
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2671 Session of
2008

INTRODUCED BY JOSEPHS, DeWEESE, BENNINGTON, FRANKEL, JAMES,
KENNEY, KULA, LONGIETTI, MANDERINO, McILHATTAN, MILNE, MURT,
MYERS, M. O'BRIEN, ROEBUCK AND YOUNGBLOOD, JUNE 25, 2008

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
JUNE 25, 2008

AN ACT

1 Providing for protection of abused, neglected, exploited or
2 abandoned adults; establishing a uniform Statewide reporting
3 and investigative system for suspected abuse, neglect,
4 exploitation or abandonment of adults; providing for
5 protective services; and prescribing penalties.

6 TABLE OF CONTENTS

7 Chapter 1. Preliminary Provisions

8 Section 101. Short title.

9 Section 102. Legislative policy.

10 Section 103. Definitions.

11 Chapter 3. Administration

12 Section 301. Duties of department and agencies.

13 Section 302. Reporting.

14 Section 303. Investigations of reports of need for protective
15 services.

16 Section 304. Provision of services.

17 Section 305. Immunity from civil and criminal liability.

18 Section 306. Confidentiality of records.

1 Section 307. Involuntary intervention by emergency court
2 order.
3 Section 308. Rights of protective services clients.
4 Section 309. Financial obligations, liabilities and payments.
5 Chapter 5. Reporting Suspected Abuse by Employees
6 Section 501. Reporting by employees.
7 Section 502. Reports to department and coroner or medical
8 examiner.
9 Section 503. Investigation.
10 Section 504. Restrictions on employees.
11 Section 505. Confidentiality of and access to confidential
12 reports.
13 Section 506. Penalties.
14 Section 507. Immunity.
15 Chapter 7. Miscellaneous Provisions
16 Section 701. Regulations.
17 Section 702. Report.
18 Section 703. Repeals.
19 Section 704. Effective date.

20 The General Assembly of the Commonwealth of Pennsylvania
21 hereby enacts as follows:

22 CHAPTER 1

23 PRELIMINARY PROVISIONS

24 Section 101. Short title.

25 This act shall be known and may be cited as the Adult
26 Protective Services Act.

27 Section 102. Legislative policy.

28 It is declared the policy of this Commonwealth that:

29 (1) Adults who lack the capacity to protect themselves
30 and are at imminent risk of abuse, neglect, exploitation or

1 abandonment must have access to services necessary to protect
2 their health, safety and welfare.

3 (2) Adults have the right to make choices, subject to
4 the laws and regulations of the Commonwealth, regarding their
5 lifestyles, relationships, bodies and health, even when those
6 choices present risks to themselves or their property.

7 (3) Adults have the right to refuse some or all
8 protective services.

9 (4) Information about protective services should be
10 provided in a safe place and in a safe, understandable and
11 responsive manner.

12 (5) The Commonwealth must provide for the detection,
13 prevention, reduction and elimination of abuse, neglect,
14 exploitation and abandonment and establish a program of
15 protective services for adults in need of them.

16 (6) Adults have the right to receive services in the
17 most integrated settings and in the manner least restrictive
18 of individual liberties.

19 Section 103. Definitions.

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

23 "Abandonment." The desertion of an adult by a caregiver.

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

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

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

1 health.

2 (3) Sexual harassment, rape or "abuse" as defined in 23
3 Pa.C.S. § 6102 (relating to definitions).

4 The term does not include environmental factors which are beyond
5 the control of an adult or caregiver, including, but not limited
6 to, inadequate housing, furnishings, income, clothing or medical
7 care.

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

12 "Adult." A resident of this Commonwealth between 18 and 59
13 years of age who has a physical or mental impairment that
14 substantially limits one or more major life activities.

15 "Adult in need of protective services." An adult who needs
16 the assistance of another person to obtain protective services
17 in order to prevent imminent risk to person or property.

18 "Agency." A local contracted provider of protective
19 services.

20 "Assessment." Social, physical and psychological findings
21 along with a description of the person's current resources and
22 needs.

23 "Caregiver." An individual or institution that has assumed
24 the responsibility for the provision of care needed to maintain
25 the physical or mental health of an adult. This responsibility
26 may arise voluntarily, by contract, by receipt of payment for
27 care, as a result of family relationship or by order of a court
28 of competent jurisdiction. It is not the intent of this act to
29 impose responsibility on any individual if the responsibility
30 would not otherwise exist in law.

1 "Court." A court of common pleas or a district magistrate
2 court, where applicable.

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

4 "Employee." An individual who is employed by a facility. The
5 term includes:

6 (1) A contract employee who has direct contact with
7 residents or unsupervised access to their personal living
8 quarters.

9 (2) A person who is employed or who enters into a
10 contractual relationship to provide care to an adult for
11 monetary consideration in the adult's place of residence.

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

19 "Facility." The term includes, but is not limited to:

20 (1) An assisted living residence as defined in section
21 1001 of the act of June 13, 1967 (P.L.31, No.21), known as
22 the Public Welfare Code.

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

26 (3) A home health care agency as defined in section
27 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as
28 the Health Care Facilities Act.

29 (4) An intermediate care facility for people with mental
30 retardation.

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

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

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

10 (8) An organization or group of people that uses public
11 funds and is paid, in part, to provide care and support to
12 adults in a licensed or unlicensed setting.

13 (9) A residential treatment facility.

14 "Incident Reporting System." Home and Community Services
15 Information System (HCSIS) or its successor.

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

21 "Law enforcement official." These shall include:

22 (1) A police officer of a municipality.

23 (2) A district attorney.

24 (3) The Pennsylvania State Police.

25 (4) A county sheriff.

26 (5) The Attorney General.

27 "Least restrictive alternative." The least intrusive service
28 or environment that can effectively and safely address the
29 adult's needs and preferences.

30 "Most integrated setting." A setting that enables

1 individuals with disabilities to interact with individuals who
2 do not have disabilities to the fullest extent possible.

3 "Neglect." The failure to provide for oneself or the failure
4 of a caregiver to provide goods or services essential to avoid a
5 clear and serious threat to the physical or mental health of an
6 adult. The term does not include environmental factors that are
7 beyond the control of an adult or the caregiver, including, but
8 not limited to, inadequate housing, furnishings, income,
9 clothing or medical care.

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

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

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

17 "Serious bodily injury." Injury that:

- 18 (1) creates a substantial risk of death; or
19 (2) causes serious permanent disfigurement or protracted
20 loss or impairment of the function of a body member or organ.

21 "Serious injury." An injury that:

- 22 (1) causes a person severe pain; or
23 (2) significantly impairs a person's physical or mental
24 functioning, either temporarily or permanently.

25 "Service plan." A written plan that:

- 26 (1) Is cooperatively developed by an agency staff, an
27 adult in need of protective services or the adult's appointed
28 guardian, if any, and other family members and advocates when
29 appropriate.

- 30 (2) Where possible, is based on multidisciplinary,

1 comprehensive written assessments conducted by professionals
2 who have met with the adult in need of protective services
3 and are familiar with their situation.

4 (3) Provides for services in the most integrated setting
5 and utilizes least restrictive alternatives.

6 (4) Describes identified needs, goals to be achieved and
7 specific services to support goal attainment, with regular
8 follow-up and predetermined reassessment of client progress.

9 (5) Is updated as needed.

10 "Sexual abuse." Intentionally, knowingly or recklessly
11 causing or attempting to cause rape, involuntary deviate sexual
12 intercourse, sexual assault, statutory sexual assault,
13 aggravated indecent assault or incest, as defined by 18 Pa.C.S.
14 (relating to crimes and offenses).

15 CHAPTER 3

16 ADMINISTRATION

17 Section 301. Duties of department and agencies.

18 (a) General rule.--

19 (1) The department shall administer the adult protective
20 services program in a manner designed to utilize least
21 restrictive alternatives and to ensure services are provided
22 in the most integrated setting.

23 (2) The department shall, in consultation with the
24 Department of Public Welfare and other appropriate State
25 agencies, define the geographic areas to be served by
26 agencies and shall select those agencies based upon a
27 competitive bidding process. Successful bidders must:

28 (i) Demonstrate knowledge of and experience working
29 with adults.

30 (ii) Be separate from agencies providing direct

1 services to adults and from county mental health and
2 mental retardation programs.

3 (iii) Demonstrate knowledge of service delivery
4 principles important to adults and their families such as
5 individual choice and use of the least restrictive
6 alternative.

7 (iv) Demonstrate that the program will be advised by
8 a body that includes at least 51% representation of
9 adults and their family members.

10 (v) Include letters of support that show
11 collaboration with entities which advocate for adults.

12 (3) The department shall establish, by regulation,
13 procedures to ensure no conflict of interest in the provision
14 of adult protective services.

15 (4) The department shall conduct an ongoing campaign
16 designed to inform and educate adults, families, caregivers,
17 professionals and the general public about the need for and
18 availability of protective services under this chapter. The
19 campaign shall require facilities to post notice of the
20 availability of protective services and to provide the notice
21 to recipients and their families. The department shall
22 consult with other departments of the Commonwealth on the
23 design and implementation of the ongoing public awareness
24 campaign. The department shall also consider the concerns of
25 agencies and entities identified by them under subsection
26 (b).

27 (5) The department shall establish, by regulation,
28 minimum standards of training and experience that agencies
29 funded by the department shall follow in the selection and
30 assignment of staff for the provision of protective services.

1 The standards shall require agencies to collaborate with
2 adults, their families and advocates, and the standards shall
3 be included in developing and delivering training.

4 (6) The department shall ensure that agencies have
5 access to the incident reporting system.

6 (b) Agency duties.--Each agency shall submit a proposal that
7 includes a protective services plan. The plan shall:

8 (1) Describe the implementation of this chapter,
9 including, but not limited to, the organization, staffing,
10 mode of operations and financing of protective services, as
11 well as the provisions made for purchase of services,
12 interagency relations, interagency agreements, service
13 referral mechanisms and locus of responsibility for cases
14 with multiservice agency needs.

15 (2) Describe the methods that the agency, its designees
16 and service providers will use to assure the privacy of all
17 adults receiving services and the confidentiality of all
18 records.

19 (3) List all other social service entities, whether
20 public or private, that have been identified by the agency as
21 having substantial contact with potential victims or
22 perpetrators of abuse, neglect, exploitation and abandonment.

23 (4) Ensure that the entities have information regarding
24 the unique aspects of various disabilities.

25 The agency shall submit the list to the department for purposes
26 of the public information campaign under subsection (a).

27 Section 302. Reporting.

28 (a) General rule.--A person having reasonable cause to
29 believe that an adult is in need of protective services may
30 report such information to the agency. Where applicable, reports

1 shall comply with the provisions of Chapter 5.

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

12 (c) Screening.--A person who receives a report shall screen
13 the report during and immediately following receipt of the
14 report to assign it to one of the following referral categories:

15 (1) Priority. A report placed in this category shall
16 require immediate attention because specific details in the
17 report indicate the possibility that the adult reported to
18 need protective services is at imminent risk of death or
19 serious injury or serious bodily injury. The person receiving
20 a priority report shall immediately contact a protective
21 services caseworker and provide the caseworker with the
22 information contained in the report.

23 (2) Nonpriority. A report shall be placed in this
24 category when it does not appropriately fall within the
25 priority category and, therefore, does not require immediate
26 attention by the agency. A report in this category shall be
27 referred to a protective services caseworker of an agency
28 within the normal business hours of the agency's current or
29 next day of business under the agency's established
30 procedures for referring these reports.

1 (3) Another planning and service area. A report in which
2 the adult who is the subject of the report does not reside in
3 the planning and service area of the agency or, at that time,
4 is not in the planning and service area shall be placed in
5 this category. The report shall be referred to the agency
6 that has the designated responsibility for protective
7 services in the planning and service area in which the adult
8 reported to be in need of protective services is located at
9 the time of the report. A report in this category shall also
10 meet the criteria for placement in one of the other
11 categories in this subsection. The provisions for referral
12 for the other category shall apply to a referral to another
13 planning and service area.

14 (4) No need for protective services. A report shall be
15 placed in this category when the person reported to be in
16 need of protective services meets either of the following
17 criteria:

18 (i) has the capacity to perform or obtain, without
19 help, services necessary to maintain physical or mental
20 health;

21 (ii) is not at imminent risk or danger to his person
22 or property.

23 A report in this category shall be referred to a protective
24 services caseworker of the agency within the normal business
25 hours of the agency's current or next day of business. The
26 protective services caseworker shall review the details of
27 the report and take all steps necessary to confirm or reject
28 the categorization of no need for protective services. If the
29 caseworker confirms the screening categorization, and upon
30 the request of any interested party and without objection by

1 the adult appropriate referrals shall be made to other
2 entities. The protective services case shall then be closed.
3 If the caseworker rejects the categorization, the report
4 shall be placed in the appropriate category and shall be
5 handled accordingly. A report may not be placed in this
6 category if the adult is temporarily relocated to a safe
7 environment and will return to the original abusive situation
8 or to a new location which has not been determined to be
9 safe.

10 (d) Retaliatory action.--

11 (1) Any person who makes a report or cooperates with the
12 agency, including providing testimony in any administrative
13 or judicial proceeding, and any adult in need of protective
14 services shall not be subject to any discriminatory,
15 retaliatory or disciplinary action by an employer or by any
16 other person or entity.

17 (2) Any person who violates this subsection is subject
18 to a civil action by the reporter or the adult in need of
19 protective services, in which action the reporter or adult in
20 need of protective services shall recover treble compensatory
21 damages, compensatory and punitive damages or \$5,000,
22 whichever is greater.

23 (e) Intimidation.--

24 (1) A person, including an adult in need of protective
25 services, with knowledge sufficient to justify making a
26 report or cooperating with an agency, including possibly
27 providing testimony in an administrative or judicial
28 proceeding, shall not be subject to any intimidation by an
29 employer or by any other person or entity.

30 (2) A person who violates this subsection is subject to

1 civil action by the reporter or the adult in need of
2 protective services, in which action the reporter or adult in
3 need of protective services shall recover treble compensatory
4 damages, compensatory and punitive damages or \$5,000,
5 whichever is greater.

6 (f) Immunity.--

7 (1) A person who participates in the making of a report
8 or who provides testimony in an administrative or judicial
9 proceeding arising out of a report shall be immune from any
10 civil or criminal liability, subject to paragraph (2), on
11 account of the report or testimony, unless the person acted
12 in bad faith or with malicious purpose.

13 (2) The immunity established under paragraph (1) shall
14 not extend to liability for an act of abuse, neglect,
15 exploitation or abandonment even if such act is the subject
16 of the report or testimony.

17 Section 303. Investigations of reports of need for protective
18 services.

19 (a) Investigation.--

20 (1) An agency shall investigate each report made under
21 section 302.

22 (2) The investigation shall be initiated immediately for
23 a priority report, and to the extent feasible, the agency
24 shall conduct a face-to-face interview with the reported
25 adult in need of protective services.

26 (3) The investigation shall be initiated within 72 hours
27 for a nonpriority report.

28 (4) The department shall adopt regulations providing for
29 the methods of conducting investigations under this section
30 and shall assure that steps are taken to avoid any conflict

1 of interest between the investigator and service delivery
2 functions.

3 (5) Reports and investigations conducted under this
4 section shall comply with the provisions of Chapter 5, where
5 applicable.

6 (b) Investigation involving licensed facilities.--

7 (1) A report concerning adults residing in a State-
8 licensed facility shall be reported to the appropriate State
9 licensing department and investigated under procedures
10 developed by the department in consultation with the bureau
11 responsible for the licensure of the facility.

12 (2) The protective services agency may seek judicial
13 relief to require the facility to protect the health and
14 safety of the adult when the licensed program is believed to
15 continue to jeopardize the adult's health and safety through
16 evidence of risk substantiated.

17 (c) Unsubstantiated reports.--If after investigation by the
18 agency a report is unsubstantiated, the case shall be closed,
19 and all information shall be maintained for a period of one year
20 under procedures established by the department.

21 (d) Substantiated reports.--

22 (1) The agency shall provide for a timely assessment of
23 the adult if a report is substantiated by the agency or if an
24 assessment is necessary in order to determine whether the
25 report is substantiated. An adult may refuse the assessment.

26 (2) Upon completion of the assessment, written findings
27 shall be prepared that include recommended action. A service
28 plan shall be developed and shall:

29 (i) Provide for the least restrictive alternative
30 and encourage choice and continuity of care.

1 (ii) Assure that services and supports are provided
2 in the most integrated setting.

3 (iii) Absent a court order, not include the
4 relocation of the adult unless the adult consents.

5 (iv) Be written in plain language whenever possible
6 and prepared in a manner which can be easily understood
7 by an adult in need of protective services or that
8 adult's appointed guardian.

9 (v) Be in writing and include a recommended course
10 of action that may include the pursuit of civil or
11 criminal remedies.

12 (3) If an adult who is found to be in need of protective
13 services refuses an assessment or the development of a
14 service plan, the agency may apply to the case the provisions
15 of section 307.

16 Section 304. Provision of services.

17 (a) Availability of protective services.--Once need is
18 determined, an agency shall offer protective services if an
19 adult requests services or an interested person requests
20 services on behalf of an adult.

21 (b) Consent by request.--

22 (1) Except as provided in section 307, an adult shall
23 only receive protective services voluntarily. In no event may
24 protective services be provided under this chapter to an
25 adult who refuses consent to the services or who, having
26 consented, withdraws the consent, unless the services are
27 ordered by a court or provided under section 307.

28 (2) Nothing in this chapter shall be construed to
29 prevent an agency from petitioning for the appointment of a
30 guardian pursuant to 20 Pa.C.S. (relating to decedents,

1 estates and fiduciaries).

2 (c) Interference with services.--If any person interferes
3 with the provision of services or the right of an adult to
4 consent to provision of services, the agency may petition the
5 court for an order enjoining the interference.

6 (d) Access to records.--An agency shall have access to all
7 records relevant to:

8 (1) Investigations of reports under section 303.

9 (2) Assessment of client need.

10 (3) Development of a service plan when an adult's need
11 for protective services has been or is being established.

12 (4) Delivery of services arranged for under the service
13 plan developed by the agency to respond to an adult's
14 assessed need for specific services.

15 (e) Access to persons.--An agency shall have access to
16 adults who have been reported to be in need of protective
17 services in order to:

18 (1) Investigate reports under section 303 and Chapter 5.

19 (2) Assess needs and develop a service plan for
20 addressing them.

21 (3) Provide for the delivery of services by the agency
22 or other service provider arranged for under the service
23 plan.

24 (f) Denial of access to persons.--If the agency is denied
25 access to an adult reported to be in need of protective services
26 and access is necessary to complete the investigation or the
27 assessment and service plan or the delivery of needed services
28 in order to prevent further abuse, neglect, exploitation or
29 abandonment of the adult, the agency may petition the court for
30 an order to require the appropriate access when either of the

1 following conditions apply:

2 (1) The caregiver or a third party has interfered with
3 the completion of the investigation or the assessment and
4 service plan or the delivery of services.

5 (2) The agency can demonstrate that the adult denies
6 access because of coercion, extortion or justifiable fear of
7 further abuse, neglect, exploitation or abandonment.

8 (g) Access by consent.--An agency's access to confidential
9 records held by other entities or individuals or an adult
10 reported to be in need of protective services shall require the
11 consent of the adult or a court-appointed guardian except as
12 provided for under this section or section 307.

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

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

24 (2) The agency can demonstrate that the adult denies
25 access to records because of incompetence, coercion,
26 extortion or justifiable fear of future abuse, neglect,
27 exploitation or abandonment.

28 Section 305. Immunity from civil and criminal liability.

29 In the absence of willful misconduct or gross negligence, an
30 agency, its director and employees, protective services workers

1 or employees of the department shall not be civilly or
2 criminally liable for any decision or action or resulting
3 consequence of decisions or actions when acting under and
4 according to the provisions of this chapter.

5 Section 306. Confidentiality of records.

6 (a) General rule.--Information contained in reports, records
7 of investigation, assessment and service plans shall be
8 considered confidential and shall be maintained under
9 regulations promulgated by the department to safeguard
10 confidentiality. Except as otherwise provided in subsection (b),
11 this information shall not be disclosed to anyone outside the
12 agency other than to a court of competent jurisdiction pursuant
13 to a court order.

14 (b) Limited access to agency's protective services
15 records.--

16 (1) In the event that an investigation by an agency
17 results in the discovery of suspected criminal conduct, law
18 enforcement officials shall be given access to all relevant
19 records maintained by the agency or the department.

20 (2) In arranging specific services to carry out service
21 plans, an agency may disclose to appropriate service
22 providers such information as may be necessary to initiate
23 the delivery of services.

24 (3) An adult who is the subject of a report made under
25 section 302 may receive, upon written request, all
26 information contained in the report except that prohibited
27 from disclosure under paragraph (4).

28 (4) The release of information that would identify a
29 person who made a report of suspected abuse, neglect,
30 exploitation or abandonment or who cooperated in a subsequent

1 investigation is prohibited unless the secretary can
2 determine that such a release will not be detrimental to the
3 safety of the person.

4 (5) When the department is involved in the hearing of an
5 appeal by an adult who is the subject of a report made under
6 section 302, the appropriate department staff shall be given
7 access to all information in the report record relevant to
8 the appeal.

9 (6) For the purpose of monitoring agency performance,
10 appropriate staff of the department may access agency
11 protective services records.

12 Section 307. Involuntary intervention by emergency court order.

13 (a) Emergency petition.--

14 (1) Where there is clear and convincing evidence that,
15 if protective services are not provided, the adult is at
16 imminent risk of death, serious injury or serious bodily
17 injury, the agency may petition the court for an emergency
18 order to provide the necessary services.

19 (2) The court of common pleas of each judicial district
20 shall ensure that a judge or magisterial district judge is
21 available on a 24-hour-a-day, 365-day-a-year basis to accept
22 and decide on petitions for an emergency court order under
23 this section whenever the agency determines that a delay
24 until normal court hours would significantly increase the
25 danger the adult faces.

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

30 (c) Right to counsel.--In order to protect the rights of an

1 adult in need of protective services, an emergency court order
2 under this section shall provide that the adult has the right to
3 legal counsel which shall be appointed by the court at public
4 expense.

5 (d) Forcible entry.--Where it is necessary to forcibly enter
6 a premises, law enforcement shall obtain a court order and may
7 be accompanied by a representative of an agency.

8 (e) Health and safety requirements.--An agency shall take
9 reasonable steps to assure that while an adult is receiving
10 services under an emergency court order, the health and safety
11 needs of any of the adult's dependents are met and that personal
12 property and the dwelling the adult occupies are secure.

13 (f) Nonrestrictive setting.--In those cases in which an
14 adult must be relocated, the court shall order the adult to be
15 relocated to the most integrated setting and the least
16 restrictive alternative that will ensure the adult's health and
17 safety and appropriate care.

18 (g) Exclusion of remedy.--Nothing in this chapter shall be
19 construed to deny an adult access to emergency medical services
20 or police protection that would be provided to anyone,
21 regardless of age, in similar circumstances.

22 Section 308. Rights of protective services clients.

23 (a) Minimum requirements.--The agency shall observe the
24 following minimum requirements to safeguard the rights of an
25 adult who is reported to be in need of protective services:

26 (1) The agency shall to the extent possible, notify the
27 adult privately during the investigation that a report has
28 been made and provide the adult with a brief summary of the
29 nature of the report.

30 (2) As provided under section 306(b)(3), the adult may

1 request and the agency shall provide additional information
2 contained in the report.

3 (3) An appeal of a denial of services by the department
4 or an authorized agency under this chapter shall be conducted
5 according to the provisions of the rules and regulations
6 issued by the department under Article XXII-A of the act of
7 April 9, 1929 (P.L.177, No.175), known as The Administrative
8 Code of 1929.

9 (b) Construction.--Nothing in this act shall be construed to
10 limit the right of an adult to file a petition pursuant to 23
11 Pa.C.S. Ch. 61 (relating to protection from abuse).

12 Section 309. Financial obligations, liabilities and payments.

13 An adult receiving services and each agency providing
14 services under this chapter shall comply with the following
15 provisions regarding liability for the payment of services:

16 (1) Funding to provide or make available protective
17 services under this chapter shall not:

18 (i) Supplant any public and private entitlements or
19 resources for which adults receiving protective services
20 under this chapter are or may be eligible.

21 (ii) Be available until an adult has exhausted the
22 adult's eligibility and receipt of benefits under public
23 and private entitlements or resources.

24 (2) (i) The obligation of the Commonwealth or a county
25 to provide funding for services provided pursuant to this
26 chapter shall be entirely discharged by the
27 appropriations made to the department or an agency.

28 (ii) Provided that the agency has met its
29 responsibility under the law, no action at law or equity
30 may be instituted in a court to require the department,

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

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

8 CHAPTER 5

9 REPORTING SUSPECTED ABUSE BY EMPLOYEES

10 Section 501. Reporting by employees.

11 (a) Mandatory reporting to agency.--

12 (1) An employee or an administrator who has reasonable
13 cause to suspect that a recipient is a victim of abuse or
14 neglect shall immediately make an oral report to an agency.
15 If applicable, the agency shall advise the employee or
16 administrator of additional reporting requirements that may
17 pertain under subsection (b). An employee shall notify the
18 administrator immediately following the report to the agency.

19 (2) Within 48 hours of making the oral report, the
20 employee or administrator shall make a written report to the
21 agency. The agency shall notify the administrator that a
22 report of abuse has been made with the agency.

23 (3) The provisions of this section shall be satisfied
24 when the administrator or employee submits a report to the
25 incident reporting system. Nothing in this subsection shall
26 prohibit an employee or administrator who has reasonable
27 cause to suspect that a recipient is a victim of abuse or
28 neglect from also making a report to the agency.

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

30 (1) An employee or an administrator who has reasonable

1 cause to suspect that a recipient is the victim of sexual
2 abuse, serious injury or serious bodily injury or that a
3 death is suspicious shall, in addition to contacting the
4 agency and the department, immediately contact law
5 enforcement officials to make an oral report. An employee
6 shall notify the administrator immediately following the
7 report to law enforcement officials.

8 (2) Within 48 hours of making the oral report, the
9 employee and the administrator shall make a joint written
10 report to appropriate law enforcement officials.

11 (3) The law enforcement officials shall notify the
12 administrator that a report has been made with the law
13 enforcement officials.

14 (4) The employee may request the administrator to make
15 or to assist the employee to make the oral and written
16 reports to law enforcement officials required by this
17 subsection.

18 (c) Contents of report.--A written report under this section
19 shall be submitted in a manner and on forms prescribed by the
20 department. The report shall include, at a minimum, the
21 following information:

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

23 (2) Name and address of the recipient's guardian,
24 attorney-in-fact or next of kin.

25 (3) Name and address of the facility.

26 (4) Nature of the alleged offense.

27 (5) Any specific comments or observations that are
28 directly related to the alleged incident and those involved.

29 Section 502. Reports to department and coroner or medical
30 examiner.

1 (a) Department.--

2 (1) Within 48 hours of receipt of a written report under
3 section 501(a) involving sexual abuse, serious injury,
4 serious bodily injury or suspicious death, the agency shall
5 transmit a written report to the department. Supplemental
6 reports shall be transmitted as they are obtained by the
7 agency.

8 (2) A report under this subsection shall be made in a
9 manner and on forms prescribed by the department. The report
10 shall include, at a minimum, that information required to be
11 submitted under section 501.

12 (b) Coroner or medical examiner.--For a report under section
13 501(a) concerning the death of a recipient, if there is
14 reasonable cause to suspect that the recipient died as a result
15 of abuse or neglect, the agency shall give the oral report and
16 forward a copy of the written report to the appropriate coroner
17 or medical examiner within 24 hours.

18 Section 503. Investigation.

19 (a) Law enforcement officials.--Upon receipt of a report
20 under section 501(b), law enforcement officials shall conduct an
21 investigation to determine what criminal charges, if any, will
22 be filed.

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

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

1 basis.

2 (d) Further notification.--

3 (1) Law enforcement officials shall notify an agency and
4 facility of a decision regarding criminal charges.

5 (2) Upon being notified by law enforcement, the agency
6 shall notify the department and both shall keep a record of
7 any decision regarding criminal charges.

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

11 Section 504. Restrictions on employees.

12 (a) Plan of supervision.--

13 (1) On notification that an employee is alleged to have
14 committed abuse, the facility shall immediately suspend the
15 employee or where appropriate and subject to approval by the
16 agency and by the appropriate State licensing department with
17 regulatory authority over the facility, implement a plan of
18 supervision.

19 (2) A plan of supervision for a home health care agency
20 shall include periodic random direct inspections of
21 recipients by an employee who has been continuously employed
22 by the facility for a period of at least one year.

23 (b) Prohibition.--

24 (1) On the filing of criminal charges against an
25 employee, the appropriate State licensing department that
26 regulates or has fiscal authority over the facility shall
27 order the facility to immediately prohibit the employee from
28 having access to recipients at the facility.

29 (2) If the employee is a director, operator,
30 administrator or supervisor, the employee shall be subject to

1 restrictions deemed appropriate by the Commonwealth agency
2 that licenses, regulates or has fiscal authority over the
3 facility to assure the safety of the recipients of the
4 facility.

5 Section 505. Confidentiality of and access to confidential
6 reports.

7 A report under this chapter shall be made available in the
8 following circumstances:

9 (1) Information may be disclosed to a court of competent
10 jurisdiction under a court order.

11 (2) If an investigation by an agency or law enforcement
12 results in a report of criminal conduct, law enforcement
13 officials shall have access to relevant records maintained by
14 the agency or the department.

15 (3) In arranging specific services to effect service
16 plans, an agency may disclose to appropriate service
17 providers information necessary to initiate the delivery of
18 services.

19 (4) A subject of a report may receive, upon written
20 request, information contained in the report except that
21 prohibited from being disclosed under paragraph (5).

22 (5) Except for reports to law enforcement officials, the
23 release of information that would identify the person who
24 made a report under this chapter or who cooperated in a
25 subsequent investigation is prohibited. Law enforcement
26 officials shall treat all reporting sources as confidential
27 information.

28 (6) When the department is involved in the hearing of an
29 appeal by a subject of a report, the appropriate department
30 staff shall be given access to information in the report

1 record relevant to the appeal.

2 (7) For the purposes of monitoring agency performance,
3 appropriate staff of the department may be given access to
4 agency protective service records.

5 Section 506. Penalties.

6 (a) Administrative.--

7 (1) An administrator who intentionally or willfully
8 fails to comply or obstructs compliance with the provisions
9 of this chapter or intimidates or commits a retaliatory act
10 against an employee who complies in good faith with the
11 provisions of this chapter commits a violation of this
12 chapter and shall be subject to an administrative penalty
13 under paragraph (3).

14 (2) A facility owner that intentionally or willfully
15 fails to comply with or obstructs compliance with this
16 chapter or that intimidates or commits a retaliatory act
17 against an employee who complies in good faith with this
18 chapter commits a violation of this chapter and shall be
19 subject to an administrative penalty under paragraph (3).

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

28 (b) Criminal.--

29 (1) An administrator who intentionally or willfully
30 fails to comply or obstructs compliance with this chapter

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

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

9 (c) Penalties for failure to report.--A person required
10 under this chapter to report a case of suspected abuse or
11 neglect who willfully fails to do so commits a summary offense
12 for the first violation and a misdemeanor of the third degree
13 for a second or subsequent violation.

14 (d) Whistleblower protection.--A person required under this
15 act to report a case of suspected abuse or neglect shall not be
16 subject to any retaliatory action for reporting suspected abuse
17 or neglect and shall have the protections and remedies set forth
18 in the act of December 12, 1986 (P.L.1559, No.169), known as the
19 Whistleblower Law.

20 Section 507. Immunity.

21 No administrator or facility shall be held civilly liable for
22 any action directly related to good faith compliance with this
23 chapter.

24 CHAPTER 7

25 MISCELLANEOUS PROVISIONS

26 Section 701. Regulations.

27 (a) The Department of Health and the Department of Public
28 Welfare shall promulgate regulations necessary to carry out
29 Chapter 5.

30 (b) The department shall promulgate rules and regulations

1 necessary to implement this act. Regulations shall be developed
2 in consultation with adults, their families and advocates.

3 Section 702. Report.

4 The department shall present a report on the program and
5 services performed to the Aging and Youth Committee of the
6 Senate and the Aging and Older Adult Services Committee of the
7 House of Representatives on an annual basis.

8 Section 703. Repeals.

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

11 Section 704. Effective date.

12 This act shall take effect in six months.