

### **12-12-1701. Title.**

This subchapter shall be known and may be cited as the “Adult and Long-Term Care Facility Resident Maltreatment Act”.

History. Acts 2005, No. 1812, § 1.

### **12-12-1702. Purpose.**

The purpose of this subchapter is to:

- (1) Provide a system for the reporting of known or suspected adult and long-term care facility resident maltreatment;
- (2) Ensure the screening, safety assessment, and prompt investigation of reports of known or suspected adult and long-term care facility resident maltreatment;
- (3) Provide for a civil action, if appropriate, to protect maltreated adults and long-term care facility residents; and
- (4) Encourage the cooperation of state law enforcement officials, courts, and state agencies in the investigation and assessment of maltreated adults and long-term care facility residents, and prosecution of offenders.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 6.

### **12-12-1703. Definitions.**

As used in this subchapter:

- (1) (A) “Abuse” means with regard to any long-term care facility resident or any patient at the Arkansas State Hospital by a caregiver:
  - (i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person, excluding court-ordered medical care or medical care requested by the patient or long-term care facility resident or a person legally authorized to make medical decisions on behalf of the patient or long-term care facility resident;
  - (ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care;

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause; or

(iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(B) “Abuse” means with regard to any person who is not a long-term care facility resident or a patient at the Arkansas State Hospital:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered person or an impaired person;

(ii) Any intentional act that a reasonable person would believe subjects an endangered person or an impaired person, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered person or an impaired person except in the course of medical treatment or for justifiable cause;

(2) “Adult maltreatment” means abuse, exploitation, neglect, or sexual abuse of an adult;

(3) “Caregiver” means a related person or an unrelated person, an owner, an agent, a high managerial agent of a public or private organization, or a public or private organization that has the responsibility for the protection, care, or custody of an endangered person or an impaired person as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of a court;

(4) “Department” means the Department of Human Services;

(5) “Endangered person” means:

(A) A person eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) A long-term care facility resident who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to the long-term care facility resident; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(6) “Exploitation” means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another; or

(C) Misappropriation of property of a long-term care facility resident, that is, the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

(7) “Imminent danger to health or safety” means a situation in which death or serious bodily harm could reasonably be expected to occur without intervention;

(8) (A) “Impaired person” means a person eighteen (18) years of age or older who as a result of mental or physical impairment is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this subchapter, a long-term care facility resident is presumed to be an impaired person;

(9) “Long-term care facility” means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for individuals with mental retardation; or

(F) Any facility that provides long-term medical or personal care;

(10) “Long-term care facility resident” means a person, regardless of age, living in a long-term care facility;

(11) “Long-term care facility resident maltreatment” means abuse, exploitation, neglect, or sexual abuse of a long-term care facility resident;

(12) “Maltreated adult” means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(13) “Maltreated person” means a person, regardless of age, who has been abused, exploited, neglected, physically abused, or sexually abused;

(14) “Neglect” means:

(A) An act or omission by an endangered person or an impaired person, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered person or an impaired person constituting:

(i) Negligently failing to provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered person or an impaired person;

(ii) Negligently failing to report health problems or changes in health problems or changes in the health condition of an endangered person or an impaired person to the appropriate medical personnel;

(iii) Negligently failing to carry out a prescribed treatment plan; or

(iv) Negligently failing to provide goods or services to a long-term care facility resident necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care;

(15) (A) “Physical injury” means the impairment of a physical condition or the infliction of substantial pain on a person.

(B) If the person is an endangered person or an impaired person, there shall be a presumption that any physical injury resulted in the infliction of substantial pain;

(16) “Serious bodily harm” means sexual abuse, physical injury, or serious physical injury;

(17) “Serious physical injury” means physical injury to an endangered person or an impaired person that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(18) "Sexual abuse" means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless; and

(19) "Subject of the report" means:

(A) The endangered person or impaired person;

(B) The adult's legal guardian;

(C) The natural or legal guardian of a long-term care facility resident under eighteen (18) years of age; and

(D) The offender.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 7; 2007, No. 497, § 4.

#### **12-12-1704. Spiritual treatment alone not abusive.**

Nothing in this subchapter shall be construed to mean that an endangered person or an impaired person who is being furnished with treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or religious denomination is for that reason alone an endangered person or an impaired person.

History. Acts 2005, No. 1812, § 1.

#### **12-12-1705. Privilege not grounds for exclusion of evidence.**

Any privilege between husband and wife or between any professional person and his or her clients, except lawyer and client, including, but not limited to, physicians, members of the clergy, counselors, hospitals, clinics, rest homes, and nursing homes shall not constitute grounds for excluding evidence at any proceeding regarding an endangered person or an impaired person, or the cause of the proceeding.

History. Acts 2005, No. 1812, § 1.

#### **12-12-1706. Civil penalties.**

(a) (1) The State of Arkansas and the Attorney General may institute a civil action against any long-term care facility caregiver necessary to enforce any provision of this subchapter.

(2) Notwithstanding any criminal penalties assessed, any caregiver against whom any civil judgment is entered as the result of a civil action brought by the State of Arkansas

through the Attorney General on a complaint alleging that caregiver to have abused, neglected, or exploited an endangered person or an impaired person in a long-term care facility certified under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., as it existed on January 1, 2005, shall be subject to pay a civil penalty:

(A) Not to exceed ten thousand dollars (\$10,000) for each violation judicially found to have occurred; or

(B) Not to exceed fifty thousand dollars (\$50,000) for the death of a long-term care facility resident that results from a single violation.

(3) (A) The Attorney General shall not be precluded from recovering civil penalties under subdivision (a)(2)(A) of this section for the death of a person that results from multiple violations.

(B) However, the Attorney General may not recover civil penalties under both subdivisions (a)(2)(A) and (B) of this section.

(b) In any action brought under this section, the Attorney General shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(c) Any civil penalty under subdivision (a)(2) of this section shall be paid into the State Treasury and credited to the Arkansas Medicaid Program Trust Fund.

(d) Any caregiver against whom any civil judgment is entered as the result of a civil action under this section by the Attorney General shall be required to pay to the Attorney General all reasonable expenses that the court determines have been necessarily incurred in the enforcement of this subchapter.

(e) A civil action under this section may not be brought more than three (3) years after the date on which the violation of this subchapter is committed.

History. Acts 2005, No. 1812, § 1.

**12-12-1707. Adult and long-term care facility resident maltreatment hotline.**

(a) The Department of Human Services shall maintain a single statewide telephone number that all persons, whether mandated by law or not, may use to report a case of suspected adult maltreatment and long-term care facility resident maltreatment.

(b) When appropriate, a copy of the initial report shall immediately be made available to the appropriate law enforcement agency for its consideration.

(c) (1) The department shall not release information that would identify the person who made the report unless a court of competent jurisdiction orders release of the information

after the court has reviewed in camera the record related to the report and has found that disclosure is necessary:

(A) To prevent execution of a crime; or

(B) For prosecution of a crime.

(2) (A) However, any person to whom the name of the reporter is disclosed is prohibited from redisclosing this information, except as provided in subdivision (c)(2)(B) of this section.

(B) (i) Upon request, the information shall be disclosed to:

(a) The Attorney General;

(b) The prosecuting attorney; or

(c) Law enforcement officers.

(ii) However, the information shall remain confidential until criminal charges are filed.

(d) (1) A report of an allegation of suspected adult maltreatment or long-term care facility resident maltreatment shall be accepted if the allegation, if true, would constitute adult maltreatment or long-term care facility resident maltreatment and so long as sufficient identifying information is provided to identify and locate the victim.

(2) A report to the hotline when the allegation, even if true, would not constitute adult maltreatment or long-term care facility resident maltreatment shall be screened out.

(e) (1) The hotline shall accept a report if the victim or offender is present in Arkansas or if the incident occurred in Arkansas.

(2) If the incident occurred in another state, the hotline shall screen out the report and transfer the report to the hotline of the state in which the incident occurred.

(3) Upon request from an adult maltreatment or long-term care facility resident maltreatment investigator in another state, the department shall complete courtesy interviews with the victim, offender, or any witness of adult maltreatment who resides in Arkansas.

(f) Upon registration of a hotline report of suspected adult maltreatment or long-term care facility resident maltreatment, the hotline shall refer the matter immediately to the appropriate investigating agency as outlined in this subchapter.

History. Acts 2005, No. 1812, § 1.

**12-12-1708. Persons required to report adult or long-term care facility resident maltreatment.**

(a) (1) Whenever any of the following persons has observed or has reasonable cause to suspect that an endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment, the person shall immediately report or cause a report to be made in accordance with the provisions of this section:

- (A) A physician;
- (B) A surgeon;
- (C) A coroner;
- (D) A dentist;
- (E) A dental hygienist;
- (F) An osteopath;
- (G) A resident intern;
- (H) A nurse;
- (I) A member of a hospital's personnel who is engaged in the administration, examination, care, or treatment of persons;
- (J) A social worker;
- (K) A case manager;
- (L) A home health worker;
- (M) A mental health professional;
- (N) A peace officer;
- (O) A law enforcement officer;
- (P) A facility administrator or owner;
- (Q) An employee in a facility;
- (R) An employee of the Department of Human Services;



(S) A firefighter;

(T) An emergency medical technician;

(U) An employee of a bank or other financial institution;

(V) An employee of the United States Postal Service;

(W) An employee or a volunteer of a program or an organization funded partially or wholly by the department who enters the home of or has contact with an elderly person;

(X) A person associated with the care and treatment of animals, such as animal control officers and humane society officials;

(Y) An employee who enforces code requirements for a city, township, or municipality; or

(Z) Any clergy member, including without limitation, a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a religious organization, or an individual reasonably believed to be a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a religious organization by the person consulting him or her, except to the extent he or she:

(i) Has acquired knowledge of suspected maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or

(ii) Received the knowledge of the suspected maltreatment from the offender in the context of a statement of admission.

(2) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff, an employee in or owner of a facility, or an employee of the department, he or she shall immediately notify the person in charge of the institution, facility, or agency, or that person's designated agent, who shall then become responsible for making a report or cause a report to be made within twenty-four (24) hours or on the next business day, whichever is earlier.

(3) In addition to those persons and officials required to report suspected maltreatment, any other person may make a report if the person has observed an adult or long-term care facility resident being maltreated or has reasonable cause to suspect that an adult or long-term care facility resident has been maltreated.

(b) (1) A report for a long-term care facility resident shall be made:

(A) Immediately to the local law enforcement agency for the jurisdiction in which the long-term care facility is located; and

(B) To the Office of Long-Term Care, under regulations of that office.

(2) A report of a maltreated adult who does not reside in a long-term care facility shall be made to the adult and long-term care facility maltreatment hotline provided in § 12-12-1707.

(c) No privilege or contract shall relieve any person required by this subchapter to make a notification or report from the requirement of making the notification or report.

History. Acts 2005, No. 1812, § 1; 2007, No. 497, § 5.

**12-12-1709. Report of death caused by maltreatment.**

(a) (1) Any person or official who is required to report a case of suspected adult maltreatment or long-term care facility resident maltreatment under this subchapter and who has reasonable cause to suspect that an adult or long-term care facility resident has died as a result of maltreatment shall report the suspected death from maltreatment to the appropriate medical examiner or coroner.

(2) (A) In all cases of the death of a long-term care facility resident or a hospice facility resident, the long-term care facility or the hospice facility shall immediately report the death to the appropriate coroner.

(B) The report is required regardless of whether the long-term care facility or the hospice facility believes the death to be from natural causes or the result of maltreatment or any other cause.

(3) (A) In all cases of the death in a hospital of a person who was a long-term care facility resident within five (5) days before entering the hospital, the hospital shall immediately report the death to the appropriate coroner.

(B) The report is required regardless of whether the hospital believes the death to be from natural causes, the result of maltreatment, or any other cause.

(b) (1) The medical examiner or coroner shall accept the report for investigation and upon finding reasonable cause to suspect that a person has died as a result of maltreatment shall report the findings to a law enforcement agency and the appropriate prosecuting attorney.

(2) If the institution making the report is a hospital or long-term care facility, the medical examiner or coroner shall report the findings to the hospital or long-term care facility unless the findings are part of a pending or ongoing law enforcement investigation.

(c) If it receives findings under subdivision (b)(2) of this section, the medical examiner, coroner, or hospital shall also report findings under subsection (b) of this section to the Department of Human Services if:

(1) Reasonable cause exists to believe the death resulted from maltreatment; or

(2) Upon request of the department and there is a pending investigation concerning allegations of maltreatment occurring before death.

History. Acts 2005, No. 1812, § 1.

**12-12-1710. Investigation by Department of Human Services.**

(a) The Department of Human Services shall have jurisdiction to investigate all cases of suspected maltreatment of an endangered person or an impaired person.

(b) (1) The Adult Protective Services Unit of the Department of Human Services shall investigate:

(A) All cases of suspected adult maltreatment if the act or omission occurs in a place other than a long-term care facility; and

(B) All cases of suspected adult maltreatment of an adult endangered person or an adult impaired person if a family member of the adult endangered person or adult impaired person is named as the suspected offender, regardless of whether or not the adult endangered person or adult impaired person is a long-term care facility resident.

(2) The Office of Long-Term Care shall investigate all cases of suspected maltreatment of a long-term care facility resident.

(3) If requested by the department, a law enforcement agency shall assist in the investigation of any case of suspected adult maltreatment or long-term care facility resident maltreatment.

History. Acts 2005, No. 1812, § 1.

**12-12-1711. Procedures for investigation by the Department of Human Services.**

(a) The Department of Human Services shall conduct a thorough investigation of all suspected adult maltreatment or long-term care facility resident maltreatment in accordance with this subchapter.

(b) (1) The investigation shall be completed and an investigative determination entered within sixty (60) days.

(2) The investigation and written investigative report shall include:

(A) The nature, extent, and cause of the maltreatment;

(B) The identity of the person responsible;

(C) The names and conditions of other adults in the home, if the incident occurred in a home;

(D) An evaluation of the persons responsible for the care of the maltreated person, if any;

(E) The home environment, the relationship of the maltreated person to the next of kin or other person responsible for his or her care, and all other pertinent data; and

(F) (i) A visit to the maltreated adult's home, if the incident occurred in the home, and an interview with the maltreated adult.

(ii) An investigator shall interview the maltreated person alone and out of the hearing of any next of kin or other person responsible for the maltreated person's care.

(iii) If necessary, an interpreter may be present during the interview of the maltreated person.

History. Acts 2005, No. 1812, § 1.

### **12-12-1712. Photographs and X-rays.**

(a) Any person who is required to report a case of adult maltreatment or long-term care facility resident maltreatment may take or cause to be taken, at public expense, color photographs of the area of trauma visible on the maltreated person and, if medically indicated, cause to be performed radiological examination of the maltreated person.

(b) (1) Whenever a person is required to report under this subchapter in his or her capacity as a member of the staff of any private or public institution or agency, he or she shall immediately notify the person in charge of the institution or agency or his or her designee.

(2) Upon notification under subdivision (b)(1) of this section, the person in charge of the institution or agency or his or her designee shall:

(A) Take or cause to be taken, at public expense, color photographs of physical trauma; and

(B) If medically indicated, cause to be performed a radiological examination of the maltreated person.

(c) Any photograph or X-ray taken shall be sent to the Department of Human Services as soon as possible.

History. Acts 2005, No. 1812, § 1.

**12-12-1713. Immunity for investigation participants.**

(a) Any person, official, or institution acting in good faith in the making of a report, the taking of a photograph, or the removal of a maltreated person under this subchapter shall have immunity from liability and suit for damages, civil or criminal, that otherwise might result by reason of those actions.

(b) The good faith of any person required to report a case of adult maltreatment or long-term care facility resident maltreatment shall be presumed.

History. Acts 2005, No. 1812, § 1.

**12-12-1714. Investigative powers of the Department of Human Services.**

(a) If admission cannot be obtained to a home, an institution, or other place in which an allegedly maltreated person may be present, a circuit court, upon good cause shown, shall order the person responsible for or in charge of the home, institution, or other place to allow entrance for an examination and investigation.

(b) If admission to a home cannot be obtained due to hospitalization or similar absence of the maltreated person and admission to the home is necessary to complete an investigation, a circuit court, upon good cause shown, shall order a law enforcement agency to assist the Department of Human Services to obtain entrance to the home for the required investigation of the home environment.

(c) (1) Upon request, the medical, mental health, or other records regarding the maltreated person, including protected health information, maintained by any facility or maintained by any person required by this subchapter to report suspected adult maltreatment or long-term care facility resident maltreatment, shall be made available to the department for the purpose of conducting an investigation under this subchapter.

(2) Upon request, financial records maintained by a bank or similar institution regarding a maltreated person shall be made available to the department for the purpose of conducting an investigation under this subchapter.

(3) A circuit court, upon good cause shown, shall order any facility or person that maintains medical, mental health, or other records, including protected health information, regarding a maltreated person to tender the records to the department for the purpose of conducting an investigation under this subchapter.

(d) (1) An investigation under this subchapter may include a medical, psychological, social, vocational, financial, and educational evaluation and review, if necessary.

(2) (A) (i) The department may file an ex parte petition in circuit court requesting an order of investigation.

(ii) If the court issues an order of investigation, any subsequent petition for custody shall be filed in this same case.

(B) No fees may be charged or collected by the clerk, including without limitation, fees for filing, summons, or subpoenas.

(3) (A) The department may compel the allegedly maltreated person to be evaluated in the least restrictive environment and least intrusive manner necessary to obtain an assessment if:

(i) The department is unable to secure an order of investigation from the circuit court during regular business hours;

(ii) The department has reasonable cause to suspect a significant risk for serious harm to the health or safety of the adult; and

(iii) The department cannot adequately assess:

(a) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition; or

(b) The adult's mental or physical impairment and ability to protect himself or herself from maltreatment.

(B) (i) Upon request by the department and without a court order, law enforcement and medical personnel shall assist the department as needed in obtaining an assessment on an allegedly maltreated person.

(ii) The assessment may include emergency treatment.

(C) No later than the next business day after the assessment, the department shall petition the court for an order of investigation as outlined in this section.

(4) (A) Upon a showing of reasonable cause to suspect an allegedly maltreated person is endangered or impaired, the circuit court shall issue an order of investigation.

(B) The order of investigation may include the power to compel the allegedly maltreated person to be assessed to determine whether the person:

(i) Lacks capacity to understand the nature and consequences of remaining in the situation or condition that poses a danger to the person; or

(ii) Has a mental or physical impairment such that the person is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(5) Upon good cause shown by the department, the circuit court may order emergency treatment of the allegedly maltreated adult.

(6) (A) The allegedly maltreated adult has a right to counsel, including appointed counsel if indigent, and a right to a hearing within five (5) business days after issuance of an ex parte order of investigation.

(B) If the allegedly maltreated adult is not indigent, the circuit court has the authority to appoint counsel to represent the allegedly maltreated adult and to direct payment from the assets of the adult for legal services received by the adult.

(7) (A) At the five-day hearing the court shall determine whether the order of investigation shall continue for an additional period of time or be terminated.

(B) The burden shall be upon the department to show probable cause that the alleged maltreated person is an endangered or impaired person and that additional time is necessary to complete the investigation.

(8) The department and the court shall defer to any declaration executed in conformance with the Arkansas Rights of the Terminally Ill or Permanently Unconscious Act, § 20-17-201 et seq. and before any documented medical or judicial determination of lack of capacity.

(e) If before an investigation under this subchapter is completed, the Adult Protective Services Unit of the Department of Human Services determines that the immediate removal of a maltreated adult is necessary to protect the maltreated adult from imminent danger to his or her health or safety, the unit may:

(1) Petition a circuit court for an order of temporary custody; or

(2) Exercise a seventy-two-hour hold under the Adult Maltreatment Custody Act, § 9-20-101 et seq.

(f) Upon petition by the department, the court may direct payment from the assets of the allegedly maltreated adult for services rendered or goods purchased by or for the allegedly maltreated adult during the course of the investigation.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 8; 2007, No. 497, § 6.

**12-12-1715. Rights of subject of report — Investigative determination of the Department of Human Services — Notice of finding — Appeal.**

(a) Upon completion of an investigation, the Department of Human Services shall determine that an allegation of adult maltreatment or long-term care facility maltreatment is either:

(1) (A) Unfounded, a finding that shall be entered if the allegation is not supported by a preponderance of the evidence.

(B) (i) An unfounded report shall be expunged one (1) year after the completion of the investigation.

(ii) Demographic information may be retained for statistical purposes; or

(2) (A) Founded, a finding that shall be entered if the allegation is supported by a preponderance of the evidence.

(B) A determination of founded shall not be entered solely because an adult practicing his or her religious beliefs is receiving spiritual treatment under § 5-28-105 or § 12-12-1704.

(b) (1) (A) After making an investigative determination, the department shall notify in writing within ten (10) business days:

(i) (a) The person identified as the offender.

(b) However, in cases of unfounded self-neglect, no notice is required;

(ii) Either the:

(a) Person identified as the maltreated person;

(b) Legal guardian of the maltreated person; or

(c) Natural or legal guardian of a long-term care facility resident under eighteen (18) years of age;

(iii) The current administrator of the long-term care facility if the incident occurred in a long-term care facility; and

(iv) If known by the Office of Long-term Care, the administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred.



(B) If the investigation determines that the report is founded, notification to the offender shall be by process server or by certified mail, restricted delivery.

(2) The notification under subdivision (b)(1) of this section shall include the following:

(A) The investigative determination, exclusive of the source of the notification, including the nature of the allegation and the date and time of occurrence;

(B) A statement that an offender of a founded report has the right to an administrative hearing upon a timely request;

(C) A statement that the request for an administrative hearing shall be made to the department within thirty (30) days of receipt of the notice of determination;

(D) A statement of intent to report in writing after the offender has had an opportunity for an administrative hearing the founded investigative determination to:

(i) The adult and long-term care facility resident maltreatment central registry;  
and

(ii) Any applicable licensing authority;

(E) A statement that the offender's failure to request an administrative hearing in writing within thirty (30) days from the date of receipt of the notice will result in submission of the investigative report, including the investigative determination, to:

(i) The registry; and

(ii) Any applicable licensing authority;

(F) The consequences of waiving the right to an administrative hearing;

(G) The consequences of a finding by a preponderance of the evidence through the administrative hearing process that the maltreatment occurred;

(H) The fact that the offender has the right to be represented by an attorney at the offender's own expense; and

(I) The name of the person making the notification, his or her occupation, and the location at which he or she can be reached.

(c) (1) The administrative hearing process shall be completed within one hundred twenty (120) days from the date of the receipt of the request for a hearing unless waived by the offender.

(2) The department shall hold the administrative hearing at a reasonable place and time.

(3) For an incident occurring in a long-term care facility, the department may not make a finding that an offender has neglected a long-term care facility resident if the offender demonstrates that the neglect was caused by factors beyond the control of the offender.

(4) A delay in completing the administrative hearing process that is attributable to the offender shall not count against the time limit in subdivision (c)(1) of this section.

(5) Failure to complete the administrative hearing process in a timely fashion shall not prevent the department or a court from:

(A) Reviewing the investigative determination of jurisdiction;

(B) Making a final agency determination; or

(C) Reviewing a final agency determination under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) (1) When the department conducts an administrative hearing, the chief counsel of the department may require the attendance of witnesses and the production of books, records, or other documents through the issuance of a subpoena if the testimony or information is necessary to adequately present the position of the department or the alleged offender in a report.

(2) Failure to obey the subpoena may be deemed a contempt and shall be punishable accordingly.

(e) If the department's investigative determination of founded is upheld during the administrative hearing process or if the offender does not timely appeal for or waives the right to an administrative hearing, the department shall report the investigative determination in writing within ten (10) business days to:

(1) The offender;

(2) The current administrator of the long-term care facility if the incident occurred in a long-term care facility;

(3) The administrator of the long-term care facility that currently employs the offender if different from the long-term care facility in which the incident occurred;

(4) The appropriate licensing authority;

(5) The adult and long-term care facility resident maltreatment central registry; and

- (6) The maltreated person or the legal guardian of the maltreated person.

History. Acts 2005, No. 1812, § 1.

**12-12-1716. Adult and long-term care facility resident maltreatment central registry.**

(a) (1) There is established within the Department of Human Services a statewide adult and long-term care facility resident maltreatment central registry.

(2) The central registry shall contain investigative determinations made by the department on all founded allegations of adult maltreatment and long-term care facility resident maltreatment.

(3) An offender's name shall be placed in the registry if:

(A) After notice, the offender does not timely request an administrative hearing; or

(B) Upon completion of the administrative hearing process, the department's investigative determination of founded is upheld.

(4) An offender's name shall remain in the registry unless:

(A) The name is removed under a statute;

(B) The name is removed under a rule; or

(C) The offender prevails upon appeal.

(b) The department may adopt rules necessary to encourage cooperation with other states in exchanging reports to effect a national registry system of adult maltreatment.

(c) (1) The department may charge a reasonable fee not to exceed ten dollars (\$10.00) for researching, copying, and mailing records of the investigative files maintained under this subchapter.

(2) The department may also charge a reasonable fee for reproducing copies of tapes and photographs maintained under this subchapter.

(3) No fee may be charged to a nonprofit or volunteer agency that requests a search of the investigative files maintained under this subchapter.

(4) No fee may be charged under this subchapter to a person who is indigent.

History. Acts 2005, No. 1812, § 1.

**12-12-1717. Availability of founded reports of adult or long-term care facility resident maltreatment.**

(a) A report made under this subchapter that is determined to be founded, as well as any other information obtained, including protected health information, and a report written or photograph taken concerning a founded report in the possession of the Department of Human Services shall be confidential and shall be made available only to:

(1) A physician who has before him or her an endangered person or an impaired person the physician reasonably believes may have been maltreated;

(2) A person authorized to place the adult in protective custody if the person:

(A) Has before him or her an adult the person reasonably believes may have been maltreated; and

(B) Requires the information to determine whether to place the adult in protective custody;

(3) An authorized agency having responsibility for the care or supervision of an endangered person or an impaired person;

(4) Any person who is the subject of a report or that person's legal guardian;

(5) A grand jury or court, if the grand jury or court determines that the information is necessary for the determination of an issue before the grand jury or court;

(6) A prosecuting attorney, law enforcement official, coroner, or the Attorney General or his or her designated investigator;

(7) (A) A mandated reporter who has made a report of suspected maltreatment.

(B) However, a mandated reporter shall receive the information only to the extent that he or she may be informed after completion and closure of the investigation whether:

(i) Legal action was taken;

(ii) Services were provided; or

(iii) No action was taken.

(C) No further information shall be released to a mandated reporter, and the mandated reporter shall be informed of the confidentiality of the information and the penalties for disclosure;

(8) (A) An employer or volunteer agency for the purpose of screening an employee, applicant, or volunteer upon submission of a signed, notarized release from the employee, applicant, or volunteer.

(B) The only information released to the employer or volunteer agency shall be whether or not the adult and long-term care facility resident maltreatment central registry contains any founded reports naming the employee, applicant, or volunteer as an offender;

(9) The Death Review Committee of the Department of Human Services;

(10) The current administrator of the long-term care facility, if the incident occurred in a long-term care facility;

(11) The administrator of the long-term care facility that currently employs the offender, if different from the long-term care facility in which the incident occurred;

(12) A person or provider identified by the department as having services needed by the maltreated person;

(13) Any applicable licensing or registering authority;

(14) Any employer, legal entity, or board responsible for the person named as the offender;

(15) Any legal entity or board responsible for the maltreated person; and

(16) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program.

(b) (1) Under no circumstances may the information contained in the registry be released to a person unless the person's capacity is confirmed by the department.

(2) Except for the subject of the report, no person or agency to whom disclosure is made may disclose to any other person a report or other information obtained under this section.

(c) (1) The department may not release data that would identify the person who made a report except to law enforcement, a prosecuting attorney, or the office of the Attorney General.

(2) A court of competent jurisdiction may order release of data that would identify the person who made a report after the court has reviewed in camera the record related to the report and has found that disclosure is needed:

(A) To prevent execution of a crime; or

(B) For prosecution of a crime.

(d) However, information contained in the registry may be made available to bona fide and approved research groups solely for the purpose of scientific research, but in no event shall the name of a person be released, nor shall specific circumstances or facts related to a specific person be used in any research report that might be identifiable with the person.

(e) Any person who willfully permits and any other person who encourages the release of data or information contained in the registry to a person not permitted by this subchapter to receive the data or information is guilty of a Class A misdemeanor.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 9.

**12-12-1718. Availability of screened out, pending, and unfounded reports.**

(a) (1) A screened out report or a pending report, including protected health information, shall be confidential and shall be made available only to:

(A) The Department of Human Services, including the Death Review Committee of the Department of Human Services;

(B) A law enforcement agency;

(C) A prosecuting attorney;

(D) The office of the Attorney General;

(E) A circuit court having jurisdiction pursuant to a petition for emergency, temporary, long-term protective custody, or protective services;

(F) A grand jury or court, upon a finding that the information in the report is necessary for the determination of an issue before the grand jury or court;

(G) A person or provider identified by the department as having services needed by the maltreated person;

(H) Any applicable licensing or registering authority;

(I) Any employer, legal entity, or board responsible for the person named as the offender;

(J) Any legal entity or board responsible for the maltreated person; and

(K) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program.

(2) The subject of the report may only be advised that a report is pending.

(b) Upon completion of the administrative hearing process and if an allegation was determined to be unfounded, the investigative report, including protected health information, shall be confidential and shall be made available only to:

(1) The department, including the committee;

(2) A law enforcement agency;

(3) A prosecuting attorney;

(4) The office of the Attorney General;

(5) Any applicable licensing or registering authority;

(6) Any person named as a subject of the report or that person's legal guardian;

(7) A circuit court having jurisdiction pursuant to a petition for emergency, temporary, long-term protective custody, or protective services;

(8) A grand jury or court, upon a finding that the information in the record is necessary for the determination of an issue before the grand jury or court;

(9) A person or provider identified by the department as having services needed by the person;

(10) Any employer, legal entity, or board responsible for the person named as the offender;

(11) Any legal entity or board responsible for the maltreated person; and

(12) The Division of Developmental Disabilities Services and the Division of Aging and Adult Services as to participants of the waiver program.

(c) (1) An unfounded report shall be expunged one (1) year after completion of the investigation.

(2) However, demographic information may be retained for statistical purposes.

(d) (1) Except for the subject of the report, no person or agency to which disclosure is made may disclose to any other person a report or other information obtained under this section.

(2) Upon conviction, any person disclosing information in violation of this subsection is guilty of a Class C misdemeanor.

History. Acts 2005, No. 1812, § 1; 2007, No. 283, § 10.

**12-12-1719. Delegation of authority.**

The Director of the Department of Human Services may assign responsibilities for administering the various duties imposed upon the Department of Human Services under this subchapter to respective divisions of the department that in the director's opinion are best able to render service or administer the provisions of this subchapter.

History. Acts 2005, No. 1812, § 1.

**12-12-1720. Penalties.**

(a) Any person or caregiver required by this subchapter to report a case of suspected adult maltreatment or long-term care facility resident maltreatment who purposely fails to do so shall be guilty of a Class B misdemeanor.

(b) Any person or caregiver required by this subchapter to report a case of suspected adult maltreatment or long-term care facility resident maltreatment who purposely fails to do so shall be civilly liable for damages proximately caused by the failure.

(c) Any person, official, or institution willfully making false notification under this subchapter knowing the allegations to be false shall be guilty of a Class A misdemeanor.

(d) Any person, official, or institution willfully making false notification under this subchapter knowing the allegations to be false and who has been previously convicted of making false allegations shall be guilty of a Class D felony.

(e) Any person who willfully permits and any other person who encourages the release of data or information contained in the adult and long-term care facility resident maltreatment central registry to a person to whom disclosure is not permitted under this subchapter shall be guilty of a Class A misdemeanor.

(f) Any person required to report a death as the result of suspected adult maltreatment or long-term care facility resident maltreatment who knowingly fails to make the report in the manner and time provided in this subchapter shall be guilty of a Class C misdemeanor.

(g) Any person required to report suspected adult maltreatment or long-term care facility resident maltreatment who knowingly fails to make the report in the manner and time provided in this subchapter shall be guilty of a Class C misdemeanor.

History. Acts 2005, No. 1812, § 1.



**12-12-1721. Reports as evidence.**

(a) A written report from a person or official required by this subchapter to report shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

(b) The affidavit of a physician, psychiatrist, psychologist, or licensed certified social worker shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

History. Acts 2005, No. 1812, § 1.