LEGISLATURE OF THE STATE OF IDAHO

Sixty-fifth Legislature First Regular Session - 2019

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 18

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO ADULT PROTECTIVE SERVICES; AMENDING SECTION 39-5301A, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-5302, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 39-5303, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-5304, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5305, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-5306, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 39-5308, IDAHO CODE, TO REVISE TERMINOLOGY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 39-5309, IDAHO CODE, TO REVISE TERMINOLOGY; AND AMENDING SECTION 67-5011, IDAHO CODE, TO REVISE PROVISIONS REGARDING SERVICES FOR VULNERABLE ADULTS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-5301A, Idaho Code, be, and the same is hereby amended to read as follows:

39-5301A. DECLARATION OF POLICY. (1) It is the intent of the adult abuse, neglect and exploitation act to authorize the fewest possible restrictions on the exercise of personal freedom and religious beliefs consistent with a vulnerable adult's need for services and to empower vulnerable adults to protect themselves.

(2) The legislature recognizes that vulnerable adults sometimes experience difficulties managing their own affairs or are unable to protect themselves from abuse, neglect or exploitation. Often, vulnerable adults cannot find others who are able or willing to provide assistance.

(3) The commission is directed to investigate allegations of abuse, neglect, self-neglect or exploitation involving a vulnerable adult, to make appropriate referrals to law enforcement, and to arrange for the provision of necessary services. Further, the commission shall honor a vulnerable adult's freedom of choice and right to self-determination. When it becomes necessary for the commission to assist a vulnerable adult, actions shall be tempered by the requirements of due process and must place the fewest possible restrictions on personal freedom. Services provided under this act are also intended to provide assistance to caregiving families experiencing difficulties in maintaining functionally impaired relatives in the household.

(4) In the process of carrying out its adult ~~protection~~ <u>protective services</u> responsibilities, the commission is directed to make effective use of multidisciplinary services available through any and all public agencies, community-based organizations, and informal resources.

SECTION 2. That Section 39-5302, Idaho Code, be, and the same is hereby amended to read as follows:

39-5302. DEFINITIONS. For the purposes of this chapter:

(1) "Abuse" means the intentional or negligent infliction of physical pain, injury or mental injury.

(2) "Caretaker" means any individual or institution that is responsible by relationship, contract, or court order to provide food, shelter or clothing, or medical or other life-sustaining necessities to a vulnerable adult.

(3) "Commission" means the Idaho commission on aging, established pursuant to chapter 50, title 67, Idaho Code.

(4) ~~"Contractor" means an area agency on aging and its duly authorized agents and employees providing adult protection services pursuant to a contract with the commission in accordance with section 67-5011, Idaho Code. The commission designates area agencies on aging pursuant to 42 U.S.C.A. 3025(a)(2)(A) and may establish by rule when duties or obligations under this chapter may be fulfilled by an area agency on aging.~~

~~(5)~~ "Department" means the Idaho department of health and welfare.

(~~6~~5) "Emergency" means an exigent circumstance in which a vulnerable adult's health and safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention.

(~~7~~6) "Exploitation" means an action ~~which~~ that may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property, or resources by another person for profit or advantage.

(~~8~~7) "Neglect" means failure of a caretaker to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult, or the failure of a vulnerable adult to provide those services for himself.

(8) "Provider" means an area agency on aging or a person or an entity capable of providing adult protective services, including duly authorized agents and employees.

(9) "Supportive services" means noninvestigatory remedial, social, legal, health, educational, mental health and referral services provided to a vulnerable adult.

(10) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment ~~which~~ that affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person.

Nothing in this chapter shall be construed to mean a person is abused, neglected, or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this chapter be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.

SECTION 3. That Section 39-5303, Idaho Code, be, and the same is hereby amended to read as follows:

39-5303. DUTY TO REPORT CASES OF ABUSE, NEGLECT OR EXPLOITATION OF VULNERABLE ADULTS. (1) Any physician, nurse, employee of a public or private health facility, or a state-licensed or certified residential facility serving vulnerable adults, medical examiner, dentist, osteopath, optometrist, chiropractor, podiatrist, social worker, police officer, pharmacist, physical therapist, or home care worker who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected or exploited shall immediately report such information to the commission. Provided however, that nursing facilities defined in section 39-1301(b), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department. When there is reasonable cause to believe that abuse or sexual assault has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult, any person required to report under this section shall also report such information within four (4) hours to the appropriate law enforcement agency.

(2) Failure to report as provided under this section is a misdemeanor subject to punishment as provided in section 18-113, Idaho Code. If an employee at a state licensed or certified residential facility fails to report abuse or sexual assault that has resulted in death or serious physical injury jeopardizing the life, health or safety of a vulnerable adult as provided under this section, the department shall also have the authority to:

(a) Revoke the facility's license and/or contract with the state to provide services;

(b) Deny payment;

(c) Assess and collect a civil monetary penalty with interest from the facility owner and/or facility administrator;

(d) Appoint temporary management;

(e) Close the facility and/or transfer residents to another certified facility;

(f) Direct a plan of correction;

(g) Ban admission of persons with certain diagnoses or requiring specialized care;

(h) Ban all admissions to the facility;

(i) Assign monitors to the facility; or

(j) Reduce the licensed bed capacity.

Any action taken by the department pursuant to this subsection shall be appealable as provided in chapter 52, title 67, Idaho Code.

(3) Any person, including any officer or employee of a financial institution, who has reasonable cause to believe that a vulnerable adult is being abused, neglected or exploited may report such information to the commission or its ~~contractors~~ providers.

(4) The commission and its ~~contractors~~ providers shall make training available to officers and employees of financial institutions in identifying and reporting instances of abuse, neglect or exploitation involving vulnerable adults.

(5) Any person who makes any report pursuant to this chapter, or who testifies in any administrative or judicial proceeding arising from such report, or who is authorized to provide supportive or emergency services pursuant to the provisions of this chapter, shall be immune from any civil or criminal liability on account of such report, testimony or services provided

in good faith, except that such immunity shall not extend to perjury, reports made in bad faith or with malicious purpose nor, in the case of provision of services, in the presence of gross negligence under the existing circumstances.

(6) Any person who makes a report or allegation in bad faith, with malice or knowing it to be false, shall be liable to the party against whom the report was made for the amount of actual damages sustained or statutory damages in the amount of five hundred dollars ($500), whichever is greater, plus attorney's fees and costs of suit. If the court finds that the defendant acted with malice or oppression, the court may award treble actual damages or treble statutory damages, whichever is greater.

SECTION 4. That Section 39-5304, Idaho Code, be, and the same is hereby amended to read as follows:

39-5304. REPORTING REQUIREMENTS, INVESTIGATION, EMERGENCY ACCESS. (1) When a report is required pursuant to this chapter, such report shall be made immediately to the commission or appropriate ~~contractor~~ provider. Provided however, that nursing facilities defined in section 39-1301(b), Idaho Code, and employees of such facilities shall make reports required under this chapter to the department. If known, the report shall contain the name and address of the vulnerable adult; the caretaker; the alleged perpetrator; the nature and extent of suspected abuse, neglect or exploitation; and any other information that will be of assistance in the investigation.

(2) If the allegations in the report indicate that an emergency exists, the commission or ~~contractor~~ provider must initiate an investigation immediately~~,~~ and initiate contact with the alleged vulnerable adult within twenty-four (24) hours from the time the report is received. All other investigations must be initiated within seventy-two (72) hours from the time the report is received.

(3) The investigation shall include a determination of the nature, extent and cause of the abuse, neglect, or exploitation, examination of evidence and consultation with persons thought to have knowledge of the circumstances, and identification, if possible, of the person alleged to be responsible for the abuse, neglect or exploitation of the vulnerable adult.

(4) Where no emergency exists, the commission or ~~contractor~~ provider may determine, based on the review of the report and any initial inquiries, that an interview with the vulnerable adult is not necessary to the investigation. If the commission or ~~contractor~~ provider determines that an interview is necessary, the preferred method of interviewing is by means of a personal visit with the vulnerable adult in the adult's dwelling. Alternatively, the interview may occur in the local office of the commission or ~~contractor~~ provider, or by telephone conversation, or by any other means available to the commission or ~~contractor~~ provider. Decisions regarding the method of conducting any interview will be within the discretion of the commission or ~~contractor~~ provider.

(5) Upon completion of an investigation, the commission or ~~contractor~~ provider shall prepare a written report of the investigation. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such dis-

closure or unless the disclosure is made pursuant to the commission's duty to notify law enforcement as required in section 39-5310, Idaho Code, to a request to law enforcement for emergency access, a court order or hearing.

If the abuse, neglect, or exploitation is substantiated to have occurred in a state-certified or licensed facility, a copy of the findings shall be sent to the licensing and certification office of the department.

If the commission or ~~contractor~~ provider determines that a report is unsubstantiated and that no other law has been violated, all records related to the report shall be expunged no later than three (3) years following the completion of the investigation.

SECTION 5. That Section 39-5305, Idaho Code, be, and the same is hereby amended to read as follows:

39-5305. INSPECTIONS -- RIGHT OF ENTRY. (1) Upon receiving information that a vulnerable adult is alleged to be abused, neglected, or exploited, the commission or ~~contractor~~ provider shall cause such investigation to be made in accordance with the provisions of this chapter as is appropriate. In making the investigation, the commission or ~~contractor~~ provider shall use its own resources and may enlist the cooperation of peace officers. In an emergency, any authorized commission employee or ~~contractor~~ provider shall enlist the cooperation of a peace officer to ensure the safety of the vulnerable adult~~,~~ and ~~they~~ shall receive the peace officer's assistance. Assistance in an emergency may include entry on private or public property where a vulnerable adult is allegedly subject to abuse, neglect or exploitation, and the removal and transportation of the vulnerable adult to a medical facility, care-providing facility, or other appropriate and safe environment.

(2) In a nonemergency, any peace officer may cooperate with an authorized commission employee or ~~contractor~~ provider in ensuring the safety of a vulnerable adult who has been abused, neglected or exploited, including a vulnerable adult living in a condition of self-neglect. Assistance shall ~~only~~ be provided only with the consent of the vulnerable adult or his legal representative.

(3) For the purposes of implementing or enforcing any provision of this chapter or any rule authorized under the provisions of this chapter, any duly authorized commission employee or ~~contractor~~ provider may, upon presentation of appropriate credentials at any reasonable time, with consent or in an emergency, enter upon any private or public property where a vulnerable adult allegedly is subject to abuse, neglect, or exploitation.

(4) All inspections and searches conducted under the provisions of this chapter shall be performed in conformity with the prohibitions against unreasonable searches and seizures contained in the fourth amendment to the constitution of the United States and article I, section 17, of the constitution of the state of Idaho. The state shall not, under the authority granted in this chapter, conduct warrantless administrative searches of private property except with consent, or in an emergency.

(5) If consent to entry is not given, a commission employee or ~~contractor~~ provider with the assistance of the county prosecutor may obtain, and any magistrate or district judge is authorized to issue, a search warrant upon showing that probable cause exists to believe a vulnerable adult

is subject to abuse, neglect or exploitation. Upon request of a commission employee or ~~contractor~~ provider, a peace officer shall serve the search warrant.

SECTION 6. That Section 39-5306, Idaho Code, be, and the same is hereby amended to read as follows:

39-5306. SUPPORTIVE SERVICES AND DISCLOSURE. (1) If there is substantiated abuse, neglect, or exploitation of a vulnerable adult, the commission or ~~contractor~~ provider has the responsibility to assist the adult in obtaining available services.

(2) If the commission or ~~contractor~~ provider develops a plan of supportive services for the vulnerable adult, the plan shall provide for appropriate supportive services available to the vulnerable adult that are least restrictive to personal freedom and shall provide encouragement for client self-determination and continuity of care.

(3) If the vulnerable adult does not consent to the receipt of reasonable and necessary supportive services, or if the vulnerable adult withdraws consent, services shall not be provided or continued.

(4) If the commission or ~~contractor~~ provider determines that a vulnerable adult is an incapacitated person~~,~~ as defined in section 15-5-101(a), Idaho Code, mentally ill as defined in section 66-317, Idaho Code, or developmentally disabled as defined in section 66-402, Idaho Code, the commission or ~~contractor~~ provider may petition the court for protective proceedings, appointment of a guardian or conservator and such other relief as may be provided by chapter 5, title 15, Idaho Code, and chapters 3 and 4, title 66, Idaho Code.

(5) An employee or ~~contractor~~ provider of the commission shall not be appointed the guardian or conservator of a vulnerable adult unless the commission employee or ~~contractor~~ provider has a spousal or familial relationship with the vulnerable adult.

SECTION 7. That Section 39-5308, Idaho Code, be, and the same is hereby amended to read as follows:

39-5308. INTERAGENCY COOPERATION. (1) In performing the duties set forth in this chapter, the commission or ~~contractor~~ provider may request the assistance of the staffs and resources of all appropriate state departments, agencies and commissions, and local health directors, and may utilize any other public or private agencies, groups or individuals who are appropriate and who may be available. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, and any other person or entity deemed necessary due to their specialized training in providing services to vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to vulnerable adults.

(2) The commission shall provide to the department on at least a quarterly basis a listing of all alleged perpetrators against whom an allegation of adult abuse, neglect or exploitation has been substantiated. Upon request, all available supportive information shall be provided to enable the

department to conduct criminal background checks and other required investigations.

(3) The department shall provide to the commission or ~~contractor~~ provider any report received under this chapter from a nursing facility defined in section 39-1301(b), Idaho Code, or an employee of such facility.

(4) The commission or ~~contractor~~ provider shall provide the department with any report received under this chapter involving allegations of abuse, neglect or exploitation occurring in a nursing facility as defined in section 39-1301(b), Idaho Code.

(5) The commission, ~~contractors~~ providers, and the department shall use interagency staffing when necessary and share client and facility information necessary to provide services to vulnerable adults.

SECTION 8. That Section 39-5309, Idaho Code, be, and the same is hereby amended to read as follows:

39-5309. COORDINATION OF SERVICES. Subsequent to the authorization for the provision of reasonable and necessary emergency and support services, the commission or ~~contractor~~ provider shall initiate a review of each case at reasonable intervals over a reasonable period of time as the commission or ~~contractor~~ provider deems necessary based upon the circumstances in each individual case to determine whether continuation or modification of the services provided is warranted. A decision to continue the provision of such services should be made in concert with appropriate personnel from state agencies, departments, service providers and others, and shall comply with the consent provisions of this chapter.

SECTION 9. That Section 67-5011, Idaho Code, be, and the same is hereby amended to read as follows:

67-5011. ADULT ~~PROTECTION~~ PROTECTIVE SERVICES. Adult ~~protection~~ protective services for vulnerable adults shall be administered through the commission. Adult ~~protection~~ protective services are specialized social services directed toward assisting vulnerable adults who are unable to manage their own affairs, carry out the activities of daily living or protect themselves from abuse, neglect or exploitation. ~~Provision of services may be accomplished by contracting with each of the commission's local area agencies on aging.~~ For the purposes of implementing the provisions of this section, the commission shall assume all responsibilities cited in chapter 53, title 39, Idaho Code, entitled "~~A~~adult ~~A~~abuse, ~~N~~neglect and ~~E~~exploitation ~~A~~act."