§ 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 abused, mistreated, 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, or employee of any corporation, partnership, organization or other entity which, and any other person who, is under contract 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.

2. In addition to those persons required to report suspected abuse, mistreatment, 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 abused, mistreated, neglected or subjected to the misappropriation of property in the facility.

3. Reports of suspected abuse, mistreatment, 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 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 abuse, mistreatment, neglect or misappropriation of property, if known; the nature and extent of the abuse, mistreatment, 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 abuse, mistreatment, 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 abuse, mistreatment, 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 abuse, mistreatment, 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 abuse, mistreatment, 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 abuse, mistreatment, 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, reasonable effort shall be made to notify, personally or by certified mail, any person under investigation for having committed an act of abuse, mistreatment, 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 abuse, neglect, 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 abuse, neglect, 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 abuse, mistreatment, 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 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 sealed, the commissioner shall notify any official notified pursuant to paragraph (a) of this subdivision that the information has been 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 abuse, neglect, mistreatment or misappropriation of property, or as having failed to report such an incident, may request in writing that the commissioner amend or 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 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 sealed, the commissioner shall notify any official notified pursuant to paragraph (a) of this subdivision that the information has been 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 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 abuse, neglect, 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 abuse, mistreatment, 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 abuse, mistreatment, neglect, misappropriation of 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 abuse, neglect, 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 abuse, mistreatment, 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 abuse, mistreatment, neglect and misappropriation of property of persons receiving care or services in residential health care facilities. No individual identifying information concerning any individual 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 sealing of, statistical data which would not reveal the identity of any person.

10. An investigation shall be made of each incident reported pursuant to this section.

11. The commissioner shall adopt regulations necessary to implement this section.