S T A T E O F N E W Y O R K

4797

2011-2012 Regular Sessions

I N S E N A T E

April 25, 2011

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to evidence of abuse and legally sealed reports

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph (a) of subdivision 6 of section 2803-d of the public health law, as amended by chapter 340 of the laws of 1980, is amended to read as follows:

(a) Upon receipt of a report made pursuant to this section, the commissioner shall cause an investigation to be made of the allegations contained in the report. Notification of the receipt of a report shall be made immediately by the department to the appropriate district attorney if a prior request in writing has been made to the department by the district attorney. THE INVESTIGATION MUST INCLUDE A REVIEW OF ALL PRIOR REPORTS, INCLUDING LEGALLY SEALED REPORTS, THAT INVOLVE THE SUBJECT OF THE CURRENT REPORT. Prior to the completion of the investigation by the department, every reasonable effort shall be made to notify, personally or by certified mail, any person under investigation for having committed an act of physical abuse, mistreatment or neglect. The commissioner shall make a written determination, based on the findings of the investigation, of whether or not [sufficient credible evidence exists to sustain the allegations contained in the report or would support] THERE IS SOME CREDIBLE EVIDENCE OF THE ALLEGED PHYSICAL ABUSE, NEGLECT, OR MISTREATMENT, OR EVIDENCE SUPPORTING a conclusion that a person not named in such report has committed an act of physical abuse, neglect or mistreatment. A copy of such written determination, together with a notice of the right to a hearing as provided in this subdivision, shall be sent by registered or certified mail to each person [who] AGAINST WHOM the commissioner has determined THERE IS SOME CREDIBLE EVIDENCE THAT SUCH PERSON has committed an act of physical abuse, neglect or

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

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mistreatment. A letter shall be sent to any other person alleged in such report to have committed such an act stating that a determination has been made that there is [not sufficient] NO CREDIBLE evidence to sustain the allegations relating to such person. A copy of each such determination and letter shall be sent to the facility in which the alleged incident occurred.

S 2. Paragraph (c) of subdivision 6 of section 2803-d of the public health law, as amended by chapter 414 of the laws of 1986, is amended to read as follows:

(c) All information relating to any allegation FOR which the commissioner has determined [would not be sustained] THERE IS NO CREDIBLE EVIDENCE OF THE ALLEGED PHYSICAL ABUSE, NEGLECT, OR MISTREATMENT, OR EVIDENCE SUPPORTING A CONCLUSION THAT A PERSON NOT NAMED IN SUCH REPORT HAS COMMITTED AN ACT OF PHYSICAL ABUSE, NEGLECT, OR MISTREATMENT, shall be [expunged] LEGALLY SEALED one hundred twenty days following notification of such determination to the person who made the report pursuant to this section, unless a proceeding pertaining to such allegation is pending pursuant to article seventy-eight of the civil practice law and rules. Whenever information is [expunged] LEGALLY SEALED, the commissioner shall notify any official notified pursuant to paragraph (a) of this subdivision that the information has been [expunged] LEGALLY SEALED.

(I) LEGALLY SEALED REPORTS SHALL BE MADE AVAILABLE ONLY TO:

A. THE DEPARTMENT OF HEALTH, WHEN INVESTIGATING A SUBSEQUENT REPORT INVOLVING A SUBJECT OF THE SEALED REPORT OR WHEN CONDUCTING INTERNAL QUALITY ASSURANCE REVIEWS;

B. THE SUBJECT OF THE REPORT; OR

C. THE DISTRICT ATTORNEY, THE ATTORNEY GENERAL AND OTHER ENFORCEMENT OFFICIALS, WHEN THEY VERIFY THE REPORT IS NECESSARY TO CONDUCT AN ACTIVE INVESTIGATION OR PROSECUTION.

(II) A PERSON GIVEN ACCESS TO LEGALLY SEALED REPORTS PURSUANT TO CLAUSE C OF SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL NOT REDISCLOSE THEM EXCEPT AS NECESSARY FOR AN ACTIVE INVESTIGATION OR PROSECUTION. SUCH PERSONS SHALL REQUEST OF ANY COURT INVOLVED THAT ANY COPIES OF SUCH REPORTS PRODUCED IN ANY PROCEEDING FOR PUBLIC DISCLOSURE BE REDACTED TO REMOVE THE IDENTITIES OF THE SUBJECTS OF SUCH REPORTS.

(III) A LEGALLY SEALED REPORT SHALL NOT BE SUFFICIENT EVIDENCE TO SUSTAIN A SUBSEQUENT REPORT INVOLVING THE SAME SUBJECT OR SUBJECTS.

(IV) THE COMMISSIONER MAY GRANT A REQUEST TO EXPUNGE A LEGALLY SEALED REPORT WHERE:

A. THE SOURCE OF THE REPORT WAS CONVICTED OF A VIOLATION OF SECTION 240.55 OF THE PENAL LAW; OR

B. THE SUBJECT OF THE REPORT PRESENTS CLEAR AND CONVINCING EVIDENCE THAT AFFIRMATIVELY REFUTES THE ALLEGATION. THE ABSENCE OF CREDIBLE EVIDENCE SUPPORTING THE ALLEGATION SHALL NOT BE THE SOLE BASIS TO EXPUNGE THE REPORT.

S 3. Paragraph (d) of subdivision 6 of section 2803-d of the public health law, as amended by chapter 622 of the laws of 1980, is amended to read as follows:

(d) At any time within thirty days of the receipt of a copy of a determination made pursuant to this section, a person named in such determination as having committed an act of physical abuse, neglect or mistreatment, or as having failed to report such an incident, may request in writing that the commissioner amend or [expunge] SEAL the record of such report, to the extent such report applies to such person, or such written determination. If the commissioner does not comply with

such request within thirty days, such person shall have the right to a fair hearing to determine whether the record of the report or the written determination should be amended or [expunged] SEALED on the grounds that the record is inaccurate or the determination is not supported by the evidence. The burden of proof in such hearing shall be on the department. Whenever information is [expunged] SEALED, the commissioner shall notify any official notified pursuant to paragraph (a) of this subdivision that the information has been [expunged] SEALED.

S 4. This act shall take effect immediately.