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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO HEALTH AND SAFETY -- LICENSING OF HEALTH CARE FACILITIES

Introduced By: Senators Conley, Coyne, Crowley, Lynch Prata, and Lombardi

Date Introduced: February 01, 2017

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-17.8-2 and 23-17.8-9 of the General Laws in Chapter 23-17.8
2 entitled "Abuse in Health Care Facilities" are hereby amended to read as follows:

3 **23-17.8-2. Duty to report.**

4 (a) Any physician, medical intern, registered nurse, licensed practical nurse, nurse's aide,
5 orderly, certified nursing assistant, medical examiner, dentist, optometrist, optician, chiropractor,
6 podiatrist, coroner, police officer, emergency medical technician, fire-fighter, speech pathologist,
7 audiologist, social worker, pharmacist, physical or occupational therapist, or health officer, or any
8 person, within the scope of their employment at a facility or in their professional capacity, who
9 has knowledge of or reasonable cause to believe that a patient or resident in a facility has been
10 abused, mistreated, or neglected shall make, within twenty-four (24) hours or by the end of the
11 next business day, a telephone report to the director of the department of health or his or her
12 designee for those incidents involving health care facilities, and in addition to the office of the
13 state long-term care ombudsperson for those incidents involving nursing facilities, assisted living
14 residences, home-care and home nursing-care providers, veterans' homes and long-term care units
15 in Eleanor Slater Hospital, or to the director of the department of behavioral healthcare,
16 developmental disabilities and hospitals or his or her designee and to the state-designated
17 ombudsperson for services for intellectually/developmentally disabled individuals for those
18 incidents involving community residences for people who are mentally retarded or persons with
19 developmental disabilities. The report shall contain:

1 (1) The name, address, telephone number, occupation, and employer's address and the
2 phone number of the person reporting;

3 (2) The name and address of the patient or resident who is believed to be the victim of the
4 abuse, mistreatment, or neglect;

5 (3) The details, observations, and beliefs concerning the incident(s);

6 (4) Any statements regarding the incident made by the patient or resident and to whom
7 they were made;

8 (5) The date, time, and place of the incident;

9 (6) The name of any individual(s) believed to have knowledge of the incident;

10 (7) The name of any individual(s) believed to have been responsible for the incident.

11 (b) In addition to those persons required to report pursuant to this section, any other
12 person may make a report if that person has reasonable cause to believe that a patient or resident
13 of a facility has been abused, mistreated, or neglected.

14 (c) Any person required to make a report pursuant to this section shall be deemed to have
15 complied with these requirements if a report is made to a high managerial agent of the facility in
16 which the alleged incident occurred. Once notified, the high managerial agent shall be required to
17 meet all reporting requirements of this section within the time frames specified by this chapter.

18 (d) Telephone reports made pursuant to subsection (a) shall be followed-up within three
19 (3) business days with a written report.

20 **23-17.8-9. Duties of the directors of the department of health and the department of**
21 **mental health, retardation, and hospitals.**

22 The directors of the department of health and the department of mental health, retardation
23 and hospitals or their designee shall:

24 (1) Immediately notify the attorney general or his or her designee [and to the state-](#)
25 [designated ombudsperson for services for intellectually/developmentally disabled individuals](#)
26 upon receipt of an oral or written report made pursuant to § 23-17.8-2;

27 (2) Investigate and evaluate the information reported in the reports. The investigation and
28 evaluation shall be made within twenty-four (24) hours if the department has reasonable cause to
29 believe the patient's or resident's health or safety is in "immediate jeopardy"; within seven (7)
30 days for reports deemed by the department to be of "non-immediate jeopardy -- high potential for
31 harm"; within twenty-one (21) days for reports deemed by the department to be of "non-
32 immediate jeopardy -- medium potential for harm"; and within sixty (60) days for reports deemed
33 by the department to be of "non-immediate jeopardy -- low potential for harm." The investigation
34 shall include a visit to the facility, an interview with the patient or resident allegedly abused,

1 mistreated, or neglected, a determination of the nature, extent, and cause or causes of the injuries,
2 the identity of the person or persons responsible for the injuries, and all other pertinent facts. The
3 determination shall be in writing;

4 (3) Evaluate the environment at the facility named in the report and make a written
5 determination of the risk of physical or emotional injury to any other patients or residents in the
6 same facility;

7 (4) Forward to the attorney general [and to the state-designated ombudsperson for services](#)
8 [for intellectually/developmentally disabled individuals](#) within a reasonable time after a case is
9 initially reported pursuant to § 23-17.8-2, subject to subdivision (1), a summary of the findings
10 and recommendations on each case;

11 (5) If the director or the director's designee has reasonable cause to believe that a patient
12 or resident has died as a result of abuse, mistreatment, or neglect, immediately report the death to
13 the attorney general, [to the state-designated ombudsperson for services for](#)
14 [intellectually/developmentally disabled individuals](#), and the office of the medical examiner. The
15 office of the medical examiner shall investigate the report and communicate its preliminary
16 findings, orally within seventy-two (72) hours, and in writing within seven (7) working days, to
17 the attorney general [and to the state-designated ombudsperson for services for](#)
18 [intellectually/developmentally disabled individuals](#). The office of the medical examiner shall also
19 communicate its final findings and conclusions, with the basis for its final findings and
20 conclusions, to the same parties within sixty (60) days;

21 (6) Promulgate any regulations that may be necessary to implement the provisions of this
22 chapter;

23 (7) Maintain a file of the written reports prepared pursuant to this chapter. The written
24 reports shall be confidential, but shall be released to the attorney general [and to the state-](#)
25 [designated ombudsperson for services for intellectually/developmentally disabled individuals](#) or
26 to a court of competent jurisdiction, and may be released, upon written request and with the
27 approval of the director or his or her designee, to the patient or resident, counsel, the reporting
28 person or agency, the appropriate review board, or a social worker assigned to the case. [The](#)
29 [office of the state-designated ombudsperson shall also be authorized to make public reports of](#)
30 [abuse investigations](#).

31 SECTION 2. Section 40.1-27-3 of the General Laws in Chapter 40.1-27 entitled
32 "Penalties for Abuse of Persons with Developmental Disabilities" is hereby amended to read as
33 follows:

34 **40.1-27-3. Duties of the director of the department of behavioral healthcare,**

1 **developmental disabilities and hospitals.**

2 The director of the department of behavioral healthcare, developmental disabilities and
3 hospitals or his or her designee shall:

4 (1) Notify the attorney general or his or her designee, the chair of the program's human
5 rights committee [and to the state-designated ombudsperson for services for](#)
6 [intellectually/developmentally disabled individuals](#) forthwith upon receipt of an oral or written
7 report made pursuant to § 40.1-27-2;

8 (2) Investigate and evaluate or cause to be investigated and evaluated the information
9 reported in those reports. The investigation and evaluation shall be made within twenty-four (24)
10 hours if the director of the department of behavioral healthcare, developmental disabilities and
11 hospitals has reasonable cause to believe the participant's health or safety is in immediate danger
12 of further abuse or neglect and within seven (7) days for all other reports. The investigations shall
13 include a visit to the program, an interview with the participant allegedly abused, mistreated or
14 neglected, an interview with all witnesses to the alleged incident, a determination of the nature,
15 extent, and cause or causes of the injuries, the identity of the person or persons responsible
16 therefor, all other pertinent facts and recommendations to prevent further abuse, mistreatment or
17 neglect of the participant or other program participants. The determination shall be in writing;

18 (3) Evaluate the environment in the program named in the report and make a written
19 determination of the risk of physical or emotional injury to any other participants in the same
20 program;

21 (4) Forward to the attorney general and the chair of the program's human rights
22 committee [and to the state-designated ombudsperson for services for](#)
23 [intellectually/developmentally disabled individuals](#) within fifteen (15) days after a case is initially
24 reported pursuant to § 40.1-27-2 a summary of the findings and recommendations on each case;

25 (5) If the director of the department of behavioral healthcare, developmental disabilities
26 and hospitals has reasonable cause to believe that a participant had died as a result of abuse,
27 mistreatment, or neglect, immediately report the death to the attorney general, [to the state-](#)
28 [designated ombudsperson for services for intellectually/developmentally disabled individuals,](#)
29 and to the office of the medical examiner. The office of the medical examiner shall investigate the
30 report and communicate its preliminary findings, orally within seventy-two (72) hours, and in
31 writing within seven (7) working days to the attorney general, [to the state-designated](#)
32 [ombudsperson for services for intellectually/developmentally disabled individuals,](#) and to the
33 department of behavioral healthcare, developmental disabilities and hospitals. The office of the
34 medical examiner shall also communicate its final findings and conclusions, with the basis

1 therefore to the same parties within sixty (60) days;

2 (6) Promulgate such regulations as may be necessary to implement the provisions of this
3 chapter; and

4 (7) Maintain a file of the written reports prepared pursuant to this chapter. The written
5 reports shall be confidential, but shall be released to the attorney general, [to the state-designated](#)
6 [ombudsperson for services for intellectually/developmentally disabled individuals, or](#) to a court of
7 competent jurisdiction, and upon written request to the participant, his or her counsel, the
8 reporting person or agency, the appropriate review board or a social worker assigned to the case.
9 [The office of the state-designated ombudsperson shall be authorized to make public reports of](#)
10 [abuse investigations.](#)

11 SECTION 3. Section 40.1-22-4 of the General Laws in Chapter 40.1-22 entitled
12 "Developmental Disabilities" is hereby amended to read as follows:

13 **40.1-22-4. General powers and duties of the director.**

14 (a) The director of mental health, retardation, and hospitals is charged with the execution
15 of laws relating to the admission and care of the developmentally disabled.

16 (b) The director shall be responsible for the facilities in the department and such others as
17 are approved to function under this chapter for the purpose of determining whether the provisions
18 of this law relating to admission and care of developmentally disabled persons are being complied
19 with, and giving such residents of the facilities as may request it, suitable opportunity to converse
20 with him or her or them apart from the officers and attendants thereof. The director shall act with
21 power to investigate the question of developmental disability and condition of any person who is
22 a resident of any institution for the developmentally disabled, public or private, or restrained in
23 his or her liberty by reason of alleged developmental disability at any place within the state, and
24 shall discharge any such person, if in his or her opinion he or she is not developmentally disabled
25 or can be cared for after discharge without serious harm to him or herself or others. For such
26 purposes, the director is empowered to hold hearings, subpoena witnesses, compel their
27 attendance, administer oaths to witnesses, examine witnesses under oath, and require the
28 production of any books, documents, papers, or records deemed relevant to the inquiry under
29 investigation. A subpoena issued under this section shall be regulated by civil practice laws and
30 rules.

31 (3) The director may assign a portion of any state facility, for the holding of religious
32 service, to be used exclusively for the benefit of the patients and employees of the facility, subject
33 to such conditions as may be imposed by the director.

34 (4) The director may:

1 (i) Examine all facilities, public and private, licensed by him or her or authorized by law
2 to receive, admit, and care for the developmentally disabled; and

3 (ii) Inquire into their methods of government and management of all persons therein; and

4 (iii) Examine into the condition of all buildings, grounds, and other property connected
5 with the facility, and into all matters relating to its management.

6 (5) The director may promulgate and adopt such rules and regulations governing the
7 management of the facilities, both public and private, as he or she may deem necessary to carry
8 out the provisions of this chapter to insure the comfort, promote the welfare, and protect the rights
9 of the residents.

10 (6) Any patient, or person representing the patient shall be furnished, upon request, all
11 information and reports upon which a director or other resident physician made his or her or their
12 determination or finding that the patient is a developmentally disabled person.

13 (7) Subject to appropriation, the director shall, in conjunction with the secretary of the
14 office of health and human services, designate and contract with an independent ombudsperson
15 for services for intellectually/developmentally disabled individuals. The ombudsperson shall have
16 professional background in the practice, knowledge, and experience of working with individuals
17 with intellectual/developmental disabilities.

18 SECTION 4. Section 40.1-24-12 of the General Laws in Chapter 40.1-24 entitled
19 "Persons With Mental Illness, Addiction/Substance Abuse Disorders and Developmental
20 Disabilities" is hereby amended to read as follows:

21 **40.1-24-12. Confidentiality of information.**

22 Information received by the department through filed reports, inspection, or as otherwise
23 authorized under this chapter, shall not be disclosed publicly in such manner as to identify
24 individuals or facilities and programs, except in a proceeding involving the question of licensure,
25 or the final report of resident abuse investigation and reporting as cited in §23-17.8-9.

26 SECTION 5. Section 40.1-24.5-11 of the General Laws in Chapter 40.1-24.5 entitled
27 "Community Residences" is hereby amended to read as follows:

28 **40.1-24.5-11. Confidentiality of information and records.**

29 (a) The fact of admission and all information and records compiled, obtained, or
30 maintained in the course of providing services to persons under this chapter shall be confidential.

31 (b) Except as provided in subsections (c) and (d), the fact of admission and all
32 confidential information and records shall not be released without the written consent of the
33 resident concerned.

34 (c) No consent for release of confidential information and records is required in the

1 following situations:

2 (1) To proper medical or psychiatric authorities for the purpose of providing emergency
3 medical or psychiatric treatment when the resident's life or health is in immediate jeopardy.

4 (2) Between or among residence staff within the same community residence for purposes
5 of coordinating services for a resident.

6 (3) For program evaluation and/or research, provided that the director of mental health,
7 retardation, and hospitals adopts rules ensuring the anonymity of the resident's identity. The rules
8 shall include, but need not be limited to, the requirement that all evaluators and researchers must
9 sign an oath of confidentiality, agreeing not to divulge, publish, or otherwise make known to
10 unauthorized persons or the public any information obtained in the course of the evaluation or
11 research regarding residents who have received services such that the resident who received the
12 services is identifiable.

13 (4) Pursuant to an order of a court of competent jurisdiction.

14 [\(5\) To the state-designated ombudsperson for services for intellectually/developmentally](#)
15 [disabled individuals.](#)

16 (d) If a resident is deceased, consent for release of information deemed confidential under
17 this section may be obtained from his or her personal representative, or in the absence of a
18 personal representative, his or her surviving spouse. If there is neither a personal representative
19 nor surviving spouse, consent may be obtained from the resident's kindred of the closest degree;
20 if there is more than one person of lawful age within the same degree of kindred, each shall
21 individually possess the right to provide consent.

22 SECTION 6. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- LICENSING OF HEALTH CARE FACILITIES

1 This act would create the position of a state-designated ombudsperson for services for
2 intellectually/developmentally disabled individuals.

3 This act would take effect upon passage.

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