

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2229 Session of
1993

INTRODUCED BY VANCE, BLAUM, GRUPPO, KING, ADOLPH, CIVERA,
B. SMITH, ARGALL, ARMSTRONG, BAKER, BARLEY, BISHOP, BOYES,
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MELIO, MERRY, MILLER, MUNDY, NAILOR, NICKOL, NYCE, O'BRIEN,
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SCHULER, SEMMEL, SERAFINI, S. H. SMITH, D. W. SNYDER, STAIRS,
E. Z. TAYLOR, J. TAYLOR, TOMLINSON, TRELLO, TRICH, TRUE,
TULLI, ULIANA AND WAUGH, NOVEMBER 24, 1993

REFERRED TO COMMITTEE ON AGING AND YOUTH, NOVEMBER 24, 1993

AN ACT

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

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

13 Section 1. Section 5 of the act of November 6, 1987
14 (P.L.381, No.79), known as the Older Adults Protective Services
15 Act, is amended by adding a subsection to read:

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

1 * * *

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

7 * * *

8 Section 2. Sections 6 and 9 of the act are amended to read:
9 Section 6. Investigations of reports of need for protective
10 services.

11 (a) Investigation.--It shall be the agency's responsibility
12 to provide for an investigation of each report made under
13 section 5. Upon the receipt of a report indicating homicide,
14 sexual abuse or serious bodily injury, the agency shall
15 immediately orally notify law enforcement officials of the
16 jurisdiction where the alleged abuse or neglect occurred. The
17 agency shall also report within 72 hours all cases of abuse or
18 neglect of older persons in institutions to law enforcement
19 officials of the jurisdiction where the institution is located,
20 when the agency has reason to believe the report will be
21 substantiated. The investigation shall be initiated within 72
22 hours after the receipt of the report and shall be carried out
23 under regulations issued by the department. These regulations
24 shall provide for the methods of conducting investigations under
25 this section and shall assure that steps are taken to avoid any
26 conflict of interest between the investigator and service
27 delivery functions.

28 (b) Investigation involving licensed facilities.--[Any
29 report concerning older adults residing in a State-licensed
30 facility shall be investigated under procedures developed by the

1 department in consultation with the State agency licensing such
2 facility.] If a report concerns a resident of a State-licensed
3 facility, the agency shall notify the State agency licensing the
4 facility of the initiation of the investigation. If the report
5 concerns a resident of a State-licensed facility for whom the
6 area agency on aging provides ombudsman services, the ombudsman
7 of the area agency on aging must be notified.

8 (c) Unsubstantiated reports.--If, after investigation by the
9 agency, the report is unsubstantiated, the case shall be closed
10 and all information identifying the reporter and the alleged
11 abuser shall be immediately deleted from all records. For
12 purposes of substantiating a pattern of abuse, neglect,
13 exploitation or abandonment, the name of the alleged victim and
14 any information describing the alleged act of abuse, neglect,
15 exploitation or abandonment may be maintained for a period of
16 six months under procedures established by the department.

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

1 section 10.

2 (e) Plan of supervision.--Upon notification that an
3 individual who is a caretaker in an institution is alleged to
4 have committed abuse or neglect under this act, the institution
5 shall immediately implement a plan of supervision or alternative
6 arrangement, subject to the agency's approval, for the
7 individual under investigation to insure the safety of the
8 residents of the institution. This plan shall remain in effect
9 until a determination is made by the agency under this section.

10 (f) Duty of State licensing agency where report is
11 substantiated.--Upon the receipt of a substantiated report
12 identifying an employee, supervisor, director, independent
13 contractor or operator as a perpetrator, the State licensing
14 agency shall order the licensee to immediately prohibit the
15 perpetrator from having access to residents of the facility.
16 Where the perpetrator is a director, operator or supervisor, the
17 person shall be subject to restrictions deemed appropriate by
18 the licensing agency which shall assure the safety of residents
19 of the institution.

20 Section 9. Confidentiality of records.

21 (a) General rule.--Information contained in reports, records
22 of investigation, client assessment and service plans shall be
23 considered confidential and shall be maintained under
24 regulations promulgated by the department to safeguard
25 confidentiality. Except as provided below, this information
26 shall not be disclosed to anyone outside the agency other than
27 to a court of competent jurisdiction or pursuant to a court
28 order.

29 (b) Limited access to the agency's protective services
30 records.--

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

6 (2) In arranging specific services to carry out service
7 plans, the agency may disclose to appropriate service
8 providers such information as may be necessary to initiate
9 the delivery of services.

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

14 (4) The release of information that would identify the
15 person who made a report of suspected abuse, neglect,
16 exploitation or abandonment or person who cooperated in a
17 subsequent investigation, is hereby prohibited unless the
18 secretary can determine that such a release will not be
19 detrimental to the safety of such person.

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

24 (6) For the purposes of monitoring agency performance,
25 appropriate staff of the department may access agency
26 protective services records.

27 (7) Appropriate staff of the department may access
28 agency protective service records for the purpose of placing
29 information in the central register regarding institutional
30 abuse of older persons under section 13.1.

1 Section 3. The act is amended by adding a section to read:

2 Section 13.1. Registry of perpetrators of abuse in
3 institutions.

4 (a) Establishment.--The department shall establish a
5 Statewide register of persons found to be substantiated
6 perpetrators of abuse or neglect of older persons in
7 institutions.

8 (b) Information in register.--The register shall include and
9 be limited to the following information:

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

12 (2) The institution or institutions where the
13 perpetrator committed the abuse or neglect.

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

16 (c) Expungement.--The department shall immediately expunge
17 information in the register pertaining to any perpetrator where
18 the finding of the agency has been reversed upon appeal under 6
19 Pa. Code § 15.82(3) (relating to rights of alleged abusers).

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

28 (e) Grounds for denying employment.--In no case shall an
29 administrator hire an applicant where the department has
30 verified the applicant is named in the register as a

1 perpetrator.

2 (f) Regulations.--The department shall promulgate the
3 regulations necessary to carry out this section which shall
4 include a procedure for agencies to immediately transmit to the
5 department records of substantiated cases of abuse or neglect of
6 older persons in institutions.

7 Section 4. This act shall take effect in 60 days.