

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 819 Session of 2019

INTRODUCED BY MENSCH, GORDNER, BROWNE, YAW, BAKER, K. WARD, KILLION, VOGEL, J. WARD, SCHWANK, TARTAGLIONE, FONTANA, BREWSTER, BOSCOLA, YUDICHAK, HAYWOOD, MUTH, LEACH AND BLAKE, AUGUST 7, 2019

REFERRED TO AGING AND YOUTH, AUGUST 7, 2019

AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled  
2 "An act relating to the protection of the abused, neglected,  
3 exploited or abandoned elderly; establishing a uniform  
4 Statewide reporting and investigative system for suspected  
5 abuse, neglect, exploitation or abandonment of the elderly;  
6 providing protective services; providing for funding; and  
7 making repeals," extensively revising provisions on older  
8 adults protective services relating to preliminary  
9 provisions, administration, criminal history for employees,  
10 reporting suspected abuse by employees and miscellaneous  
11 provisions; and imposing penalties.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 Section 1. Chapters 1, 3, 5, 7 and 51 of the act of  
15 November 6, 1987 (P.L.381, No.79), known as the Older Adults  
16 Protective Services Act, are repealed:

17 [CHAPTER 1

18 PRELIMINARY PROVISIONS

19 Section 101. Short title.

20 This act shall be known and may be cited as the Older Adults  
21 Protective Services Act.

1 Section 102. Legislative policy.

2 It is declared the policy of the Commonwealth of Pennsylvania  
3 that older adults who lack the capacity to protect themselves  
4 and are at imminent risk of abuse, neglect, exploitation or  
5 abandonment shall have access to and be provided with services  
6 necessary to protect their health, safety and welfare. It is not  
7 the purpose of this act to place restrictions upon the personal  
8 liberty of incapacitated older adults, but this act should be  
9 liberally construed to assure the availability of protective  
10 services to all older adults in need of them. Such services  
11 shall safeguard the rights of incapacitated older adults while  
12 protecting them from abuse, neglect, exploitation and  
13 abandonment. It is the intent of the General Assembly to provide  
14 for the detection and reduction, correction or elimination of  
15 abuse, neglect, exploitation and abandonment, and to establish a  
16 program of protective services for older adults in need of them.

17 Section 103. Definitions.

18 The following words and phrases when used in this act shall  
19 have the meanings given to them in this section unless the  
20 context clearly indicates otherwise:

21 "Abandonment." The desertion of an older adult by a  
22 caretaker.

23 "Abuse." The occurrence of one or more of the following  
24 acts:

25 (1) The infliction of injury, unreasonable confinement,  
26 intimidation or punishment with resulting physical harm, pain  
27 or mental anguish.

28 (2) The willful deprivation by a caretaker of goods or  
29 services which are necessary to maintain physical or mental  
30 health.

1 (3) Sexual harassment, rape or abuse, as defined in the  
2 act of October 7, 1976 (P.L.1090, No.218), known as the  
3 Protection From Abuse Act.

4 No older adult shall be found to be abused solely on the grounds  
5 of environmental factors which are beyond the control of the  
6 older adult or the caretaker, such as inadequate housing,  
7 furnishings, income, clothing or medical care.

8 "Administrator." The person responsible for the  
9 administration of a facility. The term includes a person  
10 responsible for employment decisions or an independent  
11 contractor.

12 "Agency." The local provider of protective services, which  
13 is the area agency on aging or the agency designated by the area  
14 agency on aging to provide protective services in the area  
15 agency's planning and service area.

16 "Care." Services provided to meet a person's need for  
17 personal care or health care. Services may include homemaker  
18 services, assistance with activities of daily living, physical  
19 therapy, occupational therapy, speech therapy, medical social  
20 services, home-care aide services, companion-care services,  
21 private duty nursing services, respiratory therapy, intravenous  
22 therapy, in-home dialysis and durable medical equipment  
23 services, which are routinely provided unsupervised and which  
24 require interaction with the care-dependent person. The term  
25 does not include durable medical equipment delivery.

26 "Care-dependent individual." An adult who, due to physical  
27 or cognitive disability or impairment, requires assistance to  
28 meet needs for food, shelter, clothing, personal care or health  
29 care.

30 "Caretaker." An individual or institution that has assumed

1 the responsibility for the provision of care needed to maintain  
2 the physical or mental health of an older adult. This  
3 responsibility may arise voluntarily, by contract, by receipt of  
4 payment for care, as a result of family relationship, or by  
5 order of a court of competent jurisdiction. It is not the intent  
6 of this act to impose responsibility on any individual if such  
7 responsibility would not otherwise exist in law.

8 "Client assessment." Social, physical and psychological  
9 findings along with a description of the person's current  
10 resources and needs.

11 "Court." A court of common pleas or a district magistrate  
12 court, where applicable.

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

14 "Employee." An individual who is employed by a facility. The  
15 term includes contract employees who have direct contact with  
16 residents or unsupervised access to their personal living  
17 quarters. The term includes any person who is employed or who  
18 enters into a contractual relationship to provide care to a  
19 care-dependent individual for monetary consideration in the  
20 individual's place of residence.

21 "Exploitation." An act or course of conduct by a caretaker  
22 or other person against an older adult or an older adult's  
23 resources, without the informed consent of the older adult or  
24 with consent obtained through misrepresentation, coercion or  
25 threats of force, that results in monetary, personal or other  
26 benefit, gain or profit for the perpetrator or monetary or  
27 personal loss to the older adult.

28 "Facility." Any of the following:

29 (1) A domiciliary care home as defined in section 2202-A  
30 of the act of April 9, 1929 (P.L.177, No.175), known as The

1 Administrative Code of 1929.

2 (2) A home health care agency.

3 (3) A long-term care nursing facility as defined in  
4 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),  
5 known as the Health Care Facilities Act.

6 (4) An older adult daily living center as defined in  
7 section 2 of the act of July 11, 1990 (P.L.499, No.118),  
8 known as the Older Adult Daily Living Centers Licensing Act.

9 (5) A personal care home as defined in section 1001 of  
10 the act of June 13, 1967 (P.L.31, No.21), known as the Public  
11 Welfare Code.

12 "Home health care agency." Any of the following:

13 (1) A home health care organization or agency licensed  
14 by the Department of Health.

15 (2) A public or private agency or organization, or part  
16 of an agency or organization, which provides care to a care-  
17 dependent individual in the individual's place of residence.

18 "Intimidation." An act or omission by any person or entity  
19 toward another person which is intended to, or with knowledge  
20 that the act or omission will, obstruct, impede, impair, prevent  
21 or interfere with the administration of this act or any law  
22 intended to protect older adults from mistreatment.

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

24 (1) A police officer of a municipality.

25 (2) A district attorney.

26 (3) The Pennsylvania State Police.

27 "Neglect." The failure to provide for oneself or the failure  
28 of a caretaker to provide goods or services essential to avoid a  
29 clear and serious threat to physical or mental health. No older  
30 adult who does not consent to the provision of protective

1 services shall be found to be neglected solely on the grounds of  
2 environmental factors which are beyond the control of the older  
3 adult or the caretaker, such as inadequate housing, furnishings,  
4 income, clothing or medical care.

5 "Older adult." A person within the jurisdiction of the  
6 Commonwealth who is 60 years of age or older.

7 "Older adult in need of protective services." An  
8 incapacitated older adult who is unable to perform or obtain  
9 services that are necessary to maintain physical or mental  
10 health, for whom there is no responsible caretaker and who is at  
11 imminent risk of danger to his person or property.

12 "Protective services." Those activities, resources and  
13 supports provided to older adults under this act to detect,  
14 prevent, reduce or eliminate abuse, neglect, exploitation and  
15 abandonment.

16 "Protective setting." A setting chosen by the agency where  
17 services can be provided in the least restrictive environment to  
18 protect the physical and mental well-being of the older adult.

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

21 "Secretary." The Secretary of Aging of the Commonwealth.

22 "Serious bodily injury." Injury which creates a substantial  
23 risk of death or which causes serious permanent disfigurement or  
24 protracted loss or impairment of the function of a body member  
25 or organ.

26 "Serious physical injury." An injury that:

27 (1) causes a person severe pain; or

28 (2) significantly impairs a person's physical  
29 functioning, either temporarily or permanently.

30 "Service plan." A written plan developed by the agency on

1 the basis of comprehensive assessment of a client's need which  
2 describes identified needs, goals to be achieved and specific  
3 services to support goal attainment, with regular follow-up and  
4 predetermined reassessment of client progress. Specific services  
5 to support goal attainment may include, but is not limited to,  
6 homemaker services, home-delivered meals, attendant care, other  
7 in-home services, emergency shelter or food, legal aid services,  
8 transportation and other such services. Service plans are  
9 cooperatively developed by the agency staff, the client or the  
10 client's appointed guardian, and other family members when  
11 appropriate. The plan shall also address, where applicable,  
12 special needs of other members of the household unit as they may  
13 affect the older adult's need for protective services.

14 "Sexual abuse." Intentionally, knowingly or recklessly  
15 causing or attempting to cause rape, involuntary deviate sexual  
16 intercourse, sexual assault, statutory sexual assault,  
17 aggravated indecent assault, indecent assault or incest.

### 18 CHAPTER 3

#### 19 ADMINISTRATION

20 Section 301. Duties of department and area agencies on aging.

21 (a) Public information and interdepartmental consultation.--  
22 The department shall conduct an ongoing campaign designed to  
23 inform and educate older adults, professionals and the general  
24 public about the need for an availability of protective services  
25 under this chapter. The department shall consult with other  
26 departments of the Commonwealth on the design and implementation  
27 of the ongoing public awareness campaign. The department shall  
28 also consider the concerns of area agencies on aging and the  
29 entities identified by them under subsection (c).

30 (b) Staff training.--The department shall establish minimum

1 standards of training and experience which protective services  
2 providers funded by the department shall be required to follow  
3 in the selection and assignment of staff for the provision of  
4 protective services.

5 (c) Protective services plans.--Each area agency on aging  
6 shall include a protective services plan as part of its annual  
7 plan. The plan shall describe the local implementation of this  
8 chapter, including the organization, staffing, mode of  
9 operations and financing of protective services, as well as the  
10 provisions made for purchase of services, interagency relations,  
11 interagency agreements, service referral mechanisms and locus of  
12 responsibility for cases with multiservice agency needs. The  
13 description of the methods that will be used by the agency, its  
14 designees and its service providers to assure the privacy of  
15 older adults receiving services and the confidentiality of all  
16 records shall be established by the department. The department  
17 shall establish a schedule for the submission and approval of  
18 the plans. The plan shall include a list of all entities,  
19 whether public or private, that have been identified by the area  
20 agency on aging as having substantial contact with potential  
21 victims or perpetrators of abuse, neglect, exploitation and  
22 abandonment. This list shall be submitted to the department for  
23 purposes of the public information campaign under subsection  
24 (a).

25 Section 302. Reporting; protection from retaliation; immunity.

26 (a) Reporting.--Any person having reasonable cause to  
27 believe that an older adult is in need of protective services  
28 may report such information to the agency which is the local  
29 provider of protective services. Where applicable, reports shall  
30 comply with the provisions of Chapter 7.

1 (b) Receiving reports.--The agency shall be capable of  
2 receiving reports of older adults in need of protective services  
3 24 hours a day, seven days a week (including holidays). This  
4 capability may include the use of a local emergency response  
5 system or a crisis intervention agency, provided that access can  
6 be made to a protective services caseworker in appropriate  
7 emergency situations as set forth in regulations promulgated by  
8 the department. All reports received orally under this section  
9 shall be reduced to writing immediately by the person who  
10 receives the report.

11 (c) Retaliatory action; penalty.--Any person making a report  
12 or cooperating with the agency, including providing testimony in  
13 any administrative or judicial proceeding, and the victim shall  
14 be free from any discriminatory, retaliatory or disciplinary  
15 action by an employer or by any other person or entity. Any  
16 person who violates this subsection is subject to a civil  
17 lawsuit by the reporter or the victim wherein the reporter or  
18 victim shall recover treble compensatory damages, compensatory  
19 and punitive damages or \$5,000, whichever is greater.

20 (c.1) Intimidation; penalty.--Any person, including the  
21 victim, with knowledge sufficient to justify making a report or  
22 cooperating with the agency, including possibly providing  
23 testimony in any administrative or judicial proceeding, shall be  
24 free from any intimidation by an employer or by any other person  
25 or entity. Any person who violates this subsection is subject to  
26 civil lawsuit by the person intimidated or the victim wherein  
27 the person intimidated or the victim shall recover treble  
28 compensatory damages, compensatory and punitive damages or  
29 \$5,000, whichever is greater.

30 (d) Immunity.--Any person participating in the making of a

1 report or who provides testimony in any administrative or  
2 judicial proceeding arising out of a report shall be immune from  
3 any civil or criminal liability on account of the report or  
4 testimony unless the person acted in bad faith or with malicious  
5 purpose. This immunity shall not extend to liability for acts of  
6 abuse, neglect, exploitation or abandonment, even if such acts  
7 are the subject of the report or testimony.

8 Section 303. Investigations of reports of need for protective  
9 services.

10 (a) Investigation.--It shall be the agency's responsibility  
11 to provide for an investigation of each report made under  
12 section 302. The investigation shall be initiated within 72  
13 hours after the receipt of the report and shall be carried out  
14 under regulations issued by the department. These regulations  
15 shall provide for the methods of conducting investigations under  
16 this section and shall assure that steps are taken to avoid any  
17 conflict of interest between the investigator and service  
18 delivery functions. Reports and investigations under this  
19 section shall comply with Chapter 7, where applicable.

20 (b) Investigation involving licensed facilities.--Any report  
21 concerning older adults residing in a State-licensed facility  
22 shall be investigated under procedures developed by the  
23 department in consultation with the State agency licensing such  
24 facility. If the report concerns a resident of a State-licensed  
25 facility for whom the area agency on aging provides ombudsman  
26 services, the ombudsman of the area agency on aging must be  
27 notified.

28 (c) Unsubstantiated reports.--If, after investigation by the  
29 agency, the report is unsubstantiated, the case shall be closed  
30 and all information identifying the reporter and the alleged

1 abuser shall be immediately deleted from all records. For  
2 purposes of substantiating a pattern of abuse, neglect,  
3 exploitation or abandonment, the name of the alleged victim and  
4 any information describing the alleged act of abuse, neglect,  
5 exploitation or abandonment may be maintained for a period of  
6 six months under procedures established by the department.

7 (d) Substantiated reports.--If the report is substantiated  
8 by the agency, or if the client assessment is necessary in order  
9 to determine whether or not the report is substantiated, the  
10 agency shall provide for a timely client assessment if the older  
11 adult consents to an assessment. Upon completion of the  
12 assessment, written findings shall be prepared which shall  
13 include recommended action. This service plan shall provide for  
14 the least restrictive alternative, encouraging client self-  
15 determination and continuity of care. The service plan shall be  
16 in writing and shall include a recommended course of action,  
17 which may include the pursuit of civil or criminal remedies. If  
18 an older adult found to be in need of protective services does  
19 not consent to a client assessment or the development of a  
20 service plan, the agency may apply to the case the provisions of  
21 section 307.

22 Section 304. Provision of services; access to records and  
23 persons.

24 (a) Availability of protective services.--The agency shall  
25 offer protective services under any of the following conditions:

26 (1) An older adult requests such services.

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

29 (3) If, after investigation of a report, the agency  
30 determines the older adult is in need of such services.

1 (b) Consent by request.--Except as provided in section 307,  
2 an individual shall receive protective services voluntarily. In  
3 no event may protective services be provided under this chapter  
4 to any person who does not consent to such services or who,  
5 having consented, withdraws such consent, unless such services  
6 are ordered by a court, requested by a guardian of the older  
7 adult or provided under section 307. Nothing in this chapter  
8 shall prevent the agency from petitioning for the appointment of  
9 a guardian pursuant to Title 20 of the Pennsylvania Consolidated  
10 Statutes (relating to decedents, estates and fiduciaries).

11 (c) Interference with services.--If any person interferes  
12 with the provision of services or interferes with the right of  
13 an older adult to consent to provision of services, the agency  
14 may petition the court for an order enjoining such interference.

15 (d) Access to records.--The agency shall have access to all  
16 records relevant to:

17 (1) Investigations of reports under section 303.

18 (2) Assessment of client need.

19 (3) Service planning when an older adult's need for  
20 protective services has been or is being established.

21 (4) The delivery of services arranged for under the  
22 service plan developed by the agency to respond to an older  
23 adult's assessed need for specific services.

24 (e) Access to persons.--The agency shall have access to  
25 older persons who have been reported to be in need of protective  
26 services in order to:

27 (1) Investigate reports under section 303 and Chapter 7.

28 (2) Assess client need and develop a service plan for  
29 addressing needs determined.

30 (3) Provide for the delivery of services by the agency

1 or other service provider arranged for under the service plan  
2 developed by the agency.

3 (f) Denial of access to persons.--If the agency is denied  
4 access to an older adult reported to be in need of protective  
5 services and access is necessary to complete the investigation  
6 or the client assessment and service plan, or the delivery of  
7 needed services in order to prevent further abuse, neglect,  
8 exploitation or abandonment of the older adult reported to be in  
9 need of protective services, the agency may petition the court  
10 for an order to require the appropriate access when either of  
11 the following conditions apply:

12 (1) The caretaker or a third party has interfered with  
13 the completion of the investigation or the client assessment  
14 and service plan or the delivery of services.

15 (2) The agency can demonstrate that the older adult  
16 reported to be in need of protective services is denying  
17 access because of coercion, extortion or justifiable fear of  
18 future abuse, neglect, or exploitation or abandonment.

19 (g) Access by consent.--The agency's access to confidential  
20 records held by other agencies or individuals and the agency's  
21 access to an older adult reported to be in need of protective  
22 services shall require the consent of the older adult or a  
23 court-appointed guardian except as provided for under this  
24 section or section 307.

25 (h) Denial of access to records.--If the agency is denied  
26 access to records necessary for the completion of a proper  
27 investigation of a report or a client assessment and service  
28 plan, or the delivery of needed services in order to prevent  
29 further abuse, neglect, exploitation or abandonment of the older  
30 adult reported to be in need of protective services, the agency

1 may petition the court of common pleas for an order requiring  
2 the appropriate access when either of the following conditions  
3 apply:

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

7 (2) The agency can demonstrate that the older adult is  
8 denying access to records because of incompetence, coercion,  
9 extortion or justifiable fear of future abuse, neglect,  
10 exploitation or abandonment.

11 Section 305. Immunity from civil and criminal liability.

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

18 Section 306. Confidentiality of records.

19 (a) General rule.--Information contained in reports, records  
20 of investigation, client assessment and service plans shall be  
21 considered confidential and shall be maintained under  
22 regulations promulgated by the department to safeguard  
23 confidentiality. Except as provided below, this information  
24 shall not be disclosed to anyone outside the agency other than  
25 to a court of competent jurisdiction or pursuant to a court  
26 order.

27 (b) Limited access to the agency's protective services  
28 records.--

29 (1) In the event that an investigation by the agency  
30 results in a report of criminal conduct, law enforcement

1 officials shall have access to all relevant records  
2 maintained by the agency or the department.

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

7 (3) A subject of a report made under section 302 may  
8 receive, upon written request, all information contained in  
9 the report except that prohibited from being disclosed by  
10 paragraph (4).

11 (4) The release of information that would identify the  
12 person who made a report of suspected abuse, neglect,  
13 exploitation or abandonment or person who cooperated in a  
14 subsequent investigation, is hereby prohibited unless the  
15 secretary can determine that such a release will not be  
16 detrimental to the safety of such person.

17 (5) When the department is involved in the hearing of an  
18 appeal by a subject of a report made under section 302, the  
19 appropriate department staff shall have access to all  
20 information in the report record relevant to the appeal.

21 (6) For the purposes of monitoring agency performance,  
22 appropriate staff of the department may access agency  
23 protective services records.

24 Section 307. Involuntary intervention by emergency court order.

25 (a) Emergency petition.--Where there was clear and  
26 convincing evidence that if protective services are not  
27 provided, the person to be protected is at imminent risk of  
28 death or serious physical harm, the agency may petition the  
29 court for an emergency order to provide the necessary services.  
30 The courts of common pleas of each judicial district shall

1 ensure that a judge or district justice is available on a 24-  
2 hour-a-day, 365-day-a-year basis to accept and decide on  
3 petitions for an emergency court order under this section  
4 whenever the agency determines that a delay until normal court  
5 hours would significantly increase the danger the older adult  
6 faces.

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

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

17 (d) Forcible entry.--Where it is necessary to forcibly enter  
18 premises after obtaining a court order, a peace officer may do  
19 so, accompanied by a representative of the agency.

20 (e) Health and safety requirements.--The agency shall take  
21 reasonable steps to assure that while the person is receiving  
22 services under an emergency court order, the health and safety  
23 needs of any of the person's dependents are met and that  
24 personal property and the dwelling the person occupies are  
25 secure.

26 (f) Exclusion of remedy.--Nothing in this chapter shall be  
27 interpreted to deny any older adult access to the emergency  
28 medical services or police protection that would be provided to  
29 anyone, regardless of age, in similar circumstances.

30 Section 308. Individual rights.

1 (a) Rights of protective services clients.--The agency shall  
2 observe the following minimum requirements to safeguard the  
3 rights of an older adult who is reported to be in need of  
4 protective services:

5 (1) The agency shall discreetly notify the older person  
6 during the investigation that a report has been made and  
7 shall provide the person with a brief summary of the nature  
8 of the report.

9 (2) As provided under section 306(b)(3), the older adult  
10 may request, and the agency shall provide, additional  
11 information contained in the report.

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

18 (4) Nothing in this act shall limit the right of any  
19 older person to file a petition pursuant to the act of  
20 October 7, 1976 (P.L.1090, No.218), known as the Protection  
21 From Abuse Act.

22 (b) Rights of alleged abusers.--An individual who is alleged  
23 in a protective services report to be a perpetrator of the  
24 abuse, neglect, exploitation or abandonment of an older adult  
25 shall be entitled to the following if the report is  
26 substantiated by the agency:

27 (1) Such an individual shall be notified by the agency  
28 at the conclusion of the investigation of the report that  
29 allegations have been made and shall be given a brief summary  
30 of the allegations.

1 (2) As provided under section 306(b)(3), the alleged  
2 perpetrator may request, and the agency shall provide,  
3 additional information contained in the report.

4 (3) An alleged perpetrator is entitled to file an appeal  
5 with the department under 1 Pa. Code Part II (relating to  
6 general rules of administrative practice and procedure) to  
7 challenge the agency's finding resulting from the  
8 investigation of a report made under section 303.

9 Section 309. Financial obligations; liabilities and payments.

10 All individuals receiving services and all agencies providing  
11 services under this chapter shall comply with the following  
12 provisions regarding liability for the payment of services:

13 (1) Funding to provide or make available protective  
14 services under this chapter shall not supplant any public and  
15 private entitlements or resources for which persons receiving  
16 protective services under this chapter are or may be  
17 eligible, and shall not be available until such persons have  
18 exhausted their eligibility and receipt of benefits under  
19 said public and private entitlements or resources.

20 (2) Funding available to local protective services  
21 agencies under this chapter may be used to cover the costs of  
22 activities including, but not limited to, the following:

23 (i) Administering protective services plans required  
24 under section 301(c).

25 (ii) Receiving and maintaining records of reports of  
26 abuse under section 302.

27 (iii) Conducting investigations of reported abuse  
28 under section 303.

29 (iv) Carrying out client assessments and developing  
30 service plans under section 303.

1 (v) Petitioning the court under sections 304 and  
2 307.

3 (vi) Providing emergency involuntary intervention  
4 under section 307.

5 (vii) Arranging for available services needed to  
6 carry out service plans, which may include, as  
7 appropriate, arranging for services for other household  
8 members in order to reduce, correct or eliminate abuse,  
9 neglect, exploitation or abandonment of an older adult.

10 (viii) Purchasing, on a temporary basis, services  
11 determined by a service plan to be necessary to reduce,  
12 correct or eliminate abuse, neglect, exploitation or  
13 abandonment of an older adult when such services are not  
14 available within the existing resources of the agency or  
15 other appropriate provider. Purchase of services under  
16 this provision is limited to a 30-day period which may be  
17 renewed with adequate justification under regulations  
18 promulgated by the department.

19 (3) The obligation of the Commonwealth and the counties  
20 to provide funds to the department or any agency for services  
21 provided pursuant to this chapter shall be entirely  
22 discharged by the appropriations made to the department or an  
23 agency. Provided that the agency has met its responsibility  
24 under the law, no action at law or equity shall be instituted  
25 in any court to require the department, any agency, county or  
26 the Commonwealth to provide benefits or services under this  
27 chapter for which appropriations from the Commonwealth or  
28 counties are not available.

29 (4) Protective services clients receiving the same  
30 services provided to others under an agency service plan

1 shall not be required to pay a fee for any services not  
2 subject to cost sharing for other older adults.

3 Section 310. Regulations; enforcement.

4 (a) Promulgation of regulations.--The department shall  
5 promulgate the rules and regulations to carry out this chapter  
6 and shall be responsible for presenting to the General Assembly  
7 annually a report on the program and services performed.

8 (b) Enforcement.--This chapter shall be enforced only after  
9 promulgation of regulations by the department, which shall occur  
10 no later than 12 months following passage of this chapter,  
11 except that section 301 shall apply when the area agency on  
12 aging certifies to the department that it is prepared to fulfill  
13 its responsibilities. The certification shall be made within 90  
14 days following promulgation of regulations.

15 Section 311. Funds for payment of administration of chapter.

16 Funds necessary to administer this chapter shall be provided  
17 by annual appropriation by the General Assembly.

18 CHAPTER 5

19 CRIMINAL HISTORY FOR EMPLOYEES

20 Section 501. Definitions.

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

24 "Applicant." An individual who submits an application, which  
25 is being considered for employment, to a facility.

26 "State Police." The Pennsylvania State Police.

27 Section 502. Information relating to prospective facility  
28 personnel.

29 (a) General rule.--A facility shall require all applicants  
30 to submit with their applications, and shall require all

1 administrators and any operators who have or may have direct  
2 contact with a recipient to submit, the following information  
3 obtained within the preceding one-year period:

4 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal  
5 history record information), a report of criminal history  
6 record information from the State Police or a statement from  
7 the State Police that their central repository contains no  
8 such information relating to that person. The criminal  
9 history record information shall be limited to that which is  
10 disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to  
11 general regulations).

12 (2) Where the applicant is not and for the two years  
13 immediately preceding the date of application has not been a  
14 resident of this Commonwealth, administration shall require  
15 the applicant to submit with the application for employment a  
16 report of Federal criminal history record information  
17 pursuant to the Federal Bureau of Investigation's  
18 appropriation under the Departments of State, Justice, and  
19 Commerce, the Judiciary, and Related Agencies Appropriation  
20 Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department  
21 shall be the intermediary for the purposes of this paragraph.  
22 For the purposes of this paragraph, the applicant shall  
23 submit a full set of fingerprints in a manner prescribed by  
24 the department. The Commonwealth shall submit the  
25 fingerprints to the Federal Bureau of Investigation for a  
26 national criminal history record check. The information  
27 obtained from the criminal record check shall be used by the  
28 department to determine the applicant's eligibility. The  
29 determination shall be submitted to the administrator by the  
30 applicant prior to commencing employment. The administrator

1 shall insure confidentiality of the information. The  
2 provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply if the  
3 request for a report of Federal criminal history record  
4 information is made pursuant to this section.

5 (b) (Reserved).

6 Section 503. Grounds for denying employment.

7 (a) General rule.--In no case shall a facility hire an  
8 applicant or retain an employee required to submit information  
9 pursuant to section 502(a) if the applicant's or employee's  
10 criminal history record information indicates the applicant or  
11 employee has been convicted of any of the following offenses:

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

15 (2) An offense under one or more of the following  
16 provisions of 18 Pa.C.S. (relating to crimes and offenses):

17 Chapter 25 (relating to criminal homicide).

18 Section 2702 (relating to aggravated assault).

19 Section 2901 (relating to kidnapping).

20 Section 2902 (relating to unlawful restraint).

21 Section 3121 (relating to rape).

22 Section 3122.1 (relating to statutory sexual  
23 assault).

24 Section 3123 (relating to involuntary deviate sexual  
25 intercourse).

26 Section 3124.1 (relating to sexual assault).

27 Section 3125 (relating to aggravated indecent  
28 assault).

29 Section 3126 (relating to indecent assault).

30 Section 3127 (relating to indecent exposure).

1 Section 3301 (relating to arson and related  
2 offenses).

3 Section 3502 (relating to burglary).

4 Section 3701 (relating to robbery).

5 A felony offense under Chapter 39 (relating to theft  
6 and related offenses) or two or more misdemeanors under  
7 Chapter 39.

8 Section 4101 (relating to forgery).

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

11 Section 4302 (relating to incest).

12 Section 4303 (relating to concealing death of child).

13 Section 4304 (relating to endangering welfare of  
14 children).

15 Section 4305 (relating to dealing in infant  
16 children).

17 Section 4952 (relating to intimidation of witnesses  
18 or victims).

19 Section 4953 (relating to retaliation against witness  
20 or victim).

21 A felony offense under section 5902(b) (relating to  
22 prostitution and related offenses).

23 Section 5903(c) or (d) (relating to obscene and other  
24 sexual materials and performances).

25 Section 6301 (relating to corruption of minors).

26 Section 6312 (relating to sexual abuse of children).

27 (3) A Federal or out-of-State offense similar in nature  
28 to those crimes listed in paragraphs (1) and (2).

29 (c) Immunity.--An administrator or a facility shall not be  
30 held civilly liable for any action directly related to good

1 faith compliance with this section.

2 Section 504. Regulations.

3 The department, in consultation with the Department of Health  
4 and the Department of Public Welfare, shall promulgate the  
5 regulations necessary to carry out this chapter.

6 Section 505. Violations.

7 (a) Administrative.--

8 (1) An administrator who intentionally or willfully  
9 fails to comply or obstructs compliance with the provisions  
10 of this chapter commits a violation of this chapter and shall  
11 be subject to an administrative penalty under paragraph (3).

12 (2) A facility owner that intentionally or willfully  
13 fails to comply with or obstructs compliance with this  
14 chapter commits a violation of this chapter and shall be  
15 subject to an administrative penalty under paragraph (3).

16 (3) The Commonwealth agency or Commonwealth agencies  
17 which license the facility have jurisdiction to determine  
18 violations of this chapter and may issue an order assessing a  
19 civil penalty of not more than \$2,500. An order under this  
20 paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to  
21 practice and procedure of Commonwealth agencies) and Ch. 7  
22 Subch. A (relating to judicial review of Commonwealth agency  
23 action).

24 (b) Criminal.--

25 (1) An administrator who intentionally or willfully  
26 fails to comply or obstructs compliance with this chapter  
27 commits a misdemeanor of the third degree and shall, upon  
28 conviction, be sentenced to pay a fine of \$2,500 or to  
29 imprisonment for not more than one year, or both.

30 (2) A facility owner that intentionally or willfully

1 fails to comply with or obstructs compliance with this  
2 chapter commits a misdemeanor of the third degree and shall,  
3 upon conviction, be sentenced to pay a fine of \$2,500 or to  
4 imprisonment for not more than one year, or both.

5 Section 506. Provisional employees for limited periods.

6 Notwithstanding section 502, administrators may employ  
7 applicants on a provisional basis for a single period not to  
8 exceed 30 days or, for applicants under section 502(a)(2), a  
9 period of 90 days, if all of the following conditions are met:

10 (1) The applicant has applied for the information  
11 required under section 502 and the applicant provides a copy  
12 of the appropriate completed request forms to the  
13 administrator.

14 (2) The administrator has no knowledge of information  
15 pertaining to the applicant which would disqualify him from  
16 employment pursuant to section 503, subject to 18 Pa.C.S. §  
17 4911 (relating to tampering with public records or  
18 information).

19 (3) The applicant swears or affirms in writing that he  
20 is not disqualified from employment under section 503.

21 (4) If the information obtained under section 502  
22 reveals that the applicant is disqualified from employment  
23 under section 503, the applicant shall be immediately  
24 dismissed by the administrator.

25 (5) The department shall develop guidelines regarding  
26 the supervision of applicants. For a home health care agency,  
27 supervision shall include random direct supervision by an  
28 employee who has been employed by the facility for a period  
29 of one year.

30 Section 507. State Police.

1 No later than one year following the effective date of this  
2 chapter, the State Police and the department shall report to the  
3 Aging and Youth Committee of the Senate and the Aging and Youth  
4 Committee of the House of Representatives with their findings  
5 and recommendations regarding the implementation of this  
6 chapter.

7 Section 508. Applicability.

8 This chapter shall apply as follows:

9 (1) An individual who, on the effective date of this  
10 chapter, has continuously for a period of one year been an  
11 employee of the same facility shall be exempt from section  
12 502 as a condition of continued employment.

13 (2) If an employee is not exempt under paragraph (1),  
14 the employee and the facility shall comply with section 502  
15 within one year of the effective date of this chapter.

16 (3) If an employee who is exempt under paragraph (1)  
17 seeks employment with a different facility, the employee and  
18 the facility shall comply with section 502.

19 (4) An employee who has obtained the information  
20 required under section 502 may transfer to another facility  
21 established and supervised by the same owner and is not  
22 required to obtain additional reports before making the  
23 transfer.

24 CHAPTER 7

25 REPORTING SUSPECTED ABUSE BY EMPLOYEES

26 Section 701. Reporting by employees.

27 (a) Mandatory reporting to agency.--

28 (1) An employee or an administrator who has reasonable  
29 cause to suspect that a recipient is a victim of abuse shall  
30 immediately make an oral report to the agency. If applicable,

1 the agency shall advise the employee or administrator of  
2 additional reporting requirements that may pertain under  
3 subsection (b). An employee shall notify the administrator  
4 immediately following the report to the agency.

5 (2) Within 48 hours of making the oral report, the  
6 employee or administrator shall make a written report to the  
7 agency. The agency shall notify the administrator that a  
8 report of abuse has been made with the agency.

9 (3) The employee may request the administrator to make  
10 or to assist the employee to make the oral and written  
11 reports required by this subsection.

12 (b) Mandatory reports to law enforcement officials.--

13 (1) An employee or an administrator who has reasonable  
14 cause to suspect that a recipient is the victim of sexual  
15 abuse, serious physical injury or serious bodily injury or  
16 that a death is suspicious shall, in addition to contacting  
17 the agency and the department, immediately contact law  
18 enforcement officials to make an oral report. An employee  
19 shall notify the administrator immediately following the  
20 report to law enforcement officials.

21 (2) Within 48 hours of making the oral report, the  
22 employee and an administrator shall make a written report to  
23 appropriate law enforcement officials.

24 (3) The law enforcement officials shall notify the  
25 administrator that a report has been made with the law  
26 enforcement officials.

27 (4) The employee may request the administrator to make  
28 or to assist the employee to make the oral and written  
29 reports to law enforcement required by this subsection.

30 (c) Contents of report.--A written report under this section

1 shall be in a manner and on forms prescribed by the department.

2 The report shall include, at a minimum, the following

3 information:

4 (1) Name, age and address of the recipient.

5 (2) Name and address of the recipient's guardian or next  
6 of kin.

7 (3) Name and address of the facility.

8 (4) Nature of the alleged offense.

9 (5) Any specific comments or observations that are  
10 directly related to the alleged incident and the individual  
11 involved.

12 Section 702. Reports to department and coroner.

13 (a) Department.--

14 (1) Within 48 hours of receipt of a written report under  
15 section 701(a) involving sexual abuse, serious physical  
16 injury, serious bodily injury or suspicious death, the agency  
17 shall transmit a written report to the department.

18 Supplemental reports shall be transmitted as they are  
19 obtained by the agency.

20 (2) A report under this subsection shall be made in a  
21 manner and on forms prescribed by the department. The report  
22 shall include, at a minimum, the following information:

23 (i) The name and address of the alleged victim.

24 (ii) Where the suspected abuse occurred.

25 (iii) The age and sex of the alleged perpetrator and  
26 victim.

27 (iv) The nature and extent of the suspected abuse,  
28 including any evidence of prior abuse.

29 (v) The name and relationship of the individual  
30 responsible for causing the alleged abuse to the victim,

1 if known, and any evidence of prior abuse by that  
2 individual.

3 (vi) The source of the report.

4 (vii) The individual making the report and where  
5 that individual can be reached.

6 (viii) The actions taken by the reporting source,  
7 including taking of photographs and x-rays, removal of  
8 recipient and notification under subsection (b).

9 (ix) Any other information which the department may  
10 require by regulation.

11 (b) Coroner.--For a report under section 701(a) which  
12 concerns the death of a recipient, if there is reasonable cause  
13 to suspect that the recipient died as a result of abuse, the  
14 agency shall give the oral report and forward a copy of the  
15 written report to the appropriate coroner within 24 hours.  
16 Section 703. Investigation.

17 (a) Law enforcement officials.--Upon receipt of a report  
18 under section 701(b), law enforcement officials shall conduct an  
19 investigation to determine what criminal charges, if any, will  
20 be filed.

21 (b) Notification.--If law enforcement officials have  
22 reasonable cause to suspect that a recipient has suffered sexual  
23 abuse, serious physical injury, serious bodily injury or a  
24 suspicious death, law enforcement officials shall notify the  
25 agency.

26 (c) Cooperation.--To the fullest extent possible, law  
27 enforcement officials, the facility and the agency shall  
28 coordinate their respective investigations. Law enforcement  
29 officials, the facility and the agency shall advise each other  
30 and provide any applicable additional information on an ongoing

1 basis.

2 (d) Further notification.--Law enforcement officials shall  
3 notify the agency and the facility of a decision regarding  
4 criminal charges. The agency and the department shall keep a  
5 record of any decision regarding criminal charges.

6 (e) Compliance with Chapter 3.--In addition to the  
7 provisions of this section, the agency shall comply with Chapter  
8 3.

9 Section 704. Restrictions on employees.

10 (a) Plan of supervision.--Upon notification that an employee  
11 is alleged to have committed abuse, the facility shall  
12 immediately implement a plan of supervision or, where  
13 appropriate, suspension of the employee, subject to approval by  
14 the agency and by the Commonwealth agency with regulatory  
15 authority over the facility. A plan of supervision for a home  
16 health care agency must include periodic random direct  
17 inspections of care-dependent individuals by a facility employee  
18 who has been continuously employed by that facility for a period  
19 of at least one year.

20 (b) Prohibition.--Upon the filing of criminal charges  
21 against an employee, the Commonwealth agency which licenses the  
22 facility shall order the facility to immediately prohibit that  
23 employee from having access to recipients at the facility. If  
24 that employee is a director, operator, administrator or  
25 supervisor, that employee shall be subject to restrictions  
26 deemed appropriate by the Commonwealth agency which licenses the  
27 facility to assure the safety of recipients of the facility.

28 Section 705. Confidentiality of and access to confidential  
29 reports.

30 (a) General rule.--Except as provided in subsection (b), a

1 report under this chapter shall be confidential.

2 (b) Exceptions.--A report under this chapter shall be made  
3 available to all of the following:

4 (1) An employee of the department or of an agency in the  
5 course of official duties in connection with responsibilities  
6 under this chapter.

7 (2) An employee of the Department of Health or the  
8 Department of Public Welfare in the course of official  
9 duties.

10 (3) An employee of an agency of another state which  
11 performs protective services similar to those under this  
12 chapter.

13 (4) A practitioner of the healing arts who is examining  
14 or treating a recipient and who suspects that the recipient  
15 is in need of protection under this chapter.

16 (5) The director, or an individual specifically  
17 designated in writing by the director, of any hospital or  
18 other medical institution where a victim is being treated if  
19 the director or designee suspects that the recipient is in  
20 need of protection under this chapter.

21 (6) A guardian of the recipient.

22 (7) A court of competent jurisdiction pursuant to a  
23 court order.

24 (8) The Attorney General.

25 (9) Law enforcement officials of any jurisdiction as  
26 long as the information is relevant in the course of  
27 investigating cases of abuse.

28 (10) A mandated reporter under Chapter 3 who made a  
29 report of suspected abuse. Information released under this  
30 paragraph shall be limited to the following:

1 (i) The final status of the report following the  
2 investigation.

3 (ii) Services provided or to be provided by the  
4 agency.

5 (c) Excision of certain names.--The name of the person  
6 suspected of committing the abuse shall be excised from a report  
7 made available under subsection (b) (4), (5) and (10).

8 (d) Release of information to alleged perpetrator and  
9 victim.--Upon written request, an alleged perpetrator and victim  
10 may receive a copy of all information except that prohibited  
11 from being disclosed by subsection (e).

12 (e) Protecting identity of person making report.--Except for  
13 reports to law enforcement officials, the release of data that  
14 would identify the individual who made a report under this  
15 chapter or an individual who cooperated in a subsequent  
16 investigation is prohibited. Law enforcement officials shall  
17 treat all reporting sources as confidential information.

18 Section 706. Penalties.

19 (a) Administrative.--

20 (1) An administrator who intentionally or willfully  
21 fails to comply or obstructs compliance with the provisions  
22 of this chapter or who intimidates or commits a retaliatory  
23 act against an employee who complies in good faith with the  
24 provisions of this chapter commits a violation of this  
25 chapter and shall be subject to an administrative penalty  
26 under paragraph (3).

27 (2) A facility owner that intentionally or willfully  
28 fails to comply with or obstructs compliance with this  
29 chapter or that intimidates or commits a retaliatory act  
30 against an employee who complies in good faith with this

1 chapter commits a violation of this chapter and shall be  
2 subject to an administrative penalty under paragraph (3).

3 (3) The Commonwealth agency or Commonwealth agencies  
4 which regulate the facility have jurisdiction to determine  
5 violations of this chapter and may issue an order assessing a  
6 civil penalty of not more than \$2,500. An order under this  
7 paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to  
8 practice and procedure of Commonwealth agencies) and Ch. 7  
9 Subch. A (relating to judicial review of Commonwealth agency  
10 action).

11 (b) Criminal.--

12 (1) An administrator who intentionally or willfully  
13 fails to comply or obstructs compliance with this chapter  
14 commits a misdemeanor of the third degree and shall, upon  
15 conviction, be sentenced to pay a fine of \$2,500 or to  
16 imprisonment for not more than one year, or both.

17 (2) A facility owner that intentionally or willfully  
18 fails to comply with or obstructs compliance with this  
19 chapter commits a misdemeanor of the third degree and shall,  
20 upon conviction, be sentenced to pay a fine of \$2,500 or to  
21 imprisonment for not more than one year, or both.

22 (c) Penalties for failure to report.--A person required  
23 under this chapter to report a case of suspected abuse who  
24 willfully fails to do so commits a summary offense for the first  
25 violation and a misdemeanor of the third degree for a second or  
26 subsequent violation.

27 Section 707. Immunity.

28 An administrator or a facility shall not be held civilly  
29 liable for any action directly related to good faith compliance  
30 with this chapter.

1 Section 708. Regulations.

2 The Department of Aging, the Department of Health and the  
3 Department of Public Welfare shall promulgate the regulations  
4 necessary to carry out this chapter.

5 CHAPTER 51

6 MISCELLANEOUS PROVISIONS

7 Section 5101. Repeals.

8 All other acts and parts of acts are repealed insofar as they  
9 are inconsistent with this act.

10 Section 5102. Effective date.

11 This act shall take effect July 1, 1988.]

12 Section 2. The act is amended by adding chapters to read:

13 CHAPTER 1-A

14 PRELIMINARY PROVISIONS

15 Section 101-A. Short title.

16 This act shall be known and may be cited as the Older Adults  
17 Protective Services Act.

18 Section 102-A. Findings.

19 The General Assembly finds and declares as follows:

20 (1) Older adults who are at risk of abuse, neglect,  
21 exploitation or abandonment must have access to and be  
22 provided with services necessary to protect their health,  
23 safety and welfare.

24 (2) The purpose of this act is to assure the  
25 availability of protective services to older adults in need  
26 of them without placing restrictions upon the personal  
27 liberty of older adults.

28 (3) Protective services must safeguard the rights of  
29 older adults while protecting them from abuse, neglect,  
30 exploitation and abandonment.

1           (4) The General Assembly intends to provide for the  
2 detection and reduction, correction or elimination of abuse,  
3 neglect, exploitation and abandonment and to establish a  
4 program to provide protective services for older adults in  
5 need.

6           (5) Convictions for certain offenses that evidence a  
7 reckless disregard for the vulnerability of care-dependent  
8 populations, involve misappropriation or misuse of property  
9 or involve inappropriate or irresponsible behavior may  
10 legitimately warrant time-limited bans on employment working  
11 with older adults under this act.

12 Section 103-A. Definitions.

13           The following words and phrases when used in this act shall  
14 have the meanings given to them in this section unless the  
15 context clearly indicates otherwise:

16           "Abandonment." The desertion of an older adult by a  
17 caretaker.

18           "Abuse." The occurrence of one or more of the following  
19 acts:

20           (1) Infliction of injury, unreasonable confinement,  
21 intimidation or punishment resulting in physical harm, pain  
22 or mental anguish.

23           (2) Willful deprivation of goods or services which are  
24 necessary to maintain physical or mental health.

25           (3) Sexual abuse, including rape, involuntary deviate  
26 sexual intercourse, sexual assault, aggravated indecent  
27 assault, indecent assault or incest.

28           (4) Sexual harassment, including unwelcome sexual  
29 advances, requests for sexual favors and other unwelcome  
30 verbal or physical conduct of a sexual nature.

1 "Administrator." The person responsible for the management  
2 of a facility. The term includes a person responsible for  
3 employment decisions or an independent contractor responsible  
4 for administration of a facility.

5 "Applicant." An individual who submits an application to be  
6 considered for employment by a facility.

7 "Area agency on aging." The single local agency or the local  
8 agency's agent designated by the department within each planning  
9 and service area to administer the delivery of protective  
10 services.

11 "Assessment." A determination based upon a comprehensive  
12 review of an older adult's social, physical and psychological  
13 status along with a description of the older adult's current  
14 resources and needs using instruments and procedures established  
15 by the department.

16 "Care." Service provided to meet an older adult's need for  
17 personal care or health care which requires interaction with the  
18 older adult.

19 "Care-dependent individual." An adult who, due to physical  
20 or cognitive disability or impairment, requires assistance to  
21 meet needs for food, shelter, clothing, personal care or health  
22 care.

23 "Caretaker." A person that has assumed voluntarily, by  
24 contract, by receipt of payment for care, as a result of  
25 familial relationship or by order of a court of competent  
26 jurisdiction the responsibility for the provision of care needed  
27 to maintain the physical or mental health of an older adult.

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

29 "Employee." An individual who:

30 (1) meets any of the following criteria:

1           (i) is employed by a facility;  
2           (ii) enters into a contractual relationship with a  
3           facility, consumer or consumer's family or legal  
4           representative to provide care to an older adult; or  
5           (iii) is a student doing an internship or clinical  
6           rotation or any other individual who has been granted  
7           access to a facility to perform a clinical service for a  
8           fee; and

9           (2) has unsupervised access to the older adult or the  
10          older adult's living quarters, resources or personal records,  
11          including employees of affiliated corporate entities.

12          "Exploitation." An act or course of conduct by a caretaker  
13          or other person against an older adult or an older adult's  
14          resources without the informed consent of the older adult or  
15          with consent obtained through misrepresentation, coercion or  
16          threats of force, results in monetary, personal or other  
17          benefit, gain or profit for that caretaker or person, or  
18          monetary or personal loss to the older adult.

19          "Facility." Any of the following:

20           (1) Domiciliary care as defined in section 2202-A of the  
21           act of April 9, 1929 (P.L.177, No.175), known as The  
22           Administrative Code of 1929.

23           (2) An assisted living residence as defined in section  
24           1001 of the act of June 13, 1967 (P.L.31, No.21), known as  
25           the Human Services Code.

26           (3) A personal care home as defined in section 1001 of  
27           the Human Services Code.

28           (4) The following entities as defined in section 802.1  
29           of the act of July 19, 1979 (P.L.130, No.48), known as the  
30           Health Care Facilities Act:

- 1           (i) A home care agency.
- 2           (ii) A home care registry.
- 3           (iii) A home health care agency.
- 4           (iv) A hospice.
- 5           (v) A long-term care nursing facility.
- 6           (5) An older adult daily living center as defined in  
7 section 2 of the act of July 11, 1990 (P.L.499, No.118),  
8 known as the Older Adult Daily Living Centers Licensing Act.
- 9           (6) A PACE provider as defined in section 1894 of the  
10 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395eee).
- 11           (7) Any other public or private organization or entity,  
12 or part of an organization or entity, that uses public funds  
13 and is paid, in part, to provide care to care-dependent  
14 individuals.
- 15           "Fiduciary." A guardian, custodian, trustee, agent, personal  
16 representative or other person authorized or required to act on  
17 behalf of an older adult.
- 18           "Financial exploitation." Any of the following:
- 19           (1) The wrongful or unauthorized taking, withholding,  
20 appropriation or use of money, assets or property of an older  
21 adult.
- 22           (2) An act or omission taken by a person, including  
23 through the use of a power of attorney, guardianship or  
24 conservatorship of an older adult, to:
- 25           (i) obtain control, through deception, intimidation  
26 or undue influence, over the older adult's money, assets  
27 or property to deprive the older adult of the ownership,  
28 use, benefit or possession of the older adult's money,  
29 assets or property; or
- 30           (ii) unlawfully convert money, assets or property of

1 the older adult to deprive the older adult of the  
2 ownership, use, benefit or possession of the older  
3 adult's money, assets or property.

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

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

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

12 (3) An agent as defined in section 102(c) of the act of  
13 December 5, 1972 (P.L.1280, No.284), known as the  
14 Pennsylvania Securities Act of 1972.

15 (4) A broker-dealer as defined in section 102(e) of the  
16 Pennsylvania Securities Act of 1972.

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

19 (6) An investment adviser representative as defined in  
20 section 102(j.1) of the Pennsylvania Securities Act of 1972.

21 (7) A licensee as defined in section 2 of the act of May  
22 15, 1933 (P.L.565, No.111), known as the Department of  
23 Banking and Securities Code, or a similar entity.

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

29 "Health care provider." A licensed hospital or health care  
30 facility or person who is licensed, certified or otherwise

1 regulated to provide health care services under the laws of this  
2 Commonwealth, including a physician, podiatrist, optometrist,  
3 psychologist, physical therapist, certified nurse practitioner,  
4 registered nurse, nurse midwife, physician's assistant,  
5 chiropractor, dentist or pharmacist or an individual accredited  
6 or certified to provide behavioral health services.

7 "Intimidation." An act or omission by a person toward  
8 another person that obstructs, impedes, impairs, prevents or  
9 interferes with the administration of this act or other law  
10 intended to protect older adults from mistreatment.

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

12 (1) A police officer of a municipality.

13 (2) A district attorney.

14 (3) A Pennsylvania State Police officer.

15 (4) The Attorney General.

16 (5) An agent of the Department of Justice and other  
17 Federal law enforcement agencies, who possesses law  
18 enforcement powers and duties.

19 "Mandatory reporter." Any of the following:

20 (1) Administrators and employees of a facility.

21 (2) Health care providers.

22 (3) Law enforcement officials.

23 (4) Coroners.

24 "Neglect." The failure to provide for oneself or the failure  
25 of a caretaker to provide goods or services essential to avoid a  
26 clear and serious threat to physical or mental health. An older  
27 adult who does not consent to the provision of protective  
28 services may not be found to be neglected solely on the grounds  
29 of environmental factors which are beyond the control of the  
30 older adult or the caretaker, such as inadequate housing,

1 furnishings, income, clothing or medical care.

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

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

9 "Protective services." Those activities, resources and  
10 supports provided to older adults under this act to detect,  
11 prevent, reduce or eliminate abuse, neglect, exploitation and  
12 abandonment.

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

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

20 "Service plan." As follows:

21 (1) A written plan developed by an area agency on aging  
22 on the basis of a comprehensive assessment of an older adult  
23 that describes identified needs, goals to be achieved and  
24 specific services designed to support goal attainment, which  
25 includes regular follow-up and predetermined reassessment of  
26 progress.

27 (2) As used in this definition, specific services  
28 designed to support goal attainment may include homemaker  
29 services, home-delivered meals, personal care, other in-home  
30 services, emergency shelter or food, legal aid services and

1 transportation services.

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

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

9 "Suspicious death." A death which is unexpected with  
10 unexplained circumstances or cause.

11 Section 104-A. Intent.

12 It is not the intent of this act to impose responsibility on  
13 an individual if the responsibility would not otherwise exist in  
14 law.

15 CHAPTER 2-A

16 DUTIES OF DEPARTMENT

17 Sec.

18 201-A. Public education.

19 202-A. Interdepartmental consultation.

20 203-A. Training required.

21 204-A. Confidentiality.

22 205-A. Schedule and annual plan.

23 Section 201-A. Public education.

24 The department shall conduct an ongoing campaign designed to  
25 inform and educate older adults, professionals and the general  
26 public about the need for and the availability of protective  
27 services under this act.

28 Section 202-A. Interdepartmental consultation.

29 The following apply:

30 (1) The department shall consult with other Commonwealth

1 agencies on the design and implementation of the ongoing  
2 public awareness campaign.

3 (2) The department shall consider the concerns of area  
4 agencies on aging on the design and implementation of the  
5 ongoing public awareness campaign.

6 Section 203-A. Training required.

7 (a) Standards.--The department shall establish minimum  
8 standards of experience and training that protective services  
9 providers receiving money from the department shall be required  
10 to follow in the selection and assignment of employees for the  
11 provision of protective services.

12 (b) Mandatory reporters.--The department shall establish a  
13 training program for mandatory reporters to inform employees  
14 about the requirement to report under this act.

15 Section 204-A. Confidentiality.

16 The department shall establish methods which shall be used by  
17 an area agency on aging, its designees and its service providers  
18 to ensure the privacy of older adults receiving services and the  
19 confidentiality of all records.

20 Section 205-A. Schedule and annual plan.

21 (a) Establishment.--The department shall establish a  
22 schedule for the submission and approval of the plans associated  
23 with the development of training provided in section 203-A.

24 (b) Protective services plan.--Each area agency on aging  
25 shall include a protective services plan as part of its annual  
26 plan. The plan shall describe the local implementation of this  
27 act, including the organization, staffing, mode of operations  
28 and financing of protective services and the provisions made for  
29 the purchase of services, interagency relations, interagency  
30 agreements, service referral mechanisms and locus of

1 responsibility for cases with multiservice agency needs. The  
2 plan shall include a list of each public or private entity that  
3 has been identified by the area agency on aging as having  
4 substantial contact with potential victims or perpetrators of  
5 abuse, neglect, exploitation and abandonment. The list shall be  
6 submitted to the department for purposes of the public education  
7 campaign under section 201-A.

8 CHAPTER 3-A

9 DUTIES OF AREA AGENCIES ON AGING

10 Sec.

11 301-A. Receipt of reports.

12 302-A. Investigations.

13 303-A. Investigations involving facilities.

14 304-A. Investigations involving law enforcement officials.

15 305-A. Access to older adults.

16 306-A. Access to records.

17 307-A. Rights of older adults.

18 308-A. Confidentiality standards required.

19 309-A. Availability of protective services.

20 Section 301-A. Receipt of reports.

21 An area agency on aging must be capable of receiving reports  
22 of older adults in need of protective services at all times.  
23 This capability may include the use of a local emergency  
24 response system or a crisis intervention agency, if access can  
25 be made to a protective services caseworker in appropriate  
26 emergency situations, as set forth in regulations issued by the  
27 department. A report received orally shall be documented in a  
28 manner prescribed by the department.

29 Section 302-A. Investigations.

30 (a) Duty.--An area agency on aging shall investigate each

1 report in accordance with regulations issued by the department.  
2 The investigation shall be initiated within 72 hours after the  
3 receipt of the report and shall be carried out under regulations  
4 issued by the department. The regulations shall provide for the  
5 methods of conducting investigations and shall ensure that steps  
6 are taken to avoid a conflict of interest. Consent of the older  
7 adult is not required in order to investigate reports of abuse,  
8 neglect, exploitation or abandonment. The department and any  
9 other Commonwealth agency shall share information with each  
10 other and with mandatory reporters, fiduciaries and financial  
11 institutions as necessary to ensure the health, safety and  
12 welfare of the older adult and to assist financial institutions  
13 and fiduciaries in exercising the financial institutions' and  
14 fiduciaries' authority to prohibit disbursement of funds and  
15 transactions as provided by section 603-A.

16 (b) Closure.--If after investigation by the area agency on  
17 aging the report is unsubstantiated, the case shall be closed  
18 and all information identifying the reporter and the alleged  
19 perpetrator shall be immediately deleted from all records. For  
20 purposes of substantiating a pattern of abuse, neglect,  
21 exploitation or abandonment, the name of the alleged victim and  
22 any information describing the alleged act of abuse, neglect,  
23 exploitation or abandonment may be maintained for a period of  
24 three years under procedures established by the department.

25 (c) Timely assessment.--If the report is substantiated by  
26 the area agency on aging or if an assessment is necessary in  
27 order to determine whether or not the report is substantiated,  
28 the area agency on aging shall provide for a timely assessment  
29 if the older adult consents to an assessment. Upon completion of  
30 the assessment, written findings shall be prepared which shall

1 include recommended action. The service plan shall provide for  
2 the least restrictive alternative, encouraging self-  
3 determination and continuity of care, shall be in writing and  
4 shall include a recommended course of action, which may include  
5 the pursuit of civil or criminal remedies. If an older adult  
6 found to be in need of protective services does not consent to  
7 an assessment or the development of a service plan, the area  
8 agency on aging may apply the provisions of section 404-A to the  
9 case.

10 (d) Environmental factors.--An older adult may not be found  
11 to be abused solely on the grounds of environmental factors that  
12 are beyond the control of the older adult or the caretaker, such  
13 as inadequate housing, furnishings, income, clothing or medical  
14 care.

15 Section 303-A. Investigations involving facilities.

16 If the report concerns a facility, the area agency on aging  
17 shall notify the local ombudsman and the licensing agency.  
18 Investigations concerning facilities shall be conducted under  
19 procedures developed by the department in consultation with the  
20 Commonwealth agency with oversight authority for the facility.  
21 The department and any other Commonwealth agency shall share  
22 information with each other and with mandatory reporters,  
23 fiduciaries and financial institutions as necessary to ensure  
24 the health, safety and welfare of the older adult and to assist  
25 financial institutions and fiduciaries in exercising the  
26 financial institutions' and fiduciaries' authority to prohibit  
27 disbursement of funds and transactions as provided by section  
28 603-A. Facilities shall take reasonable steps to protect older  
29 adults following receipt of a report of suspected abuse,  
30 neglect, exploitation or abandonment involving an employee,

1 including a plan of supervision or suspension.

2 Section 304-A. Investigations involving law enforcement  
3 officials.

4 (a) Coordination.--To the extent possible, law enforcement  
5 officials, an area agency on aging and other mandatory reporters  
6 shall coordinate respective investigations and shall advise each  
7 other and provide applicable additional information on an  
8 ongoing basis.

9 (b) Notice to law enforcement.--Upon receiving a report of  
10 any of the following, the area agency on aging shall immediately  
11 notify a law enforcement official:

12 (1) Suspicious death.

13 (2) Serious bodily injury.

14 (3) Sexual abuse.

15 (c) Actions following referral.--

16 (1) Following a referral to a law enforcement official,  
17 the area agency on aging shall contact a law enforcement  
18 official to obtain information about actions taken and the  
19 outcomes, including any decisions regarding criminal charges,  
20 and the law enforcement official shall provide the  
21 information to the extent that the information is available.

22 (2) An area agency on aging shall report the information  
23 under paragraph (1) to the department in a manner prescribed  
24 by the department.

25 Section 305-A. Access to older adults.

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

27 (1) An area agency on aging shall have access to older  
28 adults who have been reported to be in need of protective  
29 services in order to:

30 (i) Investigate reports.

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

3           (iii) Provide for the delivery of services by the  
4 area agency on aging or other service provider as  
5 provided for under the service plan.

6           (2) If the area agency on aging is denied access to an  
7 older adult reported to be in need of protective services,  
8 the area agency on aging may petition the court for an order  
9 to require the appropriate access when either of the  
10 following conditions apply:

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

14           (ii) The area agency on aging can demonstrate that  
15 the older adult reported to be in need of protective  
16 services is denying access because of coercion, extortion  
17 or justifiable fear of future abuse, neglect,  
18 exploitation or abandonment.

19           (b) Petition.--The area agency on aging may petition the  
20 court for an order to require any of the following:

21           (1) Access to the older adult.

22           (2) A physical health evaluation of the older adult.

23           (3) A behavioral health evaluation of the older adult.

24 Section 306-A. Access to records.

25           (a) Area agency on aging access.--An area agency on aging  
26 shall, subject to the consent of the older adult, have access to  
27 all records for the purposes of:

28           (1) Assessing an older adult's need for services.

29           (2) Planning and delivery of services.

30           (3) Investigating reports.

1 (b) Refusal.--If the area agency on aging is denied access  
2 to records necessary for the completion of a proper  
3 investigation of a report, assessment or service plan, or the  
4 delivery of needed services in order to prevent further abuse,  
5 neglect, exploitation or abandonment of the older adult reported  
6 to be in need of protective services, the agency may petition  
7 the court of common pleas for an order requiring the appropriate  
8 access when either of the following conditions apply:

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

12 (2) The agency can demonstrate that the older adult is  
13 denying access to records because of incompetence, coercion,  
14 extortion or justifiable fear of future abuse, neglect,  
15 exploitation or abandonment.

16 (c) Request of certain records.--Records of State agencies,  
17 private organizations, financial institutions, fiduciaries,  
18 medical institutions and practitioners and persons reasonably  
19 suspected of engaging in or facilitating the abuse, neglect,  
20 exploitation or abandonment of an older adult, which the area  
21 agency on aging reasonably believes to be necessary to complete  
22 an investigation or assessment and service plan, shall be  
23 requested in written form and made available to the area agency  
24 on aging unless the disclosure is prohibited by any other  
25 provision of Federal or State law. Except as provided by a court  
26 order, access to financial records shall be limited to records  
27 relating to the most recent transaction or transactions that may  
28 comprise financial exploitation, not to exceed 60 calendar days  
29 prior to the first transaction that was reported or 60 calendar  
30 days after the last transaction that was reported.

1 (d) Compensation.--The area agency on aging or the  
2 department may compensate a person requested or ordered to  
3 provide records to the area agency on aging for the reasonable  
4 costs of producing records in a manner consistent with the  
5 requirements of section 1115(a) of the Right to Financial  
6 Privacy Act of 1978 (Public Law 95-630, 12 U.S.C. § 3415).  
7 Section 307-A. Rights of older adults.

8 (a) Notification.--An area agency on aging shall discreetly  
9 notify an older adult during an investigation that a report has  
10 been made and shall provide the older adult with a brief summary  
11 of the nature of the report.

12 (b) Information.--As provided in section 405-A, an older  
13 adult who is the subject of a report, or the older adult's  
14 guardian if the guardian is not named as a perpetrator in the  
15 report, may receive, upon written request, a summary of the  
16 report of need except information that would identify the  
17 individual who made a report of suspected abuse, neglect,  
18 exploitation or abandonment or persons who cooperated in a  
19 subsequent investigation.

20 (c) Appeal.--A denial of services by the department or an  
21 area agency on aging under this chapter may be appealed  
22 according to the provisions of the rules and regulations issued  
23 by the department under Article XXII-A of the act of April 9,  
24 1929 (P.L.177, No.175), known as The Administrative Code of  
25 1929.

26 Section 308-A. Confidentiality standards required.

27 Area agencies on aging shall utilize the department's  
28 confidentiality standards established under section 204-A.

29 Section 309-A. Availability of protective services.

30 An area agency on aging shall offer protective services under

1 any of the following conditions:

2 (1) An older adult requests the services.

3 (2) Another interested individual requests the services  
4 on behalf of the older adult.

5 (3) After investigation of a report, the area agency on  
6 aging determines that the older adult is in need of the  
7 services.

8 CHAPTER 4-A

9 PROTECTIVE SERVICES

10 Sec.

11 401-A. Consent by request.

12 402-A. Interference with services.

13 403-A. Financial obligations, liabilities and payments.

14 404-A. Involuntary intervention by emergency court order.

15 405-A. Confidentiality of records.

16 Section 401-A. Consent by request.

17 An older adult shall receive protective services voluntarily  
18 unless the services are ordered by a court of competent  
19 jurisdiction.

20 Section 402-A. Interference with services.

21 If a person interferes with the provision of services or  
22 interferes with the right of an older adult to consent to  
23 provision of services, an area agency on aging may petition the  
24 court for an order enjoining the interference.

25 Section 403-A. Financial obligations, liabilities and payments.

26 Older adults receiving protective services and agencies  
27 providing services under this chapter shall comply with the  
28 following provisions regarding liability for the payment of  
29 services:

30 (1) Funding to provide or make available protective

1 services under this chapter shall not be used in place of any  
2 public or private entitlements or benefits for which the  
3 older adult receiving protective services under this chapter  
4 is or may be eligible.

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

9 (3) Funding available to local protective services  
10 agencies under this chapter may be used to cover the costs of  
11 activities, including, but not limited to:

12 (i) Administering protective services plans.

13 (ii) Receiving and maintaining records of reports of  
14 abuse, neglect, exploitation and abandonment.

15 (iii) Conducting investigations of reported abuse,  
16 neglect, exploitation and abandonment.

17 (iv) Carrying out assessments and developing service  
18 plans.

19 (v) Petitioning the court.

20 (vi) Providing for emergency involuntary  
21 intervention.

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

28 (viii) Purchasing, on a temporary basis, services  
29 determined by a service plan to be necessary to reduce,  
30 correct or eliminate abuse, neglect, exploitation or

1 abandonment of an older adult if the services are not  
2 available within the existing resources of the area  
3 agency on aging or other appropriate provider. Purchase  
4 of services under this provision is limited to a 30-day  
5 period which may be renewed with adequate justification  
6 under regulations issued by the department.

7 (4) Older adults receiving protective services shall not  
8 be required to pay a fee for services received by other older  
9 adults if the receipt of the services by others is not  
10 subject to cost sharing.

11 Section 404-A. Involuntary intervention by emergency court  
12 order.

13 (a) Emergency petition.--An area agency on aging may  
14 petition a court of common pleas for an emergency order to  
15 provide protective services to an older adult who is at imminent  
16 risk of death, sexual abuse, serious bodily injury or financial  
17 exploitation. The court of common pleas shall grant the area  
18 agency on aging's petition if the court finds, by clear and  
19 convincing evidence, that failure to provide protective services  
20 will place the older adult at imminent risk of death, sexual  
21 abuse, serious bodily injury or financial exploitation. The  
22 courts of common pleas of each judicial district shall ensure  
23 that a judge or magisterial district judge is available at all  
24 times to accept and rule on petitions for emergency court orders  
25 under this section if the area agency on aging determines that a  
26 delay until normal court hours may significantly increase danger  
27 to the older adult.

28 (b) Limited order.--The court, after finding clear and  
29 convincing evidence of the need for an emergency order, shall  
30 order only services necessary to remove the conditions creating

1 the established need.

2 (c) Right to counsel.--In order to protect the rights of an  
3 older adult for whom protective services are being ordered, an  
4 emergency court order under this section shall provide that the  
5 older adult has the right to legal counsel. If the older adult  
6 is unable to provide for counsel, counsel shall be appointed by  
7 the court.

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

12 (e) Health and safety requirements.--The area agency on  
13 aging shall take reasonable steps to ensure that while the older  
14 adult is receiving services under an emergency court order, the  
15 health and safety needs of any of the older adult's dependents  
16 are met and that the personal property and dwelling of the older  
17 adult are secure.

18 Section 405-A. Confidentiality of records.

19 (a) Requirement.--Information contained in reports, records  
20 of investigation, assessments and service plans created under  
21 this chapter shall be considered privileged and confidential and  
22 shall be maintained under regulations promulgated by the  
23 department. The department or the area agency on aging may not  
24 release information that could be detrimental to the older adult  
25 except that the information shall be released to a law  
26 enforcement official under subsection (b) (2) and may be used by  
27 the department in civil proceedings, subject to protective  
28 orders. All information contained in protective service records  
29 is subject to other Federal and State confidentiality and  
30 security laws.

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

3 (1) Protective services records may be provided to a  
4 court of competent jurisdiction or to another party pursuant  
5 to a court order. A subpoena shall not be a court order for  
6 purposes of this section.

7 (2) Protective services records may be provided to law  
8 enforcement officials or a coroner if the information is  
9 relevant to the official's or coroner's investigation of  
10 abuse, neglect, exploitation, abandonment or death of the  
11 older adult. The protective services records shall not be  
12 subject to the act of February 14, 2008 (P.L.6, No.3), known  
13 as the Right-to-Know Law.

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

18 (4) The older adult who is the subject of a report or  
19 the older adult's guardian, if the guardian is not named as a  
20 perpetrator in the report, may receive, upon written request,  
21 a summary of the report of need except information that would  
22 identify the individual who made a report of suspected abuse,  
23 neglect, exploitation or abandonment or persons who  
24 cooperated in a subsequent investigation.

25 (5) An individual who makes a report of suspected abuse,  
26 neglect, exploitation or abandonment may receive, upon  
27 written request, confirmation from the department that the  
28 report was received and the area agency on aging is acting in  
29 accordance with this chapter.

30 (6) For the purposes of monitoring agency performance or

1 conducting other official duties, appropriate staff of the  
2 department, as designated by the Secretary of Aging, may  
3 access protective services records.

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

8 (8) The department or the area agency on aging may share  
9 a summary of protective services information with another  
10 area agency on aging that is performing responsibilities  
11 under this chapter relevant to older adults within the area  
12 agency on aging's jurisdiction.

13 (9) An employee of an agency of another state who  
14 performs older adult protective services similar to those  
15 under this chapter may access a summary of protective  
16 services information relevant to older adults within the area  
17 agency on aging's jurisdiction.

18 (10) Protective services records may be provided to a  
19 health care provider who is examining or treating the older  
20 adult and who suspects that the older adult is in need of  
21 protection under this chapter.

22 (11) Protective services records may be provided to the  
23 director, or an individual specifically designated in writing  
24 by the director, of a hospital or other medical institution  
25 where the older adult is being treated if the director or  
26 designee suspects that the recipient is in need of protection  
27 under this act.

28 (12) Unless prohibited by Federal law, protective  
29 services records relating to financial exploitation may be  
30 provided to a financial institution or fiduciary as necessary

1 to exercise the authority to prohibit disbursement of funds  
2 and transactions provided under section 603-A.

3 CHAPTER 5-A

4 REPORTING

5 Sec.

6 501-A. Voluntary reporting.

7 502-A. Mandatory reporting.

8 503-A. Mandatory reporting to law enforcement officials and  
9 department.

10 504-A. Contents of reports.

11 505-A. Mandatory reporter training.

12 506-A. Coroner.

13 507-A. Protecting identity of reporter and cooperating  
14 witnesses.

15 Section 501-A. Voluntary reporting.

16 An individual having reasonable cause to believe that an  
17 older adult may be a victim of abuse, neglect, exploitation or  
18 abandonment may report the information to an area agency on  
19 aging.

20 Section 502-A. Mandatory reporting.

21 A mandatory reporter who has reasonable cause to suspect that  
22 an older adult may be a victim of abuse, neglect, exploitation  
23 or abandonment shall immediately make an oral report to the area  
24 agency on aging. If applicable, an area agency on aging shall  
25 advise the mandatory reporter of additional reporting  
26 requirements that may apply under section 503-A. Within 48 hours  
27 of making the oral report, the mandatory reporter shall make a  
28 written report to the area agency on aging.

29 Section 503-A. Mandatory reporting to law enforcement officials  
30 and department.

1 In addition to the report under section 502-A, a mandatory  
2 reporter who has reasonable cause to suspect that an older adult  
3 may be a victim of suspicious death, serious bodily injury or  
4 sexual abuse shall immediately contact law enforcement officials  
5 and the department to make an oral report. Within 48 hours of  
6 making the oral report, the mandatory reporter shall make a  
7 written report to appropriate law enforcement officials and to  
8 the area agency on aging. The area agency on aging shall forward  
9 the report to the department within 48 hours of receipt.

10 Section 504-A. Contents of reports.

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

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

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

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

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

23 (5) Any relevant information known related to the  
24 identity of the alleged perpetrator, including, but not  
25 limited to, name, age, sex and relationship to the older  
26 adult.

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

30 Section 505-A. Mandatory reporter training.

1 Mandatory reporters shall be trained by either the department  
2 or an agent of the department on the reporting requirements  
3 under this chapter.

4 Section 506-A. Coroner.

5 If there is reasonable cause to suspect that an older adult  
6 died as a result of abuse, neglect, exploitation or abandonment,  
7 including a death within a coroner's jurisdiction under the act  
8 of August 9, 1955 (P.L.323, No.130), known as The County Code,  
9 an area agency on aging shall give the oral report and forward a  
10 copy of the written report as provided in section 504-A to the  
11 appropriate coroner within 24 hours. The written report shall be  
12 maintained as confidential by the coroner.

13 Section 507-A. Protecting identity of reporter and cooperating  
14 witnesses.

15 (a) Prohibition.--Except for disclosures to law enforcement  
16 officials and coroners and shall not be subject to the act of  
17 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law,  
18 the release of records that would identify the individual who  
19 made a report under this chapter or an individual who cooperated  
20 in a subsequent investigation is prohibited.

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

25 CHAPTER 6-A

26 FINANCIAL INSTITUTIONS AND FIDUCIARIES

27 Sec.

28 601-A. Reporting financial exploitation.

29 602-A. Financial services provider training.

30 603-A. Disbursement of money and transactions.

1 604-A. Immunity and defenses.

2 Section 601-A. Reporting financial exploitation.

3 Notwithstanding any law limiting or prohibiting disclosure,  
4 except as otherwise provided by Federal law, a financial  
5 services provider, including a designated employee of a  
6 financial services provider, may report financial exploitation  
7 if the employee reasonably believes that financial exploitation  
8 of an older adult may have occurred, may have been attempted or  
9 is being attempted.

10 Section 602-A. Financial services provider training.

11 (a) Requirement.--A financial services provider with  
12 employees in this Commonwealth or with employees regularly  
13 engaging in financial transactions with or on behalf of older  
14 adults in this Commonwealth shall provide training to employees  
15 who have direct contact with older adults and conduct financial  
16 transactions for or on behalf of older adults.

17 (b) Program.--The department, in consultation with the  
18 Department of Banking and Securities and representatives of the  
19 financial services industry, may establish a model training  
20 program for employees of financial services providers regarding  
21 the identification and prevention of financial exploitation of  
22 older adults and on procedures to provide relief to older adults  
23 from financial exploitation, including training regarding the  
24 following:

25 (1) When to report suspected financial exploitation.

26 (2) To whom suspected exploitation should be reported.

27 (3) The information to be included in a report.

28 (4) The applicable laws, rules and regulations that must  
29 be followed while reporting suspected financial exploitation.

30 (c) Information.--The financial services provider training

1 shall include information that:

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

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

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

12 (iii) Suspicious signatures on checks.

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

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

23 Section 603-A. Disbursement of money and transactions.

24 (a) Reasonable belief.--If a financial services provider or  
25 fiduciary reasonably believes, after initiating an internal  
26 review of a disbursement or transaction, that financial  
27 exploitation of an older adult may have occurred, may have been  
28 attempted or is being attempted, the financial services provider  
29 or fiduciary may refuse to disburse money or engage in a  
30 transaction, as appropriate, to prevent financial exploitation

1 of an older adult with respect to the following accounts:

2 (1) An account of the older adult.

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

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

7 (b) Area agency on aging or law enforcement.--A financial  
8 services provider or fiduciary may refuse to disburse money or  
9 engage in a transaction under this section if an area agency on  
10 aging or law enforcement official provides information to the  
11 financial services provider or fiduciary demonstrating that it  
12 is reasonable to believe that financial exploitation of an older  
13 adult may have occurred, may have been attempted or is being  
14 attempted.

15 (c) Discretion.--A financial services provider or fiduciary  
16 shall not be required to refuse to disburse money or engage in a  
17 transaction when provided with information alleging that  
18 financial exploitation may have occurred, may have been  
19 attempted or is being attempted, but may use its discretion to  
20 determine whether to refuse to disburse money based on the  
21 information available to the financial services provider or  
22 fiduciary.

23 (d) Duties.--Except as provided under Federal or State law,  
24 a financial services provider or fiduciary that refuses to  
25 disburse money or engage in a transaction based on a reasonable  
26 belief that financial exploitation of an older adult may have  
27 occurred, may have been attempted or is being attempted shall:

28 (1) Make a reasonable effort to notify, orally or in  
29 writing, each person authorized to transact business on the  
30 account, that is a beneficiary of the account or that has

1 been authorized by the older adult to receive notifications  
2 regarding account activity, except for a person reasonably  
3 believed to have engaged in suspected or attempted financial  
4 exploitation of the older adult. A notification shall be  
5 sufficient if it provides:

6 (i) Notice that the financial institution or  
7 fiduciary has temporarily blocked the disbursement of  
8 funds or delayed the execution of transactions as  
9 authorized under section 601-A.

10 (ii) The name of the financial institution or  
11 fiduciary.

12 (iii) The account or transaction to which the  
13 notification applies.

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

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

19 (2) Immediately make an oral report to the agency.

20 Within two business days of making an oral report, the  
21 financial services provider shall make a written report to  
22 the area agency on aging.

23 (e) Expiration.--A refusal to disburse money or engage in a  
24 transaction as authorized by this section based on the  
25 reasonable belief of a financial services provider that  
26 financial exploitation of an older adult may have occurred, may  
27 have been attempted or is being attempted shall expire upon the  
28 sooner of the following:

29 (1) Fifteen business days after the date on which the  
30 financial services provider or fiduciary first refused to

1 disburse the money or engage in the transaction, unless  
2 terminated or extended by an order of a court of competent  
3 jurisdiction, a law enforcement official, the department or  
4 an area agency on aging. An additional 10 business days shall  
5 be permitted, if requested by a law enforcement official, the  
6 department or an area agency on aging, following the  
7 submission of a petition for a court order further extending  
8 the time period.

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

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

20 Section 604-A. Immunity and defenses.

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

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

28 (2) A decision to make a report or not make a report  
29 under this act.

30 (3) A decision to allow the disbursement of money or

1 engage in a transaction under this act.

2 (4) A refusal to disburse money or engage in a  
3 transaction under this act.

4 (5) The release of information to a law enforcement  
5 official, the department or an area agency on aging as  
6 authorized by this act.

7 (6) The provision of a notice under section 603-A.

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

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

16 (2) A reasonable belief that payment of a check will  
17 facilitate the financial exploitation of an older adult shall  
18 constitute reasonable grounds to doubt the collectability of  
19 the item for purposes of the Expedited Funds Availability Act  
20 (Public Law 100-86, 12 U.S.C. § 4001 et seq.), the Check  
21 Clearing for the 21st Century Act (Public Law 108-100, 12  
22 U.S.C. § 5001 et seq.) and 12 CFR Pt. 229 (relating to  
23 availability of funds and collection of checks).

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

27 CHAPTER 7-A

28 CRIMINAL HISTORY

29 Sec.

30 701-A. Criminal history.

1 702-A. Grounds for denying employment.

2 703-A. Provisional employees for limited periods.

3 Section 701-A. Criminal history.

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

7 (1) Under 18 Pa.C.S. Ch. 91 (relating to criminal  
8 history record information), a report of criminal history  
9 record information from the Pennsylvania State Police or a  
10 statement from the Pennsylvania State Police that the central  
11 repository contains no information relating to that person.  
12 The criminal history record information shall be limited to  
13 that which is disseminated under 18 Pa.C.S. § 9121(b)(2)  
14 (relating to general regulations).

15 (2) A report of Federal criminal history record  
16 information pursuant to the Federal Bureau of Investigation's  
17 appropriation under the Departments of State, Justice, and  
18 Commerce, the Judiciary, and Related Agencies Appropriation  
19 Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department  
20 shall be the intermediary for the purposes of this paragraph.  
21 For the purposes of this paragraph, the individual shall  
22 submit a full set of fingerprints in a manner prescribed by  
23 the department. The Commonwealth shall submit the  
24 fingerprints to the Federal Bureau of Investigation for a  
25 national criminal history record check. The information  
26 obtained from the criminal record check shall be used by the  
27 department to determine the individual's eligibility. The  
28 determination shall be submitted to the administrator by the  
29 applicant, prior to commencing employment, or by the  
30 employee. The administrator shall insure confidentiality of

1 the information. The provisions of 18 Pa.C.S. § 9121(b)(2)  
2 shall not apply if the request for a report of Federal  
3 criminal history record information is made under this  
4 section.

5 (b) Reports.--The following individuals shall submit the  
6 reports of criminal history record information required under  
7 subsection (a):

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

9 (2) An employee.

10 (3) An administrator who has or may have direct contact  
11 with a recipient.

12 (4) An operator who has or may have direct contact with  
13 a recipient.

14 (c) New reports.--New reports of criminal history record  
15 information shall be obtained in accordance with the following:

16 (1) Beginning on the effective date of this section, an  
17 individual under subsection (b) shall be required to obtain  
18 the report of criminal history record information required  
19 under subsection (a)(2) every 60 months. The date for  
20 required renewal shall be from the date of the individual's  
21 oldest report of criminal history record information.

22 (2) An individual identified in subsection (b) with a  
23 current report of criminal history record information issued  
24 prior to the effective date of this subsection shall be  
25 required to obtain the report of criminal history record  
26 information required under subsection (a)(2) within 60 months  
27 from the date of the individual's oldest report of criminal  
28 history record information or, if the current report of  
29 criminal history record information is older than 60 months,  
30 within one year of the effective date of this section.

1           (3) An individual identified in subsection (b) who was  
2 previously not required to have a report of criminal history  
3 information shall be required to obtain the reports of  
4 criminal history information required under subsection (a) no  
5 later than a year from the effective date of this section.

6 (d) Written notice of new arrest or conviction.--

7           (1) If an employee is arrested for or convicted of an  
8 offense that would constitute grounds for denying employment  
9 under section 702-A, the employee shall provide the  
10 administrator or designee with written notice not later than  
11 72 hours after the arrest or conviction.

12           (2) If the person responsible for employment decisions  
13 or the administrator has a reasonable belief that an employee  
14 was arrested or convicted for an offense that would  
15 constitute grounds for denying employment under section 702-  
16 A, or the employee has provided notice as required under  
17 paragraph (1), the person responsible for employment  
18 decisions or the administrator shall immediately require the  
19 employee to submit current information as required under  
20 subsection (a). The cost of the information set forth in  
21 subsection (a) shall be borne by the facility.

22 Section 702-A. Grounds for denying employment.

23           (a) General rule.--Subject to subsection (f), a facility may  
24 not hire or retain an individual required to submit information  
25 under section 701-A if the individual's criminal history record  
26 information indicates that the individual has been convicted of  
27 an offense under one or more of the following provisions of 18  
28 Pa.C.S. (relating to crimes and offenses):

29           (1) A felony under Chapter 25 (relating to criminal  
30 homicide).

1           (2) Section 3011 (relating to trafficking in  
2 individuals).

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

4           (4) Section 3124.2 (relating to institutional sexual  
5 assault).

6           (5) Section 3125 (relating to aggravated indecent  
7 assault).

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

10          (b) Twenty-five-year ban.--Subject to subsection (f), a  
11 facility may not hire or retain an individual required to submit  
12 information under section 701-A within 25 years from the  
13 individual's release or discharge from a State or county  
14 correctional institution or from termination of supervised  
15 probation or parole, whichever is later, if the individual's  
16 criminal history record information indicates that the  
17 individual has been convicted of any of the following offenses  
18 under one or more of the following provisions of 18 Pa.C.S.:

19           (1) A misdemeanor under Chapter 25.

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

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

23           (4) A misdemeanor under section 2718 (relating to  
24 strangulation).

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

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

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

28           (8) Section 3122.1 (relating to statutory sexual  
29 assault).

30           (9) Section 3123 (relating to involuntary deviate sexual

- 1 intercourse).
- 2 (10) Section 3124.1 (relating to sexual assault).
- 3 (11) Section 3126 (relating to indecent assault).
- 4 (12) Section 3127 (relating to indecent exposure).
- 5 (13) Section 3129 (relating to sexual intercourse with
- 6 animal).
- 7 (14) Section 3301 (relating to arson and related
- 8 offenses).
- 9 (15) Section 3502 (relating to burglary).
- 10 (16) Chapter 37 (relating to robbery).
- 11 (17) Section 4115 (relating to falsely impersonating
- 12 persons privately employed).
- 13 (18) A felony under section 4120 (relating to identity
- 14 theft).
- 15 (19) Section 4302 (relating to incest).
- 16 (20) Section 4303 (relating to concealing death of
- 17 child).
- 18 (21) A felony offense under section 4304 (relating to
- 19 endangering welfare of children).
- 20 (22) Section 4305 (relating to dealing in infant
- 21 children).
- 22 (23) Section 5902(b.1) (relating to prostitution and
- 23 related offenses).
- 24 (24) Section 5903(a)(1), (3)(ii), (4)(ii), (5)(ii) or
- 25 (6), (c) or (d) (relating to obscene and other sexual
- 26 materials and performances).
- 27 (25) Section 6312 (relating to sexual abuse of
- 28 children).
- 29 (26) Section 6318 (relating to unlawful contact with
- 30 minor).

1           (27) Section 6319 (relating to solicitation of minors to  
2 traffic drugs).

3           (28) Section 6320 (relating to sexual exploitation of  
4 children).

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

7           (c) Ten-year ban.--Subject to subsection (f), a facility may  
8 not hire or retain an individual required to submit information  
9 under section 701-A within 10 years from the individual's  
10 release or discharge from a State or county correctional  
11 institution or from termination of supervised probation or  
12 parole, whichever is later, if the individual's criminal history  
13 record information indicates that the individual has been  
14 convicted of any of the following offenses under one or more of  
15 the following provisions of 18 Pa.C.S.:

16           (1) A misdemeanor under section 2710 (relating to ethnic  
17 intimidation).

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

20           (3) Section 2909 (relating to concealment of whereabouts  
21 of a child).

22           (4) Section 3131 (relating to unlawful dissemination of  
23 intimate image).

24           (5) A felony under Chapter 39 (relating to theft and  
25 related offenses) or two or more misdemeanors under Chapter  
26 39.

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

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

30           (8) A felony under section 4106 (relating to access

1 device fraud) or two or more misdemeanors under section 4106.

2 (9) Section 4114 (relating to securing execution of  
3 documents by deception).

4 (10) A misdemeanor under section 4120 (relating to  
5 identity theft).

6 (11) A misdemeanor under section 4304.

7 (12) Section 4952 (relating to intimidation of witnesses  
8 or victims).

9 (13) Section 4953 (relating to retaliation against  
10 witness, victim or party).

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

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

14 (d) Five-year ban.--Subject to subsection (f), a facility  
15 may not hire or retain an individual required to submit  
16 information under section 701-A within five 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 that the  
21 individual has been convicted of any of the following offenses  
22 under one or more of the following provisions of 18 Pa.C.S.:

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

26 (2) A felony under section 4105 (relating to bad  
27 checks).

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

30 (e) Date of release or discharge.--To determine the date of

1 an individual's release, discharge or termination of  
2 supervision, an individual shall provide to the department, upon  
3 request, documentation relating to the individual's release or  
4 discharge from a State or county correctional institution or  
5 from termination of supervised probation or parole.

6 (f) Waiver request.--Unless prohibited by Federal law, the  
7 department may grant a waiver of the prohibitions under  
8 subsections (a), (b), (c) and (d) when an individual submits a  
9 written waiver request. The department shall review a written  
10 request within 45 days. The waiver request shall be submitted on  
11 a form as prescribed by the department and shall contain the  
12 following:

13 (1) The length of time since the individual's  
14 conviction.

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

16 (3) If the individual was incarcerated, a copy of the  
17 order from the Federal, State or local jurisdiction that  
18 released the individual from incarceration, including the  
19 date of release.

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

21 (5) Demonstrated prior and present relevant work  
22 experience of the individual.

23 (6) Competency and proficiency of the individual in  
24 relevant work, including the provision of essential care-  
25 dependent services.

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

28 (8) Demonstrated good moral character in personal and  
29 occupational or employment affairs.

30 (9) A copy of a previously approved waiver request for

1 another job position, as applicable.

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

7 Section 703-A. Provisional employees for limited periods.

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

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

12 (i) The applicant has applied for a criminal history  
13 report required under section 701-A(a) and provided the  
14 facility with a copy of the completed request forms.

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

19 (iii) The applicant swears or affirms in writing  
20 that the applicant is not disqualified from employment  
21 under this chapter.

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

27 (2) If the information obtained from the criminal  
28 history report reveals that the applicant is disqualified  
29 from employment under section 702-A, the applicant shall be  
30 terminated immediately.

1 (b) Supervision.--The department, in consultation with the  
2 Department of Health and the Department of Human Services, shall  
3 develop guidelines regarding the supervision of provisional  
4 employees. Supervision shall include random direct supervision  
5 by an employee who has been employed by the facility for a  
6 period of at least one year.

7 CHAPTER 8-A

8 REMEDIES

9 Sec.

10 801-A. Penalties.

11 802-A. Immunity from civil and criminal liability.

12 Section 801-A. Penalties.

13 (a) Civil penalties.--

14 (1) A mandatory reporter who fails to comply or  
15 obstructs compliance with the provisions of this act or who  
16 intimidates or commits a retaliatory act against an  
17 individual who complies in good faith with the provisions of  
18 this act commits a violation of this act and shall be subject  
19 to an administrative penalty. The department shall have  
20 jurisdiction to determine violations of this act and may  
21 issue an order assessing a civil penalty of not more than  
22 \$5,000. An order under this paragraph is subject to 2 Pa.C.S.  
23 Chs. 5 Subch. A (relating to practice and procedure of  
24 Commonwealth agencies) and 7 Subch. A (relating to judicial  
25 review of Commonwealth agency action).

26 (2) Each Commonwealth agency that licenses a facility  
27 shall have jurisdiction regarding violations of section 701-A  
28 and may issue an order assessing a civil penalty not to  
29 exceed \$5,000.

30 (3) An older adult or a person making a report or

1 cooperating with the area agency on aging, including  
2 providing testimony in an administrative or judicial  
3 proceeding, shall be free from any discriminatory,  
4 retaliatory or disciplinary action by an employer or by any  
5 other person. A person who violates this paragraph shall be  
6 subject to a civil action by the reporter or the older adult.  
7 The reporter or older adult shall recover treble compensatory  
8 damages, compensatory and punitive damages or \$5,000,  
9 whichever is greater.

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

21 (b) Criminal penalties.--

22 (1) A mandatory reporter who intentionally fails to  
23 report suspected abuse, neglect, exploitation or abandonment  
24 commits a summary offense for the first violation and a  
25 misdemeanor of the second degree for a second or subsequent  
26 violation and shall, upon conviction, be sentenced to pay a  
27 fine of \$5,000 or to imprisonment for not more than one year,  
28 or both.

29 (2) An individual who makes a false statement or  
30 representation of a material fact in a report of need commits

1 a misdemeanor of the first degree and shall, upon conviction,  
2 be sentenced to pay a fine of not more than \$10,000 or to  
3 imprisonment for not more than five years, or both.

4 (c) Immunity.--

5 (1) An individual participating in the making of a  
6 report of need, or who provides testimony in an  
7 administrative or judicial proceeding in a court of this  
8 Commonwealth arising out of a report, shall be immune from  
9 any civil or criminal liability on account of the report or  
10 testimony related to good faith compliance with this act.  
11 This immunity shall not extend to liability for acts of  
12 abuse, neglect, exploitation or abandonment, even if the acts  
13 are the subject of the report or testimony.

14 (2) An entity that employs an individual required or  
15 permitted to make a report under this act shall not be held  
16 civilly liable for any action directly related to good faith  
17 compliance with this act.

18 (d) Use.--Money collected under this act by the department  
19 shall be used for department programs to investigate and prevent  
20 the abuse, neglect, exploitation and abandonment of older  
21 adults.

22 Section 802-A. Immunity from civil and criminal liability.

23 In the absence of willful misconduct or gross negligence, the  
24 area agency on aging, the director or employees of the area  
25 agency on aging, protective services workers or employees of the  
26 department shall not be civilly or criminally liable for any  
27 decision or action or resulting consequence of decisions or  
28 action when acting under and according to the provisions of this  
29 act.

30 CHAPTER 9-A

1 ADMINISTRATION

2 Sec.

3 901-A. Funding.

4 902-A. Regulations.

5 Section 901-A. Funding.

6 Money necessary to administer this act shall be provided by  
7 an annual appropriation by the General Assembly.

8 Section 902-A. Regulations.

9 The department shall promulgate rules and regulations to  
10 carry out the provisions this act and shall annually present to  
11 the General Assembly a report on the program and services  
12 performed. State agencies with oversight authority over entities  
13 impacted by this act shall promulgate regulations necessary to  
14 assist the department in implementing this act.

15 Section 3. This act shall take effect as follows:

16 (1) The addition of section 202-A of the act shall take  
17 effect in one year.

18 (2) The remainder of this act shall take effect  
19 immediately.