WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
REVISED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 498

(Senators Kessler and Chafin, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]
AN ACT to amend and reenact §9-6-1 of the Code of West Virginia, 1931, as amended, relating to amending the civil definition of “neglect” by making it congruent with the definition of “criminal neglect”; replacing the term “mentally retarded” with “individuals with an intellectual disability”; and providing a definition for “caregiver”.

Be it enacted by the Legislature of West Virginia:

That §9-6-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

1 As used in this article:

2 (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 unreasonable failure by a caregiver to provide the care necessary to assure the physical safety or health of an incapacitated adult; or

(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 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 articles five-c, five-d, five-e or five-h, chapter sixteen of this code;

(8) "Regional long-term care ombudsman" means any paid staff of a designated regional long-term care ombudsman;
(9) "Facility resident" means an individual living in a nursing home or other facility, as that term is defined in subdivision (7) 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-1, 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.

(13) "Caregiver" means a person or entity who cares for or shares in the responsibility for the care of an incapacitated adult on a full-time or temporary basis, regardless of whether such person or entity has been designated as a guardian or custodian of the incapacitated adult by any contract, agreement or legal procedures. Caregiver includes health care providers, family members, and any person who otherwise voluntarily accepts a supervisory role towards an incapacitated adult.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within .............. approved .............. this the 31st Day of .............. 2010.

Governor