

SECOND REGULAR SESSION, 2000

ENROLLED

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

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.

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

4 (1) “Adult protective services agency” means any public or
5 nonprofit private agency, corporation, board or organization
6 furnishing protective services to adults;

7 (2) “Abuse” means the infliction or threat to inflict physical
8 pain or injury on or the imprisonment of any incapacitated adult
9 or facility resident.

10 (3) “Neglect” means (A) the failure to provide the necessi-
11 ties of life to an incapacitated adult or facility resident with
12 intent to coerce or physically harm the incapacitated adult or
13 resident; and (B) the unlawful expenditure or willful dissipation
14 of the funds or other assets owned or paid to or for the benefit
15 of an incapacitated adult or resident;

16 (4) “Incapacitated adult” means any person who by reason
17 of physical, mental or other infirmity is unable to independently
18 carry on the daily activities of life necessary to sustaining life
19 and reasonable health;

20 (5) “Emergency” or “emergency situation” means a
21 situation or set of circumstances which presents a substantial
22 and immediate risk of death or serious injury to an incapaci-
23 tated adult.

24 (6) “Legal representative” means a person lawfully invested
25 with the power and charged with the duty of taking care of
26 another person or with managing the property and rights of
27 another person, including, but not limited to, a guardian,
28 conservator, medical power of attorney representative, trustee
29 or other duly appointed person.

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

35 (8) “Regional long-term care ombudsman” means any paid
36 staff of a designated regional long-term care ombudsman
37 program who has obtained appropriate certification from the
38 bureau for senior services and meets the qualifications set forth
39 in section seven, article five-l, chapter sixteen of this code;

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

43 (10) “Responsible family member” means a member of a
44 resident’s family who has undertaken primary responsibility for
45 the care of the resident and who has established a working
46 relationship with the nursing home or other facility in which the
47 resident resides. For purposes of this article, a responsible
48 family member may include someone other than the resident’s
49 legal representative.

50 (11) “State long-term care ombudsman” means an individ-
51 ual who meets the qualifications of section five, article five-l,
52 chapter sixteen of this code and who is employed by the state
53 bureau for senior services to implement the state long-term care
54 ombudsman program.

55 (12) "Secretary" means the secretary of the department of
56 health and human resources.

**§9-6-2. Adult protective services; rules and regulations; organiza-
tion and duties.**

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

4 (b) The secretary shall propose rules for legislative ap-
5 proval in accordance with the provisions of article three,
6 chapter twenty-nine-a of this code regarding the organization
7 and duties of the adult protective services system and the
8 procedures to be used by the department to effectuate the
9 purposes of this article. The rules may be amended and supple-
10 mented from time to time.

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

16 (1) Assisting adults who are abused, neglected or incapaciti-
17 tated in achieving or maintaining self-sufficiency and self-
18 support, and preventing, reducing and eliminating their depend-
19 ency on the state;

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

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

24 (4) Referring and admitting abused, neglected or incapaciti-
25 tated adults to institutional care only where other available
26 services are inappropriate;

27 (5) Providing services and monitoring to adults in institu-
28 tions designed to assist adults in returning to community
29 settings;

30 (6) Preventing, reducing and eliminating the exploitation of
31 incapacitated adults and facility residents through the joint
32 efforts of the various agencies of the department of health and
33 human resources, the adult protective services system, the state
34 and regional long-term care ombudsmen, administrators of
35 nursing homes or other residential facilities and county prose-
36 cutors;

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

39 (8) Coordinating investigation activities for complaints of
40 abuse and neglect of incapacitated adults and facility residents
41 among the various agencies of the department of health and
42 human resources, the adult protective services system, the state
43 and regional long-term care ombudsmen, administrators of
44 nursing homes or other residential facilities, county prosecutors,
45 if necessary, and other state or federal agencies or officials, as
46 appropriate.

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

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

1 The secretary shall direct the coordination of the investiga-
2 tion of complaints of abuse or neglect made pursuant to this
3 article; and the various agencies of the department, the adult
4 protective services system, the state and regional long-term care
5 ombudsmen, administrators of nursing homes or other residen-

6 tial facilities, county prosecutors and any other applicable state
7 or federal agency shall cooperate among each other for the
8 purposes of observing, reporting, investigating and acting upon
9 complaints of abuse or neglect of any incapacitated adult or
10 facility resident in this state.

§9-6-8. Confidentiality of records.

1 (a) Except as otherwise provided in this section, all records
2 of the department, state and regional long-term care ombuds-
3 men, nursing home or facility administrators, the office of
4 health facility licensure and certification and all protective
5 services agencies concerning an adult or facility resident under
6 this article shall be confidential and shall not be released,
7 except in accordance with the provisions of section eleven of
8 this article.

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

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

1 (a) If any medical, dental or mental health professional,
2 christian science practitioner, religious healer, social service
3 worker, law-enforcement officer, state or regional ombudsman
4 or any employee of any nursing home or other residential

5 facility has reasonable cause to believe that an incapacitated
6 adult or facility resident is or has been neglected, abused or
7 placed in an emergency situation, or if such person observes an
8 incapacitated adult or facility resident being subjected to
9 conditions that are likely to result in abuse, neglect or an
10 emergency situation, the person shall immediately report the
11 circumstances pursuant to the provisions of section eleven of
12 this article: *Provided*, That nothing in this article is intended to
13 prevent individuals from reporting on their own behalf.

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

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

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

1 (a) Any person or official who is required under section
2 nine of this article to report cases of suspected abuse or neglect
3 and who has probable cause to believe that an incapacitated
4 adult or facility resident has died as a result of abuse or neglect
5 shall report that fact to the appropriate medical examiner or
6 coroner.

7 (b) Upon the receipt of such a report, the medical examiner
8 or coroner shall cause an investigation to be made and shall
9 report the findings to the local law-enforcement agency, the

10 local prosecuting attorney, the department's local adult protec-
11 tive services agency, and, if the institution making a report is a
12 hospital, nursing home or other residential facility, to the
13 administrator of the facility, the state and regional long-term
14 care ombudsman and the office of health facility licensure and
15 certification.

§9-6-11. Reporting procedures.

1 (a) A report of neglect or abuse of an incapacitated adult or
2 facility resident or of an emergency situation involving such an
3 adult shall be made immediately by telephone to the depart-
4 ment's local adult protective services agency and shall be
5 followed by a written report by the complainant or the receiving
6 agency within forty-eight hours. The department shall, upon
7 receiving any such report, take such action as may be appropri-
8 ate and shall maintain a record thereof. The department shall
9 receive such telephonic reports on its twenty-four hour, seven-
10 day-a-week, toll-free number established to receive calls
11 reporting cases of suspected or known adult abuse or neglect.

12 (b) A copy of any report of abuse, neglect or emergency
13 situation shall be immediately filed with the following agen-
14 cies:

15 (1) The department of health and human resources;

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

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

20 (c) If the person who is alleged to be abused or neglected is
21 a resident of a nursing home or other residential facility, a copy
22 of the report shall also be filed with the state or regional
23 ombudsman and the administrator of the nursing home or
24 facility.

25 (d) The department shall omit from such report in the first
26 instance, the name of the person making a report, when
27 requested by such person.

28 (e) Reports of known or suspected institutional abuse or
29 neglect of an incapacitated adult or facility resident or the
30 existence of an emergency situation in an institution, nursing
31 home or other residential facility shall be made, received and
32 investigated in the same manner as other reports provided for
33 in this article. In the case of a report regarding an institution,
34 nursing home or residential facility, the department shall
35 immediately cause an investigation to be conducted.

36 (f) Upon receipt of a written complaint, the department
37 shall coordinate an investigation pursuant to section three of
38 this article and applicable state or federal laws, rules or regula-
39 tions.

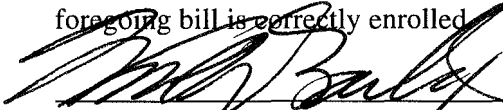
§9-6-12. Reporting person's immunity from liability.

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

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

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

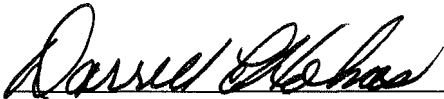
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

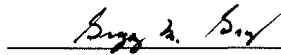

Chairman Senate Committee

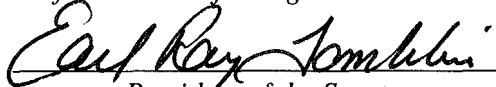

Chairman House Committee

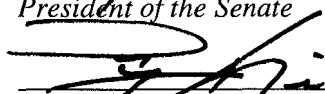
Originating in the House.

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 appeared this the 4th
day of April, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/00

Time 3:08 pm