

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 305 Session of
1995

INTRODUCED BY VANCE, E. Z. TAYLOR, GRUPPO, ITKIN, NAILOR,
KUKOVICH, MICOZZIE, BUXTON, STURLA, D. R. WRIGHT, MARSICO,
TRELLO, HERMAN, FLICK, COLAFELLA, STISH, COY, STEELMAN,
CLARK, TRUE, RUBLEY, CIVERA, SAYLOR, D. W. SNYDER, GEIST,
MILLER, CORNELL, PLATTS, VAN HORNE, DEMPSEY, WAUGH, DeLUCA,
FAIRCHILD, OLASZ, BELARDI, MUNDY, BROWN, SHANER, BATTISTO,
CORRIGAN, YOUNGBLOOD, O'BRIEN, TIGUE, TRICH, FAJT, EGOLF,
BARD, SCHULER, BROWNE, ARMSTRONG, HALUSKA, SCRIMENTI, SATHER,
MICHLOVIC, MERRY, CAPPABIANCA, WILLIAMS, PETRARCA AND
BOSCOLA, JANUARY 25, 1995

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 21, 1995

AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled
2 "An act relating to the protection of the abused, neglected,
3 exploited or abandoned elderly; establishing a uniform
4 Statewide reporting and investigative system for suspected
5 abuse, neglect, exploitation or abandonment of the elderly;
6 providing protective services; providing for funding; and
7 making repeals," adding definitions of "registry" and
8 "serious bodily injury"; further providing for reporting, for
9 investigations of reports of need for protective services and
10 for confidentiality of records; and providing for a registry
11 of perpetrators of abuse in institutions.

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

14 Section 1. Section 3 of the act of November 6, 1987
15 (P.L.381, No.79), known as the Older Adults Protective Services
16 Act, is amended by adding definitions to read:

17 Section 3. Definitions.

18 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 * * *

4 "Registry." The Nurse Aide and Elder Abuse Registry
5 established in section 13.1.

6 * * *

7 "Serious bodily injury." Injury which creates a substantial
8 risk of death or which causes serious permanent disfigurement or
9 protracted loss or impairment of the function of a body member
10 or organ.

11 * * *

12 Section 2. Section 5 of the act is amended by adding a
13 ~~subsection~~ SUBSECTIONS to read:

14 Section 5. Reporting; protection from retaliation; immunity.

15 * * *

16 (a.1) Mandatory reporting.--Any individual who is a
17 caretaker in an institution who has reason to believe an older
18 adult who is a resident of the institution is a victim of abuse
19 or neglect shall immediately make an oral report to the agency
20 which is the local provider of protective services.

21 * * *

22 (E) PENALTIES FOR FAILURE TO REPORT.--A PERSON REQUIRED
23 UNDER THIS SECTION TO REPORT A CASE OF SUSPECTED ABUSE OR
24 NEGLECT WHO WILLFULLY FAILS TO DO SO COMMITS A SUMMARY OFFENSE
25 FOR THE FIRST VIOLATION AND A MISDEMEANOR OF THE THIRD DEGREE
26 FOR A SECOND OR SUBSEQUENT VIOLATION.

27 Section 3. Sections 6 and 9 of the act are amended to read:

28 Section 6. Investigations of reports of need for protective
29 services.

30 (a) Investigation.--It shall be the agency's responsibility

1 to provide for an investigation of each report made under
2 section 5. Upon the receipt of a report ~~indicating homicide,~~ OF <—
3 A SUSPICIOUS DEATH OR SUSPECTED sexual abuse or serious bodily
4 injury, the agency shall immediately orally notify law
5 enforcement officials of the jurisdiction where the alleged
6 abuse or neglect occurred. The agency shall also report within
7 72 hours all OTHER cases of abuse or neglect of older persons in <—
8 institutions to LOCAL law enforcement officials ~~of the~~ <—
9 ~~jurisdiction where the institution is located,~~ when the agency
10 has reason to believe the report will be substantiated. The
11 investigation shall be initiated within 72 hours after the
12 receipt of the report and shall be carried out under regulations
13 issued by the department. These regulations shall provide for
14 the methods of conducting investigations under this section and
15 shall assure that steps are taken to avoid any conflict of
16 interest between the investigator and service delivery
17 functions.

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

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

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

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

22 (e) Plan of supervision.--Upon notification that an
23 individual who is a caretaker in an institution is alleged to
24 have committed abuse or neglect under this act, the institution
25 shall immediately implement a plan of supervision or alternative
26 arrangement, subject to the agency's approval, for the
27 individual under investigation to insure the safety of the
28 residents of the institution. This plan shall remain in effect
29 until a determination is made by the agency under this section.

30 (f) Duty of State licensing agency where report is

1 substantiated.--Upon the receipt of a substantiated report
2 identifying an employee, supervisor, director, independent
3 contractor or operator as a perpetrator, the State licensing
4 agency shall order the licensee to immediately prohibit the
5 perpetrator from having access to residents of the facility.
6 Where the perpetrator is a director, operator or supervisor, the
7 person shall be subject to restrictions deemed appropriate by
8 the licensing agency which shall assure the safety of residents
9 of the institution.

10 Section 9. Confidentiality of records.

11 (a) General rule.--Information contained in reports, records
12 of investigation, client assessment and service plans shall be
13 considered confidential and shall be maintained under
14 regulations promulgated by the department to safeguard
15 confidentiality. Except as provided below, this information
16 shall not be disclosed to anyone outside the agency other than
17 to a court of competent jurisdiction or pursuant to a court
18 order.

19 (b) Limited access to the agency's protective services
20 records.--

21 (1) [In the event that an investigation by the agency
22 results in a report of criminal conduct, law] Law enforcement
23 officials shall have access to all relevant records
24 maintained by the agency or the department for the purposes
25 of investigating cases referred to under section 6(a).

26 (2) In arranging specific services to carry out service
27 plans, the agency may disclose to appropriate service
28 providers such information as may be necessary to initiate
29 the delivery of services.

30 (3) A subject of a report made under section 5 may

1 receive, upon written request, all information contained in
2 the report except that prohibited from being disclosed by
3 paragraph (4).

4 (4) The release of information that would identify the
5 person who made a report of suspected abuse, neglect,
6 exploitation or abandonment or person who cooperated in a
7 subsequent investigation, is hereby prohibited unless the
8 secretary can determine that such a release will not be
9 detrimental to the safety of such person.

10 (5) When the department is involved in the hearing of an
11 appeal by a subject of a report made under section 5, the
12 appropriate department staff shall have access to all
13 information in the report record relevant to the appeal.

14 (6) For the purposes of monitoring agency performance,
15 appropriate staff of the department may access agency
16 protective services records.

17 (7) Appropriate staff of the department may access
18 agency protective service records for the purpose of placing
19 information in the registry regarding institutional abuse of
20 older persons under section 13.1.

21 Section 4. The act is amended by adding a section to read:

22 Section 13.1. Nurse Aide and Elder Abuse Registry.

23 (a) Establishment.--The Department of Aging, the Department
24 of Health and the Department of Public Welfare shall establish a
25 cooperative arrangement whereby persons found to be
26 substantiated perpetrators of abuse or neglect of older persons
27 in institutions shall be listed on the Department of Health's
28 Nurse Aide Registry, as established in accordance with the
29 Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203,
30 101 Stat. 1330). The Nurse Aide Registry shall hereafter be

1 known as the Nurse Aide and Elder Abuse Registry.

2 (b) Information in registry.--In addition to the information
3 already required to be maintained within the Nurse Aide
4 Registry, in accordance with regulations promulgated pursuant to
5 the Omnibus Budget Reconciliation Act of 1987, the registry
6 shall include and be limited to the following information:

7 (1) The name, Social Security number, age, sex and
8 address of the perpetrator.

9 (2) The institution or institutions where the
10 perpetrator committed the abuse or neglect.

11 (3) A description of the abuse or neglect committed by
12 the perpetrator including the date or dates of the incidents.

13 (c) Expungement.--The Department of Health shall immediately
14 expunge information in the registry pertaining to any
15 perpetrator where the finding of the agency has been reversed
16 upon appeal under 6 Pa. Code § 15.82(3) (relating to rights of
17 alleged abusers).

18 (d) Information submitted by prospective employees.--
19 Administrators of institutions which assume the responsibility
20 for the provision of care needed to maintain the physical or
21 mental health of an older adult shall require prospective
22 employees to submit with their applications for employment a
23 certification from the Department of Health as to whether the
24 applicant is named in the registry as a perpetrator. The
25 certificate must be obtained within the preceding one-year
26 period.

27 (e) Grounds for denying employment.--In no case shall an
28 administrator hire an applicant where the Department of Health
29 has verified the applicant is named in the registry as a
30 perpetrator.

1 (f) Regulations.--The Department of Aging, the Department of
2 Health and the Department of Public Welfare shall promulgate the
3 regulations necessary to carry out this section which shall
4 include a uniform procedure for agencies to immediately transmit
5 to the registry records of substantiated cases of abuse or
6 neglect of older persons in institutions.

7 Section 5. This act shall take effect in 90 days.