
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,
M. COHEN, NICKOL, COY, B. SMITH, MILLER, JAMES, BELARDI,
TULLI, MAITLAND, WAUGH, CORNELL, FEESE, OLASZ, READSHAW,
PESCI, DENT, BATTISTO, BOSCOLA, PETRARCA, DeLUCA, TRAVAGLIO,
GLADECK, TRELLO, VAN HORNE, ROONEY, BEBKO-JONES,
D. W. SNYDER, SHANER, MARSICO, ITKIN, MUNDY, MANDERINO,
MICHLOVIC, CURRY, BUNT, COLAFELLA, L. I. COHEN, LUCYK,
STEELMAN, RAYMOND, C. WILLIAMS, TRICH, STEVENSON, EGOLF,
ROBERTS, BAKER, HABAY, ORIE, BENNINGHOFF, EACHUS AND BROWN,
JANUARY 29, 1997

SENATOR PICCOLA, AGING AND YOUTH, IN SENATE, AS AMENDED,
MARCH 12, 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, is amended by adding definitions to read:

15 Section 103. Definitions.

16 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 "INTIMIDATION." AN ACT OR OMISSION BY ANY PERSON OR ENTITY <—
5 TOWARD ANOTHER PERSON WHICH IS INTENDED TO, OR WITH KNOWLEDGE
6 THAT THE ACT OR OMISSION WILL, OBSTRUCT, IMPEDE, IMPAIR, PREVENT
7 OR INTERFERE WITH THE ADMINISTRATION OF THIS ACT OR ANY LAW
8 INTENDED TO PROTECT OLDER ADULTS FROM MISTREATMENT.

9 * * *

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

14 "Serious physical injury." An injury that:

15 (1) causes a person severe pain; or

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

18 * * *

19 "Sexual abuse." Intentionally, knowingly or recklessly
20 causing or attempting to cause rape, involuntary deviate sexual
21 intercourse, sexual assault, statutory sexual assault,
22 aggravated indecent assault, indecent assault or incest.

23 Section 2. Sections ~~302(a)~~ 302, 303(a), 304(e) and ~~503~~, 503 <—
24 AND 508 of the act, amended or added December 18, 1996
25 (P.L.1125, No.169), are amended to read:

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

27 (a) Reporting.--Any person having reasonable cause to
28 believe that an older adult is in need of protective services
29 may report such information to the agency which is the local
30 provider of protective services. Where applicable, reports shall

1 comply with the provisions of chapter 7.

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3 (B) RECEIVING REPORTS.--THE AGENCY SHALL BE CAPABLE OF

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4 RECEIVING REPORTS OF OLDER ADULTS IN NEED OF PROTECTIVE SERVICES
5 24 HOURS A DAY, SEVEN DAYS A WEEK (INCLUDING HOLIDAYS). THIS
6 CAPABILITY MAY INCLUDE THE USE OF A LOCAL EMERGENCY RESPONSE
7 SYSTEM OR A CRISIS INTERVENTION AGENCY, PROVIDED THAT ACCESS CAN
8 BE MADE TO A PROTECTIVE SERVICES CASEWORKER IN APPROPRIATE
9 EMERGENCY SITUATIONS AS SET FORTH IN REGULATIONS PROMULGATED BY
10 THE DEPARTMENT. ALL REPORTS RECEIVED ORALLY UNDER THIS SECTION
11 SHALL BE REDUCED TO WRITING IMMEDIATELY BY THE PERSON WHO
12 RECEIVES THE REPORT.

13 (C) RETALIATORY ACTION; PENALTY.--ANY PERSON MAKING A REPORT
14 OR COOPERATING WITH THE AGENCY, INCLUDING PROVIDING TESTIMONY IN
15 ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, AND THE VICTIM SHALL
16 BE FREE FROM ANY DISCRIMINATORY, RETALIATORY OR DISCIPLINARY
17 ACTION BY AN EMPLOYER OR BY ANY OTHER PERSON OR ENTITY. ANY
18 PERSON WHO VIOLATES THIS SUBSECTION IS SUBJECT TO A CIVIL
19 LAWSUIT BY THE REPORTER OR THE VICTIM WHEREIN THE REPORTER OR
20 VICTIM SHALL RECOVER TREBLE COMPENSATORY AND PUNITIVE DAMAGES OR
21 \$5,000, WHICHEVER IS GREATER.

22 (C.1) INTIMIDATION; PENALTY.--ANY PERSON, INCLUDING THE
23 VICTIM, WITH KNOWLEDGE SUFFICIENT TO JUSTIFY MAKING A REPORT OR
24 COOPERATING WITH THE AGENCY, INCLUDING POSSIBLY PROVIDING
25 TESTIMONY IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, SHALL BE
26 FREE FROM ANY INTIMIDATION BY AN EMPLOYER OR BY ANY OTHER PERSON
27 OR ENTITY. ANY PERSON WHO VIOLATES THIS SUBSECTION IS SUBJECT TO
28 CIVIL LAWSUIT BY THE PERSON INTIMIDATED OR THE VICTIM WHEREIN
29 THE PERSON INTIMIDATED OR THE VICTIM SHALL RECOVER TREBLE
30 COMPENSATORY AND PUNITIVE DAMAGES OR \$5,000, WHICHEVER IS

1 GREATER.

2 (D) IMMUNITY.--ANY PERSON PARTICIPATING IN THE MAKING OF A
3 REPORT OR WHO PROVIDES TESTIMONY IN ANY ADMINISTRATIVE OR
4 JUDICIAL PROCEEDING ARISING OUT OF A REPORT SHALL BE IMMUNE FROM
5 ANY CIVIL OR CRIMINAL LIABILITY ON ACCOUNT OF THE REPORT OR
6 TESTIMONY UNLESS THE PERSON ACTED IN BAD FAITH OR WITH MALICIOUS
7 PURPOSE. THIS IMMUNITY SHALL NOT EXTEND TO LIABILITY FOR ACTS OF
8 ABUSE, NEGLIGENCE, EXPLOITATION OR ABANDONMENT, EVEN IF SUCH ACTS
9 ARE THE SUBJECT OF THE REPORT OR TESTIMONY.

10 Section 303. Investigations of reports of need for protective
11 services.

12 (a) Investigation.--It shall be the agency's responsibility
13 to provide for an investigation of each report made under
14 section 302. The investigation shall be initiated within 72
15 hours after the receipt of the report and shall be carried out
16 under regulations issued by the department. These regulations
17 shall provide for the methods of conducting investigations under
18 this section and shall assure that steps are taken to avoid any
19 conflict of interest between the investigator and service
20 delivery functions. Reports and investigations under this
21 section shall comply with chapter 7, where applicable.

22 * * *

23 Section 304. Provision of services; access to records and
24 persons.

25 * * *

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

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

30 (2) Assess client need and develop a service plan for

addressing needs determined.

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

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Section 503. Grounds for denying employment.

(a) General rule.--In no case shall a facility hire an applicant or retain an employee required to submit information pursuant to section 502(a) if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted [under one or more provisions of 18 Pa.C.S. (relating to crimes and offenses):] of any of the following offenses:

[Section 2502(a) or (b) (relating to murder).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 4302 (relating to incest).

Section 6312 (relating to sexual abuse of children).

(b) Other offenses.--In no case may a facility hire an applicant or retain an employee required to submit information pursuant to section 502(a) if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted within ten years immediately preceding the date of the report of one or more of the following offenses:

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

4 (2) An offense under one or more of the following
5 provisions of 18 Pa.C.S.:

6 Chapter 25 (relating to criminal homicide) except for
7 section 2502(a) and (b).

8 Section 2702 (relating to aggravated assault).

9 Section 2901 (relating to kidnapping).

10 Section 2902 (relating to unlawful restraint).

11 Section 3301 (relating to arson and related
12 offenses).

13 Section 3502 (relating to burglary).

14 Section 3701 (relating to robbery).

15 A felony offense under Chapter 39 (relating to theft
16 and related offenses), or two or more misdemeanors under
17 Chapter 39.

18 Section 4101 (relating to forgery).

19 Section 4304 (relating to endangering welfare of
20 children).

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

23 Section 4953 (relating to retaliation against witness
24 or victim).

25 A felony offense under section 5902(b) (relating to
26 prostitution and related offenses).

27 Section 5903(c) or (d) (relating to obscene and other
28 sexual materials and performances).

29 Section 6301 (relating to corruption of minors).]

30 (1) An offense designated as a felony under the act of

1 April 14, 1972 (P.L.233, No.64), known as The Controlled
2 Substance, Drug, Device and Cosmetic Act.

3 (2) An offense under one or more of the following
4 provisions of 18 Pa.C.S. (relating to crimes and offenses):

5 Chapter 25 (relating to criminal homicide).

6 Section 2702 (relating to aggravated assault).

7 Section 2901 (relating to kidnapping).

8 Section 2902 (relating to unlawful restraint).

9 Section 3121 (relating to rape).

10 Section 3122.1 (relating to statutory sexual
11 assault).

12 Section 3123 (relating to involuntary deviate sexual
13 intercourse).

14 SECTION 3124.1 (RELATING TO SEXUAL ASSAULT).

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15 Section 3125 (relating to aggravated indecent
16 assault).

17 Section 3126 (relating to indecent assault).

18 Section 3127 (relating to indecent exposure).

19 Section 3301 (relating to arson and related
20 offenses).

21 Section 3502 (relating to burglary).

22 Section 3701 (relating to robbery).

23 A felony offense under Chapter 39 (relating to theft
24 and related offenses) or two or more misdemeanors under
25 Chapter 39.

26 Section 4101 (relating to forgery).

27 Section 4114 (relating to securing execution of
28 documents by deception).

29 SECTION 4302 (RELATING TO INCEST).

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30 Section 4303 (relating to concealing death of child).

1 Section 4304 (relating to endangering welfare of
2 children).

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

5 Section 4952 (relating to intimidation of witnesses
6 or victims).

7 Section 4953 (relating to retaliation against witness
8 or victim).

9 A felony offense under section 5902(b) (relating to
10 prostitution and related offenses).

11 Section 5903(c) or (d) (relating to obscene and other
12 sexual materials and performances).

13 Section 6301 (relating to corruption of minors).

14 Section 6312 (relating to sexual abuse of children).

15 (3) A Federal or out-of-State offense similar in nature
16 to those crimes listed in paragraphs (1) and (2).

17 (c) Immunity.--An administrator or a facility shall not be
18 held civilly liable for any action directly related to good
19 faith compliance with this section.

20 SECTION 508. APPLICABILITY.

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21 THIS CHAPTER SHALL APPLY AS FOLLOWS:

22 (1) AN INDIVIDUAL WHO, ON THE EFFECTIVE DATE OF THIS
23 CHAPTER, HAS CONTINUOUSLY FOR A PERIOD OF [TWO YEARS] ONE
24 YEAR BEEN AN EMPLOYEE OF THE SAME FACILITY SHALL BE EXEMPT
25 FROM SECTION 502 AS A CONDITION OF CONTINUED EMPLOYMENT.

26 (2) IF AN EMPLOYEE IS NOT EXEMPT UNDER PARAGRAPH (1),
27 THE EMPLOYEE AND THE FACILITY SHALL COMPLY WITH SECTION 502
28 WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS CHAPTER.

29 (3) IF AN EMPLOYEE WHO IS EXEMPT UNDER PARAGRAPH (1)
30 SEEKS EMPLOYMENT WITH A DIFFERENT FACILITY, THE EMPLOYEE AND

1 THE FACILITY SHALL COMPLY WITH SECTION 502.

2 (4) AN EMPLOYEE WHO HAS OBTAINED THE INFORMATION
3 REQUIRED UNDER SECTION 502 MAY TRANSFER TO ANOTHER FACILITY
4 ESTABLISHED AND SUPERVISED BY THE SAME OWNER AND IS NOT
5 REQUIRED TO OBTAIN ADDITIONAL REPORTS BEFORE MAKING THE
6 TRANSFER.

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

8 CHAPTER 7

9 REPORTING SUSPECTED ABUSE BY EMPLOYEES

10 Section 701. 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 shall
14 immediately make an oral report to the agency. If applicable,
15 the agency shall advise the employee or administrator of
16 additional reporting requirements that may pertain under
17 subsection (b). An employee shall notify the administrator
18 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 employee may request the administrator to make,
24 or to assist the employee to make, the oral and written
25 reports required by this subsection.

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 PHYSICAL INJURY or serious bodily injury or
30 that a death is suspicious shall, in addition to contacting

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

5 (2) Within 48 hours of making the oral report, the
6 employee and an administrator shall make a written report to
7 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 required by this subsection.

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

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

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

21 (3) Name and address of the facility.

22 (4) Nature of the alleged offense.

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

26 Section 702. Reports to department and coroner.

27 (a) Department.--

28 (1) Within 48 hours of receipt of a written report under
29 section 701(a) involving sexual abuse, SERIOUS PHYSICAL
30 INJURY, serious bodily injury or suspicious death, the agency

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1 shall transmit a written report to the department.

2 Supplemental reports shall be transmitted as they are
3 obtained by the agency.

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

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

8 (ii) Where the suspected abuse occurred.

9 (iii) The age and sex of the alleged perpetrator and
10 victim.

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

13 (v) The name and relationship of the individual
14 responsible for causing the alleged abuse to the victim,
15 if known, and any evidence of prior abuse by that
16 individual.

17 (vi) The source of the report.

18 (vii) The individual making the report and where
19 that individual can be reached.

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

23 (ix) Any other information which the department may
24 require by regulation.

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

30 Section 703. Investigation.

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

5 (b) Notification.--If law enforcement officials have
6 reasonable cause to suspect that a recipient has suffered sexual
7 abuse, SERIOUS PHYSICAL INJURY, serious bodily injury or a <—
8 suspicious death, law enforcement officials shall notify the
9 agency.

10 (c) Cooperation.--To the fullest extent possible, law
11 enforcement officials, the facility and the agency shall
12 coordinate their respective investigations. Law enforcement
13 officials, the facility and the agency shall advise each other
14 and provide any applicable additional information on an ongoing
15 basis.

16 (d) Further notification.--Law enforcement officials shall
17 notify the agency and the facility of a decision regarding
18 criminal charges. The agency and the department shall keep a
19 record of any decision regarding criminal charges.

20 (e) Compliance with Chapter 3.--In addition to the
21 provisions of this section, the agency shall comply with Chapter
22 3.
23 Section 704. Restrictions on employees.

24 (a) Plan of supervision.--Upon notification that an employee
25 is alleged to have committed abuse, the facility shall
26 immediately implement a plan of supervision or, where
27 appropriate, suspension of the employee, subject to approval by
28 the agency and by the Commonwealth agency with regulatory
29 authority over the facility. A plan of supervision for a home
30 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 performs protective services similar to those under this chapter.

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

(5) The director, or an individual specifically

1 designated in writing by the director, of any hospital or
2 other medical institution where a victim is being treated if
3 the director or designee suspects that the recipient is in
4 need of protection under this chapter.

5 (6) A guardian of the recipient.

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

8 (8) The Attorney General.

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

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

15 (i) The final status of the report following the
16 investigation.

17 (ii) Services provided or to be provided by the
18 agency.

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

22 (d) Release of information to alleged perpetrator and
23 victim.--Upon written request, an alleged perpetrator and victim
24 may receive a copy of all information, except that prohibited
25 from being disclosed by subsection (e).

26 (e) Protecting identity of person making report.--Except for
27 reports to law enforcement officials, the release of data that
28 would identify the individual who made a report under this
29 chapter or an individual who cooperated in a subsequent
30 investigation is prohibited. Law enforcement officials shall

1 treat all reporting sources as confidential information.

2 Section 706. Penalties.

3 (a) Administrative.--

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

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

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

25 (b) Criminal.--

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

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

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

11 SECTION 707. IMMUNITY.

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12 AN ADMINISTRATOR OR A FACILITY SHALL NOT BE HELD CIVILLY
13 LIABLE FOR ANY ACTION DIRECTLY RELATED TO GOOD FAITH COMPLIANCE
14 WITH THIS CHAPTER.

15 Section 707 708. Regulations.

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16 The Department of Aging, the Department of Health and the
17 Department of Public Welfare shall promulgate the regulations
18 necessary to carry out this chapter.

19 Section 4. This act shall take effect in 180 days.