
THE GENERAL ASSEMBLY OF PENNSYLVANIA

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REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES, APRIL
3, 2009

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 prescribing penalties.

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19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 CHAPTER 1

22 PRELIMINARY PROVISIONS

23 Section 101. Short title.

24 This act shall be known and may be cited as the Adult
25 Protective Services Act.

26 Section 102. Legislative policy.

27 It is declared the policy of this Commonwealth that:

28 (1) Adults who lack the capacity to protect themselves
29 and are at imminent risk of abuse, neglect, exploitation or
30 abandonment must have access to services necessary to protect

1 their health, safety and welfare.

2 (2) Adults have the right to make choices, subject to
3 the laws and regulations of the Commonwealth, regarding their
4 lifestyles, relationships, bodies and health, even when those
5 choices present risks to themselves or their property.

6 (3) Adults have the right to refuse some or all
7 protective services.

8 (4) Information about protective services should be
9 provided in a safe place and in a safe, understandable and
10 responsive manner.

11 (5) The Commonwealth must provide for the detection,
12 prevention, reduction and elimination of abuse, neglect,
13 exploitation and abandonment and establish a program of
14 protective services for adults in need of them.

15 (6) Adults have the right to receive services in the
16 most integrated settings and in the manner least restrictive
17 of individual liberties.

18 Section 103. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

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

23 "Abuse." The occurrence of one or more of the following
24 acts:

25 (1) The infliction of injury, unreasonable confinement,
26 intimidation or punishment with resulting physical harm, pain
27 or mental anguish.

28 (2) The willful deprivation by a caregiver of goods or
29 services which are necessary to maintain physical or mental
30 health.

1 (3) Sexual harassment, rape or "abuse" as defined in 23
2 Pa.C.S. § 6102 (relating to definitions).

3 The term does not include environmental factors which are beyond
4 the control of an adult or caregiver, including, but not limited
5 to, inadequate housing, furnishings, income, clothing or medical
6 care.

7 "Administrator." The person responsible for the
8 administration of a facility. The term includes a person
9 responsible for employment decisions or an independent
10 contractor.

11 "Adult." A resident of this Commonwealth between 18 and 59
12 years of age who has a physical or mental impairment that
13 substantially limits one or more major life activities.

14 "Adult in need of protective services." An adult who needs
15 the assistance of another person to obtain protective services
16 in order to prevent imminent risk to person or property.

17 "Agency." A local contracted provider of protective
18 services.

19 "Assessment." Social, physical and psychological findings
20 along with a description of the person's current resources and
21 needs.

22 "Caregiver." An individual or institution that has assumed
23 the responsibility for the provision of care needed to maintain
24 the physical or mental health of an adult. This responsibility
25 may arise voluntarily, by contract, by receipt of payment for
26 care, as a result of family relationship or by order of a court
27 of competent jurisdiction. It is not the intent of this act to
28 impose responsibility on any individual if the responsibility
29 would not otherwise exist in law.

30 "Court." A court of common pleas or a district magistrate

1 court, where applicable.

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

3 "Employee." An individual who is employed by a facility. The
4 term includes:

5 (1) A contract employee who has direct contact with
6 residents or unsupervised access to their personal living
7 quarters.

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

11 "Exploitation." An act or course of conduct by a caregiver
12 or other person against an adult or an adult's resources,
13 without the informed consent of the adult or with consent
14 obtained through misrepresentation, coercion or threats of
15 force, that results in monetary, personal or other benefit, gain
16 or profit for the perpetrator or monetary or personal loss to
17 the adult.

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

19 (1) An assisted living residence as defined in section
20 1001 of the act of June 13, 1967 (P.L.31, No.21), known as
21 the Public Welfare Code.

22 (2) A domiciliary care home as defined in section 2202-A
23 of the act of April 9, 1929 (P.L.177, No.175), known as The
24 Administrative Code of 1929.

25 (3) A home health care agency as defined in section
26 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as
27 the Health Care Facilities Act.

28 (4) An intermediate care facility for people with mental
29 retardation.

30 (5) A long-term care nursing facility as defined in

1 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
2 known as the Health Care Facilities Act.

3 (6) An older adult daily living center as defined in
4 section 2 of the act of July 11, 1990 (P.L.499, No.118),
5 known as the Older Adult Daily Living Centers Licensing Act.

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

9 (8) An organization or group of people that uses public
10 funds and is paid, in part, to provide care and support to
11 adults in a licensed or unlicensed setting.

12 (9) A residential treatment facility.

13 "Incident Reporting System." Home and Community Services
14 Information System (HCSIS) or its successor.

15 "Intimidation." An act or omission by a person or entity
16 toward another person which is intended to or with knowledge
17 that the act or omission will obstruct, impede, impair, prevent
18 or interfere with the administration of this act or any law
19 intended to protect adults from mistreatment.

20 "Law enforcement official." These shall include:

21 (1) A police officer of a municipality.

22 (2) A district attorney.

23 (3) The Pennsylvania State Police.

24 (4) A county sheriff.

25 (5) The Attorney General.

26 "Least restrictive alternative." The least intrusive service
27 or environment that can effectively and safely address the
28 adult's needs and preferences.

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 "Protective services." Those activities, resources and
10 supports provided to adults under this act to detect, prevent,
11 reduce or eliminate abuse, neglect, exploitation and
12 abandonment.

13 "Recipient." An adult who receives care, services or
14 treatment in or from a facility.

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

16 "Serious bodily injury." Injury that:

- 17 (1) creates a substantial risk of death; or
18 (2) causes serious permanent disfigurement or protracted
19 loss or impairment of the function of a body member or organ.

20 "Serious injury." An injury that:

- 21 (1) causes a person severe pain; or
22 (2) significantly impairs a person's physical or mental
23 functioning, either temporarily or permanently.

24 "Service plan." A written plan that:

- 25 (1) Is cooperatively developed by an agency staff, an
26 adult in need of protective services or the adult's appointed
27 guardian, if any, and other family members and advocates when
28 appropriate.

- 29 (2) Where possible, is based on multidisciplinary,
30 comprehensive written assessments conducted by professionals

1 who have met with the adult in need of protective services
2 and are familiar with their situation.

3 (3) Provides for services in the most integrated setting
4 and utilizes least restrictive alternatives.

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

8 (5) Is updated as needed.

9 "Sexual abuse." Intentionally, knowingly or recklessly
10 causing or attempting to cause rape, involuntary deviate sexual
11 intercourse, sexual assault, statutory sexual assault,
12 aggravated indecent assault or incest, as defined by 18 Pa.C.S.
13 (relating to crimes and offenses).

14 CHAPTER 3

15 ADMINISTRATION

16 Section 301. Duties of department and agencies.

17 (a) General rule.--

18 (1) The department shall administer the adult protective
19 services program in a manner designed to utilize least
20 restrictive alternatives and to ensure services are provided
21 in the most integrated setting.

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

27 (i) Demonstrate knowledge of and experience working
28 with adults.

29 (ii) Be separate from agencies providing direct
30 services to adults and from county mental health and

1 mental retardation programs.

2 (iii) Demonstrate knowledge of service delivery
3 principles important to adults and their families such as
4 individual choice and use of the least restrictive
5 alternative.

6 (iv) Demonstrate that the program will be advised by
7 a body that includes at least 51% representation of
8 adults and their family members.

9 (v) Include letters of support that show
10 collaboration with entities which advocate for adults.

11 (3) The department shall establish, by regulation,
12 procedures to ensure no conflict of interest in the provision
13 of adult protective services.

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

26 (5) The department shall establish, by regulation,
27 minimum standards of training and experience that agencies
28 funded by the department shall follow in the selection and
29 assignment of staff for the provision of protective services.
30 The standards shall require agencies to collaborate with

1 adults, their families and advocates, and the standards shall
2 be included in developing and delivering training.

3 (6) The department shall ensure that agencies have
4 access to the incident reporting system.

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

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

14 (2) Describe the methods that the agency, its designees
15 and service providers will use to assure the privacy of all
16 adults receiving services and the confidentiality of all
17 records.

18 (3) List all other social service entities, whether
19 public or private, that have been identified by the agency as
20 having substantial contact with potential victims or
21 perpetrators of abuse, neglect, exploitation and abandonment.

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

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

26 Section 302. Reporting.

27 (a) General rule.--A person having reasonable cause to
28 believe that an adult is in need of protective services may
29 report such information to the agency. Where applicable, reports
30 shall comply with the provisions of Chapter 5.

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

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

14 (1) Priority. A report placed in this category shall
15 require immediate attention because specific details in the
16 report indicate the possibility that the adult reported to
17 need protective services is at imminent risk of death or
18 serious injury or serious bodily injury. The person receiving
19 a priority report shall immediately contact a protective
20 services caseworker and provide the caseworker with the
21 information contained in the report.

22 (2) Nonpriority. A report shall be placed in this
23 category when it does not appropriately fall within the
24 priority category and, therefore, does not require immediate
25 attention by the agency. A report in this category shall be
26 referred to a protective services caseworker of an agency
27 within the normal business hours of the agency's current or
28 next day of business under the agency's established
29 procedures for referring these reports.

30 (3) Another planning and service area. A report in which

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

13 (4) No need for protective services. A report shall be
14 placed in this category when the person reported to be in
15 need of protective services meets either of the following
16 criteria:

17 (i) has the capacity to perform or obtain, without
18 help, services necessary to maintain physical or mental
19 health;

20 (ii) is not at imminent risk or danger to his person
21 or property.

22 A report in this category shall be referred to a protective
23 services caseworker of the agency within the normal business
24 hours of the agency's current or next day of business. The
25 protective services caseworker shall review the details of
26 the report and take all steps necessary to confirm or reject
27 the categorization of no need for protective services. If the
28 caseworker confirms the screening categorization, and upon
29 the request of any interested party and without objection by
30 the adult appropriate referrals shall be made to other

1 entities. The protective services case shall then be closed.
2 If the caseworker rejects the categorization, the report
3 shall be placed in the appropriate category and shall be
4 handled accordingly. A report may not be placed in this
5 category if the adult is temporarily relocated to a safe
6 environment and will return to the original abusive situation
7 or to a new location which has not been determined to be
8 safe.

9 (d) Retaliatory action.--

10 (1) Any person who makes a report or cooperates with the
11 agency, including providing testimony in any administrative
12 or judicial proceeding, and any adult in need of protective
13 services shall not be subject to any discriminatory,
14 retaliatory or disciplinary action by an employer or by any
15 other person or entity.

16 (2) Any person who violates this subsection is subject
17 to a civil action by the reporter or the adult in need of
18 protective services, in which action the reporter or adult in
19 need of protective services shall recover treble compensatory
20 damages, compensatory and punitive damages or \$5,000,
21 whichever is greater.

22 (e) Intimidation.--

23 (1) A person, including an adult in need of protective
24 services, with knowledge sufficient to justify making a
25 report or cooperating with an agency, including possibly
26 providing testimony in an administrative or judicial
27 proceeding, shall not be subject to any intimidation by an
28 employer or by any other person or entity.

29 (2) A person who violates this subsection is subject to
30 civil action by the reporter or the adult in need of

1 protective services, in which action the reporter or adult in
2 need of protective services shall recover treble compensatory
3 damages, compensatory and punitive damages or \$5,000,
4 whichever is greater.

5 (f) Immunity.--

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

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

16 Section 303. Investigations of reports of need for protective
17 services.

18 (a) Investigation.--

19 (1) An agency shall investigate each report made under
20 section 302.

21 (2) The investigation shall be initiated immediately for
22 a priority report, and to the extent feasible, the agency
23 shall conduct a face-to-face interview with the reported
24 adult in need of protective services.

25 (3) The investigation shall be initiated within 72 hours
26 for a nonpriority report.

27 (4) The department shall adopt regulations providing for
28 the methods of conducting investigations under this section
29 and shall assure that steps are taken to avoid any conflict
30 of interest between the investigator and service delivery

1 functions.

2 (5) Reports and investigations conducted under this
3 section shall comply with the provisions of Chapter 5, where
4 applicable.

5 (b) Investigation involving licensed facilities.--

6 (1) A report concerning adults residing in a State-
7 licensed facility shall be reported to the appropriate State
8 licensing department and investigated under procedures
9 developed by the department in consultation with the bureau
10 responsible for the licensure of the facility.

11 (2) The protective services agency may seek judicial
12 relief to require the facility to protect the health and
13 safety of the adult when the licensed program is believed to
14 continue to jeopardize the adult's health and safety through
15 evidence of risk substantiated.

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

20 (d) Substantiated reports.--

21 (1) The agency shall provide for a timely assessment of
22 the adult if a report is substantiated by the agency or if an
23 assessment is necessary in order to determine whether the
24 report is substantiated. An adult may refuse the assessment.

25 (2) Upon completion of the assessment, written findings
26 shall be prepared that include recommended action. A service
27 plan shall be developed and shall:

28 (i) Provide for the least restrictive alternative
29 and encourage choice and continuity of care.

30 (ii) Assure that services and supports are provided

1 in the most integrated setting.

2 (iii) Absent a court order, not include the
3 relocation of the adult unless the adult consents.

4 (iv) Be written in plain language whenever possible
5 and prepared in a manner which can be easily understood
6 by an adult in need of protective services or that
7 adult's appointed guardian.

8 (v) Be in writing and include a recommended course
9 of action that may include the pursuit of civil or
10 criminal remedies.

11 (3) If an adult who is found to be in need of protective
12 services refuses an assessment or the development of a
13 service plan, the agency may apply to the case the provisions
14 of section 307.

15 Section 304. Provision of services.

16 (a) Availability of protective services.--Once need is
17 determined, an agency shall offer protective services if an
18 adult requests services or an interested person requests
19 services on behalf of an adult.

20 (b) Consent by request.--

21 (1) Except as provided in section 307, an adult shall
22 only receive protective services voluntarily. In no event may
23 protective services be provided under this chapter to an
24 adult who refuses consent to the services or who, having
25 consented, withdraws the consent, unless the services are
26 ordered by a court or provided under section 307.

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

1 (c) Interference with services.--If any person interferes
2 with the provision of services or the right of an adult to
3 consent to provision of services, the agency may petition the
4 court for an order enjoining the interference.

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

7 (1) Investigations of reports under section 303.

8 (2) Assessment of client need.

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

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

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

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

18 (2) Assess needs and develop a service plan for
19 addressing them.

20 (3) Provide for the delivery of services by the agency
21 or other service provider arranged for under the service
22 plan.

23 (f) Denial of access to persons.--If the agency is denied
24 access to an adult reported to be in need of protective services
25 and access is necessary to complete the investigation or the
26 assessment and service plan or the delivery of needed services
27 in order to prevent further abuse, neglect, exploitation or
28 abandonment of the adult, the agency may petition the court for
29 an order to require the appropriate access when either of the
30 following conditions apply:

1 (1) The caregiver or a third party has interfered with
2 the completion of the investigation or the assessment and
3 service plan or the delivery of services.

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

7 (g) Access by consent.--An agency's access to confidential
8 records held by other entities or individuals or an adult
9 reported to be in need of protective services shall require the
10 consent of the adult or a court-appointed guardian except as
11 provided for under this section or section 307.

12 (h) Denial of access to records.--If the agency is denied
13 access to records necessary for completion of a proper
14 investigation of a report, assessment, service plan or the
15 delivery of needed services in order to prevent further abuse,
16 neglect, exploitation or abandonment of the adult reported to be
17 in need of protective services, the agency may petition the
18 court of common pleas for an order requiring the appropriate
19 access when either of the following conditions apply:

20 (1) The adult has provided written consent for any
21 confidential records to be disclosed and the keeper of the
22 records denies access.

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

27 Section 305. Immunity from civil and criminal liability.

28 In the absence of willful misconduct or gross negligence, an
29 agency, its director and employees, protective services workers
30 or employees of the department shall not be civilly or

1 criminally liable for any decision or action or resulting
2 consequence of decisions or actions when acting under and
3 according to the provisions of this chapter.

4 Section 306. Confidentiality of records.

5 (a) General rule.--Information contained in reports, records
6 of investigation, assessment and service plans shall be
7 considered confidential and shall be maintained under
8 regulations promulgated by the department to safeguard
9 confidentiality. Except as otherwise provided in subsection (b),
10 this information shall not be disclosed to anyone outside the
11 agency other than to a court of competent jurisdiction pursuant
12 to a court order.

13 (b) Limited access to agency's protective services
14 records.--

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

19 (2) In arranging specific services to carry out service
20 plans, an agency may disclose to appropriate service
21 providers such information as may be necessary to initiate
22 the delivery of services.

23 (3) An adult who is the subject of a report made under
24 section 302 may receive, upon written request, all
25 information contained in the report except that prohibited
26 from disclosure under paragraph (4).

27 (4) The release of information that would identify a
28 person who made a report of suspected abuse, neglect,
29 exploitation or abandonment or who cooperated in a subsequent
30 investigation is prohibited unless the secretary can

1 determine that such a release will not be detrimental to the
2 safety of the person.

3 (5) When the department is involved in the hearing of an
4 appeal by an adult who is the subject of a report made under
5 section 302, the appropriate department staff shall be given
6 access to all information in the report record relevant to
7 the appeal.

8 (6) For the purpose of monitoring agency performance,
9 appropriate staff of the department may access agency
10 protective services records.

11 Section 307. Involuntary intervention by emergency court order.

12 (a) Emergency petition.--

13 (1) Where there is clear and convincing evidence that,
14 if protective services are not provided, the adult is at
15 imminent risk of death, serious injury or serious bodily
16 injury, the agency may petition the court for an emergency
17 order to provide the necessary services.

18 (2) The court of common pleas of each judicial district
19 shall ensure that a judge or magisterial district judge is
20 available on a 24-hour-a-day, 365-day-a-year basis to accept
21 and decide on petitions for an emergency court order under
22 this section whenever the agency determines that a delay
23 until normal court hours would significantly increase the
24 danger the adult faces.

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

29 (c) Right to counsel.--In order to protect the rights of an
30 adult in need of protective services, an emergency court order

1 under this section shall provide that the adult has the right to
2 legal counsel which shall be appointed by the court at public
3 expense.

4 (d) Forcible entry.--Where it is necessary to forcibly enter
5 a premises, law enforcement shall obtain a court order and may
6 be accompanied by a representative of an agency.

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

12 (f) Nonrestrictive setting.--In those cases in which an
13 adult must be relocated, the court shall order the adult to be
14 relocated to the most integrated setting and the least
15 restrictive alternative that will ensure the adult's health and
16 safety and appropriate care.

17 (g) Exclusion of remedy.--Nothing in this chapter shall be
18 construed to deny an adult access to emergency medical services
19 or police protection that would be provided to anyone,
20 regardless of age, in similar circumstances.

21 Section 308. Rights of protective services clients.

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

25 (1) The agency shall to the extent possible, notify the
26 adult privately during the investigation that a report has
27 been made and provide the adult with a brief summary of the
28 nature of the report.

29 (2) As provided under section 306(b)(3), the adult may
30 request and the agency shall provide additional information

1 contained in the report.

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

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

11 Section 309. Financial obligations, liabilities and payments.

12 An adult receiving services and each agency providing
13 services under this chapter shall comply with the following
14 provisions regarding liability for the payment of services:

15 (1) Funding to provide or make available protective
16 services under this chapter shall not:

17 (i) Supplant any public and private entitlements or
18 resources for which adults receiving protective services
19 under this chapter are or may be eligible.

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

23 (2) (i) The obligation of the Commonwealth or a county
24 to provide funding for services provided pursuant to this
25 chapter shall be entirely discharged by the
26 appropriations made to the department or an agency.

27 (ii) Provided that the agency has met its
28 responsibility under the law, no action at law or equity
29 may be instituted in a court to require the department,
30 agency, county or Commonwealth to provide benefits or

1 services under this chapter for which appropriations from
2 the Commonwealth or counties are not available.

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

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 provisions of this section shall be satisfied
23 when the administrator or employee submits a report to the
24 incident reporting system. Nothing in this subsection shall
25 prohibit an employee or administrator who has reasonable
26 cause to suspect that a recipient is a victim of abuse or
27 neglect from also making a report to the agency.

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 injury or serious bodily injury or that a
2 death is suspicious shall, in addition to contacting the
3 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 joint written
9 report to 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 those involved.

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

30 (a) Department.--

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

7 (2) A report under this subsection shall be made in a
8 manner and on forms prescribed by the department. The report
9 shall include, at a minimum, that information required to be
10 submitted under section 501.

11 (b) Coroner or medical examiner.--For a report under section
12 501(a) concerning the death of a recipient, if there is
13 reasonable cause to suspect that the recipient died as a result
14 of abuse or neglect, the agency shall give the oral report and
15 forward a copy of the written report to the appropriate coroner
16 or medical examiner within 24 hours.

17 Section 503. Investigation.

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

22 (b) Notification.--If law enforcement officials have
23 reasonable cause to suspect that a recipient has suffered sexual
24 abuse, serious injury, serious bodily injury or a suspicious
25 death, law enforcement officials shall notify the agency.

26 (c) Cooperation.--To the fullest extent possible, law
27 enforcement officials, facilities and agencies shall coordinate
28 their respective investigations and advise each other and
29 provide any applicable additional information on an ongoing
30 basis.

1 (d) Further notification.--

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

4 (2) Upon being notified by law enforcement, the agency
5 shall notify the department and both shall keep a record of
6 any decision regarding criminal charges.

7 (e) Compliance with Chapter 3.--In addition to the
8 provisions of this section, the agency shall comply with the
9 provisions of Chapter 3.

10 Section 504. Restrictions on employees.

11 (a) Plan of supervision.--

12 (1) On notification that an employee is alleged to have
13 committed abuse, the facility shall immediately suspend the
14 employee or where appropriate and subject to approval by the
15 agency and by the appropriate State licensing department with
16 regulatory authority over the facility, implement a plan of
17 supervision.

18 (2) A plan of supervision for a home health care agency
19 shall include periodic random direct inspections of
20 recipients by an employee who has been continuously employed
21 by the facility for a period of at least one year.

22 (b) Prohibition.--

23 (1) On the filing of criminal charges against an
24 employee, the appropriate State licensing department that
25 regulates or has fiscal authority over the facility shall
26 order the facility to immediately prohibit the employee from
27 having access to recipients at the facility.

28 (2) If the employee is a director, operator,
29 administrator or supervisor, the employee shall be subject to
30 restrictions deemed appropriate by the Commonwealth agency

1 that licenses, regulates or has fiscal authority over the
2 facility to assure the safety of the recipients of the
3 facility.

4 Section 505. Confidentiality of and access to confidential
5 reports.

6 A report under this chapter shall be made available in the
7 following circumstances:

8 (1) Information may be disclosed to a court of competent
9 jurisdiction under a court order.

10 (2) If an investigation by an agency or law enforcement
11 results in a report of criminal conduct, law enforcement
12 officials shall have access to relevant records maintained by
13 the agency or the department.

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

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

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

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

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

4 Section 506. Penalties.

5 (a) Administrative.--

6 (1) An administrator who intentionally or willfully
7 fails to comply or obstructs compliance with the provisions
8 of this chapter or intimidates or commits a retaliatory act
9 against an employee who complies in good faith with the
10 provisions of this chapter commits a violation of this
11 chapter and shall be subject to an administrative penalty
12 under paragraph (3).

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

19 (3) The Commonwealth agency or Commonwealth agencies
20 which regulate a facility shall have jurisdiction to
21 determine violations of this chapter and may issue an order
22 assessing a civil penalty of not more than \$2,500. An order
23 under this paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A
24 (relating to practice and procedure of Commonwealth agencies)
25 and Ch. 7 Subch. A (relating to judicial review of
26 Commonwealth agency action).

27 (b) Criminal.--

28 (1) An administrator who intentionally or willfully
29 fails to comply or obstructs compliance with this chapter
30 commits a misdemeanor of the third degree and shall, upon

1 conviction, be sentenced to pay a fine of \$2,500 or to
2 imprisonment for not more than one year, or both.

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

8 (c) Penalties for failure to report.--A person required
9 under this chapter to report a case of suspected abuse or
10 neglect who willfully fails to do so commits a summary offense
11 for the first violation and a misdemeanor of the third degree
12 for a second or subsequent violation.

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

19 Section 507. Immunity.

20 No administrator or facility shall be held civilly liable for
21 any action directly related to good faith compliance with this
22 chapter.

23 CHAPTER 7

24 MISCELLANEOUS PROVISIONS

25 Section 701. Regulations.

26 (a) General rule.--The Department of Health and the
27 Department of Public Welfare shall promulgate regulations
28 necessary to carry out Chapter 5.

29 (b) Development of regulations.--The department shall
30 promulgate rules and regulations necessary to implement this

1 act. Regulations shall be developed in consultation with adults,
2 their families and advocates.

3 Section 702. Report.

4 The department shall present a report on the program and
5 services performed to the Aging and Youth Committee of the
6 Senate and the Aging and Older Adult Services Committee of the
7 House of Representatives on an annual basis.

8 Section 703. Repeals.

9 All acts and parts of acts are repealed insofar as they are
10 inconsistent with this act.

11 Section 704. Effective date.

12 This act shall take effect in six months.