STATE OF NEW YORK

4757--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 5, 2019

Introduced by M. of A. GOTTFRIED -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to enhancing transparency and oversight of residential health care facilities

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

Section 1. Section 2803-d of the public health law, as amended by chapter 340 of the laws of 1980, subdivision 1 as amended by chapter 230 of the laws of 2004, paragraph (c) of subdivision 6 as amended by chapter 414 of the laws of 1986, paragraph (d) of subdivision 6 as amended by chapter 622 of the laws of 1980 and paragraph (g) of subdivision 6 as amended by chapter 717 of the laws of 1989, is amended to read as follows:

§ 2803-d. Reporting abuses of persons receiving care or services in residential health care facilities. 1. The following persons are required to report in accordance with this section when they have reasonable cause to believe that a person receiving care or services in a residential health care facility has been [~~physically~~] abused, mistreated [~~or~~]**,** neglected **or subjected to the misappropriation of property** by other than a person receiving care or services in the facility: any operator or employee of such facility, [~~any person who,~~] or employee of any corporation, partnership, organization or other entity which, **and any other person who,** is under contract [~~to provide patient care services in~~] **with** such facility, and any nursing home administrator, physician, medical examiner, coroner, physician's associate, specialist's assistant, osteopath, chiropractor, physical therapist, occupational therapist, registered professional nurse, licensed practical nurse, dentist, podiatrist, optometrist, pharmacist, psychologist, licensed master social worker, licensed clinical social worker, speech pathologist and audiologist.

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

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2. In addition to those persons required to report suspected [~~physical~~] abuse, mistreatment [~~or~~], neglect **or misappropriation of the property** of persons receiving care or services in residential health care facilities, any other person may make such a report if he or she has reasonable cause to believe that a person receiving care or services has been [~~physically~~] abused, mistreated [~~or~~], neglected **or subjected to the misappropriation of property** in the facility.

3. Reports of suspected [~~physical~~] abuse, mistreatment [~~or~~], neglect **or the misappropriation of property** made pursuant to this section shall be made immediately by telephone and in writing within forty-eight hours to the department. **The department shall provide forms, which shall be available to be downloaded from the department's website, which may be, but are not required to be, used for making the written reports.** Written reports shall [~~be made on forms supplied by the commissioner and shall~~] include the following information: the identity of the person making the report and where he can be found; the name and address of the residential health care facility; the names of the operator and administrator of the facility, if known; the name of the subject of the alleged [~~physical~~] abuse, mistreatment [~~or~~], neglect **or misappropriation of property**, if known; the nature and extent of the [~~physical~~] abuse, mistreatment [~~or~~], neglect **or misappropriation of property**; the date, time and specific location of the occurrence; the names of next of kin or sponsors of the subject of the alleged [~~physical~~] abuse, mistreatment [~~or~~], neglect **or misappropriation of property**, if known; and any other information which the person making the report believes would be helpful to further the purposes of this section. Such written reports shall be admissible in evidence, consistent with the provisions of paragraph (f) of subdivision six of this section, in any actions or proceedings relating to [~~physical~~] abuse, mistreatment [~~or~~], neglect **or misappropriation of property** of persons receiving care or services in residential health care facilities. Written reports made other than on forms supplied by the commissioner which contain the information required herein shall be treated as if made on such forms.

4. Any person who in good faith makes a report pursuant to this section shall have immunity from any liability, civil or criminal, for having made such a report. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report instances of [~~physical~~] abuse, mistreatment [~~or~~], neglect **or misappropriation of property** of persons receiving care or services in residential health care facilities shall be presumed.

5. Notwithstanding the provisions of section two hundred thirty of this chapter, any licensed person who commits an act of [~~physical~~] abuse, mistreatment [~~or~~], neglect **or misappropriation of property** of a person receiving care or services in a residential health care facility and any licensed person required by this section to report an instance of suspected [~~physical~~] abuse, mistreatment [~~or~~], neglect **or misappropriation of property** of a person receiving care or services in a residential health care facility who fails to do so shall be guilty of unprofessional conduct in the practice of his or her profession.

6. (a) Upon receipt of a report made pursuant to this section, the commissioner shall cause an investigation to be made of the allegations contained in the report. Notification of the receipt of a report shall be made immediately by the department to the appropriate district attorney if a prior request in writing has been made to the department by the district attorney. **At any time, if the department determines that there is a reasonable belief that a reported allegation may constitute a crime**

under the laws of the state of New York or the United States, the department shall notify the appropriate law enforcement official or authority. Prior to the completion of the investigation by the department, [~~every~~] reasonable effort shall be made to notify, personally or by certified mail, any person under investigation for having committed an act of [~~physical~~] abuse, mistreatment [~~or~~], neglect or misappropriation of property. The commissioner shall make a written determination, based on the findings of the investigation, of whether or not sufficient credible evidence exists to sustain the allegations contained in the report or would support a conclusion that a person not named in such report has committed an act of [~~physical~~] abuse, neglect [~~or~~], mistreatment or misappropriation of property. A copy of such written determination, together with a notice of the right to a hearing as provided in this subdivision, shall be sent by registered or certified mail to each person who the commissioner has determined has committed an act of [~~physical~~] abuse, neglect [~~or~~], mistreatment or misappropriation of property. A letter shall be sent to any other person alleged in such report to have committed such an act stating that a determination has been made that there is not sufficient evidence to sustain the allegations relating to such person. A copy of each such determination and letter shall be sent to the facility in which the alleged incident occurred.

(b) The commissioner may make a written determination, based on the findings of the investigation, that sufficient credible evidence exists to support a conclusion that a person required by this section to report suspected [~~physical~~] abuse, mistreatment [~~or~~], neglect or misappropriation of property had reasonable cause to believe that such an incident occurred and failed to report such incident. A copy of such written determination, together with a notice of the right to a hearing as provided in this subdivision, shall be sent by registered or certified mail to each person who the commissioner has determined has failed to report as required by this section.

(c) All information relating to any allegation which the commissioner has determined would not be sustained shall be [~~expunged~~] sealed one hundred twenty days following notification of such determination to the person who made the report pursuant to this section, unless a proceeding pertaining to such allegation is pending pursuant to article seventy-eight of the civil practice law and rules. Whenever information is [~~expunged~~] sealed, the commissioner shall notify any official notified pursuant to paragraph (a) of this subdivision that the information has been [~~expunged~~] sealed.

(d) At any time within thirty days of the receipt of a copy of a determination made pursuant to this section, a person named in such determination as having committed an act of [~~physical~~] abuse, neglect [~~or~~], mistreatment or misappropriation of property, or as having failed to report such an incident, may request in writing that the commissioner amend or [~~expunge~~] seal the record of such report, to the extent such report applies to such person, or such written determination. If the commissioner does not comply with such request within thirty days, such person shall have the right to a fair hearing to determine whether the record of the report or the written determination should be amended or [~~expunged~~] sealed on the grounds that the record is inaccurate or the determination is not supported by the evidence. The burden of proof in such hearing shall be on the department. Whenever information is [~~expunged~~] sealed, the commissioner shall notify any official notified

pursuant to paragraph (a) of this subdivision that the information has been [~~expunged~~] **sealed**.

(e) Except as hereinafter provided, any report, record of the investigation of such report and all other information related to such report shall be confidential and shall be exempt from disclosure under article six of the public officers law.

(f) Information relating to a report made pursuant to this section shall be disclosed under any of the following conditions:

(i) pursuant to article six of the public officers law after [~~expungement~~] **sealing** or amendment, if any, is made in accordance with a hearing conducted pursuant to this section, or at least forty-five days after a written determination is made by the commissioner concerning such report, whichever is later; provided, however, that the identity of the person who made the report, the victim, or any other person named, except a person who the commissioner has determined committed an act of [~~physical~~] abuse, neglect [~~or~~]**,** mistreatment **or misappropriation of property**, shall not be disclosed unless such person authorizes such disclosure;

(ii) as may be required by the penal law or any lawful order or warrant issued pursuant to the criminal procedure law; or

(iii) to a person who has requested a hearing pursuant to this section, information relating to the determination upon which the hearing is to be conducted; provided, however, that the identity of the person who made the report or any other person who provided information in an investigation of the report shall not be disclosed unless such person authorizes such disclosure.

(g) Where appropriate, the commissioner shall report instances of [~~physical~~] abuse, mistreatment [~~or~~]**,** neglect **or misappropriation of property** or the failure to report as required by this section, to the appropriate committee on professional conduct for the professions enumerated in subdivision one of this section when a determination has been made after the commissioner has provided an opportunity to be heard. The commissioner shall report instances of [~~physical~~] abuse, mistreatment, neglect [~~or~~]**,** misappropriation of [~~resident~~] property by a nurse aide or other unlicensed individual and any brief statement by the nurse aide or other unlicensed individual disputing the finding to the nursing home nurse aide registry established pursuant to section twenty-eight hundred three-j of this article when a determination has been made after the commissioner has provided an opportunity to be heard.

7. In addition to any other penalties prescribed by law, any person who commits an act of [~~physical~~] abuse, neglect [~~or~~]**,** mistreatment **or misappropriation of property**, or who fails to report such an act as provided in this section, shall be deemed to have violated this section and shall be liable for a penalty pursuant to section twelve of this chapter after an opportunity to be heard pursuant to this section.

8. No residential health care facility or officer or employee thereof shall discharge or in any manner discriminate or retaliate against any person in any residential health care facility, or any relative, or sponsor thereof, or against any employee of the facility, or against any other person because such person, relative, legal representative, sponsor or employee has made, or is about to make, a report pursuant to this section, or has testified, or is about to testify, in any proceeding relating to [~~physical~~] abuse, mistreatment [~~or~~]**,** neglect **or misappropriation of property** of a person receiving care or services in a residential health care facility. The supreme court may grant injunctive relief to any person subject to such retaliation or discrimination. Any

violation of this subdivision shall be punishable pursuant to section twelve of this chapter.

9. No later than March fifteenth of every year the commissioner shall prepare and transmit to the governor and the legislature a report on the incidents of [~~physical~~] abuse, mistreatment [~~and~~], neglect **and misappropriation of property** of persons receiving care or services in residential health care facilities. No **individual identifying** information concerning any individual [~~or facility~~] **subjected to abuse, mistreatment, neglect or misappropriation of property** shall be disclosed in a report made pursuant to this subdivision, or in any other report, except information which would be available pursuant to article six of the public officers law as provided in this section. Nothing in this section shall be construed to prohibit the maintenance or disclosure of, or require the [~~expungement~~] **sealing** of, statistical data which would not reveal the identity of any person [~~or facility~~].

10. An investigation shall be made of each incident reported pursuant to this section[~~, but only the provisions of paragraphs (e) and (f) of subdivision six, and subdivisions two, four, eight and nine shall apply to physical abuse by persons receiving care or services in residential health care facilities~~].

11. The commissioner shall adopt [~~rules and~~] regulations necessary to implement this section.

§ 2. The public health law is amended by adding a new section 2803-w to read as follows:

§ 2803-w. Independent quality monitors for residential health care facilities. The department may require a residential health care facility to contract with an independent quality monitor selected, and on reasonable terms determined, by the department, pursuant to a selection process conducted notwithstanding sections one hundred twelve or one hundred sixty-three of the state finance law, for purposes of monitoring the operator's compliance with a written and mandatory corrective plan and reporting to the department on the implementation of such corrective action, when the department has determined in its discretion that operational deficiencies exist at such facility that show:

1. a condition or conditions in substantial violation of the standards for health, safety, or resident care established in law or regulation that constitute a danger to resident health or safety;

2. a pattern or practice of habitual violation of the standards of health, safety, or resident care established in law or regulation; or

3. any other condition dangerous to resident life, health, or safety. Such written mandatory corrective plans shall include caps on administrative and general costs that are unrelated to providing direct care (including providing at least minimum staffing levels as determined by the department) or care coordination.

§ 3. The public health law is amended by adding a new section 2803-x to read as follows:

§ 2803-x. Requirements related to residential health care facilities and related assets. 1. The operator of a residential health care facility shall notify the commissioner of any common or familial ownership of any corporation, other entity or individual providing services to the operator or the facility.

2. The operator of a residential health care facility shall, on an annual basis, attest to the department, in a form determined by the department, to the accuracy of the information provided to the department under this section.

3. The operator of a residential health care facility may not enter into any arrangement to guarantee the debt or other obligation of a party which has not received establishment approval.

4. The operator of a residential health care facility shall notify the department at least ninety days prior to executing a letter of intent or other contractual agreement related to the sale, mortgaging, encumbrance, or other disposition of the real property of the facility.

5. In any instance where a residential health care facility is sold or otherwise transferred and used for a purpose which is not a health care purpose, the operator shall remit to the department an amount equivalent to the undepreciated value of capital assets for which the provider has been funded or reimbursed through Medicaid rate adjustments or otherwise funded or reimbursed with resources provided by the state for the purpose of improvement or transformation.

§ 4. The public health law is amended by adding a new section 2803-y to read as follows:

§ 2803-y. Provision of residency agreement. The operator of a residential health care facility shall provide to prospective residents who inquire about admission, and post on its website, a copy of the facility's entire approved residency agreement, including the non-governmental rates charged to residents.

§ 5. Severability clause. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 6. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the commissioner of health shall make regulations and take other actions necessary to implement this act on that date.