

2023 -- H 5436

LC001001

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO HEALTH AND SAFETY -- ABUSE IN HEALTHCARE FACILITIES

Introduced By: Representatives Serpa, Fellela, Ackerman, Costantino, Phillips, Lima,
and Shanley

Date Introduced: February 08, 2023

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. Section 42-66-4.1 of the General Laws in Chapter 42-66 entitled "Office of
29 Healthy Aging" is hereby amended to read as follows:

30 **42-66-4.1. Definitions.**

31 As used in this chapter:

32 (1) "Abuse" means physical abuse, sexual abuse, and/or emotional abuse of an elderly
33 person by a caregiver as defined in subsection (5).

34 (a) "Physical abuse" means the ~~willful~~ infliction of physical pain or injury (e.g. slapping,

1 bruising or restraining) upon an elderly person.

2 (b) “Sexual abuse” means the infliction of non-consensual sexual contact of any kind upon
3 an elderly person. Sexual abuse includes, but is not limited to, sexual assault, rape, sexual misuse
4 or exploitation of an elder, as well as threats of sexual abuse where the perpetrator has the intent
5 and the capacity to carry out the threatened abuse.

6 (c) “Emotional abuse” means a pattern of ~~willful~~ infliction of mental or emotional harm
7 upon an elder by threat, intimidation, isolation or other abusive conduct.

8 (2) “Exploitation” means the fraudulent or otherwise illegal, unauthorized or improper act
9 or process of an individual, including, but not limited to, a caregiver or fiduciary, that uses the
10 resources of an elder for monetary or personal benefit, profit, gain, or that results in depriving an
11 elder of rightful access to, or use of, benefits, resources, belongings, or assets by use of undue
12 influence, harassment, duress, deception, false representation or false pretenses.

13 (3) “Neglect” means the ~~willful~~ failure by a caregiver or other person with a duty of care
14 to provide goods or services necessary to avoid physical harm, mental harm or mental illness to an
15 elderly person, including, but not limited to, “abandonment” (withdrawal of necessary assistance)
16 and denial of food or health related services.

17 (4) ~~“Willful” means intentional, conscious and directed toward achieving a purpose.~~

18 (5) “Caregiver” means a person who has assumed the responsibility for the care of the
19 elderly person voluntarily, by contract or by order of a court of competent jurisdiction, or who is
20 otherwise legally responsible for the care of the elderly person.

21 (6) “Self-neglect” means a pattern of behavior in an elderly person that directly,
22 imminently and significantly threatens his/her own health and/or, safety. Self-neglect includes, but
23 is not limited to, an inability or an incapacity to provide self with food, water, shelter, or safety to
24 the point of establishing imminent risk of any of the harm(s) described in the immediately preceding
25 sentence.

26 (7) “Protective services” means services and/or action intended to prevent and/or alleviate
27 the abuse, neglect, exploitation or self-neglect of elderly persons. Protective services may include
28 supervision, counseling, and assistance in securing health and supportive services, safe living
29 accommodations and legal intervention.

30 (8) “Elderly person” or “elder” means any person sixty (60) years of age or older.

31 SECTION 3. 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 HEALTHCARE FACILITIES

1 This act would remove the intent requirement relative to the definitions of "abuse" within
2 the chapter on "abuse in healthcare facilities" and would amend the definitions of "abuse" and
3 "neglect" with regard to elderly affairs by deleting the element of willful conduct. This act would
4 also delete the definition of willful.

5 This act would take effect upon passage.

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