WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2000

ENROLLED

House Bill No. 4390

(By Delegates Compton, Hutchins, Leach, Hatfield, Houston, Perdue and Romine)

Passed March 11, 2000

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections one, two, three, eight, nine, ten, eleven and twelve, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reporting for complaints of abuse or neglect of incapacitated adults or residents in nursing homes and other adult residential care facilities; defining terms; providing for application of article to certain types of facilities; authorizing secretary of the department of health and human resources to propose certain rules; adding certain goals relating to preventing abuse and neglect and developing a coordinated and cooperative system for investigating complaints; providing for confidentiality of certain records; increasing the types of persons who are required to report incident of suspected abuse or neglect; providing for development and distribution of a complaint reporting form; providing for disclosure of complaint reports to certain persons or agencies; specifying additional reporting procedures; prohibiting discrimination against persons making reports of incidents of abuse or neglect and providing for violations of same; and making technical changes and corrections.
Be it enacted by the Legislature of West Virginia:

That sections one, two, three, eight, nine, ten, eleven and twelve, article six, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

The following words and terms, when used in this article, shall have the same meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

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

2. "Abuse" means the infliction or threat to inflict physical pain or injury on or the imprisonment of any incapacitated adult or facility resident;

3. "Neglect" means (A) the failure to provide the necessities of life to an incapacitated adult or facility resident with intent to coerce or physically harm the incapacitated adult or resident; and (B) the unlawful expenditure or willful dissipation of the funds or other assets owned or paid to or for the benefit of an incapacitated adult or resident;

4. "Incapacitated adult" means any person who by reason of physical, mental or other infirmity is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health;

5. "Emergency" or "emergency situation" means a situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to an incapacitated adult.
(6) "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, medical power of attorney representative, trustee or other duly appointed person.

(7) "Nursing home" or "facility" means any institution, residence, intermediate care facility for the mentally retarded, care home or any other adult residential facility, or any part or unit thereof, that is subject to the provisions of articles five-c, five-d, five-e or five-h of chapter sixteen.

(8) "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 for senior services and meets the qualifications set forth in section seven, article five-l, chapter sixteen of this code;

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

(10) "Responsible family member" means a member of a resident's family who has undertaken primary responsibility for the care of the resident and who has established a working relationship with the nursing home or other facility in which the resident resides. For purposes of this article, a responsible family member may include someone other than the resident's legal representative.

(11) "State long-term care ombudsman" means an individual who meets the qualifications of section five, article five-l, chapter sixteen of this code and who is employed by the state bureau for senior services to implement the state long-term care ombudsman program.
(12) "Secretary" means the secretary of the department of health and human resources.

§9-6-2. Adult protective services; rules and regulations; organization and duties.

(a) There is hereby established and continued within the department of health and human resources the system of adult protective services heretofore existing.

(b) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a 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 adults who are abused, neglected or incapacitated 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 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 incapacitated 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 incapacitated adults and facility residents through the joint efforts of the various agencies of the department of health and human resources, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities and county prose-
cutors;

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

(8) Coordinating investigation activities for complaints of abuse and neglect of incapacitated adults and facility residents among the various agencies of the department of health and human resources, 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) 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.

§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 or neglect 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 residen-
temporal 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 or neglect of any incapacitated adult or
facility resident in this state.

§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 ombuds-
men, 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 shall be confidential and shall not be released,
except in accordance with the provisions of section eleven of
this article.

(b) Unless the adult concerned is receiving adult protective
services or unless there are pending proceedings with regard to
the adult, the records maintained by the adult protective
services agency shall be destroyed two years following their
preparation. A circuit court or the supreme court of appeals may
subpoena such records, but shall, before permitting their use in
connection with any court proceeding, review the same for
relevancy and materiality to the issues in the proceeding, and
may issue such order to limit the examination and use of such
records or any part thereof, having due regard for the purposes
of this article and the requirements of the litigation as shall be
just.

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

(a) If any medical, dental or mental health professional,
christian science practitioner, religious healer, social service
worker, law-enforcement officer, state or regional ombudsman
or any employee of any nursing home or other residential
facility has reasonable cause to believe that an incapacitated adult or facility resident is or has been neglected, abused or placed in an emergency situation, or if such person observes an incapacitated adult or facility resident being subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of section eleven of this article: 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 or neglect of an incapacitated adult or facility resident or the existence of an emergency situation, any other person may make such a report.

(c) The secretary shall develop a form for the filing of written complaints, as provided by section eleven of this article, and provide these forms to all nursing homes or other residential facilities, hospitals, ombudsmen, and adult protective service agencies in this state. The forms shall be designed to protect the identity of the complainant, if desired, and to facilitate the prompt filing of complaints.

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

(a) Any person or official who is required under section nine of this article to report cases of suspected abuse or neglect and who has probable cause to believe that an incapacitated 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
Enr. H. B. 4390] 8

10 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.

§9-6-11. Reporting procedures.

(a) A report of neglect or abuse of an incapacitated adult or facility resident or of an emergency situation involving such an adult shall be made immediately by telephone to the department’s local adult protective services agency and shall be followed by a written report by the complainant or the receiving agency within forty-eight hours. 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 such telephonic reports on its twenty-four 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 or emergency situation shall be immediately filed with the following agencies:

(1) The department of health and human resources;

(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 or neglected 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 ombudsman and the administrator of the nursing home or facility.
(d) The department shall omit from such report in the first instance, the name of the person making a report, when requested by such person.

(e) Reports of known or suspected institutional abuse or neglect of an incapacitated 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.

(f) Upon receipt of a written complaint, the department shall coordinate an investigation pursuant to section three of this article and applicable state or federal laws, rules or regulations.

§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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 4th day of April, 2000.

Governor