

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 2269 Session of  
2005

INTRODUCED BY SATHER, VEON, KENNEY, HESS, PISTELLA, BAKER,  
BARRAR, BELFANTI, BOYD, BUNT, CALTAGIRONE, CAPPELLI, CAWLEY,  
CLYMER, CRAHALLA, CREIGHTON, DeLUCA, DENLINGER, DERMODY,  
FABRIZIO, FRANKEL, FREEMAN, GEIST, GINGRICH, GOOD, GOODMAN,  
GRUCELA, HARPER, HENNESSEY, HERMAN, JAMES, KOTIK, LEH,  
MACKERETH, MANN, MARKOSEK, McNAUGHTON, MICOZZIE, R. MILLER,  
S. MILLER, MUSTIO, NAILOR, O'NEILL, PHILLIPS, PICKETT, RAPP,  
READSHAW, REICHLEY, ROEBUCK, ROSS, RUBLEY, SCAVELLO, SEMMEL,  
SIPTROTH, B. SMITH, STERN, T. STEVENSON, SURRA, E. Z. TAYLOR,  
THOMAS, TIGUE, TRUE, TURZAI, WANSACZ, WATSON, WHEATLEY, WILT,  
YOUNGBLOOD, GODSHALL, PETRARCA, WALKO, FICHTER, SHAPIRO,  
LaGROTTA, BUXTON, DALLY, REED, HARHART, BIANCUCCI, HARHAI,  
MARSICO, DIVEN, PAYNE, STAIRS, STURLA, R. STEVENSON, SAINATO,  
BEYER, McILHATTAN, SAMUELSON, CAUSER, CASORIO, FLAHERTY AND  
BENNINGHOFF, NOVEMBER 28, 2005

AS REPORTED FROM COMMITTEE ON AGING AND OLDER ADULT SERVICES,  
HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 4, 2006

## 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 for funding; and prescribing  
6 penalties.

## TABLE OF CONTENTS

7  
8 Chapter 1. Preliminary Provisions  
9 Section 101. Short title.  
10 Section 102. Legislative policy.  
11 Section 103. Definitions.  
12 Chapter 3. Administration  
13 Section 301. Duties of department and agencies.

1 Section 302. Reporting.

2 Section 303. Investigations of reports of need for protective  
3 services.

4 Section 304. Provision of services.

5 Section 305. Immunity from civil and criminal liability.

6 Section 306. Confidentiality of records.

7 Section 307. Involuntary intervention by emergency court  
8 order.

9 Section 308. Rights of protective services clients.

10 Section 309. Financial obligations, liabilities and payments.

11 Section 310. Regulations.

12 Section 311. Funds for payment of administration of chapter.

13 Chapter 5. Reporting Suspected Abuse by Employees

14 Section 501. Reporting by employees.

15 Section 502. Reports to department and coroner or medical  
16 examiner.

17 Section 503. Investigation.

18 Section 504. Restrictions on employees.

19 Section 505. Confidentiality of and access to confidential  
20 reports.

21 Section 506. Penalties.

22 Section 507. Immunity.

23 Section 508. Regulations.

24 Chapter 7. Miscellaneous Provisions

25 Section 701. Repeals.

26 Section 702. Effective date.

27 The General Assembly of the Commonwealth of Pennsylvania  
28 hereby enacts as follows:

29 CHAPTER 1

30 PRELIMINARY PROVISIONS

1 Section 101. Short title.

2 This act shall be known and may be cited as the Adult  
3 Protective Services Act.

4 Section 102. Legislative policy.

5 It is declared the policy of this Commonwealth that:

6 (1) Adults who lack the capacity to protect themselves  
7 and are at imminent risk of abuse, neglect, exploitation or  
8 abandonment ~~should~~ MUST have access to services necessary to <—  
9 protect their health, safety and welfare.

10 (2) Adults have the right to make choices, subject to  
11 the ~~provisions of this act, regarding their lifestyles,~~ <—  
12 ~~relationships, bodies and health, even when those choices~~  
13 ~~present risks to self or property.~~ LAWS AND REGULATIONS OF <—  
14 THE COMMONWEALTH, REGARDING THEIR LIFESTYLES, RELATIONSHIPS,  
15 BODIES AND HEALTH, EVEN WHEN THOSE CHOICES PRESENT RISKS TO  
16 THEMSELVES OR THEIR PROPERTY.

17 (3) Adults have the right to refuse some or all  
18 protective services.

19 (4) Information about protective services should be  
20 provided in a safe place and in a safe, understandable and  
21 responsive manner.

22 (5) The Commonwealth ~~should~~ MUST provide for the <—  
23 detection and reduction, correction or elimination of abuse,  
24 neglect, exploitation and abandonment and establish a program  
25 of protective services for adults in need of them.

26 (6) Adults have the right to receive services in the  
27 most integrated settings and in the manner least restrictive  
28 of individual liberties.

29 Section 103. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

3 "Abandonment." The desertion of an adult by a caregiver.

4 "Abuse." The occurrence of one or more of the following  
5 acts:

6 (1) The infliction of injury, unreasonable confinement,  
7 intimidation or punishment with resulting physical harm, pain  
8 or mental anguish.

9 (2) The willful deprivation by a caregiver of goods or  
10 services which are necessary to maintain physical or mental  
11 health.

12 (3) Sexual harassment, rape or ~~abuse~~ "ABUSE" as defined <—  
13 in 23 Pa.C.S. § 6102 (relating to definitions).

14 The term does not include environmental factors which are beyond  
15 the control of an adult or caregiver, including, but not limited  
16 to, inadequate housing, furnishings, income, clothing or medical  
17 care.

18 "Administrator." The person responsible for the  
19 administration of a facility. The term includes a person  
20 responsible for employment decisions or an independent  
21 contractor.

22 "Adult." A person within the jurisdiction of this  
23 Commonwealth who is between 18 and 59 years of age.

24 "Adult in need of protective services." An adult who needs  
25 the assistance of another person to obtain protective services  
26 in order to prevent imminent risk to person or property as a  
27 result of one or more functional limitations.

28 "Adult with a disability." An individual with a physical or  
29 mental impairment that substantially limits one or more of the  
30 major life activities of the individual.

1 "Agency." A local contracted provider of protective  
2 services.

3 "Caregiver." An individual or institution that has assumed  
4 the responsibility for the provision of care needed to maintain  
5 the physical or mental health of an adult. This responsibility  
6 may arise voluntarily, by contract, by receipt of payment for  
7 care, as a result of family relationship or by order of a court  
8 of competent jurisdiction. It is not the intent of this act to  
9 impose responsibility on any individual if the responsibility  
10 would not otherwise exist in law.

11 "Client assessment." Social, physical and psychological  
12 findings along with a description of the person's current  
13 resources and needs.

14 "Court." A court of common pleas or a district magistrate  
15 court, where applicable.

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

17 "Employee." An individual who is employed by a facility. The  
18 term includes:

19 (1) A contract employee who has direct contact with  
20 residents or unsupervised access to their personal living  
21 quarters.

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

25 "Exploitation." An act or course of conduct by a caregiver  
26 or other person against an adult or an adult's resources,  
27 without the informed consent of the adult or with consent  
28 obtained through misrepresentation, coercion or threats of  
29 force, that results in monetary, personal or other benefit, gain  
30 or profit for the perpetrator or monetary or personal loss to

1 the adult.

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

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

6 (2) A home health care agency.

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

10 (4) A personal care home as defined in section 1001 of  
11 the act of June 13, 1967 (P.L.31, No.21), known as the Public  
12 Welfare Code.

13 (5) An organization.

14 "Home health care agency." Any of the following:

15 (1) A home health care organization or agency licensed  
16 by the Department of Health.

17 (2) A public or private agency or organization, or part  
18 of an agency or organization, that provides care to an adult  
19 in the adult's place of residence.

20 "Intimidation." An act or omission by a person or entity  
21 toward another person which is intended to or with knowledge  
22 that the act or omission will obstruct, impede, impair, prevent  
23 or interfere with the administration of this act or any law  
24 intended to protect adults from mistreatment.

25 "Law enforcement official." Any of the following:

26 (1) A police officer of a municipality.

27 (2) A district attorney.

28 (3) The Pennsylvania State Police.

29 "MOST INTEGRATED SETTING." A SETTING THAT ENABLES <—  
30 INDIVIDUALS WITH DISABILITIES TO INTERACT WITH INDIVIDUALS WHO

1 DO NOT HAVE DISABILITIES TO THE FULLEST EXTENT POSSIBLE.

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

9 "Organization." An entity or group of people that uses  
10 public funds and is paid, in part, to provide care and support  
11 to persons with disabilities in a licensed or unlicensed  
12 setting.

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

17 "Protective setting." A setting chosen by an agency where  
18 services can be provided in the least restrictive environment to  
19 protect the physical and mental well-being of an adult.

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

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

23 "Serious bodily injury." Injury that:

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

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

27 "Serious mental harm." Mental suffering of great intensity  
28 that creates a substantial risk of deterioration in routine  
29 functioning.

30 "Serious physical injury." An injury that:

1 (1) causes a person severe pain; or

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

4 "Service plan." A written plan that includes all of the  
5 following:

6 (1) Is cooperatively developed by an agency staff, a <—  
7 ~~person or the person's appointed guardian~~, AN ADULT IN NEED <—  
8 OF PROTECTIVE SERVICES OR THE ADULT'S APPOINTED GUARDIAN, if  
9 any, and other family members and advocates when appropriate.

10 (2) Is based on multidisciplinary, comprehensive written  
11 assessments conducted by professionals ~~familiar with the~~ <—  
12 ~~person~~ WHO HAVE MET WITH THE ADULT IN NEED OF PROTECTIVE <—  
13 SERVICES AND ARE FAMILIAR WITH THEIR SITUATION.

14 (3) Provides for services in the most integrated setting  
15 and in a manner least restrictive to individual liberties.

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

19 (5) Is updated as needed.

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

## 25 CHAPTER 3

### 26 ADMINISTRATION

27 Section 301. Duties of department and agencies.

28 (a) General rule.--

29 (1) The department shall administer the protective  
30 services program in a manner designed to ensure that the



1 right of adults to make choices is protected and services are  
2 provided in a manner that is least restrictive of individual  
3 liberties.

4 (2) The department shall, in consultation with the  
5 Department of Public Welfare and other appropriate State  
6 agencies, define the geographic areas to be served by  
7 agencies and shall select those agencies based upon a  
8 competitive bidding process. Successful bidders must:

9 (i) Demonstrate knowledge regarding adults with  
10 disabilities.

11 (ii) Be separate from ~~service providers~~ AGENCIES  
12 PROVIDING DIRECT SERVICES TO ADULTS. <—

13 (iii) Agree to practice principles of individual  
14 choice, self-determination and least restrictive  
15 alternatives.

16 (3) The department shall conduct an ongoing campaign  
17 designed to inform and educate adults, families, caregivers,  
18 professionals and the general public about the need for and  
19 availability of protective services under this chapter. The  
20 campaign shall require facilities to post notice of the  
21 availability of protective services and to provide the notice  
22 to recipients and their families. The department shall  
23 consult with other departments of the Commonwealth on the  
24 design and implementation of the ongoing public awareness  
25 campaign. The department shall also consider the concerns of  
26 agencies and entities identified by them under subsection  
27 (b).

28 (4) The department shall establish, by regulation,  
29 minimum standards of training and experience that protective  
30 services providers funded by the department shall follow in

1 the selection and assignment of staff for the provision of  
2 protective services. The standards shall require ~~adults with~~ <—  
3 ~~disabilities, their families and advocates to collaborate~~  
4 ~~with local protective services providers and the standards~~  
5 LOCAL PROTECTIVE SERVICES PROVIDERS TO COLLABORATE WITH <—  
6 ADULTS WITH DISABILITIES, THEIR FAMILIES AND ADVOCATES, AND  
7 THE STANDARDS shall be included in developing and delivering  
8 training.

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

11 (1) Describe the implementation of this chapter,  
12 including, but not limited to, the organization, staffing,  
13 mode of operations and financing of protective services, as  
14 well as the provisions made for purchase of services,  
15 interagency relations, interagency agreements, service  
16 referral mechanisms and locus of responsibility for cases  
17 with multiservice agency needs.

18 (2) Describe the methods that the agency, its designees  
19 and service providers will use to assure the privacy of all  
20 adults receiving services and the confidentiality of all  
21 records.

22 (3) List all entities, whether public or private, that  
23 have been identified by the agency as having substantial  
24 contact with potential victims or perpetrators of abuse,  
25 neglect, exploitation and abandonment.

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

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

30 Section 302. Reporting.

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

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

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

19 (1) Priority. A report placed in this category shall  
20 require immediate attention because specific details in the  
21 report indicate the possibility that the adult reported to  
22 need protective services is at imminent risk of death or  
23 serious physical or mental harm. The person receiving an  
24 emergency report shall immediately contact a protective  
25 services caseworker and provide the caseworker with the  
26 information contained in the report.

27 (2) Nonpriority. A report shall be placed in this  
28 category when it does not appropriately fall within the  
29 priority category and, therefore, does not require immediate  
30 attention by the agency. A report in this category shall be

1 referred to a protective services caseworker of an agency  
2 within the normal business hours of the agency's current or  
3 next day of business under the agency's established  
4 procedures for referring these reports.

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

18 (4) No need for protective services. A report shall be  
19 placed in this category when the person reported to be in  
20 need of protective services meets at least one of the  
21 following criteria:

22 (i) has the capacity to perform or obtain, without  
23 help, services necessary to maintain physical or mental  
24 health;

25 (ii) has a responsible caregiver at the time of the  
26 report who is not the alleged perpetrator; or

27 (iii) is not at imminent risk or danger to his  
28 person or property.

29 A report in this category shall be referred to a protective  
30 services caseworker of the agency within the normal business

1 hours of the agency's current or next day of business. The  
2 protective services caseworker shall review the details of  
3 the report and take all steps necessary to confirm or reject  
4 the categorization of no need for protective services. If the  
5 caseworker confirms the screening categorization, appropriate  
6 referrals shall be made to other agencies, upon request, and  
7 the protective services case shall be closed. If the  
8 caseworker rejects the categorization, the report shall be  
9 placed in the appropriate category and shall be handled  
10 accordingly. A report may not be placed in this category if  
11 the adult is temporarily relocated to a safe environment and  
12 will return to the original abusive situation or to a new  
13 location which has not been determined to be safe.

14 (d) Retaliatory action.--

15 (1) Any person who makes a report or cooperates with the  
16 agency, including providing testimony in any administrative  
17 or judicial proceeding, and any victim shall not be subject  
18 to any discriminatory, retaliatory or disciplinary action by  
19 an employer or by any other person or entity.

20 (2) Any person who violates this subsection is subject  
21 to a civil action by the reporter or the victim, in which  
22 action the reporter or victim shall recover treble  
23 compensatory damages, compensatory and punitive damages or  
24 \$5,000, whichever is greater.

25 (e) Intimidation.--

26 (1) A person, including a victim, with knowledge  
27 sufficient to justify making a report or cooperating with an  
28 agency, including possibly providing testimony in an  
29 administrative or judicial proceeding, shall not be subject  
30 to any intimidation by an employer or by any other person or

1 entity.

2 (2) A person who violates this subsection is subject to  
3 civil action by the reporter or the victim, in which action  
4 the reporter or victim shall recover treble compensatory  
5 damages, compensatory and punitive damages or \$5,000,  
6 whichever is greater.

7 (f) Immunity.--

8 (1) A person who participates in the making of a report  
9 or who provides testimony in an administrative or judicial  
10 proceeding arising out of a report shall be immune from any  
11 civil or criminal liability, subject to paragraph (2), on  
12 account of the report or testimony, unless the person acted  
13 in bad faith or with malicious purpose.

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

18 Section 303. Investigations of reports of need for protective  
19 services.

20 (a) Investigation.--

21 (1) An agency shall investigate each report made under  
22 section 302. The investigation shall be initiated immediately  
23 for an emergency intake and within 24 hours for a priority  
24 intake.

25 (2) An emergency and priority intake shall be conducted  
26 face to face, except when the adult is hospitalized or  
27 emergency services are provided through another method.

28 (3) The investigation shall be initiated within 72 hours  
29 for a nonpriority intake, which may be conducted by telephone  
30 contact.

1           (4) The department shall adopt regulations providing for  
2 the methods of conducting investigations under this section  
3 and shall assure that steps are taken to avoid any conflict  
4 of interest between the investigator and service delivery  
5 functions.

6           (5) Reports and investigations conducted under this  
7 section shall comply with the provisions of Chapter 5, where  
8 applicable.

9       (b) Investigation involving licensed facilities.--

10           (1) A report concerning adults residing in a State-  
11 licensed facility shall be reported to the appropriate  
12 licensing department and investigated under procedures  
13 developed by the department in consultation with the bureau  
14 within the Department of State responsible for the licensure  
15 of the facility.

16           (2) The protective services agency may seek judicial  
17 relief to require the provider to protect the health and  
18 safety of the individual when the licensed program is  
19 believed to continue to jeopardize the adult's health and  
20 safety through evidence of risk substantiated.

21       (c) Unsubstantiated reports.--If after investigation by the  
22 agency a report is unsubstantiated, the case shall be closed,  
23 and all information shall be maintained for a period of one year  
24 under procedures established by the department.

25       (d) Substantiated reports.--

26           (1) If a report is substantiated by the agency or if the  
27 client assessment is necessary in order to determine whether  
28 the report is substantiated, the agency shall provide for a  
29 timely client assessment if the adult does not refuse consent  
30 to an assessment.

1           (2) Upon completion of the assessment, written findings  
2 shall be prepared that include recommended action in a  
3 service plan. The service plan shall:

4           (i) Provide for the least restrictive alternative,  
5 encouraging client self-determination and continuity of  
6 care.

7           (ii) Assure that services and supports are provided  
8 in the most integrated setting and in a manner that is  
9 least restrictive of the individual's liberty and may not  
10 provide for relocation of the client without consent,  
11 absent a court order.

12           (iii) Be in writing and include a recommended course  
13 of action that may include the pursuit of civil or  
14 criminal remedies.

15           (3) If an adult who is found to be in need of protective  
16 services refuses a client assessment or the development of a  
17 service plan, the agency may apply to the case the provisions  
18 of section 307.

19 Section 304. Provision of services.

20           (a) Availability of protective services.--An agency shall  
21 offer protective services under any of the following conditions:

22           (1) An adult requests the services.

23           (2) Another interested person requests the services on  
24 behalf of an adult.

25           (3) If, after investigation of a report, the agency  
26 determines an adult is in need of the services.

27           (b) Consent by request.--

28           (1) Except as provided in section 307, an adult shall  
29 receive protective services voluntarily. In no event may  
30 protective services be provided under this chapter to an



1 adult who refuses consent to the services or who, having  
2 consented, withdraws the consent, unless the services are  
3 ordered by a court or provided under section 307.

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

8 (c) Interference with services.--If any person interferes  
9 with the provision of services or the right of an adult to  
10 consent to provision of services, the agency may petition the  
11 court for an order enjoining the interference.

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

14 (1) Investigations of reports under section 303.

15 (2) Assessment of client need.

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

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

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

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

25 (2) Assess client need and develop a service plan for  
26 addressing needs determined.

27 (3) Provide for the delivery of services by the agency  
28 or other service provider arranged for under the service plan  
29 developed by the agency.

30 (f) Denial of access to persons.--If the agency is denied

1 access to an adult reported to be in need of protective services  
2 and access is necessary to complete the investigation or the  
3 client assessment and service plan or the delivery of needed  
4 services in order to prevent further abuse, neglect,  
5 exploitation or abandonment of the adult, the agency may  
6 petition the court for an order to require the appropriate  
7 access when either of the following conditions apply:

8 (1) The caregiver or a third party has interfered with  
9 the completion of the investigation or the client assessment  
10 and service plan or the delivery of services.

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

14 (g) Access by consent.--An agency's access to confidential  
15 records held by other agencies or individuals and to an adult  
16 reported to be in need of protective services shall require the  
17 consent of the adult or a court-appointed guardian except as  
18 provided for under this section or section 307.

19 (h) Denial of access to records.--If the agency is denied  
20 access to records necessary for completion of a proper  
21 investigation of a report or a client assessment and service  
22 plan or the delivery of needed services in order to prevent  
23 further abuse, neglect, exploitation or abandonment of the adult  
24 reported to be in need of protective services, the agency may  
25 petition the court of common pleas for an order requiring the  
26 appropriate access when either of the following conditions  
27 apply:

28 (1) The adult has provided written consent for any  
29 confidential records to be disclosed and the keeper of the  
30 records denies access.

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

5       Section 305. Immunity from civil and criminal liability.

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

12      Section 306. Confidentiality of records.

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

21      (b) Limited access to agency's protective services  
22      records.--

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

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

1 (3) A subject of a report made under section 302 may  
2 receive, upon written request, all information contained in  
3 the report except that prohibited from disclosure under  
4 paragraph (4).

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

11 (5) When the department is involved in the hearing of an  
12 appeal by a subject of a report made under section 302, the  
13 appropriate department staff shall be given access to all  
14 information in the report record relevant to the appeal.

15 (6) For the purpose of monitoring agency performance,  
16 appropriate staff of the department may access agency  
17 protective services records.

18 Section 307. Involuntary intervention by emergency court order.

19 (a) Emergency petition.--

20 (1) Where there is clear and convincing evidence that,  
21 if protective services are not provided, the person to be  
22 protected is at imminent risk of death, serious physical harm  
23 or serious bodily injury, the agency may petition the court  
24 for an emergency order to provide the necessary services.

25 (2) The court of common pleas of each judicial district  
26 shall ensure that a judge or magisterial district judge is  
27 available on a 24-hour-a-day, 365-day-a-year basis to accept  
28 and decide on petitions for an emergency court order under  
29 this section whenever the agency determines that a delay  
30 until normal court hours would significantly increase the

1 danger the adult faces.

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

6 (c) Right to counsel.--In order to protect the rights of an  
7 adult for whom protective services are being ordered, an  
8 emergency court order under this section shall provide that the  
9 adult has the right to legal counsel which shall be appointed by  
10 the court at public expense.

11 (d) Forcible entry.--Where it is necessary to forcibly enter  
12 premises after obtaining a court order, a law enforcement  
13 officer may do so, accompanied by a representative of an agency.

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

19 (f) Community acute care hospitals.--An adult with medical  
20 conditions requiring treatment shall be sent to a community  
21 acute care hospital.

22 (g) Nonrestrictive setting.--In those cases in which an  
23 adult must be relocated, the court shall order the adult to be  
24 relocated to a setting that will ensure the adult's health and  
25 safety and appropriate care. The adult may not be moved to a  
26 setting more restrictive of individual liberties than the  
27 setting from which that adult came, unless requested by the  
28 adult.

29 (h) Exclusion of remedy.--Nothing in this chapter shall be  
30 construed to deny an adult access to emergency medical services

or police protection that would be provided to anyone,  
regardless of age, in similar circumstances.

Section 308. Rights of protective services clients.

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

(1) The agency shall discreetly notify the adult during the investigation that a report has been made and provide the adult with a brief summary of the nature of the report.

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

(3) Any denial of services by the department or an authorized agency under this chapter shall be appealed according to the provisions of the rules and regulations issued by the department under Article XXII-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

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

Section 309. Financial obligations, liabilities and payments.

An adult receiving services and each agency providing 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.

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

4 (2) Funding available to local protective services  
5 agencies under this chapter may be used to cover the costs of  
6 activities including, but not limited to, the following:

7 (i) Administering protective services plans required  
8 under section ~~301(e)~~ 301(B). <—

9 (ii) Receiving and maintaining records of reports of  
10 abuse under section 302.

11 (iii) Conducting investigations of reported abuse  
12 under section 303.

13 (iv) Carrying out client assessments and developing  
14 service plans under sections 303 and 307.

15 (v) Petitioning the court under sections 304 and  
16 307, or other relevant acts or provisions of law.

17 (vi) Providing emergency involuntary intervention  
18 under section 307.

19 (vii) Arranging for available services needed to  
20 carry out service plans, including, as appropriate, the  
21 arrangement for services for other household members in  
22 order to reduce, correct or eliminate abuse, neglect,  
23 exploitation or abandonment of an adult.

24 (viii) Purchasing, on a temporary basis, services  
25 determined by a service plan to be necessary to reduce,  
26 correct or eliminate abuse, neglect, exploitation or  
27 abandonment of an adult when the services are not  
28 available within the existing resources of the agency or  
29 other appropriate provider. The purchase of services  
30 under this subparagraph is limited to a 30-day period,

1       which period may be renewed with adequate justification  
2       under regulations promulgated by the department.

3       (3) (i) The obligation of the Commonwealth and the  
4       counties to provide funds to the department or any agency  
5       for services provided pursuant to this chapter shall be  
6       entirely discharged by the appropriations made to the  
7       department or an agency.

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

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

18 Section 310. Regulations.

19      (a) General rule.--The department shall develop regulations  
20      in collaboration with adults with disabilities and groups  
21      representing adults with disabilities, their families and  
22      advocates.

23      (b) Promulgation of regulations.--The department shall  
24      promulgate rules and regulations to carry out this chapter and  
25      shall be responsible for presenting to the General Assembly  
26      annually a report on the program and services performed.

27      (c) Enforcement.--This chapter shall be enforced only after  
28      promulgation of regulations by the department, which regulations  
29      shall take effect no later than 12 months after the effective  
30      date of this section, except that section 301 shall apply when



1 the agency certifies to the department that it is prepared to  
2 fulfill its responsibilities. The certification shall be made  
3 within 90 days following the effective date of the regulations.

4 Section 311. Funds for payment of administration of chapter.

5 Funds necessary to administer this chapter shall be provided  
6 by annual appropriation by the General Assembly.

## 7 CHAPTER 5

### 8 REPORTING SUSPECTED ABUSE BY EMPLOYEES

9 Section 501. Reporting by employees.

10 (a) Mandatory reporting to agency.--

11 (1) An employee or an administrator who has reasonable  
12 cause to suspect that a recipient is a victim of abuse or  
13 neglect shall immediately make an oral report to an agency.  
14 If applicable, the agency shall advise the employee or  
15 administrator of additional reporting requirements that may  
16 pertain under subsection (b). An employee shall notify the  
17 administrator immediately following the report to the agency.

18 (2) Within 48 hours of making the oral report, the  
19 employee or administrator shall make a written report to the  
20 agency. The agency shall notify the administrator that a  
21 report of abuse has been made with the agency.

22 (3) The law enforcement officials shall notify the  
23 administrator that a report has been made with the law  
24 enforcement officials.

25 (4) The employee may request the administrator to make  
26 or assist the employee to make oral and written reports to  
27 law enforcement officials required by this subsection.

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

29 (1) An employee or an administrator who has reasonable  
30 cause to suspect that a recipient is the victim of sexual

1 abuse, serious physical injury or serious bodily injury or  
2 that a death is suspicious shall, in addition to contacting  
3 the agency and the department, immediately contact law  
4 enforcement officials to make an oral report. An employee  
5 shall notify the administrator immediately following the  
6 report to law enforcement officials.

7 (2) Within 48 hours of making the oral report, the  
8 employee and the administrator shall make a written report to  
9 appropriate law enforcement officials.

10 (3) The law enforcement officials shall notify the  
11 administrator that a report has been made with the law  
12 enforcement officials.

13 (4) The employee may request the administrator to make  
14 or to assist the employee to make the oral and written  
15 reports to law enforcement officials required by this  
16 subsection.

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

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

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

24 (3) Name and address of the facility.

25 (4) Nature of the alleged offense.

26 (5) Any specific comments or observations that are  
27 directly related to the alleged incident and the individual  
28 involved.

29 Section 502. Reports to department and coroner or medical  
30 examiner.

1 (a) Department.--

2 (1) Within 48 hours of receipt of a written report under  
3 section 501(a) involving sexual abuse, serious physical  
4 injury, serious bodily injury or suspicious death, the agency  
5 shall transmit a written report to the department.  
6 Supplemental reports shall be transmitted as they are  
7 obtained by the agency.

8 (2) A report under this subsection shall be made in a  
9 manner and on forms prescribed by the department. The report  
10 shall include, at a minimum, the following information:

11 (i) The name and address of the alleged victim.

12 (ii) The location where the suspected abuse  
13 occurred.

14 (iii) The age and sex of the alleged perpetrator and  
15 victim.

16 (iv) The nature and extent of the suspected abuse,  
17 including any evidence of prior abuse.

18 (v) The name and relationship of the individual  
19 responsible for causing the alleged abuse to the victim,  
20 if known, and any evidence of prior abuse by the  
21 individual.

22 (vi) The source of the report.

23 (vii) The individual making the report and the  
24 location where the individual can be reached.

25 (viii) The actions taken by the reporting source,  
26 including the taking of photographs and x-rays, removal  
27 of the recipient and notification under subsection (b).

28 (ix) Any other information that the department may  
29 require by regulation.

30 (b) Coroner or medical examiner.--For a report under section

1 501(a) concerning the death of a recipient, if there is  
2 reasonable cause to suspect that the recipient died as a result  
3 of abuse or neglect, the agency shall give the oral report and  
4 forward a copy of the written report to the appropriate coroner  
5 or medical examiner within 24 hours.

6 Section 503. Investigation.

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

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

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

21 (d) Further notification.--

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

24 (2) The agency and the department shall keep a record of  
25 any decision regarding criminal charges.

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

29 Section 504. Restrictions on employees.

30 (a) Plan of supervision.--

1 (1) On notification that an employee is alleged to have  
2 committed abuse, the facility shall immediately implement a  
3 plan of supervision or, where appropriate, suspend the  
4 employee, subject to approval by the agency and by the  
5 Commonwealth agency with regulatory authority over the  
6 facility.

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

11 (b) Prohibition.--

12 (1) On the filing of criminal charges against a  
13 facility's employee, the Commonwealth agency that licenses,  
14 regulates or has fiscal authority over the facility shall  
15 order the facility to immediately prohibit the employee from  
16 having access to recipients at the facility.

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

23 Section 505. Confidentiality of and access to confidential  
24 reports.

25 ~~(a) General rule.~~—A report under this chapter shall be made <—  
26 available in the following circumstances:

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

29 (2) If an investigation by an agency or law enforcement  
30 results in a report of criminal conduct, law enforcement

officials shall have access to relevant records maintained by the agency or the department.

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

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

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

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

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

#### Section 506. Penalties.

##### (a) Administrative.--

(1) An administrator who intentionally or willfully fails to comply or obstructs compliance with the provisions of this chapter or intimidates or commits a retaliatory act against an employee who complies in good faith with the provisions of this chapter commits a violation of this chapter and shall be subject to an administrative penalty

1 under paragraph (3).

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

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

16 (b) Criminal.--

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

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

27 (c) Penalties for failure to report.--A person required  
28 under this chapter to report a case of suspected abuse or  
29 neglect who willfully fails to do so commits a summary offense  
30 for the first violation and a misdemeanor of the third degree

1 for a second or subsequent violation.

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

8 Section 507. Immunity.

9 No administrator or facility shall be held civilly liable for  
10 any action directly related to good faith compliance with this  
11 chapter.

12 Section 508. Regulations.

13 The department, the Department of Health and the Department  
14 of Public Welfare shall promulgate the regulations necessary to  
15 carry out this chapter.

16 CHAPTER 7

17 MISCELLANEOUS PROVISIONS

18 Section 701. Repeals.

19 All acts and parts of acts are repealed insofar as they are  
20 inconsistent with this act.

21 Section 702. Effective date.

22 This act shall take effect in six months.