
A. Elements

1. "Deprivation of any right or benefit"

   (a) Definition “right or benefit”:

   (i) any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute, code, rule or regulation or by any applicable federal statute, code, rule or regulation.

   (ii) where noncompliance by said facility with such statute, code, rule or regulation has not been expressly authorized by the appropriate governmental authority. *NY CLS Pub Health § 2801-d(1)* (emphasis added).

   Note: *NY CLS Pub Health § 2803-c (3)* provides a list of “rights and responsibilities” that must be contained in a statement to be posted in a public place in the facility and must also be given to patients and employees. However, because of some confusion within the case law, *NY CLS Pub Health § 2801-d(4)* was amended in 2009 to include the language “A violation of subdivision three of section twenty-eight hundred three-c (§ 23803-c) of this article is not a prerequisite for a claim under this section.” *Contra, Begandy v. Richardson*, 134 Misc. 2d 357, 510 N.Y.S.2d 984, (N.Y. Sup. Ct. 1987).

2. Injury:

   (a) Definition: For the purposes of this section, "injury" shall include, but not be limited to:

   (i) physical harm to a patient;

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1 *NY CLS Pub Health § 2803-c (1),(4)-(5).*
emotional harm to a patient;

(iii) death of patient;

(iv) financial loss of a patient.

NY CLS Pub Health § 2801-d(1)

B. Persons/Entities Excluded From Statute

(1) Any person who reports an incident of abuse, mistreatment or neglect pursuant to NY CLS Pub Health § 2803-d, is immune from any liability, civil or criminal, for having made such report. However, if a report has been filed, there is nothing to stop the patient from filing suit against the residential home for the same conduct.

C. Class Action

Patients may collectively bring claims under this article, in the form of a class action, pursuant to NYS CLS CPLR Article 9.

D. Relationship to Other Causes of Action

Although there is conflicting case-law from various departments, the more recent cases hold that NY CLS Pub Health § 2801-d is a separate and distinct cause of action from negligence and medical malpractice. Earlier cases held that a cause of action under §2801-d could only be maintained when a cause of action in tort was unavailable under the facts. However the issue has never come to the Court of Appeals, so the Goldberg ruling has never been affirmatively overturned, but the more recent case law appears to prevail.

E. Statute of Limitations: Three Years


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2 NY CLS Pub Health § 2803-d is a reporting statute that requires operators and employees of residential health care facilities to report incidents of abuse, mistreatment and neglect. If someone makes such a report, it is believed that they cannot be held liable if the conduct contained in said report is then used by the patient to form a cause of action under NY CLS Pub Health § 2801-d.

3 NY CLS Pub Health § 2801-d(2).


F. Burden of Proof:

(1) The Plaintiff must make a prima facie showing of a deprivation of a right or benefit.

(2) Once achieved, the burden of proof shifts to the defendant facility to prove as an affirmative defense that the facility “exercised all care reasonably necessary to prevent and limit the deprivation and injury of which liability is asserted.”


G. Can Regulations Establish Standard of Care:

Yes. This cause of action is based upon statutorily created standards of care, including but not limited to the requirements outlined in NY CLS Pub Health § 2803-c. NY CLS Pub Health § 2801-d(1) defines “right or benefit” as those create by contract, statute, code rule or regulation.

II. DAMAGES, See NY CLS Pub Health §2801-d(2), (3)

A. Damages Available

1. Compensatory, with a minimum\(^6\)

2. Punitive Damages, where the deprivation of any such right or benefit is found to be willful or reckless\(^7\)

3. Any other type of relief, including injunctive and declaratory relief, permitted by law.\(^8\)

B. Attorney’s Fees Available: Yes.

1. Upon the discretion of the court. NY CLS Pub Health § 2801-d(6)

III. LEGISLATION AFFECTING STATUTE


a. amending NY CLS Pub Health § 2801-d(4) and creation of “§2801-d(4a)”, to affirmatively allow legal representatives and estate administrators to assert claims under this section.

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\(^6\) “…in no event less than twenty-five percent of the daily per-patient rate of payment established for the residential health care facility under section twenty-eight hundred seven of this article or, in the case of a residential health care facility not having such an established rate, the average daily total charges per patient for said facility, for each day that such injury exists.” NY CLS Pub Health §2801-d(2)

\(^7\) NY CLS Pub Health §2801-d(2).

\(^8\) NY CLS Pub Health §2801-d(3)