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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1925** Session of  
2003

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INTRODUCED BY VEON, SATHER, WHEATLEY, CURRY, PETRARCA, LEACH,  
GEORGE, BEBKO-JONES, FORCIER, TRAVAGLIO, GEIST, GINGRICH,  
SHANER, RUFFING, THOMAS, PICKETT, ARMSTRONG, LAUGHLIN, KOTIK,  
BELARDI, GERGELY, LEVDANSKY, FREEMAN, COSTA, MANN, SOLOBAY,  
TANGRETTI, SCHRODER, SCRIMENTI, HARHAI, ADOLPH, FRANKEL,  
WILT, HARRIS, READSHAW, GRUCELA, DeWEESE, COY, SANTONI,  
PISTELLA, CAPPELLI, TIGUE, FABRIZIO, BUNT, HESS, CORRIGAN,  
McGEEHAN, WOJNAROSKI, WALKO, WANSACZ, YUDICHAK, STABACK,  
T. STEVENSON AND ROBERTS, AUGUST 5, 2003

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REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,  
AUGUST 5, 2003

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AN ACT

1 Providing for protective services for adults with developmental  
2 disabilities, for reporting requirements, for powers and  
3 duties of the Department of Aging, the Department of Health  
4 and the Department of Public Welfare, for enforcement and for  
5 civil and criminal penalties.

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25 The General Assembly of the Commonwealth of Pennsylvania  
26 hereby enacts as follows:

27 CHAPTER 1

28 PRELIMINARY PROVISIONS

29 Section 101. Short title.

30 This act shall be known and may be cited as the Developmental

1 Disabilities Adult Protective Services Act.

2 Section 102. Declaration of policy.

3 The General Assembly finds and declares as follows:

4 (1) Adults with developmental disabilities who lack the  
5 capacity to protect themselves and are at imminent risk of  
6 abuse, neglect, exploitation or abandonment should have  
7 access to and be provided with services necessary to protect  
8 their health, safety and welfare.

9 (2) It is not the purpose of this act to place  
10 restrictions upon the personal liberty of individuals with  
11 developmental disabilities, but this act should be liberally  
12 construed to assure the availability of protective services  
13 to individuals in need of them.

14 (3) Protective services shall safeguard the rights of  
15 adults with developmental disabilities while protecting them  
16 from abuse, neglect, exploitation and abandonment.

17 (4) It is the intent of the General Assembly to provide  
18 for the detection and reduction, correction and elimination  
19 of abuse, neglect, exploitation and abandonment of adults  
20 with developmental disabilities and to establish a program of  
21 protective services for adults in need of protective  
22 services.

23 Section 103. Definitions.

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

27 "Abandonment." The desertion of an adult with a  
28 developmental disability by a caretaker.

29 "Abuse." The occurrence of one or more of the following  
30 acts:

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

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

7 (3) Sexual harassment, rape or abuse as defined under 23  
8 Pa.C.S. Ch.61 (relating to protection from abuse). No adult  
9 shall be found to be abused solely on the grounds of  
10 environmental factors which are beyond the control of the  
11 adult or the caretaker, such as inadequate housing,  
12 furnishings, income, clothing or medical care.

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

17 "Adult." An individual under this act between the ages of 18  
18 and 59 years of age.

19 "Agency." The local provider of protective services, which  
20 is the Department of Public Welfare, the county or the agency  
21 designated by the department or county to provide protective  
22 services in the department's planning and service area.

23 "Care." Services provided to meet a person's need for  
24 personal care or health care. Services may include homemaker  
25 services, assistance with activities of daily living, physical  
26 therapy, occupational therapy, speech therapy, medical or social  
27 services, home-care aide services, companion-care services,  
28 private duty nursing services, respiratory therapy, intravenous  
29 therapy, in-home dialysis and durable medical equipment  
30 services, which are routinely provided unsupervised and which

1 require interaction with the care-dependent individual. The term  
2 does not include durable medical equipment delivery.

3 "Care-dependent individual." An adult who has a  
4 developmental disability that is attributable to a mental  
5 impairment that begins before age 22 and that results in  
6 substantial functional limitation in three or more areas of  
7 major life activity.

8 "Caretaker." An individual or institution that has assumed  
9 the responsibility for the provision of care needed to maintain  
10 the physical and mental health of an adult with a developmental  
11 disability. This responsibility may arise voluntarily, by  
12 contract, by receipt of payment for care, as a result of family  
13 relationship or by order of a court of competent jurisdiction.  
14 It is not the intent of this act to impose responsibility on any  
15 individual if the responsibility would not otherwise exist in  
16 law.

17 "Client assessment." Social, physical and psychological  
18 findings along with a description of the person's current  
19 resources and needs.

20 "Court." A court of common pleas or a district justice,  
21 where applicable.

22 "Department." The Department of Public Welfare of the  
23 Commonwealth.

24 "Developmental disability." A severe, chronic disability of  
25 an individual that:

26 (1) is attributable to a mental or physical impairment  
27 or combination of mental and physical impairments;

28 (2) is manifested before the individual attains the age  
29 of 22;

30 (3) is likely to continue indefinitely;

1 (4) results in substantial functional limitations in  
2 three or more of the following areas of major life activity:

- 3 (i) self-care;
- 4 (ii) receptive and expressive language;
- 5 (iii) learning;
- 6 (iv) mobility;
- 7 (v) self-direction;
- 8 (vi) capacity for independent living;
- 9 (vii) economic self-sufficiency; and

10 (5) reflects the individual's need for a combination and  
11 sequence of special, interdisciplinary or generic services,  
12 individualized supports or other forms of assistance that are  
13 of lifelong or extended duration and are individually planned  
14 and coordinated.

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

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

30 "Facility." Any of the following:

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

4 (2) A home health care agency.

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

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

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

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

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

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

20 "Individual in need of protective services." An adult with a  
21 developmental disability who is unable to perform or obtain  
22 services that are necessary to maintain physical and mental  
23 health, for whom there is no responsible caretaker and who is at  
24 imminent risk of danger to his person or property.

25 "Intimidation." An act or omission by any person or entity  
26 toward another person which is intended to, or with knowledge  
27 that the act or omission will, obstruct, impede, impair, prevent  
28 or interfere with the administration of this act or any law  
29 intended to protect adults with developmental disabilities from  
30 mistreatment.

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

2 (1) A police officer of a municipality.

3 (2) A district attorney.

4 (3) The Pennsylvania State Police.

5 "Neglect." The failure to provide for oneself or the failure  
6 of a caretaker to provide goods or services essential to avoid a  
7 clear and serious threat to physical or mental health. No  
8 individual who does not consent to the provision of protective  
9 services shall be found to be neglected solely on the grounds of  
10 environmental factors which are beyond the control of the  
11 individual or the caretaker, such as inadequate housing,  
12 furnishings, income, clothing or medical care.

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

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

19 "Secretary." The Secretary of Public Welfare of the  
20 Commonwealth.

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

25 "Serious physical injury." An injury that:

26 (1) causes a person severe pain; or

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

29 "Service plan." A written plan developed by the agency on  
30 the basis of comprehensive assessment of a client's need which

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

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

### 17 CHAPTER 3

#### 18 PROTECTIVE SERVICES

19 Section 301. Duties of department.

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

29 (b) Staff training.--The department shall establish minimum  
30 standards of training and experience which protective services

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

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

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

25 (a) Reporting.--Any person having reasonable cause to  
26 believe that a care-dependent individual with a developmental  
27 disability is in need of protective services may report the  
28 information to the agency which is the local provider of  
29 protective services.

30 (b) Receiving reports.--The agency shall be capable of

1 receiving reports of care-dependent individuals with  
2 developmental disabilities in need of protective services 24  
3 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 if access can be made to  
6 a protective services caseworker in appropriate emergency  
7 situations as set forth in regulations promulgated by the  
8 department. All reports received orally under this section shall  
9 be reduced to writing immediately by the person who receives the  
10 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 action  
17 by the reporter or the victim wherein the reporter or victim  
18 shall recover treble compensatory damages and punitive damages,  
19 or \$5,000, whichever is greater.

20 (d) 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 a civil action by the person intimidated or the victim wherein  
27 the person intimidated or the victim shall recover treble  
28 compensatory damages and punitive damages, or \$5,000, whichever  
29 is greater.

30 (e) 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 the acts are  
7 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 facility.--Any report  
21 concerning a care-dependent individual with a developmental  
22 disability residing in a State-licensed facility shall be  
23 investigated under procedures developed by the department in  
24 consultation with the State agency licensing the facility. If  
25 the report concerns a resident of a State-licensed facility for  
26 whom the area agency on aging provides ombudsman services, the  
27 ombudsman of the area agency on aging must be 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 not more than six months under procedures established by the  
7 department.

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

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

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

27 (1) A care-dependent individual with a developmental  
28 disability requests the services.

29 (2) Another interested person requests the services on  
30 behalf of the care-dependent individual.

1 (3) If, after investigation of a report, the agency  
2 determines the care-dependent individual is in need of the  
3 services.

4 (b) Consent by request.--Except as provided in section 307,  
5 a care-dependent individual with a developmental disability  
6 shall receive protective services voluntarily. In no event may  
7 protective services be provided under this chapter to any person  
8 who does not consent to the services or who, having consented,  
9 withdraws the consent unless the services are ordered by a  
10 court, requested by a guardian of the care-dependent individual  
11 or provided under section 307. Nothing in this chapter shall  
12 prevent the agency from petitioning for the appointment of a  
13 guardian pursuant to 20 Pa.C.S. (relating to decedents, estates  
14 and fiduciaries).

15 (c) Interference with services.--If any person interferes  
16 with the provision of services or interferes with the right of a  
17 care-dependent individual to consent to provision of services,  
18 the agency may petition the court for an order enjoining the  
19 interference.

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

22 (1) Investigations of reports under section 303.

23 (2) Assessment of client need.

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

26 (4) The delivery of services arranged for under the  
27 service plan developed by the agency to respond to an adult's  
28 assessed need for specific services.

29 (e) Access to persons.--The agency shall have access to a  
30 care-dependent individual who has been reported to be in need of

1 protective services in order to:

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

3 (2) Assess client need and develop a service plan for  
4 addressing the needs that have been determined.

5 (3) Provide for the delivery of services by the agency  
6 or other service provider arranged for under the service plan  
7 developed by the agency.

8 (f) Denial of access to persons.--If the agency is denied  
9 access to a care-dependent individual reported to be in need of  
10 protective services and access is necessary to complete the  
11 investigation or the client assessment and service plan, or the  
12 delivery of needed services in order to prevent further abuse,  
13 neglect, exploitation or abandonment of the adult reported to be  
14 in need of protective services, the agency may petition the  
15 court for an order to require the appropriate access when either  
16 of the following conditions apply:

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

20 (2) The agency can demonstrate that the care-dependent  
21 individual reported to be in need of protective services is  
22 denying access because of coercion, extortion or justifiable  
23 fear of future abuse, neglect, exploitation or abandonment.

24 (g) Access by consent.--The agency's access to confidential  
25 records held by other agencies or individuals and the agency's  
26 access to a care-dependent individual reported to be in need of  
27 protective services shall require the consent of the care-  
28 dependent individual or a court-appointed guardian except as  
29 provided for under this section or section 307.

30 (h) Denial of access to records.--If the agency is denied

1 access to records necessary for the completion of a proper  
2 investigation of a report or a client assessment and service  
3 plan, or the delivery of needed services in order to prevent  
4 further abuse, neglect, exploitation or abandonment of the care-  
5 dependent individual reported to be in need of protective  
6 services, the agency may petition the court of common pleas for  
7 an order requiring the appropriate access when either of the  
8 following conditions apply:

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

12 (2) The agency can demonstrate that the care-dependent  
13 individual is denying access to records because of lack of  
14 cognitive capacity, coercion, extortion or justifiable fear  
15 of future abuse, neglect, exploitation or abandonment.

16 Section 305. Immunity from civil and criminal liability.

17 In the absence of willful misconduct or gross negligence, the  
18 agency, the director, employees of the agency, protective  
19 services workers or employees of the department shall not be  
20 civilly or criminally liable for any decision or action or  
21 resulting consequence of decisions or actions when acting under  
22 and according to this chapter.

23 Section 306. Confidentiality of records.

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

1 court order.

2 (b) Limited access to the agency's protective services  
3 records.--

4 (1) In the event that an investigation by the agency  
5 results in a report of criminal conduct, law enforcement  
6 officials shall have access to all relevant records  
7 maintained by the agency or the department.

8 (2) In arranging specific services to carry out service  
9 plans, the agency may disclose to appropriate service  
10 providers information as may be necessary to initiate the  
11 delivery of services.

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

16 (4) The release of information that would identify the  
17 person who made a report of suspected abuse, neglect,  
18 exploitation or abandonment or person who cooperated in a  
19 subsequent investigation is prohibited unless the secretary  
20 can determine that the release will not be detrimental to the  
21 safety of the person.

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

26 (6) For the purposes of monitoring agency performance,  
27 appropriate staff of the department may access agency  
28 protective services records.

29 Section 307. Involuntary intervention by emergency court order.

30 (a) Emergency petition.--Where there was clear and

1 convincing evidence that if protective services are not  
2 provided, the individual to be protected is at imminent risk of  
3 death or serious physical harm, the agency may petition the  
4 court for an emergency order to provide the necessary services.  
5 The courts of common pleas of each judicial district shall  
6 ensure that a judge or district justice is available on a 24-  
7 hour-a-day, 365-day-a-year basis to accept and decide on  
8 petitions for an emergency court order under this section  
9 whenever the agency determines that a delay until normal court  
10 hours would significantly increase the danger the adult with the  
11 developmental disability encounters.

12 (b) Limited order.--The court, after finding clear and  
13 convincing evidence of the need for an emergency order, shall  
14 order only the services as are necessary to remove the  
15 conditions creating the established need.

16 (c) Right to counsel.--In order to protect the rights of a  
17 care-dependent individual for whom protective services are being  
18 ordered, an emergency court order under this section shall  
19 provide that the care-dependent individual has the right to  
20 legal counsel. If the care-dependent individual is unable to  
21 provide for counsel, counsel shall be appointed by the court.

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

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

1 (f) Exclusion of remedy.--Nothing in this chapter shall be  
2 interpreted to deny any care-dependent individual access to the  
3 emergency medical services or police protection that would be  
4 provided to anyone, regardless of age, in similar circumstances.  
5 Section 308. Individual rights.

6 (a) Rights of protective services clients.--The agency shall  
7 observe the following minimum requirements to safeguard the  
8 rights of a care-dependent individual who is reported to be in  
9 need of protective services:

10 (1) The agency shall discreetly notify the care-  
11 dependent individual during the investigation that a report  
12 has been made and shall provide the person with a brief  
13 summary of the nature of the report.

14 (2) As provided under section 306(b)(3), the care-  
15 dependent individual may request and the agency shall provide  
16 additional information contained in the report.

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

22 (4) Nothing in this act shall limit the right of any  
23 person with a developmental disability to file a petition  
24 pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from  
25 abuse).

26 (b) Rights of alleged abusers.--An individual who is alleged  
27 in a protective services report to be a perpetrator of the  
28 abuse, neglect, exploitation or abandonment of an adult with a  
29 developmental disability shall be entitled to the following if  
30 the report is substantiated by the agency:

1 (1) The individual shall be notified by the agency at  
2 the conclusion of the investigation of the report that  
3 allegations have been made and shall be given a brief summary  
4 of the allegations.

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

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

13 Section 309. Financial obligations; liabilities and payments.

14 Individuals receiving services and agencies providing  
15 services under this chapter shall comply with the following  
16 provisions regarding liability for the payment of services:

17 (1) Funding to provide or make available protective  
18 services under this chapter shall not supplant any public and  
19 private entitlements or resources for which a person  
20 receiving protective services under this chapter is or may be  
21 eligible and shall not be available until the person has  
22 exhausted eligibility and receipt of benefits under the  
23 public and private entitlements or resources.

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

27 (i) Administering protective services plans required  
28 under section 301(c).

29 (ii) Receiving and maintaining records of reports of  
30 abuse under section 302.

1 (iii) Conducting investigations of reported abuse  
2 under section 303.

3 (iv) Carrying out client assessments and developing  
4 service plans under section 303.

5 (v) Petitioning the court under sections 304 and  
6 307.

7 (vi) Providing emergency involuntary intervention  
8 under section 307.

9 (vii) Arranging for available services needed to  
10 carry out service plans, which may include, as  
11 appropriate, arranging for services for other household  
12 members in order to reduce, correct or eliminate abuse,  
13 neglect, exploitation or abandonment of an adult with a  
14 developmental disability.

15 (viii) Purchasing, on a temporary basis, services  
16 determined by a service plan to be necessary to reduce,  
17 correct or eliminate abuse, neglect, exploitation or  
18 abandonment of an adult with a developmental disability  
19 when the services are not available within the existing  
20 resources of the agency or other appropriate provider.  
21 Purchase of services under this provision is limited to a  
22 30-day period which may be renewed with adequate  
23 justification under regulations promulgated by the  
24 department.

25 (3) The obligation of the Commonwealth and the counties  
26 to provide funds to the department or any agency for services  
27 provided pursuant to this chapter shall be entirely  
28 discharged by the appropriations made to the department or an  
29 agency. If the agency has met its responsibility under the  
30 law, no action at law or equity shall be instituted in any

1 court to require the department, any county, agency or the  
2 Commonwealth to provide benefits or services under this  
3 chapter for which appropriations from the Commonwealth or  
4 counties are not available.

5 (4) Protective services clients receiving the same  
6 services provided to others under an agency service plan  
7 shall not be required to pay a fee for any services not  
8 subject to cost sharing for other adults with a developmental  
9 disability.

10 Section 310. Regulations and enforcement.

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

15 (b) Enforcement.--This chapter shall be enforced only after  
16 promulgation of regulations by the department, which shall occur  
17 no later than 12 months following enactment of this chapter,  
18 except that section 301 shall apply when the county or agency  
19 certifies to the department that it is prepared to fulfill its  
20 responsibilities. The certification shall be made within 90 days  
21 following promulgation of regulations.

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

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

25 CHAPTER 5

26 (RESERVED)

27 CHAPTER 7

28 ENFORCEMENT

29 Section 701. Reporting by employees.

30 (a) Mandatory reporting to agency.--

1 (1) An employee or an administrator who has reasonable  
2 cause to suspect that a recipient is a victim of abuse shall  
3 immediately make an oral report to the agency. If applicable,  
4 the agency shall advise the employee or administrator of  
5 additional reporting requirements that may pertain under  
6 subsection (b). An employee shall notify the administrator  
7 immediately following the report to the agency.

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

12 (3) The employee may request the administrator to make  
13 or to assist the employee to make the oral and written  
14 reports required by this subsection.

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

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

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

28 (3) The law enforcement officials shall notify the  
29 administrator that a report has been made with the law  
30 enforcement officials.

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

4 (c) Contents of report.--A written report under this section  
5 shall be in a manner and on forms prescribed by the department.  
6 The report shall include, at a minimum, the following  
7 information:

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

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

11 (3) Name and address of the facility.

12 (4) Nature of the alleged offense.

13 (5) Any specific comments or observations that are  
14 directly related to the alleged incident and the individual  
15 involved.

16 Section 702. Reports to department, coroner and medical  
17 examiner.

18 (a) Department.--

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

23 Supplemental reports shall be transmitted as they are  
24 obtained by the agency.

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

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

29 (ii) Where the suspected abuse occurred.

30 (iii) The age and sex of the alleged perpetrator and

1 victim.

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

4 (v) The name and relationship of the individual  
5 responsible for causing the alleged abuse to the victim,  
6 if known, and any evidence of prior abuse by that  
7 individual.

8 (vi) The source of the report.

9 (vii) The individual making the report and where  
10 that individual can be reached.

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

14 (ix) Any other information which the department may  
15 require by regulation.

16 (b) Coroner or medical examiner.--For a report under section  
17 701(a) which concerns the death of a recipient, if there is  
18 reasonable cause to suspect that the recipient died as a result  
19 of abuse, the agency shall give the oral report and forward a  
20 copy of the written report to the appropriate coroner or medical  
21 examiner within 24 hours.

22 Section 703. Investigation.

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

27 (b) Notification.--If law enforcement officials have  
28 reasonable cause to suspect that a recipient has suffered sexual  
29 abuse, serious physical injury, serious bodily injury or a  
30 suspicious death, law enforcement officials shall notify the

1 agency.

2 (c) Cooperation.--To the fullest extent possible, law  
3 enforcement officials, the facility and the agency shall  
4 coordinate their respective investigations. Law enforcement  
5 officials, the facility and the agency shall advise each other  
6 and provide any applicable additional information on an ongoing  
7 basis.

8 (d) Further notification.--Law enforcement officials shall  
9 notify the agency and the facility of a decision regarding  
10 criminal charges. The agency and the department shall keep a  
11 record of any decision regarding criminal charges.

12 (e) Compliance with Chapter 3.--In addition to the  
13 provisions of this section, the agency shall comply with Chapter  
14 3.

15 Section 704. Restrictions on employees.

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

26 (b) Prohibition.--Upon the filing of criminal charges  
27 against an employee, the Commonwealth agency which licenses the  
28 facility shall order the facility to immediately prohibit that  
29 employee from having access to recipients at the facility. If  
30 that employee is a director, operator, administrator or

1 supervisor, that employee shall be subject to restrictions  
2 deemed appropriate by the Commonwealth agency which licenses the  
3 facility to assure the safety of recipients of the facility.  
4 Section 705. Confidentiality of and access to confidential  
5 reports.

6 (a) General rule.--Except as provided in subsection (b), a  
7 report under this chapter shall be confidential.

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

10 (1) An employee of the department, county or of an  
11 agency in the course of official duties in connection with  
12 responsibilities under this chapter.

13 (2) An employee of the Department of Aging, the  
14 Department of Health or the Department of Public Welfare in  
15 the course of official duties.

16 (3) The State Long Term Care Ombudsman.

17 (4) An employee of an agency of another state which  
18 performs protective services similar to those under this  
19 chapter.

20 (5) A practitioner of the healing arts who is examining  
21 or treating a recipient and who suspects that the recipient  
22 is in need of protection under this chapter.

23 (6) The director, or an individual specifically  
24 designated in writing by the director, of any hospital or  
25 other medical institution where a victim is being treated if  
26 the director or designee suspects that the recipient is in  
27 need of protection under this chapter.

28 (7) A guardian of the recipient.

29 (8) A court of competent jurisdiction pursuant to a  
30 court order.

1 (9) The Attorney General.

2 (10) Law enforcement officials of any jurisdiction as  
3 long as the information is relevant in the course of  
4 investigating cases of abuse.

5 (11) A mandated reporter under Chapter 3 who made a  
6 report of suspected abuse. Information released under this  
7 paragraph shall be limited to the following:

8 (i) The final status of the report following the  
9 investigation.

10 (ii) Services provided or to be provided by the  
11 agency.

12 (c) Excision of certain names.--The name of the person  
13 suspected of committing the abuse shall be excised from a report  
14 made available under subsection (b)(5), (6) or (11).

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

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

25 Section 706. Penalties.

26 (a) Administrative.--

27 (1) An administrator who intentionally or willfully  
28 fails to comply or obstructs compliance with the provisions  
29 of this chapter or who intimidates or commits a retaliatory  
30 act against an employee who complies in good faith with the

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

4 (2) A facility owner that intentionally or willfully  
5 fails to comply with or obstructs compliance with this  
6 chapter or that intimidates or commits a retaliatory act  
7 against an employee who complies in good faith with this  
8 chapter commits a violation of this chapter and shall be  
9 subject to an administrative penalty under paragraph (3).

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

18 (b) Criminal.--

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

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

29 (c) Penalties for failure to report.--A person required  
30 under this chapter to report a case of suspected abuse who

1 willfully fails to do so commits a summary offense for the first  
2 violation and a misdemeanor of the third degree for a second or  
3 subsequent violation.

4 Section 707. Immunity.

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

8 CHAPTER 21

9 MISCELLANEOUS PROVISIONS

10 Section 2101. Regulations.

11 The Department of Aging, the Department of Health and the  
12 Department of Public Welfare shall promulgate the regulations  
13 necessary to carry out this chapter.

14 Section 2102. Effective date.

15 This act shall take effect in 60 days.