

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 305 Session of  
1995

INTRODUCED BY VANCE, E. Z. TAYLOR, GRUPPO, ITKIN, NAILOR,  
KUKOVICH, MICOZZIE, BUXTON, STURLA, D. R. WRIGHT, MARSICO,  
TRELLO, HERMAN, FLICK, COLAFELLA, STISH, COY, STEELMAN,  
CLARK, TRUE, RUBLEY, CIVERA, SAYLOR, D. W. SNYDER, GEIST,  
MILLER, CORNELL, PLATTS, VAN HORNE, DEMPSEY, WAUGH, DeLUCA,  
FAIRCHILD, OLASZ, BELARDI, MUNDY, BROWN, SHANER, BATTISTO,  
CORRIGAN, YOUNGBLOOD, O'BRIEN, TIGUE, TRICH, FAJT, EGOLF,  
BARD, SCHULER, BROWNE, ARMSTRONG, HALUSKA, SCRIMENTI, SATHER,  
MICHLOVIC, MERRY, CAPPABIANCA, WILLIAMS, PETRARCA AND  
BOSCOLA, JANUARY 25, 1995

AS REPORTED FROM COMMITTEE ON AGING AND YOUTH, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MARCH 14, 1995

## 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," ADDING DEFINITIONS OF "REGISTRY" AND <—  
8 "SERIOUS BODILY INJURY"; further providing for reporting, for  
9 investigations of reports of need for protective services and  
10 for confidentiality of records; and providing for a registry  
11 of perpetrators of abuse in institutions.

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

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

17 SECTION 1. SECTION 3 OF THE ACT OF NOVEMBER 6, 1987 <—  
18 (P.L.381, NO.79), KNOWN AS THE OLDER ADULTS PROTECTIVE SERVICES

1 ACT, IS AMENDED BY ADDING DEFINITIONS TO READ:

2 SECTION 3. DEFINITIONS.

3 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL  
4 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
5 CONTEXT CLEARLY INDICATES OTHERWISE:

6 \* \* \*

7 "REGISTRY." THE NURSE AIDE AND ELDER ABUSE REGISTRY  
8 ESTABLISHED IN SECTION 13.1.

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 \* \* \*

15 SECTION 2. SECTION 5 OF THE ACT IS AMENDED BY ADDING A  
16 SUBSECTION TO READ:

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

18 \* \* \*

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

24 \* \* \*

25 Section ~~2~~ 3. Sections 6 and 9 of the act are amended to  
26 read:

27 Section 6. Investigations of reports of need for protective  
28 services.

29 (a) Investigation.--It shall be the agency's responsibility  
30 to provide for an investigation of each report made under

1 section 5. Upon the receipt of a report indicating homicide,  
2 sexual abuse or serious bodily injury, the agency shall  
3 immediately orally notify law enforcement officials of the  
4 jurisdiction where the alleged abuse or neglect occurred. The  
5 agency shall also report within 72 hours all cases of abuse or  
6 neglect of older persons in institutions to law enforcement  
7 officials of the jurisdiction where the institution is located,  
8 when the agency has reason to believe the report will be  
9 substantiated. The investigation shall be initiated within 72  
10 hours after the receipt of the report and shall be carried out  
11 under regulations issued by the department. These regulations  
12 shall provide for the methods of conducting investigations under  
13 this section and shall assure that steps are taken to avoid any  
14 conflict of interest between the investigator and service  
15 delivery functions.

16 (b) Investigation involving licensed facilities.--[Any  
17 report concerning older adults residing in a State-licensed  
18 facility shall be investigated under procedures developed by the  
19 department in consultation with the State agency licensing such  
20 facility.] If a report concerns a resident of a State-licensed  
21 facility, the agency shall notify the State agency licensing the  
22 facility of the initiation of the investigation. If the report  
23 concerns a resident of a State-licensed facility for whom the  
24 area agency on aging provides ombudsman services, the ombudsman  
25 of the area agency on aging must be notified.

26 (c) Unsubstantiated reports.--If, after investigation by the  
27 agency, the report is unsubstantiated, the case shall be closed  
28 and all information identifying the reporter and the alleged  
29 abuser shall be immediately deleted from all records. For  
30 purposes of substantiating a pattern of abuse, neglect,

1 exploitation or abandonment, the name of the alleged victim and  
2 any information describing the alleged act of abuse, neglect,  
3 exploitation or abandonment may be maintained for a period of  
4 six months under procedures established by the department.

5 (d) Substantiated reports.--If the report is substantiated  
6 by the agency, or if the client assessment is necessary in order  
7 to determine whether or not the report is substantiated, the  
8 agency shall provide for a timely client assessment if the older  
9 adult consents to an assessment. Upon completion of the  
10 assessment, written findings shall be prepared which shall  
11 include recommended action. This service plan shall provide for  
12 the least restrictive alternative, encouraging client self-  
13 determination and continuity of care. The service plan shall be  
14 in writing and shall include a recommended course of action,  
15 which may include the pursuit of civil or criminal remedies. If  
16 an older adult found to be in need of protective services does  
17 not consent to a client assessment or the development of a  
18 service plan, the agency may apply to the case the provisions of  
19 section 10.

20 (e) Plan of supervision.--Upon notification that an  
21 individual who is a caretaker in an institution is alleged to  
22 have committed abuse or neglect under this act, the institution  
23 shall immediately implement a plan of supervision or alternative  
24 arrangement, subject to the agency's approval, for the  
25 individual under investigation to insure the safety of the  
26 residents of the institution. This plan shall remain in effect  
27 until a determination is made by the agency under this section.

28 (f) Duty of State licensing agency where report is  
29 substantiated.--Upon the receipt of a substantiated report  
30 identifying an employee, supervisor, director, independent

1 contractor or operator as a perpetrator, the State licensing  
2 agency shall order the licensee to immediately prohibit the  
3 perpetrator from having access to residents of the facility.

4 Where the perpetrator is a director, operator or supervisor, the  
5 person shall be subject to restrictions deemed appropriate by  
6 the licensing agency which shall assure the safety of residents  
7 of the institution.

8 Section 9. Confidentiality of records.

9 (a) General rule.--Information contained in reports, records  
10 of investigation, client assessment and service plans shall be  
11 considered confidential and shall be maintained under  
12 regulations promulgated by the department to safeguard  
13 confidentiality. Except as provided below, this information  
14 shall not be disclosed to anyone outside the agency other than  
15 to a court of competent jurisdiction or pursuant to a court  
16 order.

17 (b) Limited access to the agency's protective services  
18 records.--

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

24 (2) In arranging specific services to carry out service  
25 plans, the agency may disclose to appropriate service  
26 providers such information as may be necessary to initiate  
27 the delivery of services.

28 (3) A subject of a report made under section 5 may  
29 receive, upon written request, all information contained in  
30 the report except that prohibited from being disclosed by

paragraph (4).

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

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

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

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

Section 3 4. The act is amended by adding a section to read:

~~Section 13.1. Registry of perpetrators of abuse in institutions.~~

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

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

SECTION 13.1. NURSE AIDE AND ELDER ABUSE REGISTRY.

(A) ESTABLISHMENT.--THE DEPARTMENT OF AGING, THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF PUBLIC WELFARE SHALL ESTABLISH A

1 COOPERATIVE ARRANGEMENT WHEREBY PERSONS FOUND TO BE  
2 SUBSTANTIATED PERPETRATORS OF ABUSE OR NEGLECT OF OLDER PERSONS  
3 IN INSTITUTIONS SHALL BE LISTED ON THE DEPARTMENT OF HEALTH'S  
4 NURSE AIDE REGISTRY, AS ESTABLISHED IN ACCORDANCE WITH THE  
5 OMNIBUS BUDGET RECONCILIATION ACT OF 1987 (PUBLIC LAW 100-203,  
6 101 STAT. 1330). THE NURSE AIDE REGISTRY SHALL HEREAFTER BE  
7 KNOWN AS THE NURSE AIDE AND ELDER ABUSE REGISTRY.

8 (B) INFORMATION IN REGISTRY.--IN ADDITION TO THE INFORMATION  
9 ALREADY REQUIRED TO BE MAINTAINED WITHIN THE NURSE AIDE  
10 REGISTRY, IN ACCORDANCE WITH REGULATIONS PROMULGATED PURSUANT TO  
11 THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987, THE REGISTRY  
12 SHALL INCLUDE AND BE LIMITED TO THE FOLLOWING INFORMATION:

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

15 (2) The institution or institutions where the  
16 perpetrator committed the abuse or neglect.

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

19 (c) Expungement.--The ~~department~~ DEPARTMENT OF HEALTH shall <—  
20 immediately expunge information in the ~~register~~ REGISTRY <—  
21 pertaining to any perpetrator where the finding of the agency  
22 has been reversed upon appeal under 6 Pa. Code § 15.82(3)  
23 (relating to rights of alleged abusers).

24 (d) Information submitted by prospective employees.--  
25 Administrators of institutions which assume the responsibility  
26 for the provision of care needed to maintain the physical or  
27 mental health of an older adult shall require prospective  
28 employees to submit with their applications for employment a  
29 certification from the ~~department~~ DEPARTMENT OF HEALTH as to <—  
30 whether the applicant is named in the ~~central register~~ REGISTRY <—

1 as a perpetrator. The certificate must be obtained within the  
2 preceding one-year period.

3 (e) Grounds for denying employment.--In no case shall an  
4 administrator hire an applicant where the ~~department~~ DEPARTMENT <—  
5 OF HEALTH has verified the applicant is named in the ~~register~~ <—  
6 REGISTRY as a perpetrator. <—

7 (f) Regulations.--The ~~department~~ DEPARTMENT OF AGING, THE <—  
8 DEPARTMENT OF HEALTH AND THE DEPARTMENT OF PUBLIC WELFARE shall  
9 promulgate the regulations necessary to carry out this section  
10 which shall include a UNIFORM procedure for agencies to <—  
11 immediately transmit to the ~~department~~ REGISTRY records of <—  
12 substantiated cases of abuse or neglect of older persons in  
13 institutions.

14 Section 4 5. This act shall take effect in ~~60~~ 90 days. <—