

52:27G-2 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 52:27G-2 et a. (Elderly persons—reporting system for abused patients)

LAWS OF: 1983 CHAPTER: 43

Bill No.: A455

Sponsor(s): Girgenti and Zangari

Date Introduced: Pre-filed

Committee: Assembly: Corrections, Health and Human Services

Senate: Institutions, Health and Welfare

Amended during passage Yes // Amendments during passage denoted by asterisks

Date of Passage: Assembly: June 28, 1982

Senate: Dec. 2, 1982

Date of Approval: Jan. 27, 1983

Following statements are attached if available:

Sponsor statement: Yes //

Committee statement: Assembly Yes //

Senate Yes //

Fiscal Note: /// No

Veto Message /// No

Message on Signing: Yes //

Following were printed:

Reports: Yes //

Hearings: Yes //

Recommendations for legislation in:

974.90 Governor's Conference on Aging (1981: Trenton State College)

044 Governor's Conference on Aging, March 24, 1981, Trenton

198! State College: "today, tomorrow, together."

March 24, 1981, Trenton, 1981.

(See especially, pp. 30-32, 56-58, 137)

(over)

974.90 Governor's Conference on Aging (1981: Trenton State College)
O44 Report and recommendations: toward an aging policy:
1981a today, tomorrow, together. March 24, 1981. Trenton, 1981
(see especially pp.32, 86)

White House Conference on Aging mentioned in above reports:

305.26 White House Conference on Aging.
Whi Reports. Washington, D.C. National Council
on the Aging, 1980-82.

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 455

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Assemblymen GIRGENTI and ZANGARI

AN ACT to amend and supplement "An act concerning the health, safety, welfare, civil and human rights of elderly persons, establishing the Office of the Ombudsman for the Institutionalized Elderly, and making an appropriation," approved September 29, 1977 (P. L. 1977, c. 239, C. 52:27G-1 et seq.).

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Section 2 of P. L. 1977, c. 239 (C. 52:27G-2) is amended to read
2 as follows:

3 2. As used in this act, unless the context clearly indicates other-
4 wise:

5 a. "Abuse" means the willful infliction of physical pain, injury
6 or mental anguish; unreasonable confinement; or, the willful
7 deprivation of services which are necessary to maintain a person's
8 physical and mental health. **However, no person shall be deemed
8A to be abused for the sole reason he is being furnished nonmedical
8B remedial treatment by spiritual means through prayer alone in ac-
8C cordance with a recognized religious method of healing in lieu of
8D medical treatment.**

9 [a.] b. An "act" of any facility or government agency shall be
10 deemed to include any failure or refusal to act by such facility or
11 government agency;

12 [b.] c. "Administrator" means any person who is charged
13 with the general administration or supervision of a facility whether
14 or not such person has an ownership interest in such facility, and
15 whether or not such person's functions and duties are shared with
16 one or more other persons;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted June 21, 1982.

**—Senate committee amendments adopted October 25, 1982.

17 *d. "Caretaker" means a person employed by a facility to provide*
 18 *care or services to an elderly person, and includes, but is not limited*
 19 *to, the administrator of a facility.*

20 *e. "Exploitation" means the ****[unconscionable]**** act or pro-*
 21 *cess of using a person or his resources for another person's profit*
 21A *or advantage ****without legal entitlement to do so****.*

22 **[c.] f.** "Facility" means any facility or institution, whether
 23 public or private, offering health or health related services for the
 24 institutionalized elderly, and which is subject to regulation, visita-
 25 tion, inspection, or supervision by any government agency.
 26 Facilities include, but are not limited to, nursing homes, skilled
 27 nursing homes, intermediate care facilities, extended care facilities,
 28 convalescent homes, rehabilitation centers, ****[homes for the**
 29 **aged]**** ****residential health care facilities****, special hospitals,
 30 veterans hospitals, chronic disease hospitals, psychiatric hospitals,
 31 mental hospitals, mental retardation centers or facilities, day care
 32 facilities for the elderly ****[,]**** ****and**** medical day care cen-
 33 ters **[,]**** ****[and boarding homes or other homes for the sheltered**
 33A **care]****;

34 **[d.] g.** "Government agency" means any department, division,
 35 office, bureau, board, commission, authority, or any other agency or
 36 instrumentality created by the State **[,]**** or to which the State is a
 37 party, or by any county or municipality, which is responsible for
 38 the regulation, visitation, inspection or supervision of facilities, or
 39 which provides services to patients, residents or clients of facilities;

40 **[e.] h.** "Guardian" means any person with the legal right to
 41 manage the financial affairs and protect the rights of any patient,
 42 resident or client of a facility who has been declared a mental in-
 43 competent by a court of competent jurisdiction;

44 **[f.] i.** "Institutionalized elderly," **[or]** "elderly" or "elderly
 45 person" means any **[adult]** person 60 years of age or older who is
 46 a patient, resident or client of any facility;

47 **[g.] j.** "Office" means the Office of the Ombudsman for the In-
 48 stitutionalized Elderly established herein;

49 **[h.] k.** "Ombudsman" means the administrator and chief execu-
 50 tive officer of the Office of the Ombudsman for the Institutionalized
 51 Elderly;

52 **[i.] l.** "Patient, resident or client" means any elderly person
 53 who is receiving treatment or care in any facility in all its aspects
 54 including, but not limited to, admission, retention, confinement,
 55 commitment, period of residence, transfer, discharge **[,]**** and any
 56 instances directly related to such status.

1 2. (New section) a. Any caretaker, social worker, physician

2 ***[or]** ******, registered or licensed practical nurse *or other profes-*
 3 *sional* ****[working in a facility]** ****** who ******, *as a result of informa-*
 4 *tion obtained in the course of his employment* ****** has reasonable
 5 cause to suspect or believe that an *institutionalized* elderly per-
 6 son is being or has been abused or exploited, shall report such
 6A ****[inforamtion]** ****** *information* ****** in a timely manner to the om-
 6B budsman or to the person designated by him to receive such reports.

7 b. Such report shall contain the name and address of the elderly
 8 person, information regarding the nature of the suspected abuse or
 9 exploitation and any other information which might be helpful in
 10 an investigation of the case and the protection of such elderly
 11 person.

12 c. Any other person having reasonable cause to suspect or
 13 believe that an elderly person is being or has been abused or
 14 exploited may report such information to the ombudsman or to the
 15 person designated by him to receive such report.

16 d. The name of any person who reports suspected abuse or
 17 exploitation pursuant to this act ***[and the name of any person**
 18 **mentioned in such report]** shall not be disclosed unless the person
 19 who reported the abuse or exploitation specifically requests such
 20 disclosure or a judicial proceeding results from such report.

21 e. Any person who reports suspected abuse or exploitation
 22 pursuant to this act or who testifies in any administrative or judicial
 23 proceeding arising from such report or testimony shall have im-
 24 munity from any civil or criminal liability on account of such
 25 report or testimony, unless such person has acted in bad faith or
 26 with malicious purpose.

27 f. Any person required to report suspected abuse or exploitation
 28 pursuant to this act who fails to make such report shall be fined not
 29 more than \$500.00. Such penalty shall be collected and enforced
 30 by summary proceedings pursuant to "the penalty enforcement
 31 law" (N. J. S. 2A:58-1 et seq.).

32 ***g. No provision of this act shall be deemed to require the dis-*
 33 *closure of, or penalize the failure to disclose, any information which*
 34 *would be privileged pursuant to the provisions of sections 18*
 35 *through 23 inclusive, of P. L. 1960, c. 52 (C. 2A:84A-18 through*
 36 *2A:84A-23).* ******

1 3. (New section) a. Upon receiving a report that an elderly
 2 person may be or may have been abused or exploited, the ombuds-
 3 man shall ***[cause]** ***conduct*** a prompt and thorough ***[evalua-**
 4 **tion to be made.** The evaluation may be made by either the Office
 5 of the Ombudsman or an appropriate government agency, at the
 6 discretion of the ombudsman] ***investigation pursuant to section**

7 8 of P. L. 1977, c. 239 (C. 52:27G-8) ****[and shall notify any]****
8 ******. Within 24 hours of receipt of the report the ombudsman shall
9 notify the Commissioner of Human Services and any other ****** gov-
9A ernmental agency which regulates or operates the facility that the
9B report has been received*.

10 b. The ****[evaluation]**** *investigation* shall include a visit with
11 the elderly person and consultation with others who have knowl-
12 edge of the particular case. When the ****[evaluation]**** *investiga-*
13 *tion* is completed, findings and recommended action shall be pre-
14 pared in a written report and submitted to the ****[ombudsman]****
14A ****Commissioner of Human Services****.

15 c. The person who reported the suspected abuse or exploitation
16 shall be promptly notified ****[of such findings and recommended**
17 **action]**** *that action is being taken*.*.

18 d. If a determination is made that an elderly person may have
19 been *criminally* abused or exploited, the ombudsman shall refer
20 such findings, in writing, to the county prosecutor.

1 4. (New section) The ombudsman shall maintain a central
2 registry of all reports of suspected abuse or exploitation and all
3 ****[evaluations]**** *investigations**, findings and recommended action.
4 No information received and compiled in such registries shall be
5 construed as a public record.

1 5. This act shall take effect immediately.

STATEMENT

This bill provides for a reporting system for the protection of elderly persons who are patients or residents of facilities. Professionals and nonprofessionals in the fields of health and social services are required to inform the Office of the Ombudsman for the Institutionalized Elderly when they have reasonable cause to believe that any elderly person has been abused or exploited. The ombudsman, in turn, shall cause a prompt and thorough evaluation to be made. Upon completion of the evaluation of each case, findings and recommended action shall be prepared in a written report and findings of abuse or exploitation shall be referred to the county prosecutor.

A455 (1983)

ASSEMBLY CORRECTIONS, HEALTH AND
HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 455

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 21, 1982

This bill establishes a system for reporting and investigating of suspected incidents of abuse or exploitation of elderly persons who reside in nursing homes and other care facilities.

As amended by the committee, the bill requires physicians, nurses, social workers and other professionals working in a facility to report suspected incidents of abuse or exploitation to the Ombudsman for the elderly in the Department of Community Affairs.

The bill defines *abuse* as (1) infliction of physical pain, injury or mental anguish, (2) unreasonable confinement or (3) the deprivation of services necessary to maintain a resident's physical and mental health. *Exploitation* means any unconscionable act which uses a person or person's resources for the advantage or profit of another.

The bill directs the ombudsman to investigate the suspected incident and to notify the appropriate governmental licensing and operating agency of the report of suspected abuse or exploitation. The ombudsman is further directed to refer the issue to the county prosecutor upon a determination that the elderly person may have been criminally abused or exploited.

This bill provides that the names of persons reporting the suspected abuse shall be kept confidential unless judicial proceedings result. Further, persons reporting or testifying as to any abuse are provided immunity from civil or criminal liability unless acting in bad faith or with malicious purpose.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 455

STATE OF NEW JERSEY

DATED: OCTOBER 25, 1982

This bill requires the reporting and investigating of suspected incidents of abuse or exploitation of elderly persons who reside in health care facilities.

As amended by committee, the bill requires physicians, nurses, social workers and other professionals to report suspected incidents of abuse or exploitation to the Ombudsman for the Institutionalized Elderly. The penalty for failure to report such incidents shall be a fine of up to \$500.00.

The bill directs the ombudsman to investigate the reported incident promptly and to notify the appropriate government agency that the report has been received. The ombudsman also is directed to maintain a central registry of all reports, investigations and findings and to refer his findings to the county prosecutor if he determines that the elderly person may have been criminally abused or exploited.

The bill also provides that all reports shall be kept confidential and persons who make a report to testify in good faith about an incident of abuse or exploitation shall have immunity from civil or criminal liability.

The committee made technical amendments to the bill in accordance with recommendations by the Department of Human Services, the Department of the Public Advocate and the Christian Scientists.

OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATELY

CONTACT: CARL GOLDEN

THURSDAY, JANUARY 27, 1983

Governor Thomas H. Kean today signed legislation to establish a system for reporting abuses of elderly individuals in institutions and requires an investigation into reported abuses.

The legislation, A-455, sponsored by Assemblyman John A. Girgenti, (D-Passaic), provides that a central registry of reported abuses be maintained in the Office of the Ombudsman for the Institutionalized Elderly.

"There have been unfortunate incidents in the past in which elderly patients in certain institutions or care facilities have been subjected to either physical or mental abuses," Kean said. "These incidents have either gone unreported or came to light many months later when it was too late to take official action."

The Governor said the bill would provide "protection for the patient and comfort for the patient's family that he or she was receiving adequate care and was not being subjected to abuse of any kind."

The bill covers persons 60 years of age or older who are patients, residents or clients of facilities which fall within the jurisdiction of the Ombudsman's Office. These include facilities, public or private, which offer health related services for the institutionalized elderly and which are subject to government regulation.

The legislation requires professionals who, in the course of their employment, suspect a case of abuse to report the information to the Ombudsman's Office and provides for a fine of \$500 for any professional who willfully fails to make such a report.

Upon receiving the report, the Ombudsman is required to notify the Department of Human Services and any other government agency involved in regulating the facility involved.

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The Ombudsman, further, is required to investigate the report, including a visit with the individual and consultation with any other persons who may have knowledge of the reported abuse.

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