

LAWS OF DELAWARE
VOLUME 81
CHAPTER 343
149th GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 362

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 Chapter 39 of Title 31 of the Delaware Code by making deletions as shown by strike through, insertions as shown by underline, and redesignate as follows:

§ 3902 Definitions.

As used in this chapter:

() “Alleged victim” shall mean any adult who is impaired, incapacitated, elderly or vulnerable that may have been abused, neglected or exploited based on a report to Adult Protective Services.

§ 3903 Establishment of protective services system.

(a) The Secretary of the Department of ~~Health and Social Services~~ 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 ~~Economic Services~~ 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 ~~Senior Citizens Legal Assistance Program~~ Elder Law Program and the ~~Governor's Council on Emergency Medical Services~~ 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, shall promulgate rules and regulations for the operation of the adult protective services program.

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

(1) One person of at least the ~~social worker III~~ Master Family Service Specialist level as the overall supervisor of the protective services program.

(2) Three persons of at least ~~social worker II~~ Senior Family Service Specialist level, to function throughout the State.

(3) One ~~social worker I~~ Family Service Specialist.

(f) The Department shall make continuing provisions in each county for the shelter of those persons who are determined to be in temporary need of such protection pursuant to §§ 3905, 3906 and 3907 of this title. In providing this service, the Department may utilize existing resources such as state institutions; it may contract for bed space in private facilities; and it may utilize the resources of ~~rest~~ (family care and residential) homes for those ~~clients~~ alleged victims not requiring medical care.

§ 3904 Nature 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.

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

(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 ~~client~~ alleged victim.

(4) Maintenance of the person in the person's own home through provision of ~~home health care, homemaker services, day care and chore services~~ 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 ~~rest-residential home~~ long-term care facility.

(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:

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

(2) Accepting and processing all referrals on, or applications from, adults in need of protective services.

(3) Home visits to all ~~clients~~ alleged victims, if necessary.

(4) Counseling with ~~clients~~ alleged victims to assist them to accept needed services voluntarily.

(5) Referring ~~clients~~ alleged victims to other service-providing agencies, arranging for visits and following up to determine that needed services were delivered by those agencies.

(d)(1) The cost of services provided by the State which are voluntarily accepted by the protective services ~~client~~ alleged victim shall be borne by the ~~client~~ alleged victim himself or herself, insofar as the ~~client~~ alleged victim is able to pay for them from the ~~client's~~ alleged victim's own resources, insurance programs, Medicare, Medicaid or similar programs. The Department shall determine the ~~client's~~ 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 ~~client~~ 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 a ~~client~~ alleged victim whose resources are adequate for such payment, the State may take action in the Court of ~~Chancery~~ to obtain reimbursement; provided, that efforts have been made to collect the account through other means.

(3) Where protective services are provided under Court order, the Court may authorize reasonable payment to the Department from the resources of the person 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.

(4) To the extent that funds are available, the cost of protective services not paid from the resources of the ~~client~~ alleged victim shall be debited to the adult protective services budget.

§ 3906 Involuntary protective services.

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

(5) By a ~~social service worker~~ family service specialist on probable cause of death or immediate and irreparable physical injury pursuant to § 3907 of this title.

§ 3908 Emergency order for protective services.

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

(i) Whenever the Court of ~~Chancery~~ finds, based upon a verified petition, affidavit or other evidentiary materials, that probable cause exists to believe that: (1) a person is impaired or incapacitated, as defined in § 3902(2) or (18) of this title; (2) that an emergency exists, as defined in § 3902 of this title; (3) that the emergency threatens serious harm to such person which harm may occur before a hearing on the petition for an emergency order may be held; (4) that the person is located in the building or premises described; and (5) that entry or access to said building or premises is being denied, the Court may issue an order for entry. The order for entry shall be signed by the Court, and shall contain the address of the building or premises where the person is located and the name of the person reported to be in need of protective services. The order for entry shall command that entry to the building or premises where the person is located be permitted for the purpose of seeing or interviewing, assessing and counseling the person named in the order. The order for entry shall permit entry on a day certain, which shall be set forth in the order. Nothing contained in this subsection shall in any way be construed to limit or restrict entry where the consent of the owner, lessor or lawful occupant is obtained. Whenever a member of the Court of ~~Chancery~~ is unavailable, any judge of the Superior Court may exercise the powers conferred by this subsection.

§ 3910 Duty to report.

(a) Any person having reasonable cause to believe that an adult person is impaired or 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 information to the Department of ~~Health and Social Services~~ in the manner and format published by the Department.

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

of establishing protocols for the reporting of past, current or attempted financial exploitation. Said policies, programs, plans or procedures shall require written reporting to the Department, in the format published by the Department, by the earlier of the date on which the financial institution completes its investigation or 5 business days after the bank identifies a suspicious transaction pursuant to the policies, programs, plans or procedures adopted by the financial institution. Such policies, programs, plans or procedures may, in addition, allow reporting to agencies such as the Delaware Department of Justice or the Federal Trade Commission. In addition, said institution shall be empowered to place a hold on a proposed transaction for a period of 10 business days following the filing of the report. The proposed transaction can be held another 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 of Health and Social Services~~ or the Delaware Department of Justice, or the financial institution may seek injunctive relief from a court of competent jurisdiction.

§ 3912 Confidentiality of records.

(a) All records and information in the possession of ~~Adult Protective Services~~ the Department or anyone providing service to an adult protective services ~~client~~ alleged victim and the ~~client's~~ alleged victim's relatives shall be deemed confidential, and shall 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. Notwithstanding the foregoing, disclosure shall not be unlawful when necessary for purposes directly connected with the administration of adult protective services, or when the identity of the recipient or recipients of such services is not revealed by the disclosure, 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 jurisdiction over violations of this section.

(c) Any staff person of adult protective services or anyone providing service to an adult protective services ~~client~~ alleged victim who violates these provisions and improperly discloses confidential information shall immediately be removed or dismissed.

Approved July 23, 2018