

SENATE BILL 47

O2

7lr0081

(PRE-FILED)

By: **Chair, Finance Committee (By Request – Departmental – Aging)**

Requested: October 11, 2016

Introduced and read first time: January 11, 2017

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Reporting Abuse to the Long-Term Care Ombudsman Program and the Office of**
3 **Health Care Quality**

4 FOR the purpose of establishing a certain exception to certain provisions of law requiring
5 reporting of suspected abuse, neglect, self-neglect, or exploitation of an alleged
6 vulnerable adult; clarifying the entities to which a person is required to report
7 suspected abuse of a resident of a certain related institution; requiring a report to
8 each entity; repealing a requirement that a recipient of a certain report promptly
9 notify certain other persons; establishing that the Long-Term Care Ombudsman
10 Program may notify certain entities of certain alleged abuse only under certain
11 circumstances; clarifying the entities to which a law enforcement agency is required
12 to submit a report of the findings of a certain investigation; clarifying the entities to
13 which the Secretary of Health and Mental Hygiene is required to submit a report of
14 the findings of a certain investigation; and generally relating to certain abuse
15 reporting requirements.

16 BY repealing and reenacting, with amendments,
17 Article – Family Law
18 Section 14-302
19 Annotated Code of Maryland
20 (2012 Replacement Volume and 2016 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Health – General
23 Section 19-347
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2016 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
27 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Family Law

14–302.

(a) (1) [Notwithstanding] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, NOTWITHSTANDING** any law on privileged communications, each health practitioner, police officer, or human service worker who contacts, examines, attends, or treats an alleged vulnerable adult, and who has reason to believe that the alleged vulnerable adult has been subjected to abuse, neglect, self–neglect, or exploitation shall:

[(1)] (I) notify the local department; and

[(2)] (II) if acting as a staff member of a hospital or public health agency, immediately notify and give all the information required by this section to the head of the institution or the designee of the head.

(2) AN OMBUDSMAN, AS DEFINED IN § 10–901 OF THE HUMAN SERVICES ARTICLE, SHALL COMPLY WITH 42 U.S.C. § 3058G(D)(2) AND MAY NOT DISCLOSE THE IDENTITY OF A RESIDENT OR COMPLAINANT EXCEPT AS AUTHORIZED UNDER 42 U.S.C. § 3058G(D)(2).

(b) An individual who is required to make a report under subsection (a) of this section shall make the report by telephone, direct communication, or in writing to the local department as soon as possible.

(c) Any individual other than a health practitioner, human service worker, or police officer who has reason to believe that an alleged vulnerable adult has been subjected to abuse, neglect, self–neglect, or exploitation may file with the local department an oral or written report of the suspected abuse, neglect, self–neglect, or exploitation.

(d) Insofar as is reasonably possible, an individual who makes a report under this section shall include in the report the following information:

(1) the name, age, and home address of the alleged vulnerable adult;

(2) the name and home address of the person responsible for the care of the alleged vulnerable adult;

(3) the whereabouts of the alleged vulnerable adult;

(4) the nature of the alleged vulnerable adult’s incapacity;

(5) the nature and extent of the abuse, neglect, self–neglect, or exploitation of the alleged vulnerable adult, including evidence or information available to the reporter

1 concerning previous injury possibly resulting from abuse, neglect, self–neglect, or
2 exploitation; and

3 (6) any other information that would help to determine:

4 (i) the cause of the suspected abuse, neglect, self–neglect, or
5 exploitation; and

6 (ii) the identity of any individual responsible for the abuse, neglect,
7 self–neglect, or exploitation.

8 **Article – Health – General**

9 19–347.

10 (a) (1) In this section the following words have the meanings indicated.

11 (2) (i) “Abuse” means the non–therapeutic infliction of physical pain or
12 injury, or any persistent course of conduct intended to produce or resulting in mental or
13 emotional distress.

14 (ii) “Abuse” does not include the performance of an accepted medical
15 procedure that a physician orders.

16 (3) “Law enforcement agency” means the Department of State Police or a
17 police agency of a county or municipal corporation.

18 (b) (1) A person who believes that a resident of a related institution has been
19 abused shall report promptly the alleged abuse to an appropriate law enforcement agency,
20 the [Secretary] **OFFICE OF HEALTH CARE QUALITY IN THE DEPARTMENT, [or] AND**
21 the [Department of Aging] **LONG–TERM CARE OMBUDSMAN PROGRAM ESTABLISHED**
22 **UNDER § 10–902 OF THE HUMAN SERVICES ARTICLE.**

23 (2) A report:

24 (i) May be oral or written; and

25 (ii) Shall contain as much information as the reporter is able to
26 provide.

27 (3) [The recipient of the report promptly shall notify:

28 (i) The other parties referred to in paragraph (1) of this subsection;
29 and

30 (ii) Unless the administrator is the alleged abuser, the
31 administrator of the related institution.] **THE LONG–TERM CARE OMBUDSMAN**

1 **PROGRAM MAY NOTIFY THE OFFICE OF HEALTH CARE QUALITY OR A LAW**
2 **ENFORCEMENT AGENCY OF AN ALLEGED ABUSE ONLY IF THE RESIDENT OR THE**
3 **RESIDENT'S LEGAL REPRESENTATIVE CONSENTS TO THE NOTIFICATION.**

4 (c) Any employee of a related institution who is required to report alleged abuse
5 under subsection (b) of this section, and who fails to report the alleged abuse within 3 days
6 after learning of the alleged abuse, is liable for a civil penalty of not more than \$1,000.

7 (d) (1) Unless otherwise provided, the law enforcement agency, with the
8 assistance of the Secretary, shall:

9 (i) Investigate thoroughly each report of an alleged abuse; and

10 (ii) Attempt to insure the protection of the alleged victim.

11 (2) The investigation shall include:

12 (i) A determination of the nature, extent, and cause of the abuse;

13 (ii) The identity of the alleged abuser; and

14 (iii) Any other pertinent fact or matter.

15 (3) Within 10 working days after the completion of the investigation, the
16 law enforcement agency shall submit a written report of its findings to:

17 (i) The State's Attorney;

18 (ii) The Secretary;

19 (iii) The local [ombudsman as designated by the Secretary of Aging]
20 **LONG-TERM CARE OMBUDSMAN ENTITY, AS DEFINED IN § 10-901 OF THE HUMAN**
21 **SERVICES ARTICLE;**

22 (iv) Unless the administrator is the alleged abuser, the
23 administrator of the related institution; and

24 (v) The [Division of Licensing and Certification] **OFFICE OF**
25 **HEALTH CARE QUALITY** of the Department of Health and Mental Hygiene.

26 (e) The law enforcement agency:

27 (1) Shall refer to the Secretary for investigation reported instances of abuse
28 involving any persistent course of conduct intended to produce or resulting in mental or
29 emotional distress; and

1 (2) May refer to the Secretary for investigation reported instances of
2 patient-to-patient abuse.

3 (f) Within 10 working days after the completion of an investigation under
4 subsection (d) of this section, the Secretary shall submit a written report of its findings to:

5 (1) The State's Attorney;

6 (2) The local [ombudsman as designated by the Secretary of Aging]
7 **LONG-TERM CARE OMBUDSMAN ENTITY, AS DEFINED IN § 10-901 OF THE HUMAN**
8 **SERVICES ARTICLE**; and

9 (3) Unless the administrator is the alleged abuser, the administrator of the
10 related institution.

11 (g) A person shall have the immunity from liability described under § 5-631 of
12 the Courts and Judicial Proceedings Article for:

13 (1) Making a report under this section;

14 (2) Participating in an investigation arising out of a report under this
15 section;

16 (3) Participating in a judicial proceeding arising out of a report under this
17 section; or

18 (4) Participating in transferring, suspending, or terminating the
19 employment of any individual who is believed to have abused or aided in abusing a resident
20 under this section.

21 (h) (1) The Department shall provide each related institution with signs that
22 set forth the reporting requirements under this section.

23 (2) The related institution shall post the signs conspicuously in the
24 employee and public areas of the related institution.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2017.