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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 84

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO ABUSE, NEGLECT,
MISTREATMENT, FINANCIAL EXPLOITATION, OR MEDICATION DIVERSION OF RESIDENTS OR PATIENTS.

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

1 Section 1. Amend Chapter 11, Title 16 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Subchapter III. Abuse, Neglect, Mistreatment, ~~or Financial Exploitation of Residents or Patients.~~ Exploitation, or
4 Medication Diversion of Patients or Residents.

5 Section 2. Amend § 1131, Title 16 of the Delaware Code by making deletions as shown by strike through and
6 insertions as shown by underline as follows and by redesignating accordingly:

7 § 1131. Definitions.

8 As used in this subchapter:

9 (1) "Abuse" means the infliction of injury, unreasonable confinement, intimidation, or punishment with
10 resulting physical harm, pain, or mental anguish and includes all of the following:

11 a. *Physical abuse*. — "Physical abuse" means the unnecessary infliction of pain or injury to a patient or
12 resident. "Physical abuse" includes hitting, kicking, punching, slapping, or pulling hair. If any act constituting
13 physical abuse has been proven, the infliction of pain is presumed.

14 b. *Sexual abuse*. — "Sexual abuse" includes any sexual contact, sexual penetration, or sexual intercourse,
15 as those terms are defined in § 761 of Title 11, with a patient or resident by an employee or volunteer working at a
16 facility. It is not a defense that the sexual contact, sexual penetration, or sexual intercourse was consensual.

17 c. *Emotional abuse*. — "Emotional abuse" means the use of oral, written, or gestured language that
18 includes disparaging and derogatory terms to patients, residents, their families, or within their hearing distance,
19 regardless of their age, ability to comprehend, or disability. "Emotional abuse" includes the violation of resident
20 rights and privacy through the posting of inappropriate materials on social media. "Emotional abuse" includes all
21 of the following: ridiculing, demeaning, humiliating, or cursing at a patient or resident; punishment or deprivation;
22 or threatening a patient or resident with physical harm.

23 d. 1. ~~Medication diversion.~~ —“Medication diversion” means the knowing or intentional interruption,
24 obstruction, or alteration of the delivery, or administration of a prescription drug to a patient or resident, if both of
25 the following apply:

26 A. ~~The prescription drug was prescribed or ordered by a licensed independent practitioner for the~~
27 ~~patient or resident.~~

28 B. ~~The interruption, obstruction, or alteration occurred without the prescription or order of a~~
29 ~~licensed independent practitioner.~~

30 2. ~~“Medication diversion” does not mean conduct performed by any of the following:~~

31 A. ~~A licensed independent practitioner or licensed health-care professional who acted in good~~
32 ~~faith within the scope of the individual's practice or employment.~~

33 B. ~~An individual acting in good faith while rendering emergency care at the scene of an~~
34 ~~emergency or accident.~~

35 (8) “Investigation” the collection of evidence in response to an allegation of abuse, neglect, mistreatment, or
36 financial ~~exploitation~~ exploitation, or medication diversion of a ~~resident or patient~~ patient or resident to determine if
37 that ~~resident or patient~~ patient or resident has been abused, neglected, mistreated, or financially ~~exploited.~~ exploited or
38 has been the victim of medication diversion. The Department shall develop protocols for its investigations which focus
39 on ensuring the safety and well-being of the patient or resident and which satisfy the requirements of this chapter.

40 (10)a. “Medication diversion” means the knowing or intentional interruption, obstruction, or alteration of the
41 delivery or administration of a prescription drug to a patient or resident, if both of the following apply:

42 1. The prescription drug was prescribed or ordered by a licensed independent practitioner for the
43 patient or resident.

44 2. The interruption, obstruction, or alteration occurred without the prescription or order of a licensed
45 independent practitioner.

46 b. “Medication diversion” does not mean conduct performed by any of the following:

47 1. A licensed independent practitioner or licensed health-care professional who acted in good faith
48 within the scope of the individual's practice or employment.

49 2. An individual acting in good faith while rendering emergency care at the scene of an emergency or
50 accident.

51 Section 3. Amend § 1132, Title 16 of the Delaware Code by making deletions as shown by strike through and
52 insertions as shown by underline as follows:

53 § 1132. Reporting requirements.

54 (a) (1) Any employee of a facility or person who provides services to a patient or resident of a facility on a regular
55 or intermittent basis who has reasonable cause to believe that a patient or resident in a facility has been abused, neglected,
56 mistreated, neglected, or financially exploited or has been the victim of medication diversion shall immediately report ~~such~~
57 the abuse, neglect, mistreatment, neglect, or financial exploitation-exploitation, or medication diversion to the Department
58 by oral communication. ~~A written report shall be filed by the~~ The employee or person providing services to a patient or
59 resident of a facility shall file a written report within 48 hours after the employee or person providing services to a patient
60 or resident of a facility first gains knowledge of the abuse, neglect, mistreatment, neglect or financial
61 exploitation-exploitation, or medication diversion.

62 (2) In addition to the persons required to report abuse, neglect, mistreatment, ~~or financial exploitation~~
63 exploitation, or medication diversion under paragraph (a)(1) of this section, any other person, including a patient or
64 facility-resident, may contact the Department to report any complaint concerning the health, safety, and welfare of
65 patients or facility-residents.

66 (3) The Department shall inform a person making a report under paragraph (a)(1) or (a)(2) of this section of
67 the person's right to obtain information concerning the disposition of the report. ~~Such person shall~~ The person must
68 receive, if requested, information on the general disposition of the report at the conclusion of the investigation.

69 (4) If the Department does not have jurisdiction over the report, the Department shall so advise the person
70 making the report under paragraph (a)(1) or (a)(2) of this section and shall promptly refer the person to the appropriate
71 agency.

72 (b) Any person required by subsection (a) or (c) of this section to make an oral and a written report who fails to do
73 so is to be fined not more than \$1,000 or imprisoned not more than 15 days, or both. ~~In any action brought under this~~
74 ~~section, if a court finds a violation, the court may award costs and attorneys' fees.~~

75 (c) In addition to those persons subject to subsection (a) of this section, any other person shall make ~~such a report,~~
76 a report if the person has reasonable cause to believe that a patient or resident of a facility has been abused, neglected,
77 mistreated, neglected, or financially exploited. ~~Such reports are exploited, or has been the victim of medication diversion.~~ A
78 report under this subsection is confidential and the reporting person cannot be compelled to do either of the following:

79 (1) Notify the facility, care provider, or individual implicated in the event.

80 (2) Provide information regarding the reported abuse, neglect, mistreatment, ~~or financial exploitation~~
81 exploitation, or medication diversion to the facility, care provider, or individual implicated in the event.

82 (d) Any person who intentionally makes a false report under this subchapter is guilty of a class A misdemeanor.

83 (e) Any correspondence or other written communication from a ~~resident or patient~~ patient or resident to the
84 Department, the Attorney General's office, the protection and advocacy agency, or a law-enforcement agency must, if
85 delivered to or received by a facility, be promptly forwarded, unopened, by the facility to the agency to which it is written.
86 Violation of this subsection is punishable by a civil penalty not to exceed \$1,000 per violation.

87 (f) Any correspondence or other written communication from the Department, the Attorney General's office, the
88 protection and advocacy ~~agency~~ agency, or a law-enforcement agency to a ~~resident or patient~~ patient or resident
89 must, if delivered to or received by ~~the a~~ a facility, be promptly forwarded, unopened, by the facility to ~~such resident or~~
90 ~~patient~~ the patient or resident. Violation of this subsection is punishable by a civil penalty not to exceed \$1,000 per
91 violation.

92 Section 4. Amend § 1133, Title 16 of the Delaware Code by making deletions as shown by strike through and
93 insertions as shown by underline as follows:

94 § 1133. Contents of reports.

95 The reports required under this subchapter ~~shall~~ must contain all of the following information:

96 (1) The name and sex of the patient or resident.

97 (2) The name and address of the facility in which the patient or resident resides.

98 (3) The age of the patient or resident, if known.

99 (4) The name and address of the reporter and where the reporter can be contacted.

100 (5) Any information relative to the nature and extent of the abuse, neglect, mistreatment, financial
101 exploitation, or ~~neglect or medication diversion~~ and, if known to the reporter, any information relative to prior abuse,
102 neglect, mistreatment, financial exploitation, or ~~neglect of such~~ medication diversion of the patient or resident.

103 (6) The circumstances under which the reporter became aware of the abuse, neglect, mistreatment, financial
104 exploitation, or ~~neglect~~ medication diversion.

105 (7) What action, if any, was taken to treat or otherwise assist the patient or resident.

106 (8) Any other information which the reporter believes to be relevant in establishing the cause of ~~such the~~
107 abuse, neglect, mistreatment, financial exploitation, or ~~neglect~~ medication diversion.

108 Section 5. Amend § 1134, Title 16 of the Delaware Code by making deletions as shown by strike through and
109 insertions as shown by underline as follows:

110 § 1134. State response to reports of adult abuse, neglect, mistreatment, ~~or financial exploitation~~ exploitation, or
111 medication diversion.

112 (a) The Department shall ensure that patients or residents are afforded the same rights and protections as other
113 individuals in the State.

114 (b) [Repealed.]

115 (c) The Department shall establish and maintain a 24-hour statewide toll-free telephone report line operating at all
116 times and capable of receiving reports of alleged abuse, neglect, mistreatment, ~~and financial exploitation.~~ exploitation, and
117 medication diversion.

118 (d) ~~Upon~~ On receipt of an allegation of abuse, neglect, mistreatment, ~~or~~ financial exploitation, or medication
119 diversion, the Department shall do all of the following:

120 (1) Receive and maintain reports in a computerized central data base.

121 (2) Acknowledge all complaints, when authorized by the person making the report. The acknowledgement
122 shall identify other relevant remedial agencies, including the protection and advocacy agency, Office of the Long-Term
123 Care Ombudsperson, and victim rights resource organizations.

124 (3) Forward complaints to the appropriate Department staff who shall determine, through the use of standard
125 operating procedures developed by the Department, whether an investigation should be initiated to respond to the
126 complaint. ~~The Department shall develop the protocols for making this determination shall be developed by the~~
127 ~~Department and shall~~ the protocols must give priority to ensuring the well-being and safety of ~~residents and patients.~~
128 patients and residents.

129 (4) Begin the investigation within 24 hours of receipt of any report or complaint that alleges any of the
130 following:

131 a. A ~~resident's or patient's~~ patient's or resident's health or safety is in imminent danger.

132 b. A ~~resident or patient~~ patient or resident has died due to alleged abuse, neglect, ~~or mistreatment.~~
133 mistreatment, or medication diversion.

134 c. A ~~resident or patient~~ patient or resident has been hospitalized or received medical treatment due to
135 alleged abuse, neglect, ~~or mistreatment.~~ mistreatment, or medication diversion.

136 d. ~~If the report or complaint alleges the~~ The existence of circumstances that could result in abuse, neglect,
137 ~~or mistreatment~~ mistreatment, or medication diversion and that could place a ~~resident's or patient's~~ patient's or
138 resident's health or safety in imminent danger.

139 e. A ~~resident or patient~~ patient or resident has been the victim of financial exploitation or risk thereof and
140 exigent circumstances warrant an immediate response.

141 (5) Except in situations outlined in paragraph (d)(4) of this section, initiate and conclude an investigation
142 within 10 days of receiving a report or complaint unless extenuating facts warrant a longer time period to complete the
143 investigation.

144 (6) Contact the appropriate law-enforcement agency immediately ~~upon~~ on receipt of any complaint requiring
145 an investigation under this section and ~~shall~~ provide the police with a detailed description of the complaint received.

146 a. The appropriate law-enforcement agency shall conduct its investigation or provide the Department
147 within a reasonable ~~time period~~, time an explanation detailing the reasons why it is unable to conduct the
148 investigation.

149 b. The Department may defer its own investigation in these circumstances until it receives appropriate
150 guidance from the Attorney General's Office and the relevant police agency with respect to how to proceed with
151 its investigation thereby assuring a coordinated investigation.

152 c. Notwithstanding any provision of the Delaware Code to the contrary, to the extent the law-enforcement
153 agency with jurisdiction over the case is unable to assist, the Department may request that the Delaware State
154 Police exercise jurisdiction over the case and, upon such request, the Delaware State Police may exercise such
155 jurisdiction.

156 (7) ~~Have~~ If a case is classified as an investigation under this subchapter, have the authority to secure a medical
157 examination of a long-term care ~~facility resident or patient upon~~ patient or resident on the consent of the ~~resident or~~
158 ~~patient~~ patient or resident without the consent of the long-term care facility if the ~~resident or patient~~ patient or resident
159 has been reported to be a victim of abuse, neglect, or ~~mistreatment; provided, that such case is classified as an~~
160 ~~investigation under this subchapter.~~ mistreatment, or medication diversion.

161 (8) When a written report of abuse, neglect, mistreatment, ~~or financial exploitation~~ exploitation, or medication
162 diversion is made by a person required to report under § 1132(a) of this title, the Department shall contact the person
163 who made ~~such~~ the report within 48 hours of the receipt of the report in order to ensure that full information has been
164 received and to obtain any additional information, including medical records, which may be pertinent.

165 (9) Conduct an investigation involving all reports which, if true, would constitute ~~criminal offenses pursuant~~
166 ~~to a criminal offense, or an attempt to commit a criminal offense, under~~ any of the following provisions of Title 11: §§
167 601, 602, 603, 604, 611, 612, 613, 621, 625, 626, 627, 631, 632, 633, 634, 635, 636, 645, 763, 764, 765, 767, 768, 769,
168 770, 771, 772, 773, 774, 775, 791, 841, 842, 843, 844, 845, 846, 848, 851, 861, 862 and ~~908 or an attempt to commit~~
169 ~~any such crime.~~ 908.

170 (10) Develop protocols to ensure that it ~~shall conduct~~ conducts its investigation in coordination with the
171 relevant law-enforcement agency. The primary purpose of the Department's investigation ~~shall~~ must be the protection
172 of the ~~resident or patient.~~ patient or resident.

173 (11) Do any of the following when investigating abuse, neglect, mistreatment, ~~or financial exploitation~~
174 exploitation, or medication diversion reports:

175 a. Make unannounced visits to the facility, as required, to determine the nature and cause of the alleged
176 abuse, neglect, mistreatment, ~~or financial exploitation.~~ exploitation, or medication diversion.

177 b. Interview available witnesses identified by any source as having personal knowledge relevant to the
178 reported abuse, neglect, mistreatment, ~~or financial exploitation.~~ exploitation, or medication diversion.

179 c. Conduct interviews in private unless the witness expressly requests that the interview not be private.

180 d. Write an investigation report that includes all of the following:

181 1. The investigator's personal observations.

182 2. A review of the medical and all other relevant documents and records.

183 3. A summary of each witness statement.

184 4. A statement of the factual basis for the findings for each incident or problem alleged in the
185 complaint.

186 (12)-(16) [Repealed.]

187 (17) Before the completion of an investigation, file a petition for the temporary care and protection of the
188 ~~resident or patient~~ patient or resident if the Department determines that immediate removal is necessary to protect the
189 ~~resident or patient~~ patient or resident from further abuse, neglect, mistreatment, ~~or financial exploitation.~~ exploitation,
190 or medication diversion.

191 (18) ~~Upon~~ On completing an investigation of a complaint, the Department shall take 1 or more of the
192 following courses of action, as appropriate:

193 a. If representatives of the Department, the Attorney General's ~~Office~~ Office, or the appropriate law-
194 enforcement agency are unable to substantiate a complaint that applicable laws or regulations have been ~~violated~~
195 violated, the ~~Department~~ Department, Attorney General's Office, or appropriate law-enforcement agency shall so
196 advise the complainant and the facility, agency, or individual against which the complaint was made.

197 b. If Department representatives are able to substantiate a complaint that applicable laws or regulations
198 have been violated, the Department shall take appropriate enforcement action.

199 1. An enforcement action may include instituting actions by the Department for injunctive relief or
200 other relief deemed appropriate.

201 2. The ~~Office of the Attorney General~~ Attorney General's Office shall provide legal advice and assist
202 the Department to institute an enforcement action.

203 c. If the Department discovers a violation of federal laws or regulations or rules administered by any
204 other government agency, the Department shall refer the matter directly to the appropriate government agency for
205 an enforcement action.

206 d.-f. [Repealed.]

207 (19) Protect the privacy of the long-term care ~~resident or patient~~ patient or resident and the ~~patient~~ patient's or
208 resident's family.

209 a. The Department shall establish guidelines concerning the disclosure of information relating to
210 complaints and investigations regarding abuse, neglect, mistreatment, ~~or financial exploitation~~ exploitation, or
211 medication diversion involving that ~~resident or patient.~~ patient or resident.

212 b. The Department may require persons to make written requests for access to records maintained by the
213 Department.

214 c. Records maintained for investigations conducted under this section are not public records under
215 Chapter 100 of Title 29 and the Department may only release information to persons who have a legitimate public
216 safety need for ~~such~~ the information and ~~such~~ the information must be used only for the purpose for which it is
217 released under a user agreement with the Department.

218 (e) The protection and advocacy agency ~~is authorized to~~ may complement the Department's complaint resolution
219 system through monitoring, investigation, and advocacy on behalf of facility patients or residents. In furtherance of this
220 authority, protection and advocacy agency representatives may engage in all of the following functions:

221 (1) Solicit and receive oral and written reports and complaints of abuse, neglect, mistreatment, ~~or financial~~
222 ~~exploitation~~ exploitation, or medication diversion of facility patients or residents.

223 (2) Access a facility.

224 (3) Interview patients, residents, facility staff, and agents.

225 (4) Inspect and copy records pertaining to the patient or resident with valid consent or as otherwise authorized
226 by federal law.

227 (f) The Department may develop protocols with the protection and advocacy agency to facilitate coordination
228 whenever both agencies have initiated an overlapping investigation.

229 (g) The immunities and protections ~~compiled in~~ under § 1135 of this title apply to persons offering reports or
230 testimony to initiate or support protection and advocacy agency investigation or advocacy.

231 (h) *Appointment of special investigators; powers and duties.* — (1) The Secretary of the Department may appoint
232 qualified persons to be special investigators.

233 a. ~~Such~~ The investigators hold office at the pleasure of the Secretary.

234 b. Any individual appointed under this section must have all of the following qualifications:

235 1. A minimum of 10 years experience as a ~~“police officer,”~~ police officer, as that term is defined in §
236 1911(a) of Title 11.

237 2. Significant investigatory experience while working as a police officer.

238 3. Be in good standing with the previous or present law-enforcement agency where ~~such~~ the
239 individual was or is ~~employed,~~ employed.

240 4. ~~Such other~~ Other qualifications deemed appropriate by the Secretary.

241 (2) Special investigators appointed under this section may conduct investigations of abuse, neglect,
242 mistreatment, ~~or financial exploitation~~ exploitation, or medication diversion of patients and residents of facilities and
243 adults who are impaired as defined in § 3902 of Title 31 anywhere in this State as directed by the Department and ~~shall~~
244 have the power to make arrests and serve writs anywhere in this State.

245 a. In conducting ~~such~~ the investigations, the special investigators have the statewide powers enumerated
246 under § 1911 of Title 11 and ~~such~~ other powers as conferred by law on police officers, but ~~such~~ the powers are
247 limited to offenses involving abuse, neglect, mistreatment, ~~or financial exploitation~~ exploitation, or medication
248 diversion of patients and residents of long-term care facilities and adults who are impaired anywhere in this State
249 as directed by the Department.

250 b. To the extent possible, special investigators under this section may consult with the police agency
251 having jurisdiction and the Department ~~prior to~~ before making an arrest and shall do so in all cases after making
252 ~~such~~ the arrest.

253 (3) The Secretary of the Department shall fix the salary of special investigators within the appropriations
254 made to the Department.

255 (4) Special investigators shall assist in the training of other Department staff.

256 (i) ~~Upon~~ On receipt of any report under paragraph (d)(5) of this section, the law-enforcement agency having
257 jurisdiction shall conduct a full and complete criminal investigation based on their departmental policies and shall assess
258 probable cause and effectuate arrests when appropriate.

259 (1) The Attorney General's Office or other law-enforcement agency conducting the investigation shall keep
260 the Department informed of the case status and all major decisions under memoranda of understanding between the
261 Department and the Attorney General's Office and other relevant law-enforcement agencies entered into under
262 subsection (j) of this section.

263 (2) The ~~Department of Justice~~ Attorney General's Office shall keep the Department well informed of the case
264 status and all major decisions, including the disposition of criminal charges and the specifics of any sentencing order
265 rendered.

266 (j) The Department, the ~~Office of the Attorney General,~~ Attorney General's Office, and other law-enforcement
267 agencies shall develop memoranda of understanding under this subchapter which provide for timely notification, co-
268 investigation, referral of cases, including automatic referral in certain cases, and ongoing coordination in order to keep each
269 other apprised of the status of their respective investigations. The memoranda of understanding may be amended as needed.

270 (k) If the Department suspects or discovers information indicating the commission of violations of standards of
271 professional conduct by facilities licensed under this chapter or by staff employed by such facilities, the Department shall
272 immediately contact the ~~Office of the Attorney General~~ Attorney General's Office and the relevant professional licensing
273 board.

274 (l) The Department and the Attorney General's Office shall cooperate with law-enforcement agencies to develop
275 training programs to increase the effectiveness of Department personnel, Attorney General's Office personnel, and law-
276 enforcement officers in investigating suspected cases of abuse, neglect, mistreatment, ~~or financial exploitation.~~ exploitation,
277 or medication diversion.

278 (m) ~~In the event that~~ If a criminal prosecution for abuse, neglect, mistreatment, ~~or financial exploitation~~
279 exploitation, or medication diversion is initiated by the Attorney General's Office based on a report under this subchapter,
280 and incarceration of the individual who is the subject of the report is ordered by the court, the Attorney General's Office
281 shall keep the Department informed of actions taken by the court which result in the release of ~~any such individual,~~
282 provided that the individual if the Attorney General's Office is represented at ~~such a~~ the hearing.

283 (n) ~~In the event that~~ If a criminal prosecution for abuse, neglect, mistreatment, ~~or financial exploitation~~
284 exploitation, or medication diversion is initiated by the Attorney General's Office against a person employed by or
285 associated with a facility or organization required to be licensed or whose staff are required to be licensed under Delaware
286 law, the ~~Attorney General~~ Attorney General's Office shall notify the Department within 48 hours and the Department shall then
287 notify the individual's employer as follows:

288 (1) When ~~such the~~ individual is charged with having committed at least 1 felony offense involving an
289 allegation of abuse, neglect, mistreatment, ~~or financial exploitation.~~ exploitation, or medication diversion.

290 (2) ~~Upon~~ On an adjudication of guilt of ~~such the~~ person for any misdemeanor or violation, when ~~such the~~
291 offense involved abuse, neglect, mistreatment, ~~or financial exploitation.~~ exploitation, or medication diversion.

292 Section 6. Amend § 1135, Title 16 of the Delaware Code by making deletions as shown by strike through and
293 insertions as shown by underline as follows:

294 § 1135. Immunities and other protections.

295 (a) A person making any oral or written report under this subchapter is not liable in any civil or criminal action by
296 reason of ~~such the~~ report where ~~such the~~ report was made in good faith or under the reasonable belief that ~~such the~~ abuse,
297 ~~financial exploitation, neglect, mistreatment, or neglect has taken place.~~ financial exploitation, or medication diversion has
298 occurred.

299 (b) A facility may not discharge, or in any manner discriminate or retaliate against any person, by any means
300 whatsoever, who in good faith makes or causes to be made, a report under this subchapter, or who testifies or who is about
301 to testify in any proceeding concerning abuse, ~~financial exploitation, neglect, mistreatment, or neglect~~ financial
302 exploitation, or medication diversion of patients or residents of a facility. ~~residents of a facility.~~ residents.

303 (c) Any facility which discharges, discriminates, or retaliates against a person because the person ~~has reported,~~
304 ~~testified, reports, testifies,~~ or is about to testify concerning abuse, ~~financial exploitation, neglect, mistreatment, or neglect~~
305 financial exploitation, or medication diversion of patients or residents is liable to ~~such the~~ person for treble damages, costs,
306 and attorney fees. If a facility discharges, demotes, or retaliates by any other means against a person after the person ~~made~~
307 makes a report, testified, or was ~~testifies, or is~~ subpoenaed to testify as a result of a report authorized under this subchapter,
308 there is a rebuttable presumption that ~~such the~~ facility discharged, demoted, or retaliated against ~~such the~~ person as a result
309 of ~~such the~~ report or testimony.

310 (d) This section does not apply to any person who has engaged in the abuse, ~~financial exploitation, neglect,~~
311 ~~mistreatment, or neglect~~ financial exploitation, or medication diversion of a patient or resident.

312 Section 7. Amend § 1136, Title 16 of the Delaware Code by making deletions as shown by strike through and
313 insertions as shown by underline as follows:

314 § 1136. Violations.

315 (a) Any person who knowingly or recklessly abuses, mistreats, or neglects a patient or resident ~~of a facility~~ is
316 guilty of a class A misdemeanor.

317 (1) If the abuse involves sexual contact such person is guilty of a class G felony.

318 (2) If the abuse, mistreatment, or neglect results in serious physical injury, sexual penetration, or sexual
319 intercourse, such person is guilty of a class C felony.

320 (3) If the abuse, mistreatment, or neglect results in death, then the person is guilty of a class A felony.

321 (b) Any person who knowingly causes medication diversion of a patient or resident, is guilty of the following:

322 (1) A class G felony.

323 (2) A class F felony, if committed by a health-care professional.

324 (c) Any person who knowingly commits financial exploitation of a patient's or resident's resources is guilty of the
325 following:

326 (1) A class A misdemeanor if the value of the resources is less than \$1,000.

327 (2) A class G felony if the value of the resources is \$1,000 or more.

328 (d) Any member of the board of directors or a high managerial agent who knows that patients or residents of the
329 facility are being abused, mistreated, neglected, or financially exploited or are the victim of medication diversion and fails
330 to promptly take corrective action is guilty of a class A misdemeanor.

331 (e) Nothing in this section ~~shall preclude~~ precludes a separate charge, conviction, and sentence for any other crime
332 ~~set forth in this title, or in the Delaware Code.~~ under this title or this Code.

333 Section 8. Amend § 1137, Title 16 of the Delaware Code by making deletions as shown by strike through and
334 insertions as shown by underline as follows:

335 § 1137. Suspension or revocation of license for violation by licensed or registered professional.

336 ~~Upon~~ On a finding of abuse, ~~mistreatment or neglect,~~ neglect, mistreatment, or medication diversion by a licensed
337 or registered professional, or a licensed or registered professional's failure to report such instances— abuse, neglect,
338 mistreatment, or medication diversion by a licensed or registered professional, the Department or the Attorney ~~General~~
339 General's Office shall notify the appropriate licensing or registration board. If, after a hearing, a licensed or registered
340 professional is found to have abused, ~~mistreated or neglected~~ neglected, or mistreated, or committed medication diversion
341 against a patient or resident or has failed to report ~~such instance,~~ abuse, neglect, mistreatment, or medication diversion, the
342 appropriate board shall suspend or revoke ~~such person's~~ the licensed or registered professional's license.

343 Section 9. Amend § 1138, Title 16 of the Delaware Code by making deletions as shown by strike through and
344 insertions as shown by underline as follows:

345 § 1138. Suspension or revocation of license for violation by facility.

346 ~~Upon~~ On a finding that abuse, neglect, mistreatment, financial exploitation, or neglect— medication diversion has
347 occurred in a facility, if it is determined that a member of the board of directors or a high managerial agent knew that

348 patients or residents were abused, neglected, mistreated, or financially exploited, ~~or neglected-exploited~~ or the victim of
349 medication diversion and failed to promptly take corrective action, the Department must suspend or revoke the facility's
350 license.

351 Section 10. Amend § 1139, Title 16 of the Delaware Code by making deletions as shown by strike through and
352 insertions as shown by underline as follows:

353 § 1139. Treatment by spiritual means.

354 Nothing in this subchapter may be construed to mean that a patient or resident is abused, ~~mistreated, or neglected~~
355 neglected, or mistreated, or is the victim of medication diversion, for the sole reason the patient or resident relies ~~upon, on,~~
356 or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of
357 a recognized church or religious denomination, nor may anything in this subchapter be construed to authorize or require any
358 medical care or treatment over the implied or express objection of ~~said~~the patient or resident.

359 Section 11. Amend § 1012, Title 16 of the Delaware Code by making deletions as shown by strike through and
360 insertions as shown by underline as follows:

361 § 1012. Reportable events.

362 (b) Hospitals must notify the Department immediately of any event occurring within the hospital that jeopardizes
363 the health or safety of patients or employees including:

364 (1) An unscheduled interruption for 3 or more hours of physical plant or clinical services impacting the health
365 or safety of patients or employees.

366 (2) A fire, disaster or accident which results in evacuation of patients out of the hospital.

367 (3) An alleged or suspected crime which endangers the life or safety of patients or employees, which is also
368 reportable to the police department, and which results in an immediate on-site investigation by the police.

369 (4) An alleged incident of medication diversion, as defined under § 1131 of this title.

SYNOPSIS

This Act elevates medication diversion out of the definition of abuse for the sake of clarity and is not intended to change existing reporting obligations for facilities under Subchapter III of Chapter 11 of Title 16 of the Delaware Code ("Subchapter III"). This Act ensures reporting requirements are triggered for facilities and hospitals covered by Subchapter III if medication diversion occurs in the facilities or hospitals. Reporting is essential to the Department of Justice's ability to prosecute and recommend treatment, when appropriate, for the person committing medication diversion. Finally, this Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual, including standardizing the order of words in the phrase "abuse, neglect, mistreatment, financial exploitation, or medication diversion" to ensure consistency.

Medication diversion poses a threat to patient and resident safety in long-term care facilities, psychiatric facilities, nursing facilities, and hospitals. Risks include patients and residents receiving inadequate pain relief, exposure to infectious diseases from contaminated needles and drugs, and potentially unsafe care. The Drug Enforcement Administration recognizes 5 classes of drugs that are frequently abused: opioids, depressants, hallucinogens, stimulants, and anabolic steroids. Opioid abuse is the major cause of medication diversion. Medication diversion is commonly underreported. The

sooner medication diversion is reported, the sooner interventions can be made to protect the health and safety of a patient or resident and to provide drug treatment or other help to a healthcare worker.

Author: Senator Sturgeon