

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2477 Session of
1994

INTRODUCED BY BLAUM, GRUPPO, BELARDI, THOMAS, DeWEESE,
D. R. WRIGHT, TIGUE, HALUSKA, TRELLO, BUSH, PHILLIPS,
M. N. WRIGHT, MUNDY, LESCOVITZ, JAROLIN, E. Z. TAYLOR, WOGAN,
COLAFELLA, PISTELLA, PESCI, PETRARCA, ROONEY, GEIST, STETLER,
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TOMLINSON, KENNEY, STISH, WOZNIAK, LAUGHLIN, KASUNIC, VEON,
WILLIAMS, COLAIZZO, RICHARDSON, TRICH, J. TAYLOR, COY AND
STURLA, JANUARY 25, 1994

REFERRED TO COMMITTEE ON AGING AND YOUTH, JANUARY 25, 1994

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing criminal penalties for the
3 mistreatment of care-dependent persons by caretakers; and
4 imposing additional duties on the Office of Attorney General
5 and the district attorneys.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 18 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:

10 § 4306. Care-dependent person mistreatment; prohibited acts.

11 (a) Offense defined.--It shall be unlawful for any caretaker
12 to intentionally, knowingly or recklessly, as defined in section
13 302 (relating to general requirements of culpability):

14 (1) Fail to provide treatment, care, goods or services
15 necessary to preserve the health, safety or welfare of a

care-dependent person for whom he is responsible to care,
including, but not limited to, nutrition, medication,
therapies, personal care, shelter, sanitary environment,
toileting, bathing, feeding or repositioning, which failure
causes bodily injury.

(2) Use a physical restraint or chemical restraint or
medication on a care-dependent person or isolate or confine a
care-dependent person:

(i) without authorization;

(ii) for a purpose other than that for which it was
ordered;

(iii) as a substitute for treatment of care or for
staff convenience;

(iv) for a period beyond or in a manner other than
that for which it was ordered; or

(v) contrary to law or regulation.

(b) Penalties for mistreatment.--

(1) A caretaker who intentionally or knowingly mistreats
a care-dependent person in violation of subsection (a)(1) or
(2) commits a felony of the third degree. If such conduct
results in serious bodily injury, the caretaker commits a
felony of the second degree.

(2) A caretaker who recklessly mistreats a care-
dependent person in violation of subsection (a)(1) or (2)
commits a misdemeanor of the first degree. If such conduct
results in serious bodily injury, the caretaker commits a
felony of the third degree.

(c) Enforcement.--

(1) The district attorneys of the several counties shall
have authority to investigate and to institute criminal

1 proceedings for any violation of this section.

2 (2) In addition to the authority conferred upon the
3 Attorney General under the act of October 15, 1980 (P.L.950,
4 No.164), known as the Commonwealth Attorneys Act, the
5 Attorney General shall have the authority to investigate and
6 institute criminal proceedings for any violation of this
7 section or any series of such violations involving more than
8 one county of this Commonwealth or involving any county of
9 this Commonwealth and another state. A person charged with a
10 violation of this section by the Attorney General shall not
11 have standing to challenge the authority of the Attorney
12 General to investigate or prosecute the case and, if any such
13 challenge is made, the challenge shall be dismissed and no
14 relief shall be available in the courts of the Commonwealth
15 to the person making the challenge.

16 (d) Regulatory and investigative powers additional to those
17 now existing.--Nothing contained in this section shall be
18 construed to limit the regulatory or investigative authority of
19 any department or agency of the Commonwealth whose functions
20 might relate to persons, enterprises or matters falling within
21 the scope of this section.

22 (e) Exemptions.--

23 (1) The provisions of this section shall not apply to:

24 (i) any caretaker following patient directions under
25 section 1866(f) of the Social Security Act (49 Stat. 620,
26 42 U.S.C. § 1395 cc (f)) or 20 Pa.C.S. Ch. 54 (relating
27 to advance directive for health care); or

28 (ii) to any facility following directions to
29 withhold treatment, providing all of the following
30 conditions are satisfied:

1 (A) The facility has a written policy on
2 withholding treatment which has been agreed to by the
3 care-dependent person.

4 (B) The provisions of section 4206 of the
5 Omnibus Budget Reconciliation Act of 1990 (Public Law
6 101-508, 104 Stat. 1386), referred to as the Patient
7 Self-Determination Act, are fulfilled.

8 (C) The attending physician has by written order
9 authorized the caretaker to withhold treatment.

10 (2) Caretakers employed by or otherwise acting on the
11 direction of home health agencies shall not be held liable
12 under this section for providing nutritional services,
13 administration of medications or maintaining shelter or a
14 sanitary environment.

15 (3) No older adult shall be considered abused or
16 neglected solely on the grounds of environmental factors
17 which are beyond the control of the older adult or the
18 caretaker, such as inadequate housing, furnishings, income,
19 clothing or medical care.

20 (f) Definitions.--As used in this section, the following
21 words and phrases shall have the meanings given to them in this
22 subsection:

23 "Adult." A person 18 years of age or older.

24 "Care-dependent person." An adult who, due to physical or
25 cognitive disability or impairment, requires assistance to meet
26 his needs for food, shelter, clothing, personal care or health
27 care.

28 "Caretaker." A person who:

29 (1) is an owner, operator or manager of a facility,
30 whether licensed or unlicensed; or

1 (2) is an employee of, agent of, supervisor of,
2 independent contractor to or consultant to such facility or
3 care-dependent person in such facility, who provides medical,
4 nursing, social, psychological or dietary services or other
5 health maintenance services to a care-dependent person or who
6 provides assistance with activities of daily living to a
7 care-dependent person in such facility or to a recipient of
8 such home health care services; or

9 (3) has a legal obligation to care for a care-dependent
10 person.

11 "Facility." A nursing home, personal care home, domiciliary
12 care home, community residential facility, adult daily living
13 center, home health agency or home health service provider.

14 "Home health care." The provision of nursing and other
15 therapeutic services to disabled, injured or sick persons in
16 their places of residence and other health-related services
17 provided to protect and maintain persons in their own homes.

18 "Person." A natural person, corporation, partnership,
19 unincorporated association or other business entity.

20 Section 2. This act shall take effect in 60 days.