

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

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: January 27, 2017

CHAPTER _____

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~~ altering a requirement that a recipient of a certain report
9 promptly notify certain other persons; ~~establishing that the Long Term Care~~
10 ~~Ombudsman Program may notify certain entities of certain alleged abuse only under~~
11 ~~certain circumstances~~; clarifying the entities to which a law enforcement agency is
12 required to submit a report of the findings of a certain investigation; clarifying the
13 entities to which the Secretary of Health and Mental Hygiene is required to submit
14 a report of the findings of a certain investigation; and generally relating to certain
15 abuse 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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 19-347
2 Annotated Code of Maryland
3 (2015 Replacement Volume and 2016 Supplement)

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

6 **Article – Family Law**

7 14-302.

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

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

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

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

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

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

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

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

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

1 (3) the whereabouts of the alleged vulnerable adult;

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

3 (5) the nature and extent of the abuse, neglect, self–neglect, or exploitation
4 of the alleged vulnerable adult, including evidence or information available to the reporter
5 concerning previous injury possibly resulting from abuse, neglect, self–neglect, or
6 exploitation; and

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

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

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

12 Article – Health – General

13 19–347.

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

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

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

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

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

27 (2) A report:

28 (i) May be oral or written; and

29 (ii) Shall contain as much information as the reporter is able to
30 provide.

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

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

3 (ii) Unless the administrator is the alleged abuser, A RECIPIENT OF
4 A REPORT PROMPTLY SHALL NOTIFY, TO THE EXTENT ALLOWED BY FEDERAL AND
5 STATE LAW, the administrator of the related institution. ~~THE LONG TERM CARE~~
6 ~~OMBUDSMAN PROGRAM MAY NOTIFY THE OFFICE OF HEALTH CARE QUALITY OR A~~
7 ~~LAW ENFORCEMENT AGENCY OF AN ALLEGED ABUSE ONLY IF THE RESIDENT OR THE~~
8 ~~RESIDENT'S LEGAL REPRESENTATIVE CONSENTS TO THE NOTIFICATION.~~

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

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

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

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

16 (2) The investigation shall include:

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

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

19 (iii) Any other pertinent fact or matter.

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

22 (i) The State's Attorney;

23 (ii) The Secretary;

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

27 (iv) Unless the administrator is the alleged abuser, the
28 administrator of the related institution; and

29 (v) The [Division of Licensing and Certification] ~~OFFICE OF~~
30 ~~HEALTH CARE QUALITY~~ of the Department of Health and Mental Hygiene.

1 (e) The law enforcement agency:

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

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

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

9 (1) The State's Attorney;

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

13 (3) Unless the administrator is the alleged abuser, the administrator of the
14 related institution.

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

17 (1) Making a report under this section;

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

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

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

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

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

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