

By Mr. Backman, a petition (accompanied by bill, Senate, No. 491) of Jack H. Backman, Sharon M. Pollard and other members of the General Court for legislation to provide for the reporting of the abuse of nursing home residents. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty.

AN ACT PROVIDING FOR THE REPORTING OF THE ABUSE OF NURSING HOME RESIDENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 111 of the General Laws is hereby amended by in-
2 serting after section 73A the following sections: —

3 *Section 73B.* Any physician, medical intern, registered
4 nurse, licensed practical nurse, registered nurse practitioner,
5 medical examiner, dentist, osteopath, optometrist, chiroprac-
6 tor, podiatrist, social worker, coroner, clergyman, police offi-
7 cer, pharmacist or physical therapist, who has treated a pa-
8 tient in a long term care facility, any long term care facility
9 administrator, nurses aide or orderly in a long term care fa-
10 cility, or any other person paid for caring for a patient in a
11 long term care facility, and any other staff person employed
12 by a long term care facility who, in his professional capacity
13 shall have reasonable cause to believe that a resident of a
14 long term care facility is suffering serious physical or emo-
15 tional injury resulting from abuse inflicted upon him includ-
16 ing sexual abuse, or from neglect, including malnutrition,
17 shall immediately report such condition to the department by
18 oral communication and by making a written report within
19 forty-eight hours after such oral communication; provided,
20 however, that whenever such person so required to report is a
21 member of the staff of a medical or other public or private
22 institution or facility, he shall immediately either notify the
23 department or notify the person in charge of such institution
24 or facility, or that person's designated agent, whereupon such

25 person in charge or his said agent shall then become respon-
26 sible to make the report in the manner required by this sec-
27 tion. Any such person so required to make such oral and
28 written reports who fails to do so shall be punished by a fine
29 of not more than one thousand dollars.

30 Said reports shall contain the name of the resident; the ad-
31 dress of the facility in which he resides; the resident's age;
32 the resident's sex; the nature and extent of the resident's in-
33 juries, abuse, maltreatment, or neglect, including any evi-
34 dence of prior injuries, abuse, maltreatment, or neglect; the
35 circumstances under which the person required to report first
36 became aware of the resident's injuries, abuse, maltreatment,
37 or neglect; whatever action, if any, was taken to treat or
38 otherwise assist the resident; the name of the person or per-
39 sons making such report; and any other information which
40 the person reporting believes might be helpful in establishing
41 the cause of the injuries, the identity of the person or per-
42 sons responsible therefor; and such other information as shall
43 be required by the department.

44 Any person required to report under this section who has
45 reasonable cause to believe that a resident has died as a re-
46 sult of any of the conditions listed in said paragraph shall re-
47 port said death to the department and to the district attorney
48 for the county in which such death occurred and to the medi-
49 cal examiner as required by section six of chapter thirty-eight.
50 Any such person who fails to make such a report shall be
51 punished by a fine of not more than one thousand dollars.

52 In addition to those persons required to report pursuant to
53 this section, any other person, including a resident or the
54 guardian of a resident, may make such a report if any such
55 person has reasonable cause to believe that a resident is suf-
56 fering from or has died as a result of such abuse or neglect.
57 No person so required to report shall be liable in any civil or
58 criminal action by reason of such report. No other person
59 making such a report shall be liable in any civil or criminal
60 action by reason of such report if it was made in good faith.
61 No employment action shall be taken against any employee
62 who is required to make such a report or who has made such
63 a report in good faith.

64 Within sixty days of the receipt of a report by the depart-
65 ment from any person required to report, the department
66 shall notify such person, in writing, of its determination of
67 the nature, extent and cause or causes of the injuries to the
68 resident.

69 Any privilege established by section twenty or twenty B of
70 chapter two hundred and thirty-three, by court decision or by
71 profession code relating to the exclusion of confidential com-
72 munications and the competency of witnesses, may not be
73 invoked in any civil action arising out of a report made pur-
74 suant to this section.

75 *Section 73C.* The department shall: —

76 (1) Investigate and evaluate the information reported un-
77 der section seventy-three B. Said investigation and evalua-
78 tion shall be made within twenty-four hours if the depart-
79 ment has reasonable cause to believe the resident's health or
80 safety is in immediate danger from further abuse or neglect
81 and within seven days for all other such reports. The investi-
82 gation shall include a visit to the facility at which the alleged
83 incident occurred; an interview with the resident involved,
84 when appropriate, a determination of the nature, extent and
85 cause or causes of the injuries, the identification of the per-
86 son or persons responsible therefor, and all other pertinent
87 facts or matters. Such determinations and evaluations shall
88 be in writing;

89 (2) evaluate the environment of the facility named in the
90 report and make a written determination of the risk of physi-
91 cal or emotional injury to any other residents in the same
92 facility.

93 (3) forward to the attorney general within a reasonable
94 time after a case is initially reported pursuant to section
95 seventy-three B, a summary of the findings and recommenda-
96 tions on each case.

97 Upon receipt of the written report, the attorney general
98 shall make a recommendation for court action and shall com-
99 municate such recommendation to the department.

100 In forming such recommendation, the attorney general may
101 request further information on the case and may call before it
102 any person who has been involved in the investigation and

103 evaluation which is being reviewed.

104 The attorney general shall give precedence to cases of resi-
105 dents suffering serious physical or emotional damage as de-
106 fined in section seventy-three B in which court action is rec-
107 ommended. The attorney general shall next review cases in
108 which a party to the proceedings, or any person required to
109 report under section seventy-three B requests a consultation.
110 Other cases shall be reviewed in the order of their receipt.

111 (4) promulgate regulations to implement the provisions of
112 sections seventy-three B through seventy-three E, inclusive.

113 *Section 73D.* The department shall maintain a file of the
114 written reports prepared pursuant to this section and sections
115 seventy-three B to seventy-three E, inclusive. Such written
116 reports shall be confidential. The resident, or counsel, the re-
117 porting person or agency, the appropriate review board, or a
118 social worker assigned to the case, may, upon request, and
119 upon the approval of the commissioner, receive a copy of the
120 written report of the initial investigation. No such report
121 shall be made available to any persons other than those enu-
122 merated in this section without the written and informed
123 consent of the resident, the written approval of the commis-
124 sioner, or an order of a court of competent jurisdiction.

125 The name and all other identifying information relating to
126 any resident, or to his facility, shall be removed from said re-
127 ports ninety days after the department determines that the
128 allegation of serious physical or emotional injury resulting
129 from abuse or neglect cannot be substantiated.

130 Any person employed in the central registry who permits
131 the data and information stored in the registry to be released
132 without authorization to persons or agencies other than those
133 specified in the rules and regulations shall be punished by a
134 fine of not more than one thousand dollars or by imprison-
135 ment for not more than two and one half years, or both.

136 *Section 73E.* The department shall maintain a central reg-
137 istry of information sufficient to identify residents whose
138 names are reported pursuant to section seventy-three B or
139 seventy-three C. Data and information relating to individual
140 cases in the central registry shall be confidential and shall be
141 made available only with the approval of the commissioner

142 or upon court order. The commissioner shall establish rules
143 and regulations governing the availability of such data and
144 information. The name and all other identifying character-
145 istics relating to any resident which is contained in the central
146 registry, or to his facility, shall be removed ninety days after
147 the department determines, after investigation, that the alle-
148 gations of serious physical or emotional injury resulting from
149 abuse or neglect cannot be substantiated.

150 Any person who permits any information in the files to be
151 released to persons or agencies other than those specified in
152 this section shall be punished by a fine of not more than one
153 thousand dollars or by imprisonment for not more than two
154 and one half years, or both.

Received of the Treasurer of the County of ... the sum of ... Dollars for ...

The County of ...

do hereby certify that the within and foregoing is a true and correct copy of the ...

Witness my hand and seal of office this ... day of ... 1847.

Attest: My hand and seal of office this ... day of ... 1847.

Done at the City of ... this ... day of ... 1847.

By the County Clerk, ...

By the Treasurer, ...

