

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4279

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[Originating in the House Committee on Health and
Human Resources on February 8, 2018.]

1 A BILL to amend and reenact §9-6-1 and §9-6-2 of the Code of West Virginia, 1931, as amended,
2 relating to adult protective services system; defining terms; and adding a goal that must
3 be consider when creating a rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

1 As used in this article:

2 (1) "Adult protective services agency" means any public or nonprofit private agency,
3 corporation, board or organization furnishing protective services to adults;

4 (2) "Abuse" means the infliction or threat to inflict physical pain or injury on or the
5 imprisonment of any incapacitated adult or facility resident;

6 (3) "Neglect" means

7 ~~(A) the unreasonable failure by a caregiver to provide the care necessary to assure the~~
8 ~~physical safety or health of an incapacitated adult; or~~

9 ~~(B) The unlawful expenditure or willful dissipation of the funds or other assets owned or~~
10 ~~paid to or for the benefit of an incapacitated adult or resident.~~

11 (4) "Incapacitated adult" means any person who by reason of physical, mental or other
12 infirmity is unable to independently carry on the daily activities of life necessary to sustaining life
13 and reasonable health;

14 (5) "Emergency" or "emergency situation" means a situation or set of circumstances which
15 presents a substantial and immediate risk of death or serious injury to an incapacitated adult;

16 (6) "Financial exploitation" means the intentional misappropriation or misuse of funds or
17 assets of an incapacitated adult or facility resident, but does not apply to a transaction or
18 disposition of funds or assets where a person made a good faith effort to assist the incapacitated
19 adult or facility resident with the management of his or her money or other things of value;

20 ~~(6)~~ (7) “Legal representative” means a person lawfully invested with the power and
21 charged with the duty of taking care of another person or with managing the property and rights
22 of another person, including, but not limited to, a guardian, conservator, medical power of attorney
23 representative, trustee or other duly appointed person;

24 ~~(7)~~ (8) “Nursing home” or “facility” means any institution, residence, intermediate care
25 facility for individuals with an intellectual disability, care home or any other adult residential facility,
26 or any part or unit thereof, that is subject to the provisions of §16-5C-1 *et seq.*, §16-5D-1 *et seq.*
27 §16-5E-1 *et seq.*, or §16-5H-1 *et seq.* §16-5C-1 *et seq.* of this code;

28 ~~(8)~~ (9) “Regional long-term care ombudsman” means any paid staff of a designated
29 regional long-term care ombudsman program who has obtained appropriate certification from the
30 Bureau for Senior Services and meets the qualifications set forth in §16-5I-7 of this code;

31 ~~(9)~~ (10) “Facility resident” means an individual living in a nursing home or other facility, as
32 that term is defined in subdivision (7) of this section;

33 ~~(10)~~ (11) “Responsible family member” means a member of a resident’s family who has
34 undertaken primary responsibility for the care of the resident and who has established a working
35 relationship with the nursing home or other facility in which the resident resides. For purposes of
36 this article, a responsible family member may include someone other than the resident’s legal
37 representative;

38 ~~(11)~~ (12) “State Long-term Care Ombudsman” means an individual who meets the
39 qualifications of §16-5I-5 of this code and who is employed by the State Bureau for Senior
40 Services to implement the State Long-term Care Ombudsman Program;

41 ~~(12)~~ (13) “Secretary” means the Secretary of the Department of Health and Human
42 Resources.

43 ~~(13)~~ (14) “Caregiver” means a person or entity who cares for or shares in the responsibility
44 for the care of an incapacitated adult on a full-time or temporary basis, regardless of whether such
45 person or entity has been designated as a guardian or custodian of the incapacitated adult by any

46 contract, agreement or legal procedures. Caregiver includes health care providers, family
47 members, and any person who otherwise voluntarily accepts a supervisory role towards an
48 incapacitated adult.

**§9-6-2. Adult protective services; immunity from civil liability; rules; organization and
duties.**

1 (a) There is continued within the Department of Health and Human Resources the system
2 of adult protective services heretofore existing.

3 (b) The secretary shall propose rules for legislative approval in accordance with the
4 provisions of §29A-3-1 *et seq.* of this code regarding the organization and duties of the adult
5 protective services system and the procedures to be used by the department to effectuate the
6 purposes of this article. The rules may be amended and supplemented from time to time.

7 (c) The secretary shall design and arrange such rules to attain, or move toward the
8 attainment, of the following goals to the extent that the secretary believes feasible under the
9 provisions of this article within the state appropriations and other funds available:

10 (1) Assisting adults who are abused, neglected, financially exploited or incapacitated in
11 achieving or maintaining self-sufficiency and self-support and preventing, reducing and
12 eliminating their dependency on the state;

13 (2) Preventing, reducing and eliminating neglect, financial exploitation and abuse of adults
14 who are unable to protect their own interests;

15 (3) Preventing and reducing institutional care of adults by providing less intensive forms
16 of care, preferably in the home;

17 (4) Referring and admitting abused, neglected, financially exploited or incapacitated adults
18 to institutional care only where other available services are inappropriate;

19 (5) Providing services and monitoring to adults in institutions designed to assist adults in
20 returning to community settings;

21 (6) Preventing, reducing and eliminating the exploitation of incapacitated adults and facility
22 residents through the joint efforts of the various agencies of the Department of Health and Human
23 Resources, the adult protective services system, the state and regional long-term care
24 ombudsmen, administrators of nursing homes or other residential facilities and county
25 prosecutors;

26 (7) Preventing, reducing and eliminating abuse, ~~and neglect,~~ and financial exploitation of
27 residents in nursing homes or facilities; and

28 (8) Coordinating investigation activities for complaints of financial exploitation, abuse and
29 neglect of incapacitated adults and facility residents among the various agencies of the
30 Department of Health and Human Resources, the adult protective services system, the state and
31 regional long-term care ombudsmen, administrators of nursing homes or other residential
32 facilities, county prosecutors, if necessary, and other state or federal agencies or officials, as
33 appropriate.

34 (d) No adult protective services caseworker may be held personally liable for any
35 professional decision or action thereupon arrived at in the performance of his or her official duties
36 as set forth in this section or agency rules promulgated thereupon: *Provided*, That nothing in this
37 subsection protects any adult protective services worker from any liability arising from the
38 operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton
39 misconduct or intentional misconduct.

40 (e) The rules proposed by the secretary shall provide for the means by which the
41 department shall cooperate with federal, state and other agencies to fulfill the objectives of the
42 system of adult protective services.

NOTE: The purpose of this bill is to specifically provide that the goals of the legislative rules applicable to the adult protective services system within the Department of Health and Human Services separately include the preventing, reducing and eliminating of the financial exploitation of residents of nursing homes or facilities.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.