

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3247

By Delegates Linville, Rohrbach, Summers,

Mazzocchi, Kump and Tully

[Introduced February 03, 2023; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §9-2A-1, §9-2A-2, §9-2A-3, §9-2A-4, and §9-2A-5, all relating to the creation of
 3 the Abuse and Neglect Oversight Act; providing for a short title; providing for legislative
 4 findings regarding the necessity for this article; providing for enactment of the article, as
 5 well as specific responsibilities required of the Department of Health and Human Services
 6 and the Bureau of Medical Services; and providing for reporting to ensure oversight is
 7 taking place.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. ABUSE AND NEGLECT OVERSIGHT ACT.

§9-2A-1. Short title.

1 This article shall be known and cited as the Abuse and Neglect Oversight Act.

§9-2A-2. Legislative findings.

1 The Legislature finds that recently, serious issues involving abuse and neglect have been
 2 occurring more frequently towards individuals with an intellectual and/or developmental disability.
 3 Because of this, legislative oversight of the various state agencies tasked with current
 4 responsibility in this area is necessary to ensure protection for these at-risk individuals. Annual
 5 reporting requirements to the Legislature, law enforcement, and to Social Services is critical to
 6 ensure the success of these reforms.

§9-2A-3. Definitions.

1 The following definitions shall apply for purposes of this article:

2 (1) "Adult Protect Services" or "ADS" means the Adult Protect Services division of the West
 3 Virginia Department of Health and Human Services.

4 (2) "Bureau of Medical Services" or "BMS" means the West Virginia Bureau of Medical
 5 Services.

6 (3) "Department of Health and Human Services" or "DHHR" means the West Virginia
 7 Department of Health and Human Services.

8 (4) "ICF/IDD" means those persons having intellectual and developmental disabilities.

9 (5) "Intermediate care facility" means an institution that provides health-related services to
10 individuals with conditions that require services above the level of room and board, but do not
11 require the degree of services provided in a hospital or skilled-nursing facility.

12 (6) "Office of Health Facility Licensure and Certification" or "OHFLAC" means the West
13 Virginia Office of Health Facility Licensure & Certification

§9-2A-4. Enactment; DHHR specific requirements; DMS specific requirements.

1 (a) The Department of Health and Human Resources ("DHHR") shall implement a West
2 Virginia Intellectual/Developmental Disabilities (I/DD) Waiver Program reimbursement model that
3 institutes significant financial penalties for substantiated abuse and neglect cases. The DHHR
4 shall be responsible for determining the best means to implement the requirements of this
5 subsection.

6 (b) The DHHR shall institute a three-tier staff reimbursement model, as proposed by the
7 Behavioral Health Association. This tiered reimbursement system shall offer higher subsidy
8 payments to programs that demonstrate that they meet higher standards of care.

9 (c) The West Virginia Bureau for Medical Services ("BMS") shall develop a new policy
10 framework for Intensively Supported Settings ("ISS"), to be evaluated on an annual basis through
11 the legislative rule making process. These entities shall receive oversight by the Office of Health
12 Facility Licensure and Certification ("OHFLAC"), and alignment shall occur across both BMS and
13 OHFLAC in regulatory actions to ensure the success of this oversight.

14 (d) The BMS shall submit Intermediate Care Facilities for the Intellectual and
15 Developmental Disabilities ("ICF/IDD") manuals and state policies through the legislative
16 rulemaking process, to occur on an annual basis.

17 (e) All individuals who are wards of the state shall receive a visit by his or her state
18 assigned caseworker by the agency at least once a month.

19 (f) OHFLAC fines that may be assessed on ICF/IDD and ISS placements shall be

20 increased in an amount up to \$100,000. Legislative rules shall specify when such fines would be
21 issued, and such legislative rulemaking shall occur on an annual basis.

22 (g) Mental health and long-term care ombudsman offices shall have exclusive jurisdiction
23 over all aspects of ICF and ISS placements.

24 (h) The DHHR shall periodically bid out ICF/IDD placements regionally, or alternatively, the
25 DHHR shall eliminate moratorium and certificate of need ("CON") requirements.

26 (i) OHFLAC shall independently assess and determine the penalties for abuse and neglect
27 cases from the rest of DHHR. Leadership from the DHHR shall not have an influence, nor shall
28 negotiate, in these situations.

§9-2A-5.

Reporting.

1 (a) The DHHR and all sub-units of the DHHR shall send to county prosecutors and the
2 Office of the Attorney General any findings that may be subject to criminal prosecution in cases of
3 abuse and neglect with IDD.

4 (1) These entities shall report back to the DHHR when cases are prosecuted. Based on
5 this initial reporting and subsequent submissions back to the DHHR, an annual report will be
6 submitted to the WV Legislature.

7 (2) This report shall sunset in five years, and shall be submitted to both LOCHHRA and the
8 Joint Committee on Government and Finance.

9 (b) All instances where abuse and neglect cases involving IDD has been substantiated by
10 law enforcement, APS, regulators, or the Court shall be immediately reported to Social Services
11 for the purpose of making a record of these instances.

12 (c) All instances of reported abuse of IDD individuals shall be reported to the Legislature
13 annually. This includes, but is not limited to, abuses that occur in state operated facilities, out-of-
14 state facilities where West Virginia residents have been placed by the state, foster homes, group
15 homes, private provider settings, and other similarly situated facilities

16 (d) The information reported to the Legislature shall include the following:

- 17 (1) The county where abuse occurred;
18 (2) The category of the abuse and neglect;
19 (3) The type of setting where the abuse and neglect occurred;
20 (4) Whether the abuse and neglect information was turned over to the county prosecutor
21 and law enforcement;
22 (5) The name of the provider, if the provider is involved, who is charged with the care of the
23 individual; and
24 (6) The age range and gender of the individual.
25 (e) In instances where abuse and/or neglect leads to the death of an individual, the DHHR
26 shall be required to send a letter, within 30 days, to the Senate President, the House Speaker, and
27 the respective chairpersons of LOCHHRA outlining the information above about the case.

NOTE: The purpose of this bill is to create the Abuse and Neglect Oversight Act. The bill provides for a short title. The bill provides for legislative findings regarding the necessity for this article. The bill provides for the enactment of the article, as well as specific responsibilities required of the Department of Health and Human Services and the Bureau of Medical Services. Finally, the bill provides for reporting to ensure oversight is taking place.

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