

[Second Reprint]
SENATE, No. 1219

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 8, 2016

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SYNOPSIS

Requires reporting of suspected abuse of institutionalized elderly to police and that facility employees receive notice of reporting requirement annually; designated as "Peggy's Law."

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 26, 2017, with amendments.

(Sponsorship Updated As Of: 6/30/2017)

1 AN ACT concerning the Ombudsman for the Institutionalized
2 Elderly and amending P.L.1977, c.239 and P.L.1983, c.43.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 ¹1. Section 7 of P.L.1977, c.239 (C.52:27G-7) is amended to
8 read as follows:

9 7. a. The office shall establish and implement procedures for
10 eliciting, receiving, processing, responding to ^{2,2} and resolving
11 complaints from patients, residents, or clients of facilities, the
12 relatives or guardians of such persons, or from interested citizens,
13 public officials, or government agencies having an interest in the
14 matter. The office shall ensure that a system is in place to receive
15 complaints 24 hours per day, seven days per week, whether or not
16 live staff ²members² are available to receive the complaint.

17 b. When the office receives a complaint or otherwise
18 encounters a deficiency that pertains to a violation of a resident's
19 rights or compliance with State or ²[Federal] federal² laws or
20 regulations or rules administered by any government agency, it
21 shall make referral thereof directly to the appropriate government
22 agency for action pursuant to applicable federal law and
23 regulations.

24 c. When the complaint received or the investigation conducted
25 by the office discloses facts that it determines **[warrants]** constitute
26 a violation of a resident's rights or warrant the institution of civil
27 proceedings by a government agency against any person or
28 government agency, the matter shall be referred to the government
29 agency with authority to institute such proceedings pursuant to
30 applicable federal law and regulations.

31 d. When the complaint received or the investigation conducted
32 by the office reveals information in relation to a violation of a
33 resident's rights or the misconduct or breach of duty of any officer
34 or employee of a facility or a government agency, it shall refer the
35 matter to the appropriate authorities for such action as may be
36 necessary pursuant to applicable federal law and regulations.

37 e. When the complaint received or the investigation conducted
38 by the office discloses information or facts indicating the
39 commission of criminal offenses or violations of standards of
40 professional conduct, it shall refer the matter, as appropriate, to the
41 Attorney General, county prosecutor, or any other law enforcement
42 official that has jurisdiction to prosecute the crime, or to the
43 professional licensing board concerned.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SHH committee amendments adopted January 30, 2017.

²Assembly ABU committee amendments adopted June 26, 2017.

1 f. The government agency, prosecuting agency ^{2,2} or
 2 professional licensing board, as the case may be in this section,
 3 shall report to the office on its findings and actions with respect to
 4 all such referrals within 30 days after receipt thereof and every 30
 5 days thereafter until final action on each such referral. The office
 6 shall monitor all such referrals and responses and maintain a record
 7 thereof. The office shall be authorized to make disclosure of such
 8 information as appropriate and as may be necessary to resolve the
 9 matter referred.

10 g. In the event that the complaint of a patient, resident ^{2,2} or
 11 client or class of patients, residents ^{2,2} or clients of a facility or
 12 facilities cannot be resolved satisfactorily through negotiation with
 13 the facility or the appropriate government agency or that an act,
 14 practice, policy ^{2,2} or procedure of a facility or government agency
 15 does or may adversely affect the health, safety, welfare ^{2,2} or civil
 16 or human rights of a patient ^{2,2} resident ^{2,2} or client or class of
 17 patients, residents ^{2,2} or clients of a facility or facilities the office
 18 may recommend to the appropriate authorities civil litigation on
 19 behalf of such patient, resident ^{2,2} or client or class of patients,
 20 residents ^{2,2} or clients as it deems appropriate. The office may
 21 institute actions for injunctive relief or civil damages.¹
 22 (cf: P.L.1977, c.239, s.7)

23
 24 ¹[1.] 2.¹ Section 2 of P.L.1983, c.43 (C.52:27G-7.1) is
 25 amended to read as follows:

26 2. a. Any caretaker, social worker, physician, registered or
 27 licensed practical nurse, ¹[or] ²or² other professional ²[, ¹other]
 28 or² staff member ²[, or] employed at a facility, and any²
 29 representative of a managed care entity¹ ^{2,2} who, as a result of
 30 information obtained in the course of ²[his] that individual's²
 31 employment, has reasonable cause to suspect or believe that an
 32 institutionalized elderly person is being or has been abused or
 33 exploited, shall report such information [in a timely manner]
 34 ¹[immediately]¹ ²[to the local law enforcement agency and]² to
 35 the ombudsman or to the person designated by ²[him] the
 36 ombudsman² to receive such report. ²If an individual reporting
 37 suspected abuse or exploitation pursuant to this subsection has
 38 reasonable cause to suspect or believe that the institutionalized
 39 elderly person is or has been the victim of a crime, the individual
 40 shall additionally report such information to the local law
 41 enforcement agency and to the health administrator of the facility.²

42 ¹(1) If the events that cause the suspicion or belief result in
 43 serious bodily injury, the ²[professional] individual² shall report
 44 the suspicion or belief immediately, but not later than two hours
 45 after forming the suspicion or belief.

- 1 (2) If the events that cause the suspicion or belief do not result
2 in serious bodily injury, the ²**[professional]** individual² shall report
3 the suspicion or belief immediately, but not later than 24 hours after
4 forming the suspicion or belief.¹
- 5 b. Such report shall contain the name and address of the elderly
6 person, information regarding the nature of the suspected abuse or
7 exploitation and any other information which might be helpful in an
8 investigation of the case and the protection of such elderly person.
- 9 c. Any other person having reasonable cause to suspect or
10 believe that an elderly person is being or has been abused or
11 exploited **[may]** ¹**[shall]** may¹ report such information
12 ¹**[immediately]**¹ to the local law enforcement agency and ²to² the
13 ombudsman or ²**[to]**² the person designated by ²**[him]** the
14 ombudsman² to receive such report.
- 15 d. The name of any person who reports suspected abuse or
16 exploitation pursuant to this act shall not be disclosed, unless the
17 person who reported the abuse or exploitation specifically requests
18 such disclosure or a judicial proceeding results from such report.
- 19 e. Any person who reports suspected abuse or exploitation
20 pursuant to this act or who testifies in any administrative or judicial
21 proceeding arising from such report or testimony shall have
22 immunity from any civil or criminal liability on account of such
23 report or testimony, unless such person has acted in bad faith or
24 with malicious purpose.
- 25 f. Any person required to report suspected abuse or
26 exploitation pursuant to this act who fails to make such report shall
27 be fined not more than ²**[\$5,000.00]** \$500, and the facility
28 employing the individual shall be fined not more than \$2,500².
29 Such penalty shall be collected and enforced by summary
30 proceedings pursuant to **[**"the penalty enforcement law"
31 (N.J.S.2A:58-1 et seq.)**]** the "Penalty Enforcement Law of 1999,"
32 P.L.1999, c.274 (C.2A:58-10 et seq.). Each violation of this act
33 shall constitute a separate offense.
- 34 g. No provision of this act shall be deemed to require the
35 disclosure of, or penalize the failure to disclose, any information
36 which would be privileged pursuant to the provisions of sections 18
37 through 23 inclusive of P.L. 1960, c. 52 (C. 2A:84A-18 through
38 2A:84A-23).
- 39 h. When a person has been penalized under this section, a letter
40 making note of the penalty shall immediately be sent by the court to
41 the licensing authority or the professional board, if any, having
42 jurisdiction over the person who has been penalized.
- 43 i. The office may bring suit in a court of competent
44 jurisdiction to enforce any of the powers enumerated in this section.
45 (cf: P.L.1987, c.104, s.2)

1 ¹[2.] 3.¹ Section 11 of P.L.1977, c.239 (C.52:27G-11) is
2 amended to read as follows:

3 11. a. Any correspondence or written communication from any
4 patient, resident ²,² or client of a facility to the office shall, if
5 delivered to or received by the facility, be promptly forwarded,
6 unopened, by the facility to the office. Any correspondence or
7 written communication from the office to any patient, resident ²,² or
8 client of a facility shall, if delivered to or received by the facility,
9 be promptly forwarded, unopened, by the facility to such patient,
10 resident, or client.

11 b. The office shall prepare and distribute to each facility
12 written notices, in English and Spanish, which set forth the address
13 and telephone number of the office, a brief explanation of the
14 function of the office, the procedure to follow in filing a complaint
15 ²,² and other pertinent information. The notice shall also ¹[include
16 the phone number of the local law enforcement agency] indicate the
17 option to call 9-1-1¹.

18 The administrator of each facility shall ensure that such written
19 notice is given to every patient, resident ¹,¹ or client or ²[his] the
20 patient's, resident's, or client's² guardian upon admission to the
21 facility and to every person already in residence or ²[his] the
22 person's² guardian. The administrator shall also post such written
23 notice in a conspicuous, public place in the facility in the number
24 and manner set forth in the guidelines adopted by the office.

25 c. The ¹[office] facility¹ shall inform patients, residents ²,² or
26 clients, ²and² their guardians ¹, resident representatives,¹ or
27 ²[their]² families, of their rights and entitlements under State and
28 ²[Federal] federal² laws and rules and regulations ¹in a format and
29 language that the recipient understands,¹ by means of the
30 distribution of educational materials ¹[and group meetings] ²[, set
31 forth] as provided² in subsection b. of this section¹.

32 d. The office shall facilitate the filing of complaints with the
33 office concerning matters within the authority of the office. The
34 measures taken in connection therewith shall include, but need not
35 be limited to, maintenance of a toll-free telephone, either by the
36 office or in conjunction with ¹[the [Division on Aging]
37 Department of Health and Senior Services] another ²[relevant]
38 appropriate² State agency¹, at least during regular working hours of
39 the office for the filing of complaints.

40 e. The administrator of each facility shall annually provide all
41 caretakers, social workers, physicians, registered or licensed
42 practical nurses, ¹[or]¹ ²and² other professionals ²[,]² and
43 ²[other]² staff¹ ²members² employed at the facility with a notice
44 explaining the requirements of section 2 of P.L.1983, c.43
45 (C.52:27G-7.1) concerning the reporting of suspected abuse or
46 exploitation of an institutionalized elderly person, and require, as a

1 condition of employment at the facility, that the ²**[professional]**
2 employee² acknowledge in writing receipt of the notice. The signed
3 acknowledgement shall be retained in the employee's personnel
4 file.

5 (cf: P.L.1977, c.239, s.11)

6

7 ¹**[3.] 4.**¹ This act shall take effect on the 60th day following
8 enactment.