

2021 -- H 5559

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO HEALTH AND SAFETY - ABUSE IN HEALTH CARE FACILITIES

Introduced By: Representatives McEntee, Craven, Knight, Shanley, and Batista

Date Introduced: February 12, 2021

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-17.8-1 of the General Laws in Chapter 23-17.8 entitled "Abuse in  
2 Healthcare Facilities" is hereby amended to read as follows:

3 **23-17.8-1. Definitions.**

4 (a)(1) "Abuse" means:

5 (i) Any assault as defined in chapter 5 of title 11, including, but not limited to, hitting,  
6 kicking, pinching, slapping, or the pulling of hair; provided, however, unless it is required as an  
7 element of the offense charged, it shall not be necessary to prove that the patient or resident was  
8 injured by the assault;

9 (ii) Any assault as defined in chapter 37 of title 11;

10 (iii) Any offense under chapter 10 of title 11;

11 (iv) Any conduct which harms or is likely to physically harm the patient or resident except  
12 where the conduct is a part of the care and treatment, and in furtherance of the health and safety of  
13 the patient or resident; or

14 (v) ~~Intentionally engaging~~ Engaging in a pattern of harassing conduct which causes or is  
15 likely to cause emotional or psychological harm to the patient or resident, including but not limited  
16 to, ridiculing or demeaning a patient or resident, making derogatory remarks to a patient or resident  
17 or cursing directed towards a patient or resident, or threatening to inflict physical or emotional harm  
18 on a patient or resident.

19 (2) Nothing in this section shall be construed to prohibit the prosecution of any violator of

1 this section under any other chapter.

2 (b) "Department" means the department of health when the incident occurs in a health care  
3 facility, and the department of behavioral healthcare, developmental disabilities and hospitals when  
4 the incident occurs in a community residence for people who are mentally retarded or persons with  
5 developmental disabilities.

6 (c) "Facility" means any health care facility or community residence for persons who are  
7 mentally retarded, or persons with developmental disabilities as those terms are defined in this  
8 section. "Health care facility" means any hospital or facility which provides long-term health care  
9 required to be licensed under chapter 17 of this title, and any assisted living residence required to  
10 be licensed under chapter 17.4 of this title, and any community residence whether privately or  
11 publicly owned. "Community residence" for persons who are mentally retarded or persons with  
12 developmental disabilities means any residential program licensed by the department of behavioral  
13 healthcare, developmental disabilities and hospitals which meets the definition of a community  
14 residence as defined in § 40.1-24-1(2) and provides services to people who are mentally retarded  
15 or persons with developmental disabilities.

16 (d) "High Managerial Agent" means an officer of a facility, the administrator and assistant  
17 administrator of the facility, the director and assistant director of nursing services, or any other  
18 agent in a position of comparable authority with respect to the formulation of the policies of the  
19 facility or the supervision in a managerial capacity of subordinate employees.

20 (e) "Mistreatment" means the inappropriate use of medications, isolation, or use of physical  
21 or chemical restraints:

- 22 (1) As punishment;
- 23 (2) For staff convenience;
- 24 (3) As a substitute for treatment or care;
- 25 (4) In conflict with a physician's order; or
- 26 (5) In quantities which inhibit effective care or treatment, or which harms or is likely to  
27 harm the patient or resident.

28 (f) "Neglect" means the ~~intentional~~ failure to provide treatment, care, goods, and services  
29 necessary to maintain the health and safety of the patient or resident, or the ~~intentional~~ failure to  
30 carry out a plan of treatment or care prescribed by the physician of the patient or resident, or the  
31 ~~intentional~~ failure to report patient or resident health problems or changes in health problems or  
32 changes in health conditions to an immediate supervisor or nurse, or the ~~intentional~~ lack of attention  
33 to the physical needs of a patient or resident including, but not limited to toileting, bathing, meals,  
34 and safety. No person shall be considered to be neglected for the sole reason that he or she relies

1 on or is being furnished treatment in accordance with the tenets and teachings of a well-recognized  
2 church or denomination by a duly-accredited practitioner of a well-recognized church or  
3 denomination.

4 (g) "Patient" means any person who is admitted to a facility for treatment or care, while  
5 "resident" means any person who maintains their residence or domicile, on either a temporary or  
6 permanent basis, in a facility.

7 (h) "Person" means any natural person, corporation, partnership, unincorporated  
8 association, or other business entity.

9 (i) "Immediate jeopardy" means a situation in which the nursing facility's alleged  
10 noncompliance with one or more state or federal requirements or conditions has caused, or is likely  
11 to cause serious injury, harm, impairment or death to a resident; or shall be defined in accordance  
12 with 42 CFR 489 or any subsequent applicable federal regulations.

13 (j) "Non-immediate jeopardy -- high potential for harm" means a situation in which a  
14 nursing facility's alleged noncompliance with one or more state or federal requirements or  
15 conditions may have caused harm that negatively impacts the individual's mental, physical and/or  
16 psychosocial status; or shall be defined in accordance with 42 CFR 489 or any subsequent  
17 applicable federal regulations.

18 (k) "Non-immediate jeopardy -- medium potential for harm" means a situation in which a  
19 nursing facility's alleged noncompliance with one or more state or federal requirements or  
20 conditions has caused or may have caused harm that is of limited consequence and does not  
21 significantly impair the individual's mental, physical and/or psychosocial status to function; or shall  
22 be defined in accordance with 42 CFR 489 or any subsequent applicable federal regulations.

23 (l) "Non-immediate jeopardy -- low potential for harm" means a situation in which a  
24 nursing facility's alleged noncompliance with one or more state or federal requirements or  
25 conditions may have caused mental, physical and/or psychosocial discomfort that does not  
26 constitute injury or damage; or shall be defined in accordance with 42 CFR 489 or any subsequent  
27 applicable federal regulations.

28 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HEALTH AND SAFETY - ABUSE IN HEALTH CARE FACILITIES

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- 1           This act would remove the "intentional" element in the definition of "abuse" and "neglect"
- 2   in the abuse in health care facilities' law.
- 3           This act would take effect upon passage.

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