LEGISLATURE OF THE STATE OF IDAHO
Sixty-fourth Legislature Second Regular Session - 2018

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 347

BY HEALTH AND WELFARE COMMITTEE

AN ACT
RELATING TO THE OFFICE OF OMBUDSMAN FOR THE ELDERLY; AMENDING SECTION 39-5303, IDAHO CODE, TO REVISE PROVISIONS REGARDING DUTY TO REPORT CASES OF ABUSE, NEGLECT OR EXPLOITATION OF VULNERABLE ADULTS; AND AMENDING SECTION 67-5009, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE OFFICE OF OMBUDSMAN FOR THE ELDERLY.

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

SECTION 1. 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, ombudsman for the elderly, 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 ap-
pealable as provided in chapter 52, title 67, Idaho Code.

(3) Any person, including any officer or employee of a financial insti-
tution, 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.

(4) The commission and its contractors shall make training available
to officers and employees of financial institutions in identifying and re-
porting 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 re-
port, or who is authorized to provide supportive or emergency services pur-
suant 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 circum-
stances.

(6) Any person who makes a report or allegation in bad faith, with mal-
ice 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 dam-
ages 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 2. That Section 67-5009, Idaho Code, be, and the same is hereby
amended to read as follows:

67-5009. OFFICE OF OMBUDSMAN FOR THE ELDERLY. The office of ombudsman
for the elderly is hereby created within the commission. The ombudsman shall
be able to independently make determinations and establish positions of the
office without necessarily representing the determinations or positions of
the commission. The ombudsman shall be responsible for receiving, investi-
gating and resolving or closing complaints made by or on behalf of residents
of long-term care facilities or persons aged sixty (60) years or older liv-
ing in the community. No representative of the office shall be liable for
the good faith performance of official duties, and willful interference with
representatives of the office is unlawful. Long-term care facilities are
prohibited from interference, reprisals or retaliation against a resident, an
employee or other person filing a complaint with, or furnishing informa-
tion to, the office.

For the purposes of implementing the provisions of this section, the
commission is hereby authorized as follows:

The administrator shall hire the state ombudsman for the elderly who
shall be a person with the necessary educational background commensurate
with the duties and responsibilities of the office of ombudsman and shall
be a classified employee subject to the provisions of chapter 53, title 67, Idaho Code.

The ombudsman may delegate to designated local ombudsmen any duties deemed necessary to carry out the purposes of the provisions of this section.

The ombudsman shall establish procedures for receiving and processing complaints, conducting investigations and reporting his findings. He shall have jurisdiction to investigate administrative acts or omissions of long-term care facilities or state or county departments or agencies providing services to older people. An administrative act of a long-term care facility or state or county department or agency may become an appropriate subject for the ombudsman to investigate under certain circumstances. For example, the ombudsman may investigate such an act if it might be contrary to law, unreasonable, unfair, oppressive, capricious or discriminatory. The ombudsman may make a finding for an appropriate resolution to the subject matter of the investigation.

The ombudsman shall investigate any complaint which he determines to be an appropriate subject for investigation under this section and will work to resolve the complaint to the satisfaction of the resident or the resident's representative.

When the ombudsman investigates a complaint, he shall notify the complainant, if any, of the investigation and shall also notify the long-term care facility or the state or county department or agency affected by the investigation of his intent to investigate. However, if no investigation takes place, he shall inform the complainant of the reasons therefor. Records obtained by the ombudsman shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

In an investigation of any complaint or administrative act of any long-term care facility or state or county department or agency providing services to older people, the ombudsman may undertake, but not be limited to, any of the following actions:

(a) Make the necessary inquiries and obtain such information he deems necessary.

(b) Hold private hearings.

(c) Enter during regular business hours, a long-term care facility or state or county department or agency's premises, or enter at any time a long-term care facility.

Following the investigation and upon his determination that particular subject matter should be further considered by the long-term care facility or state or county department or agency, an administrative act should be modified or canceled, a statute or regulation on which an administrative act is based should be altered, reasons should be given for an administrative act, or some other action should be taken by a long-term care facility or state or county department or agency, he shall report his opinions and recommendations to the respective parties. The ombudsman may request the parties affected by such opinions or recommendations to notify him within the specified time of any action taken by such parties on his recommendation. Following an investigation, the ombudsman shall consult with the particular parties before issuing any opinion or recommendation that is critical to such parties.
The ombudsman shall notify the complainant in writing or verbally, the resident or the resident's representative within a reasonable time from the date the investigation is terminated of any actions taken by him and the long-term care facility, or state or county department or agency to resolve any issues raised by the complaint.

The ombudsman, on December 1 of each year, shall submit to the governor, the speaker of the house, president of the senate, the department of health and welfare bureau division of licensing and certification, the president of the Idaho hospital association and the president of the Idaho health care association a report of the activities of the ombudsman for the elderly during the prior fiscal year. This report shall include, but not be limited to, the number and general patterns of complaints received by the ombudsman, the action taken on such complaints, the results of such action, and any opinions or recommendations which further the state's capability in providing for statutory resolution of complaints.

Nothing in this section shall be construed to be a limitation of the powers and responsibilities assigned by law to other state or county departments or agencies.

Records obtained by the ombudsman shall be subject to disclosure according to chapter 1, title 74, Idaho Code.