

SENATE. No. 1818

The Commonwealth of Massachusetts

SENATE, June 19, 1997.

The committee on Health Care, to whom was referred the petition (accompanied by bill, Senate, No. 471) of Mark C. Montigny, Thomas C. Norton, Rachel Kaprielian, Robert A. DeLeo, Peter J. Koutoujian, other members of the General Court and another for legislation relative to reports of abuse of patients receiving home health care; and the petition (accompanied by bill, House, No. 3042) of Paul C. Casey that the Department of Public Health be directed to require the licensing of home health agencies; report the accompanying bill (Senate, No. 1818).

For the committee,

MARK C. MONTIGNY.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT RELATIVE TO REPORTS OF ABUSE OF PATIENTS RECEIVING HOME HEALTH CARE.

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

1 SECTION 1. Section 72F through 72L of chapter 111 of the
2 General Laws are hereby amended by striking out said sections in
3 their entirety and inserting in place thereof the following sec-
4 tions:—

5 §72F. Definitions applicable to sections 72F to 72L.

6 In sections 72F to 72L, inclusive, the following words shall
7 have the following meanings: —

8 “Abuse”, the willful infliction of injury, unreasonable confine-
9 ment, intimidation, including verbal or mental abuse, or punish-
10 ment with resulting physical harm, pain or mental anguish.

11 “Facility”, any entity required to be licensed under section
12 seventy-one.

13 “Home health aide”, an employee of a home health agency or a
14 hospice program who provides health services to individuals in a
15 home setting.

16 “Home health agency”, any entity, however organized, whether
17 conducted for profit or not for profit, which is advertised,
18 announced, established or maintained for the purpose of providing
19 health and homemaker services to individuals in a home setting.

20 “Homemaker”, an employee hired by a home health agency or a
21 hospice program to perform homemaking tasks in an individual’s
22 home, including the essential nutritional and environmental needs
23 of the individual, such as, meal preparation, cleaning and laundry.

24 “Hospice program”, an entity required to be licensed under
25 section fifty-seven D or any hospice service of a hospital licensed
26 under section fifty-one.

27 “Misappropriation of patient or resident property”, the delib-
28 erate misplacement, exploitation, or wrongful, temporary or per-
29 manent use of a patient’s or resident’s belongings or money
30 without the patient’s or resident’s consent.

31 “Mistreatment”, the use of medications or treatments, isolation,
32 or physical or chemical restraints which harms or is likely to harm
33 the patient or resident.

34 “Neglect”, failure to provide goods and services necessary to
35 avoid physical harm, mental anguish or mental illness.

36 “Nurse aide”, any individual, who is not a licensed health pro-
37 fessional, employed by a facility who provides nursing or nursing-
38 related services to residents.

39 “Patients”, an individual who receives health, homemaker or
40 hospice services at home from an individual employed by a home
41 health agency or a hospice program.

42 “Resident”, an individual who resides in a long term care
43 facility licensed under section seventy-one.

44 §72G. Reports of abuse of patients or residents.

45 Any physician, medical intern or resident, physician assistant,
46 registered nurse, licensed practical nurse, nurse aide, orderly,
47 home health aide, hospice worker, homemaker, administrator,
48 responsible person, medical examiner, dentist, optometrist, opti-
49 cian, chiropractor, podiatrist, coroner, police officer, speech
50 pathologist, audiologist, social worker, pharmacist, physical or
51 occupational therapist, or health officer, paid for caring for a
52 patient or a resident, who has reasonable cause to believe that a
53 patient or resident has been abused, mistreated or neglected, or
54 had property misappropriated, shall immediately report such
55 abuse, mistreatment, neglect, or misappropriation of patient or
56 resident property to the department by electronically transmitted
57 report, by facsimile, or by oral communication, and, if by oral
58 communication, by making a written report within forty-eight
59 hours after such oral communication. Any such person so required
60 to make such oral and written reports who fails to do so shall be
61 punished by a fine of not more than one thousand dollars.

62 In addition to those persons required to report pursuant to this
63 section, any other person may make such a report if any such
64 person has reasonable cause to believe that a patient or resident
65 has been abused, mistreated, neglected, or had property misappro-

66 priated. Any person making an oral or written report pursuant to
67 this section shall not be liable in any civil or criminal action by
68 reason of such report if it was made in good faith. In a civil action
69 commenced against a person making such report, if the court finds
70 in favor of the defendant, the court shall order the plaintiff to pay
71 the defendant reasonable costs and expenses, including, but not
72 limited to, attorneys fees, lost wages and court costs.

73 No facility, home health agency or hospice program shall dis-
74 charge, or in any manner discriminate or retaliate against, any
75 person who, in good faith, makes such a report, or testifies, or is
76 about to testify in any proceeding about the abuse, mistreatment,
77 neglect of a patient or resident, or the misappropriation of a
78 patient's or resident's property. A facility, home health agency, or
79 hospice program which discharges, discriminates or retaliates
80 against such a person shall be liable to the person so discharged,
81 discriminated or retaliated against, for treble damages, costs and
82 attorneys fees.

83 Said written reports shall contain the following information
84 where applicable: the name and sex of the patient or resident; the
85 home address of the patient; the name and address of the facility
86 in which the resident resides; the name and address of the home
87 health agency or hospice program; the age of the patient or resi-
88 dent, if known to the reporter; the name and address of the
89 reporter and where said reporter may be contacted; any informa-
90 tion relative to the nature and extent of the abuse, mistreatment,
91 neglect, or misappropriation of patient or resident property; and, if
92 known to the reporter, any information relative to prior abuse,
93 mistreatment, or neglect of such patient or resident, or misappro-
94 priation of the patient's or resident's property; the circumstances
95 under which the reporter became aware of the abuse, mistreat-
96 ment, neglect or misappropriation of property; if known to the
97 reporter, whatever action, if any, was taken to treat or otherwise
98 assist the patient or resident; any other information which the
99 reporter believes might be helpful in establishing the cause of
100 such abuse, mistreatment, neglect, or misappropriation of property
101 and the person or persons responsible therefor; and such other
102 information as may be required by the department.

103 Any privilege established by sections twenty or twenty B of
104 chapter two hundred and thirty-three, by court decision or by pro-

105 fessional code relating to the exclusion of confidential communi-
106 cations and the competency of witnesses, may not be invoked in
107 any civil action arising out of a report made pursuant to this
108 section.

109 §72H. Duties of the department.

110 The department shall, subject to appropriation:

111 (1) notify the attorney general forthwith upon receipt of an oral
112 or written report made under the provisions of section seventy-
113 two G;

114 (2) investigate and evaluate the information reported in said
115 reports. Said investigation and evaluation shall be made within
116 twenty-four hours if the department has reasonable cause to
117 believe the patient's or resident's health or safety is in immediate
118 danger from further abuse or neglect, and within seven days for all
119 other such reports. The investigation shall include a visit to the
120 facility, the home health agency, the hospice program and/or the
121 home of the patient, an interview with the patient or resident
122 allegedly abused, mistreated or neglected, or whose property was
123 allegedly misappropriated, a determination of the nature, extent,
124 and cause or causes of the injuries, the identity of the person or
125 persons responsible therefor, and all other pertinent facts. Such
126 determinations and evaluations shall be in the form of a written
127 report;

128 (3) evaluate the environment of the facility named in the report
129 and make a written determination of the risk of physical or emo-
130 tional injury to any other residents in the same facility;

131 (4) forward a copy of the department's written report to the
132 attorney general within a reasonable time after a case has been
133 investigated;

134 (5) if it has reasonable cause to believe that a patient or resident
135 has died as a result of abuse, mistreatment or neglect, immediately
136 report said death to the attorney general, the district attorney for
137 the county in which such death occurred, and to the medical
138 examiner as required by section three of chapter thirty-eight;

139 (6) promulgate such regulations as may be necessary to imple-
140 ment the provisions of sections 72F through 72I.

141 §72I. Filing of reports; confidentiality.

142 The department shall, subject to appropriation, maintain a file
143 of the written reports prepared pursuant to sections seventy-two G

144 and seventy-two H. Both the report submitted by the mandatory or
145 non-mandatory reporter to the department and the report prepared
146 by the department following its investigation shall be confidential.

147 The patient or resident, or their counsel, the reporting person or
148 agency, the appropriate professional board of registration, or a
149 social worker assigned to the case may, upon written request, and
150 upon the approval of the commissioner, receive a copy of the
151 department's written report.

152 The department's written report shall not be made available to
153 any persons other than those enumerated in this section without
154 the written, informed consent of the patient or resident, or the
155 written approval of the commissioner, or an order of a court of
156 competent jurisdiction.

157 The reports prepared by the department shall contain no identi-
158 fying information relating to any patient or resident.

159 Any person who causes any information which is contained in
160 the department's files maintained pursuant to section 72I to be
161 released without authorization to persons or agencies other than
162 those specified in this section shall be punished by a fine of not
163 more than one thousand dollars or by imprisonment for not more
164 than two and one-half years, or both.

165 §72J. Registry; establishment; content.

166 The department shall, subject to appropriation, establish and
167 maintain a registry of all individuals who have met the federal
168 requirements contained in 42 U.S.C. §1396r, as most recently
169 amended, for competency and have been certified as nurse aides
170 for employment in a facility.

171 The registry shall also contain specific documented findings by
172 the department of patient or resident abuse, mistreatment, neglect
173 or misappropriation of patient or resident property involving: (1)
174 an individual listed on the registry, (2) a home health aide, and (3)
175 a homemaker, as well as any brief statement of the individual dis-
176 puting the findings. In the case of inquiries to the registry con-
177 cerning a nurse aide, a home health aide, or a homemaker, any
178 information disclosed concerning such a finding shall also include
179 disclosure of any such statement in the registry relating to the
180 finding or a clear and accurate summary of such a statement. The
181 Registry and its information shall be available to all home health
182 agencies that request such information as part of its employment
183 process.

184 The department shall, after notice to the nurse aide, home
185 health aide, or homemaker involved in an allegation of patient or
186 resident abuse, mistreatment, neglect or misappropriation of
187 patient or resident property, and a reasonable opportunity for a
188 hearing for the individual to rebut allegations, make a finding as
189 to the accuracy of the allegations. If the department finds that a
190 nurse aide, home health aide, or homemaker has abused, mis-
191 treated or neglected a patient or resident or misappropriated
192 patient or resident property, the department shall notify the nurse
193 aide, home health aide, or homemaker and their employers and the
194 registry of such finding. The department shall not make a finding
195 that an individual has neglected a patient or resident if the indi-
196 vidual demonstrates that such neglect was caused by factors
197 beyond the control of the individual.

198 The department shall promulgate such rules and regulations as
199 may be necessary to implement the provisions of this section.

200 §72K. Civil penalties; recovery by attorney general.

201 The attorney general may recover a civil penalty of not more
202 than two thousand five hundred dollars if any person abuses, mis-
203 treats, or neglects a patient or resident or misappropriates patient
204 or resident property. Any action brought by the attorney general
205 pursuant to this section shall be exempt from the provisions of
206 section sixty B of chapter two hundred and thirty-one. This provi-
207 sion does not exclude any actions brought by the attorney general
208 or a private party pursuant to chapter ninety-three A or to any
209 action by the department pursuant to this chapter.

210 §72L. Abuse by licensed or registered professional; suspension
211 or revocation of license.

212 Upon a finding by the department of patient or resident abuse,
213 mistreatment, neglect or misappropriation of patient or resident
214 property, or failure to report such instances by a licensed or regis-
215 tered professional, the department or the attorney general shall
216 notify the appropriate board of registration as provided in chapter
217 one hundred and twelve. If a licensed or registered professional
218 has abused, mistreated or neglected a patient or resident, or mis-
219 appropriated patient or resident property, or has failed to report
220 such instances, the appropriate board shall take any necessary dis-
221 ciplinary action, including suspending or revoking such person's
222 license as provided in section sixty-one of chapter one hundred
223 and twelve subject to the prescribed procedures.

1 SECTION 2. Chapter 111 of the Massachusetts General Laws
2 is hereby amended by inserting after section 72Y, the following
3 new section, section 72Z: —

4 §72Z. Immunity from Liability.

5 All facilities, home health agencies, hospice programs, their
6 respective directors, employees or consultants shall be immune
7 from any liability associated with compliance under sections 72F
8 through 72L.

9 A facility, home health agency, or hospice program as defined
10 in chapter 111, section 72F, which is asked to provide an employ-
11 ment reference with respect to a named individual who either is
12 working for, or has worked for, said facility, home health agency,
13 or hospice program, shall not be liable for disclosing information
14 related to the named individual's employment history, including a
15 subjective assessment of whether the named individual is suited to
16 provide services to any resident or patient, unless it is alleged and
17 proven that the information disclosed was false and disclosed with
18 knowledge that the information was false.