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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1049 Session of  
2007

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AUGUST 13, 2007

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REFERRED TO AGING AND YOUTH, AUGUST 13, 2007

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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.

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

23 CHAPTER 1

24 PRELIMINARY PROVISIONS

25 Section 101. Short title.

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

28 Section 102. Legislative policy.

29 It is declared the policy of this Commonwealth that:

30 (1) Adults who lack the capacity to protect themselves

1 and are at imminent risk of abuse, neglect, exploitation or  
2 abandonment must have access to services necessary to protect  
3 their health, safety and welfare.

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

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

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

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

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

20 Section 103. Definitions.

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

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

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

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

30 (2) The willful deprivation by a caregiver of goods or

1 services which are necessary to maintain physical or mental  
2 health.

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

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

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

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

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

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

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

29 "Client assessment." Social, physical and psychological  
30 findings along with a description of the person's current

1 resources and needs.

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

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

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

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

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

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

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

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

24 (2) A home health care agency as defined in section  
25 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as  
26 the Health Care Facilities Act.

27 (3) An intermediate care facility for people with mental  
28 retardation.

29 (4) A long-term care nursing facility as defined in  
30 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),

known as the Health Care Facilities Act.

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

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

(7) A residential treatment facility.

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

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

"Law enforcement official." Any of the following:

(1) A police officer of a municipality.

(2) A district attorney.

(3) The Pennsylvania State Police.

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

"Most integrated setting." A setting that enables individuals with disabilities to interact with individuals who do not have disabilities to the fullest extent possible.

"Neglect." The failure to provide for oneself or the failure of a caregiver to provide goods or services essential to avoid a clear and serious threat to the physical or mental health of an adult. The term does not include environmental factors that are beyond the control of an adult or the caregiver, including, but

1 not limited to, inadequate housing, furnishings, income,  
2 clothing or medical care.

3 "Protective services." Those activities, resources and  
4 supports provided to adults under this act to detect, prevent,  
5 reduce or eliminate abuse, neglect, exploitation and  
6 abandonment.

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

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

10 "Serious bodily injury." Injury that:

11 (1) creates a substantial risk of death; or

12 (2) causes serious permanent disfigurement or protracted  
13 loss or impairment of the function of a body member or organ.

14 "Serious injury." An injury that:

15 (1) causes a person severe pain; or

16 (2) significantly impairs a person's physical or mental  
17 functioning, either temporarily or permanently.

18 "Service plan." A written plan that:

19 (1) Is cooperatively developed by an agency staff, an  
20 adult in need of protective services or the adult's appointed  
21 guardian, if any, and other family members and advocates when  
22 appropriate.

23 (2) Is based on multidisciplinary, comprehensive written  
24 assessments conducted by professionals who have met with the  
25 adult in need of protective services and are familiar with  
26 their situation.

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

29 (4) Describes identified needs, goals to be achieved and  
30 specific services to support goal attainment, with regular

1 follow-up and predetermined reassessment of client progress.

2 (5) Is updated as needed.

3 "Sexual abuse." Intentionally, knowingly or recklessly  
4 causing or attempting to cause rape, involuntary deviate sexual  
5 intercourse, sexual assault, statutory sexual assault,  
6 aggravated indecent assault or incest, as defined by 18 Pa.C.S.  
7 (relating to crimes and offenses).

### 8 CHAPTER 3

#### 9 ADMINISTRATION

10 Section 301. Duties of department and agencies.

11 (a) General rule.--

12 (1) The department shall administer the protective  
13 services program in a manner designed to utilize least  
14 restrictive alternatives and to ensure services are provided  
15 in the most integrated setting.

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

21 (i) Demonstrate knowledge of and experience working  
22 with adults.

23 (ii) Be separate from agencies providing direct  
24 services to adults or county mental health and mental  
25 retardation programs.

26 (iii) Demonstrate knowledge of service delivery  
27 principles important to adults and their families such as  
28 individual choice and use of least restrictive  
29 alternative.

30 (iv) Include at least 51% representation of adults



1 and their family members on the board of directors.

2 (v) Include letters of support that show  
3 collaboration with agencies which advocate for adults.

4 (3) The department shall conduct an ongoing campaign  
5 designed to inform and educate adults, families, caregivers,  
6 professionals and the general public about the need for and  
7 availability of protective services under this chapter. The  
8 campaign shall require facilities to post notice of the  
9 availability of protective services and to provide the notice  
10 to recipients and their families. The department shall  
11 consult with other departments of the Commonwealth on the  
12 design and implementation of the ongoing public awareness  
13 campaign. The department shall also consider the concerns of  
14 agencies and entities identified by them under subsection  
15 (b).

16 (4) The department shall establish, by regulation,  
17 minimum standards of training and experience that protective  
18 services agencies funded by the department shall follow in  
19 the selection and assignment of staff for the provision of  
20 protective services. The standards shall require local  
21 protective services providers to collaborate with adults,  
22 their families and advocates, and the standards shall be  
23 included in developing and delivering training.

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

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

28 (1) Describe the implementation of this chapter,  
29 including, but not limited to, the organization, staffing,  
30 mode of operations and financing of protective services, as

1 well as the provisions made for purchase of services,  
2 interagency relations, interagency agreements, service  
3 referral mechanisms and locus of responsibility for cases  
4 with multiservice agency needs.

5 (2) Describe the methods that the agency, its designees  
6 and service providers will use to assure the privacy of all  
7 adults receiving services and the confidentiality of all  
8 records.

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

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

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

17 Section 302. Reporting.

18 (a) General rule.--A person having reasonable cause to  
19 believe that an adult is in need of protective services may  
20 report such information to the agency that is the local provider  
21 of protective services. Where applicable, reports shall comply  
22 with the provisions of Chapter 5.

23 (b) Receiving reports.--The agency shall be capable of  
24 receiving reports of adults in need of protective services 24  
25 hours a day, seven days a week, including holidays. This  
26 capability may include the use of a local emergency response  
27 system or a crisis intervention agency, provided that access can  
28 be made to a protective services caseworker in appropriate  
29 emergency situations as set forth in regulations promulgated by  
30 the department. All reports received orally under this section

1 shall be reduced to writing immediately by the person who  
2 receives the report.

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

6 (1) Priority. A report placed in this category shall  
7 require immediate attention because specific details in the  
8 report indicate the possibility that the adult reported to  
9 need protective services is at imminent risk of death or  
10 serious injury or serious bodily injury. The person receiving  
11 a priority report shall immediately contact a protective  
12 services caseworker and provide the caseworker with the  
13 information contained in the report.

14 (2) Nonpriority. A report shall be placed in this  
15 category when it does not appropriately fall within the  
16 priority category and, therefore, does not require immediate  
17 attention by the agency. A report in this category shall be  
18 referred to a protective services caseworker of an agency  
19 within the normal business hours of the agency's current or  
20 next day of business under the agency's established  
21 procedures for referring these reports.

22 (3) Another planning and service area. A report in which  
23 the adult who is the subject of the report does not reside in  
24 the planning and service area of the agency or, at that time,  
25 is not in the planning and service area shall be placed in  
26 this category. The report shall be referred to the agency  
27 that has the designated responsibility for protective  
28 services in the planning and service area in which the adult  
29 reported to be in need of protective services is located at  
30 the time of the report. A report in this category shall also

1 meet the criteria for placement in one of the other  
2 categories in this subsection. The provisions for referral  
3 for the other category shall apply to a referral to another  
4 planning and service area.

5 (4) No need for protective services. A report shall be  
6 placed in this category when the person reported to be in  
7 need of protective services meets either of the following  
8 criteria:

9 (i) has the capacity to perform or obtain, without  
10 help, services necessary to maintain physical or mental  
11 health;

12 (ii) is not at imminent risk or danger to his person  
13 or property.

14 A report in this category shall be referred to a protective  
15 services caseworker of the agency within the normal business  
16 hours of the agency's current or next day of business. The  
17 protective services caseworker shall review the details of  
18 the report and take all steps necessary to confirm or reject  
19 the categorization of no need for protective services. If the  
20 caseworker confirms the screening categorization, and upon  
21 the request of any interested party and without objection by  
22 the adult appropriate referrals shall be made to other  
23 agencies. The protective services case shall then be closed.  
24 If the caseworker rejects the categorization, the report  
25 shall be placed in the appropriate category and shall be  
26 handled accordingly. A report may not be placed in this  
27 category if the adult is temporarily relocated to a safe  
28 environment and will return to the original abusive situation  
29 or to a new location which has not been determined to be  
30 safe.

1 (d) Retaliatory action.--

2 (1) Any person who makes a report or cooperates with the  
3 agency, including providing testimony in any administrative  
4 or judicial proceeding, and any adult in need of protective  
5 services shall not be subject to any discriminatory,  
6 retaliatory or disciplinary action by an employer or by any  
7 other person or entity.

8 (2) Any person who violates this subsection is subject  
9 to a civil action by the reporter or the adult in need of  
10 protective services, in which action the reporter or adult  
11 need of protective services shall recover treble compensatory  
12 damages, compensatory and punitive damages or \$5,000,  
13 whichever is greater.

14 (e) Intimidation.--

15 (1) A person, including an adult in need of protective  
16 services, with knowledge sufficient to justify making a  
17 report or cooperating with an agency, including possibly  
18 providing testimony in an administrative or judicial  
19 proceeding, shall not be subject to any intimidation by an  
20 employer or by any other person or entity.

21 (2) A person who violates this subsection is subject to  
22 civil action by the reporter or the adult in need of  
23 protective services, in which action the reporter or adult in  
24 need of protective services shall recover treble compensatory  
25 damages, compensatory and punitive damages or \$5,000,  
26 whichever is greater.

27 (f) Immunity.--

28 (1) A person who participates in the making of a report  
29 or who provides testimony in an administrative or judicial  
30 proceeding arising out of a report shall be immune from any

1 civil or criminal liability, subject to paragraph (2), on  
2 account of the report or testimony, unless the person acted  
3 in bad faith or with malicious purpose.

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

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

10 (a) Investigation.--

11 (1) An agency shall investigate each report made under  
12 section 302.

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

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

19 (4) The department shall adopt regulations providing for  
20 the methods of conducting investigations under this section  
21 and shall assure that steps are taken to avoid any conflict  
22 of interest between the investigator and service delivery  
23 functions.

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

27 (b) Investigation involving licensed facilities.--

28 (1) A report concerning adults residing in a State-  
29 licensed facility shall be reported to the appropriate  
30 licensing department and investigated under procedures

1 developed by the department in consultation with the bureau  
2 within the appropriate State agency responsible for the  
3 licensure of the facility.

4 (2) The protective services agency may seek judicial  
5 relief to require the facility to protect the health and  
6 safety of the adult when the licensed program is believed to  
7 continue to jeopardize the adult's health and safety through  
8 evidence of risk substantiated.

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

13 (d) Substantiated reports.--

14 (1) The agency shall provide for a timely assessment of  
15 the adult if a report is substantiated by the agency or if an  
16 assessment is necessary in order to determine whether the  
17 report is substantiated. An adult may refuse the assessment.

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

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

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

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

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

1 (v) Be in writing and include a recommended course  
2 of action that may include the pursuit of civil or  
3 criminal remedies.

4 (3) If an adult who is found to be in need of protective  
5 services refuses a client assessment or the development of a  
6 service plan, the agency may apply to the case the provisions  
7 of section 307.

8 Section 304. Provision of services.

9 (a) Availability of protective services.--Once need is  
10 determined, an agency shall offer protective services if an  
11 adult requests services or an interested person requests  
12 services on behalf of an adult.

13 (b) Consent by request.--

14 (1) Except as provided in section 307, an adult shall  
15 only receive protective services voluntarily. In no event may  
16 protective services be provided under this chapter to an  
17 adult who refuses consent to the services or who, having  
18 consented, withdraws the consent, unless the services are  
19 ordered by a court or provided under section 307.

20 (2) Nothing in this chapter shall be construed to  
21 prevent an agency from petitioning for the appointment of a  
22 guardian pursuant to 20 Pa.C.S. (relating to decedents,  
23 estates and fiduciaries).

24 (c) Interference with services.--If any person interferes  
25 with the provision of services or the right of an adult to  
26 consent to provision of services, the agency may petition the  
27 court for an order enjoining the interference.

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

30 (1) Investigations of reports under section 303.



1           (2)   Assessment of client need.

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

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

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

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

11           (2)   Assess needs and develop a service plan for  
12   addressing them.

13           (3)   Provide for the delivery of services by the agency  
14   or other service provider arranged for under the service  
15   plan.

16   (f)   Denial of access to persons.--If the agency is denied  
17   access to an adult reported to be in need of protective services  
18   and access is necessary to complete the investigation or the  
19   assessment and service plan or the delivery of needed services  
20   in order to prevent further abuse, neglect, exploitation or  
21   abandonment of the adult, the agency may petition the court for  
22   an order to require the appropriate access when either of the  
23   following conditions apply:

24           (1)   The caregiver or a third party has interfered with  
25   the completion of the investigation or the assessment and  
26   service plan or the delivery of services.

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

30   (g)   Access by consent.--An agency's access to confidential

1 records held by other entities or individuals or an adult  
2 reported to be in need of protective services shall require the  
3 consent of the adult or a court-appointed guardian except as  
4 provided for under this section or section 307.

5 (h) Denial of access to records.--If the agency is denied  
6 access to records necessary for completion of a proper  
7 investigation of a report, assessment, service plan or the  
8 delivery of needed services in order to prevent further abuse,  
9 neglect, exploitation or abandonment of the adult reported to be  
10 in need of protective services, the agency may petition the  
11 court of common pleas for an order requiring the appropriate  
12 access when either of the following conditions apply:

13 (1) The adult has provided written consent for any  
14 confidential records to be disclosed and the keeper of the  
15 records denies access.

16 (2) The agency can demonstrate that the adult denies  
17 access to records because of incompetence, coercion,  
18 extortion or justifiable fear of future abuse, neglect,  
19 exploitation or abandonment.

20 Section 305. Immunity from civil and criminal liability.

21 In the absence of willful misconduct or gross negligence, an  
22 agency, its director and employees, protective services workers  
23 or employees of the department shall not be civilly or  
24 criminally liable for any decision or action or resulting  
25 consequence of decisions or actions when acting under and  
26 according to the provisions of this chapter.

27 Section 306. Confidentiality of records.

28 (a) General rule.--Information contained in reports, records  
29 of investigation, assessment and service plans shall be  
30 considered confidential and shall be maintained under

1 regulations promulgated by the department to safeguard  
2 confidentiality. Except as otherwise provided in subsection (b),  
3 this information shall not be disclosed to anyone outside the  
4 agency other than to a court of competent jurisdiction pursuant  
5 to a court order.

6 (b) Limited access to agency's protective services  
7 records.--

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

12 (2) In arranging specific services to carry out service  
13 plans, an agency may disclose to appropriate service  
14 providers such information as may be necessary to initiate  
15 the delivery of services.

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

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

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

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

Section 307. Involuntary intervention by emergency court order.

(a) Emergency petition.--

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

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

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

(c) Right to counsel.--In order to protect the rights of an adult in need of protective services, an emergency court order under this section shall provide that the adult has the right to legal counsel which shall be appointed by the court at public expense.

(d) Forcible entry.--Where it is necessary to forcibly enter premises after obtaining a court order, a law enforcement officer may do so, accompanied by a representative of an agency.

(e) Health and safety requirements.--An agency shall take

1 reasonable steps to assure that while an adult is receiving  
2 services under an emergency court order, the health and safety  
3 needs of any of the adult's dependents are met and that personal  
4 property and the dwelling the adult occupies are secure.

5 (f) Community or general acute care hospitals.--An adult  
6 with medical conditions requiring treatment shall be sent to a  
7 community or general acute care hospital.

8 (g) Nonrestrictive setting.--In those cases in which an  
9 adult must be relocated, the court shall order the adult to be  
10 relocated to the most integrated setting and the least  
11 restrictive alternative that will ensure the adult's health and  
12 safety and appropriate care.

13 (h) Exclusion of remedy.--Nothing in this chapter shall be  
14 construed to deny an adult access to emergency medical services  
15 or police protection that would be provided to anyone,  
16 regardless of age, in similar circumstances.

17 Section 308. Rights of protective services clients.

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

21 (1) The agency shall to the extent possible, notify the  
22 adult privately during the investigation that a report has  
23 been made and provide the adult with a brief summary of the  
24 nature of the report.

25 (2) As provided under section 306(b)(3), the adult may  
26 request and the agency shall provide additional information  
27 contained in the report.

28 (3) An appeal of a denial of services by the department  
29 or an authorized agency under this chapter shall be conducted  
30 according to the provisions of the rules and regulations

1 issued by the department under Article XXII-A of the act of  
2 April 9, 1929 (P.L.177, No.175), known as The Administrative  
3 Code of 1929.

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

7 Section 309. Financial obligations, liabilities and payments.

8 An adult receiving services and each agency providing  
9 services under this chapter shall comply with the following  
10 provisions regarding liability for the payment of services:

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

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

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

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

23 (ii) Provided that the agency has met its  
24 responsibility under the law, no action at law or equity  
25 may be instituted in a court to require the department,  
26 agency, county or Commonwealth to provide benefits or  
27 services under this chapter for which appropriations from  
28 the Commonwealth or counties are not available.

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

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

## 3 CHAPTER 5

### 4 REPORTING SUSPECTED ABUSE BY EMPLOYEES

#### 5 Section 501. Reporting by employees.

##### 6 (a) Mandatory reporting to agency.--

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

14 (2) Within 48 hours of making the oral report, the  
15 employee or administrator shall make a written report to the  
16 agency. The agency shall notify the administrator that a  
17 report of abuse has been made with the agency.

18 (3) The provisions of this section shall be satisfied  
19 when the administrator or employee of a facility serving  
20 adults with mental retardation submits a report to the  
21 incident reporting system.

22 (4) Notwithstanding the provisions of subsection (b),  
23 any employee or administrator who has reasonable cause to  
24 suspect that an adult is a victim of abuse or neglect may  
25 make a report to the agency.

##### 26 (b) Mandatory reports to law enforcement officials.--

27 (1) An employee or an administrator who has reasonable  
28 cause to suspect that a recipient is the victim of sexual  
29 abuse, serious injury or serious bodily injury or that a  
30 death is suspicious shall, in addition to contacting the

1 agency and the department, immediately contact law  
2 enforcement officials to make an oral report. An employee  
3 shall notify the administrator immediately following the  
4 report to law enforcement officials.

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

8 (3) The law enforcement officials shall notify the  
9 administrator that a report has been made with the law  
10 enforcement officials.

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

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

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

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

22 (3) Name and address of the facility.

23 (4) Nature of the alleged offense.

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

26 Section 502. Reports to department and coroner or medical  
27 examiner.

28 (a) Department.--

29 (1) Within 48 hours of receipt of a written report under  
30 section 501(a) involving sexual abuse, serious injury,



1       serious bodily injury or suspicious death, the agency shall  
2       transmit a written report to the department. Supplemental  
3       reports shall be transmitted as they are obtained by the  
4       agency.

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

9       (b) Coroner or medical examiner.--For a report under section  
10      501(a) concerning the death of a recipient, if there is  
11      reasonable cause to suspect that the recipient died as a result  
12      of abuse or neglect, the agency shall give the oral report and  
13      forward a copy of the written report to the appropriate coroner  
14      or medical examiner within 24 hours.

15      Section 503. Investigation.

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

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

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

29       (d) Further notification.--

30           (1) Law enforcement officials shall notify an agency and

1 facility of a decision regarding criminal charges.

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

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

8 Section 504. Restrictions on employees.

9 (a) Plan of supervision.--

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

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

19 (b) Prohibition.--

20 (1) On the filing of criminal charges against a  
21 facility's employee, the appropriate State agency that  
22 licenses, regulates or has fiscal authority over the facility  
23 shall order the facility to immediately prohibit the employee  
24 from having access to recipients at the facility.

25 (2) If the employee is a director, operator,  
26 administrator or supervisor, the employee shall be subject to  
27 restrictions deemed appropriate by the Commonwealth agency  
28 that licenses, regulates or has fiscal authority over the  
29 facility to assure the safety of the recipients of the  
30 facility.

1 Section 505. Confidentiality of and access to confidential  
2 reports.

3 A report under this chapter shall be made available in the  
4 following circumstances:

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

7 (2) If an investigation by an agency or law enforcement  
8 results in a report of criminal conduct, law enforcement  
9 officials shall have access to relevant records maintained by  
10 the agency or the department.

11 (3) In arranging specific services to effect service  
12 plans, an agency may disclose to appropriate service  
13 providers information necessary to initiate the delivery of  
14 services.

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

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

24 (6) When the department is involved in the hearing of an  
25 appeal by a subject of a report, the appropriate department  
26 staff shall be given access to information in the report  
27 record relevant to the appeal.

28 (7) For the purposes of monitoring agency performance,  
29 appropriate staff of the department may be given access to  
30 agency protective service records.

1 Section 506. Penalties.

2 (a) Administrative.--

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

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

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

24 (b) Criminal.--

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

30 (2) A facility owner that intentionally or willfully

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

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

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

16 Section 507. Immunity.

17 No administrator or facility shall be held civilly liable for  
18 any action directly related to good faith compliance with this  
19 chapter.

## 20 CHAPTER 7

### 21 MISCELLANEOUS PROVISIONS

22 Section 701. Regulations.

23 (a) The Department of Health and the Department of Public  
24 Welfare shall promulgate regulations necessary to carry out  
25 Chapter 5.

26 (b) The department shall promulgate rules and regulations  
27 necessary to implement this act. Regulations shall be developed  
28 in consultation with adults, their families and advocates.

29 Section 702. Report.

30 The department shall present a report on the program and

1 services performed to the Aging and Youth Committee of the  
2 Senate and the Aging and Older Adult Services Committee of the  
3 House of Representatives on an annual basis.

4 Section 703. Repeals.

5 All acts and parts of acts are repealed insofar as they are  
6 inconsistent with this act.

7 Section 704. Effective date.

8 This act shall take effect in six months.