

STATE OF NEW YORK

8252

2017-2018 Regular Sessions

IN ASSEMBLY

June 2, 2017

Introduced by M. of A. McDONALD -- read once and referred to the Committee on Mental Health

AN ACT to amend the social services law, in relation to the definitions of neglect and significant incident for the purposes of reportable incidents

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (h) and (i) of subdivision 1 of section 488 of
2 the social services law, as added by section 1 of part B of chapter 501
3 of the laws of 2012, are amended to read as follows:

4 (h) "Neglect," which shall mean any action, inaction or lack of atten-
5 tion that breaches a custodian's duty and that results in or [~~is likely~~
6 ~~to result in~~] places in imminent risk of physical injury or serious or
7 protracted impairment of the physical, mental or emotional condition of
8 a service recipient. Neglect shall include, but is not limited to: (i)
9 failure to provide proper supervision, including a lack of proper super-
10 vision that results in conduct between persons receiving services that
11 would constitute abuse as described in paragraphs (a) through (g) of
12 this subdivision if committed by a custodian; (ii) failure to provide
13 adequate food, clothing, shelter, medical, dental, optometric or surgi-
14 cal care, consistent with the rules or regulations promulgated by the
15 state agency operating, certifying or supervising the facility or
16 provider agency, provided that the facility or provider agency has
17 reasonable access to the provision of such services and that necessary
18 consents to any such medical, dental, optometric or surgical treatment
19 have been sought and obtained from the appropriate individuals; or (iii)
20 failure to provide access to educational instruction, by a custodian
21 with a duty to ensure that an individual receives access to such
22 instruction in accordance with the provisions of part one of article
23 sixty-five of the education law and/or the individual's individualized
24 education program.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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(i) "Significant incident" shall mean an incident, other than an incident of abuse or neglect, that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a person receiving services and shall include but shall not be limited to:

(1) conduct between persons receiving services that would constitute abuse as described in paragraphs (a) through (g) of this subdivision if committed by a custodian; or

~~(2) [conduct on the part of a custodian, which is inconsistent with a service recipient's individual treatment plan or individualized educational program, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a person receiving services, including but not limited to:~~

~~(A) unauthorized seclusion, which shall mean the placement of a person receiving services in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will;~~

~~(B) unauthorized use of time-out, which shall mean the use of a procedure in which a person receiving services is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming but shall not include the use of a time out as an emergency intervention to protect the health or safety of the individual or other persons;~~

~~(C) except as provided for in paragraph (g) of subdivision one of this section, the administration of a prescribed or over the counter medication, which is inconsistent with a prescription or order issued for a service recipient by a licensed, qualified health care practitioner, and which has an adverse effect on a service recipient. For purposes of this paragraph, "adverse effect" shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well being of a service recipient;~~

~~(D) inappropriate use of restraints, which shall mean the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is inconsistent with a service recipient's individual plan, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies. For the purposes of this subdivision, a "restraint" shall include the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a person receiving services to freely move his or her arms, legs or body; or~~

~~(3)] any other conduct identified in regulations of the state oversight agency, pursuant to guidelines or standards established by the executive director.~~

§ 2. This act shall take effect immediately.