

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 132 Session of
1997

INTRODUCED BY VANCE, E. Z. TAYLOR, GRUPPO, BLAUM, SAYLOR, TIGUE,
BUXTON, NAILOR, KREBS, MASLAND, GEORGE, FLICK, ARMSTRONG,
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D. W. SNYDER, SHANER, MARSICO, ITKIN, MUNDY, MANDERINO,
MICHLOVIC, CURRY AND BUNT, JANUARY 29, 1997

REFERRED TO COMMITTEE ON AGING AND YOUTH, JANUARY 29, 1997

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; making
7 repeals," adding certain definitions; further providing for
8 reporting, for investigations and for reporting suspected
9 abuse by employees.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 103 of the act of November 6, 1987
13 (P.L.381, No.79), known as the Older Adults Protective Services
14 Act, amended December 18, 1996 (P.L. No.169), is amended by
15 adding definitions to read:

16 Section 103. Definitions.

17 The following words and phrases when used in this act shall
18 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 "Serious bodily injury." An injury which:

4 (1) causes a person severe pain;

5 (2) creates a substantial risk of death; or

6 (3) significantly impairs a person's physical
7 functioning, either temporarily or permanently.

8 * * *

9 "Sexual abuse." Intentionally, knowingly or recklessly
10 causing or attempting to cause rape, involuntary deviate sexual
11 intercourse, sexual assault, statutory sexual assault,
12 aggravated indecent assault, indecent assault or incest.

13 Section 2. Sections 302(a), 303(a) and 304(e) of the act,
14 amended December 18, 1996 (P.L. , No.169) are amended to
15 read:

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

17 (a) Reporting.--Any person having reasonable cause to
18 believe that an older adult is in need of protective services
19 may report such information to the agency which is the local
20 provider of protective services. Where applicable, reports shall
21 comply with the provisions of chapter 7.

22 * * *

23 Section 303. Investigations of reports of need for protective
24 services.

25 (a) Investigation.--It shall be the agency's responsibility
26 to provide for an investigation of each report made under
27 section 302. The investigation shall be initiated within 72
28 hours after the receipt of the report and shall be carried out
29 under regulations issued by the department. These regulations
30 shall provide for the methods of conducting investigations under

1 this section and shall assure that steps are taken to avoid any
2 conflict of interest between the investigator and service
3 delivery functions. Reports and investigations under this
4 section shall comply with chapter 7, where applicable.

5 * * *

6 Section 304. Provision of services; access to records and
7 persons.

8 * * *

9 (e) Access to persons.--The agency shall have access to
10 older persons who have been reported to be in need of protective
11 services in order to:

12 (1) Investigate reports under section 303 and chapter 7.

13 (2) Assess client need and develop a service plan for
14 addressing needs determined.

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

18 * * *

19 Section 3. The act is amended by adding a chapter to read:

20 CHAPTER 7

21 REPORTING SUSPECTED ABUSE BY EMPLOYEES

22 Section 701. Reporting by employees.

23 (a) Mandatory reporting to agency.--

24 (1) An employee or an administrator who has reasonable
25 cause to suspect that a recipient is a victim of abuse shall
26 immediately make an oral report to the agency. An employee
27 shall notify the administrator immediately following the
28 report to the agency.

29 (2) Within 48 hours of making the oral report, the
30 employee or administrator shall make a written report to the

1 agency. The agency shall notify the administrator that a
2 report of abuse has been made with the agency.

3 (3) The employee may request the administrator to make,
4 or to assist the employee to make, the oral and written
5 reports required by this subsection.

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

7 (1) An employee or an administrator who has reasonable
8 cause to suspect that a recipient is the victim of sexual
9 abuse or serious bodily injury or that a death is suspicious
10 shall immediately contact law enforcement officials to make
11 an oral report. An employee shall notify the administrator
12 immediately following the report to law enforcement
13 officials.

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

17 (3) The law enforcement officials shall notify the
18 administrator that a report has been made with the law
19 enforcement officials.

20 (4) The employee may request the administrator to make,
21 or to assist the employee to make, the oral and written
22 reports to law enforcement required by this subsection.

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

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

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

30 (3) Name and address of the facility.

1 (4) Nature of the alleged offense.

2 (5) Any specific comments or observations that are
3 directly related to the alleged incident and the individual
4 involved.

5 Section 702. Reports to department and coroner.

6 (a) Department.--

7 (1) Within 48 hours of receipt of a written report under
8 section 701(a), the agency shall transmit a written report to
9 the department. Supplemental reports shall be transmitted as
10 they are obtained by the agency.

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

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

15 (ii) Where the suspected abuse occurred.

16 (iii) The age and sex of the alleged perpetrator and
17 victim.

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

20 (v) The name and relationship of the individual
21 responsible for causing the alleged abuse to the victim,
22 if known, and any evidence of prior abuse by that
23 individual.

24 (vi) The source of the report.

25 (vii) The individual making the report and where
26 that individual can be reached.

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

30 (ix) Any other information which the department may

1 require by regulation.

2 (b) Coroner.--For a report under section 701(a) which
3 concerns the death of a recipient, if there is reasonable cause
4 to suspect that the recipient died as a result of abuse, the
5 agency shall give the oral report and forward a copy of the
6 written report to the appropriate coroner within 24 hours.

7 Section 703. Investigation.

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

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

16 (c) Cooperation.--To the fullest extent possible, law
17 enforcement officials, the facility and the agency shall
18 coordinate their respective investigations. Law enforcement
19 officials, the facility and the agency shall advise each other
20 and provide any applicable additional information on an ongoing
21 basis.

22 (d) Further notification.--Law enforcement officials shall
23 notify the agency and the facility of a decision regarding
24 criminal charges. The agency and the department shall keep a
25 record of any decision regarding criminal charges.

26 (e) Compliance with Chapter 3.--In addition to the
27 provisions of this section, the agency shall comply with Chapter
28 3.

29 Section 704. Restrictions on employees.

30 (a) Plan of supervision.--Upon notification that an employee

is alleged to have committed abuse, the facility shall immediately implement a plan of supervision or, where appropriate, suspension of the employee, subject to approval by the agency and by the Commonwealth agency with regulatory authority over the facility. A plan of supervision for a home health care agency must include periodic random direct inspections of care-dependent individuals by a facility employee who has been continuously employed by that facility for a period of at least one year.

(b) Prohibition.--Upon the filing of criminal charges against an employee, the Commonwealth agency which licenses the facility shall order the facility to immediately prohibit that employee from having access to recipients at the facility. If that employee is a director, operator, administrator or supervisor, that employee shall be subject to restrictions deemed appropriate by the Commonwealth agency which licenses the facility to assure the safety of recipients of the facility.
Section 705. Confidentiality of and access to confidential reports.

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

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

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

(2) An employee of the Department of Health or the Department of Public Welfare in the course of official duties.

(3) An employee of an agency of another state which

1 performs protective services similar to those under this
2 chapter.

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

6 (5) The director, or an individual specifically
7 designated in writing by the director, of any hospital or
8 other medical institution where a victim is being treated if
9 the director or designee suspects that the recipient is in
10 need of protection under this chapter.

11 (6) A guardian of the recipient.

12 (7) A court of competent jurisdiction pursuant to a
13 court order.

14 (8) The Attorney General.

15 (9) Law enforcement officials of any jurisdiction as
16 long as the information is relevant in the course of
17 investigating cases of abuse.

18 (10) A mandated reporter under Chapter 3 who made a
19 report of suspected abuse. Information released under this
20 paragraph shall be limited to the following:

21 (i) The final status of the report following the
22 investigation.

23 (ii) Services provided or to be provided by the
24 agency.

25 (c) Excision of certain names.--The name of the person
26 suspected of committing the abuse shall be excised from a report
27 made available under subsection (b)(4), (5) and (10).

28 (d) Release of information to alleged perpetrator and
29 victim.--Upon written request, an alleged perpetrator and victim
30 may receive a copy of all information, except that prohibited

1 from being disclosed by subsection (e).

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

8 Section 706. Penalties.

9 (a) Administrative.--

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

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

23 (3) The Commonwealth agency or Commonwealth agencies
24 which regulate the facility have jurisdiction to determine
25 violations of this chapter and may issue an order assessing a
26 civil penalty of not more than \$2,500. An order under this
27 paragraph is subject to 2 Pa.C.S. Ch. 5, Subch. A (relating
28 to practice and procedure of Commonwealth agencies) and Ch.
29 7, Subch. A (relating to judicial review of Commonwealth
30 agency action).

1 (b) Criminal.--

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

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

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

17 Section 4. This act shall take effect in 90 days.