

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 717

BY SENATORS MARONEY, CLINE, HAMILTON, PREZIOSO,
RUCKER, SWOPE, SYPOLT, TAKUBO, TRUMP, WELD,
STOLLINGS, AND SMITH

[Introduced February 6, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §9-6-1, §9-6-2, §9-6-3, §9-6-4, §9-6-5, §9-6-6, §9-6-7, §9-6-8, §9-
 2 6-9, §9-6-10, §9-6-11, §9-6-13, and §9-6-16 of the Code of West Virginia, 1931, as
 3 amended, all relating to adult protective services, abuse, neglect, vulnerable adults;
 4 amending the definition of “financial exploitation” to include the use of undue influence;
 5 redefining “caregiver”, defining “fiduciary” and “undue influence”; replacing old terms and
 6 adding new terms; providing for the release of investigative summaries of substantiated
 7 and unsubstantiated reports of abuse, neglect, or financial exploitation to certain
 8 individuals; adding employees of a financial institution as mandated reporters of suspected
 9 abuse, neglect, or financial exploitation; and providing for the release of suspicious
 10 financial transactions to Adult Protective Services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

1 As used in this article:
 2 (1) “Adult protective services agency” means any public or nonprofit private agency,
 3 corporation, board or organization furnishing protective services to adults;
 4 (2) “Adult Protective Services” means services provided to vulnerable adults as the
 5 secretary may specify and may include, but are not limited to, services such as:
 6 (A) Receiving reports of adult abuse, neglect or exploitation;
 7 (B) Investigating the reports of abuse, neglect or exploitation;
 8 (C) Case planning, monitoring, evaluation and other case work and services; and
 9 (D) Providing, arranging for or facilitating the provision of medical, social service,
 10 economic, legal, housing, law enforcement or other protective, emergency or support
 11 services.
 12 ~~(2)~~ (3) “Abuse” means the infliction or threat to inflict of physical or psychological harm,
 13 including the use of undue influence, pain or injury on or the imprisonment of any incapacitated

14 vulnerable adult or facility resident;

15 ~~(3)~~ (4) “Neglect” means the unreasonable failure by a caregiver to provide the care
16 necessary to ~~assure~~ maintain the ~~physical~~ safety or health of ~~an incapacitated~~ a vulnerable adult
17 or self-neglect by a vulnerable adult, including the use of undue influence by a caregiver to cause
18 self-neglect.

19 ~~(4)~~ (5) “~~Incapacitated~~ Vulnerable adult” means any person over the age of 18, or an
20 emancipated minor, who by reason of physical, ~~mental or other infirmity~~ or mental condition is
21 unable to independently carry on the daily activities of life necessary to sustaining life and
22 reasonable health and protection. As used in this article, all facility residents are considered
23 vulnerable adults;

24 ~~(5)~~ (6) “Emergency” or “emergency situation” means a situation or set of circumstances
25 which presents a substantial and immediate risk of death or serious injury to ~~an incapacitated~~ a
26 vulnerable adult;

27 ~~(6)~~ (7) “Financial exploitation” means the intentional misappropriation, ~~or misuse~~ or use of
28 undue influence to cause the misuse of funds or assets of ~~an incapacitated~~ a vulnerable adult or
29 facility resident, but does not apply to a transaction or disposition of funds or assets where a
30 person made a good faith effort to assist the ~~incapacitated~~ vulnerable adult or facility resident with
31 the management of his or her money or other things of value;

32 ~~(7)~~ (8) “Legal representative” means a person lawfully invested with the power and
33 charged with the duty of taking care of another person or with managing the property and rights
34 of another person, including, but not limited to, a guardian, conservator, medical power of attorney
35 representative, trustee, or other duly appointed person;

36 ~~(8)~~ (9) “Nursing home” or “facility” means any institution, residence, intermediate care
37 facility for individuals with an intellectual disability, care home or any other adult residential facility,
38 or any part or unit thereof, that is subject to the provisions of §16-5C-1 *et seq.*, §16-5D-1 *et seq.*
39 §16-5E-1 *et seq.*, or §16-5H-1 *et seq.* of this code;

40 ~~(9)~~ (10) “Regional long-term care ombudsman” means any paid staff of a designated
41 regional long-term care ombudsman program who has obtained appropriate certification from the
42 Bureau for Senior Services and meets the qualifications set forth in ~~§16-51-7~~ §16-5L-7 of this
43 code;

44 ~~(10)~~ (11) “Facility resident” means an individual living in a nursing home or other facility,
45 as that term is defined in subdivision ~~(7)~~ (9) of this section;

46 ~~(11)~~ (12) “Responsible family member” means a member of a resident’s family who has
47 undertaken primary responsibility for the care of the resident and who has established a working
48 relationship with the nursing home or other facility in which the resident resides. For purposes of
49 this article, a responsible family member may include someone other than the resident’s legal
50 representative;

51 ~~(12)~~ (13) “State Long-term Care Ombudsman” means an individual who meets the
52 qualifications of ~~§16-51-5~~ §16-5L-5 of this code and who is employed by the State Bureau for
53 Senior Services to implement the State Long-term Care Ombudsman Program;

54 ~~(13)~~ (14) “Secretary” means the Secretary of the Department of Health and Human
55 Resources;

56 ~~(14)~~ (15) “Caregiver” ~~means a person or entity who cares for or shares in the responsibility~~
57 ~~for the care of an incapacitated adult on a full-time or temporary basis, regardless of whether such~~
58 ~~person or entity has been designated as a guardian or custodian of the incapacitated adult by any~~
59 ~~contract, agreement or legal procedures. Caregiver includes health care providers, family~~
60 ~~members, and any person who otherwise voluntarily accepts a supervisory role towards an~~
61 ~~incapacitated adult.~~ means an individual who is responsible for the care of a vulnerable adult or
62 a facility resident, either voluntarily, by contract, by receipt of payment for care, or as a result of
63 the operation of law, and means a family member or other individual who provides (on behalf of
64 such individual or of a public or private agency, organization, or institution) compensated or
65 uncompensated care to an adult with disabilities or a facility resident who needs supportive

66 services in any setting.

67 (16) “Fiduciary” means a person or entity with the legal responsibility to make decisions
68 on behalf of and for the benefit of another person; and to act in good faith and with fairness; and
69 includes a trustee, a guardian, a conservator, an executor or an agent under a financial power of
70 attorney or health.

71 (17) “Undue Influence” means excessive persuasion that causes a vulnerable adult to act
72 or refrain from acting by overcoming that person’s free will and that results in inequity.

73 (A) In determining whether a result was produced by undue influence, all of the following
74 shall be considered:

75 (i) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited
76 to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional
77 distress, isolation, or dependence, and whether the influencer knew or should have known of the
78 alleged victim’s vulnerability.

79 (ii) The influencer’s apparent authority. Evidence of apparent authority may include, but
80 is not limited to, status as a fiduciary, family member, care provider, health care professional,
81 legal professional, spiritual adviser, expert or other qualification.

82 (iii) The actions or tactics used by the influencer. Evidence of actions or tactics used may
83 include, but is not limited to, controlling necessities of life, medication, the victim’s interactions
84 with others, access to information, or sleep; use of affection, intimidation or coercion; or initiation
85 of changes in personal or property rights, use of haste or secrecy in effecting those changes,
86 effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

87 (iv) The equity of the result. Evidence of the equity of the result may include, but is not
88 limited to, the economic consequences to the victim, any divergence from the victim’s prior intent
89 or course of conduct or dealing, the relationship of the value conveyed to the value of any services
90 or consideration received, or the appropriateness of the change in light of the length and nature
91 of the relationship.

92 (B) Evidence of an inequitable result, without more, is not sufficient to prove undue
93 influence.

§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

1 (a) There is continued within the Department of Health and Human Resources the system
2 of adult protective services heretofore existing.

3 (b) The secretary shall propose rules for legislative approval in accordance with the
4 provisions of §29A-3-1 *et seq.* of this code regarding the organization and duties of the adult
5 protective services system and the procedures to be used by the department to effectuate the
6 purposes of this article. The rules may be amended and supplemented from time to time.

7 (c) The secretary shall design and arrange such rules to attain, or move toward the
8 attainment of, the following goals to the extent that the secretary believes feasible under the
9 provisions of this article within the state appropriations and other funds available:

10 (1) Assisting vulnerable adults who are abused, neglected or financially exploited ~~or~~
11 ~~incapacitated~~ in achieving or maintaining self-sufficiency and self-support and preventing,
12 reducing and eliminating their dependency on the state;

13 (2) Preventing, reducing, and eliminating neglect, financial exploitation, and abuse of
14 adults who are unable to protect their own interests;

15 (3) Preventing and reducing institutional care of adults by providing less intensive forms
16 of care, preferably in the home;

17 (4) Referring and admitting abused, neglected or financially exploited ~~or incapacitated~~
18 vulnerable adults to institutional care only where other available services are inappropriate;

19 (5) Providing services and monitoring to adults in institutions designed to assist adults in
20 returning to community settings;

21 (6) Preventing, reducing and eliminating the exploitation of ~~incapacitated~~ vulnerable adults
22 and facility residents through the joint efforts of the various agencies of the Department of Health

23 and Human Resources, the adult protective services system, the state and regional long-term
 24 care ombudsmen, administrators of nursing homes or other residential facilities, and county
 25 prosecutors;

26 (7) Preventing, reducing and eliminating abuse, neglect and financial exploitation of
 27 residents in nursing homes or facilities; and

28 (8) Coordinating investigation activities for complaints of financial exploitation, abuse and
 29 neglect of ~~incapacitated~~ vulnerable adults and facility residents among the various agencies of
 30 the Department of Health and Human Resources, the adult protective services system, the state
 31 and regional long-term care ombudsmen, administrators of nursing homes or other residential
 32 facilities, county prosecutors, if necessary, and other state or federal agencies or officials, as
 33 appropriate.

34 (d) No adult protective services caseworker may be held personally liable for any
 35 professional decision or action thereupon arrived at in the performance of his or her official duties
 36 as set forth in this section or agency rules promulgated thereupon: *Provided*, That nothing in this
 37 subsection protects any adult protective services worker from any liability arising from the
 38 operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton
 39 misconduct or intentional misconduct.

40 (e) The rules proposed by the secretary shall provide for the means by which the
 41 department shall cooperate with federal, state and other agencies to fulfill the objectives of the
 42 system of adult protective services.

**§9-6-3. Cooperation among agencies; termination and reduction of assistance by
 commissioner.**

1 The secretary shall direct the coordination of the investigation of complaints of abuse, ~~or~~
 2 neglect, or financial exploitation made pursuant to this article and the various agencies of the
 3 department, the adult protective services system, the state and regional long-term care
 4 ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors,

5 and any other applicable state or federal agency shall cooperate among each other for the
6 purposes of observing, reporting, investigating, and acting upon complaints of abuse, ~~or~~ neglect,
7 or financial exploitation of any ~~incapacitated~~ vulnerable adult or facility resident in this state.

§9-6-4. Action to abate abuse, neglect, or emergency.

1 The department or any reputable person may bring and maintain an action against any
2 person having actual care, custody, or control of an ~~incapacitated~~ a vulnerable adult, for injunctive
3 relief, including a preliminary injunction, to restrain and abate any abuse or neglect of an
4 ~~incapacitated~~ a vulnerable adult or to abate an emergency situation. In any such proceeding the
5 court shall appoint a guardian *ad litem*, to protect the interests of the ~~incapacitated~~ vulnerable
6 adult, who shall not be an employee of the state nor be a party to the proceeding nor be selected
7 by or in the employ of any party to the proceeding: *Provided*, That the court may by order terminate
8 assistance granted or paid to any person found to have abused, ~~or~~ neglected or financially
9 exploited an ~~incapacitated~~ a vulnerable adult and order any such assistance to be paid to another
10 person solely for the use and benefit of such abused, ~~or~~ neglected or exploited person, and grant
11 such other equitable relief as may be appropriate in the circumstances to restrain and abate such
12 abuse or neglect: *Provided, however*, That in the case of an action to abate an emergency
13 situation, the court may grant the relief authorized in section five of this article.

§9-6-5. Emergency immediate remedial treatment; procedure.

1 Whenever a circuit court shall find in an action to abate an emergency situation that there
2 is probable cause to believe that an ~~incapacitated~~ a vulnerable adult is in an emergency situation
3 and that the person or persons having the immediate care, custody and control of such
4 ~~incapacitated~~ vulnerable adult refuses to take necessary steps to alleviate such emergency, or
5 that such ~~incapacitated~~ vulnerable adult is without the actual care, custody, and control of any
6 persons, it may issue an order of attachment for such ~~incapacitated~~ vulnerable adult and direct
7 that the peace officer executing the same deliver such ~~incapacitated~~ vulnerable adult in his
8 custody to a hospital or other safe place except a jail, for immediate remedial treatment to reduce

9 or avoid the risk of death or serious injury. In the event that an order of attachment is issued
10 pursuant to this section, any peace officer executing the order, and such employees of the
11 department the peace officer directs to accompany him, may enter into the place of abode to
12 remove such ~~incapacitated~~ vulnerable person, notwithstanding the residence therein of other
13 persons.

14 If any employee or officer of the department shall by direct observation of an ~~incapacitated~~
15 a vulnerable adult not in the immediate care, custody or control of another have reasonable cause
16 to believe that such ~~incapacitated~~ vulnerable person is then and there in an emergency situation,
17 then such officer or employee may offer transportation to a hospital or other safe place, other than
18 a jail, to such ~~incapacitated~~ vulnerable adult for immediate remedial treatment to reduce or avoid
19 the risk of death or serious injury.

20 Immediately upon delivery of any ~~incapacitated~~ vulnerable person to such hospital or other
21 safe place, such officer or employee shall apply to the circuit court for and the court shall appoint,
22 and in the case of an attachment the court shall contemporaneously with its issuance appoint, a
23 guardian *ad litem* who shall not be an employee of the state, nor be an interested party nor be
24 selected by nor in the employ of any interested party, to represent the interests of such
25 ~~incapacitated~~ vulnerable adult, and the court shall fix a time, not later than one judicial day later,
26 to determine if such remedial treatment shall continue or such ~~incapacitated~~ vulnerable adult
27 should be released. A copy of that attachment and notice of such hearing shall be served on any
28 person in whose actual care, custody and control such ~~incapacitated~~ vulnerable adult is found. If
29 further remedial treatment is required, application shall be promptly made to the county
30 commission or such other proper tribunal for appropriate relief: *Provided*, That the commitment
31 for further remedial treatment may be continued until proceedings for such appropriate relief be
32 concluded: *Provided, however*, That application for release from such remedial treatment may be
33 made and granted at any time that the emergency ceases.

§9-6-6. Payment and termination of payment for services to ~~incapacitated~~ a vulnerable

adult.

1 If any ~~incapacitated~~ vulnerable adult (1) requires and is granted remedial treatment for an
 2 emergency or the department determines that ~~an incapacitated~~ a vulnerable adult is (2) abused,
 3 ~~or (3) neglected,~~ or financially exploited the department may pay any assistance granted for the
 4 use and benefit of such ~~incapacitated~~ vulnerable adult to the person actually providing care for
 5 such adult, and terminate payments to any person alleged or shown to have abused, ~~or neglected~~
 6 or financially exploited such ~~incapacitated~~ vulnerable adult, or to whom such payments were
 7 made prior to such remedial treatment, for so long as such remedial treatment continues, or until
 8 such abuse, ~~or neglect~~ or financial exploitation is abated, and such ~~incapacitated~~ vulnerable adult
 9 continues to be in the immediate care, custody and control of such person.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

1 The department shall develop a plan for a comprehensive system of adult protective
 2 services including social casework, medical and psychiatric services, home care, day care,
 3 counseling, research and others to achieve the goals of this article.

4 It shall offer such services as are available and appropriate in the circumstances to
 5 persons who, other than for compensation, have or intend to have the actual, physical custody
 6 and control of ~~an incapacitated~~ a vulnerable adult and to such ~~incapacitated~~ vulnerable adults or
 7 to adults who may request and be entitled to such protective services: *Provided*, That except as
 8 expressly provided in this article, the department may not directly or indirectly compel the
 9 acceptance of such services by any person or discriminate against a person who refuses such
 10 services

§9-6-8. Confidentiality of records.

1 (a) Except as otherwise provided in this section, all records of the department, state and
 2 regional long-term care ombudsmen, nursing home or facility administrators, the Office of Health
 3 Facility Licensure and Certification, and all protective services agencies concerning an adult or

4 facility resident under this article are confidential and may not be released, except in accordance
5 with the provisions of section 11 of this article.

6 (b) Unless the adult concerned is receiving adult protective services or unless there are
7 pending proceedings with regard to the adult, the records maintained by the adult protective
8 services agency shall be destroyed ~~thirty~~ 30 years following their preparation.

9 (c) Notwithstanding the provisions of subsection (a) of this section or any other provision
10 of this code to the contrary, ~~all~~ records concerning reports of abuse, neglect or financial
11 exploitation of a vulnerable adult, including all records generated as a result of such reports, may
12 be made available to:

13 (1) Employees or agents of the department who need access to the records for official
14 business;

15 (2) Any law-enforcement agency investigating a report of known or suspected abuse,
16 neglect or financial exploitation of a vulnerable adult;

17 (3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or
18 in which the alleged abuse, neglect or financial exploitation occurred;

19 (4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court
20 shall, before permitting use of the records in connection with any court proceeding, review the
21 records for relevancy and materiality to the issues in the proceeding. The court may issue an
22 order to limit the examination and use of the records or any part of the record;

23 (5) A grand jury, by subpoena, upon its determination that access to the records is
24 necessary in the conduct of its official business;

25 (6) The recognized protection and advocacy agency for the disabled of the State of West
26 Virginia to the extent permitted by federal laws;

27 (7) The victim; and

28 (8) The victim's legal representative, unless he or she is the subject of an investigation
29 under this article.

30 (d) Notwithstanding the provisions of subsection (a) of this section or any other provision
31 of this code to the contrary, summaries concerning substantiated investigative reports of abuse,
32 neglect or financial exploitation of adults may be made available to:

33 ~~(4)~~ Any person who the department has determined to have abused, neglected or
34 financially exploited the victim.

35 (e) Notwithstanding the provisions of subsection (a) of this section or any other provision
36 of this code to the contrary, summaries concerning substantiated and unsubstantiated
37 investigative reports of abuse, neglect or financial exploitation of adults may be made available
38 to:

39 ~~(2)~~ (1) Any appropriate official of the state or regional long-term care ombudsman
40 investigating a report of known or suspected abuse, neglect or financial exploitation of a
41 vulnerable adult;

42 ~~(3)~~ (2) Any person engaged in bona fide research or auditing, as defined by the
43 department. However, information identifying the subjects of the report may not be made available
44 to the researcher;

45 ~~(4)~~ (3) Employees or agents of an agency of another state that has jurisdiction to
46 investigate known or suspected abuse, neglect or exploitation of vulnerable adults;

47 ~~(5)~~ (4) A professional person when the information is necessary for the diagnosis and
48 treatment of, and service delivery to, a vulnerable adult; and

49 ~~(6)~~ (5) A department administrative hearing officer when the hearing officer determines
50 the information is necessary for the determination of an issue before the officer.

51 ~~(e)~~ (f) The identity of any person reporting abuse, neglect or financial exploitation of a
52 vulnerable adult may not be released, without that person's written consent, to any person other
53 than employees of the department responsible for protective services or the appropriate
54 prosecuting attorney or law-enforcement agency. This subsection grants protection only for the
55 person who reported the abuse, neglect or financial exploitation and protects only the fact that

56 the person is the reporter. This subsection does not prohibit the subpoena of a person reporting
 57 the abuse, neglect or exploitation when deemed necessary by the prosecuting attorney or the
 58 department to protect a vulnerable adult who is the subject of a report, if the fact that the person
 59 made the report is not disclosed.

**§9-6-9. Mandatory reporting of incidences of abuse, neglect, financial exploitation or
 emergency situation.**

1 (a) If any medical, dental or mental health professional, Christian Science practitioner,
 2 religious healer, social service worker, law-enforcement officer, humane officer, ~~state or regional~~
 3 ~~ombudsman~~ or any employee of any nursing home or other residential facility, or any employee
 4 of a financial institution has reasonable cause to believe that ~~an incapacitated~~ a vulnerable adult
 5 or facility resident is or has been neglected, abused, financially exploited or placed in an
 6 emergency situation, or if such person observes ~~an incapacitated~~ a vulnerable adult or facility
 7 resident being subjected to conditions that are likely to result in abuse, neglect, financial
 8 exploitation or an emergency situation, the person shall immediately report the circumstances
 9 pursuant to the provisions of section 11 of this article: *Provided*, That nothing in this article is
 10 intended to prevent individuals from reporting on their own behalf.

11 (b) In addition to those persons and officials specifically required to report situations
 12 involving suspected abuse, ~~or neglect~~ or financial exploitation of ~~an incapacitated~~ a vulnerable
 13 adult or facility resident or the existence of an emergency situation, any other person may make
 14 such a report.

15 ~~(c) The secretary shall develop a form for the filing of written complaints, as provided by~~
 16 ~~section eleven of this article, and provide these forms to all nursing homes or other residential~~
 17 ~~facilities, hospitals, ombudsmen and adult protective service agencies in this state. The forms~~
 18 ~~shall be designed to protect the identity of the complainant, if desired, and to facilitate the prompt~~
 19 ~~filing of complaints.~~

20 ~~(d)~~ (c) The Department of Health and Human Resources shall develop and implement a

21 procedure to notify any person mandated to report suspected abuse and neglect of an
22 ~~incapacitated~~ a vulnerable adult or facility resident of whether an investigation into the reported
23 suspected abuse, or neglect or financial exploitation has been initiated and when the investigation
24 is completed.

25 (d) Financial institutions and their employees, as defined by §31A-2A-1 of this code and
26 as permitted by §31A-2A-4(13) of this code, others engaged in financially related activities, as
27 defined by §31A-8C-1 of this code, caregivers, relatives and other concerned persons are
28 permitted to report suspected cases of financial exploitation to state or federal law-enforcement
29 authorities, the county prosecuting attorney and to the Department of Health and Human
30 Resources, Adult Protective Services Division or Medicaid Fraud Division, as appropriate. Public
31 officers and employees are required to report suspected cases of financial exploitation to the
32 appropriate entities as stated above. The requisite agencies shall investigate or cause the
33 investigation of the allegations.

34 (e) When financial exploitation is suspected, and to the extent permitted by federal law,
35 financial institutions and their employees or other business entities required by federal law or
36 regulation to file suspicious activity reports and currency transaction reports shall also be
37 permitted to disclose suspicious activity reports or currency transaction reports to Adult Protective
38 Services in the county in which the transactions underlying the suspicious activity reports or
39 currency transaction reports occurred.

§9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.

1 (a) Any person or official who is required under section nine of this article to report cases
2 of suspected abuse, or neglect or financial exploitation and who has probable cause to believe
3 that ~~an incapacitated~~ a vulnerable adult or facility resident has died as a result of abuse or neglect
4 shall report that fact to the appropriate medical examiner or coroner.

5 (b) Upon the receipt of such a report, the medical examiner or coroner shall cause an
6 investigation to be made and shall report the findings to the local law-enforcement agency, the

7 local prosecuting attorney, the department's local adult protective services agency, and, if the
8 institution making a report is a hospital, nursing home or other residential facility, to the
9 administrator of the facility, the state and regional long-term care ombudsman and the Office of
10 Health Facility Licensure and Certification.

§9-6-11. Reporting procedures.

1 (a) A report of neglect, ~~or abuse~~ or financial exploitation of an ~~incapacitated~~ a vulnerable
2 adult or facility resident or of an emergency situation involving such an adult shall be made
3 immediately, and not more than 48 hours after suspecting abuse, neglect or financial exploitation,
4 to the department's adult protective services agency by a method established by the department.
5 ~~Provided, That if the method for reporting is web-based, the Department of Health and Human~~
6 ~~Resources shall maintain a system for addressing emergency situations that require immediate~~
7 ~~attention and shall be followed by a written report by the complainant or the receiving agency~~
8 ~~within 48 hours.~~ The department shall, upon receiving any such report, take such action as may
9 be appropriate and shall maintain a record thereof. The department shall receive ~~telephonic~~
10 reports on its 24-hour, seven-day-a-week, toll-free number established to receive calls reporting
11 cases of suspected or known adult abuse or neglect.

12 (b) A copy of any report of abuse, neglect, financial exploitation or emergency situation
13 shall be immediately filed with the following agencies:

14 (1) The Department of Health and Human Resources;

15 (2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary;

16 or

17 (3) In case of a death, to the appropriate medical examiner or coroner's office.

18 (c) If the person who is alleged to be abused, ~~or neglected~~ or financially exploited is a
19 resident of a nursing home or other residential facility, a copy of the report shall also be filed with
20 the state or regional ombudsman and the administrator of the nursing home or facility.

21 ~~(d) The department shall omit from such report in the first instance, the name of the person~~

22 ~~making a report, when requested by such person.~~

23 ~~(e)~~ (d) Reports of known or suspected institutional abuse, ~~or~~ neglect or financial
24 exploitation of ~~an incapacitated~~ a vulnerable adult or facility resident or the existence of an
25 emergency situation in an institution, nursing home or other residential facility shall be made,
26 received and investigated in the same manner as other reports provided for in this article. In the
27 case of a report regarding an institution, nursing home or residential facility, the department shall
28 immediately cause an investigation to be conducted.

29 ~~(f) Upon receipt of a written complaint, the department shall coordinate an investigation~~
30 ~~pursuant to § 9-6-3 of this code and applicable state or federal laws, rules, or regulations.~~

§9-6-13. Abrogation of privileged communications.

1 The privileged status of communications between husband and wife, and with any person
2 required to make reports under sections nine or 10 of this article, except communications between
3 an attorney and his client, is hereby abrogated in circumstances involving suspected or known
4 abuse, ~~or~~ neglect or financial exploitation of ~~an incapacitated~~ a vulnerable adult or where the
5 incapacitated adult is in a known or suspected emergency situation.

§9-6-16. Compelling production of information.

1 (a)(1) In order to obtain information regarding the location of an adult who is the subject
2 of an allegation of abuse, ~~or~~ neglect or financial exploitation the Secretary of the Department of
3 Health and Human Resources may serve, by certified mail, personal service or facsimile, an
4 administrative subpoena on any corporation, partnership, business or organization for production
5 of information leading to determining the location of the adult. In case of disobedience to the
6 subpoena, Adult Protective Services may petition any circuit court to require the production of
7 information.

8 (2) In case of disobedience to the subpoena, in compelling the production of information
9 the secretary may invoke the aid of: (A) The circuit court with jurisdiction over the served party, if
10 the entity served is located in this state; or (B) the circuit court of the county in which the local

11 protective services office conducting the investigation is located, if the entity served is a
12 nonresident.

13 (3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The
14 investigation is one the division of Adult Protective Services is authorized to make and is being
15 conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the
16 inquiry is not too broad or indefinite; (D) the information sought is not already in the possession
17 of the division of Adult Protective Services; and (E) any administrative steps required by law have
18 been followed.

19 (4) If circumstances arise where the secretary, or his or her designee, determines it
20 necessary to compel an individual to provide information regarding the location of an adult who is
21 the subject of an allegation of abuse, ~~or neglect~~ or financial exploitation, the secretary, or his or
22 her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from
23 whom the information is sought.

NOTE: The purpose of this bill is to add new definitions, replace archaic language, provide for the sharing of information for the protections of vulnerable adults and for providing Adult Protective Services with best practices in investigating allegations of financial exploitation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.