

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 699 Session of  
2009

INTRODUCED BY VANCE, ERICKSON, MELLOW, WASHINGTON, BAKER,  
O'PAKE, ORIE, ALLOWAY, STACK, BROWNE, TARTAGLIONE, RAFFERTY,  
MUSTO, ROBBINS, TOMLINSON, COSTA, WAUGH, PICCOLA, KASUNIC,  
KITCHEN, PIPPY, WONDERLING, FERLO, BOSCOLA, EICHELBERGER,  
FONTANA, GREENLEAF, LOGAN, YAW, FARNESE, LEACH AND DINNIMAN,  
APRIL 1, 2009

SENATOR WARD, AGING AND YOUTH, AS AMENDED, APRIL 21, 2010

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

22 CHAPTER 1

23 PRELIMINARY PROVISIONS

24 Section 101. Short title.

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

27 Section 102. Legislative policy.

28 It is declared the policy of this Commonwealth that:

29 (1) Adults who lack the capacity to protect themselves  
30 and are at imminent risk of abuse, neglect, exploitation or

1       abandonment must have access to services necessary to protect  
2       their health, safety and welfare.

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

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

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

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

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

19 Section 103. Definitions.

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

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

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

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

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

1 health.

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

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

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

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

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

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

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

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

1 "Court." A court of common pleas or a district magistrate  
2 court, where applicable.

3 "Department." The Department of Public Welfare of the  
4 Commonwealth.

5 "Employee." An individual who is employed by a facility. The  
6 term includes:

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

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

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

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

21 (1) An assisted living residence as defined in section  
22 1001 of the act of June 13, 1967 (P.L.31, No.21), known as  
23 the Public Welfare Code.

24 (2) A domiciliary care home as defined in section  
25 2202-A of the act of April 9, 1929 (P.L.177, No.175), known  
26 as The Administrative Code of 1929.

27 (3) A home health care agency as defined in section  
28 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as  
29 the Health Care Facilities Act.

30 (4) An intermediate care facility for people with mental

1       retardation.

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

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

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

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

14          (9) A residential treatment facility.

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

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

22      "Law enforcement official." These shall include:

23          (1) A police officer of a municipality.

24          (2) A district attorney.

25          (3) The Pennsylvania State Police.

26          (4) A county sheriff.

27          (5) The Attorney General.

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

1 "Most integrated setting." A setting that enables  
2 individuals with disabilities to interact with individuals who  
3 do not have disabilities to the fullest extent possible.

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

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

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

17 "Secretary." The Secretary of Public Welfare of the  
18 Commonwealth.

19 "Serious bodily injury." Injury that:

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

23 "Serious injury." An injury that:

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

27 "Service plan." A written plan that:

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

appropriate.

(2) Where possible, is based on multidisciplinary, comprehensive written assessments conducted by professionals who have met with the adult in need of protective services and are familiar with their situation.

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

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

(5) Is updated as needed.

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

### CHAPTER 3

#### ADMINISTRATION

Section 301. Duties of department and agencies.

(a) General rule.--

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

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

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



1           (ii) Be separate from agencies providing direct  
2 services to adults and from county mental health and  
3 mental retardation programs.

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

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

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

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

16          (4) 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          (5) The department shall establish, by regulation,  
29 minimum standards of training and experience that agencies  
30 funded by the department shall follow in the selection and

1 assignment of staff for the provision of protective services.  
2 The standards shall require agencies to collaborate with  
3 adults, their families and advocates, and the standards shall  
4 be included in developing and delivering training.

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

7 (7) THE DEPARTMENT SHALL WORK WITH THE DEPARTMENT OF  
8 AGING TO PROVIDE COORDINATION WITH THE OLDER ADULTS  
9 PROTECTIVE SERVICES SYSTEM AND TO ENSURE THAT ADULTS WHO ARE  
10 THE SUBJECT OF A PROTECTIVE SERVICES REPORT AT THE TIME OF  
11 THEIR 60TH BIRTHDAY HAVE CONTINUITY IN THE DELIVERY OF  
12 PROTECTIVE SERVICES.

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

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

22 (2) Describe the methods that the agency, its designees  
23 and service providers will use to assure the privacy of all  
24 adults receiving services and the confidentiality of all  
25 records.

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

30 (4) Ensure that the entities have information regarding

1 the unique aspects of various disabilities.

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

4 (C) DISCRETIONARY AUTHORITY OF THE DEPARTMENT.--THE  
5 DEPARTMENT MAY, IN ITS SOLE DISCRETION, PERFORM ANY DUTY GRANTED  
6 TO AN AGENCY IN ANY GEOGRAPHIC AREA BY THIS ACT UNTIL AN AGENCY  
7 HAS BEEN SELECTED BY THE DEPARTMENT AND IS OPERATING TO SERVE  
8 THAT GEOGRAPHIC AREA PURSUANT TO SUBSECTION (A) (2).

9 Section 302. Reporting.

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

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

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

27 (1) Priority. A report placed in this category shall  
28 require immediate attention because specific details in the  
29 report indicate the possibility that the adult reported to  
30 need protective services is at imminent risk of death or

1 serious injury or serious bodily injury. The person receiving  
2 a priority report shall immediately contact a protective  
3 services caseworker and provide the caseworker with the  
4 information contained in the report.

5 (2) Nonpriority. A report shall be placed in this  
6 category when it does not appropriately fall within the  
7 priority category and, therefore, does not require immediate  
8 attention by the agency. A report in this category shall be  
9 referred to a protective services caseworker of an agency  
10 within the normal business hours of the agency's current or  
11 next day of business under the agency's established  
12 procedures for referring these reports.

13 (3) Another planning and service area. A report in which  
14 the adult who is the subject of the report does not reside in  
15 the planning and service area of the agency or, at that time,  
16 is not in the planning and service area shall be placed in  
17 this category. The report shall be referred to the agency  
18 that has the designated responsibility for protective  
19 services in the planning and service area in which the adult  
20 reported to be in need of protective services is located at  
21 the time of the report. A report in this category shall also  
22 meet the criteria for placement in one of the other  
23 categories in this subsection. The provisions for referral  
24 for the other category shall apply to a referral to another  
25 planning and service area.

26 (4) No need for protective services. A report shall be  
27 placed in this category when the person reported to be in  
28 need of protective services meets either of the following  
29 criteria:

30 (i) has the capacity to perform or obtain, without

1 help, services necessary to maintain physical or mental  
2 health;

3 (ii) is not at imminent risk or danger to his person  
4 or property.

5 A report in this category shall be referred to a protective  
6 services caseworker of the agency within the normal business  
7 hours of the agency's current or next day of business. The  
8 protective services caseworker shall review the details of  
9 the report and take all steps necessary to confirm or reject  
10 the categorization of no need for protective services. If the  
11 caseworker confirms the screening categorization, and upon  
12 the request of any interested party and without objection by  
13 the adult appropriate referrals shall be made to other  
14 entities. The protective services case shall then be closed.  
15 If the caseworker rejects the categorization, the report  
16 shall be placed in the appropriate category and shall be  
17 handled accordingly. A report may not be placed in this  
18 category if the adult is temporarily relocated to a safe  
19 environment and will return to the original abusive situation  
20 or to a new location which has not been determined to be  
21 safe.

22 (d) Retaliatory action.--

23 (1) Any person who makes a report or cooperates with the  
24 agency, including providing testimony in any administrative  
25 or judicial proceeding, and any adult in need of protective  
26 services shall not be subject to any discriminatory,  
27 retaliatory or disciplinary action by an employer or by any  
28 other person or entity.

29 (2) Any person who violates this subsection is subject  
30 to a 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 (e) Intimidation.--

6 (1) A person, including an adult in need of protective  
7 services, with knowledge sufficient to justify making a  
8 report or cooperating with an agency, including possibly  
9 providing testimony in an administrative or judicial  
10 proceeding, shall not be subject to any intimidation by an  
11 employer or by any other person or entity.

12 (2) A person who violates this subsection is subject to  
13 civil action by the reporter or the adult in need of  
14 protective services, in which action the reporter or adult in  
15 need of protective services shall recover treble compensatory  
16 damages, compensatory and punitive damages or \$5,000,  
17 whichever is greater.

18 (f) Immunity.--

19 (1) A person who participates in the making of a report  
20 or who provides testimony in an administrative or judicial  
21 proceeding arising out of a report shall be immune from any  
22 civil or criminal liability, subject to paragraph (2), on  
23 account of the report or testimony, unless the person acted  
24 in bad faith or with malicious purpose.

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

29 Section 303. Investigations of reports of need for protective  
30 services.

1 (a) Investigation.--

2 (1) An agency shall investigate each report made under  
3 section 302.

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

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

10 (4) The department shall adopt regulations providing for  
11 the methods of conducting investigations under this section  
12 and shall assure that steps are taken to avoid any conflict  
13 of interest between the investigator and service delivery  
14 functions.

15 (5) Reports and investigations conducted under this  
16 section shall comply with the provisions of Chapter 5, where  
17 applicable.

18 (b) Investigation involving licensed facilities.--

19 (1) A report concerning adults residing in a State-  
20 licensed facility shall be reported to the appropriate State  
21 licensing department and investigated under procedures  
22 developed by the department in consultation with the bureau  
23 responsible for the licensure of the facility.

24 (2) The protective services agency may seek judicial  
25 relief to require the facility to protect the health and  
26 safety of the adult when the licensed program is believed to  
27 continue to jeopardize the adult's health and safety through  
28 evidence of risk substantiated.

29 (c) Unsubstantiated reports.--If after investigation by the  
30 agency a report is unsubstantiated, the case shall be closed,

1 and all information shall be maintained for a period of one year  
2 under procedures established by the department.

3 (d) Substantiated reports.--

4 (1) The agency shall provide for a timely assessment of  
5 the adult if a report is substantiated by the agency or if an  
6 assessment is necessary in order to determine whether the  
7 report is substantiated. An adult may refuse the assessment.

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

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

13 (ii) Assure that services and supports are provided  
14 in the most integrated setting.

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

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

21 (v) Be in writing and include a recommended course  
22 of action that may include the pursuit of civil or  
23 criminal remedies.

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

28 Section 304. Provision of services.

29 (a) Availability of protective services.--Once need is  
30 determined, an agency shall offer protective services if an



1 adult requests services or an interested person requests  
2 services on behalf of an adult.

3 (b) Consent by request.--

4 (1) Except as provided in section 307, an adult shall  
5 only receive protective services voluntarily. In no event may  
6 protective services be provided under this chapter to an  
7 adult who refuses consent to the services or who, having  
8 consented, withdraws the consent, unless the services are  
9 ordered by a court or provided under section 307.

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

14 (c) Interference with services.--If any person interferes  
15 with the provision of services or the right of an adult to  
16 consent to provision of services, the agency may petition the  
17 court for an order enjoining the interference.

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

20 (1) Investigations of reports under section 303.

21 (2) Assessment of client need.

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

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

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

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

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

3           (3) Provide for the delivery of services by the agency  
4     or other service provider arranged for under the service  
5     plan.

6     (f) Denial of access to persons.--If the agency is denied  
7     access to an adult reported to be in need of protective services  
8     and access is necessary to complete the investigation or the  
9     assessment and service plan or the delivery of needed services  
10    in order to prevent further abuse, neglect, exploitation or  
11    abandonment of the adult, the agency may petition the court for  
12    an order to require the appropriate access when either of the  
13    following conditions apply:

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

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

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

25     (h) Denial of access to records.--If the agency is denied  
26     access to records necessary for completion of a proper  
27     investigation of a report, assessment, service plan or the  
28     delivery of needed services in order to prevent further abuse,  
29     neglect, exploitation or abandonment of the adult reported to be  
30     in need of protective services, the agency may petition the

1 court of common pleas for an order requiring the appropriate  
2 access when either of the following conditions apply:

3 (1) The adult has provided written consent for any  
4 confidential records to be disclosed and the keeper of the  
5 records denies access.

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

10 Section 305. Immunity from civil and criminal liability.

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

17 Section 306. Confidentiality of records.

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

26 (b) Limited access to agency's protective services  
27 records.--

28 (1) In the event that an investigation by an agency  
29 results in the discovery of suspected criminal conduct, law  
30 enforcement officials shall be given access to all relevant

1 records maintained by the agency or the department.

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

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

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

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

21 (6) For the purpose of monitoring agency performance,  
22 appropriate staff of the department may access agency  
23 protective services records.

24 Section 307. Involuntary intervention by emergency court order.

25 (a) Emergency petition.--

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

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

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

12       (c) Right to counsel.--In order to protect the rights of an  
13 adult in need of protective services, an emergency court order  
14 under this section shall provide that the adult has the right to  
15 legal counsel which shall be appointed by the court at public  
16 expense.

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

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

25       (f) Nonrestrictive setting.--In those cases in which an  
26 adult must be relocated, the court shall order the adult to be  
27 relocated to the most integrated setting and the least  
28 restrictive alternative that will ensure the adult's health and  
29 safety and appropriate care.

30       (g) Exclusion of remedy.--Nothing in this chapter shall be

1 construed to deny an adult access to emergency medical services  
2 or police protection that would be provided to anyone,  
3 regardless of age, in similar circumstances.

4 Section 308. Rights of protective services clients.

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

8 (1) The agency shall to the extent possible, notify the  
9 adult privately during the investigation that a report has  
10 been made and provide the adult with a brief summary of the  
11 nature of the report.

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

15 (3) An appeal of a denial of services by the department  
16 or an authorized agency under this chapter shall be conducted  
17 according to the provisions of the rules and regulations  
18 issued by the department under ~~Article XXII A of the act of~~ ←  
19 ~~April 9, 1929 (P.L.177, No.175), known as The Administrative~~  
20 ~~Code of 1929~~ THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN ←  
21 AS THE PUBLIC WELFARE CODE.

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

25 Section 309. Financial obligations, liabilities and payments.

26 An adult receiving services and each agency providing  
27 services under this chapter shall comply with the following  
28 provisions regarding liability for the payment of services:

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

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

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

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

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

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

## 21 CHAPTER 5

### 22 REPORTING SUSPECTED ABUSE BY EMPLOYEES

#### 23 Section 501. Reporting by employees.

##### 24 (a) Mandatory reporting to agency.--

25 (1) An employee or an administrator who has reasonable  
26 cause to suspect that a recipient is a victim of abuse or  
27 neglect shall immediately make an oral report to an agency.  
28 If applicable, the agency shall advise the employee or  
29 administrator of additional reporting requirements that may  
30 pertain under subsection (b). An employee shall notify the

1 administrator immediately following the report to the agency.

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

6 (3) The provisions of this section shall be satisfied  
7 when the administrator or employee submits a report to the  
8 incident reporting system. Nothing in this subsection shall  
9 prohibit an employee or administrator who has reasonable  
10 cause to suspect that a recipient is a victim of abuse or  
11 neglect from also making a report to the agency.

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

13 (1) An employee or an administrator who has reasonable  
14 cause to suspect that a recipient is the victim of sexual  
15 abuse, serious injury or serious bodily injury or that a  
16 death is suspicious shall, in addition to contacting the  
17 agency and the department, immediately contact appropriate  
18 law enforcement officials to make an oral report. An employee  
19 shall notify the administrator immediately following the  
20 report to law enforcement officials, unless such notification  
21 would jeopardize the investigation or subject the recipient  
22 to further risk.

23 (2) Within 48 hours of making the oral report, the  
24 employee and the administrator shall make a joint written  
25 report to appropriate law enforcement officials.

26 (3) The law enforcement officials shall notify the  
27 administrator that a report has been made with the law  
28 enforcement officials, unless such notification would  
29 jeopardize the investigation or subject the recipient to  
30 further risk.



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

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

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

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

12          (3) Name and address of the facility.

13          (4) Nature of the alleged offense.

14          (5) Any specific comments or observations that are  
15 directly related to the alleged incident and those involved.

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

18       (a) Department.--

19           (1) Within 48 hours of receipt of a written report under  
20 section 501(a) involving sexual abuse, serious injury,  
21 serious bodily injury or suspicious death, the agency shall  
22 transmit a written report to the department. Supplemental  
23 reports shall be transmitted as they are obtained by the  
24 agency.

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

29       (b) Coroner or medical examiner.--For a report under section  
30 501(a) concerning the death of a recipient, if there is

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

5 Section 503. Investigation.

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

10 (b) Notification.--If law enforcement officials have  
11 reasonable cause to suspect that a recipient has suffered sexual  
12 abuse, serious injury, serious bodily injury or a suspicious  
13 death, law enforcement officials shall notify the agency, unless  
14 such notification would jeopardize the investigation or subject  
15 the recipient to further risk.

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) Upon being notified by law enforcement, the agency  
25 shall notify the department and both shall keep a record of  
26 any decision regarding criminal charges.

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

30 Section 504. Restrictions on employees.

1 (a) Plan of supervision.--

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

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

12 (b) Prohibition.--

13 (1) On the filing of criminal charges against an  
14 employee, the appropriate State licensing department that  
15 regulates or has fiscal authority over the facility shall  
16 order the facility to immediately prohibit the employee from  
17 having access to recipients at the facility.

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

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

26 A report under this chapter shall be made available in the  
27 following circumstances:

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

30 (2) If an investigation by an agency or law enforcement

1 results in a report of criminal conduct, law enforcement  
2 officials shall have access to relevant records maintained by  
3 the agency or the department.

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

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

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

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

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

#### 24 Section 506. Penalties.

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

26 (1) An administrator who intentionally or willfully  
27 fails to comply or obstructs compliance with the provisions  
28 of this chapter or intimidates or commits a retaliatory act  
29 against an employee who complies in good faith with the  
30 provisions of this chapter commits a violation of this

chapter and shall be subject to an administrative penalty under paragraph (3).

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

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

(b) Criminal.--

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

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

(c) Penalties for failure to report.--A person required under this chapter to report a case of suspected abuse or neglect who willfully fails to do so commits a summary offense

1 for the first violation and a misdemeanor of the third degree  
2 for a second or subsequent violation.

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

9 Section 507. Immunity.

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

## 13 CHAPTER 7

### 14 MISCELLANEOUS PROVISIONS

15 Section 701. Regulations.

16 (a) ~~The Department of Health and the Department of Aging~~ ←  
17 ~~shall promulgate regulations necessary to carry out Chapter 5.~~

18 (b) GENERAL RULE.--The department shall promulgate rules and ←  
19 regulations necessary to implement this act. Regulations shall  
20 be developed in consultation with adults, their families and  
21 advocates AND ALL OTHER DEPARTMENTS THAT ARE AFFECTED BY THIS ←  
22 ACT.

23 (B) CONTRACTS.--THE DEPARTMENT SHALL NOT BE REQUIRED TO ←  
24 CONTRACT WITH AGENCIES TO PROVIDE ADULT PROTECTIVE SERVICES  
25 UNTIL FINAL REGULATIONS ARE PUBLISHED BY THE DEPARTMENT IN THE  
26 PENNSYLVANIA BULLETIN OR FUNDING IS APPROPRIATED BY THE GENERAL  
27 ASSEMBLY.

28 Section 702. Report.

29 The department shall present a report on the program and  
30 services performed to the ~~Aging and Youth~~ PUBLIC HEALTH AND ←

1 WELFARE Committee of the Senate and the ~~Aging and Older Adult~~ ←  
2 HEALTH AND HUMAN Services Committee of the House of ←  
3 Representatives on an annual basis.

4 Section 703. Repeals.

5 All acts and parts of acts are repealed insofar as they are  
6 inconsistent with this act.

7 Section 704. Effective date.

8 This act shall take effect in six months.