

STATE OF NEW YORK

7734

2017-2018 Regular Sessions

IN ASSEMBLY

May 11, 2017

Introduced by M. of A. GJONAJ -- read once and referred to the Committee on Aging

AN ACT to amend the social services law, in relation to adult abuse protective services; and making an appropriation therefor

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

1 Section 1. Article 5 of the social services law is amended by adding a
2 new title 9 to read as follows:

TITLE 9

ADULT ABUSE PROTECTIVE ACT

Section 310. Declaration of purpose.

311. Definitions.

312. Reporting the possible necessity for protective services.

313. Action on reports.

314. Judicial review.

315. Authority of office of children and family services.

316. Assistance of other agencies.

317. Review.

318. Costs for providing protective services.

319. Abuse of duties of facility or caretaker.

320. Statewide central register of adult abuse.

16 § 310. Declaration of purpose. The legislature declares that no adult
17 in the state shall be subjected to abuse or deprivation. Towards that
18 end the "adult abuse protective act" is enacted.

19 § 311. Definitions. For purposes of this title:

20 1. For the purposes of this article, the term "adult" means any resi-
21 dent of the state who is eighteen years of age or older.

22 2. An adult shall be deemed to be "in need of protective services" if
23 such person is unable to perform or obtain services which are necessary
24 to maintain physical and mental health.

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

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1 3. The term "services which are necessary to maintain physical and
2 mental health" includes, but is not limited to, the provision of medical
3 care for physical and mental health needs, the relocation of an adult to
4 a facility or institution able to offer such care, assistance in
5 personal hygiene, food, clothing, adequately heated and ventilated shel-
6 ter, protection from health and safety hazards, protection from
7 maltreatment the result of which includes, but is not limited to, malnu-
8 trition, deprivation of necessities or physical punishment, and trans-
9 portation necessary to secure any of the above stated needs, except that
10 this term shall not include taking such person into custody without
11 consent except as provided in this title.

12 4. The term "protective services" means services provided by the state
13 as described in section four hundred seventy-three of this chapter,
14 which are necessary to prevent abuse, neglect, exploitation or abandon-
15 ment.

16 5. The term "abuse" includes but is not limited to any act or omission
17 which results in the infliction of physical pain or injury, or the
18 infliction of mental anguish that requires medical attention or the
19 deprivation by a caretaker of services which are necessary to maintain
20 physical or mental health.

21 6. The term "neglect" refers to an adult who is either living alone
22 and not able to provide for oneself the services which are necessary to
23 maintain physical and mental health or is not receiving the said neces-
24 sary services from the responsible caretaker.

25 7. The term "exploitation" means intentional economic exploitation of
26 an adult by means of theft, fraud, coercion or extortion.

27 8. The term "abandonment" refers to the desertion or wilful forsaking
28 of an adult by a caretaker or the foregoing of duties or the withdrawal
29 or neglect of duties and obligations owed an adult by a caretaker or
30 other person.

31 9. The term "caretaker" means a person who has the responsibility for
32 the care of an adult as a result of family relationship or who has
33 assumed the responsibility for the care of the adult voluntarily, by
34 contract or by order of a court of competent jurisdiction.

35 § 312. Reporting the possible necessity for protective services. 1.
36 Any facility or institution; licensed physician or surgeon, any resident
37 physician or intern in any hospital in this state, whether or not so
38 licensed, any registered nurse, any adult care facility administrator,
39 any person paid for caring for a resident in an adult care facility, any
40 staff person employed by an adult care facility, any patient's advocate
41 and any licensed practical nurse, medical examiner, dentist, osteopath,
42 optometrist, chiropractor, podiatrist, social worker, coroner, clergy-
43 man, peace officer, pharmacist or physical therapist or any attorney,
44 accountant, trustee, guardian, conservator or other person who has
45 responsibility for preparing the tax records of an adult or a person who
46 has a fiduciary responsibility for any other action concerning the use
47 or preservation of an adult's property, who has a reasonable basis to
48 believe that any adult has been abused, neglected, exploited or aban-
49 doned, or is in a condition which is the result of such abuse, neglect,
50 exploitation or abandonment, or who is in need of protective services,
51 or any attorney, accountant, trustee, guardian, conservator or other
52 person who has responsibility for preparing the tax records of an adult
53 or a person who has a fiduciary responsibility for any other action
54 concerning the use or retention of an adult's property who has a reason-
55 able basis to believe that an adult has been exploited, shall within

1 three calendar days report such information or cause a report to be made
2 in the following manner:

3 (a) if the abuse has occurred in a long-term care facility, except a
4 state mental hospital or a state development center, the report shall be
5 made to the commissioner of the office of children and family services;

6 (b) if the suspected or alleged abuse occurred in a state mental
7 health hospital or a state developmental center, the report shall be
8 made to the office of mental health or the office for people with devel-
9 opmental disabilities; or

10 (c) if the abuse has occurred any place other than one described in
11 paragraph (a) or (b) of this subdivision, the report shall be made to
12 the statewide central register.

13 Any facility or institution required to report under the provisions of
14 this section which fails to make such report may be fined not more than
15 five thousand dollars.

16 Any person required to report under the provision of this section who
17 fails to make such report may be fined not more than one thousand
18 dollars.

19 All reports made in compliance with this section shall be confiden-
20 tial.

21 2. Such report shall contain the name and address of the involved
22 adult, information regarding the nature and extent of the abuse,
23 neglect, exploitation or abandonment, and any other information which
24 the reporter believes might be helpful in an investigation of the case
25 and the protection of such adult.

26 3. Any other person having reasonable cause to believe that an adult
27 is being, or has been abused, neglected, exploited or abandoned or who
28 is in need of protective services may report such information in any
29 reasonable manner to the commissioner of the office of children and
30 family services or his or her designee.

31 4. Any person who makes any report pursuant to this title, or who
32 testifies in any administrative or judicial proceeding arising from such
33 report shall be immune from any civil or criminal liability on account
34 of such report or testimony, except for liability for perjury, unless
35 such person was grossly negligent or acted in bad faith or with mali-
36 cious purpose.

37 5. Any physician, surgeon, or psychotherapist shall not be required to
38 file a report pursuant to this section if all the following conditions
39 are met:

40 (a) such physician, surgeon, or psychotherapist has been told by an
41 adult that he or she has experienced behavior constituting physical
42 abuse, abandonment, isolation, financial abuse, or neglect;

43 (b) such physician, surgeon, or psychotherapist is not aware of any
44 independent evidence that corroborates the statement that abuse has
45 occurred;

46 (c) the adult has been diagnosed with a mental illness or dementia, or
47 is the subject of a court ordered conservatorship because of mental
48 illness or dementia; and

49 (d) in the exercise of clinical judgment, such physician, surgeon, or
50 psychotherapist reasonably believes that such abuse did not occur.

51 6. In a long-term care facility, a person who otherwise would have
52 been required to report abuse pursuant to this section, shall not be
53 required to file a report if the following conditions are met:

54 (a) such person is aware that there is a proper plan of care;

55 (b) such person is aware that the plan of care was properly provided
56 or executed;

1 (c) a physical, mental, or medical injury occurred as a result of care
2 provided pursuant to paragraph (a) or (b) of this subdivision; and

3 (d) such person reasonably believes that the injury was not the result
4 of abuse.

5 7.(a) Any individual specified in subdivision one of this section who
6 has knowledge of, or reasonably suspects that, types of adult abuse for
7 which reports are not mandated have been inflicted upon an adult or that
8 his or her emotional well-being is endangered in any other way, may
9 report the known or suspected instance of abuse.

10 (b) If the suspected or alleged abuse occurred in a long-term care
11 facility other than a state mental health hospital or a state develop-
12 mental center, the report may be made to the commissioner of the office
13 of children and family services.

14 (c) If the suspected or alleged abuse occurred in a state mental
15 health hospital or a state developmental center, the report may be made
16 to the office of mental health or the office for people with develop-
17 mental disabilities.

18 (d) If the suspected or alleged abuse occurred in a place other than a
19 place described in paragraph (b) or (c) of this subdivision, the report
20 may be made to the statewide central register.

21 8. If the conduct involves criminal activity not covered in subdivi-
22 sion five or six of this section, it may be immediately reported to the
23 appropriate law enforcement agency.

24 9. When two or more individuals specified in subdivision one of this
25 section are present and jointly have knowledge or reasonably suspect
26 that types of abuse of an adult for which a report is or is not mandated
27 have occurred, and when there is agreement among them, the telephone
28 report may be made by a member of the team selected by mutual agreement,
29 and a single report may be made and signed by the selected member of the
30 reporting team. Any member who has knowledge that the member designated
31 to report has failed to do so shall thereafter make the report.

32 10. A telephone report of a known or suspected instance of adult abuse
33 shall include the name of the person making the report, the name and age
34 of the adult, the present location of the adult, the names and addresses
35 of family members or any other person responsible for the adult's care,
36 if known, the nature and extent of the adult's condition, the date of
37 the incident, and any other information, including information that led
38 that person to suspect adult abuse, requested by the agency receiving
39 the report.

40 § 313. Action on reports. 1. The commissioner of the office of chil-
41 dren and family services upon receiving a report that an adult allegedly
42 is being, or has been, abused, neglected, exploited or abandoned, or is
43 in need of protective services shall cause a prompt and thorough evalu-
44 ation to be made, through the appropriate local or county department of
45 social services to determine the situation relative to the condition of
46 the adult and what action and services, if any, are required. The evalu-
47 ation shall include a visit to the named adult and consultation with
48 those individuals having knowledge of the facts of the particular case.

49 2. Upon probable cause to believe that an individual covered by this
50 title is being abused, maltreated or neglected, a representative of the
51 local or county department of social services, accompanied by a law
52 enforcement officer, may enter a premises, after obtaining a court order
53 and announcing their authority and purpose.

54 3. Upon completion of the evaluation of each case, written findings
55 shall be prepared which shall include recommended action and a determi-
56 nation of whether protective services are needed.

1 4. Each local or county department of social services shall maintain a
2 registry of the reports received, the evaluation and findings and the
3 actions recommended, and shall furnish copies of such data to the office
4 of children and family services for a statewide register.

5 5. Neither the original report nor the evaluation report of the local
6 or county department of social services shall be deemed a public record.
7 The name of the person making the original report or any person
8 mentioned in such report shall not be disclosed unless the person making
9 the original report specifically requests such disclosure or unless a
10 judicial proceeding results therefrom.

11 § 314. Judicial review. 1. If it is determined that an adult is in
12 need of protective services, the local or county department of social
13 services shall furnish the necessary services, provided the adult
14 consents.

15 2. If an adult does not consent to the receipt of reasonable and
16 necessary protective services, or if such person withdraws the consent,
17 such services shall not be provided or continued, except that if the
18 commissioner of the office of children and family services has reason to
19 believe that such adult is at risk of serious harm and lacks capacity to
20 consent, he or she may proceed to petition for an order for short-term
21 involuntary protective services pursuant to section four hundred seven-
22 ty-three-a of this chapter.

23 3. If the caretaker of an adult who has consented to the receipt of
24 reasonable and necessary protective services refuses to allow the
25 provision of such services to such adult, the commissioner of the office
26 of children and family services may petition the supreme court or the
27 surrogate's court for an order enjoining the caretaker from interfering
28 with the provision of protective services to the adult. The petition
29 shall allege specific facts sufficient to show that the adult is in need
30 of protective services and consents to their provision and that the
31 caretaker refuses to allow the provision of such services. If the judge
32 finds that the adult is in need of such services and has been prevented
33 by the caretaker from receiving the same, the judge may issue an order
34 enjoining the caretaker from interfering with the provision of protec-
35 tive services to the adult.

36 § 315. Authority of office of children and family services. 1. Every
37 person, department, agency or commission authorized to carry out the
38 duties enumerated in this title shall have access to all relevant
39 records, except that records which are confidential to an adult shall
40 only be disclosed with the written consent of the adult or his or her
41 representative. The authority of the office of children and family
42 services under this title shall include, but not be limited to, the
43 right to initiate or otherwise take those actions necessary to assure
44 the health, safety and welfare of any adult, subject to any specific
45 requirement for individual consent, and the right to authorize the
46 transfer of an adult from an adult care facility, intermediate or resi-
47 dential health care facility, nursing home, or hospital.

48 2. The office of children and family services, within ten calendar
49 days of the referral of any cases for the provision of protective
50 services, shall furnish the local or county department of social
51 services a written report outlining the intended plan of services. The
52 local or county department of social services shall have the right to
53 comment on the proposed plan.

54 § 316. Assistance of other agencies. In performing the duties set
55 forth in this title, the local or county department of social services
56 may request the assistance of the staffs and resources of all appropri-

ate state departments, agencies and commissions and local health directors.

§ 317. Review. Subsequent to the authorization for the provision of reasonable and necessary protective services, the office of children and family services shall initiate a review of each case within forty-five days, to determine whether continuation of, or modification in, the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from other involved state and local groups, agencies and departments, and shall comply with the consent provisions of this title. Reevaluations of each such case shall be made every ninety days thereafter. The office of children and family services shall advise the appropriate local or county department of social services of the decisions relative to continuation of protective services for each such adult.

§ 318. Costs for providing protective services. Prior to implementation of any protective services, an evaluation shall be undertaken by the office of children and family services pursuant to regulations which shall be adopted by the commissioner of the office of children and family services regarding the adult's financial capability for paying for the protective services. If the person is so able, procedures for the reimbursement for the costs of providing the needed protective services should be initiated. If it is determined that the person is not financially capable of paying for such needed services, the services shall be provided in accordance with policies and procedures established by the commissioner of the office of children and family services for the provision of social services benefits under such circumstances.

§ 319. Abuse of duties of facility or caretaker. If as a result of any investigation initiated under the provisions of this title, a determination is made that a facility or caretaker or other person has abused, neglected, exploited or abandoned an adult, such information shall be referred in writing to the attorney general or his or her designee, and the district attorney in the county in which the abuse, neglect, exploitation or abandonment is believed to have occurred which shall conduct such further investigation, if any is deemed necessary and shall determine whether criminal proceedings should be initiated against such facility or caretaker or other person, in accordance with applicable state law. Any facility or caretaker found guilty of abuse or neglect shall be further investigated for any additional implications of abuse or neglect and may be subject to a fine determined by the commissioner.

§ 320. Statewide central register of adult abuse. 1. There shall be established in the office of children and family services a statewide central register of adult abuse reports made pursuant to this title.

2. The central register shall be capable of receiving oral and electronic reports of adult abuse, neglect, exploitation or abandonment and of immediately identifying prior reports of adult abuse, neglect, exploitation or abandonment and capable of monitoring the provision of adult protective services twenty-four hours a day, seven days a week. To effectuate this purpose, but subject to the provisions of the appropriate local plan for the provision of adult protective services, there shall be a single statewide telephone number that all persons, whether mandated by law or not, may use to report cases of suspected adult abuse, neglect, exploitation or abandonment and that all persons so authorized by this title may use for determining the existence of prior reports in order to evaluate the condition or circumstances of the adult before them. Such oral reports shall be immediately transmitted orally or electronically by the office of children and family services to the

1 appropriate local adult protective service. If the records indicate a
2 previous report concerning a subject of the report, other persons named
3 in the report or other pertinent information, the appropriate local
4 adult protective service shall be immediately notified of the fact.

5 3. The central register shall include but not be limited to the
6 following information: all the information in the written report; a
7 record of the final disposition of the report, including services
8 offered and services accepted; the plan for rehabilitative treatment;
9 the names and identifying data, dates and circumstances of any person
10 requesting or receiving information from the register; and any other
11 information which the commissioner of the office of children and family
12 services believes might be helpful in the furtherance of the purposes of
13 this chapter.

14 4. Reports made pursuant to this title as well as any other informa-
15 tion obtained, reports written or photographs taken concerning such
16 reports in the possession of the office of children and family services
17 or local departments shall be confidential and shall only be made avail-
18 able to (a) a physician who has before him or her an adult whom he or
19 she reasonably suspects may be abused, neglected, exploited or aban-
20 doned; (b) a person authorized to place an adult in protective custody
21 when such person has before him or her an adult whom he or she reason-
22 ably suspects may be abused, neglected, exploited or abandoned and such
23 person requires the information in the record to determine whether to
24 place the adult in protective custody; (c) a duly authorized agency
25 having the responsibility for the care or supervision of an adult who is
26 reported to the central register of adult abuse; (d) any person who is
27 the subject of the report or other persons named in the report; (e) a
28 court, upon a finding that the information in the record is necessary
29 for the determination of an issue before the court; (f) a grand jury,
30 upon a finding that the information in the record is necessary for the
31 determination of charges before the grand jury; (g) any appropriate
32 state legislative committee responsible for adult protective legislation
33 and any temporary state commission having the powers of a legislative
34 committee and having the power to review such legislation and make
35 recommendations thereon to the governor and legislature; (h) any person
36 engaged in a bona fide research purpose, provided, however, that no
37 information identifying the subjects of the report or other persons
38 named in the report shall be made available to the researcher unless it
39 is absolutely essential to the research purpose and the office of chil-
40 dren and family services gives prior approval; (i) authorized agencies
41 and the office for the aging. However, no information may be released
42 unless the person or official's identity is confirmed by the department
43 and the released information states whether the report is "indicated" or
44 "under investigation," whichever the case may be. A person given access
45 to the names or other information identifying the subjects of the report
46 or other persons named in the report, except the subject of the report
47 or other persons named in the report, shall not divulge or make public
48 such identifying information unless he or she is a district attorney or
49 other law enforcement official and the purpose is to initiate court
50 action.

51 5. Unless an investigation of a report conducted pursuant to this
52 title determines that there is some credible evidence of the alleged
53 abuse, neglect, exploitation or abandonment, all information identifying
54 the subjects of the report and other persons named in the report shall
55 be expunged from the central register and from the records of all local
56 adult protective services forthwith.

6. In all other cases, the record of the report to the central register shall be expunged no later than ten years after the death of the adult. In any case and at any time, the commissioner of the office of children and family services may amend or expunge any record upon good cause shown and notice to the subjects of the report and other persons named in the report.

7. At any time, a subject of a report and other persons named in the report may receive, upon request, a copy of all information contained in the central register; provided, however, that the commissioner of the office of children and family services is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation, which he or she reasonably finds will be detrimental to the safety or interests of such person.

8. At any time subsequent to the completion of the investigation but in no event later than ninety days after the subject of the report is notified that the report is indicated the subject may request the commissioner of the office of children and family services to amend or expunge the record of the report. If the commissioner of the office of children and family services does not amend or expunge the report within ninety days of receiving such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central register should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this title. The appropriate local adult protective service shall be given notice of the fair hearing. The burden of proof in such hearing shall be on the office of children and family services and appropriate local adult protective service. In such hearings, the fact that there was a court finding of abuse, neglect, exploitation or abandonment shall be presumptive evidence that the report was substantiated. The commissioner of the office of children and family services or his or her designated agent is hereby authorized and empowered to make any appropriate order respecting the amendment or expungement of the record to make it accurate or consistent with the requirements of this title.

9. Written notice of any expungement or amendment of any record, made pursuant to the provisions of this title, shall be served upon each subject of such record, other persons named in the report and the appropriate local adult protective service. The latter, upon receipt of such notice, shall take the appropriate similar action in regard to the local adult abuse register and inform, for the same purpose, any other agency which received such record pursuant to this title.

10. Any person who willfully permits and any person who encourages the release of any data and information contained in the central register to persons or agencies not permitted by this title shall be guilty of a class A misdemeanor.

§ 2. The sum of seven hundred thousand dollars (\$700,000), or so much thereof as may be necessary, is hereby appropriated to the office of children and family services out of any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated, for its expenses, including personal service, maintenance and operation in carrying out the provisions of this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of the office of children and family services or his or her designee, in the manner prescribed by law.

1 § 3. The state shall reimburse each local or county department of
2 social services for the costs of providing adult persons with protective
3 services.

4 § 4. The department of social welfare shall make a report to the
5 governor and the legislature annually regarding the provisions of this
6 act.

7 § 5. This act shall take effect on the one hundred twentieth day after
8 it shall have become a law, except that any rules and regulations neces-
9 sary for the timely implementation of this act on its effective date
10 shall be promulgated on or before such date.