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Bill 39

An Act to amend the Substitute Decisions Act, 1992 and the Regulated Health Professions Act, 1991

Ms S. Wong

Private Member's Bill

1st Reading April 10, 2018

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill amends the *Substitute Decisions Act, 1992* and the *Regulated Health Professions Act, 1991*.

The *Substitute Decisions Act, 1992* is amended to require regulated health professionals to report any reasonable suspicion that a senior is being abused or neglected. The Public Guardian and Trustee is required to investigate the report to determine whether an application for a temporary guardian is required.

This requirement applies even if the information that is required to be disclosed is confidential or privileged, unless the information is subject to solicitor-client privilege. No proceeding may be commenced against a regulated health professional for making a report in good faith. The intimidation, dismissal or penalization of regulated health professionals who make a report is prohibited. Coercion or intimidation of a regulated health professional who makes a report is also prohibited. In addition, authorizing, permitting or concurring in a contravention of the requirement to make a report is prohibited.

The *Regulated Health Professions Act, 1991* is amended to make it an act of professional misconduct for a regulated health professional to fail to report a reasonable suspicion that a senior is being abused or neglected as required by the *Substitute Decisions Act, 1992*.

An Act to amend the Substitute Decisions Act, 1992 and the Regulated Health Professions Act, 1991

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Substitute Decisions Act, 1992**1 Subsection 1 (1) of the *Substitute Decisions Act, 1992* is amended by adding the following definitions:**

“regulated health professional” means a health practitioner whose profession is regulated under the *Regulated Health Professions Act, 1991*; (“membre d’une profession de la santé réglementée”)

“senior” means a person who is 65 years of age or older; (“personne âgée”)

2 Subsection 27 (3.1) of the Act is amended by striking out “If, as a result of the investigation” at the beginning and substituting “If, as a result of an investigation under subsection (2) or subsection 84.1 (4)”.**3 Subsection 62 (3.1) of the Act is amended by striking out “If, as a result of the investigation” at the beginning and substituting “If, as a result of an investigation under subsection (2) or subsection 84.1 (4)”.****4 The Act is amended by adding the following section:****Duty of regulated health professional**

84.1 (1) A regulated health professional who has reasonable grounds to suspect that a senior is being abused or neglected shall, as soon as possible, report the suspicion to the Public Guardian and Trustee, a police officer or a prescribed person.

Exception

(2) Subsection (1) does not apply if the senior is a resident of a long-term care home as defined in the *Long-Term Care Homes Act, 2007* or of a retirement home as defined in the *Retirement Homes Act, 2010*.

Duty of police officer or prescribed person

(3) A police officer or prescribed person who receives a report made under subsection (1) shall, as soon as possible, provide the report to the Public Guardian and Trustee.

Investigation

(4) The Public Guardian and Trustee shall investigate any report made or provided under subsection (1) or (3) to determine whether an application to the court under subsection 27 (3.1) or subsection 62 (3.1) is required.

Extent of investigation

(5) In conducting an investigation under subsection (4), the Public Guardian and Trustee is not required to take any steps that, in his or her opinion, are unnecessary for the purpose of determining whether the application to the court is required.

Definitions

(6) In subsection (1),

“abused”, in relation to a senior, means physical, sexual, emotional, verbal, financial or systemic abuse of that senior, as defined in the regulations in each case; (“mauvais traitements”)

“neglected”, in relation to a senior, means that a person has failed to provide care, assistance, guidance or attention to the senior which causes or is reasonably likely to cause serious physical or psychological harm to the senior, or substantial damage to or substantial loss of a significant part of the senior’s property, within a short period of time, unless the failure to provide care, assistance, guidance or attention is medically advisable. (“négligence”)

5 The Act is amended by adding the following section:**Reporting requirements****Confidentiality and privilege**

88.1 (1) Subsections 84.1 (1) and (3) apply even if they require a person to disclose information that is confidential or privileged, and no proceeding shall be commenced against the person for the disclosure. However, this subsection does not require a person to disclose information that is subject to solicitor-client privilege.

Protection from liability

(2) No proceeding shall be commenced against a regulated health professional for an act done in good faith in the execution or intended execution of his or her duty under subsection 84.1 (1).

Reprisal

(3) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize a regulated health professional or threaten to do so because he or she has, in good faith,

- (a) sought advice about making a report required by subsection 84.1 (1);
- (b) made a report required by subsection 84.1 (1); or
- (c) co-operated in an investigation under this Act.

Suppressing reports, etc.

(4) No person shall,

- (a) coerce a regulated health professional not to make a report required by subsection 84.1 (1);
- (b) intimidate a regulated health professional because he or she made or proposed to make a report required by subsection 84.1 (1); or
- (c) authorize, permit or concur in a contravention of subsection 84.1 (1).

6 Section 89 of the Act is amended by adding the following subsection:

Offence: reprisal, suppressing reports, etc.

(6.1) A person who contravenes subsection 88.1 (3) or (4) is guilty of an offence and liable, on conviction, to a fine of not more than \$25,000 or to imprisonment for a term of not more than two years, or to both.

7 Subsection 90 (1) of the Act is amended by adding the following clauses:

- (h) prescribing a person for the purposes of subsections 84.1 (1) and (3);
- (i) defining physical, sexual, emotional, verbal, financial or systemic abuse for the purposes of the definition of “abused” in subsection 84.1 (6).

Regulated Health Professions Act, 1991

8 Subsection 51 (1) of Schedule 2 to the *Regulated Health Professions Act, 1991* is amended by adding the following clause:

(b.0.2) the member has failed to make a report required by subsection 84.1 (1) of the *Substitute Decisions Act, 1992*;

Commencement

9 This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

10 The short title of this Act is the *Protection of Vulnerable Seniors in the Community Act, 2018*.