

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# SENATE BILL

## No. 1049 Session of 2007

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INTRODUCED BY VANCE, ERICKSON, WASHINGTON, BAKER, BOSCOLA,  
BROWNE, COSTA, FERLO, FONTANA, GREENLEAF, KASUNIC, KITCHEN,  
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STOUT, TOMLINSON, C. WILLIAMS, WONDERLING, WOZNIAK AND  
EICHELBERGER, AUGUST 13, 2007

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SENATOR VANCE, AGING AND YOUTH, AS AMENDED, DECEMBER 11, 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 "ASSESSMENT." SOCIAL, PHYSICAL AND PSYCHOLOGICAL FINDINGS  
22 ALONG WITH A DESCRIPTION OF THE PERSON'S CURRENT RESOURCES AND  
23 NEEDS.

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

<—

1 would not otherwise exist in law.

2 ~~"Client assessment." Social, physical and psychological~~ <—  
3 ~~findings along with a description of the person's current~~  
4 ~~resources and needs.~~

5 "Court." A court of common pleas or a district magistrate  
6 court, where applicable.

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

8 "Employee." An individual who is employed by a facility. The  
9 term includes:

10 (1) A contract employee who has direct contact with  
11 residents or unsupervised access to their personal living  
12 quarters.

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

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

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

24 (1) AN ASSISTED LIVING RESIDENCE AS DEFINED IN SECTION <—  
25 1001 OF THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS  
26 THE PUBLIC WELFARE CODE.

27 ~~(1)~~ (2) A ~~"domiciliary care"~~ DOMICILIARY CARE home as <—  
28 defined in section 2202-A of the act of April 9, 1929  
29 (P.L.177, No.175), known as The Administrative Code of 1929.

30 ~~(2)~~ (3) A home health care agency as defined in section <—

802.1 of the act of July 19, 1979 (P.L.130, No.48), known as  
the Health Care Facilities Act.

~~(3)~~ (4) An intermediate care facility for people with  
mental retardation.

~~(4)~~ (5) A long-term care nursing facility as defined in  
section 802.1 of the act of July 19, 1979 (P.L.130, No.48),  
known as the Health Care Facilities Act.

(6) AN OLDER ADULT DAILY LIVING CENTER AS DEFINED IN  
SECTION 2 OF THE ACT OF JULY 11, 1990 (P.L.499, NO.118),  
KNOWN AS THE OLDER ADULT DAILY LIVING CENTERS LICENSING ACT.

~~(5)~~ (7) 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)~~ (8) 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)~~ (9) 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:~~ THESE  
SHALL INCLUDE:

(1) A police officer of a municipality.

(2) A district attorney.

(3) The Pennsylvania State Police.

(4) A COUNTY SHERIFF.

1           (5) THE ATTORNEY GENERAL.

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

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

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

15          "Protective services." Those activities, resources and  
16 supports provided to adults under this act to detect, prevent,  
17 reduce or eliminate abuse, neglect, exploitation and  
18 abandonment.

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

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

22          "Serious bodily injury." Injury that:

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

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

26          "Serious injury." An injury that:

27               (1) causes a person severe pain; or

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

30          "Service plan." A written plan that:

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

5 (2) ~~Is~~ WHERE POSSIBLE, IS based on multidisciplinary, <—  
6 comprehensive written assessments conducted by professionals  
7 who have met with the adult in need of protective services  
8 and are familiar with their situation.

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

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

14 (5) Is updated as needed.

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

## 20 CHAPTER 3

### 21 ADMINISTRATION

22 Section 301. Duties of department and agencies.

23 (a) General rule.--

24 (1) The department shall administer the ADULT protective <—  
25 services program in a manner designed to utilize least  
26 restrictive alternatives and to ensure services are provided  
27 in the most integrated setting.

28 (2) The department shall, in consultation with the  
29 Department of Public Welfare and other appropriate State  
30 agencies, define the geographic areas to be served by

1 agencies and shall select those agencies based upon a  
2 competitive bidding process. Successful bidders must:

3 (i) Demonstrate knowledge of and experience working  
4 with adults.

5 (ii) Be separate from agencies providing direct  
6 services to adults ~~or~~ AND FROM county mental health and <—  
7 mental retardation programs.

8 (iii) Demonstrate knowledge of service delivery  
9 principles important to adults and their families such as  
10 individual choice and use of THE least restrictive <—  
11 alternative.

12 ~~(iv) Include at least 51% representation of adults <—~~  
13 ~~and their family members on the board of directors.~~

14 (IV) DEMONSTRATE THAT THE PROGRAM WILL BE ADVISED BY <—  
15 A BODY THAT INCLUDES AT LEAST 51% REPRESENTATION OF  
16 ADULTS AND THEIR FAMILY MEMBERS.

17 (v) Include letters of support that show  
18 collaboration with ~~agencies~~ ENTITIES which advocate for <—  
19 adults.

20 (3) THE DEPARTMENT SHALL ESTABLISH, BY REGULATION, <—  
21 PROCEDURES TO ENSURE NO CONFLICT OF INTEREST IN THE PROVISION  
22 OF ADULT PROTECTIVE SERVICES.

23 ~~(3)~~ (4) The department shall conduct an ongoing campaign <—  
24 designed to inform and educate adults, families, caregivers,  
25 professionals and the general public about the need for and  
26 availability of protective services under this chapter. The  
27 campaign shall require facilities to post notice of the  
28 availability of protective services and to provide the notice  
29 to recipients and their families. The department shall  
30 consult with other departments of the Commonwealth on the

1 design and implementation of the ongoing public awareness  
2 campaign. The department shall also consider the concerns of  
3 agencies and entities identified by them under subsection  
4 (b).

5 ~~(4)~~ (5) The department shall establish, by regulation, <—  
6 minimum standards of training and experience that ~~protective~~ <—  
7 ~~services~~ agencies funded by the department shall follow in  
8 the selection and assignment of staff for the provision of  
9 protective services. The standards shall require ~~local~~ <—  
10 ~~protective services providers~~ AGENCIES to collaborate with <—  
11 adults, their families and advocates, and the standards shall  
12 be included in developing and delivering training.

13 ~~(5)~~ (6) The department shall ensure that agencies have <—  
14 access to the incident reporting system.

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

17 (1) Describe the implementation of this chapter,  
18 including, but not limited to, the organization, staffing,  
19 mode of operations and financing of protective services, as  
20 well as the provisions made for purchase of services,  
21 interagency relations, interagency agreements, service  
22 referral mechanisms and locus of responsibility for cases  
23 with multiservice agency needs.

24 (2) Describe the methods that the agency, its designees  
25 and service providers will use to assure the privacy of all  
26 adults receiving services and the confidentiality of all  
27 records.

28 (3) List all other social service entities, whether  
29 public or private, that have been identified by the agency as  
30 having substantial contact with potential victims or

perpetrators of abuse, neglect, exploitation and abandonment.

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

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

#### Section 302. Reporting.

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

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

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

(1) Priority. A report placed in this category shall require immediate attention because specific details in the report indicate the possibility that the adult reported to need protective services is at imminent risk of death or serious injury or serious bodily injury. The person receiving a priority report shall immediately contact a protective

1 services caseworker and provide the caseworker with the  
2 information contained in the report.

3 (2) Nonpriority. A report shall be placed in this  
4 category when it does not appropriately fall within the  
5 priority category and, therefore, does not require immediate  
6 attention by the agency. A report in this category shall be  
7 referred to a protective services caseworker of an agency  
8 within the normal business hours of the agency's current or  
9 next day of business under the agency's established  
10 procedures for referring these reports.

11 (3) Another planning and service area. A report in which  
12 the adult who is the subject of the report does not reside in  
13 the planning and service area of the agency or, at that time,  
14 is not in the planning and service area shall be placed in  
15 this category. The report shall be referred to the agency  
16 that has the designated responsibility for protective  
17 services in the planning and service area in which the adult  
18 reported to be in need of protective services is located at  
19 the time of the report. A report in this category shall also  
20 meet the criteria for placement in one of the other  
21 categories in this subsection. The provisions for referral  
22 for the other category shall apply to a referral to another  
23 planning and service area.

24 (4) No need for protective services. A report shall be  
25 placed in this category when the person reported to be in  
26 need of protective services meets either of the following  
27 criteria:

- 28 (i) has the capacity to perform or obtain, without  
29 help, services necessary to maintain physical or mental  
30 health;

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

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

(d) Retaliatory action.--

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

(2) Any person who violates this subsection is subject to a civil action by the reporter or the adult in need of protective services, in which action the reporter or adult IN need of protective services shall recover treble compensatory

1 damages, compensatory and punitive damages or \$5,000,  
2 whichever is greater.

3 (e) Intimidation.--

4 (1) A person, including an adult in need of protective  
5 services, with knowledge sufficient to justify making a  
6 report or cooperating with an agency, including possibly  
7 providing testimony in an administrative or judicial  
8 proceeding, shall not be subject to any intimidation by an  
9 employer or by any other person or entity.

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

16 (f) Immunity.--

17 (1) A person who participates in the making of a report  
18 or who provides testimony in an administrative or judicial  
19 proceeding arising out of a report shall be immune from any  
20 civil or criminal liability, subject to paragraph (2), on  
21 account of the report or testimony, unless the person acted  
22 in bad faith or with malicious purpose.

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

27 Section 303. Investigations of reports of need for protective  
28 services.

29 (a) Investigation.--

30 (1) An agency shall investigate each report made under

1 section 302.

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

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

8 (4) The department shall adopt regulations providing for  
9 the methods of conducting investigations under this section  
10 and shall assure that steps are taken to avoid any conflict  
11 of interest between the investigator and service delivery  
12 functions.

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

16 (b) Investigation involving licensed facilities.--

17 (1) A report concerning adults residing in a State-  
18 licensed facility shall be reported to the appropriate STATE <—  
19 licensing department and investigated under procedures  
20 developed by the department in consultation with the bureau  
21 ~~within the appropriate State agency~~ responsible for the <—  
22 licensure of the facility.

23 (2) The protective services agency may seek judicial  
24 relief to require the facility to protect the health and  
25 safety of the adult when the licensed program is believed to  
26 continue to jeopardize the adult's health and safety through  
27 evidence of risk substantiated.

28 (c) Unsubstantiated reports.--If after investigation by the  
29 agency a report is unsubstantiated, the case shall be closed,  
30 and all information shall be maintained for a period of one year

1 under procedures established by the department.

2 (d) Substantiated reports.--

3 (1) The agency shall provide for a timely assessment of  
4 the adult if a report is substantiated by the agency or if an  
5 assessment is necessary in order to determine whether the  
6 report is substantiated. An adult may refuse the assessment.

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

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

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

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

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

20 (v) Be in writing and include a recommended course  
21 of action that may include the pursuit of civil or  
22 criminal remedies.

23 (3) If an adult who is found to be in need of protective  
24 services refuses ~~a client~~ AN assessment or the development of <—  
25 a service plan, the agency may apply to the case the  
26 provisions of section 307.

27 Section 304. Provision of services.

28 (a) Availability of protective services.--Once need is  
29 determined, an agency shall offer protective services if an  
30 adult requests services or an interested person requests

1 services on behalf of an adult.

2 (b) Consent by request.--

3 (1) Except as provided in section 307, an adult shall  
4 only receive protective services voluntarily. In no event may  
5 protective services be provided under this chapter to an  
6 adult who refuses consent to the services or who, having  
7 consented, withdraws the consent, unless the services are  
8 ordered by a court or provided under section 307.

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

13 (c) Interference with services.--If any person interferes  
14 with the provision of services or the right of an adult to  
15 consent to provision of services, the agency may petition the  
16 court for an order enjoining the interference.

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

19 (1) Investigations of reports under section 303.

20 (2) Assessment of client need.

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

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

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

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

30 (2) Assess needs and develop a service plan for

1 addressing them.

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

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

13 (1) The caregiver or a third party has interfered with  
14 the completion of the investigation or the assessment and  
15 service plan or the delivery of services.

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

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

24 (h) Denial of access to records.--If the agency is denied  
25 access to records necessary for completion of a proper  
26 investigation of a report, assessment, service plan or the  
27 delivery of needed services in order to prevent further abuse,  
28 neglect, exploitation or abandonment of the adult reported to be  
29 in need of protective services, the agency may petition the  
30 court of common pleas for an order requiring the appropriate

1 access when either of the following conditions apply:

2 (1) The adult has provided written consent for any  
3 confidential records to be disclosed and the keeper of the  
4 records denies access.

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

9 Section 305. Immunity from civil and criminal liability.

10 In the absence of willful misconduct or gross negligence, an  
11 agency, its director and employees, protective services workers  
12 or employees of the department shall not be civilly or  
13 criminally liable for any decision or action or resulting  
14 consequence of decisions or actions when acting under and  
15 according to the provisions of this chapter.

16 Section 306. Confidentiality of records.

17 (a) General rule.--Information contained in reports, records  
18 of investigation, assessment and service plans shall be  
19 considered confidential and shall be maintained under  
20 regulations promulgated by the department to safeguard  
21 confidentiality. Except as otherwise provided in subsection (b),  
22 this information shall not be disclosed to anyone outside the  
23 agency other than to a court of competent jurisdiction pursuant  
24 to a court order.

25 (b) Limited access to agency's protective services  
26 records.--

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

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

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

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

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

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

23 Section 307. Involuntary intervention by emergency court order.

24           (a) Emergency petition.--

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

30           (2) The court of common pleas of each judicial district

1 shall ensure that a judge or magisterial district judge is  
2 available on a 24-hour-a-day, 365-day-a-year basis to accept  
3 and decide on petitions for an emergency court order under  
4 this section whenever the agency determines that a delay  
5 until normal court hours would significantly increase the  
6 danger the adult faces.

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

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

16 (d) Forcible entry.--Where it is necessary to forcibly enter  
17 ~~premises after obtaining a court order, a law enforcement~~ <—  
18 ~~officer may do so, accompanied by a representative of an agency.~~  
19 A PREMISES, LAW ENFORCEMENT SHALL OBTAIN A COURT ORDER AND MAY <—  
20 BE ACCOMPANIED BY A REPRESENTATIVE OF AN AGENCY.

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

26 ~~(f) Community or general acute care hospitals. An adult~~ <—  
27 ~~with medical conditions requiring treatment shall be sent to a~~  
28 ~~community or general acute care hospital.~~

29 ~~(g)~~ (F) Nonrestrictive setting.--In those cases in which an <—  
30 adult must be relocated, the court shall order the adult to be

1 relocated to the most integrated setting and the least  
2 restrictive alternative that will ensure the adult's health and  
3 safety and appropriate care.

4 ~~(h)~~ (G) Exclusion of remedy.--Nothing in this chapter shall <—  
5 be construed to deny an adult access to emergency medical  
6 services or police protection that would be provided to anyone,  
7 regardless of age, in similar circumstances.

8 Section 308. Rights of protective services clients.

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

12 (1) The agency shall to the extent possible, notify the  
13 adult privately during the investigation that a report has  
14 been made and provide the adult with a brief summary of the  
15 nature of the report.

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

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

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

28 Section 309. Financial obligations, liabilities and payments.

29 An adult receiving services and each agency providing  
30 services under this chapter shall comply with the following

provisions regarding liability for the payment of services:

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

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

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

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

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

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

## CHAPTER 5

### REPORTING SUSPECTED ABUSE BY EMPLOYEES

Section 501. Reporting by employees.

(a) Mandatory reporting to agency.--

(1) An employee or an administrator who has reasonable cause to suspect that a recipient is a victim of abuse or neglect shall immediately make an oral report to an agency.

1 If applicable, the agency shall advise the employee or  
2 administrator of additional reporting requirements that may  
3 pertain under subsection (b). An employee shall notify the  
4 administrator immediately following the report to the agency.

5 (2) Within 48 hours of making the oral report, the  
6 employee or administrator shall make a written report to the  
7 agency. The agency shall notify the administrator that a  
8 report of abuse has been made with the agency.

9 (3) The provisions of this section shall be satisfied  
10 when the administrator or employee ~~of a facility serving~~ <—  
11 ~~adults with mental retardation~~ submits a report to the  
12 incident reporting system. NOTHING IN THIS SUBSECTION SHALL <—  
13 PROHIBIT AN EMPLOYEE OR ADMINISTRATOR WHO HAS REASONABLE  
14 CAUSE TO SUSPECT THAT A RECIPIENT IS A VICTIM OF ABUSE OR  
15 NEGLECT FROM ALSO MAKING A REPORT TO THE AGENCY.

16 ~~(4) Notwithstanding the provisions of subsection (b),~~ <—  
17 ~~any employee or administrator who has reasonable cause to~~  
18 ~~suspect that an adult is a victim of abuse or neglect may~~  
19 ~~make a report to the agency.~~

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

21 (1) An employee or an administrator who has reasonable  
22 cause to suspect that a recipient is the victim of sexual  
23 abuse, serious injury or serious bodily injury or that a  
24 death is suspicious shall, in addition to contacting the  
25 agency and the department, immediately contact law  
26 enforcement officials to make an oral report. An employee  
27 shall notify the administrator immediately following the  
28 report to law enforcement officials.

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

1 report to appropriate law enforcement officials.

2 (3) The law enforcement officials shall notify the  
3 administrator that a report has been made with the law  
4 enforcement officials.

5 (4) The employee may request the administrator to make  
6 or to assist the employee to make the oral and written  
7 reports to law enforcement officials required by this  
8 subsection.

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

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

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

16 (3) Name and address of the facility.

17 (4) Nature of the alleged offense.

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

20 Section 502. Reports to department and coroner or medical  
21 examiner.

22 (a) Department.--

23 (1) Within 48 hours of receipt of a written report under  
24 section 501(a) involving sexual abuse, serious injury,  
25 serious bodily injury or suspicious death, the agency shall  
26 transmit a written report to the department. Supplemental  
27 reports shall be transmitted as they are obtained by the  
28 agency.

29 (2) A report under this subsection shall be made in a  
30 manner and on forms prescribed by the department. The report

1 shall include, at a minimum, that information required to be  
2 submitted under section 501.

3 (b) Coroner or medical examiner.--For a report under section  
4 501(a) concerning the death of a recipient, if there is  
5 reasonable cause to suspect that the recipient died as a result  
6 of abuse or neglect, the agency shall give the oral report and  
7 forward a copy of the written report to the appropriate coroner  
8 or medical examiner within 24 hours.

9 Section 503. Investigation.

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

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

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

23 (d) Further notification.--

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

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

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

1 provisions of Chapter 3.

2 Section 504. Restrictions on employees.

3 (a) Plan of supervision.--

4 (1) On notification that an employee is alleged to have  
5 committed abuse, the facility shall immediately suspend the  
6 employee or where appropriate and subject to approval by the  
7 agency and by the appropriate State ~~agency~~ LICENSING <—  
8 DEPARTMENT with regulatory authority over the facility,  
9 implement a plan of supervision.

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

14 (b) Prohibition.--

15 (1) On the filing of criminal charges against a <—  
16 ~~facility's~~ AN employee, the appropriate State ~~agency~~ <—  
17 LICENSING DEPARTMENT that ~~licenses~~, regulates or has fiscal <—  
18 authority over the facility shall order the facility to  
19 immediately prohibit the employee from having access to  
20 recipients at the facility.

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

27 Section 505. Confidentiality of and access to confidential  
28 reports.

29 A report under this chapter shall be made available in the  
30 following circumstances:

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

3           (2) If an investigation by an agency or law enforcement  
4 results in a report of criminal conduct, law enforcement  
5 officials shall have access to relevant records maintained by  
6 the agency or the department.

7           (3) In arranging specific services to effect service  
8 plans, an agency may disclose to appropriate service  
9 providers information necessary to initiate the delivery of  
10 services.

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

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

20          (6) When the department is involved in the hearing of an  
21 appeal by a subject of a report, the appropriate department  
22 staff shall be given access to information in the report  
23 record relevant to the appeal.

24          (7) For the purposes of monitoring agency performance,  
25 appropriate staff of the department may be given access to  
26 agency protective service records.

27 Section 506. Penalties.

28          (a) Administrative.--

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

1 of this chapter or intimidates or commits a retaliatory act  
2 against an employee who complies in good faith with the  
3 provisions of this chapter commits a violation of this  
4 chapter and shall be subject to an administrative penalty  
5 under paragraph (3).

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

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

20 (b) Criminal.--

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

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

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

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

12 Section 507. Immunity.

13 No administrator or facility shall be held civilly liable for  
14 any action directly related to good faith compliance with this  
15 chapter.

## 16 CHAPTER 7

### 17 MISCELLANEOUS PROVISIONS

18 Section 701. Regulations.

19 (a) The Department of Health and the Department of Public  
20 Welfare shall promulgate regulations necessary to carry out  
21 Chapter 5.

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

25 Section 702. Report.

26 The department shall present a report on the program and  
27 services performed to the Aging and Youth Committee of the  
28 Senate and the Aging and Older Adult Services Committee of the  
29 House of Representatives on an annual basis.

30 Section 703. Repeals.

1       All acts and parts of acts are repealed insofar as they are  
2 inconsistent with this act.  
3 Section 704.   Effective date.  
4       This act shall take effect in six months.