

AMENDMENTS TO SENATE BILL NO. 899

Sponsor: SENATOR MENSCH

Printer's No. 1205

1 Amend Bill, page 1, line 2, by striking out "adult" and
2 inserting
3 adults

4 Amend Bill, page 1, lines 6 through 18; pages 2 through 41,
5 lines 1 through 30; page 42, lines 1 through 7; by striking out
6 all of said lines on said pages and inserting

7 Section 1. Title 23 of the Pennsylvania Consolidated
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 69

10 OLDER ADULTS PROTECTIVE SERVICES

11 Subchapter

12 A. Preliminary Provisions

13 B. Duties of Department

14 C. Duties of Area Agencies on Aging

15 D. Protective Services

16 E. Reporting

17 F. Financial Institutions and Fiduciaries

18 G. Criminal History

19 H. Remedies

20 I. Administration

21 SUBCHAPTER A

22 PRELIMINARY PROVISIONS

23 Sec.

24 6901. Scope of chapter.

25 6902. Definitions.

26 6903. Intent.

27 § 6901. Scope of chapter.

28 This chapter relates to older adult protective services.

29 § 6902. Definitions.

30 The following words and phrases when used in this chapter
31 shall have the meanings given to them in this section unless the
32 context clearly indicates otherwise:

33 "Abandonment." The desertion of an older adult by a
34 caretaker.

35 "Abuse." The occurrence of one or more of the following

1 acts:

2 (1) Infliction of injury, unreasonable confinement,
3 intimidation or punishment resulting in physical harm, pain
4 or mental anguish.

5 (2) The willful deprivation by a caretaker of goods or
6 services which are necessary to maintain physical or mental
7 health.

8 (3) Sexual abuse, including rape, involuntary deviate
9 sexual intercourse, sexual assault, aggravated indecent
10 assault, indecent assault or incest.

11 (4) Sexual harassment, including unwelcome sexual
12 advances, requests for sexual favors and other unwelcome
13 verbal or physical conduct of a sexual nature.

14 "Administrator." The person responsible for the management
15 of a facility. The term includes a person responsible for
16 employment decisions or an independent contractor responsible
17 for administration of a facility.

18 "Applicant." An individual who submits an application which
19 is being considered for employment to a facility.

20 "Area agency on aging." The single local agency or the local
21 agency's agent designated by the department within each planning
22 and service area to administer the delivery of protective
23 services.

24 "Assessment." A determination based upon a comprehensive
25 review of an older adult's social, physical and psychological
26 status along with a description of the person's current
27 resources and needs using the instruments and procedures
28 established by the department.

29 "Care." Services provided to meet an older adult's need for
30 personal care or health care which require interaction with the
31 older adult.

32 "Care-dependent individual." An adult who, due to physical
33 or cognitive disability or impairment, requires assistance to
34 meet needs for food, shelter, clothing, personal care or health
35 care.

36 "Caretaker." A person that has assumed the responsibility
37 for the provision of care needed to maintain the physical or
38 mental health of an older adult. This responsibility may arise
39 voluntarily, by contract, by receipt of payment for care, as a
40 result of familial relationship, or by order of a court of
41 competent jurisdiction.

42 "Department." The Department of Aging of the Commonwealth.

43 "Employee." An individual who:

44 (1) any of the following:

45 (i) is employed by a facility;

46 (ii) enters into a contractual relationship with a
47 facility, consumer, consumer's family or legal
48 representative to provide care to an older adult; or

49 (iii) is a student doing an internship or clinical
50 rotation or any other individual who has been granted
51 access to the facility to perform a clinical service for

1 a fee; and
2 (2) has unsupervised access to the older adult or the
3 older adult's living quarters, resources or personal records,
4 including employees of affiliated corporate entities.
5 "Exploitation." An act or course of conduct by a caretaker
6 or other person against an older adult or an older adult's
7 resources without the informed consent of the older adult or
8 with consent obtained through misrepresentation, coercion or
9 threats of force, results in monetary, personal or other
10 benefit, gain or profit for that caretaker or person, or
11 monetary or personal loss to the older adult.
12 "Facility." Any of the following:
13 (1) Domiciliary care as defined in section 2202-A of the
14 act of April 9, 1929 (P.L.177, No.175), known as The
15 Administrative Code of 1929.
16 (2) An assisted living residence as defined in section
17 1001 of the act of June 13, 1967 (P.L.31, No.21), known as
18 the Human Services Code.
19 (3) A personal care home as defined in section 1001 of
20 the Human Services Code.
21 (4) The following entities as defined in section 802.1
22 of the act of July 19, 1979 (P.L.130, No.48), known as the
23 Health Care Facilities Act:
24 (i) A home care agency.
25 (ii) A home care registry.
26 (iii) A home health care agency.
27 (iv) A hospice.
28 (v) A long-term care nursing facility.
29 (5) An older adult daily living center as defined in
30 section 2 of the act of July 11, 1990 (P.L.499, No.118),
31 known as the Older Adult Daily Living Centers Licensing Act.
32 (6) A PACE provider as defined in section 1894 of the
33 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395eee).
34 (7) Any other public or private organization or entity,
35 or part of an organization or entity, that uses public funds
36 and is paid, in part, to provide care to care-dependent
37 individuals.
38 "Fiduciary." A guardian, custodian, trustee, agent, personal
39 representative or other person authorized or required to act on
40 behalf of an older adult.
41 "Financial exploitation." Any of the following:
42 (1) The wrongful or unauthorized taking, withholding,
43 appropriation or use of money, assets or property of an older
44 adult.
45 (2) An act or omission taken by a person, including
46 through the use of a power of attorney, guardianship or
47 conservatorship of an older adult, to:
48 (i) obtain control, through deception, intimidation
49 or undue influence, over the older adult's money, assets
50 or property to deprive the older adult of the ownership,
51 use, benefit or possession of the older adult's money,

1 assets or property; or

2 (ii) unlawfully convert money, assets or property of
3 the older adult to deprive the older adult of the
4 ownership, use, benefit or possession of the older
5 adult's money, assets or property.

6 "Financial services provider." Any of the following:

7 (1) A depository institution or affiliate of a
8 depository institution as those terms are defined in section
9 3 of the Federal Deposit Insurance Act (64 Stat. 873, 12
10 U.S.C. § 1813).

11 (2) A credit union eligible for insurance of member
12 accounts under the Federal Credit Union Act (48 Stat. 1216,
13 12 U.S.C. § 1751 et seq.).

14 (3) A broker-dealer as defined in section 102(e) of the
15 act of December 5, 1972 (P.L.1280, No.284), known as the
16 Pennsylvania Securities Act of 1972.

17 (4) An investment adviser as defined in section 102(j)
18 of the Pennsylvania Securities Act of 1972.

19 (5) An agent as defined in section 102(c) of the
20 Pennsylvania Securities Act of 1972.

21 (6) An investment advisor representative as defined in
22 section 102(j.1) of the Pennsylvania Securities Act of 1972.

23 (7) A licensee as defined in section 2 of the act of May
24 15, 1933 (P.L.565, No.111), known as the Department of
25 Banking and Securities Code, or a similar entity.

26 (8) A business or agency that engages in an activity
27 which the department determines, by regulation, to be an
28 activity that is similar to, related to or a substitute for
29 an activity conducted by a business described in paragraph
30 (1), (2), (3), (4), (5), (6) or (7).

31 "Health care provider." A licensed hospital or health care
32 facility or person who is licensed, certified or otherwise
33 regulated to provide health care services under the laws of this
34 Commonwealth, including a physician, podiatrist, optometrist,
35 psychologist, physical therapist, certified nurse practitioner,
36 registered nurse, nurse midwife, physician's assistant,
37 chiropractor, dentist, pharmacist or an individual accredited or
38 certified to provide behavioral health services.

39 "Home care worker." An individual employed by a home care
40 agency, referred by a home care registry or listed on the home
41 care worker directory to provide any of the following services:

42 (1) Personal care.

43 (2) Assistance with instrumental activities of daily
44 living.

45 (3) Companionship services for the limited purposes of
46 providing supervision and minimal assistance that is focused
47 solely on the health and safety of the individual.

48 (4) Respite care to support an individual on a short-
49 term basis.

50 (5) Activities to support an individual with acquiring,
51 maintaining or improving skills in home-based and community-

1 based settings, including with employment.

2 "Intimidation." An act or omission by a person toward
3 another person that obstructs, impedes, impairs, prevents or
4 interferes with the administration of this chapter or other law
5 intended to protect older adults from mistreatment.

6 "Law enforcement official." Any of the following:

7 (1) A police officer of a municipality.

8 (2) A district attorney.

9 (3) A Pennsylvania State Police officer.

10 (4) The Attorney General.

11 (5) An agent of the Department of Justice and other
12 Federal law enforcement agencies, who possesses law
13 enforcement powers and duties.

14 "Mandatory reporter." Any of the following:

15 (1) Administrators and employees of a facility.

16 (2) Health care providers.

17 (3) A law enforcement official.

18 "Neglect." The failure to provide for oneself or the failure
19 of a caretaker to provide goods or services essential to avoid a
20 clear and serious threat to physical or mental health. An older
21 adult who does not consent to the provision of protective
22 services may not be found to be neglected solely on the grounds
23 of environmental factors which are beyond the control of the
24 older adult or the caretaker, such as inadequate housing,
25 furnishings, income, clothing or medical care.

26 "Older adult." An individual within the jurisdiction of the
27 Commonwealth who is 60 years of age or older.

28 "Older adult in need of protective services." An
29 incapacitated older adult who is unable to perform or obtain
30 services that are necessary to maintain physical or mental
31 health, for whom there is no responsible caretaker and who is at
32 imminent risk of danger to self or property.

33 "Protective services." Those activities, resources and
34 supports provided to older adults under this chapter to detect,
35 prevent, reduce or eliminate abuse, neglect, exploitation and
36 abandonment.

37 "Recipient." An individual who receives care, services or
38 treatment in or from a facility.

39 "Serious bodily injury." Injury which creates a substantial
40 risk of death or which causes serious disfigurement of a body
41 part or organ, protracted loss or impairment of the function of
42 a body member or organ or severe pain. The term does not include
43 an isolated accidental injury self-inflicted by an older adult.

44 "Service plan." As follows:

45 (1) A written plan developed by an area agency on aging
46 on the basis of a comprehensive assessment of an older adult
47 that describes identified needs, goals to be achieved and
48 specific services designed to support goal attainment, which
49 includes regular follow-up and predetermined reassessment of
50 progress.

51 (2) As used in this definition, specific services

1 designed to support goal attainment may include homemaker
2 services, home-delivered meals, personal care, other in-home
3 services, emergency shelter or food, legal aid services and
4 transportation services.

5 (3) Service plans shall be cooperatively developed by
6 area agency on aging staff, the older adult or the older
7 adult's legal representative and other family members, if
8 appropriate.

9 (4) The service plan shall address special needs of
10 other members of the household unit if they affect the older
11 adult's need for protective services.

12 "Suspicious death." A death which is unexpected with
13 unexplained circumstances or cause.
14 § 6903. Intent.

15 It is not the intent of this chapter to impose responsibility
16 on an individual if the responsibility would not otherwise exist
17 in law.

18 SUBCHAPTER B
19 DUTIES OF DEPARTMENT

20 Sec.

21 6910. Public education.

22 6911. Interdepartmental consultation.

23 6912. Training required.

24 6913. Confidentiality.

25 6914. Schedule and annual plan.

26 § 6910. Public education.

27 The department shall conduct an ongoing campaign designed to
28 inform and educate older adults, professionals and the general
29 public about the need for and the availability of protective
30 services under this chapter.

31 § 6911. Interdepartmental consultation.

32 The following apply:

33 (1) The department shall consult with other Commonwealth
34 agencies on the design and implementation of the ongoing
35 public awareness campaign.

36 (2) The department shall consider the concerns of area
37 agencies on aging on the design and implementation of the
38 ongoing public awareness campaign.

39 § 6912. Training required.

40 (a) Standards.--The department shall establish minimum
41 standards of experience and training that protective services
42 providers receiving money from the department shall be required
43 to follow in the selection and assignment of employees for the
44 provision of protective services.

45 (b) Mandatory reporters.--The department shall establish a
46 training program for mandatory reporters to inform employees
47 about the requirement to report under this chapter.

48 § 6913. Confidentiality.

49 The department shall establish methods which shall be used by
50 an area agency on aging, its designees and its service providers
51 to ensure the privacy of older adults receiving services and the

1 confidentiality of all records.

2 § 6914. Schedule and annual plan.

3 (a) Establishment.--The department shall establish a
4 schedule for the submission and approval of the plans associated
5 with the development of training provided in section 6912
6 (relating to training required).

7 (b) Protective services plan.--Each area agency on aging
8 shall include a protective services plan as part of its annual
9 plan. The plan shall describe the local implementation of this
10 chapter, including the organization, staffing, mode of
11 operations and financing of protective services and the
12 provisions made for the purchase of services, interagency
13 relations, interagency agreements, service referral mechanisms
14 and locus of responsibility for cases with multiservice agency
15 needs. The plan shall include a list of each public or private
16 entity that has been identified by the area agency on aging as
17 having substantial contact with potential victims or
18 perpetrators of abuse, neglect, exploitation and abandonment.
19 The list shall be submitted to the department for purposes of
20 the public education campaign under section 6910 (relating to
21 public education).

22 SUBCHAPTER C

23 DUTIES OF AREA AGENCIES ON AGING

24 Sec.

25 6920. Receipt of reports.

26 6921. Investigations.

27 6922. Investigations involving facilities.

28 6923. Investigations involving law enforcement officials.

29 6924. Access to older adults.

30 6925. Access to records.

31 6926. Rights of older adults.

32 6927. Confidentiality standards required.

33 6928. Availability of protective services.

34 § 6920. Receipt of reports.

35 The area agency on aging must be capable of receiving reports
36 of older adults in need of protective services at all times.
37 This capability may include the use of a local emergency
38 response system or a crisis intervention agency, if access can
39 be made to a protective services caseworker in appropriate
40 emergency situations, as set forth in regulations issued by the
41 department. All reports received orally shall be documented in a
42 manner set forth by the department.

43 § 6921. Investigations.

44 (a) Duty.--An area agency on aging shall investigate each
45 report in accordance with regulations issued by the department.
46 The investigation shall be initiated within 72 hours after the
47 receipt of the report and shall be carried out under regulations
48 issued by the department. The regulations shall provide for the
49 methods of conducting investigations and shall ensure that steps
50 are taken to avoid a conflict of interest. Consent of the older
51 adult is not required in order to begin to investigate reports

1 of abuse, neglect, exploitation or abandonment. The department
2 and any other Commonwealth agency shall share information with
3 each other and with mandatory reporters, fiduciaries and
4 financial institutions as necessary to ensure the health, safety
5 and welfare of the older adult and to assist financial
6 institutions and fiduciaries in exercising the financial
7 institution's and fiduciaries' authority to prohibit
8 disbursement of funds and transactions as provided by section
9 6952 (relating to disbursement of funds and transactions).

10 (b) Closure.--If after investigation by the area agency on
11 aging the report is unsubstantiated, the case shall be closed
12 and all information identifying the reporter and the alleged
13 perpetrator shall be immediately deleted from all records. For
14 purposes of substantiating a pattern of abuse, neglect,
15 exploitation or abandonment, the name of the alleged victim and
16 any information describing the alleged act of abuse, neglect,
17 exploitation or abandonment may be maintained for a period of
18 six months under procedures established by the department.

19 (c) Timely assessment.--If the report is substantiated by
20 the area agency on aging or if an assessment is necessary in
21 order to determine whether or not the report is substantiated,
22 the area agency on aging shall provide for a timely assessment
23 if the older adult consents to an assessment. Upon completion of
24 the assessment, written findings shall be prepared which shall
25 include recommended action. The service plan shall provide for
26 the least restrictive alternative, encouraging self-
27 determination and continuity of care, shall be in writing and
28 shall include a recommended course of action, which may include
29 the pursuit of civil or criminal remedies. If an older adult
30 found to be in need of protective services does not consent to
31 an assessment or the development of a service plan, the area
32 agency on aging may apply the provisions of section 6933
33 (relating to involuntary intervention by emergency court order)
34 to the case.

35 (d) Environmental factors.--An older adult may not be found
36 to be abused solely on the grounds of environmental factors that
37 are beyond the control of the older adult or the caretaker, such
38 as inadequate housing, furnishings, income, clothing or medical
39 care.

40 § 6922. Investigations involving facilities.

41 If the report concerns a facility, the area agency on aging
42 shall notify the local ombudsman and the licensing agency.
43 Investigations concerning facilities shall be conducted under
44 procedures developed by the department in consultation with the
45 Commonwealth agency with oversight authority for the facility.
46 The department and any other Commonwealth agency shall share
47 information with each other and with mandatory reporters,
48 fiduciaries and financial institutions as necessary to ensure
49 the health, safety and welfare of the older adult and to assist
50 financial institutions and fiduciaries in exercising the
51 financial institution's and fiduciaries' authority to prohibit

1 disbursement of funds and transactions as provided by section
2 6952 (relating to disbursement of funds and transactions).
3 Facilities shall take reasonable steps to protect older adults
4 following receipt of a report of suspected abuse, neglect,
5 exploitation or abandonment involving an employee, including a
6 plan of supervision or suspension.

7 § 6923. Investigations involving law enforcement officials.

8 The following shall apply:

9 (1) To the extent possible, law enforcement officials,
10 the area agency on aging and other mandatory reporters shall
11 coordinate respective investigations and shall advise each
12 other and provide applicable additional information on an
13 ongoing basis.

14 (2) Upon receiving a report of any of the following, the
15 area agency on aging shall immediately notify a law
16 enforcement official:

17 (i) Suspicious death.

18 (ii) Serious bodily injury.

19 (iii) Sexual abuse.

20 (3) (i) Following a referral to a law enforcement
21 official, the area agency on aging shall contact a law
22 enforcement official to obtain information about actions
23 taken and the outcomes, including any decisions regarding
24 criminal charges, and the law enforcement official shall
25 provide the information to the extent that the
26 information is available.

27 (ii) The area agency on aging shall report the
28 information under subparagraph (i) to the department in a
29 manner prescribed by the department.

30 § 6924. Access to older adults.

31 (a) General rule.--The following apply:

32 (1) The area agency on aging shall have access to older
33 adults who have been reported to be in need of protective
34 services in order to:

35 (i) Investigate reports.

36 (ii) Assess needs of the older adult and develop a
37 service plan for addressing those needs.

38 (iii) Provide for the delivery of services by the
39 area agency on aging or other service provider as
40 provided for under the service plan.

41 (2) If the area agency on aging is denied access to an
42 older adult reported to be in need of protective services,
43 the area agency on aging may petition the court for an order
44 to require the appropriate access when either of the
45 following conditions apply:

46 (i) The caretaker or a third party has interfered
47 with the completion of the investigation, the assessment
48 and service plan or the delivery of services.

49 (ii) The area agency on aging can demonstrate that
50 the older adult reported to be in need of protective
51 services is denying access because of coercion, extortion

1 or justifiable fear of future abuse, neglect,
2 exploitation or abandonment.
3 (b) Petition.--The area agency on aging may petition the
4 court for an order to require any of the following:
5 (1) Access to the older adult.
6 (2) A physical health evaluation of the older adult.
7 (3) A behavioral health evaluation of the older adult.

8 § 6925. Access to records.

9 (a) Area agency on aging access.--The area agency on aging
10 shall, subject to the consent of the older adult, have access to
11 all records for the purposes of:

- 12 (1) Assessing an older adult's need for services.
13 (2) Planning and delivery of services.
14 (3) Investigating reports.

15 (b) Refusal.--If the area agency on aging is denied access
16 to records necessary for the completion of a proper
17 investigation of a report, assessment or service plan, or the
18 delivery of needed services in order to prevent further abuse,
19 neglect, exploitation or abandonment of the older adult reported
20 to be in need of protective services, the agency may petition
21 the court of common pleas for an order requiring the appropriate
22 access when either of the following conditions apply:

23 (1) The older adult has provided written consent for any
24 confidential records to be disclosed and the keeper of the
25 records denies access.

26 (2) The agency can demonstrate that the older adult is
27 denying access to records because of incompetence, coercion,
28 extortion or justifiable fear of future abuse, neglect,
29 exploitation or abandonment.

30 (c) Request of certain records.--Records of State agencies,
31 private organizations, financial institutions, fiduciaries,
32 medical institutions and practitioners and persons reasonably
33 suspected of engaging in or facilitating the abuse, neglect,
34 exploitation or abandonment of an older adult, which the area
35 agency on aging reasonably believes to be necessary to complete
36 an investigation or assessment and service plan, shall be
37 requested in written form and made available to the area agency
38 on aging unless the disclosure is prohibited by any other
39 provision of Federal or State law. Except as provided by a court
40 order, access to financial records shall be limited to records
41 relating to the most recent transaction or transactions that may
42 comprise financial exploitation, not to exceed 60 calendar days
43 prior to the first transaction that was reported or 60 calendar
44 days after the last transaction that was reported.

45 (d) Compensation.--The area agency on aging or the
46 department may compensate a person requested or ordered to
47 provide records to the area agency on aging for the reasonable
48 costs of producing records in a manner consistent with the
49 requirements of section 1115(a) of the Right to Financial
50 Privacy Act of 1978 (Public Law 95-630, 12 U.S.C. § 3415).
51 § 6926. Rights of older adults.

1 (a) Notification.--The area agency on aging shall discreetly
2 notify the older adult during the investigation that a report
3 has been made and shall provide the older adult with a brief
4 summary of the nature of the report.

5 (b) Information.--As provided in section 6934 (relating to
6 confidentiality of records), the older adult who is the subject
7 of a report, or the older adult's guardian if the guardian is
8 not named as a perpetrator in the report, may receive, upon
9 written request, a summary of the report of need except
10 information that would identify the person who made a report of
11 suspected abuse, neglect, exploitation or abandonment or persons
12 who cooperated in a subsequent investigation.

13 (c) Appeal.--A denial of services by the department or an
14 area agency on aging under this subchapter may be appealed
15 according to the provisions of the rules and regulations issued
16 by the department under Article XXII-A of the act of April 9,
17 1929 (P.L.177, No.175), known as The Administrative Code of
18 1929.

19 § 6927. Confidentiality standards required.

20 Area agencies on aging shall utilize the department's
21 confidentiality standards established under section 6913
22 (relating to confidentiality).

23 § 6928. Availability of protective services.

24 The area agency on aging shall offer protective services
25 under any of the following conditions:

26 (1) An older adult requests the services.

27 (2) Another interested person requests the services on
28 behalf of an older adult.

29 (3) After investigation of a report, the area agency on
30 aging determines the older adult is in need of the services.

31 SUBCHAPTER D

32 PROTECTIVE SERVICES

33 Sec.

34 6930. Consent by request.

35 6931. Interference with services.

36 6932. Financial obligations, liabilities and payments.

37 6933. Involuntary intervention by emergency court order.

38 6934. Confidentiality of records.

39 § 6930. Consent by request.

40 An older adult shall receive protective services voluntarily
41 unless the services are ordered by a court of competent
42 jurisdiction.

43 § 6931. Interference with services.

44 If a person interferes with the provision of services or
45 interferes with the right of an older adult to consent to
46 provision of services, the area agency on aging may petition the
47 court for an order enjoining the interference.

48 § 6932. Financial obligations, liabilities and payments.

49 All older adults receiving protective services and all
50 agencies providing services under this subchapter shall comply
51 with the following provisions regarding liability for the

1 payment of services:

2 (1) Funding to provide or make available protective
3 services under this subchapter shall not be used in place of
4 any public or private entitlements or benefits for which the
5 older adult receiving protective services under this
6 subchapter is or may be eligible.

7 (1.1) Funding to provide or make available protective
8 services shall not be available until eligibility and receipt
9 of benefits under public and private entitlements or
10 resources have been exhausted.

11 (2) Funding available to local protective services
12 agencies under this subchapter may be used to cover the costs
13 of activities, including, but not limited to:

14 (i) Administering protective services plans.

15 (ii) Receiving and maintaining records of reports of
16 abuse, neglect, exploitation and abandonment.

17 (iii) Conducting investigations of reported abuse,
18 neglect, exploitation and abandonment.

19 (iv) Carrying out assessments and developing service
20 plans.

21 (v) Petitioning the court.

22 (vi) Providing for emergency involuntary
23 intervention.

24 (vii) Arranging for available services needed to
25 carry out service plans, which may include, as
26 appropriate, arranging for services for other persons in
27 the household unit in order to reduce, correct or
28 eliminate abuse, neglect, exploitation or abandonment of
29 an older adult.

30 (viii) Purchasing, on a temporary basis, services
31 determined by a service plan to be necessary to reduce,
32 correct or eliminate abuse, neglect, exploitation or
33 abandonment of an older adult when the services are not
34 available within the existing resources of the area
35 agency on aging or other appropriate provider. Purchase
36 of services under this provision is limited to a 30-day
37 period which may be renewed with adequate justification
38 under regulations issued by the department.

39 (3) Older adults receiving protective services shall not
40 be required to pay a fee for services received by other older
41 adults when the receipt of the services by others is not
42 subject to cost sharing.

43 § 6933. Involuntary intervention by emergency court order.

44 (a) Emergency petition.--An area agency on aging may
45 petition a court of common pleas for an emergency order to
46 provide protective services to an older adult who is at imminent
47 risk of death, sexual abuse, serious bodily injury or financial
48 exploitation. The court of common pleas shall grant the area
49 agency on aging's petition if the court finds, by clear and
50 convincing evidence, that failure to provide protective services
51 will place the older adult at imminent risk of death, sexual

1 abuse, serious bodily injury or financial exploitation. The
2 courts of common pleas of each judicial district shall ensure
3 that a judge or magisterial district judge is available at all
4 times to accept and rule on petitions for emergency court orders
5 under this section whenever the area agency on aging determines
6 that a delay until normal court hours may significantly increase
7 danger to the older adult.

8 (b) Limited order.--The court, after finding clear and
9 convincing evidence of the need for an emergency order, shall
10 order only services necessary to remove the conditions creating
11 the established need.

12 (c) Right to counsel.--In order to protect the rights of an
13 older adult for whom protective services are being ordered, an
14 emergency court order under this section shall provide that the
15 older adult has the right to legal counsel. If the older adult
16 is unable to provide for counsel, counsel shall be appointed by
17 the court.

18 (d) Forcible entry.--If it is necessary to forcibly enter
19 premises after obtaining a court order, a law enforcement
20 official may do so, accompanied by a representative of the area
21 agency on aging.

22 (e) Health and safety requirements.--The area agency on
23 aging shall take reasonable steps to ensure that while the older
24 adult is receiving services under an emergency court order, the
25 health and safety needs of any of the older adult's dependents
26 are met and that the personal property and dwelling of the older
27 adult are secure.

28 § 6934. Confidentiality of records.

29 (a) Requirement.--Information contained in reports, records
30 of investigation, assessments and service plans created under
31 this subchapter shall be considered privileged and confidential
32 and shall be maintained under regulations promulgated by the
33 department. The department or the area agency on aging may not
34 release information that could be detrimental to the older adult
35 except that the information shall be released to a law
36 enforcement official under subsection (b) (2) and may be used by
37 the department in civil proceedings, subject to protective
38 orders. All information contained in protective service records
39 is subject to other Federal and State confidentiality and
40 security laws.

41 (b) Release of protective services records.--Protective
42 services records may be provided as follows:

43 (1) Protective services records may be provided to a
44 court of competent jurisdiction or to another party pursuant
45 to a court order. A subpoena shall not be a court order for
46 purposes of this section.

47 (2) Protective services records may be provided to law
48 enforcement officials or a coroner if the information is
49 relevant to the official's or coroner's investigation of
50 abuse, neglect, exploitation, abandonment or death of the
51 older adult.

1 (3) In arranging specific services to carry out service
2 plans, the area agency on aging may disclose information to
3 appropriate service providers as may be necessary to initiate
4 the delivery of services.

5 (4) The older adult who is the subject of a report or
6 the older adult's guardian, if the guardian is not named as a
7 perpetrator in the report, may receive, upon written request,
8 a summary of the report of need except information that would
9 identify the person who made a report of suspected abuse,
10 neglect, exploitation or abandonment or persons who
11 cooperated in a subsequent investigation.

12 (5) A person who made a report of suspected abuse,
13 neglect, exploitation or abandonment may receive, upon
14 written request, confirmation from the department that the
15 report was received and the area agency on aging is acting in
16 accordance with this subchapter.

17 (6) For the purposes of monitoring agency performance or
18 conducting other official duties, appropriate staff of the
19 department, as designated by the Secretary of Aging, may
20 access protective services records.

21 (7) The department or the area agency on aging may
22 collaborate or share information included in protective
23 services records with Commonwealth agencies for purposes of
24 official Commonwealth business.

25 (8) The department or the area agency on aging may share
26 a summary of protective services information with another
27 area agency on aging that is performing responsibilities
28 under this subchapter relevant to older adults within the
29 area agency on aging's jurisdiction.

30 (9) An employee of an agency of another state who
31 performs older adult protective services similar to those
32 under this subchapter may access a summary of protective
33 services information relevant to older adults within the area
34 agency on aging's jurisdiction.

35 (10) Protective services records may be provided to a
36 health care provider who is examining or treating the older
37 adult and who suspects that the older adult is in need of
38 protection under this subchapter.

39 (11) Protective services records may be provided to the
40 director, or an individual specifically designated in writing
41 by the director, of a hospital or other medical institution
42 where the older adult is being treated if the director or
43 designee suspects that the recipient is in need of protection
44 under this chapter.

45 (12) Unless prohibited by Federal law, protective
46 services records relating to financial exploitation may be
47 provided to a financial institution or fiduciary as necessary
48 to exercise the authority to prohibit disbursement of funds
49 and transactions provided under section 6952 (relating to
50 disbursement of funds and transactions).

51 SUBCHAPTER E

REPORTING

Sec.

6940. Voluntary reporting.

6941. Mandatory reporting.

6942. Mandatory reporting to law enforcement officials and department.

6943. Contents of reports.

6944. Mandatory reporter training.

6945. Coroner.

6946. Protecting identity of reporter and cooperating witnesses.

§ 6940. Voluntary reporting.

A person having reasonable cause to believe that an older adult may be a victim of abuse, neglect, exploitation or abandonment may report the information to the area agency on aging.

§ 6941. Mandatory reporting.

A mandatory reporter who has reasonable cause to suspect that an older adult may be a victim of abuse, neglect, exploitation or abandonment shall immediately make an oral report to the area agency on aging. If applicable, the area agency on aging shall advise the mandatory reporter of additional reporting requirements that may apply under section 6942 (relating to mandatory reporting to law enforcement officials and department). Within 48 hours of making the oral report, the mandatory reporter shall make a written report to the area agency on aging.

§ 6942. Mandatory reporting to law enforcement officials and department.

In addition to the report under section 6941 (relating to mandatory reporting), a mandatory reporter who has reasonable cause to suspect that an older adult may be a victim of suspicious death, serious bodily injury or sexual abuse shall immediately contact law enforcement officials and the department to make an oral report. Within 48 hours of making the oral report, the mandatory reporter shall make a written report to appropriate law enforcement officials and to the area agency on aging. The area agency on aging shall forward the report to the department within 48 hours of receipt.

§ 6943. Contents of reports.

A written mandatory report under this section shall be in a manner and on forms prescribed by the department. At a minimum, the report shall include the following information, as well as anything additional required by regulation:

(1) Name, age, sex and address of the older adult.

(2) Name and address of the older adult's legal representative or next of kin.

(3) Name and address of the facility, if applicable.

(4) Nature and location of the reported incident and any specific comments or observations directly related to the alleged incident and the older adult involved.

1 (5) Any relevant information known related to the
2 identity of the alleged perpetrator, including, but not
3 limited to, name, age, sex and relationship to the older
4 adult.

5 (6) Name of the individual making the report, contact
6 information for the reporter and information regarding any
7 actions taken by the reporter in response to the incident.

8 § 6944. Mandatory reporter training.

9 Mandatory reporters shall be trained by either the department
10 or an agent of the department on the requirements to report
11 identified within this subchapter.

12 § 6945. Coroner.

13 If there is reasonable cause to suspect that an older adult
14 died as a result of abuse, neglect, exploitation or abandonment,
15 the area agency on aging shall give the oral report and forward
16 a copy of the written report to the appropriate coroner within
17 24 hours.

18 § 6946. Protecting identity of reporter and cooperating
19 witnesses.

20 (a) Prohibition.--Except for disclosures to law enforcement
21 officials, the release of records that would identify the
22 individual who made a report under this subchapter or an
23 individual who cooperated in a subsequent investigation is
24 prohibited.

25 (b) Identity protection.--If records are provided pursuant
26 to a court order, the identity of the reporter and cooperating
27 witnesses shall be deleted, unless otherwise ordered by the
28 court after an in-camera review.

29 SUBCHAPTER F

30 FINANCIAL INSTITUTIONS AND FIDUCIARIES

31 Sec.

32 6950. Reporting financial exploitation.

33 6951. Financial services provider training.

34 6952. Disbursement of funds and transactions.

35 6953. Immunity and defenses.

36 § 6950. Reporting financial exploitation.

37 Notwithstanding any law limiting or prohibiting disclosure,
38 except as otherwise provided by Federal law, a financial
39 services provider, including a designated employee of a
40 financial services provider, may report financial exploitation
41 if the employee reasonably believes that financial exploitation
42 of an older adult may have occurred, may have been attempted or
43 is being attempted.

44 § 6951. Financial services provider training.

45 (a) Requirement.--A financial services provider with
46 employees in this Commonwealth or with employees regularly
47 engaging in financial transactions with or on behalf of older
48 adults in this Commonwealth shall provide training to employees
49 who have direct contact with older adults and conduct financial
50 transactions for or on behalf of older adults.

51 (b) Program.--The department, in consultation with the

Department of Banking and Securities and representatives of the financial services industry, may establish a model training program for employees of financial services providers regarding the identification and prevention of financial exploitation of older adults and on procedures to provide relief to older adults from financial exploitation, including training regarding the following:

- (1) When to report suspected financial exploitation.
- (2) To whom suspected exploitation should be reported.
- (3) The information to be included in a report.
- (4) The applicable laws, rules and regulations that must be followed while reporting suspected financial exploitation.

(c) Information.--The financial services provider training shall include information that:

(1) Assists employees in recognizing signs of potential financial abuse of an older adult, including, but not limited to, the following:

(i) Unusual activity in an older adult's retirement account, brokerage account or other accounts managed by an agent or investment adviser representative or deposit account.

(ii) Automated teller machine withdrawals by an older adult who previously never used an automated teller machine or debit card.

(iii) Suspicious signatures on checks.

(2) Informs employees about the applicable provisions of this chapter and the process that employees should use if making an abuse report or a report of need for protective services.

(d) Compliance.--A financial services provider shall be deemed in compliance with this section if the provider uses a model training program established by the department or is subject to visitorial examination by a regulatory authority that requires employee training to control fraud or money laundering and incorporates the activities required under subsections (b) and (c) into its training program.

§ 6952. Disbursement of funds and transactions.

(a) Reasonable belief.--If a financial services provider or fiduciary reasonably believes, after initiating an internal review of a disbursement or transaction, that financial exploitation of an older adult may have occurred, may have been attempted or is being attempted, the financial services provider or fiduciary may refuse to disburse funds or engage in a transaction, as appropriate, to prevent financial exploitation of an older adult with respect to the following accounts:

(1) An account of the older adult.

(2) An account on which the older adult is a beneficiary, including a trust or guardianship account.

(3) An account of a person suspected of perpetrating financial exploitation of an older adult.

(b) Area agency on aging or law enforcement.--A financial

1 services provider or fiduciary may refuse to disburse funds or
2 engage in a transaction under this section if an area agency on
3 aging or law enforcement official provides information to the
4 financial services provider or fiduciary demonstrating that it
5 is reasonable to believe that financial exploitation of an older
6 adult may have occurred, may have been attempted or is being
7 attempted.

8 (c) Discretion.--A financial services provider or fiduciary
9 shall not be required to refuse to disburse funds or engage in a
10 transaction when provided with information alleging that
11 financial exploitation may have occurred, may have been
12 attempted or is being attempted, but may use its discretion to
13 determine whether to refuse to disburse funds based on the
14 information available to the financial services provider or
15 fiduciary.

16 (d) Duties.--Except as provided by Federal or State law, a
17 financial services provider or fiduciary that refuses to
18 disburse funds or engage in a transaction based on a reasonable
19 belief that financial exploitation of an older adult may have
20 occurred, may have been attempted or is being attempted shall:

21 (1) Make a reasonable effort to notify, orally or in
22 writing, each person authorized to transact business on the
23 account, that is a beneficiary of the account or that has
24 been authorized by the older adult to receive notifications
25 regarding account activity, except for a person reasonably
26 believed to have engaged in suspected or attempted financial
27 exploitation of the older adult. A notification shall be
28 sufficient if it provides the following:

29 (i) Notice that the financial institution or
30 fiduciary has temporarily blocked the disbursement of
31 funds or delayed the execution of transactions as
32 authorized under section 6950 (relating to reporting
33 financial exploitation).

34 (ii) The name of the financial institution or
35 fiduciary.

36 (iii) The account or transaction to which the
37 notification applies.

38 (iv) The name and phone number of a contact person
39 representing the financial institution or fiduciary.

40 (v) The phone number of the area agency on aging or
41 law enforcement official to which a report has been
42 provided.

43 (2) Immediately make an oral report to the agency.
44 Within two business days of making an oral report, the
45 financial services provider shall make a written report to
46 the area agency on aging.

47 (e) Expiration.--A refusal to disburse funds or engage in a
48 transaction as authorized by this section based on the
49 reasonable belief of a financial services provider that
50 financial exploitation of an older adult may have occurred, may
51 have been attempted or is being attempted shall expire upon the

1 sooner of the following:

2 (1) Fifteen business days after the date on which the
3 financial services provider or fiduciary first refused to
4 disburse the funds or engage in the transaction, unless
5 terminated or extended by an order of a court of competent
6 jurisdiction, a law enforcement official, the department or
7 an area agency on aging. An additional 10 business days shall
8 be permitted, if requested by a law enforcement official, the
9 department or an area agency on aging, following the
10 submission of a petition for a court order further extending
11 the time period.

12 (2) Except as provided under paragraph (1), the time
13 when the financial services provider or fiduciary is
14 satisfied that the disbursement will not result in financial
15 exploitation of an older adult.

16 (f) Order.--A court of competent jurisdiction may enter an
17 order extending the refusal by the financial services provider
18 or fiduciary to disburse funds or engage in a transaction based
19 on a reasonable belief that financial exploitation of an older
20 adult may have occurred, may have been attempted or is being
21 attempted. A court of competent jurisdiction may also order
22 other protective relief as authorized.

23 § 6953. Immunity and defenses.

24 (a) Immunity.--Except as provided under subsection (c), a
25 financial services provider or fiduciary and its directors,
26 officers, employees or agents shall not be subject to a claim
27 for damages or other civil or criminal liability for the
28 following:

29 (1) The identification or failure to identify the
30 financial exploitation of an older adult.

31 (2) A decision to make a report or not make a report
32 under this chapter.

33 (3) A decision to allow the disbursement of funds or
34 engage in a transaction under this chapter.

35 (4) A refusal to disburse funds or engage in a
36 transaction under this chapter.

37 (5) The release of information to a law enforcement
38 official, the department or an area agency on aging as
39 authorized by this chapter.

40 (6) The provision of a notice under section 6952
41 (relating to disbursement of funds and transactions).

42 (b) Additional immunities and defenses.--Notwithstanding any
43 other law to the contrary:

44 (1) The refusal by a financial services provider to
45 engage in a transaction authorized under this subsection
46 shall not constitute the wrongful dishonor of an item under
47 13 Pa.C.S. § 4402 (relating to liability of bank to customer
48 for wrongful dishonor; time of determining insufficiency of
49 account).

50 (2) A reasonable belief that payment of a check will
51 facilitate the financial exploitation of an older adult shall

1 constitute reasonable grounds to doubt the collectability of
2 the item for purposes of the Expedited Funds Availability Act
3 (Public Law 100-86, 12 U.S.C. § 4001 et seq.), the Check
4 Clearing for the 21st Century Act (Public Law 108-100, 12
5 U.S.C. § 5001 et seq.) and 12 CFR Pt. 229 (relating to
6 availability of funds and collection of checks).

7 (c) Limitation.--The immunities and defenses provided under
8 this section shall not apply to a director, officer, employee or
9 agent involved in the financial exploitation of an older adult.

10 SUBCHAPTER G
11 CRIMINAL HISTORY

12 Sec.

13 6960. Criminal history.

14 6961. Grounds for denying employment.

15 6962. Provisional employees for limited periods.

16 § 6960. Criminal history.

17 (a) General rule.--A facility shall require an individual
18 under subsection (b) to submit the following information, which
19 must have been obtained within the preceding one-year period:

20 (1) Under 18 Pa.C.S. Ch. 91 (relating to criminal
21 history record information), a report of criminal history
22 record information from the Pennsylvania State Police or a
23 statement from the Pennsylvania State Police that the central
24 repository contains no information relating to that person.
25 The criminal history record information shall be limited to
26 that which is disseminated under 18 Pa.C.S. § 9121(b)(2)
27 (relating to general regulations).

28 (2) A report of Federal criminal history record
29 information pursuant to the Federal Bureau of Investigation's
30 appropriation under the Departments of State, Justice, and
31 Commerce, the Judiciary, and Related Agencies Appropriation
32 Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department
33 shall be the intermediary for the purposes of this paragraph.
34 For the purposes of this paragraph, the individual shall
35 submit a full set of fingerprints in a manner prescribed by
36 the department. The Commonwealth shall submit the
37 fingerprints to the Federal Bureau of Investigation for a
38 national criminal history record check. The information
39 obtained from the criminal record check shall be used by the
40 department to determine the individual's eligibility. The
41 determination shall be submitted to the administrator by the
42 applicant, prior to commencing employment, or by the
43 employee. The administrator shall insure confidentiality of
44 the information. The provisions of 18 Pa.C.S. § 9121(b)(2)
45 shall not apply if the request for a report of Federal
46 criminal history record information is made under this
47 section.

48 (b) Reports.--The following individuals shall submit the
49 reports of criminal history record information required under
50 subsection (a):

51 (1) An applicant, with the applicant's application.

1 (2) An employee.
2 (3) An administrator who has or may have direct contact
3 with a recipient.
4 (4) An operator who has or may have direct contact with
5 a recipient.
6 (c) New reports.--New reports of criminal history
7 information shall be obtained in accordance with the following:
8 (1) Beginning on the effective date of this section, an
9 individual under subsection (b) shall be required to obtain
10 the report of criminal history record information required
11 under subsection (a) (2) every 60 months. The date for
12 required renewal shall be from the date of the individual's
13 oldest report of criminal history record information.
14 (2) An individual identified in subsection (b) with a
15 current report of criminal history record information issued
16 prior to the effective date of this subsection shall be
17 required to obtain the report of criminal history record
18 information required under subsection (a) (2) within 60 months
19 from the date of the individual's oldest report of criminal
20 history record information or, if the current report of
21 criminal history record information is older than 60 months,
22 within one year of the effective date of this section.
23 (3) An individual identified in subsection (b) who was
24 previously not required to have a report of criminal history
25 information shall be required to obtain the reports of
26 criminal history information required under subsection (a) (1)
27 and (2) no later than a year from the effective date of this
28 section.
29 (d) Written notice of new arrest or conviction.--
30 (1) If an employee is arrested for or convicted of an
31 offense that would constitute grounds for denying employment
32 under section 6961 (relating to grounds for denying
33 employment), the employee shall provide the administrator or
34 designee with written notice not later than 72 hours after
35 the arrest or conviction.
36 (2) If the person responsible for employment decisions
37 or the administrator has a reasonable belief that an employee
38 was arrested or convicted for an offense that would
39 constitute grounds for denying employment under section 6961,
40 or the employee has provided notice as required under
41 paragraph (1), the person responsible for employment
42 decisions or the administrator shall immediately require the
43 employee to submit current information as required under
44 subsection (a). The cost of the information set forth in
45 subsection (a) shall be borne by the facility.
46 § 6961. Grounds for denying employment.
47 (a) General rule.--Subject to subsection (f), a facility may
48 not hire or retain an individual required to submit information
49 under section 6960 (relating to criminal history) if the
50 individual's criminal history record information indicates the
51 individual has been convicted of an offense under one or more of

1 the following provisions of 18 Pa.C.S. (relating to crimes and
2 offenses):

3 (1) A felony under Chapter 25 (relating to criminal
4 homicide).

5 (2) Section 3011 (relating to trafficking in
6 individuals).

7 (3) Section 3121 (relating to rape).

8 (4) Section 3124.2 (relating to institutional sexual
9 assault).

10 (5) Section 3125 (relating to aggravated indecent
11 assault).

12 (6) A Federal or out-of-State offense similar in nature
13 to those crimes listed under this subsection.

14 (b) Twenty-five-year ban.--Subject to subsection (f), a
15 facility may not hire or retain an individual required to submit
16 information under section 6960 within 25 years from the
17 individual's release or discharge from a State or county
18 correctional institution or from termination of supervised
19 probation or parole, whichever is later, if the individual's
20 criminal history record information indicates the individual has
21 been convicted of any of the following offenses under one or
22 more of the following provisions of 18 Pa.C.S.:

23 (1) A misdemeanor under Chapter 25.

24 (2) A felony under Chapter 27 (relating to assault).

25 (3) A misdemeanor under section 2713 (relating to
26 neglect of care-dependent person).

27 (4) A misdemeanor under section 2718 (relating to
28 strangulation).

29 (5) Section 2901 (relating to kidnapping).

30 (6) Section 2902 (relating to unlawful restraint).

31 (7) Section 2903 (relating to false imprisonment).

32 (8) Section 3122.1 (relating to statutory sexual
33 assault).

34 (9) Section 3123 (relating to involuntary deviate sexual
35 intercourse).

36 (10) Section 3124.1 (relating to sexual assault).

37 (11) Section 3126 (relating to indecent assault).

38 (12) Section 3127 (relating to indecent exposure).

39 (13) Section 3129 (relating to sexual intercourse with
40 animal).

41 (14) Section 3301 (relating to arson and related
42 offenses).

43 (15) Section 3502 (relating to burglary).

44 (16) Chapter 37 (relating to robbery).

45 (17) Section 4115 (relating to falsely impersonating
46 persons privately employed).

47 (18) A felony under section 4120 (relating to identity
48 theft).

49 (19) Section 4302 (relating to incest).

50 (20) Section 4303 (relating to concealing death of
51 child).

1 (21) A felony offense under section 4304 (relating to
2 endangering welfare of children).

3 (22) Section 4305 (relating to dealing in infant
4 children).

5 (23) Section 5902(b.1) (relating to prostitution and
6 related offenses).

7 (24) Section 5903(a)(1), (3)(ii), (4)(ii), (5)(ii) or
8 (6), (c) or (d) (relating to obscene and other sexual
9 materials and performances).

10 (25) Section 6312 (relating to sexual abuse of
11 children).

12 (26) Section 6318 (relating to unlawful contact with
13 minor).

14 (27) Section 6319 (relating to solicitation of minors to
15 traffic drugs).

16 (28) Section 6320 (relating to sexual exploitation of
17 children).

18 (29) A Federal or out-of-State offense similar in nature
19 to the crimes listed under this subsection.

20 (c) Ten-year ban.--Subject to subsection (f), a facility may
21 not hire or retain an individual required to submit information
22 under section 6960 within 10 years from the individual's release
23 or discharge from a State or county correctional institution or
24 from termination of supervised probation or parole, whichever is
25 later, if the individual's criminal history record information
26 indicates the individual has been convicted of any of the
27 following offenses under one or more of the following provisions
28 of 18 Pa.C.S.:

29 (1) A misdemeanor under section 2710 (relating to ethnic
30 intimidation).

31 (2) A felony under section 2904 (relating to
32 interference with custody of children).

33 (3) Section 2909 (relating to concealment of whereabouts
34 of a child).

35 (4) Section 3131 (relating to unlawful dissemination of
36 intimate image).

37 (5) A felony under Chapter 39 (relating to theft and
38 related offenses) or two or more misdemeanors under Chapter
39 39.

40 (6) Section 4101 (relating to forgery).

41 (7) Section 4103 (relating to fraudulent destruction,
42 removal or concealment of recordable instruments).

43 (8) A felony under section 4106 (relating to access
44 device fraud) or two or more misdemeanors under section 4106.

45 (9) Section 4114 (relating to securing execution of
46 documents by deception).

47 (10) A misdemeanor under section 4120 (relating to
48 identity theft).

49 (11) A misdemeanor under section 4304.

50 (12) Section 4952 (relating to intimidation of witnesses
51 or victims).

1 (13) Section 4953 (relating to retaliation against
2 witness, victim or party).

3 (14) Section 6301 (relating to corruption of minors).

4 (15) A Federal or out-of-State offense similar in nature
5 to the crimes listed in this subsection.

6 (d) Five-year ban.--Subject to subsection (f), a facility
7 may not hire or retain an individual required to submit
8 information under section 6960 within five years from the
9 individual's release or discharge from a State or county
10 correctional institution or from termination of supervised
11 probation or parole, whichever is later, if the individual's
12 criminal history record information indicates the individual has
13 been convicted of any of the following offenses under one or
14 more of the following provisions of 18 Pa.C.S.:

15 (1) An offense designated as a felony under the act of
16 April 14, 1972 (P.L.233, No.64), known as The Controlled
17 Substance, Drug, Device and Cosmetic Act.

18 (2) A felony under section 4105 (relating to bad
19 checks).

20 (3) A Federal or out-of-State offense similar in nature
21 to the crimes listed in paragraphs (1) and (2).

22 (e) Date of release or discharge.--To determine the date of
23 an individual's release, discharge or termination of
24 supervision, an individual shall provide to the department, upon
25 request, documentation relating to the individual's release or
26 discharge from a State or county correctional institution or
27 from termination of supervised probation or parole.

28 (f) Waiver request.--Unless prohibited by Federal law, the
29 department may grant a waiver of the prohibitions under
30 subsections (a), (b), (c) and (d) when an individual submits a
31 written waiver request. The department shall review a written
32 request within 45 days. The waiver request shall be submitted on
33 a form as prescribed by the department and shall contain the
34 following:

35 (1) The length of time since the individual's
36 conviction.

37 (2) The circumstances of the individual's conviction.

38 (3) If the individual was incarcerated, a copy of the
39 order from the Federal, State or local jurisdiction that
40 released the individual from incarceration, including the
41 date of release.

42 (4) Evidence of an individual's rehabilitation.

43 (5) Demonstrated prior and present relevant work
44 experience of the individual.

45 (6) Competency and proficiency of the individual in
46 relevant work, including the provision of essential care-
47 dependent services.

48 (7) The relationship of the offense to the individual's
49 prospective or current job position.

50 (8) Demonstrated good moral character in personal and
51 occupational or employment affairs.

1 (9) A copy of a previously approved waiver request for
2 another job position, as applicable.

3 (g) Waiver request for specified job.--A waiver request
4 granted under subsection (f) only applies to a specified job
5 position. If an individual seeks employment in a different
6 facility or in a different job position, the individual shall
7 submit a subsequent written waiver request.

8 § 6962. Provisional employees for limited periods.

9 (a) Provisional basis.--The following apply:

10 (1) An administrator may employ an applicant on a
11 provisional basis for a single period not to exceed 90 days
12 if all of the following conditions are met:

13 (i) The applicant has applied for a criminal history
14 report required under section 6960(a) (relating to
15 criminal history) and provided the facility with a copy
16 of the completed request forms.

17 (ii) The facility has no knowledge about the
18 applicant that would disqualify the applicant from
19 provisional employment under 18 Pa.C.S. § 4911 (relating
20 to tampering with public records or information).

21 (iii) The applicant swears or affirms in writing
22 that the applicant is not disqualified from employment
23 under this subchapter.

24 (iv) The administrator provides written information
25 to the older adult or fiduciary notifying that the care
26 provider is a provisional employee and the facility's
27 procedure for provisional hiring when a criminal history
28 report is pending.

29 (2) If the information obtained from the criminal
30 history report reveals that the applicant is disqualified
31 from employment under section 6961 (relating to grounds for
32 denying employment), the applicant shall be terminated
33 immediately.

34 (b) Supervision.--The department, in consultation with the
35 Department of Health and the Department of Human Services, shall
36 develop guidelines regarding the supervision of provisional
37 employees. Supervision shall include random direct supervision
38 by an employee who has been employed by the facility for a
39 period of at least one year.

40 SUBCHAPTER H

41 REMEDIES

42 Sec.

43 6970. Penalties.

44 6971. Immunity from civil and criminal liability.

45 § 6970. Penalties.

46 (a) Civil penalties.--

47 (1) A mandatory reporter who fails to comply or
48 obstructs compliance with the provisions of this chapter or
49 who intimidates or commits a retaliatory act against an
50 individual who complies in good faith with the provisions of
51 this chapter commits a violation of this chapter and shall be

1 subject to an administrative penalty. The department shall
2 have jurisdiction to determine violations of this chapter and
3 may issue an order assessing a civil penalty of not more than
4 \$5,000. An order under this paragraph is subject to 2 Pa.C.S.
5 Chs. 5 Subch. A (relating to practice and procedure of
6 Commonwealth agencies) and 7 Subch. A (relating to judicial
7 review of Commonwealth agency action).

8 (2) Each Commonwealth agency which licenses a facility
9 shall have jurisdiction regarding violations of section 6960
10 (relating to criminal history) and may issue an order
11 assessing a civil penalty not to exceed \$5,000.

12 (3) An older adult or a person making a report or
13 cooperating with the area agency on aging, including
14 providing testimony in an administrative or judicial
15 proceeding, shall be free from any discriminatory,
16 retaliatory or disciplinary action by an employer or by any
17 other person. A person who violates this paragraph shall be
18 subject to a civil action by the reporter or the older adult.
19 The reporter or older adult shall recover treble compensatory
20 damages, compensatory and punitive damages or \$5,000,
21 whichever is greater.

22 (4) A person, including the older adult, with knowledge
23 sufficient to justify making a report or cooperating with the
24 area agency on aging, including providing testimony in an
25 administrative or judicial proceeding, shall be free from any
26 intimidation by an employer or by any other person. A person
27 who violates this paragraph shall be subject to a civil
28 action by the person intimidated or the older adult. The
29 person intimidated or the older adult shall recover treble
30 compensatory damages, compensatory and punitive damages or
31 \$5,000, whichever is greater.

32 (b) Criminal penalties.--

33 (1) A mandatory reporter under this chapter who
34 intentionally fails to report suspected abuse, neglect,
35 exploitation or abandonment commits a summary offense for the
36 first violation and a misdemeanor of the second degree for a
37 second or subsequent violation and shall, upon conviction, be
38 sentenced to pay a fine of \$5,000 or to imprisonment for not
39 more than one year, or both.

40 (2) A person who makes a false statement or
41 representation of a material fact in a report of need commits
42 a misdemeanor of the first degree and shall, upon conviction,
43 be sentenced to pay a fine of not more than \$10,000 or to
44 imprisonment for not more than five years, or both.

45 (c) Immunity.--

46 (1) A person participating in the making of a report of
47 need, or who provides testimony in an administrative or
48 judicial proceeding in a court of this Commonwealth arising
49 out of a report, shall be immune from any civil or criminal
50 liability on account of the report or testimony related to
51 good faith compliance with this chapter. This immunity shall

1 not extend to liability for acts of abuse, neglect,
2 exploitation or abandonment, even if the acts are the subject
3 of the report or testimony.

4 (2) An entity that employs a person required or
5 permitted to make a report under this chapter shall not be
6 held civilly liable for any action directly related to good
7 faith compliance with this chapter.

8 (d) Use.--Money collected under this chapter by the
9 department shall be used for department programs to investigate
10 and prevent the abuse, neglect, exploitation and abandonment of
11 older adults.

12 § 6971. Immunity from civil and criminal liability.

13 In the absence of willful misconduct or gross negligence, the
14 area agency on aging, the director, employees of the area agency
15 on aging, protective services workers or employees of the
16 department shall not be civilly or criminally liable for any
17 decision or action or resulting consequence of decisions or
18 action when acting under and according to the provisions of this
19 chapter.

20 SUBCHAPTER I
21 ADMINISTRATION

22 Sec.

23 6980. Funding.

24 6981. Regulations.

25 § 6980. Funding.

26 Money necessary to administer this chapter shall be provided
27 by an annual appropriation by the General Assembly.

28 § 6981. Regulations.

29 The department shall issue rules and regulations to carry out
30 this chapter and shall annually present to the General Assembly
31 a report on the program and services performed. State agencies
32 with oversight authority over entities impacted by this chapter
33 shall promulgate regulations necessary to assist the department
34 in implementing this chapter.

35 Section 2. The following shall apply:

36 (1) Activities initiated under of the act of November 6,
37 1987 (P.L.381, No.79), known as the Older Adults Protective
38 Services Act, shall continue and remain in full force and
39 effect and may be completed under 23 Pa.C.S. Ch. 69.

40 (2) Orders, regulations, rules and decisions which were
41 made under the Older Adults Protective Services Act and which
42 are in effect on the effective date of this chapter shall
43 remain in full force and effect until revoked, vacated or
44 modified under 23 Pa.C.S. Ch. 69.

45 (3) Contracts, grants, agreements, obligations and
46 collective bargaining agreements entered into under the Older
47 Adults Protective Services Act are not affected nor impaired
48 by repeals under this act.

49 Section 3. Repeals are as follows:

50 (1) The General Assembly declares that the repeal under
51 paragraph (2) is necessary to effectuate the addition of 23

1 Pa.C.S. Ch. 69.

2 (2) The act of November 6, 1987 (P.L.381, No.79), known
3 as the Older Adults Protective Services Act, is repealed.

4 Section 4. This act shall take effect as follows:

5 (1) The addition of 23 Pa.C.S. § 6911 shall take effect
6 in one year.

7 (2) The remainder of this act shall take effect
8 immediately.