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Senate Bill No. 548

(By Senator Stollings)

[Introduced February 9, 2012; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

A BILL to amend and reenact §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, all relating to the confidentiality of adult protective services records; listing persons and entities to whom records may be disclosed; and providing notification procedures of investigations concerning incapacitated adults or facility residents.

Be it enacted by the Legislature of West Virginia:

That §9-6-8 and §9-6-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-8. Confidentiality of records.

(a) Except as otherwise provided in this section, all records of the department, state and regional long-term care ombudsmen, nursing home or facility administrators, the office of health

1 facility licensure and certification and all protective services
2 agencies concerning an adult or facility resident under this
3 article shall be confidential and shall not be released, except in
4 accordance with the provisions of section eleven of this article.

5 (b) Unless the adult concerned is receiving adult protective
6 services or unless there are pending proceedings with regard to the
7 adult, the records maintained by the adult protective services
8 agency ~~shall~~ may be destroyed ~~thirty~~ fifty years following their
9 preparation. ~~A circuit court or the supreme court of appeals may~~
10 ~~subpoena such records, but shall, before permitting their use in~~
11 ~~connection with any court proceeding, review the same for relevancy~~
12 ~~and materiality to the issues in the proceeding, and may issue such~~
13 ~~order to limit the examination and use of such records or any part~~
14 ~~requirements of the litigation as shall be just.~~

15 (c) Notwithstanding the provisions of subsection (a) of this
16 section or any other provision of this code to the contrary, all
17 records concerning reports of abuse, neglect or exploitation of
18 vulnerable adults, including all records generated as a result of
19 those reports, may be made available to:

20 (1) Employees or agents of the department.

21 (2) Any law-enforcement agency investigating a report of known
22 or suspected abuse, neglect or exploitation of a vulnerable adult.

23 (3) The prosecuting attorney of the judicial circuit in which

1 the vulnerable adult resides or in which the alleged abuse, neglect
2 or exploitation occurred.

3 (4) A circuit court or the Supreme Court of Appeals
4 subpoenaing such records. The court shall, before permitting use
5 of the records in connection with any court proceeding, review the
6 records for relevancy and materiality to the issues in the
7 proceeding. The court may issue an order to limit the examination
8 and use of the records or any part of the record.

9 (5) A grand jury, by subpoena, upon its determination that
10 access to the records is necessary in the conduct of its official
11 business.

12 (6) The recognized protection and advocacy agency for the
13 disabled of the State of West Virginia;

14 (7) The victim.

15 (8) The victim's legal representative, unless he or she is the
16 subject of an investigation.

17 (d) Notwithstanding the provisions of subsection (a) of this
18 section or any other provision of this code to the contrary,
19 summaries concerning substantiated investigative reports of abuse,
20 neglect or exploitation of adults may be made available to:

21 (1) Any person whom the department has determined has abused,
22 neglected or exploited the victim;

23 (2) Any appropriate official of the state or regional

1 long-term care ombudsman investigating a report of known or
2 suspected abuse, neglect or exploitation of a vulnerable adult;

3 (3) Any person engaged in bona fide research or auditing.
4 However, information identifying the subjects of the report may not
5 be made available to the researcher.

6 (4) Employees or agents of an agency of another state that has
7 jurisdiction to investigate known or suspected abuse, neglect or
8 exploitation of vulnerable adults.

9 (5) A professional person when the information is necessary
10 for the diagnosis and treatment of, and service delivery to, a
11 vulnerable adult.

12 (6) A department administrative hearing officer when the
13 hearing officer determines the information is necessary for the
14 determination of an issue before the officer.

15 (e) The identity of any person reporting abuse, neglect or
16 exploitation of a vulnerable adult may not be released, without
17 that person's written consent, to any person other than employees
18 of the department responsible for protective services or the
19 appropriate prosecuting attorney or law-enforcement agency. This
20 subsection grants protection only for the person who reported the
21 abuse, neglect or exploitation and protects only the fact that the
22 person is the reporter. This subsection does not prohibit the
23 subpoena of a person reporting the abuse, neglect or exploitation

1 when determined necessary by the prosecuting attorney or the
2 department to protect a vulnerable adult who is the subject of a
3 report, if the fact that the person made the report is not
4 disclosed.

5 **§9-6-9. Mandatory reporting of incidences of abuse, neglect or**
6 **emergency situation.**

7 (a) If any medical, dental or mental health professional,
8 Christian Science practitioner, religious healer, social service
9 worker, law-enforcement officer, humane officer, state or regional
10 ombudsman or any employee of any nursing home or other residential
11 facility has reasonable cause to believe that an incapacitated
12 adult or facility resident is or has been neglected, abused or
13 placed in an emergency situation, or if such person observes an
14 incapacitated adult or facility resident being subjected to
15 conditions that are likely to result in abuse, neglect or an
16 emergency situation, the person shall immediately report the
17 circumstances pursuant to the provisions of section eleven of this
18 article: *Provided*, That nothing in this article is intended to
19 prevent individuals from reporting on their own behalf.

20 (b) In addition to those persons and officials specifically
21 required to report situations involving suspected abuse or neglect
22 of an incapacitated adult or facility resident or the existence of
23 an emergency situation, any other person may make such a report.

1 (c) The secretary shall develop a form for the filing of
2 written complaints, as provided by section eleven of this article,
3 and provide these forms to all nursing homes or other residential
4 facilities, hospitals, ombudsmen and adult protective service
5 agencies in this state. The forms shall be designed to protect the
6 identity of the complainant, if desired, and to facilitate the
7 prompt filing of complaints.

8 (d) The Department of Health and Human Resources shall develop
9 and implement a procedure to notify any person mandated to report
10 suspected abuse and neglect of an incapacitated adult or facility
11 resident of whether an investigation into the reported suspected
12 abuse or neglect has been initiated and when the investigation is
13 completed.

NOTE: The purpose of this bill is to allow for disclosure of otherwise confidential information to certain persons so as to provide greater cooperation among the related entities, the protected person, or persons having a fiduciary relationship to the protected person for the detection, prevention and correction of abuse, neglect and exploitation of all disabled adults or elderly persons. A new provision allows the release of information to the perpetrator of abuse, neglect or exploitation of a protected person consistent with due process procedures.

The bill also requires notification to mandated reporters of whether an investigation has been initiated and completed by the department.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would

be added.