WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 498
(Senators Foster and Klempa, original sponsors)

[Passed March 10, 2012; in effect from passage.]
AN ACT to amend and reenact §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, all relating to adult protective services and reports of abuse, neglect or exploitation of vulnerable adults; permitting distribution of adult protective services records to certain individuals and entities; permitting distribution of a summary of those records to certain other individuals and entities; protecting the confidentiality of the identity of the reporter; and requiring a program for notifying mandatory reporters at the outset and conclusion of investigations.

Be it enacted by the Legislature of West Virginia:

That §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-8. Confidentiality of records.

1 (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 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 thirty years following their preparation.

(c) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, all records concerning reports of abuse, neglect or exploitation of vulnerable adults, 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 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 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.

(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 exploitation of adults may be made available to:

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

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

(3) 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.

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

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

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

(e) The identity of any person reporting abuse, neglect or 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 exploita-
tion 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 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.

§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, humane 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.
(d) The Department of Health and Human Resources shall develop and implement a procedure to notify any person mandated to report suspected abuse and neglect of an incapacitated adult or facility resident of whether an investigation into the reported suspected abuse or neglect has been initiated and when the investigation is completed.
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

The within is approved this the 30th Day of March, 2012.

Governor
PRESENTED TO THE GOVERNOR

MAR 27 2012

Time 3:00 pm