11. Reporting procedures.

(a) A report of neglect, abuse, or financial exploitation of a vulnerable adult or facility resident, or of an emergency situation involving such an adult, shall be made immediately, and not more than 48 hours after suspecting abuse, neglect or financial exploitation, to the department's adult protective services agency by a method established by the department. The department shall, upon receiving any such report, take such action as may be appropriate and shall maintain a record thereof. The department shall receive reports on its 24-hour, seven-day-a-week, toll-free number established to receive calls reporting cases of suspected or known adult abuse or neglect.

(b) A copy of any report of abuse, neglect, financial exploitation, or emergency situation shall be immediately filed with the following agencies:

(1) The Department of Human Services;

(2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or

(3) In case of a death, to the appropriate medical examiner or coroner's office.

(c) If the person who is alleged to be abused, neglected, or financially exploited is a resident of a nursing home or other residential facility, a copy of the report shall also be filed with the state or regional long-term care ombudsman and the administrator of the nursing home or facility.

(d) Reports of known or suspected institutional abuse, neglect, or financial exploitation of a vulnerable adult or facility resident, or the existence of an emergency situation in an institution, nursing home, or other residential facility shall be made, received, and investigated in the same manner as other reports provided for in this article. In the case of a report regarding an institution, nursing home, or residential facility, the department shall immediately cause an investigation to be conducted.

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§9-6-12. Reporting person's immunity from liability.

(a) Any person who in good faith makes or causes to be made any report permitted or required by this article shall be immune from any civil or criminal liability which might otherwise arise solely out of making such report.

(b) No nursing home may discharge or in any manner discriminate against any resident, family member, legal representative or employee for the reason that he or she filed a complaint or participated in any matter or proceeding stemming from the provisions of this article.

(c) Violation of the prohibition contained in subsection (b) of this section by a nursing home or other residential facility constitutes grounds for the suspension or revocation of the license of the facility, if it operates under license pursuant to this code, or other appropriate measure.

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§9-6-13. Abrogation of privileged communications.

The privileged status of communications between husband and wife, and with any person required to make reports under §9-6-9 or §9-6-10 of this code, except communications between an attorney and his or her client, is hereby abrogated in circumstances involving suspected or known abuse, neglect, or financial exploitation of a vulnerable adult, or where the vulnerable adult is in a known or suspected emergency situation.

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§9-6-14. Failure to report; penalty.

Any person subject to the mandatory reporting provisions of this article who knowingly fails to make any report required herein or any person who knowingly prevents another person from making such a report is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $100 or imprisoned in the county jail for not more than ten days, or both fined and imprisoned.

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§9-6-15.

Repealed.

Acts, 1997 Reg. Sess., Ch. 72.

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§9-6-16. Compelling production of information.

(a)(1) In order to obtain information regarding the location of an adult who is the subject of an allegation of abuse, neglect, or financial exploitation, the Secretary may serve, by certified mail, personal service, or facsimile, an administrative subpoena on any corporation, partnership, business, or organization for production of information leading to determining the location of the adult. In case of disobedience to the subpoena, the Division of Adult Protective Services may petition any circuit court to require the production of information.

(2) In case of disobedience to the subpoena, in compelling the production of information, the secretary may invoke the aid of: (A) The circuit court with jurisdiction over the served party, if the entity served is located in this state; or (B) the circuit court of the county in which the local protective services office conducting the investigation is located, if the entity served is a nonresident.

(3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The investigation is one the Division of Adult Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the inquiry is not too broad or indefinite; (D) the information sought is not already in the possession of the Division of Adult Protective Services; and (E) any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of an adult who is the subject of an allegation of abuse, neglect, or financial exploitation, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

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