

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

As Engrossed: S3/19/15
A Bill

SENATE BILL 808

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

8 **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

14 **Subtitle**

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.
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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, concerning the defined terms
33 used in the Adult and Long-Term Care Facility Resident Maltreatment Act is
34 amended to add an additional subdivision to read as follows:

35 (21) “Negligently” means a person’s failure to exercise the
36 degree of care that a person of ordinary prudence would have exercised in the

1 same circumstances.

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3 SECTION 5. Arkansas Code § 12-12-1717(a), concerning the release of
4 information in a founded report of adult maltreatment or long-term care
5 facility resident maltreatment, is amended to add an additional subdivision
6 to read as follows:

7 (18) The Office of Medicaid Inspector General.

8

9 SECTION 6. Arkansas Code § 12-12-1717, concerning the release of
10 information in a founded report of adult maltreatment or long-term care
11 facility resident maltreatment, is amended to add an additional subsection to
12 read as follows:

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

16 (A) Are confidential;

17 (B) Shall be sealed; and

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

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

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

26

27 SECTION 7. Arkansas Code § 12-12-1718 is amended to read as follows:
28 12-12-1718. Availability of screened out, pending, and unfounded
29 reports.

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

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

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

3 (B) A law enforcement agency;

4 (C) A prosecuting attorney;

5 (D) The office of the Attorney General;

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

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

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

14 (H) Any applicable licensing or registering authority;

15 (I) Any employer, legal entity, or board responsible for
16 the person named as the offender;

17 (J) Any legal entity or board responsible for the
18 maltreated person; and

19 (K) ~~{Repealed.}~~ The Office of the Medicaid Inspector
20 General.

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

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

26 (1) The department, including the committee;

27 (2) A law enforcement agency;

28 (3) A prosecuting attorney;

29 (4) The office of the Attorney General;

30 (5) Any applicable licensing or registering authority;

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

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

36 (8) A grand jury or court, upon a finding that the information

1 in the record is necessary for the determination of an issue before the grand
2 jury or court;

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

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

7 (11) Any legal entity or board responsible for the maltreated
8 person; and

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

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

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

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

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

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

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

26 (B) For prosecution of a crime.

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

30 (A) Are confidential;

31 (B) Shall be sealed; and

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

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

