

## AMENDMENTS TO SENATE BILL NO. 899

Sponsor: SENATOR MENSCH

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

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

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

CHAPTER 69OLDER ADULTS PROTECTIVE SERVICESSubchapterA. Preliminary ProvisionsB. Duties of DepartmentC. Duties of Area Agencies on AgingD. Protective ServicesE. ReportingF. Financial Institutions and FiduciariesG. Criminal HistoryH. RemediesI. AdministrationSUBCHAPTER APRELIMINARY PROVISIONSSec.6901. Scope of chapter.6902. Definitions.6903. Intent.§ 6901. Scope of chapter.This chapter relates to older adult protective services.§ 6902. Definitions.

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

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

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

1 acts:

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

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

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

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

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

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

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

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

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

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

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

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

43 "Employee." An individual who:

44 (1) any of the following:

45 (i) is employed by a facility;

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

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

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

1 assets or property; or

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

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

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

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

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

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

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

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

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

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

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

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

42 (1) Personal care.

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

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

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

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

1 based settings, including with employment.

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

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

7 (1) A police officer of a municipality.

8 (2) A district attorney.

9 (3) A Pennsylvania State Police officer.

10 (4) The Attorney General.

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

14 "Mandatory reporter." Any of the following:

15 (1) Administrators and employees of a facility.

16 (2) Health care providers.

17 (3) A law enforcement official.

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

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

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

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

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

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

44 "Service plan." As follows:

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

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

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

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

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

12 "Suspicious death." A death which is unexpected with  
13 unexplained circumstances or cause.

14 § 6903. Intent.

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

18 SUBCHAPTER B  
19 DUTIES OF DEPARTMENT

20 Sec.

21 6910. Public education.

22 6911. Interdepartmental consultation.

23 6912. Training required.

24 6913. Confidentiality.

25 6914. Schedule and annual plan.

26 § 6910. Public education.

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

31 § 6911. Interdepartmental consultation.

32 The following apply:

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

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

39 § 6912. Training required.

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

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

48 § 6913. Confidentiality.

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

1 confidentiality of all records.

2 § 6914. Schedule and annual plan.

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

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

## 22 SUBCHAPTER C

### 23 DUTIES OF AREA AGENCIES ON AGING

24 Sec.

25 6920. Receipt of reports.

26 6921. Investigations.

27 6922. Investigations involving facilities.

28 6923. Investigations involving law enforcement officials.

29 6924. Access to older adults.

30 6925. Access to records.

31 6926. Rights of older adults.

32 6927. Confidentiality standards required.

33 6928. Availability of protective services.

34 § 6920. Receipt of reports.

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

43 § 6921. Investigations.

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

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

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

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

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

40 § 6922. Investigations involving facilities.

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



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

7 § 6923. Investigations involving law enforcement officials.

8 The following shall apply:

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

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

17 (i) Suspicious death.

18 (ii) Serious bodily injury.

19 (iii) Sexual abuse.

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

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

30 § 6924. Access to older adults.

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

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

35 (i) Investigate reports.

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

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

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

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

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

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

8 § 6925. Access to records.

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

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

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

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

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

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

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

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

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

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

19 § 6927. Confidentiality standards required.

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

23 § 6928. Availability of protective services.

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

26 (1) An older adult requests the services.

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

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

#### 31 SUBCHAPTER D

#### 32 PROTECTIVE SERVICES

33 Sec.

34 6930. Consent by request.

35 6931. Interference with services.

36 6932. Financial obligations, liabilities and payments.

37 6933. Involuntary intervention by emergency court order.

38 6934. Confidentiality of records.

39 § 6930. Consent by request.

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

43 § 6931. Interference with services.

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

48 § 6932. Financial obligations, liabilities and payments.

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

1 payment of services:

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

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

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

14 (i) Administering protective services plans.

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

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

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

21 (v) Petitioning the court.

22 (vi) Providing for emergency involuntary  
23 intervention.

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

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

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

43 § 6933. Involuntary intervention by emergency court order.

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

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

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

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

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

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

28 § 6934. Confidentiality of records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51                   SUBCHAPTER E

REPORTING

Sec.

6940. Voluntary reporting.

6941. Mandatory reporting.

6942. Mandatory reporting to law enforcement officials and  
department.

6943. Contents of reports.

6944. Mandatory reporter training.

6945. Coroner.

6946. Protecting identity of reporter and cooperating  
witnesses.

§ 6940. Voluntary reporting.

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

§ 6941. Mandatory reporting.

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

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

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

§ 6943. Contents of reports.

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

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

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

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

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

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

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

8       § 6944. Mandatory reporter training.

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

12      § 6945. Coroner.

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

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

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

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

#### 29                      SUBCHAPTER F

#### 30                      FINANCIAL INSTITUTIONS AND FIDUCIARIES

31      Sec.

32      6950. Reporting financial exploitation.

33      6951. Financial services provider training.

34      6952. Disbursement of funds and transactions.

35      6953. Immunity and defenses.

36      § 6950. Reporting financial exploitation.

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

44      § 6951. Financial services provider training.

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

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



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

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

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

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

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

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

(iii) Suspicious signatures on checks.

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

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

§ 6952. Disbursement of funds and transactions.

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

- (1) An account of the older adult.
- (2) An account on which the older adult is a beneficiary, including a trust or guardianship account.
- (3) An account of a person suspected of perpetrating financial exploitation of an older adult.

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

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

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

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

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

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

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

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

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

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

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

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

1 sooner of the following:

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

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

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

23 § 6953. Immunity and defenses.

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

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

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

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

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

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

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

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

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

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

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

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

10 SUBCHAPTER G  
11 CRIMINAL HISTORY

12 Sec.

13 6960. Criminal history.

14 6961. Grounds for denying employment.

15 6962. Provisional employees for limited periods.

16 § 6960. Criminal history.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) A misdemeanor under Chapter 25.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49       (11) A misdemeanor under section 4304.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

8       § 6962. Provisional employees for limited periods.

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

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

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

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

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

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

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

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

#### 40                       SUBCHAPTER H

#### 41                       REMEDIES

42       Sec.

43       6970. Penalties.

44       6971. Immunity from civil and criminal liability.

45       § 6970. Penalties.

46       (a) Civil penalties.--

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

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

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

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

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

32 (b) Criminal penalties.--

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

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

45 (c) Immunity.--

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

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

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

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

12 § 6971. Immunity from civil and criminal liability.

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

20 SUBCHAPTER I  
21 ADMINISTRATION

22 Sec.

23 6980. Funding.

24 6981. Regulations.

25 § 6980. Funding.

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

28 § 6981. Regulations.

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

35 Section 2. The following shall apply:

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

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

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

49 Section 3. Repeals are as follows:

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

1 Pa.C.S. Ch. 69.

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

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

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

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