

**SENATE APPROPRIATIONS COMMITTEE
FISCAL NOTE**

BILL NO. Senate Bill 899

PRINTER NO. 1906

AMOUNT

No Adverse Fiscal Impact

FUND

Lottery Fund

DATE INTRODUCED

September 26, 2017

PRIME SPONSOR

Senator Mensch

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 899 amends the Older Adult Protective Services Act to update the law and to specifically address issues pertaining to criminal background checks, adult protective services, impose penalties, and make a related repeal.

The bill clarifies the definition of "abuse" to incorporate infliction of injury, intimidation or punishment resulting in physical harm, pain, or mental anguish, as well as verbal and emotional abuse, deprivation by a caretaker of goods or services necessary to maintain physical or mental health (would have to be intentionally, willfully, knowingly or recklessly causing or attempting to cause"), sexual abuse and sexual harassment.

Additionally, the bill clarifies the definitions of "administrator," "care," "caretaker," "employee," "exploitation," "facility," "intimidation," "law enforcement official," "neglect," "older adult," "older adult in need of protective services," and, "service plan."

The bill removes the definitions of "agency," "client assessment," "court," "home health care agency," and, "protective setting."

Senate Bill 899 adds definitions of "applicant," "area agency on aging," "assessment," "fiduciary," "financial exploitation," "financial services provider," "home care worker," "mandatory reporter," "protective services," "serious bodily injury," and, "suspicious death".

The bill removes the requirement for the Department of Aging to establish a training program to identify financial exploitation. The bill also requires that each Area Agency on Aging (AAA) shall include a protective services plan as part of the annual plan it submits to the Department of Aging.

The bill clarifies that consent of an older adult is not required to begin to investigate reports of abuse, neglect, exploitation or abandonment.

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- If that report is found to be unsubstantiated, the case shall be closed and all information identifying the reporter and the alleged perpetrator will be immediately deleted from all records. For purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, the name of the alleged victim and any information describing the alleged act of abuse, neglect, exploitation or abandonment may be maintained for a period of six months under procedures established by the department.
- If the report is substantiated by the area agency on aging, or if an assessment is necessary in order to determine whether or not the report is substantiated, the AAA shall provide for a timely assessment if the older adult consents to an assessment. If an older adult found to be in need of protective services does not consent to an assessment or the development of a service plan, the AAA may apply to the case the provisions of section 6933 (relating to involuntary intervention by emergency court order).

The bill clarifies that when denied access to an older adult in need of protective services, the AAA may petition the court for an order to require appropriate access when either of the following definitions apply:

- The caretaker or a third party has interfered with the completion of the investigation, the assessment and service plan, or the delivery of services; and
- The AAA can demonstrate that the older adult reported to be in need of protective services is denying access because of coercion, extortion or justifiable fear of future abuse, neglect, or exploitation or abandonment.

The bill amends Section 6925 (Access to Records), Subsection (b) (Refusal) to provide that if the AAA is denied access to certain records or is prevented from the delivery of needed services the agency may petition the court of common pleas for an order requiring the appropriate access when either of the following conditions apply:

- The older adult has provided written consent for any confidential records to be disclosed and the keeper of the records denies access; or
- The agency can demonstrate that the older adult is denying access to records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment.

The bill provides that the AAA shall share investigation information with other AAA's, mandatory reporters, and fiduciaries and financial institutions as necessary to protect older adults.

The bill clarifies the guardian of an older adult may receive, upon written request, a summary of a report made by the AAA as long as that guardian is not named as a perpetrator in the report.

The bill provides that a financial services provider may report financial exploitation when an employee reasonably believes that financial exploitation of an older adult may have occurred, may have been attempted or is being attempted.

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The bill provides that a financial services provider with employees in the Commonwealth, or with employees regularly engaging in financial transactions with, or on behalf of, older adults in this Commonwealth, shall provide training to employees who have direct contact with older adults and conduct financial transactions for or on behalf of older adults.

The Department of Aging, in consultation with the Department of Banking and Securities and representatives of the financial services industry, may establish a model training program for employees of financial services providers regarding the identification and prevention of financial exploitation of older adults and on procedures to provide relief to older adults from financial exploitation, including training regarding the following:

- When to report suspected financial exploitation;
- To whom suspected exploitation should be reported;
- The information to be included in a report; and
- The applicable laws, rules and regulations that must be followed while reporting suspected financial exploitation.

The financial services provider training shall also include information that assists employees in recognizing signs of potential financial abuse of an older adult, including, but not limited to, the following:

- Unusual activity in an older adult's retirement account, brokerage account, or other accounts managed by an agent or investment adviser representative or deposit account;
- Automated teller machine withdrawals by an older adult who previously never used an automated teller machine or debit card; and
- Suspicious signatures on checks.

The bill provides that a financial services provider or fiduciary may refuse to disburse funds or engage in a transaction if an area agency on aging or law enforcement official provides information demonstrating that financial exploitation of an older adult may have occurred, may have been attempted or is being attempted.

Senate Bill 899 provides that a financial services provider or fiduciary is not required to refuse to disburse funds or engage in a transaction, but may use its discretion to determine whether to refuse to disburse funds based on the information available to the financial services provider or fiduciary.

The bill provides that a financial services provider will make a reasonable effort to notify, orally or in writing, all persons authorized to transact business on the account, beneficiaries of the account, or those who have been authorized by the older adult to receive notifications regarding account activity.

The bill provides grounds for facilities to deny employment to individuals for the following timeframes: lifetime; 25-years; 10-years; 5-years, based on the offense.

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The bill provides that the Department of Aging may waive employment denial provisions when an individual submits a written waiver request. The department shall review a written request within 45 days. The waiver request shall be submitted on a form as prescribed by the Department of Aging and shall contain the following:

- The length of time since the individual's conviction;
- The circumstances of the individual's conviction;
- If the individual was incarcerated, a copy of the order from the local, state or federal jurisdiction that released the individual from incarceration, including the date of release;
- Evidence of an individual's rehabilitation;
- Demonstrated prior and present relevant work experience of the individual;
- Competency and proficiency of the individual in relevant work, including the provision of essential care-dependent services;
- The relationship of the offense to the individual's prospective or current job position;
- Demonstrated good moral character in personal and occupational or employment affairs; and
- A copy of a previously approved waiver request for another job position, as applicable.

The bill provides that a waiver request granted under this subsection only applies to a specified job position. If an individual seeks employment in a different facility or in a different job position, the individual shall submit a subsequent written waiver request.

The bill provides that a provisional home health care worker may be employed for a single period not to exceed 90 days if the following conditions are met:

- The applicant has applied for a criminal history report;
- The facility has no knowledge about the applicant that would disqualify the applicant from employment;
- The applicant swears or affirms in writing that the applicant is not disqualified from employment; and
- The administrator provides written information to the older adult or fiduciary notifying that the care provider is a provisional employee.

The provisions relating to inter-departmental consultation shall take effect in one year. The remainder of the act shall take effect immediately.

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FISCAL IMPACT:

Senate Bill 899 will have no adverse fiscal impact to the Commonwealth. The bill requires the Department of Aging to establish a training program for mandatory reports, which can be accomplished within existing staffing levels and funding provided to the department. In addition, the bill will increase the number of investigations completed by the Area Agencies on Aging; however, these additional investigations can be accommodated by the additional \$2.2 million for increased protective service investigations in the PENNCARE appropriation that was included in the Fiscal Year 2018-19 budget.