STATE OF NEW YORK

4736--D

2017-2018 Regular Sessions

IN SENATE

February 27, 2017

Introduced by Sens. LANZA, ADDABBO, AKSHAR, ALCANTARA, AMEDORE, BAILEY, BONACIC, BOYLE, BROOKS, COMRIE, DILAN, FELDER, FUNKE, GALLIVAN, GOLDEN, GRIFFO, HAMILTON, HELMING, HOYLMAN, JACOBS, KAMINSKY, KENNEDY, KRUEGER, LARKIN, MARCELLINO, MARCHIONE, MONTGOMERY, MURPHY, O'MARA, ORTT, PARKER, PERALTA, PERSAUD, PHILLIPS, RITCHIE, RIVERA, ROBACH, SANDERS, SAVINO, SEPULVEDA, SERRANO, SEWARD, STAVISKY, TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Mental Health and Developmental Disabilities in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the social services law, in relation to duty to report incidents to 9-1-1 and the county district attorney's office

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

Section 1. Section 491 of the social services law, as added by section 1 of part B of chapter 501 of the laws of 2012, subdivision 4 as amended by chapter 126 of the laws of 2014, subdivision 5 as added by chapter 422 of the laws of 2017, is amended to read as follows:

§ 491. Duty to report incidents. 1. (a) Mandated reporters shall report allegations of reportable incidents**, all suspicious and unexplained injuries to include broken bones, hematomas, open wounds beyond minor first aid, black eyes, swollen noses, extreme and questionable bruising, choke marks, burns, all individuals served found unresponsive and all deaths** to **a 9-1-1 operator, the county district attorney's**

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

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office and the vulnerable persons' central register **except for taunts, derogatory comments or ridicule which is required to be reported solely to the vulnerable persons' central register** as established by section four hundred ninety-two of this article and in accordance with the requirements set forth therein. **All medical emergencies that threaten the health, safety or life of individuals served shall be reported immediately to a 9-1-1 operator.**

(b) Allegations of reportable incidents**, all suspicious and unexplained injuries to include broken bones, hematomas, open wounds beyond minor first aid, black eyes, swollen noses, extreme and questionable bruising, choke marks, burns, all individuals served found unresponsive and all deaths** shall be reported immediately to **a 9-1-1 operator, the county district attorney's office and** the vulnerable persons' central register upon discovery. For purposes of this article, "discovery" occurs when the mandated reporter witnesses a suspected reportable incident or when another person, including the vulnerable person, comes before the mandated reporter in the mandated reporter's professional or official capacity and provides the mandated reporter with reasonable cause to suspect that the vulnerable person has been subjected to a reportable incident**, all suspicious and unexplained injuries to include broken bones, hematomas, open wounds beyond minor first aid, black eyes, swollen noses, extreme and questionable bruising, choke marks, burns, all individuals served found unresponsive and all deaths**. A report to the register shall include the name, title and contact information of every person known to the mandated reporter to have the same information as the mandated reporter concerning the reportable incident. [~~**Nothing in this subdivision shall be construed to prohibit a mandated reporter from contacting or reporting to law enforcement or emergency services before or after reporting to the vulnerable persons' central register.**~~]

(c) The substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or like materials or information pertaining to the treatment of a patient or client of a mandatory reporter who reports a reportable incident of such patient or client pursuant to this article, must be provided by such mandatory reporter upon request of the justice center for the protection of people with special needs**, local police and county district attorney** if such records are essential for a full investigation of such allegation, notwithstanding any applicable privilege which would otherwise bar the disclosure of such materials and records pursuant to article forty-five of the civil practice law and rules or other provision of law except applicable federal law governing the disclosure of patient and related medical records.

2. Any person or official required to report allegations of reportable incidents pursuant to this section may take or cause to be taken color photographs of visible trauma and the face of the vulnerable person named in the report and upon the consent of a person authorized to consent to medical care for the vulnerable person, shall, if medically indicated, cause to be performed a radiological examination of the vulnerable person. Any photographs or radiological examinations taken shall be provided to the justice center**, local police and county district attorney** for use only for the purposes of an investigation of a reportable incident.

3. (a) Any human services professional required by this article to report a case of suspected abuse or neglect**, all suspicious and unexplained injuries to include broken bones, hematomas, open wounds beyond minor first aid, black eyes, swollen noses, extreme and questionable**

bruising, choke marks, burns, all individuals served found unresponsive and all deaths to a 9-1-1 operator, the county district attorney's office and the vulnerable persons' central register who knowingly and willfully fails to do so shall be guilty of a class A misdemeanor. Mandated reporters shall report non-criminal medical emergencies that threaten the health, safety or life of individuals served to a 9-1-1 operator only. Mandated reporters who knowingly and willfully fail to report such medical emergencies to a 9-1-1 operator shall be guilty of a class E felony.

(b) A mandated reporter who knowingly and willfully fails to report a case of suspected abuse or neglect, all suspicious and unexplained injuries to include broken bones, hematomas, open wounds beyond minor first aid, black eyes, swollen noses, extreme and questionable bruising, choke marks, burns, all individuals served found unresponsive and all deaths to a 9-1-1 operator, the county district attorney's office and the vulnerable persons' central register may be subject to termination, subject to any applicable collective bargaining agreement. Any person or official required by this article to report a case of suspected abuse or neglect, all suspicious and unexplained injuries to include broken bones, hematomas, open wounds beyond minor first aid, black eyes, swollen noses, extreme and questionable bruising, choke marks, burns, all individuals served found unresponsive and all deaths to a 9-1-1 operator, the county district attorney's office and the vulnerable persons' central register and any medical emergencies that threaten the health, safety or life of individuals served not reported immediately to a 9-1-1 operator who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure.

4. A medical or other public or private institution, state agency, school, facility or provider agency or its vendors or contractors shall not take any retaliatory personnel action, as such term is defined in paragraph (e) of subdivision one of section seven hundred forty of the labor law, against an employee or agent or vendor or contractor because such employee or agent or vendor or contractor believes that he or she has reasonable cause to suspect that a vulnerable person has been subjected to a reportable incident and that employee or agent or vendor or contractor therefore makes a report in accordance with this section and/or cooperated with the investigation of a reportable incident. A court of competent jurisdiction may grant injunctive relief to any person determined to have been subjected to such retaliation.

5. State oversight agencies shall ensure that all facilities or provider agencies operated, licensed, or certified by such state oversight agencies have policies and procedures in place to identify and report possible crimes against a service recipient by a custodian. State oversight agencies shall provide guidance to facilities or provider agencies operated, licensed, or certified by such state oversight agencies that do not already have policies and procedures for the identification and reporting of possible crimes.

6. All state and private agencies with mandatory reporters shall retrain all staff on reporting to a 9-1-1 operator and the county district attorney's office and all state and private websites, training manuals, informational brochures or pamphlets directing reporting shall state that such instances be reported to a 9-1-1 operator and the county district attorney's office and the vulnerable persons' central register. All former poster and wallet cards and any other information directing reportable incidents to only the vulnerable persons' central register will be replaced and updated in a conspicuously located and timely

manner to direct reporting of reportable incidents, crimes, medical emergencies, suspicious and unexplained injuries to include broken bones, hematomas, open wounds beyond minor first aid, black eyes, swollen noses, extreme and questionable bruising, choke marks, burns, all individuals served found unresponsive and all deaths to the vulnerable persons' central register, a 9-1-1 operator, and the county district attorney's office with the exception of non-criminal medical emergencies, which shall only be reported to a 9-1-1 operator.

§ 2. This act shall take effect immediately.