

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

A Bill

SENATE BILL 808

5 By: Senator J. Woods
6 By: Representative D. Whitaker
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING ADULT MALTREATMENT
10 AND PROTECTED HEALTH INFORMATION OF A MALTREATED
11 ADULT OR INDIVIDUAL RESIDING IN A LONG-TERM CARE
12 FACILITY; AND FOR OTHER PURPOSES.
13

Subtitle

14
15 TO AMEND THE LAW CONCERNING ADULT
16 MALTREATMENT AND PROTECTED HEALTH
17 INFORMATION OF A MALTREATED ADULT OR
18 INDIVIDUAL RESIDING IN A LONG-TERM CARE
19 FACILITY.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 9-20-116(c)(2), concerning emergency
26 custody of a maltreated adult, is amended to add an additional subdivision to
27 read as follows:

28 (2)(A) Still exists to protect the maltreated adult.

29 (B) If the maltreated adult has a physical impairment but
30 does not have a mental impairment, the court shall determine whether the
31 maltreated adult shall remain in the custody of the Department of human
32 Services by specifically addressing these issues:

33 (i) The current risk to the maltreated adult if
34 removed from the custody of the department and returned to the home or
35 situation from which the maltreated adult was removed;

36 (ii) Whether the maltreated adult has a mental



1 impairment and if not, inquiry of the maltreated adult whether the maltreated
 2 adult wants to remain in the custody of the department; and
 3 (iii) If the maltreated adult does not want to
 4 remain in the custody of the department, is the request of the maltreated
 5 adult made intelligently, with full knowledge of the risk if custody is
 6 dismissed and the request is unequivocal.

7
 8 SECTION 2. Arkansas Code § 9-20-121 is amended to read as follows:

9 9-20-121. Availability of custody and protective services records.

10 (a) Reports, correspondence, memoranda, case histories, medical
 11 records, or other materials, including protected health information, compiled
 12 or gathered by the Department of Human Services regarding a maltreated adult
 13 in the custody of the department or receiving protective services from the
 14 department shall be confidential and shall not be released or otherwise made
 15 available except:

16 (1) To the maltreated adult;

17 (2) To the attorney representing the maltreated adult in a
 18 custody or protective services case when the disclosure is authorized in a
 19 court order or an authorization form that complies with the Health Insurance
 20 Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by
 21 the maltreated adult;

22 (3) For any audit or similar activity conducted with the
 23 administration of any plan or program by any governmental agency that is
 24 authorized by law to conduct the audit or activity;

25 (4) To law enforcement agencies, a prosecuting attorney, or the
 26 Attorney General;

27 (5)(A) To any licensing or registering authority to the extent
 28 necessary to carry out its official responsibilities.

29 (B) Information released under subdivision (5)(A) of this
 30 section shall be maintained as confidential;

31 (6) To a circuit court under this chapter;

32 (7) To a grand jury or court upon a finding that information in
 33 the record is necessary for the determination of an issue before the court or
 34 grand jury;

35 (8) To a person or provider currently providing care or services
 36 to the adult;

1 (9) To a person or provider identified by the department as
 2 having services needed by the adult;

3 (10)(A)(i) To individual federal and state representatives and
 4 senators in their official capacity when the disclosure is authorized in a
 5 court order or an authorization form that complies with the Health Insurance
 6 Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by
 7 the maltreated adult.

8 (ii) ~~who~~ Federal and state representatives and
 9 senators shall not redisclose the information.

10 (B) No disclosure may be made to any committee or
 11 legislative body of any information that identifies by name or address any
 12 recipient of services; ~~and~~

13 (11) In the discretion of the department, ~~with family members~~ if
 14 the adult is in the custody of the department, the department may share:

15 (A) Information as permitted by the Health Insurance
 16 Portability and Accountability Act of 1996, Pub. L. No. 104-191, when the
 17 disclosure of information is:

18 (i) To family, friends, or anyone else authorized by
 19 the maltreated adult;

20 (ii) Needed to assist with the care of the
 21 maltreated adult;

22 (iii) Needed to notify a person of the maltreated
 23 adult's location and general condition; and

24 (iv) Not objected to by the maltreated adult;

25 (B) Appropriate information when the maltreated adult is
 26 incapacitated when it is in the best interest of the maltreated adult;

27 (12) To the Office of Medicaid Inspector General; and

28 (13) To an individual authorized by the maltreated adult in an
 29 executed authorization form that complies with the Health Insurance
 30 Portability and Accountability Act of 1996, Pub. L. No. 104-191, or valid
 31 court order.

32 (b) Except for the maltreated adult, no person or agency to whom
 33 disclosure is made may disclose to any other person reports or other
 34 information obtained under this section.

35 (c) A disclosure of information in violation of this section shall be
 36 a Class C misdemeanor.

1 (d)(1) Data, records, reports, or documents released under this
2 section to a law enforcement agency, the prosecuting attorney, or a court by
3 the Department of Human Services:

4 (A) Are confidential;

5 (B) Shall be sealed; and

6 (C) Shall not be redisclosed without a protective order.

7 (2) Data, records, reports, or documents released under this
8 section are confidential and are items of evidence for which there is a
9 reasonable expectation of privacy that the items will not be distributed to
10 persons or institutions without a legitimate interest in the evidence.

11 (3) This chapter does not contain language that is deemed to
12 abrogate the right of discovery in a criminal case under the Arkansas Rules
13 of Criminal Procedure or other applicable law.

14
15 SECTION 3. Arkansas Code § 12-12-1703(9), concerning the defined terms
16 used in the Adult and Long-Term Care Facility Resident Maltreatment Act, is
17 amended to read as follows:

18 (9)(A) “Impaired person” means a person:

19 (i) ~~eighteen~~ Eighteen (18) years of age or older who
20 as a result of mental or physical impairment is unable to protect himself or
21 herself from abuse, sexual abuse, neglect, or exploitation; or

22 (ii) Who is a long-term care facility resident and
23 who as a result of mental or physical impairment is unable to protect himself
24 or herself from abuse, sexual abuse, neglect, or exploitation.

25 (B) For purposes of this subchapter, a long-term care
26 facility resident is presumed to be an impaired person.

27 (C) For purposes of this subchapter, a person who has a
28 representative payee appointed for the person by the Social Security
29 Administration or another authorized agency is presumed to be an impaired
30 person in relation to adult maltreatment through financial exploitation;

31
32 SECTION 4. Arkansas Code § 12-12-1703(15), concerning the defined
33 terms used in the Adult and Long-Term Care Facility Resident Maltreatment
34 Act, is amended to read as follows:

35 (15) “Neglect” means:

36 (A) An act or omission by an endangered person or an

1 impaired person, for example, self-neglect; or

2 (B) An act or omission by a caregiver responsible for the
3 care and supervision of a long-term care facility resident, an endangered
4 person, or an impaired person constituting:

5 (i) Negligently failing to provide necessary
6 treatment, rehabilitation, care, food, clothing, shelter, supervision, or
7 medical services to an endangered person or an impaired person;

8 (ii) Negligently failing to report health problems
9 or changes in health problems or changes in the health condition of an
10 endangered person or an impaired person to the appropriate medical personnel;

11 (iii) Negligently failing to carry out a treatment
12 plan developed or implemented by the facility; or

13 (iv) Negligently failing to provide goods or
14 services to a long-term care facility resident necessary to avoid physical
15 harm, mental anguish, or mental illness;

16
17 SECTION 5. Arkansas Code § 12-12-1703, concerning the defined terms
18 used in the Adult and Long-Term Care Facility Resident Maltreatment Act is
19 amended to add an additional subdivision to read as follows:

20 (21) “Negligently” means a person’s failure to exercise the
21 degree of care that a person of ordinary prudence would have exercised in the
22 same circumstances.

23
24 SECTION 6. Arkansas Code § 12-12-1717(a), concerning the release of
25 information in a founded report of adult maltreatment or long-term care
26 facility resident maltreatment, is amended to add an additional subdivision
27 to read as follows:

28 (18) The Office of Medicaid Inspector General.

29
30 SECTION 7. Arkansas Code § 12-12-1717, concerning the release of
31 information in a founded report of adult maltreatment or long-term care
32 facility resident maltreatment, is amended to add an additional subsection to
33 read as follows:

34 (f)(1) Data, records, reports, or documents released under this
35 section to a law enforcement agency, the prosecuting attorney, or a court by
36 the Department of Human Services:

- 1 (A) Are confidential;
- 2 (B) Shall be sealed; and
- 3 (C) Shall not be redisclosed without a protective order.

4 (2) Data, records, reports, or documents released under this
 5 section are confidential and are items of evidence for which there is a
 6 reasonable expectation of privacy that the items will not be distributed to
 7 persons or institutions without a legitimate interest in the evidence.

8 (3) This subchapter does not abrogate the right of discovery in
 9 a criminal case under the Arkansas Rules of Criminal Procedure or other
 10 applicable law.

11

12 SECTION 8. Arkansas Code § 12-12-1718 is amended to read as follows:
 13 12-12-1718. Availability of screened out, pending, and unfounded
 14 reports.

15 (a) A record of a screened-out report of adult maltreatment or long-
 16 term care facility resident maltreatment shall not be disclosed except to the
 17 office of the Attorney General, the prosecuting attorney, and an appropriate
 18 law enforcement agency and may be used only within the Department of Human
 19 Services for purposes of administration of the program.

20 (b)(1) A pending report, including protected health information, is
 21 confidential and shall be made available only to:

22 (A) The department, including the Death Review Committee
 23 of the Department of Human Services;

24 (B) A law enforcement agency;

25 (C) A prosecuting attorney;

26 (D) The office of the Attorney General;

27 (E) A circuit court having jurisdiction pursuant to a
 28 petition for emergency, temporary, long-term protective custody, or
 29 protective services;

30 (F) A grand jury or court, upon a finding that the
 31 information in the report is necessary for the determination of an issue
 32 before the grand jury or court;

33 (G) A person or provider identified by the department as
 34 having services needed by the maltreated person;

35 (H) Any applicable licensing or registering authority;

36 (I) Any employer, legal entity, or board responsible for

1 the person named as the offender;

2 (J) Any legal entity or board responsible for the
3 maltreated person; and

4 (K) ~~{Repealed.}~~ The Office of the Medicaid Inspector
5 General.

6 (2) The subject of the report may only be advised that a report
7 is pending.

8 (c) Upon satisfaction of due process and if an allegation was
9 determined to be unfounded, the investigative report, including protected
10 health information, is confidential and shall be made available only to:

11 (1) The department, including the committee;

12 (2) A law enforcement agency;

13 (3) A prosecuting attorney;

14 (4) The office of the Attorney General;

15 (5) Any applicable licensing or registering authority;

16 (6) Any person named as a subject of the report or that person's
17 legal guardian;

18 (7) A circuit court having jurisdiction pursuant to a petition
19 for emergency, temporary, long-term protective custody, or protective
20 services;

21 (8) A grand jury or court, upon a finding that the information
22 in the record is necessary for the determination of an issue before the grand
23 jury or court;

24 (9) A person or provider identified by the department as having
25 services needed by the person;

26 (10) Any employer, legal entity, or board responsible for the
27 person named as the offender;

28 (11) Any legal entity or board responsible for the maltreated
29 person; and

30 (12) ~~{Repealed.}~~ The Office of the Medicaid Inspector General.

31 (d) The department may retain automated information on unfounded
32 reports for statistical purposes, to assess future risk, and to identify
33 false reporting.

34 (e)(1) Except for the subject of the report, no person or agency to
35 which disclosure is made may disclose to any other person or agency a report
36 or other information obtained under this section.

1 (2) Upon conviction, any person disclosing information in
2 violation of this subsection is guilty of a Class C misdemeanor.

3 (f)(1) The department may not release data that would identify the
4 person who made a report except to law enforcement, a prosecuting attorney,
5 or the office of the Attorney General.

6 (2) A court of competent jurisdiction may order release of data
7 that would identify the person who made a report after the court has reviewed
8 in camera the record related to the report and has found that disclosure is
9 needed:

10 (A) To prevent commission of a crime; or

11 (B) For prosecution of a crime.

12 (g)(1) Data, records, reports, or documents released under this
13 section to a law enforcement agency, the prosecuting attorney, or a court by
14 the Department of Human Services:

15 (A) Are confidential;

16 (B) Shall be sealed; and

17 (C) Shall not be redisclosed without a protective order.

18 (2) Data, records, reports, or documents released under this
19 section are confidential and are items of evidence for which there is a
20 reasonable expectation of privacy that the items will not be distributed to
21 persons or institutions without a legitimate interest in the evidence.

22 (3) This subchapter does not abrogate the right of discovery in
23 a criminal case under the Arkansas Rules of Criminal Procedure or other
24 applicable law.

25
26
27
28
29
30
31
32
33
34
35
36