

# WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4279**

BY DELEGATES ROWAN, FAST, MOYE, PAYNTER,  
PETHTEL, ROHRBACH, ELDRIDGE, LYNCH, MAYNARD,  
LOVEJOY AND FLEISCHAUER

[Passed March 6, 2018; in effect ninety days from passage.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2018 MAR 27 A 9:59

FILED

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1 AN ACT to amend and reenact §9-6-1 and §9-6-2 of the Code of West Virginia, 1931, as  
2 amended, relating to adult protective services system; defining terms; and adding a goal  
3 that must be consider when creating a rule.

*Be it enacted by the Legislature of West Virginia:*

**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,  
3 corporation, board or organization furnishing protective services to adults;

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

6 (3) "Neglect" means the unreasonable failure by a caregiver to provide the care necessary  
7 to assure the physical safety or health of an incapacitated adult;

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

11 (5) "Emergency" or "emergency situation" means a situation or set of circumstances which  
12 presents a substantial and immediate risk of death or serious injury to an incapacitated adult;

13 (6) "Financial exploitation" means the intentional misappropriation or misuse of funds or  
14 assets of an incapacitated adult or facility resident, but does not apply to a transaction or  
15 disposition of funds or assets where a person made a good faith effort to assist the incapacitated  
16 adult or facility resident with the management of his or her money or other things of value;

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

21 (8) "Nursing home" or "facility" means any institution, residence, intermediate care facility  
22 for individuals with an intellectual disability, care home or any other adult residential facility, or  
23 any part or unit thereof, that is subject to the provisions of §16-5C-1 *et seq.*, §16-5D-1 *et seq.*  
24 §16-5E-1 *et seq.*, or §16-5H-1 *et seq.* §16-5C-1 *et seq.* of this code;

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

28 (10) "Facility resident" means an individual living in a nursing home or other facility, as that  
29 term is defined in subdivision (7) of this section;

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

35 (12) "State Long-term Care Ombudsman" means an individual who meets the  
36 qualifications of §16-5I-5 of this code and who is employed by the State Bureau for Senior  
37 Services to implement the State Long-term Care Ombudsman Program;

38 (13) "Secretary" means the Secretary of the Department of Health and Human Resources.

39 (14) "Caregiver" means a person or entity who cares for or shares in the responsibility for  
40 the care of an incapacitated adult on a full-time or temporary basis, regardless of whether such  
41 person or entity has been designated as a guardian or custodian of the incapacitated adult by any  
42 contract, agreement or legal procedures. Caregiver includes health care providers, family  
43 members, and any person who otherwise voluntarily accepts a supervisory role towards an  
44 incapacitated adult.

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

1 (a) There is continued within the Department of Health and Human Resources the system  
2 of adult protective services heretofore existing.

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

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

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

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

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

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

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

21 (6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility  
22 residents through the joint efforts of the various agencies of the Department of Health and Human  
23 Resources, the adult protective services system, the state and regional long-term care

24 ombudsmen, administrators of nursing homes or other residential facilities and county  
25 prosecutors;

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

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

34 (d) No adult protective services caseworker may be held personally liable for any  
35 professional decision or action thereupon arrived at in the performance of his or her official duties  
36 as set forth in this section or agency rules promulgated thereupon: *Provided*, That nothing in this  
37 subsection protects any adult protective services worker from any liability arising from the  
38 operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton  
39 misconduct or intentional misconduct.

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

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

  
.....  
Chairman, House Committee

  
.....  
Member Chairman, Senate Committee

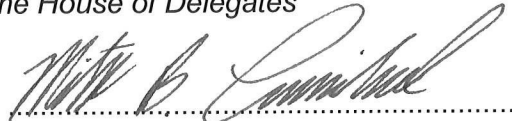
Originating in the House.

In effect ninety days from passage.

  
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Clerk of the House of Delegates

  
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Clerk of the Senate

  
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Speaker of the House of Delegates

  
.....  
President of the Senate

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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FILED

The within is approved this the 27<sup>th</sup>  
day of March ..... 2018.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2013

Time 1:28 pm