STATE OF NEW YORK

8733

IN SENATE

March 5, 2024

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Aging

AN ACT to amend the social services law, in relation to mandatory reporting of senior abuse or maltreatment

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

Section 1. Article 9-B of the social services law is amended by adding a new title 4 to read as follows:

TITLE 4

DUTY TO REPORT SENIOR ABUSE

Section 473-f. Duty to report senior abuse.

§ 473-f. Duty to report senior abuse. 1. As used in this section:

(a) "Senior" means a person sixty years of age or older.

(b) "Person legally responsible for a senior" means and includes the senior's custodian, guardian or any other person formally or informally responsible for the senior's care at the relevant time, any person acting with power of attorney, trustee appointed by a court, or any person who by consent, contract or legal order acts to arrange the affairs of the senior.

(c) "Abused senior" means and includes a senior abused in any of the following manners:

(i) "Physical abuse" means the non-accidental use of force that results in the suffering of bodily injury, physical pain or impairment resulting from the use of physical force against a senior, including but not limited to, striking with or without an object, hitting, beating, pushing, shoving, shaking, kicking, pinching, being slapped, burned, cut, bruised or improperly physically restrained. Physical abuse also includes any physical signs of impairment or of being subjected to punishment, or signs of being restrained, or a senior's report of being hit, slapped, kicked, or mistreated.

(ii) "Sexual abuse" means non-consensual sexual contact of any kind with a senior, including but not limited to, unwanted touching, sexual assault or battery, rape, sodomy, coerced nudity, and sexually explicit photographing, forcing sexual contact or forcing sex with a third party.

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

LBD14766-01-4

(iii) "Emotional or psychological abuse" means willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult. Emotional or psychological abuse may also include the infliction of anguish, pain or distress through verbal or nonverbal acts, including but not limited to verbal assaults, insults, threats, intimidation, humiliation, and harassment, infantilizing a senior, isolating a senior from his or her family, friends or regular activities, or enforced social isolation, the results of which may be evinced by impairments including but not limited to the caregiver's refusal to allow visitors to see a senior alone, or changes in the senior's behavior that result in the senior being emotionally upset or agitated, being extremely withdrawn and noncommunicative or nonresponsive, unusual behavior usually attributed to dementia (e.g. sucking, biting, rocking).

(iv) "Neglect" means the refusal or failure to fulfill any part of a person's obligations or duties to a senior, failure of a person who has fiduciary responsibilities to provide care for a senior or the failure on the part of an in-home service provider to provide such necessary care, including the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to such senior, the results of which may be evinced by such visible physical impairments as dehydration, malnutrition, untreated bed sores, and poor personal hygiene, unattended or untreated health problems, hazardous or unsafe living conditions/arrangements, unsanitary and unclean living conditions (e.g. dirt, fleas, lice on person, soiled bedding, fecal/urine smell, inadequate clothing).

(v) "Abandonment" means the desertion of a senior by an individual who has assumed responsibility for providing care for such senior, or by a person with physical custody of a senior, including but not limited to the desertion of a senior at a hospital, a nursing facility, or other similar institution, or the desertion of a senior at a shopping center or other public location; or a senior's report of being abandoned.

(vi) "Financial or material exploitation" means the illegal or improper use of a senior's funds, property, or assets, including without limitation cashing a senior's checks without authorization or permission, forging a senior's signature, misusing or stealing a senior's money or possessions, coercing or deceiving a senior into signing a document such as a contract or a will, or improper use of conservatorship, guardianship, or power of attorney.

(vii) "Self-neglect" means the behavior of an elderly person that threatens his or her own health or safety through the refusal or failure to provide himself or herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions.

2. Adult protective services shall establish a registry that shall be capable of receiving reports by telephone, fax, e-mail, and any other forms of communication the local commissioner of social services deems appropriate, alleging that a senior has become an abused senior, or immediately identifying prior reports of abuse involving such senior or other persons named in the report.

3. The following persons are required to report or cause a report to be made in accordance with this section when, while acting in their professional or official capacity, they have reasonable cause to suspect

that a senior coming before them is an abused senior, or when they have reasonable cause to suspect that a senior is an abused senior, as defined in subdivision one of this section:

(a) any health care worker, including any physician, physician assistant, surgeon, medical examiner, coroner, dentist, dental hygienist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, psychologist, registered nurse, emergency medical technician, or any hospital or nursing home and assisted living personnel engaged in the admission, examination, care or treatment of persons, or any other health care or health services practitioner, including a Christian Science practitioner, acupuncturist, or other such person;

(b) any social worker, social services worker, or any provider of family or group family day care;

(c) any mental health professional, substance abuse counselor or alcoholism counselor;

(d) any person, including a director, operator, employee, volunteer, or contractor, in a public, private, or not-for-profit facility which provides care to one or more seniors and which is licensed or registered pursuant to the provisions of this chapter or the public health law;

(e) any peace officer, police officer, district attorney or assistant district attorney, investigator employed in the office of a district attorney or other law enforcement official; and

(f) any banker, financial consultant, attorney, or paralegal with access to a senior's financial records or resources or legal documents or who possesses power of attorney for such senior.

The local commissioner of social services shall further define and enumerate in regulations persons and occupations which are required to report when they suspect that a senior has become an abused senior.

4. Reports of senior abuse made pursuant to this section shall be made within forty-eight hours of discovery to adult protective services by telephone, fax, e-mail or any other communication protocol on a form supplied by the local commissioner of social services. Oral reports shall be followed by a report in writing within forty-eight hours after such oral report.

5. Written reports shall be made in a manner prescribed by and on forms supplied by the local commissioner of social services and shall include the following information:

(a) the name and address of the senior;

(b) the person responsible for his or her care, if known;

(c) the name and address of the care facility or program in which the senior resides or is receiving care;

(d) the senior's age, sex and race;

(e) the nature and extent of the injuries, abuse or maltreatment, including any evidence of prior injuries, abuse or maltreatment;

(f) the name of the person or persons alleged to be responsible for causing the injury, abuse or maltreatment, if known;

(g) family composition, where appropriate;

(h) the source of the report;

(i) the person making the report and where he or she can be reached;

(j) the actions taken by the reporting source, including the taking of photographs and technological scans, or notifying the medical examiner or coroner; and

(k) any other information which the local commissioner of social services may by regulation require, or which the person making the report believes might be helpful, in the furtherance of the intent and purposes of this article.

6. Whenever such person required to report under this section in his or her capacity as a member of the staff of a medical or other public or private institution, facility or agency, he or she shall make the report as required by this section and immediately notify the person in charge of such institution, facility or agency, or the designated agent of such person. Such person in charge, or the designated agent of such person, shall be responsible for all subsequent administration necessitated by the report. Nothing in this section is intended to require more than one report from any such institution, facility or agency.

7. A person or official required to report suspected senior abuse or maltreatment who has reasonable cause to suspect that a senior died as a result of abuse or maltreatment shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his or her finding to the police, the appropriate district attorney, the local social services office, and, if the institution making the report is a hospital, the hospital.

8. A medical or other public or private institution, facility or agency 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 because such employee believes that he or she has reasonable cause to suspect that an individual coming before him or her is a victim of senior abuse and that employee therefore makes a report in accordance with this section. No residential care facility provider, hospital, medical institution provider or mental health facility provider shall impose any conditions, including prior approval or prior notification, upon a member of their staff specifically required to report under this section. At the time of the making of a report, or at any time thereafter, such person or official may exercise the right to request the findings of an investigation made pursuant to this section.

9. Any person, institution, facility, agency, organization, partnership or corporation which employs persons mandated to report suspected senior abuse shall provide all such current and new employees with written information explaining the reporting requirements set out in this section. The employers shall be responsible for the costs associated with printing and distributing the written information.

10. Any person, official or institution required by this section to report a case of suspected abuse or maltreatment of a senior who willfully fails to do so shall be guilty of a class A misdemeanor and shall be civilly liable for the damages proximately caused by such failure.

§ 2. This act shall take effect immediately. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such date.