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Indicates New Matter

AMENDED

April 22, 2009

**H. 3358**

Introduced by Reps. Harrison, Weeks, Horne, Hutto and Whipper

S. Printed 4/22/09--H.

Read the first time January 28, 2009.

**A** **BILL**

TO AMEND SECTION 43‑35‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF TERMS USED IN THE OMNIBUS ADULT PROTECTION ACT, SO AS TO REVISE THE DEFINITIONS OF “INVESTIGATIVE ENTITY” AND “NEGLECT”; TO AMEND SECTION 43‑35‑40, AS AMENDED, RELATING TO REQUIREMENTS OF AN INVESTIGATIVE ENTITY UPON RECEIVING A REPORT OF ADULT ABUSE, SO AS TO FURTHER SPECIFY AND CLARIFY PROCEDURES FOR REPORTING CASES IN WHICH THERE IS A REASONABLE SUSPICION OF CRIMINAL CONDUCT; AND TO AMEND SECTION 43‑35‑85, AS AMENDED, RELATING TO CRIMINAL PENALTIES FOR FAILING TO REPORT ADULT ABUSE WHEN REQUIRED TO REPORT, SO AS TO DELETE PROVISIONS AUTHORIZING DISCIPLINARY ACTION WHEN A PERSON WHO HAS REASON TO BELIEVE THAT ABUSE OCCURRED FAILS TO REPORT AND TO ESTABLISH CRIMINAL PENALTIES IF A CAREGIVER, DUE TO RECKLESS DISREGARD FOR THE HEALTH OR SAFETY OF A VULNERABLE ADULT, NEGLECTS OR CAUSES GREAT BODILY INJURY OR DEATH TO A VULNERABLE ADULT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 43-35-10(5) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

“(5) ‘Investigative entity’ means the Long Term Care Ombudsman Program ~~or~~, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General.”

SECTION 2. Section 43-35-10(6) of the 1976 Code, as added by Act 110 of 1993, is amended to read:

“(6) ‘Neglect’ means the knowing and willful failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the knowing and wilful failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. ~~Neglect may be repeated conduct or a single incident which has produced or can be proven to result in serious physical or psychological harm or substantial risk of death.~~ Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.”

SECTION 3. Section 43-35-10 of the 1976 Code, as last amended by Act 301 of 2006, is further amended by adding:

“(12) ‘Operated facility’ means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

(13) ‘Contracted facility’ means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs.”

SECTION 4. Section 43-35-15(A) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

“(A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. The unit shall establish a toll free number, which must be operated twenty four hours a day, seven days a week, to receive the reports. The unit shall investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43. The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation. Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor ~~to determine if~~ when further action is necessary. The South Carolina Law Enforcement Division may develop policies, procedures, and memorandum of agreement with other agencies to be used in fulfilling the requirements of this article. However, the South Carolina Law Enforcement Division must not delegate its responsibility to investigate criminal reports of alleged abuse, neglect, and exploitation to the agencies, facilities, or entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements.”

SECTION 5. Section 43‑35‑35(B) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

“(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors must be referred to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for investigation pursuant to Section 43‑35‑520.”

SECTION 6. Section 43-35-40 of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

“Section 43-35-40. Upon receiving a report, the ~~investigative entity promptly~~ Long Term Care Ombudsman or Adult Protective Services promptly shall:

(1) initiate an investigation; ~~and~~ or

(2) review the report within two working days ~~of receiving the report must review the report~~ for the purpose of reporting those cases that indicate reasonable suspicion of criminal conduct to local law enforcement or to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division ~~those cases which indicate reasonable suspicion of criminal conduct~~ (SLED). A report to ~~the unit~~ local law enforcement or SLED must be made within one working day of completing the review.”

SECTION 7. Section 43-35-85 of the 1976 Code, as last amended by Act 56 of 1999, is further amended to read:

“Section 43-35-85. (A) A person required to report under this chapter who ~~has actual knowledge that abuse, neglect, or exploitation has occurred and who~~ knowingly and wilfully fails to report ~~the~~ abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty five hundred dollars or imprisoned not more than one year. ~~A person required to report under this chapter who has reason to believe that abuse, neglect, or exploitation has occurred or is likely to occur and who knowingly and wilfully fails to report the abuse, neglect, or exploitation is subject to disciplinary action as may be determined necessary by the appropriate licensing board.~~

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) A caregiver who knowingly and wilfully neglects a vulnerable adult is guilty of a misdemeanor and upon conviction, must be:

(1) imprisoned not more than one year or fined not more than one thousand dollars, or both;

(2) if the vulnerable adult suffered great bodily injury, imprisoned not more than three years or fined not more than five thousand dollars, or both.

(J) A caregiver who knowingly and wilfully neglects a vulnerable adult and the neglect results in the death of the vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

(K) As used in this section, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”

SECTION 8. Section 43‑35‑520 of the 1976 Code, as added by Act 301 of 2006, is further amended to read:

“Section 43-35-520. The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, created pursuant to Section 23-3-810, shall, in addition to its investigation responsibilities under that section or Article 1, investigate cases of vulnerable adult fatalities in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. Provided, that in a nursing home, as defined in Section 44‑7‑130, contracted for operation by the Department of Mental Health, the Vulnerable Adults Investigations Unit shall investigate those fatalities for which there is suspicion that the vulnerable adult died as a result of abuse or neglect, the death is suspicious in nature, or the death is referred by a coroner or medical examiner as provided in Section 43‑35‑35(A).”

SECTION 9. Article 3, Chapter 7, Title 44 is amended by adding:

“Section 44‑7‑295. The department is authorized to enter at all times in or on the property of any facility or service, whether public or private, licensed by the department or unlicensed, for the purpose of inspecting and investigating conditions relating to a violation of this article or regulations of the department. The department’s authorized agents may examine and copy any records or memoranda pertaining to the operation of a licensed or unlicensed facility or service to determine compliance with this article. However, if entry or inspection is denied or not consented to and no emergency exists, the department is empowered to obtain a warrant to enter and inspect the property and its records from the magistrate from the jurisdiction in which the property is located. The magistrate may issue these warrants upon a showing of probable cause for the need for entry and inspection. The department shall furnish a written copy of the results of the inspection or investigation to the owner or operator of the property.”

SECTION 10. Section 44‑7‑315(A), as last amended by Act 372 of 2006, is further amended to read:

“(A) Information received by the Division of Health Licensing of the department, through inspection or otherwise, in regard to a facility or activity licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded, ~~or a group home operated by a county mental retardation board or the State Mental Retardation Department~~ must be disclosed publicly upon written request to the department. The request must be specific as to the facility or ~~home~~ activity, dates, documents, and particular information requested. The department may not disclose the identity of individuals present in a facility licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded~~, or a group home~~. When a report of deficiencies or violations regarding a facility licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded, ~~or a group home~~ is present in the department’s files when a request for information is received, the department shall inform the applicant that it has stipulated corrective action and the time it determines for completion of the action. The department also shall inform the applicant that information on the resolution of the corrective action order is expected to be available upon written request within fifteen days or less of the termination of time it determines for completion of the action. However, if information on the resolution is present in the files, it must be furnished to the applicant.”

SECTION 11. Section 44‑7‑320(A), of the 1976 Code is amended to read:

“(A)(1) The department may deny, suspend, or revoke licenses or assess a monetary penalty, or both, against a person or facility for:

(a) violating a provision of this article or departmental regulations;

(b) permitting, aiding, or abetting the commission of an unlawful act relating to the securing of a Certificate of Need or the establishment, maintenance, or operation of a facility requiring certification of need or licensure under this article;

(c) conduct or practices detrimental to the health or safety of patients, residents, clients, or employees of a facility or service. This provision does not refer to health practices authorized by law;

(d) refusing to admit and treat alcoholic and substance abusers, the mentally ill, or the mentally retarded, whose admission or treatment has been prescribed by a physician who is a member of the facility’s medical staff; or discriminating against alcoholics, the mentally ill, or the mentally retarded solely because of the alcoholism, mental illness, or mental retardation;

(e) failing to allow a team advocacy inspection of a community residential care facility by the South Carolina Protection and Advocacy System for the Handicapped, Inc., as allowed by law.

(2) Consideration to deny, suspend, or revoke licenses or assess monetary penalties, or both, is not limited to information relating to the current licensing ~~year~~ period but includes consideration of all pertinent information regarding the facility and the applicant.

(3) If in the department’s judgment conditions or practices exist in a facility that pose an immediate threat to the health, safety, and welfare of the residents, the department immediately may suspend the facility’s license and shall contact the appropriate agencies for placement of the residents. Within five days of the suspension a preliminary hearing must be held to determine if the immediate threatening conditions or practices continue to exist. If they do not, the license must be immediately reinstated. Whether the license is reinstated or suspension remains due to the immediate threatening conditions or practices, the department may proceed with the process for permanent revocation pursuant to this section.”

SECTION 12. Section 23‑3‑810(E) of the 1976 Code, as added by Act 301 of 2006, is amended to read:

“(E) Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor ~~to determine if~~ when further action is necessary.”

SECTION 13. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the general assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 14. Section 43-35-10(2) of the 1976 Code, as added by Act 110 of 1993, is amended to read:

“(2) ‘Caregiver’ means a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part‑time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility. Caregiver does not include persons who are licensed, or otherwise authorized to practice their profession, pursuant to Title 40.

SECTION 15. This act takes effect upon approval by the Governor.

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