

LAWS OF DELAWARE
VOLUME 84
CHAPTER 529
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 393

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO ADULT PROTECTIVE SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3901, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3901. Legislative intent.

The General Assembly recognizes that many adult citizens of this State are subject to psychological or physical injury or exploitation because of physical or mental disability, impairment, illness or ~~condition~~ condition, or other causes which render them incapable of providing for their basic daily living needs. The General Assembly, therefore, intends through this chapter to establish a system of services for impaired or incapacitated adults designed to protect their health, ~~safety~~ safety, and welfare. The intent is to authorize only the least possible restrictions on the exercise of personal and civil ~~rights and such rights, and that~~ restrictions may be are permitted only when consistent with proven need for services.

Section 2. Amend § 3902, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3902. Definitions.

As used in this chapter:

(1) "Abuse" ~~means:~~ means any of the following:

a. Physical abuse by unnecessarily inflicting pain or injury on an adult who is ~~impaired; or~~ impaired or an adult who is incapacitated.

b. A pattern of emotional ~~abuse, which includes, but is not limited to,~~ abuse of an adult who is impaired or an adult who is incapacitated, including ridiculing or demeaning ~~an adult who is impaired the~~ adult, making derogatory remarks to ~~an adult who is impaired~~ adult, or cursing or threatening to inflict physical or emotional harm on ~~an adult who is impaired.~~ the adult.

c. Sexual abuse of an adult who is impaired or an adult who is incapacitated.

(2) “Adult Protective Services” means the adult protective services unit under the Division of Services for Aging and Adults with Physical Disabilities.

(2) “Adult who is impaired” ~~shall mean any person 18 years of age or over~~ means an individual 18 years or older who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the ~~person’s~~ individual’s own care and custody.

(3) “Alleged victim” ~~shall mean any~~ means an adult who is impaired, an adult who is incapacitated, ~~elderly~~ an elderly person, or ~~vulnerable that a vulnerable adult, and~~ may have been ~~abused, neglected or exploited~~ subject to abuse, neglect, self-neglect, or exploitation, based on a report to Adult Protective Services.

(4) “Caregiver” means ~~any~~ an adult who has assumed the permanent or temporary care, ~~custody~~ custody, or responsibility for the supervision of an adult who is ~~impaired~~ impaired or an adult who is incapacitated.

(5) “Court” means the Court of ~~Chancery of the State~~ Chancery.

(6) “Department” means the Department of Health and Social ~~Services of the State~~ Services.

(7) “Elderly person” ~~has the same meaning~~ means as defined in § 222 of Title 11.

(8) “Emergency” means that ~~a person~~ an individual is living in conditions which present a substantial risk of serious harm and ~~includes, but is not limited to,~~ includes problems which cannot be managed by ~~a person~~ an adult who is ~~impaired~~ impaired or an adult who is incapacitated, such as insufficient food supply, inadequate shelter, threatened or actual ~~abuse~~ abuse, or utility shut-off. Emergency does not mean psychiatric emergency as ~~provided for in~~ under Chapter 50 of Title 16.

(9) “Emergency services” ~~are~~ means protective services furnished to ~~a person~~ an individual in an emergency.

(10) “Essential services” ~~shall refer to those~~ means the physical, medical, social, ~~psychiatric~~ psychiatric, or legal services necessary to safeguard ~~the person, rights and~~ physical body, rights, or resources of ~~the person~~ an adult who is impaired or an adult who is incapacitated and to maintain the ~~person’s~~ adult’s physical ~~and~~ or mental well-being. ~~These services shall include, but not be limited to,~~ “Essential services” includes adequate food and clothing, heated and sanitary shelter, medical care for physical and mental health needs, assistance in personal hygiene, protection from health and safety hazards, or protection from physical or mental injury or exploitation.

(11) “Exploitation” means at least 1 of the following:

~~an~~ a. An act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past ~~behavior,~~ behavior.

~~or causing the~~ b. Causing a vulnerable adult to perform services for the benefit of another.

(12) “Financial exploitation” means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of ~~the an~~ elderly person or ~~the a~~ vulnerable adult by ~~any person an~~ individual or entity for ~~any person’s an individual’s~~ or entity’s profit or advantage other than for the ~~elder person elderly person’s~~ or the vulnerable adult’s profit or advantage. “Financial exploitation” ~~includes, but is not limited to:~~ includes any of the following:

a. The use of deception, intimidation, or undue influence by ~~a person an individual~~ or entity in a position of trust and confidence with an elderly person or a vulnerable adult to obtain or use the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of ~~a person an~~ individual or entity other than the elderly person or the vulnerable ~~adult;~~ adult.

b. The breach of a fiduciary duty, ~~including, but not limited to;~~ including the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the elderly person or the vulnerable adult for the benefit of ~~a person an individual~~ or entity other than the elderly person or the vulnerable ~~adult;~~ and adult.

c. Obtaining or using an elderly ~~person person’s~~ or a vulnerable adult’s property, income, resources, or trust funds without lawful authority, by ~~a person an individual~~ or entity who knows or clearly should know that the elderly person or the vulnerable adult lacks the capacity to consent to the release or use of ~~that elderly person’s or vulnerable adult’s~~ the property, income, resources, or trust funds.

(13) “Financial institution” means any of the following:

a. A “depository institution,” as defined in § 3(c) of the Federal Deposit Insurance Act (12 U.S.C. U.S.C. § 1813(c)).

b. A “federal credit union” or “state credit union,” as defined in § 101 of the Federal Credit Union Act (12 U.S.C. § 1752), ~~including, but not limited to;~~ including an institution-affiliated party of a credit union, as defined in § 206(r) of the Federal Credit Union Act (12 U.S.C. § 1786(r)).

c. An “institution-affiliated party,” as defined in § 3(u) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(u)).

d. ~~[Repealed.]~~

(14) ~~“Hazardous living condition” means a mode of life which contains a substantial risk of physical injury, or mental distress, or exploitation. [Repealed.]~~

(15) “Independent living arrangement” means a mode of life pursued by ~~a person~~ an individual capable of providing for the ~~person’s~~ individual’s own care or who, while impaired, nevertheless is able to live outside an institution with assistance in obtaining essential services.

(16) “Interested person” means any of the following:

a. ~~An adult relative or friend of a person~~ an adult who is impaired; impaired or an adult who is incapacitated.

~~an~~ b. ~~An official or representative of the protective services agency~~ Adult Protective Services or of any a public or nonpublic private agency; or agency that provides protective services.

~~any~~ c. ~~A corporation, board, organization or person designated by the Court~~ organization, or individual that the Court designates to act in the interest of the person adult who is impaired.

(17) “Mistreatment” means the failure to provide appropriate physical or emotional care to an adult who is ~~impaired; impaired or an adult who is incapacitated,~~ including the inappropriate use of medications, ~~isolation~~ isolation, or physical or chemical restraints on or of an adult who is ~~impaired; impaired or an adult who is incapacitated.~~

(18) “Neglect” ~~means;~~ means any of the following:

a. ~~Lack of attention by a caregiver~~ A caregiver’s lack of attention to physical needs of an adult who is ~~impaired including but not limited to~~ impaired or an adult who is incapacitated, including toileting, bathing, meals meals, and safety; safety.

b. ~~Failure by a caregiver~~ A caregiver’s failure to carry out a treatment plan prescribed by a ~~health care~~ health-care professional for an adult who is ~~impaired; or impaired or an adult who is incapacitated.~~

c. ~~Intentional~~ A caregiver’s intentional and permanent abandonment or desertion ~~in any place of~~ an adult who is impaired ~~by a~~ or an adult or is incapacitated because the caregiver who does not make reasonable efforts to ensure that essential ~~services, as defined in this section, will be~~ services are provided for said ~~adult who is impaired.~~ the adult.

(19) ~~“Person Adult who is incapacitated” means a person~~ includes an individual for whom a guardian of ~~person the individual’s physical body~~ or property, or both, ~~shall be appointed,~~ is appointed under § 3901 of Title 12.

(20) ~~“Physical or mental disability” shall include any physical or mental disability and shall include, but not be limited to,~~ includes a disability, including intellectual and developmental disabilities, brain damage, physical degeneration, deterioration, senility, disease, ~~habitual drunkenness or addiction to drugs, and mental or physical impairment.~~ or substance use disorder.

(21) ~~“Protective placement” means the transfer of a person out of an independent living arrangement.~~
[Repealed.]

(22) “Public Guardian” means the Office of the Public Guardian.

(23) “Self-neglect” means an adult’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks, including any of the following:

a. Obtaining essential food, clothing, shelter, or medical care.

b. Obtaining goods or services necessary to maintain physical health, mental health, or general safety.

c. Managing one’s own financial affairs.

(24) “Sexual abuse” means forced or unwanted sexual interaction, either a touching or non-touching act, with an adult who is impaired or an adult who is incapacitated.

(23) ~~“Substantially impaired in the ability to provide adequately for the person’s individual’s own care and custody” means the person~~ an adult who is impaired or an adult who is incapacitated, and the adult is unable to perform or obtain for ~~that person’s~~ the adult’s essential services.

(24) ~~“Vulnerable adult” means an adult who meets the criteria set forth in~~ under § 1105(c) of Title 11.

Section 3. Amend § 3903, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3903. Establishment of protective services system.

(a) ~~The Secretary of the Department shall appoint, within 6 weeks of July 1, 1982, an advisory committee to assist the Department in developing a comprehensive and coordinated system of protective services for adults who are impaired or incapacitated in the State. The committee shall consist of representatives of the Office of the Public Guardian, the Division of Social Services, the Division of Services for Aging and Adults with Physical~~

~~Disabilities, the Division of Developmental Disabilities Services, the Division of Substance Abuse and Mental Health, the Division of Public Health, and Elder Law Program and the Delaware Emergency Medical Services Oversight Council. The committee shall also include 3 members from either the medical profession or the general public. The Secretary, with the advice of the committee, The Secretary shall promulgate rules and regulations for the operation of the adult protective services program.~~

(b) The Department shall provide ~~those protective services and activities as described in subsections (b) and (c) of § 3904 of this title~~ according to the regulations promulgated by the Secretary. In doing so, ~~it~~ the Department may contract with ~~other agencies~~ another agency for the provision of services, or it may provide directly ~~any or all of those~~ the protective services.

(c) The Department shall utilize, to the extent possible, ~~those~~ the resources of a public ~~and~~ or private ~~nonprofit agencies~~ agency which ~~are~~ is appropriate and available in providing protective services.

(d) The Department shall designate 5 ~~persons~~ individuals as the initial staff ~~in beginning the delivery of to deliver~~ protective services. ~~They shall be~~ services, as follows:

(1) One ~~person~~ individual of at least the ~~master~~ primary family service specialist level as the overall supervisor of the protective services program.

(2) Three ~~persons~~ individuals of at least the senior family service specialist level, to function throughout the State.

(3) One family service specialist.

~~(e) Protective services as provided by this chapter and the regulation promulgated pursuant to it shall be provided by the Department 8 months after July 1, 1982. [Repealed.]~~

(f) The Department shall make continuing provisions in each county for the shelter of ~~those persons~~ an individual who ~~are~~ is determined to be in temporary need of ~~such~~ protection ~~pursuant to~~ under §§ 3905, 3906 and 3906, or 3907 of this title. In providing ~~this service~~ continuing provisions, the Department may do any of the following:

(1) ~~utilize~~ Utilize existing ~~resources~~ resources, such as a state ~~institutions;~~ institution.

(2) ~~it may contract~~ Contract for bed space in a private ~~facilities;~~ facility.

(3) ~~and it may utilize~~ Utilize the resources of a family care and residential ~~homes~~ home for ~~those~~ an alleged ~~victims~~ victim not requiring medical care.

(g) The Department may ~~also~~ make provisions for securing emergency food, clothing, fuel ~~allotments~~ allotments, and funds for ~~those persons~~ an individual determined to be in need of ~~such services, pursuant to § 3905, § 3906 or § 3907~~ protection under §§ 3905, 3906, or 3907 of this title, insofar as ~~such~~ the services are not available from ~~other~~ another state-supported ~~programs.~~ program. To the extent that funds are available for this purpose, the Department may draw upon the funds budgeted to provide emergency services as needed and, where possible, reimbursement ~~shall~~ must be made to the Department for the services provided which amounts shall revert to the General Fund of the State.

(h) When the Department receives a report concerning an allegation of abuse, neglect, or exploitation, the Department shall begin an investigation into the report within the following timeframes:

(1) For a report that includes an allegation of physical abuse, sexual abuse, or self-neglect, within 1 business day.

(2) For a report that includes an allegation of emotional abuse or neglect, within 3 business days.

(3) For a report that includes an allegation of exploitation, within 5 business days.

(i) The Department shall conduct ongoing training programs for relevant staff to advance the purpose of this chapter.

(j) The Department shall continuously publicize the existence of both of the following:

(1) The 24-hour report-line for those who are required to report abuse or neglect under § 3910 of this title.

(2) The 24-hour, statewide, toll-free telephone number for the public to report abuse or neglect.

Section 4. Amend Chapter 39 of Title 31 of the Delaware Code by transferring § 3904(a) and (b) of Title 31 to § 3902 of Title 31, redesignating present § 3904(a) and (b) of Title 31 accordingly, and making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3902. Definitions.

As used in this chapter:

~~(a) (21) “Protective services” are~~ means services that are furnished ~~to an adult who is impaired or incapacitated in an emergency situation as defined in § 3902 of this title.~~ in an emergency to an alleged victim.

“Protective services” includes any of the following:

~~(b) Protective services include, but are not limited to:~~

~~(1) a.~~ Preliminary investigation and evaluation of reports of adults the alleged victim needing protective services, including a comprehensive social evaluation.

~~(2) b.~~ Medical and psychiatric evaluation, if necessary.

~~(3) c.~~ Social casework for the purpose of planning and providing services ~~needed by the adult~~ alleged victim. that the alleged victim needs.

~~(4) d.~~ Maintenance of the ~~person in the person's~~ alleged victim in the alleged victim's own home through provision of personal care, ~~attendant and~~ attendant, or adult day services.

~~(5) e.~~ Assistance in obtaining out-of-home services such as respite care, emergency ~~housing and~~ housing, or placement in a long-term care facility.

~~(6) f.~~ Referral to or for any of the following:

~~for legal assistance;~~ 1. Legal assistance.

~~information~~ 2. Information on establishing power of attorney or representative payee ~~arrangements and~~ arrangements, or on guardianship of ~~person or property;~~ the alleged victim or the alleged victim's property.

~~referral to the Office of Public Guardian;~~ 3. The Office of the Public Guardian.

~~referral for medical~~ 4. Medical assistance.

~~(7) g.~~ Transportation to and from service ~~providers, if necessary.~~ providers.

~~(8) h.~~ Other services consistent with this chapter.

Section 5. Amend § 3904, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3904. ~~Nature~~ Provision of protective services; costs.

~~(a) Protective services are services furnished to an adult who is impaired or incapacitated in an emergency situation as defined in § 3902 of this title. [Transferred to § 3902 of Title 31.]~~

~~(b) Protective services include, but are not limited to: [Transferred to § 3902 of Title 31.]~~

~~(1) Preliminary investigation and evaluation of reports of adults needing protective services, including a comprehensive social evaluation.~~

~~(2) Medical and psychiatric evaluation, if necessary.~~

~~(3) Social casework for the purpose of planning and providing services needed by the adult alleged victim.~~

~~(4) Maintenance of the person in the person's own home through provision of personal care, attendant and adult day services.~~

~~(5) Assistance in obtaining out-of-home services such as respite care, emergency housing and placement in a long-term care facility.~~

~~(6) Referral for legal assistance, information on establishing power of attorney or representative payee arrangements and on guardianship of person or property; referral to the Office of Public Guardian; referral for medical assistance.~~

~~(7) Transportation to and from service providers, if necessary.~~

~~(8) Other services consistent with this chapter.~~

~~(c) In order to provide the services listed in subsection (b) of this section, the following services will be performed by the adult protective services unit~~ Adult Protective Services shall do all of the following:

~~(1) Informing~~ Inform and ~~educating~~ educate the citizens of the State on the needs of ~~protective service~~ alleged victims and the services available to them.

~~(2) Accepting and processing all referrals on, or applications~~ Accept and process each referral on, or application from, ~~adults in need of protective services;~~ an alleged victim.

~~(3) Home visits to all alleged victims;~~ Conduct a home visit to each alleged victim, if necessary.

~~(4) Counseling with~~ Counsel an ~~alleged victims~~ victim to assist ~~them~~ the alleged victim to accept needed services voluntarily.

~~(5) Referring~~ Refer an ~~alleged victims~~ victim to other ~~service providing~~ agencies ~~providing protective services,~~ arranging arrange for ~~visits~~ visits, and ~~following~~ follow up to determine that ~~needed services were delivered by those agencies.~~ the agencies delivered the needed protective services.

~~(6) Maintaining~~ Maintain case records and statistics.

~~(7) Contracting~~ Contract with existing public ~~and~~ or private agencies and professionals for the provision of protective services ~~not directly provided by the Department.~~ that the Department does not directly provide.

~~(8) Provision for shelter of those persons in temporary need of such protection,~~ pursuant to Provide an ~~alleged victim with temporary shelter, if needed,~~ under § 3903(f) of this title.

~~(9) Provisions for~~ Provide emergency food, clothing, fuel ~~allotments~~ allotments, and funds for ~~persons determined to be in need of such services.~~ an alleged victim, if needed.

(10) ~~Arranging for~~ Arrange the development of a system, in cooperation with public ~~and or~~ private community agencies, to ~~insure that emergencies requiring adult protection services will be handled on a~~ coordinated basis. ensure that protective services required for an emergency are coordinated.

(d)(1) ~~The cost of services provided by the State which are voluntarily accepted by the protective services~~ alleged victim shall be borne by the alleged victim, insofar as the alleged victim is able to pay for them from An alleged victim who voluntarily accepts protective services that Adult Protective Services or another agency of this State provides shall pay the costs of the services to the extent that the alleged victim is able from the alleged victim's own resources, insurance programs, Medicare, Medicaid Medicaid, or similar programs. ~~The Department shall determine the alleged victim's ability to pay for services from a fee schedule and income criteria which shall be established by the Secretary under the rulemaking authority provided by this chapter. For an alleged victim aggrieved by a decision regarding fees, a caseworker's determination may be appealed to the program administrator.~~

(2) ~~In the event that services are voluntarily accepted and no payment is made by an alleged victim whose resources are adequate for such payment, the State may take action in the Court to obtain reimbursement; provided, that efforts have been made to collect the account through other means. If an alleged victim voluntarily accepts protective services and does not pay for the services despite having adequate resources to pay for them, the State may take action in the Court to obtain reimbursement, after making efforts to collect payment through other means.~~

(3) ~~Where~~ If protective services are provided under court order, the Court may authorize reasonable payment to the Department from the resources of the ~~person~~ alleged victim, if the Department can prove to the satisfaction of the Court that payment may be made without endangering the welfare or interests of the ~~person served.~~ alleged victim.

(4) To the extent that funds are available, the cost of protective services not paid from the resources of ~~the~~ an alleged victim ~~shall~~ must be debited to ~~the adult protective services~~ Division of Services for Aging and Adults with Physical Disabilities' budget.

Section 6. Amend § 3905, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3905. Voluntary protective services.

(a) ~~Any~~ A qualified ~~person~~ individual may receive ~~adult~~ protective services, ~~provided the person if the~~ individual requests or affirmatively consents to receive ~~these~~ the services. If the ~~person~~ individual withdraws or

refuses consent, ~~the service shall not be provided~~ the Department may not provide the services unless by Court order.

(b) ~~No person shall~~ A person may not interfere with the provision of protective services to ~~a person an~~ individual who requests or consents to receive ~~such~~ services or ~~who has been ordered by Court to be provided with such services.~~ receives services by Court order. ~~In the event that~~ If interference occurs on a continuing basis, the Department or the ~~service recipient~~ individual receiving the services may petition the Court to enjoin ~~such~~ the interference.

Section 7. Amend § 3906, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3906. Involuntary protective services.

If ~~a person~~ an individual lacks the capacity to consent to receive protective services, ~~these~~ services may ~~only be given in~~ be provided by 1 or more of the following ways:

(1) ~~By a~~ A police officer, on probable cause of death or immediate and irreparable physical injury, ~~pursuant to~~ under § 3907 of this title.

(2) ~~By the~~ The Attorney General or a Deputy Attorney General of this State, on probable cause of death or immediate and irreparable physical injury, ~~pursuant to~~ under § 3907 of this title.

(3) ~~By an~~ An emergency order of the Court, ~~pursuant to~~ under § 3908 of this title. The Court shall order only that intervention which it ~~finds to be~~ determines is the least restrictive of the ~~person's~~ individual's liberty and rights, while consistent with the ~~person's~~ individual's welfare and safety. The Court shall state in its opinion the basis for such order and finding shall be stated in the opinion by the Court. ~~the order.~~

(4) ~~By the~~ The appointment of a guardian ~~pursuant to~~ under § 3901 of Title 12.

(5) ~~By a family service specialist~~ An Adult Protective Services staff member, on probable cause of death or immediate and irreparable physical injury ~~pursuant to~~ under § 3907 of this title.

Section 8. Amend § 3907, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3907. Probable cause of death or immediate and irreparable physical injury.

(a) ~~When~~ If probable cause exists to make a peace officer believe that ~~a person~~ an individual will suffer immediate and irreparable physical injury or death if not immediately placed in a health care facility or other

emergency ~~shelter and~~ shelter, and if that the ~~person~~ individual is incapable of giving consent, the peace officer may transport the ~~person~~ individual to an appropriate medical facility or emergency shelter.

(b) ~~The~~ If a peace officer transports an individual to an appropriate medical facility or emergency shelter under subsection (a) of this section, the peace officer shall immediately or at the beginning of the next working day notify the Department of all of the following:

~~such transfer and of~~ (1) The transport.

~~the~~ (2) The circumstances which necessitated ~~it~~ the transport.

~~and any~~ (3) Any other relevant information.

(c) ~~The adult protective services unit shall investigate, and~~ Adult Protective Services shall investigate and, if involuntary protective services are needed on a continuing basis for ~~a person so transported, proceedings shall be initiated for supplying such~~ the individual transported under subsection (a) of this section, must initiate for the provision of the services pursuant to under § 3908 of this title or ~~pursuant to~~ § 3901 of Title 12.

Section 9. Amend § 3908, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3908. Emergency petition and order for protective services.

(a) Upon petition by the Public Guardian or ~~adult protective services unit of the Department~~ Adult Protective Services, the Court may issue an order authorizing the provision of protective services on an emergency basis to an ~~adult person after finding~~ individual after finding on the ~~record,~~ record and, based on a preponderance of the ~~evidence that.~~ evidence, that all of the following exist:

(1) ~~The person is impaired or incapacitated, as defined in § 3902(2) or (19) of this title;~~ The individual is an adult who is impaired or an adult who is incapacitated.

(2) An emergency ~~exists, as defined in § 3902 of this title;~~ exists.

(3) The ~~person~~ individual lacks the capacity to consent to receive protective ~~services;~~ services.

(4) No person authorized by law or Court order to give consent for the ~~person~~ adult is available and willing to consent to emergency ~~services; and~~ services.

(5) ~~There are compelling reasons for ordering~~ A compelling reason exists to order services.

(b) In determining whether to issue an emergency order, the Court ~~is to consider;~~ shall consider all of the following:

(1) Only ~~such~~ the protective services ~~as are~~ necessary to remove the conditions creating the emergency ~~shall be ordered; may be ordered,~~ and the Court shall specifically designate the approved services in its order.

(2) Protective services authorized by an emergency order ~~shall~~ may not include hospitalization or change of residence unless the Court specifically finds ~~such~~ the action is necessary and gives specific approval for ~~such~~ the action in its order.

(3) Protective services may be provided through an emergency order for a maximum of 90 days upon a showing to the Court that continuation of the original order is necessary to remove the emergency. During this period the ~~person~~ adult who is impaired may petition the Court to have the emergency order removed.

(4) In its order, the Court shall appoint the petitioner or another interested person other than the service provider as temporary guardian of the ~~person of the person~~ physical body of the adult who is impaired or the adult who is incapacitated. The temporary guardian shall assume responsibility for the ~~person's~~ adult's welfare and ~~be granted therein~~ the Court's order shall grant the guardian authority to give consent for the ~~person~~ adult for the approved protective services until the expiration of the order.

(5) The issuance of an emergency order and the appointment of a temporary guardian ~~shall~~ does not deprive the ~~person~~ individual of any rights except to the extent validly provided for in the ~~order of appointment.~~ emergency order.

(6) To implement an emergency order, the Court may authorize forcible entry of the premises of the ~~person~~ adult who is impaired or the adult who is incapacitated for the purpose of rendering protective services or transporting the ~~person~~ adult to another location for ~~such~~ services. ~~Such forcible~~ Forcible entry may be authorized only after a showing to the Court that ~~attempts~~ an attempt to gain voluntary access to the premises ~~have~~ failed and forcible entry is necessary. The emergency order ~~of the Court shall~~ must include ~~an order to~~ authorization for the appropriate police department ~~authorizing~~ to execute forcible entry.

(c) ~~The petition~~ A petitioner for an emergency order shall ~~set forth~~ state, to the best of the petitioner's knowledge and ~~belief;~~ belief, all of the following:

(1) The petitioner's name, ~~address and interest of the petitioner;~~ address, and interest in the circumstances for which the petitioner seeks an emergency order.

(2) The name, ~~address~~ address, and approximate age of the ~~person~~ adult who is impaired or the adult who is incapacitated in need of protective ~~services;~~ services.

(3) If the information ~~can be obtained and if any exist,~~ exists and can be obtained, the names and addresses of the spouse and next of kin ~~of the person;~~ of the adult who is impaired or the adult who is incapacitated.

(4) The petitioner's attempts to contact the ~~persons~~ individuals named ~~in~~ under paragraph (c)(3) of this section and ~~their~~ the individuals' responses to the ~~situation;~~ situation.

(5) The petitioner's reasonable belief, ~~together with facts supportive thereof, and facts supporting the belief,~~ as to the existence of the facts stated ~~in~~ under paragraphs (a)(1) through (4) ~~(5)~~ (5) of this ~~section;~~ section.

(6) Facts showing petitioner's ~~attempts~~ attempt to obtain the ~~person's~~ adults consent to the ~~protective services and the outcomes of such attempts;~~ and outcome of the attempt.

(7) The proposed ~~protection~~ protective services.

(d)(1) Actual notice of the filing of ~~such a~~ a petition under this section and other relevant ~~information~~ information, including the factual basis of the belief that emergency services are needed and a description of the exact services to be rendered, ~~shall~~ must be given to the ~~person, and~~ adult who is impaired or adult who is incapacitated and, at the Court's discretion, to the ~~person's spouse, or~~ adult's spouse or, if none, to the ~~person's~~ adult's adult children, next of ~~kin~~ kin, or guardian if any.

~~Notice to any parties other than the person in need of services may be waived by the Court~~ (2) The Court may waive notice to a party other than the adult who is impaired or adult who is incapacitated and in need of protective services, if the petition avers with specificity that ~~such~~ notice would be detrimental to the ~~person who is impaired.~~ adult.

~~Such notice shall~~ (3) Notice must be given in language reasonably understandable by ~~their~~ the intended ~~recipients~~ recipient at least 24 hours prior to the hearing for emergency intervention, ~~and~~ or longer if possible.

(e) Upon the filing of a petition for an emergency order for protective services, the Court shall hold a hearing within 7 days or immediately, if necessary, ~~pursuant to~~ under § 3909 of this title.

(f) If the ~~person~~ adult who is impaired or the adult who is incapacitated continues to need protective services after the order and renewal ~~provided for in~~ under paragraph (b)(3) of this section has expired, ~~such~~ services ~~can only be rendered pursuant to~~ may be rendered only under the appointment of a guardian.

(g) The petitioner or ~~either~~ a witness supplying information ~~shall be~~ is immune from civil liability for damages as a result of filing the petition if the petitioner ~~acted~~ or witness acts in good faith and ~~believed the person to be in need of such~~ believes the adult who is impaired or the adult who is incapacitated needs assistance.

(h) ~~The~~ This chapter does not affect the authority of the police departments of this State to transfer ~~a person~~ an adult who is impaired or an adult who is incapacitated to a mental health facility in cases of a psychiatric emergency ~~are not affected by this chapter.~~ emergency under Chapter 50 of Title 16.

(i)(1) The Court may issue an order for forcible entry of a building or premises ~~if~~ Whenever the Court finds, based upon a verified petition, ~~affidavit~~ affidavit, or other evidentiary materials, that probable cause exists to believe ~~that:~~ that all of the following are true:

(1) ~~a person is impaired or incapacitated, as defined in § 3902(2) or (19) of this title;~~ The adult at the building or premises is an adult who is impaired or an adult who is incapacitated.

(2) ~~that an~~ b. An emergency exists, as defined in § 3902 of this title; ~~exists.~~

(3) ~~that the~~ c. The emergency threatens serious harm to ~~such person which~~ the adult who is impaired or the adult who is incapacitated and the harm may occur before a hearing on the petition for an emergency order may be ~~held;~~ held.

(4) ~~that the person~~ d. The adult who is impaired or the adult who is incapacitated is located in the building or premises ~~described;~~ and described.

(5) ~~that entry~~ e. Entry or access to ~~said~~ the building or premises is being ~~denied,~~ the Court may issue an order for entry: denied.

(2) The Court must sign the order for entry shall be signed by the Court, entry.

(3) The order for entry must include all of the following:

~~a. and shall contain the~~ The address of the building or premises where the ~~person is located~~ adult who is impaired or the adult who is incapacitated is located.

~~and the name of the person~~ b. The name of the adult who is impaired or the adult who is incapacitated reported to ~~be in~~ need of protective services.

~~The order for entry shall command~~ c. A command that entry to the building or premises where the ~~person~~ adult who is impaired or adult who is incapacitated is located be permitted for the purpose of seeing or interviewing, ~~assessing~~ assessing, and counseling the ~~person~~ adult named in the order.

~~The order for entry shall permit~~ d. Authorization for entry on a ~~day certain,~~ which shall be set forth date specified in the order.

~~Nothing contained in this subsection shall in any way~~ (4) This subsection may not be construed to limit or restrict entry ~~where~~ if the consent of the owner, ~~lessor~~ lessor, or lawful occupant is obtained.

~~Whenever (5) If~~ a member of the Court is unavailable, ~~any a~~ judge of the Superior Court may exercise the powers ~~conferred by~~ under this subsection.

Section 10. Amend § 3909, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3909. Hearing on petition.

(a) The hearing on a petition for involuntary protective services ~~shall~~ must be held under all of the following conditions:

(1) ~~The person~~ An individual needing protective services ~~shall~~ must be present unless the ~~person~~ individual has knowingly and voluntarily waived the right to be present or unless, because of physical or mental incapacity, the ~~person~~ individual cannot be present without endangering the ~~person's~~ individual welfare. Waiver or incapacity may not be presumed from nonappearance but ~~shall~~ must be determined on the basis of factual information ~~supplied to the Court by counsel or a caseworker.~~ that counsel or an Adult Protective Services caseworker supplies to the Court.

(2) ~~The adult who is impaired~~ An individual needing protective services has the right to counsel ~~whether or not the person is present~~ regardless of the individual's presence at the hearing. If the ~~person~~ individual is indigent or lacks the capacity to waive counsel, the Court shall appoint counsel. ~~Where the person~~ If the individual is indigent, the Court shall assess reasonable attorney's fees, such as are customarily charged by attorneys in this State for comparable services. To the extent that funding for this purpose is budgeted and available, ~~such funds shall~~ must be drawn from the budget for ~~adult protective services~~ the Division of Services for Aging and Adults with Physical Disabilities upon an order directing payment signed by the Court.

(3) ~~The person who is impaired~~ An individual needing protective services has the right to all of the following:

at a. At the expense of the ~~person who is impaired~~ individual or, if indigent, at the expense of the State, to secure an independent medical ~~and/or or~~ or psychological examination relevant to the issue involved in ~~any a~~ a hearing under this ~~section,~~ section.

~~and to have~~ b. Have presented a report of ~~this~~ an independent evaluation under paragraph (a)(3)a. of this section or to have the Court hear the evaluator's personal testimony as to the condition and circumstances of the ~~person who is impaired~~ individual as a part of the evidence presented ~~in~~ on the behalf of the ~~person~~ individual ~~who is impaired~~ at the hearing.

~~The person who is impaired shall have the right to have~~ c. Have witnesses and evidence subpoenaed ~~in the~~ on behalf of the ~~person who is impaired~~ individual and ~~to~~ have presented at the hearing ~~such~~ witnesses and evidence in support of the position of the ~~person who is impaired as the person who is~~ impaired individual as the individual desires.

(b) The Court shall record a statement of its findings in support of ~~any~~ an order for emergency ~~protective~~ services.

Section 11. Amend § 3910, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3910. Duty to report.

(a)(1) ~~Any person~~ A person, including a health-care professional as defined under § 701 of Title 16, having reasonable cause to believe that an adult ~~person is~~ who is impaired or ~~an adult who is~~ incapacitated as defined in § 3902 ~~of this title~~ and is in need of protective services ~~as defined in § 3904 of this title~~ shall report ~~such the~~ information supporting reasonable cause to the Department in the manner and format ~~published by the Department.~~ that the Department requires.

(2) Privilege does not relieve an individual or health-care professional from the duty to report under this section.

(b) Upon receipt of a report, the Department shall make a prompt and thorough evaluation to determine whether the ~~person~~ adult who is impaired or the adult who is incapacitated named in the report under subsection (a) of this section is in need of protective services and what services are needed, unless the Department determines that the report is frivolous or is without a factual basis. The evaluation may include a visit to the ~~person~~ adult and consultation with others having knowledge of the facts of ~~the particular~~ the adult's case. If outside professional assistance is required ~~in order~~ for a caseworker to complete an evaluation, the Department may contract with ~~professionals in order to provide such services.~~ an outside professional to provide the assistance.

(c)(1) If an employee of a financial institution who has direct contact with an account holder who is an elderly person or vulnerable adult has reasonable cause to believe that ~~such the~~ elderly person or vulnerable adult ~~who is an account holder~~ may be subject to past, ~~current~~ current, or attempted financial exploitation, ~~that the~~ employee shall follow ~~any~~ the financial institution's internal written policy, program, ~~plan~~ plan, or procedure ~~adopted by the financial institution~~ for the purpose of establishing protocols for the reporting of past, ~~current~~ current, or attempted financial exploitation.

~~Said~~ (2) The policies, programs, ~~plans plans~~, or procedures ~~shall under paragraph (c)(1) of this section must~~ require written reporting to the Department, in the format ~~published by the Department, that the Department~~ requires, by the earlier of the date on which the financial institution completes its investigation or 5 business days after the ~~bank~~ financial institution identifies a suspicious transaction ~~pursuant to under the financial institution's~~ adopted policies, programs, plans plans, or procedures adopted by the financial institution. procedures.

~~Such~~ (3) The policies, programs, ~~plans plans~~, or procedures ~~may, in addition, under paragraph (c)(1) of this~~ section may allow reporting to ~~agencies another agency in addition to the Department,~~ such as the Delaware Department of Justice or the Federal Trade Commission.

~~In addition, said~~ (4) The financial institution ~~shall be empowered to~~ may place a hold on a proposed transaction for a period of 10 business days following the filing of ~~the a report to the Department under paragraph~~ (c)(1) of this section. The financial institution may hold the proposed transaction ~~can be held another~~ an additional 30 business days at the request of an investigating federal or state agency or if the financial institution has not heard from either the Department or the ~~Delaware Department of Justice, or the~~ Delaware Department of Justice. The financial institution may also seek injunctive relief from a court of competent jurisdiction.

(d) ~~Any person~~ An individual, financial institution, or other entity participating in good faith in reporting or holding or not holding a transaction ~~pursuant to under~~ this chapter ~~shall have~~ has immunity from ~~any liability,~~ civil, administrative, or criminal liability that might otherwise exist as a result of reporting or holding or not holding the transaction.

(e) Unless ~~a hold is requested by~~ the Department or the Delaware Department of Justice requests a hold, a financial institution is not required to hold a transaction when provided with information alleging that financial exploitation may have occurred, may have been attempted, or is being ~~attempted, but may~~ attempted. The financial institution may, however, use its discretion to determine whether ~~or not~~ to refuse to hold a transaction based on the information available to the financial institution.

(f) A financial institution may provide access to or copies of records that are relevant to suspected ~~financial exploitation~~ or attempted financial exploitation of an elderly person or vulnerable adult to the Department, law enforcement, or the ~~prosecuting attorney's office,~~ Delaware Department of Justice, either as part of a referral to or upon request by the Department, law enforcement, or the ~~prosecuting attorney's office,~~ Delaware Department of Justice, or upon request of the Department, law enforcement, or the prosecuting attorney's office pursuant to under an investigation. The records may include historical records as ~~well as~~ or records relating to the most recent

transaction or ~~transactions~~ that may comprise financial exploitation, not to exceed 30 calendar days ~~prior to~~ before the first transaction that was reported or 30 calendar days after the last transaction that was reported.

Section 12. Amend § 3911, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3911. Adult under treatment by spiritual means not abused, mistreated, neglected, ~~infirm or incapacitated.~~ impaired, incapacitated, or in need of protective services.

~~Nothing in this chapter shall~~ This chapter may not be construed to mean any of the following:

~~an~~ (1) An adult is abused, mistreated, neglected, ~~infirm or incapacitated~~ impaired, incapacitated, or in need of protective services for the sole reason the ~~person~~ adult relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious ~~denomination; nor shall anything in this chapter be construed~~ denomination.

~~to~~ (2) To authorize or require ~~any~~ medical care or treatment over the implied or express objections of ~~said person.~~ the adult.

Section 13. Amend § 3912, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3912. Confidentiality of records.

(a)(1) ~~All records~~ Records and information in the possession of the Department or anyone providing service to an ~~adult protective services~~ alleged victim and the alleged victim's relatives ~~shall be~~ is deemed confidential, and ~~shall~~ may be disclosed only ~~pursuant to an appropriate court order, or pursuant to the consent of the recipient of the services, where the recipient is legally competent to so consent.~~ under the following conditions:

a. Under an appropriate court order.

b. With the consent of the recipient of the services, if the recipient has legal capacity. If the recipient lacks capacity, the recipient's power of attorney or legal guardian may consent for the recipient.

c. For medical necessity.

(2) ~~Notwithstanding the foregoing, disclosure shall not be unlawful~~ paragraph (a)(1) of this section, disclosure of records or information is always lawful when necessary for purposes directly connected with the administration of ~~adult~~ protective services, or when the disclosure does not reveal the identity of the recipient or recipients of such services is not revealed by the disclosure, identity of the alleged victim, such as in the case of disclosure of statistics or other ~~such~~ summary information.

(b) Violation of this section is an unclassified misdemeanor. The Superior Court ~~shall have~~ has jurisdiction over violations of this section.

(c) ~~Any staff person of adult protective services or anyone~~ An Adult Protective Services staff member or another individual providing ~~service~~ protective services to an ~~adult protective services~~ alleged victim who violates these provisions and improperly discloses confidential information ~~shall~~ must be immediately be removed or dismissed.

Section 14. Amend § 3913, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3913. Violations.

(a) ~~Any~~ A person who knowingly or recklessly abuses, neglects, ~~exploits~~ exploits, or mistreats an adult who is impaired ~~shall be~~ is guilty of a class A misdemeanor.

(b) ~~Any~~ A person who knowingly or recklessly exploits an adult who is impaired or an adult who is incapacitated by using the resources of ~~adult who is impaired shall be guilty~~ the adult is guilty of the following:

~~of a~~ (1) A class A misdemeanor ~~where if~~ the value of the resources is less than ~~\$500 and~~ \$500.

(2) A class G felony ~~where if~~ the value of the resources is \$500 or more but less than \$5,000.

~~If~~ (3) A class E felony ~~if~~ the value of the resources is \$5,000 or more but less than \$10,000, ~~the person shall be guilty of a class E felony.~~ \$10,000.

~~If~~ (4) A class D felony ~~if~~ the value of the resources is \$10,000 or more but less than \$50,000, ~~the person shall be guilty of a class D felony and~~ \$50,000.

(5) A class C felony ~~if~~ the value of the resources is \$50,000 or ~~more the person shall be guilty of a~~ class C felony. more.

~~Any~~ (6) A class C felony ~~for each~~ subsequent conviction under this subsection ~~shall be treated as a~~ class C felony regardless of the amount of resources exploited.

(c) ~~Any person~~ An individual who knowingly or recklessly abuses, neglects, ~~exploits~~ exploits, or mistreats an adult who is ~~impaired,~~ impaired or an adult who is incapacitated and causes bodily harm, permanent ~~disfigurement~~ disfigurement, or permanent disability ~~shall be~~ is guilty of a class D felony. ~~Where the abuse, mistreatment or neglect results in death, such person shall be~~ If the abuse, neglect, mistreatment, or exploitation results in death, the individual is guilty of a class A felony.

Approved November 1, 2024