

STATE OF NEW YORK

3781

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

Introduced by M. of A. CARROLL, ORTIZ, RIVERA, JAFFEE, ABBATE, DenDEKKER, COLTON, MOYA -- Multi-Sponsored by -- M. of A. GALEF, PEOPLES-STOKES, TITONE -- read once and referred to the Committee on Aging

AN ACT to amend the social services law, in relation to elderly 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:

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

TITLE 9

ELDERLY 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 caretaker.

320. Statewide central register of elderly abuse.

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

§ 311. Definitions. For purposes of this title:

1. The term "elderly person" means any resident of the state who is sixty-two years of age or older.

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

LBD08461-01-7

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

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

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

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

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

28 7. The term "exploitation" means intentional economic exploitation of
29 an elderly person by means of theft, fraud, coercion or extortion.

30 8. The term "abandonment" refers to the desertion or wilful forsaking
31 of an elderly person by a caretaker or the foregoing of duties or the
32 withdrawal or neglect of duties and obligations owed an elderly person
33 by a caretaker or other person.

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

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

1 action concerning the use or retention of an elderly adult's property
2 who has a reasonable basis to believe that an elderly adult has been
3 exploited, shall within three calendar days report such information or
4 cause a report to be made in the following manner:

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

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

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

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

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

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

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

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

37 (a) such physician, surgeon, or psychotherapist has been told by an
38 elder or dependent adult that he or she has experienced behavior consti-
39 tuting physical abuse, abandonment, isolation, financial abuse, or
40 neglect;

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

44 (c) the elder or dependent adult has been diagnosed with a mental
45 illness or dementia, or is the subject of a court ordered conservator-
46 ship because of mental illness or dementia; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 § 314. Judicial review. 1. If it is determined that an elderly person
15 is in need of protective services, the local or county department of
16 social services shall furnish the necessary services, provided the
17 elderly person consents.

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

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

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

52 2. The office of children and family services, within ten calendar
53 days of the referral of any cases for the provision of protective
54 services, shall furnish the local or county department of social
55 services a written report outlining the intended plan of services. The

1 local or county department of social services shall have the right to
2 comment on the proposed plan.

3 § 316. Assistance of other agencies. In performing the duties set
4 forth in this title, the local or county department of social services
5 may request the assistance of the staffs and resources of all appropri-
6 ate state departments, agencies and commissions and local health direc-
7 tors.

8 § 317. Review. Subsequent to the authorization for the provision of
9 reasonable and necessary protective services, the office of children and
10 family services shall initiate a review of each case within forty-five
11 days, to determine whether continuation of, or modification in, the
12 services provided is warranted. A decision to continue the provision of
13 such services should be made in concert with appropriate personnel from
14 other involved state and local groups, agencies and departments, and
15 shall comply with the consent provisions of this title. Reevaluations of
16 each such case shall be made every ninety days thereafter. The office of
17 children and family services shall advise the appropriate local or coun-
18 ty department of social services of the decisions relative to continua-
19 tion of protective services for each such elderly person.

20 § 318. Costs for providing protective services. Prior to implementa-
21 tion of any protective services, an evaluation shall be undertaken by
22 the office of children and family services pursuant to regulations which
23 shall be adopted by the commissioner of the office of children and fami-
24 ly services regarding the elderly person's financial capability for
25 paying for the protective services. If the person is so able, procedures
26 for the reimbursement for the costs of providing the needed protective
27 services should be initiated. If it is determined that the person is not
28 financially capable of paying for such needed services, the services
29 shall be provided in accordance with policies and procedures established
30 by the commissioner of the office of children and family services for
31 the provision of social services benefits under such circumstances.

32 § 319. Abuse of duties of caretaker. If as a result of any investi-
33 gation initiated under the provisions of this title, a determination is
34 made that a caretaker or other person has abused, neglected, exploited
35 or abandoned an elderly person, such information shall be referred in
36 writing to the attorney general or his or her designee, and the district
37 attorney in the county in which the abuse, neglect, exploitation or
38 abandonment is believed to have occurred which shall conduct such
39 further investigation, if any is deemed necessary and shall determine
40 whether criminal proceedings should be initiated against such caretaker
41 or other person, in accordance with applicable state law.

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

45 2. The central register shall be capable of receiving oral and elec-
46 tronic reports of elderly abuse, neglect, exploitation or abandonment
47 and of immediately identifying prior reports of elderly abuse, neglect,
48 exploitation or abandonment and capable of monitoring the provision of
49 elderly protective services twenty-four hours a day, seven days a week.
50 To effectuate this purpose, but subject to the provisions of the appro-
51 priate local plan for the provision of elderly protective services,
52 there shall be a single statewide telephone number that all persons,
53 whether mandated by law or not, may use to report cases of suspected
54 elderly abuse, neglect, exploitation or abandonment and that all persons
55 so authorized by this title may use for determining the existence of
56 prior reports in order to evaluate the condition or circumstances of the

1 elderly person before them. Such oral reports shall be immediately
2 transmitted orally or electronically by the office of children and fami-
3 ly services to the appropriate local elderly protective service. If the
4 records indicate a previous report concerning a subject of the report,
5 other persons named in the report or other pertinent information, the
6 appropriate local elderly protective service shall be immediately noti-
7 fied of the fact.

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

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

54 5. Unless an investigation of a report conducted pursuant to this
55 title determines that there is some credible evidence of the alleged
56 abuse, neglect, exploitation or abandonment, all information identifying

1 the subjects of the report and other persons named in the report shall
2 be expunged from the central register and from the records of all local
3 elderly protective services forthwith.

4 6. In all other cases, the record of the report to the central regis-
5 ter shall be expunged no later than ten years after the death of the
6 elderly person. In any case and at any time, the commissioner of the
7 office of children and family services may amend or expunge any record
8 upon good cause shown and notice to the subjects of the report and other
9 persons named in the report.

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

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

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

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

48 § 2. The sum of six hundred thousand dollars (\$600,000), or so much
49 thereof as may be necessary, is hereby appropriated to the office of
50 children and family services out of any moneys in the state treasury in
51 the general fund to the credit of the state purposes account not other-
52 wise appropriated, for its expenses, including personal service, mainte-
53 nance and operation in carrying out the provisions of this act. Such
54 moneys shall be payable on the audit and warrant of the comptroller on
55 vouchers certified or approved by the commissioner of the office of

1 children and family services or his or her designee, in the manner
2 prescribed by law.

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