



# OHIO LEGISLATIVE SERVICE COMMISSION

---

## Bill Analysis

Matthew Magner

### **H.B. 78**

132nd General Assembly  
(As Introduced)

**Reps.** Retherford, Brenner, Bishoff, LaTourette, DeVitis, Leland, Perales, Craig, Rogers, Patterson, Rezabek, Koehler, Duffey, Ginter, Pelanda, Sheehy

---

### **BILL SUMMARY**

- Modifies and adds definitions to the adult protective services statutes.
- Expands and modifies the list of persons required to report to a county department of job and family services (CDJFS) suspected abuse, neglect, or exploitation of certain older adults.
- Permits a county prosecutor to petition courts for orders related to the provision of adult protective services.
- Requires a CDJFS to notify a local law enforcement agency if it has reasonable cause to believe that the subject of a report of abuse, neglect, or exploitation is being or has been criminally exploited.
- Modifies provisions governing the release of information from the uniform statewide automated adult protective services information system.
- Creates the Elder Abuse Commission to formulate and recommend strategies on matters related to elder abuse and to issue a biennial report.
- Requires ODJFS to provide training for implementing the statutory provisions on adult protective services, to make educational materials available to mandatory reporters, and to facilitate interagency cooperation.
- Requires each entity that employs or is responsible for licensing or regulating mandatory reporters of abuse, neglect, or exploitation to ensure that the mandatory reporters have access to the relevant educational materials developed by ODJFS.

- Repeals a requirement that each CDJFS prepare a memorandum of understanding that establishes the procedures to be followed by local officials regarding cases of elder abuse, neglect, and exploitation.
- Changes the definition of "home health agency" in the statute that shields certain entities from liability for the failure of a physician who is not an employee to obtain an informed consent from a patient prior to a surgical or medical procedure.
- Renumbers and rearranges portions of the statutes governing adult protective services and makes various technical and clarifying amendments to the law.

---

## TABLE OF CONTENTS

Definitions related to abuse, neglect, or exploitation of older adults .....	2
Mandatory reporters of abuse, neglect, or exploitation .....	3
Retained mandatory reporters.....	4
Deleted mandatory reporters.....	5
New mandatory reporters.....	8
Voluntary reporters .....	9
Reports to the CDJFS.....	9
Role of county prosecutors.....	10
Criminal exploitation.....	10
Reimbursement for implementation of adult protective services provisions .....	11
Adult protective services information system.....	11
Notice of orders for protective services .....	12
Elder Abuse Commission.....	12
Training, education, and cooperation .....	14
Memorandum of understanding .....	14

---

## CONTENT AND OPERATION

### Definitions related to abuse, neglect, or exploitation of older adults

The Revised Code provides for the protection of older adults from abuse, neglect, and exploitation. For this purpose, under current law an adult is defined as any person 60 years of age or older within Ohio who is handicapped by the infirmities of aging or who has a physical or mental impairment that prevents the person from providing for the person's own care or protection and who resides in an independent living arrangement. An "independent living arrangement" is a domicile of a person's own choosing, including but not limited to a private home, apartment, trailer, or rooming house, and includes a licensed adult care facility but does not include any other state-licensed institution or facility or a facility in which a person resides as a result of

voluntary, civil, or criminal commitment. The bill retains these definitions but relocates the definition of "independent living arrangement."<sup>1</sup>

The bill retains the existing definition of abuse (the infliction upon an older adult by self or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish) but modifies the definitions of neglect and exploitation. Under existing law, "neglect" means the failure of an older adult to provide for himself or herself the goods or services necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services. The bill adds abandonment as another form of neglect. The bill defines "abandonment" to mean desertion of an older adult by a caretaker without having made provision for transfer of the older adult's care. A "caretaker" is the person assuming responsibility for the care of an older adult on a voluntary basis, by contract, through receipt of payment for care, as a result of a family relationship, or by court order. The bill clarifies that to constitute abandonment, the abandonment must involve the older adult's primary caretaker.<sup>2</sup>

Current law defines "exploitation" to mean the unlawful or improper act of a caretaker using an older adult or an older adult's resources for monetary or personal benefit, profit, or gain when the caretaker obtained or exerted control over the older adult or resources without the older adult's consent, beyond the scope of the older adult's consent, or by deception, threat, or intimidation. Under the bill, "exploitation" means the unlawful or improper act of a *person* using, *in one or more transactions*, an older adult or an older adult's resources for monetary or personal benefit, profit, or gain when the person obtained or exerted control over the older adult or resources without the older adult's consent, beyond the scope of the older adult's consent, or by deception, threat, or intimidation.<sup>3</sup>

The bill modifies or adds other definitions for this area of law, and the modification and additions are discussed below when the relevant area of law is discussed.

### **Mandatory reporters of abuse, neglect, or exploitation**

Existing law requires specific individuals who, having reasonable cause to believe that an older adult is being abused, neglected, or exploited, or is in a condition that is the result of abuse, neglect, or exploitation, to immediately report the belief to the

---

<sup>1</sup> R.C. 5101.60(C) and (M).

<sup>2</sup> R.C. 5101.60(A), (E), and (O).

<sup>3</sup> R.C. 5101.60(J).



county department of job and family services (CDJFS). The bill changes the list of individuals who must make such a report.<sup>4</sup>

### **Retained mandatory reporters**

With some changes in terminology, the bill retains the following list of mandatory reporters from existing law (substantive changes are indicated in italics in the list or are discussed following the list):<sup>5</sup>

*Attorneys admitted to the practice of law in Ohio;*

*Physicians, osteopaths, podiatrists, chiropractors, dentists, psychologists, and registered or licensed practical nurses authorized to practice in Ohio;*

*Employees of a hospital as defined in R.C. 3701.01 (changed by the bill to employees of a hospital as defined in R.C. 3727.01);<sup>6</sup>*

*Employees of a home health agency as defined in R.C. 3701.881;<sup>7</sup>*

*Employees of a nursing home or residential care facility, as defined in R.C. 3721.01;<sup>8</sup>*

*Senior service providers (changed by the bill from any person who provides care or services to an older adult to a person who provides care or specialized services to an older adult but not including the state long-term care ombudsperson or a regional long-term care ombudsperson);<sup>9</sup>*

*Peace officers;*

*Coroners;*

*Clergy;*

*Social workers, counselors, and therapists (changed by the bill from any person engaged in social work or counseling to an individual licensed as a social worker, independent*

---

<sup>4</sup> R.C. 5101.63(A) (renumbered existing R.C. 5101.61).

<sup>5</sup> R.C. 5101.63(A)(1) and (2).

<sup>6</sup> R.C. 5101.63(A)(2)(l).

<sup>7</sup> R.C. 5101.63(A)(2)(j).

<sup>8</sup> R.C. 5101.63(A)(2)(n).

<sup>9</sup> R.C. 5101.61(A)(1) (existing law) and 5101.60(W).



*social worker, professional counselor, professional clinical counselor, marriage and family therapist, or independent marriage and family therapist).*<sup>10</sup>

### **Deleted mandatory reporters**

The bill deletes three categories of individuals from the current list of mandatory reporters: employees of an ambulatory health facility, employees of a community mental health facility, and employees of a home for the aging. However, it generally covers the same individuals under other designations.

***Ambulatory health facility and outpatient health facility.*** Existing law<sup>11</sup> defines "ambulatory health facility" as a nonprofit, public, or proprietary freestanding organization or a unit of such an agency or organization that:

(1) Provides preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished to an outpatient or ambulatory patient, by or under the direction of a physician or dentist in a facility which is not a part of a hospital, but which is organized and operated to provide medical care to outpatients;

(2) Has health and medical care policies that are developed with the advice of, and with the provision of review of such policies, an advisory committee of professional personnel, including one or more physicians, one or more dentists, if dental care is provided, and one or more registered nurses;

(3) Has a medical director, a dental director, if dental care is provided, and a nursing director responsible for the execution of such policies, and has physicians, dentists, nursing, and ancillary staff appropriate to the scope of services provided;

(4) Requires that the health care and medical care of every patient be under the supervision of a physician, provides for medical care in a case of emergency, has in effect a written agreement with one or more hospitals and other centers or clinics, and has an established patient referral system to other resources, and a utilization review plan and program;

(5) Maintains clinical records on all patients;

(6) Provides nursing services and other therapeutic services in accordance with programs and policies, with such services supervised by a registered professional nurse, and has a registered professional nurse on duty at all times of clinical operations;

---

<sup>10</sup> R.C. 5101.63(A)(2)(g).

<sup>11</sup> R.C. 5101.61(A)(2).



(7) Provides approved methods and procedures for the dispensing and administration of drugs and biologicals;

(8) Has established an accounting and recordkeeping system to determine reasonable and allowable costs.

"Ambulatory health facility" also includes an alcoholism treatment facility approved by the Joint Commission on Accreditation of Healthcare Organizations as an alcoholism treatment facility or certified by the Department of Alcohol and Drug Addiction Services.

The bill replaces "ambulatory health facility" with "outpatient health facility," defined as a facility where medical care and preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services are provided to outpatients by or under the direction of a physician or dentist. (The bill makes the same change in the section of law that lists the mandatory reporters of reasonably suspected abuse or neglect of a person with a developmental disability.)<sup>12</sup>

***Community mental health facility and community mental health agency.*** The bill replaces "community mental health facility" (a facility that provides community mental health services and is included in the comprehensive mental health plan for the alcohol, drug addiction, and mental health service district in which it is located) with "community mental health agency" (any agency, program, or facility with which a board of alcohol, drug addiction, and mental health services contracts to provide the mental health services listed in R.C. 340.09).<sup>13</sup>

***Home for the aging.*** The bill repeals and does not replace "home for the aging"<sup>14</sup> (under existing law, a home that provides services as a residential care facility and a nursing home, except that the home provides its services only to individuals who are dependent on the services of others by reason of both age and physical or mental impairment<sup>15</sup>). However, according to the Department of Health, "home for the aging" is an obsolete term.

***Home health agency.*** The bill uses the definition of "home health agency" given in R.C. 3701.881 rather than the one in current R.C. 5101.61.<sup>16</sup> As used in existing law

---

<sup>12</sup> R.C. 5101.60(P) and 5123.61(C)(2)(a).

<sup>13</sup> R.C. 5101.61(A)(3) (existing law) and 5101.60(F).

<sup>14</sup> R.C. 5101.61(A) (existing law).

<sup>15</sup> R.C. 3721.01(A)(8) (not in the bill).

<sup>16</sup> R.C. 5101.63(A)(2)(j).

governing adult protective services,<sup>17</sup> "home health agency" means an institution or a distinct part of an institution operated in Ohio that:

(1) Is primarily engaged in providing home health services;

(2) Has home health policies that are established by a group of professional personnel, including one or more doctors of medicine or osteopathy and one or more registered professional nurses, to govern the home health services it provides and that includes a requirement that every patient must be under the care of a doctor of medicine or osteopathy;

(3) Is under the supervision of a doctor of medicine or osteopathy or a registered professional nurse who is responsible for the execution of the home health policies;

(4) Maintains comprehensive records on all patients;

(5) Is operated by the state, a political subdivision, or an agency of either, or is operated not for profit in Ohio and is licensed or registered, if required, pursuant to law by the appropriate department of the state, county, or municipality in which it furnishes services; or is operated for profit in Ohio, meets all the requirements specified in paragraphs (1) through (4), and is certified under Title XVIII of the federal Social Security Act.

As used in the bill, "home health agency" means a person or government entity, other than a nursing home, residential care facility, or hospice care program, that has the primary function of providing any of the following services to a patient at a place of residence used as the patient's home: skilled nursing care, physical therapy, speech-language pathology, occupational therapy, medical social services, or home health aide services.<sup>18</sup> Because the bill repeals the existing definition in R.C. 5101.61, it makes a corresponding change to the law governing informed consent for medical procedures.<sup>19</sup>

***Hospital.*** The bill replaces the definition of "hospital" as set forth in R.C. 3701.01 with the one used in R.C. 3727.01.<sup>20</sup> R.C. 3701.01 defines "hospital" to include public health centers and general, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, self-care units, and central service facilities operated in

---

<sup>17</sup> R.C. 5101.61(A)(5) (existing law).

<sup>18</sup> R.C. 3701.881(A)(7) (not in the bill; incorporated by reference in R.C. 5101.63(A)(2)(j)).

<sup>19</sup> R.C. 2317.54.

<sup>20</sup> R.C. 5101.61(A) (existing law) and 5101.63(A)(2)(l).





connection with hospitals, and also includes education and training facilities for health professions personnel operated as an integral part of a hospital, but not to include any hospital furnishing primarily domiciliary care.<sup>21</sup>

R.C. 3727.01 defines "hospital" as an institution classified as a hospital under R.C. 3701.07 (rules adopted by the Department of Health) in which diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care is provided to inpatients for a continuous period longer than 24 hours or a hospital operated by a health maintenance organization. "Hospital" does not include a facility licensed under R.C. Chapter 3721. (nursing homes and residential care facilities), a health care facility operated by the Department of Mental Health and Addiction Services or the Department of Developmental Disabilities, a health maintenance organization that does not operate a hospital, the office of any private licensed health care professional, whether organized for individual or group practice, or a clinic that provides ambulatory patient services and where patients are not regularly admitted as inpatients. "Hospital" also does not include an institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation, and providing 24-hour nursing care pursuant to the exemption from licensing for the care of the sick when done in connection with the practice of religious tenets of any church and by or for its members.<sup>22</sup>

### **New mandatory reporters**

In addition to the mandatory reporters described above, the bill adds the following individuals:<sup>23</sup>

Pharmacists and dialysis technicians authorized to practice in Ohio;

Employees of a hospital or public hospital, as defined in R.C. 5122.01. (*"Hospital" means a hospital or inpatient unit licensed by the Department of Mental Health and Addiction Services and any institution, hospital, or other place established, controlled, or supervised by the department; "public hospital" means a facility that is tax-supported and under the jurisdiction of the Department.*)

Employees of a health department operated by city board of health or a general health district or the authority having the duties of a board of health;

---

<sup>21</sup> R.C. 3701.01(C) (not in the bill).

<sup>22</sup> R.C. 3727.01(B)(2).

<sup>23</sup> R.C. 5101.63(A)(2)(h), (i), (m), (p), (r), (s), (t), (u), (v), (z), (aa), (bb), (cc), (dd), and (ee).





Employees of a community mental health agency as defined in R.C. 5122.01;

Agents of a county humane society;

Firefighters for a lawfully constituted fire department;

Ambulance drivers for an emergency medical service organization;

First responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics;

Officials employed by a local building department to conduct inspections of houses and other residential buildings;

Certified public accountants and registered public accountants under R.C. Chapter 4701.;

Licensed real estate brokers or real estate salespersons;

Notaries public;

Employees of a bank, savings bank, savings and loan association, or credit union;

Investment advisors, as defined in R.C. 1707.01;

Financial planners accredited by a national accreditation agency.

## **Voluntary reporters**

The bill retains current law that permits any person who, having reasonable cause to believe that an older adult has suffered abuse, neglect, or exploitation, to report it to the CDJFS. The law includes a fine for anyone who violates either the mandatory or voluntary reporting provision. The bill eliminates the penalty for voluntary reporters.<sup>24</sup>

## **Reports to the CDJFS**

The bill modifies the handling of reports of abuse, neglect, or exploitation of older adults, whether made by a mandatory reporter or voluntary reporter. The bill retains the requirement that information contained in a report be made available, on request, to the older adult who is the subject of the report and to legal counsel for the older adult. It adds that if the CDJFS determines that there is a risk of harm to a person

---

<sup>24</sup> R.C. 5101.99(A).



who makes a report or to the older adult who is the subject of the report, it may redact the name and identifying information related to the person who made the report.<sup>25</sup>

### **Role of county prosecutors**

The bill extends to county prosecutors the authority to petition courts for the following orders related to the provision of adult protective services:

(1) An order authorizing protective services for an older adult who the CDJFS determines is in need of protective services as a result of exploitation.<sup>26</sup>

(2) If an older adult has consented to protective services but another person refuses to allow them, a temporary restraining order to prevent the interference with the services.<sup>27</sup>

(3) An order authorizing emergency protective services and a renewal of such an order upon a showing that a continuation of the order is necessary to remove the emergency.<sup>28</sup>

Under current law, only a CDJFS is expressly authorized to petition courts for these orders.

### **Criminal exploitation**

The bill requires a CDJFS to notify a local law enforcement agency if it has reasonable cause to believe that the subject of a report of abuse, neglect, or exploitation of an older adult, or of an investigation of such a report, is being or has been criminally exploited.<sup>29</sup>

During the course of the local law enforcement agency's investigation of criminal exploitation, the county prosecutor may file a petition in court for a temporary restraining order against any person, including the alleged victim, who denies or obstructs access to the older adult's residence. The court must issue the temporary restraining order if it finds there is reasonable cause to believe that the older adult is being or has been abused, neglected, or exploited and access to the older adult's

---

<sup>25</sup> R.C. 5101.63(F).

<sup>26</sup> R.C. 5101.68.

<sup>27</sup> R.C. 5101.69.

<sup>28</sup> R.C. 5101.70.

<sup>29</sup> R.C. 5101.64(E).

residence has been denied or obstructed. The bill establishes that such a finding by the court is prima facie evidence that immediate and irreparable injury, loss, or damage will result, so no notice is required. After obtaining the temporary restraining order, a representative of the law enforcement agency may be accompanied to the residence by a peace officer.<sup>30</sup>

## **Reimbursement for implementation of adult protective services provisions**

The bill permits ODJFS to reimburse local law enforcement agencies and county prosecutors for all or part of the costs they incur in implementing the laws pertaining to adult protective services. ODJFS is permitted under current law to reimburse CDJFSs. The ODJFS Director must adopt rules requiring local law enforcement agencies and county prosecutors to ensure data concerning the implementation of those laws are submitted to ODJFS.<sup>31</sup>

## **Adult protective services information system**

The bill modifies provisions governing the release of information from ODJFS's uniform statewide automated adult protective services information system. Am. Sub. H.B. 64 of the 131st General Assembly required ODJFS to implement this system on a county-by-county basis. Under the bill, ODJFS must release information in the system to a CDJFS that is investigating the need for protective services for an older adult and to local law enforcement agencies conducting criminal investigations, and ODJFS may release information in the registry to law enforcement agencies through the Ohio Law Enforcement Gateway established under R.C. 109.57.<sup>32</sup>

The bill repeals a provision specifying that the information contained in or obtained from the system is confidential, is not a public record, and is not subject to disclosure laws that apply to other state-implemented personal information systems. However, the bill maintains a provision permitting information contained in the system to be accessed or used only in a manner, to the extent, and for the purposes authorized by law.<sup>33</sup> Additionally, it does not amend current law that exempts the information in the system from public disclosure.<sup>34</sup>

---

<sup>30</sup> R.C. 5101.73.

<sup>31</sup> R.C. 5101.611.

<sup>32</sup> R.C. 5101.631(C) (renumbered existing R.C. 5101.612).

<sup>33</sup> R.C. 5101.631(C)(1).

<sup>34</sup> R.C. 1347.08(F)(11).



## Notice of orders for protective services

When a CDJFS petitions a court for an order authorizing the provision of protective services for an older adult, existing law requires the CDJFS to give the older adult notice of the petition. Under current law, that notice must be given orally and in writing. The bill permits notice to be given either orally or in writing.<sup>35</sup>

## Elder Abuse Commission

The bill creates the Elder Abuse Commission consisting of the following members:<sup>36</sup>

(1) Eighteen members appointed by the Attorney General (two representatives of national organizations that focus on elder abuse or sexual violence, one person who represents the interests of elder abuse victims, one person who represents the interests of elderly persons, and one representative each of the AARP, the Buckeye State Sheriffs' Association, the County Commissioners' Association of Ohio, the Ohio Association of Area Agencies on Aging, the Board of Nursing, the Ohio Coalition for Adult Protective Services, the Ohio Domestic Violence Network, the Ohio Prosecuting Attorneys Association, the Ohio Victim Witness Association, the Ohio Association of Chiefs of Police, the Ohio Association of Probate Judges, the Ohio Job and Family Services Directors' Association, the Ohio Bankers League, and the Ohio Credit Union League);

(2) The following ex officio members:

(a) One member of the House of Representatives, appointed by the Speaker, and one member of the Senate, appointed by the President of the Senate;

(b) The following officials or their designees: the Attorney General, the Chief Justice of the Supreme Court, the Governor, the Director of Aging, the Director of ODJFS, the Director of Health, the Director of Mental Health and Addiction Services, the Director of Developmental Disabilities, the Superintendent of Insurance, the Director of Public Safety, and the State Long-Term Care Ombudsman.

Appointed members serve at the pleasure of the appointing authority. Vacancies are filled in the same manner as original appointments.<sup>37</sup>

---

<sup>35</sup> R.C. 5101.681.

<sup>36</sup> R.C. 5101.74(A).

<sup>37</sup> R.C. 5101.74(B).



All members of the Commission are voting members. The Attorney General selects the chairperson from the appointed members. The Commission meets at the call of the chairperson, but not less than four times per year. The chairperson may call special meetings and must call a special meeting at the Attorney General's request. The Commission may establish its own quorum requirements and procedures regarding the conduct of meetings and other affairs.<sup>38</sup>

Commission members serve without compensation, but they may be reimbursed for mileage and other actual and necessary expenses incurred in the performance of their official duties.<sup>39</sup>

The sunset review statutes, which provide for the expiration of state public bodies unless they are renewed following a review, do not apply to the Commission.<sup>40</sup>

The bill requires the Commission to formulate and recommend strategies on all of the following:<sup>41</sup>

- (1) Increasing awareness of and improving education on elder abuse;
- (2) Increasing research on elder abuse;
- (3) Improving policy, funding, and programming related to elder abuse;
- (4) Improving the judicial response to elder abuse victims;
- (5) Identifying ways to coordinate statewide efforts to address elder abuse.

The Commission must review current funding and report on the cost to ODJFS and the county departments of implementing its recommendations.<sup>42</sup>

The Commission must issue a biennial report on a plan of action that may be used by local communities to aid in the development of efforts to combat elder abuse. The report must include the Commission's findings and recommendations described above.<sup>43</sup>

---

<sup>38</sup> R.C. 5101.74(C).

<sup>39</sup> R.C. 5101.74(D).

<sup>40</sup> R.C. 5101.74(E).

<sup>41</sup> R.C. 5101.741(A).

<sup>42</sup> R.C. 5101.741(C).

<sup>43</sup> R.C. 5101.741(C).

The bill authorizes the Attorney General to adopt rules under R.C. 111.15 as necessary for the Commission to carry out its duties.<sup>44</sup>

## Training, education, and cooperation

The bill requires ODJFS to do all of the following:<sup>45</sup>

(1) Provide a program of ongoing, comprehensive, formal training on the implementation of the adult protective services statutes and require all caseworkers and their supervisors to undergo the training (*a change from the optional "ongoing, formal training" that ODJFS may provide to county departments and other agencies that implement the statutes under current law*);

(2) Develop and make available educational materials for individuals who are required report abuse, neglect, and exploitation;

(3) Facilitate ongoing cooperation among state agencies on issues pertaining to the abuse, neglect, or exploitation of older adults.

The bill requires each entity that employs or is responsible for licensing or regulating mandatory reporters of abuse, neglect, or exploitation of older adults (see "**Mandatory reporters of abuse, neglect, or exploitation**," above) to ensure that those individuals have access to the educational materials developed by ODJFS.<sup>46</sup>

## Memorandum of understanding

The bill repeals a provision enacted in Am. Sub. H.B. 64 of the 131st General Assembly requiring each CDJFS to prepare a memorandum of understanding that establishes the procedures to be followed by local officials regarding cases of elder abuse, neglect, and exploitation.<sup>47</sup>

---

## HISTORY

### ACTION

### DATE

Introduced

02-22-17

H0078-I-132.docx/ks

---

<sup>44</sup> R.C. 5101.741(D).

<sup>45</sup> R.C. 5101.62.

<sup>46</sup> R.C. 5101.632.

<sup>47</sup> R.C. 5101.621 (repealed).

