STATE OF NEW YORK

3665

2019-2020 Regular Sessions

IN ASSEMBLY

January 30, 2019

Introduced by M. of A. CARROLL, ORTIZ, RIVERA, JAFFEE, ABBATE, DenDEKKER, COLTON -- Multi-Sponsored by -- M. of A. GALEF, PEOPLES-STOKES -- 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.

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

3. The term "services which are necessary to maintain physical and mental health" includes, but is not limited to, the provision of medical care for physical and mental health needs, the relocation of an elderly

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

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person to a facility or institution able to offer such care, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from maltreatment the result of which includes, but is not limited to, malnutrition, deprivation of necessities or physical punishment, and transportation necessary to secure any of the above stated needs, except that this term shall not include taking such person into custody without consent except as provided in this title.

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

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

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

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

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

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

§ 312. Reporting the possible necessity for protective services. 1. Any licensed physician or surgeon, any resident physician or intern in any hospital in this state, whether or not so licensed, any registered nurse, any adult care facility administrator, any person paid for caring for a resident in an adult care facility, any staff person employed by an adult care facility, any patient's advocate and any licensed practical nurse, medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, social worker, coroner, clergyman, peace officer, pharmacist or physical therapist or any attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of an elderly person or a person who has a fiduciary responsibility for any other action concerning the use or preservation of an elderly adult's property, who has a reasonable basis to believe that any elderly person has been abused, neglected, exploited or abandoned, or is in a condition which is the result of such abuse, neglect, exploitation or abandonment, or who is in need of protective services, or any attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of an elderly person or a person who has a fiduciary responsibility for any other action concerning the use or retention of an elderly adult's property who has a reasonable basis to believe that an elderly adult has been exploited, shall within three calendar days report such information or cause a report to be made in the following manner:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.(a) Any individual specified in subdivision one of this section who has knowledge of, or reasonably suspects that, types of elder or depend-

ent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

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

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

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

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

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

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

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

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

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

4. Each local or county department of social services shall maintain a registry of the reports received, the evaluation and findings and the

actions recommended, and shall furnish copies of such data to the office of children and family services for a statewide register.

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

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

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

3. If the caretaker of an elderly person who has consented to the receipt of reasonable and necessary protective services refuses to allow the provision of such services to such elderly person, the commissioner of the office of children and family services may petition the supreme court or the surrogate's court for an order enjoining the caretaker from interfering with the provision of protective services to the elderly person. The petition shall allege specific facts sufficient to show that the elderly person is in need of protective services and consents to their provision and that the caretaker refuses to allow the provision of such services. If the judge finds that the elderly person is in need of such services and has been prevented by the caretaker from receiving the same, the judge may issue an order enjoining the caretaker from interfering with the provision of protective services to the elderly person.

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

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

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

ate state departments, agencies and commissions and local health direc-
tors.

§ 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 elderly person.

§ 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 elderly person'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 caretaker. If as a result of any investigation initiated under the provisions of this title, a determination is made that a caretaker or other person has abused, neglected, exploited or abandoned an elderly person, 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 caretaker or other person, in accordance with applicable state law.

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

2. The central register shall be capable of receiving oral and electronic reports of elderly abuse, neglect, exploitation or abandonment and of immediately identifying prior reports of elderly abuse, neglect, exploitation or abandonment and capable of monitoring the provision of elderly 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 elderly 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 elderly 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 elderly person before them. Such oral reports shall be immediately transmitted orally or electronically by the office of children and family services to the appropriate local elderly protective service. If the records indicate a previous report concerning a subject of the report, other persons named in the report or other pertinent information, the

appropriate local elderly protective service shall be immediately notified of the fact.

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

4. Reports made pursuant to this title as well as any other information obtained, reports written or photographs taken concerning such reports in the possession of the office of children and family services or local departments shall be confidential and shall only be made available to (a) a physician who has before him or her an elderly person whom he or she reasonably suspects may be abused, neglected, exploited or abandoned; (b) a person authorized to place an elderly person in protective custody when such person has before him or her an elderly person whom he or she reasonably suspects may be abused, neglected, exploited or abandoned and such person requires the information in the record to determine whether to place the elderly person in protective custody; (c) a duly authorized agency having the responsibility for the care or supervision of an elderly person who is reported to the central register of elderly abuse; (d) any person who is the subject of the report or other persons named in the report; (e) a court, upon a finding that the information in the record is necessary for the determination of an issue before the court; (f) a grand jury, upon a finding that the information in the record is necessary for the determination of charges before the grand jury; (g) any appropriate state legislative committee responsible for elderly protective legislation and any temporary state commission having the powers of a legislative committee and having the power to review such legislation and make recommendations thereon to the governor and legislature; (h) any person engaged in a bona fide research purpose, provided, however, that no information identifying the subjects of the report or other persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and the office of children and family services gives prior approval; (i) authorized agencies and the office for the aging. However, no information may be released unless the person or official's identity is confirmed by the department and the released information states whether the report is "indicated" or "under investigation," whichever the case may be. A person given access to the names or other information identifying the subjects of the report or other persons named in the report, except the subject of the report or other persons named in the report, shall not divulge or make public such identifying information unless he or she is a district attorney or other law enforcement official and the purpose is to initiate court action.

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

elderly person. 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 elderly 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 elderly 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 elderly protective service. The latter, upon receipt of such notice, shall take the appropriate similar action in regard to the local elderly 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 six hundred thousand dollars ($600,000), 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.

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