

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 786 Session of 2015

INTRODUCED BY HENNESSEY, McNEILL, HICKERNELL, SCHLOSSBERG, KILLION, COHEN, MURT, KORTZ, A. HARRIS, PETRI, WATSON, PEIFER, DONATUCCI, McCARTER, MOUL AND FARRY, MARCH 13, 2015

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES, MARCH 13, 2015

AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled  
 2 "An act relating to the protection of the abused, neglected,  
 3 exploited or abandoned elderly; establishing a uniform  
 4 Statewide reporting and investigative system for suspected  
 5 abuse, neglect, exploitation or abandonment of the elderly;  
 6 providing protective services; providing for funding; and  
 7 making repeals," making extensive amendments and adding  
 8 provisions relating to preliminary provisions,  
 9 administration, criminal history for employees, reporting  
 10 suspected abuse by employees and miscellaneous provisions.

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

13 Section 1. Section 102 of the act of November 6, 1987  
 14 (P.L.381, No.79), known as the Older Adults Protective Services  
 15 Act, renumbered December 18, 1996 (P.L.1125, No.169), is amended  
 16 to read:

17 Section 102. Legislative [policy] intent.

18 [It is declared the policy of the Commonwealth of  
 19 Pennsylvania] The General Assembly finds and declares that:

20 (1) It is the policy of the Commonwealth that older  
 21 adults who [lack the capacity to protect themselves and are

1 at imminent risk] are at risk of abuse, neglect, exploitation  
2 or abandonment shall have access to and be provided with  
3 services necessary to protect their health, safety and  
4 welfare.

5 (2) It is not the purpose of this act to place  
6 restrictions upon the personal liberty of [incapacitated]  
7 older adults, but this act should be liberally construed to  
8 assure the availability of protective services to all older  
9 adults in need of them.

10 (3) Such services shall safeguard the rights of  
11 [incapacitated] older adults while protecting them from  
12 abuse, neglect, exploitation and abandonment. [It is the  
13 intent of the General Assembly]

14 (4) The General Assembly intends to provide for the  
15 detection and reduction, correction or elimination of abuse,  
16 neglect, exploitation and abandonment[, ] and to establish a  
17 program of protective services for older adults in need of  
18 them.

19 (5) It is the policy of the Commonwealth that  
20 convictions for certain offenses that evidence a reckless  
21 disregard for the vulnerability of care-dependent populations  
22 may legitimately warrant a lifetime ban on employment working  
23 with older adults under this act.

24 (6) It is the policy of the Commonwealth that  
25 convictions for certain offenses involving misappropriation  
26 or misuse of property or convictions that involve  
27 inappropriate or irresponsible behavior may legitimately  
28 warrant a time-limited ban on employment working with older  
29 adults under this act.

30 Section 2. Section 103 of the act, amended December 18, 1996

1 (P.L.1125, No.169) and June 9, 1997 (P.L.160, No.13), is amended  
2 to read:

3 Section 103. Definitions.

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

7 "Abandonment." The desertion of an older adult by a  
8 caretaker.

9 "Abuse." [The occurrence of one or more of the following  
10 acts:

11 (1) The infliction of injury, unreasonable confinement,  
12 intimidation or punishment with resulting physical harm, pain  
13 or mental anguish.

14 (2) The willful deprivation by a caretaker of goods or  
15 services which are necessary to maintain physical or mental  
16 health.

17 (3) Sexual harassment, rape or abuse, as defined in the  
18 act of October 7, 1976 (P.L.1090, No.218), known as the  
19 Protection From Abuse Act.

20 No older adult shall be found to be abused solely on the grounds  
21 of environmental factors which are beyond the control of the  
22 older adult or the caretaker, such as inadequate housing,  
23 furnishings, income, clothing or medical care.] Intentionally,  
24 willfully, knowingly or recklessly causing or attempting to  
25 cause:

26 (1) Infliction of injury or unreasonable confinement  
27 resulting in serious physical harm or pain.

28 (2) Intimidation or punishment resulting in mental  
29 anguish.

30 (3) Verbal and emotional abuse, including use of

1 language with the intent to demean, ridicule, intimidate or  
2 embarrass that results or could reasonably be expected to  
3 result in mental anguish.

4 (4) The deprivation by a caretaker of goods or services  
5 which are necessary to maintain physical or mental health.

6 (5) Sexual abuse including: rape, involuntary deviate  
7 sexual intercourse, sexual assault, statutory sexual assault,  
8 aggravated indecent assault or incest.

9 (6) Sexual harassment, including: unwelcome sexual  
10 advances, requests for sexual favors and other unwelcome  
11 verbal or physical conduct of a sexual nature.

12 "Administrator." The person responsible for the  
13 [administration] management of a facility. The term includes a  
14 person responsible for employment decisions or an independent  
15 contractor responsible for administration of a facility.

16 ["Agency." The local provider of protective services, which  
17 is the area agency on aging or the agency designated by the area  
18 agency on aging to provide protective services in the area  
19 agency's planning and service area.]

20 "Agent." A person authorized to act on behalf of an older  
21 adult, including a person acting pursuant to a power of  
22 attorney.

23 "Applicant." An individual seeking employment or engagement  
24 as an employee.

25 "Area agency on aging" or "AAA." The single local agency  
26 designated by the Department of Aging within each planning and  
27 service area to administer the delivery of protective services.

28 "Assessment." The evaluation of an older adult's social,  
29 physical and psychological well-being, along with a description  
30 of the older adult's current resources and needs.

1 "Care." Services provided to meet [a person's] an older  
2 adult's need for personal care or health care[. Services may  
3 include homemaker services, assistance with activities of daily  
4 living, physical therapy, occupational therapy, speech therapy,  
5 medical social services, home-care aide services, companion-care  
6 services, private duty nursing services, respiratory therapy,  
7 intravenous therapy, in-home dialysis and durable medical  
8 equipment services, which are routinely provided unsupervised  
9 and which require interaction with the care-dependent person.  
10 The term does not include durable medical equipment delivery]  
11 which requires interaction with the older adult.

12 "Care-dependent individual." An adult who, due to physical  
13 or cognitive disability or impairment, requires assistance to  
14 meet needs for food, shelter, clothing, personal care or health  
15 care.

16 "Caretaker." An individual or [institution] entity that has  
17 assumed the responsibility for the provision of care needed to  
18 maintain the physical or mental health of an older adult. This  
19 responsibility may arise voluntarily, by contract, by receipt of  
20 payment for care, as a result of [family] familial  
21 relationship[, ] or by order of a court of competent  
22 jurisdiction. It is not the intent of this act to impose  
23 responsibility on any individual if such responsibility would  
24 not otherwise exist in law.

25 "Case record." The complete record of the information  
26 received and the actions taken by the area agency on aging on  
27 each report of need.

28 ["Client assessment." Social, physical and psychological  
29 findings along with a description of the person's current  
30 resources and needs.]

1 "Consent." Authorization or approval that, where feasible,  
2 is obtained in writing.

3 ["Court." A court of common pleas or a district magistrate  
4 court, where applicable.]

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

6 "Employee." An individual who [is employed by a facility.  
7 The term includes contract employees who have direct contact  
8 with residents or unsupervised access to their personal living  
9 quarters. The term includes any person who is employed or who  
10 enters into a contractual relationship to provide care to a  
11 care-dependent individual for monetary consideration in the  
12 individual's place of residence.]:

13 (1) Is employed by a facility, or the affiliated  
14 corporate entity of a facility, or enters into a contractual  
15 relationship with a facility, or the affiliated corporate  
16 entity of a facility, to provide care to an older adult.

17 (2) Has unsupervised access to another individual and  
18 that individual's living quarters, resources or personal  
19 records.

20 "Exploitation." An act or course of conduct by a caretaker  
21 or other person against an older adult or an older adult's  
22 resources, without the [informed] consent or authorization of  
23 the older adult or with consent or authorization obtained  
24 through misrepresentation, coercion or threats of force, [that  
25 results] resulting in monetary, personal or other benefit, gain  
26 or profit for [the perpetrator] that caretaker or person, or  
27 monetary or personal loss to the older adult[.], including an  
28 act or course of conduct by an agent that violates the agent's  
29 duties to the older adult.

30 "Facility." Any of the following:

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

4 (2) [A home health care agency.] Any of the following  
5 entities as defined in section 802.1 of the act of July 19,  
6 1979 (P.L.130, No.48), known as the Health Care Facilities  
7 Act:

8 (i) A home health care agency.

9 (ii) A long-term care nursing facility.

10 (iii) A hospice.

11 (iv) A home care agency.

12 (v) A home care registry.

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

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

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

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

25 (7) A PACE provider as defined in section 1894 of the  
26 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395eee) and  
27 licensed under the act of July 11, 1990 (P.L.499, No.118),  
28 known as the Older Adult Daily Living Centers Licensing Act.

29 (8) Any other public or private organization, or entity  
30 or part of an organization or entity, that uses public funds

1 and is paid, in part, to provide care to care-dependent  
2 individuals.

3 The term does not include an entity licensed by the Department  
4 of Health or the Department of Drug and Alcohol Programs to  
5 provide drug and alcohol addiction treatment services or an  
6 entity licensed by the Department of Human Services.

7 "Financial institution." Any of the following:

8 (1) A national banking association.

9 (2) A State banking institution.

10 (3) Any other state bank that maintains a branch in this  
11 Commonwealth.

12 (4) A credit union that is organized under the laws of  
13 this Commonwealth or of the United States.

14 (5) A savings and loan association that is organized  
15 under the laws of this Commonwealth or of the United States.

16 ["Home health care agency." Any of the following:

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

19 (2) A public or private agency or organization, or part  
20 of an agency or organization, which provides care to a care-  
21 dependent individual in the individual's place of residence.]

22 "Incident reporting system." Home and Community Services  
23 Information System (HCSIS) or its successor.

24 "Intimidation." An act or omission by any person or entity  
25 toward another person [which is intended to, or with knowledge  
26 that the act or omission will, obstruct, impede, impair, prevent  
27 or interfere] that obstructs, impedes, impairs, prevents or  
28 interferes with the administration of this act or any other law  
29 intended to protect older adults from mistreatment.

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

1 (1) A police officer of a municipality.

2 (1.1) A peace officer, as defined in 18 Pa.C.S. § 501  
3 (relating to definitions).

4 (2) A district attorney.

5 (3) The Pennsylvania State Police.

6 (4) The Attorney General of the Commonwealth.

7 (5) The United States Department of Justice and other  
8 Federal law enforcement agencies.

9 (6) A law enforcement authority in another state.

10 "Mandatory reporter." Any of the following:

11 (1) Facility employee or administrator.

12 (2) Physician or other licensed or certified health care  
13 professional.

14 "Neglect." The failure to provide for oneself or the failure  
15 of a caretaker to provide goods or services essential to avoid a  
16 clear and serious threat to physical or mental health. [No older  
17 adult who does not consent to the provision of protective  
18 services shall be found to be neglected solely on the grounds of  
19 environmental factors which are beyond the control of the older  
20 adult or the caretaker, such as inadequate housing, furnishings,  
21 income, clothing or medical care.]

22 "Older adult." [A person] An individual within the  
23 jurisdiction of [the] this Commonwealth who is 60 years of age  
24 or older.

25 "Older adult in need of protective services." An  
26 [incapacitated] older adult who is unable to perform or obtain  
27 services that are necessary to maintain physical or mental  
28 health, for whom there is no responsible caretaker and who is at  
29 imminent risk of danger to his person or property.

30 "Protective services." Those activities, resources and

1 supports provided to older adults under this act to detect,  
2 prevent, reduce or eliminate abuse, neglect, exploitation and  
3 abandonment.

4 ["Protective setting." A setting chosen by the agency where  
5 services can be provided in the least restrictive environment to  
6 protect the physical and mental well-being of the older adult.]

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

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

10 "Serious bodily injury." Injury which creates a substantial  
11 risk of death or which causes serious permanent disfigurement or  
12 protracted loss or impairment of the function of a body member  
13 or organ.

14 "Serious financial harm." A financial loss that is likely to  
15 result in the inability of an older adult to fund basic  
16 necessities, including, but not limited to, food, shelter,  
17 utilities, medication, health care and long-term care services  
18 and supports.

19 "Serious physical injury." An injury that:

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

23 "Service plan." A written plan [developed]:

- 24 (1) Developed by the [agency] area agency on aging on  
25 the basis of comprehensive assessment of [a client's need  
26 which describes identified needs, goals to be achieved and  
27 specific services to support goal attainment, with regular  
28 follow-up and predetermined reassessment of client progress.  
29 Specific services to support goal attainment may include, but  
30 is not limited to, homemaker services, home-delivered meals,

1 attendant care, other in-home services, emergency shelter or  
2 food, legal aid services, transportation and other such  
3 services. Service plans are cooperatively developed by the  
4 agency staff, the client or the client's appointed guardian,  
5 and other family members when appropriate. The plan shall  
6 also address, where applicable, special needs of other  
7 members of the household unit as they may affect the older  
8 adult's need for protective services.] an older adult that  
9 describes identified needs and specific services designed to  
10 support goal attainment.

11 (2) That includes regular follow-up and predetermined  
12 reassessment of progress.

13 (3) In which the specific services support goal  
14 attainment and may include, but need not be limited to:

15 (i) Homemaker services.

16 (ii) Home-delivered meals.

17 (iii) Personal care.

18 (iv) Other in-home services.

19 (v) Emergency shelter or food.

20 (vi) Legal aid services.

21 (vii) Transportation.

22 (viii) Other such services.

23 (4) Cooperatively developed by the area agency on aging  
24 staff, the older adult or his legal representative, and other  
25 family members, when appropriate.

26 (5) That addresses special needs of other members of the  
27 household unit if they affect the older adult's need for  
28 protective services.

29 "Sexual abuse." Intentionally, knowingly or recklessly  
30 causing or attempting to cause rape, involuntary deviate sexual

1 intercourse, sexual assault, statutory sexual assault,  
2 aggravated indecent assault, indecent assault or incest.

3 "Suspicious death." A death which is unexpected with  
4 unexplained circumstances or cause.

5 Section 3. Section 301 of the act, amended December 18, 1996  
6 (P.L.1125, No.169), is amended to read:

7 Section 301. Duties of department and area agencies on aging.

8 (a) Public information and interdepartmental consultation.--

9 The department shall conduct an ongoing campaign designed to  
10 inform and educate older adults, professionals and the general  
11 public about the need for [an] and the availability of  
12 protective services under this [chapter] act. The department  
13 shall consult with other [departments of the Commonwealth] State  
14 agencies on the design and implementation of the ongoing public  
15 awareness campaign. The department shall also consider the  
16 concerns of area agencies on aging and the entities identified  
17 by them under subsection (c).

18 (b) Staff training.--

19 (1) The department shall establish minimum standards of  
20 training and experience [which] that protective services  
21 providers funded by the department shall be required to  
22 follow in the selection and assignment of staff for the  
23 provision of protective services.

24 (2) The department shall establish a training program  
25 for mandatory reporters about the requirement to report under  
26 this act.

27 (c) Protective services plans.--

28 (1) Each area agency on aging shall include a protective  
29 services plan as part of its annual plan. The plan shall  
30 describe the local implementation of this [chapter] act,

1 including the organization, staffing, mode of operations and  
2 financing of protective services, as well as the provisions  
3 made for purchase of services, interagency relations,  
4 interagency agreements, service referral mechanisms and locus  
5 of responsibility for cases with multiservice agency needs.

6 (2) The [description of] department shall establish the  
7 methods that will be used by the [agency] AAA, its designees  
8 and its service providers to assure the privacy of older  
9 adults receiving services and the confidentiality of all  
10 records [shall be established by the department]. The  
11 department shall establish a schedule for the submission and  
12 approval of the plans.

13 (3) The [plan shall include] area agency on aging shall  
14 include in the plan, a list of all entities, whether public  
15 or private, that have been identified by the [area agency on  
16 aging] AAA as having substantial contact with potential  
17 victims or alleged perpetrators of abuse, neglect,  
18 exploitation and abandonment. [This list shall be submitted]  
19 The area agency on aging shall submit this list to the  
20 department for purposes of the public information campaign  
21 under subsection (a).

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

23 Section 301.1. Duties of financial institutions.

24 A financial institution that has an internal training program  
25 for its employees shall include information in their training  
26 curriculum to:

27 (1) Assist employees in recognizing signs of potential  
28 financial abuse of an older adult, including, but not limited  
29 to, unusual activity in an older adult's deposit accounts,  
30 automated teller machine withdrawals by an older adult who

1 previously never used an automated teller machine or debit  
2 card and suspicious signatures on checks.

3 (2) Inform employees about the applicable provisions of  
4 this act and specifically the process that they should use if  
5 they choose to make an abuse report.

6 Section 5. Section 302 of the act, amended June 9, 1997  
7 (P.L.160, No.13), is amended to read:

8 Section 302. Reporting[; protection from retaliation;  
9 immunity].

10 (a) [Reporting] Voluntary reports.--Any person, including an  
11 employee of a financial institution, having reasonable cause to  
12 [believe] suspect that an older adult [is] may be in need of  
13 protective services may report such information to the [agency  
14 which is the local provider of protective services. Where  
15 applicable, reports shall comply with the provisions of Chapter  
16 7] area agency on aging.

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

27 (c) Retaliatory action; penalty.--Any person making a report  
28 or cooperating with the agency, including providing testimony in  
29 any administrative or judicial proceeding, and the victim shall  
30 be free from any discriminatory, retaliatory or disciplinary

1 action by an employer or by any other person or entity. Any  
2 person who violates this subsection is subject to a civil  
3 lawsuit by the reporter or the victim wherein the reporter or  
4 victim shall recover treble compensatory damages, compensatory  
5 and punitive damages or \$5,000, whichever is greater.

6 (c.1) Intimidation; penalty.--Any person, including the  
7 victim, with knowledge sufficient to justify making a report or  
8 cooperating with the agency, including possibly providing  
9 testimony in any administrative or judicial proceeding, shall be  
10 free from any intimidation by an employer or by any other person  
11 or entity. Any person who violates this subsection is subject to  
12 civil lawsuit by the person intimidated or the victim wherein  
13 the person intimidated or the victim shall recover treble  
14 compensatory damages, compensatory and punitive damages or  
15 \$5,000, whichever is greater.

16 (d) Immunity.--Any person participating in the making of a  
17 report or who provides testimony in any administrative or  
18 judicial proceeding arising out of a report shall be immune from  
19 any civil or criminal liability on account of the report or  
20 testimony unless the person acted in bad faith or with malicious  
21 purpose. This immunity shall not extend to liability for acts of  
22 abuse, neglect, exploitation or abandonment, even if such acts  
23 are the subject of the report or testimony.]

24 (e) Mandatory reports.--

25 (1) A mandatory reporter, who has reasonable cause to  
26 suspect that an older adult may be a victim of abuse,  
27 neglect, exploitation or abandonment shall immediately make  
28 an oral report to the area agency on aging. If applicable,  
29 the AAA shall advise the mandatory reporter of additional  
30 reporting requirements that may pertain under paragraph (2).

1 Within 48 hours of making the oral report, the mandatory  
2 reporter shall make a written report to the AAA.

3 (2) A mandatory reporter who has reasonable cause to  
4 suspect that an older adult may be a victim of suspicious  
5 death, serious bodily injury, serious physical injury, sexual  
6 abuse or serious financial harm shall, in addition to any  
7 duty imposed under paragraph (1), immediately contact law  
8 enforcement officials and the department to make an oral  
9 report. Within 48 hours of making the oral report, the  
10 mandatory reporter shall make a written report to appropriate  
11 law enforcement officials and to the area agency on aging.  
12 The AAA shall forward the report to the department within 48  
13 hours of receipt.

14 (3) A written mandatory report under this subsection  
15 shall be in a manner and on forms prescribed by the  
16 department. At a minimum, the report shall include the  
17 following information, as well as any additional information  
18 required by regulation:

19 (i) Name, age, sex and address of the older adult.

20 (ii) Name and address of the older adult's legal  
21 representative or next of kin.

22 (iii) Name and address of the facility, if  
23 applicable.

24 (iv) Nature and location of the reported incident  
25 and any specific comments or observations that are  
26 directly related to the alleged incident and the older  
27 adult involved.

28 (v) Any relevant information known related to the  
29 identity of the alleged perpetrator, including, but not  
30 limited to, name, age, sex, relationship to the older

1           adult.

2           (vi) Name of the individual making the report,  
3           contact information for the reporter, and information  
4           regarding any actions taken by the reporter in response  
5           to the incident.

6           (4) The provisions of this section shall be satisfied  
7           when the mandatory or voluntary reporter submits a report to  
8           the Incident Reporting System. Nothing in this subsection  
9           shall be construed to prohibit a reporter 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 area agency on  
12           aging.

13           (5) A mandatory reporter shall be trained on the  
14           requirements to report under this act.

15           (f) Coroner.--For a report under subsection (a) or (b) that  
16           concerns the death of an older adult, if there is reasonable  
17           cause to suspect that the older adult died as a result of abuse,  
18           neglect, exploitation or abandonment, the area agency on aging  
19           shall give the oral report and forward a copy of the written  
20           report to the appropriate coroner within 24 hours.

21           Section 6. Sections 303 and 304 of the act, amended December  
22           18, 1996 (P.L.1125, No.169), and June 9, 1997 (P.L.160, No.13),  
23           are repealed:

24           [Section 303. Investigations of reports of need for protective  
25                            services.

26           (a) Investigation.--It shall be the agency's responsibility  
27           to provide for an investigation of each report made under  
28           section 302. The investigation shall be initiated within 72  
29           hours after the receipt of the report and shall be carried out  
30           under regulations issued by the department. These regulations

1 shall provide for the methods of conducting investigations under  
2 this section and shall assure that steps are taken to avoid any  
3 conflict of interest between the investigator and service  
4 delivery functions. Reports and investigations under this  
5 section shall comply with Chapter 7, where applicable.

6 (b) Investigation involving licensed facilities.--Any report  
7 concerning older adults residing in a State-licensed facility  
8 shall be investigated under procedures developed by the  
9 department in consultation with the State agency licensing such  
10 facility. If the report concerns a resident of a State-licensed  
11 facility for whom the area agency on aging provides ombudsman  
12 services, the ombudsman of the area agency on aging must be  
13 notified.

14 (c) Unsubstantiated reports.--If, after investigation by the  
15 agency, the report is unsubstantiated, the case shall be closed  
16 and all information identifying the reporter and the alleged  
17 abuser shall be immediately deleted from all records. For  
18 purposes of substantiating a pattern of abuse, neglect,  
19 exploitation or abandonment, the name of the alleged victim and  
20 any information describing the alleged act of abuse, neglect,  
21 exploitation or abandonment may be maintained for a period of  
22 six months under procedures established by the department.

23 (d) Substantiated reports.--If the report is substantiated  
24 by the agency, or if the client assessment is necessary in order  
25 to determine whether or not the report is substantiated, the  
26 agency shall provide for a timely client assessment if the older  
27 adult consents to an assessment. Upon completion of the  
28 assessment, written findings shall be prepared which shall  
29 include recommended action. This service plan shall provide for  
30 the least restrictive alternative, encouraging client self-

1 determination and continuity of care. The service plan shall be  
2 in writing and shall include a recommended course of action,  
3 which may include the pursuit of civil or criminal remedies. If  
4 an older adult found to be in need of protective services does  
5 not consent to a client assessment or the development of a  
6 service plan, the agency may apply to the case the provisions of  
7 section 307.

8 Section 304. Provision of services; access to records and  
9 persons.

10 (a) Availability of protective services.--The agency shall  
11 offer protective services under any of the following conditions:

12 (1) An older adult requests such services.

13 (2) Another interested person requests such services on  
14 behalf of an older adult.

15 (3) If, after investigation of a report, the agency  
16 determines the older adult is in need of such services.

17 (b) Consent by request.--Except as provided in section 307,  
18 an individual shall receive protective services voluntarily. In  
19 no event may protective services be provided under this chapter  
20 to any person who does not consent to such services or who,  
21 having consented, withdraws such consent, unless such services  
22 are ordered by a court, requested by a guardian of the older  
23 adult or provided under section 307. Nothing in this chapter  
24 shall prevent the agency from petitioning for the appointment of  
25 a guardian pursuant to Title 20 of the Pennsylvania Consolidated  
26 Statutes (relating to decedents, estates and fiduciaries).

27 (c) Interference with services.--If any person interferes  
28 with the provision of services or interferes with the right of  
29 an older adult to consent to provision of services, the agency  
30 may petition the court for an order enjoining such interference.

1 (d) Access to records.--The agency shall have access to all  
2 records relevant to:

3 (1) Investigations of reports under section 303.

4 (2) Assessment of client need.

5 (3) Service planning when an older adult's need for  
6 protective services has been or is being established.

7 (4) The delivery of services arranged for under the  
8 service plan developed by the agency to respond to an older  
9 adult's assessed need for specific services.

10 (e) Access to persons.--The agency shall have access to  
11 older persons who have been reported to be in need of protective  
12 services in order to:

13 (1) Investigate reports under section 303 and Chapter 7.

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

16 (3) Provide for the delivery of services by the agency  
17 or other service provider arranged for under the service plan  
18 developed by the agency.

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

28 (1) The caretaker or a third party has interfered with  
29 the completion of the investigation or the client assessment  
30 and service plan or the delivery of services.

1           (2) The agency can demonstrate that the older adult  
2           reported to be in need of protective services is denying  
3           access because of coercion, extortion or justifiable fear of  
4           future abuse, neglect, or exploitation or abandonment.

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

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

20                (1) The older 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 older adult is  
24                denying access to records because of incompetence, coercion,  
25                extortion or justifiable fear of future abuse, neglect,  
26                exploitation or abandonment.]

27          Section 7. The act is amended by adding sections to read:

28          Section 304.1. Receipt and investigation of reports.

29                (a) Receipt.--The area agency on aging shall be capable of  
30                receiving reports of older adults in need of protective services

1 24 hours a day, seven days a week. This capability may include  
2 the use of a local emergency response system or a crisis  
3 intervention agency provided that access can be made to a  
4 protective services caseworker in appropriate emergency  
5 situations, as set forth in regulations issued by the  
6 department. All reports received orally shall be documented  
7 immediately in a manner set forth by the department.

8 (b) Investigation.--

9 (1) The area agency on aging shall investigate each  
10 report in accordance with regulations issued by the  
11 department. The investigation shall be initiated within 72  
12 hours after the receipt of the report and carried out under  
13 regulations issued by the department. The regulations shall  
14 provide for the methods of conducting investigations and  
15 shall assure that steps are taken to avoid any conflict of  
16 interest.

17 (2) Consent of the older adult is not required in order  
18 to investigate reports of abuse, neglect, exploitation or  
19 abandonment.

20 (c) Access to older adults.--

21 (1) The area agency on aging shall have direct access to  
22 older adults who have been reported to be in need of  
23 protective services in order to:

24 (i) Investigate reports.

25 (ii) Assess needs of the older adult and develop a  
26 service plan for addressing those needs.

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

30 (2) If the AAA is denied access to an older adult

1 reported to be in need of protective services, the AAA may  
2 petition the court for an order to require any of the  
3 following:

4 (i) Access to the older adult.

5 (ii) A medical evaluation of the older adult.

6 (iii) A psychiatric evaluation of the older adult.

7 (d) Access to records.--

8 (1) The area agency on aging shall have access to all  
9 records for the purposes of investigating reports.

10 (2) The AAA shall, subject to the consent of the older  
11 adult, have access to all records for the purposes of:

12 (i) Assessing an older adult's need for services.

13 (ii) Planning and delivery of services.

14 (3) Records of State agencies, private organizations,  
15 financial institutions, medical institutions and  
16 practitioners, which the AAA reasonably believes to be  
17 necessary to complete an investigation or assessment and  
18 service plan, shall be requested in written form and be made  
19 available to the AAA unless the disclosure would be  
20 prohibited by any other provision of Federal or State law.

21 (4) If the AAA can demonstrate that the older adult has  
22 denied access to the older adult's records because of  
23 incapacity, coercion, extortion or justifiable fear, the AAA  
24 shall have the power to access all records. If the older  
25 adult denying access to records is competent, the AAA may  
26 petition the court for an order to require access.

27 (5) If any other entity or individual denies access to  
28 the older adult's records, the AAA may petition the court for  
29 an order to require access.

30 (e) Investigations involving facilities.--

1       (1) If the report concerns a facility, the area agency  
2 on aging shall notify the local ombudsman and the licensing  
3 agency. Any investigations concerning facilities shall be  
4 conducted under procedures developed by the department in  
5 consultation with the State agency with oversight authority  
6 for such facility.

7       (2) The department and any other State agency shall  
8 share information with one another necessary to ensure the  
9 health, safety and welfare of the older adult.

10       (3) Facilities shall take reasonable steps to protect  
11 the older adults following receipt of a report of suspected  
12 abuse, neglect, abandonment or exploitation involving a  
13 facility employee, including a plan of supervision or  
14 suspension.

15 (f) Investigations involving law enforcement.--

16       (1) Law enforcement officials, the area agency on aging  
17 and mandatory reporters shall coordinate their respective  
18 investigations and shall advise each other and provide any  
19 applicable additional information on an ongoing basis.

20       (2) Upon receiving a report that falls into any of the  
21 following categories, the AAA shall immediately notify law  
22 enforcement:

23           (i) Suspicious death.

24           (ii) Serious bodily injury.

25           (iii) Serious physical injury.

26           (iv) Sexual abuse.

27           (v) Serious financial harm.

28       (3) Following a referral to law enforcement:

29           (i) The AAA shall contact law enforcement to obtain  
30 information about any actions taken and the outcomes,

1 including any decisions regarding criminal charges.

2 (ii) Law enforcement shall provide this information  
3 to the extent that it is available.

4 (iii) The AAA shall report this information to the  
5 department in a manner prescribed by the department.

6 (g) Unsubstantiated reports.--If, after investigation by the  
7 area agency on aging, the report is unsubstantiated, the case  
8 shall be closed. For purposes of substantiating a pattern of  
9 abuse, neglect, exploitation or abandonment, case records shall  
10 be maintained for three years.

11 (h) Substantiated reports.--

12 (1) If, after investigation by the area agency on aging,  
13 the report is substantiated, the AAA, in conjunction with the  
14 older adult, shall develop a service plan.

15 (2) The service plan shall encourage self-determination  
16 and continuity of care in the least restrictive setting.

17 (3) For purposes of substantiating a pattern of abuse,  
18 neglect, exploitation or abandonment, case records shall be  
19 maintained for three years.

20 (4) The AAA may pursue civil or criminal remedies.

21 (5) An older adult shall not be found to be abused or  
22 neglected solely on the grounds of environmental factors that  
23 are beyond the control of the older adult or the caretaker,  
24 such as inadequate housing, furnishings, income, clothing or  
25 medical care.

26 Section 304.2. Provision of protective services.

27 (a) Availability of protective services.--The area agency on  
28 aging shall offer protective services under any of the following  
29 conditions:

30 (1) An older adult requests protective services.

1           (2) Another interested person requests protective  
2 services on behalf of an older adult.

3           (3) After investigation of a report, the AAA determines  
4 the older adult is in need of protective services.

5           (b) Consent by request.--An individual shall receive  
6 protective services voluntarily, unless protective services are  
7 ordered by a court of competent jurisdiction or requested by the  
8 older adult's legal representative.

9           (c) Interference with protective services.--If any person  
10 interferes with the provision of protective services or  
11 interferes with the right of an older adult to consent to  
12 provision of protective services, the area agency on aging may  
13 petition the court for an order enjoining such interference.

14           (d) Financial obligations; liabilities and payments.--All  
15 older adults receiving services and all agencies providing  
16 services under this act shall comply with the following  
17 provisions regarding liability for the payment of services:

18           (1) Funding to provide or make available protective  
19 services under this act shall not be used in place of any  
20 public or private entitlements or benefits for which the  
21 older adult receiving protective services under this act is  
22 or may be eligible.

23           (2) Funding available to local protective services  
24 agencies under this act may be used to cover the costs of  
25 activities, including, but not limited to:

26           (i) Administering protective services plans.

27           (ii) Receiving and maintaining records of reports of  
28 abuse, neglect, exploitation and abandonment.

29           (iii) Conducting investigations of reported abuse,  
30 neglect, exploitation and abandonment.

1           (iv) Carrying out assessments and developing service  
2 plans.

3           (v) Petitioning the court.

4           (vi) Providing for emergency involuntary  
5 intervention.

6           (vii) Arranging for available services needed to  
7 carry out service plans, which may include arranging for  
8 services for other persons in order to reduce, correct or  
9 eliminate abuse, neglect, exploitation or abandonment of  
10 an older adult.

11           (viii) Purchasing, on a temporary basis, protective  
12 services determined by a service plan to be necessary to  
13 reduce, correct or eliminate abuse, neglect, exploitation  
14 or abandonment of an older adult when such protective  
15 services are not available within the existing resources  
16 of the AAA or other appropriate provider. Purchase of  
17 protective services under this subparagraph shall be  
18 limited to a 30-day period, which period may be renewed  
19 with adequate justification under regulations issued by  
20 the department.

21           (3) Older adults receiving protective services shall not  
22 be required to pay a fee for any protective services received  
23 by other older adults when the receipt of such protective  
24 services by others is not subject to cost sharing.

25       Section 8. Sections 305 and 306 of the act, amended December  
26 18, 1996 (P.L.1125, No.169), are repealed:

27 [Section 305. Immunity from civil and criminal liability.

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

1 civilly or criminally liable for any decision or action or  
2 resulting consequence of decisions or action when acting under  
3 and 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, client 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 provided below, this information  
10 shall not be disclosed to anyone outside the agency other than  
11 to a court of competent jurisdiction or pursuant to a court  
12 order.

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

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

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

23 (3) A subject of a report made under section 302 may  
24 receive, upon written request, all information contained in  
25 the report except that prohibited from being disclosed by  
26 paragraph (4).

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

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

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

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

10 Section 9. Section 307 of the act, amended December 18, 1996  
11 (P.L.1125, No.169), is amended to read:

12 Section 307. Involuntary intervention by emergency court order.

13 (a) Emergency petition.--[Where there was clear and  
14 convincing evidence that if protective services are not  
15 provided, the person to be protected is at imminent risk of  
16 death or serious physical harm, the agency may petition the  
17 court for an emergency order to provide the necessary services.  
18 The courts of common pleas of each judicial district shall  
19 ensure that a judge or district justice is available on a 24-  
20 hour-a-day, 365-day-a-year basis to accept and decide on  
21 petitions for an emergency court order under this section  
22 whenever the agency determines that a delay until normal court  
23 hours would significantly increase the danger the older adult  
24 faces.]

25 (1) An area agency on aging may petition a court of  
26 common pleas for an emergency order to provide protective  
27 services to an older adult who is at imminent risk of death,  
28 sexual abuse, serious bodily injury, serious physical injury  
29 or serious financial harm.

30 (2) The court of common pleas shall grant the AAA's

1 petition if it finds, by a preponderance of the evidence,  
2 that failure to provide protective services will place the  
3 older adult at imminent risk of death, sexual abuse, serious  
4 bodily injury, serious physical injury or serious financial  
5 harm.

6 (3) The courts of common pleas of each judicial district  
7 shall ensure that a judge or magisterial district judge is  
8 available on a 24-hour-a-day, 365-days-a-year basis to accept  
9 and rule on petitions for emergency court orders under this  
10 section whenever the AAA determines that a delay until normal  
11 court hours may significantly increase danger to the older  
12 adult.

13 (b) Limited order.--The court, after finding [clear and  
14 convincing] a preponderance of evidence of the need for an  
15 emergency order, shall order only such protective services as  
16 are necessary to remove the conditions creating the established  
17 need.

18 (c) Right to counsel.--In order to protect the rights of an  
19 older adult for whom protective services are being ordered, an  
20 emergency court order under this section shall provide that the  
21 older adult has the right to legal counsel. If the older adult  
22 is unable to provide for counsel, such counsel shall be  
23 appointed by the court.

24 (d) Forcible entry.--Where it is necessary to forcibly enter  
25 premises after obtaining a court order, a [peace officer] law  
26 enforcement official may do so, accompanied by a representative  
27 of the [agency] area agency on aging.

28 (e) Health and safety requirements.--The [agency] area  
29 agency on aging shall take reasonable steps to [assure] ensure  
30 that while the [person is receiving] older adult receives

1 protective services under an emergency court order, the health  
2 and safety needs of any of the [person's] older adult's  
3 dependents are met and that personal property and the dwelling  
4 the [person] older adult occupies are secure.

5 [(f) Exclusion of remedy.--Nothing in this chapter shall be  
6 interpreted to deny any older adult access to the emergency  
7 medical services or police protection that would be provided to  
8 anyone, regardless of age, in similar circumstances.]

9 Section 10. Sections 308, 309, 310 and 311 of the act,  
10 amended December 18, 1996 (P.L.1125, No.169), are repealed:  
11 [Section 308. Individual rights.

12 (a) Rights of protective services clients.--The agency shall  
13 observe the following minimum requirements to safeguard the  
14 rights of an older adult who is reported to be in need of  
15 protective services:

16 (1) The agency shall discreetly notify the older person  
17 during the investigation that a report has been made and  
18 shall provide the person with a brief summary of the nature  
19 of the report.

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

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

29 (4) Nothing in this act shall limit the right of any  
30 older person to file a petition pursuant to the act of

1       October 7, 1976 (P.L.1090, No.218), known as the Protection  
2       From Abuse Act.

3       (b) Rights of alleged abusers.--An individual who is alleged  
4       in a protective services report to be a perpetrator of the  
5       abuse, neglect, exploitation or abandonment of an older adult  
6       shall be entitled to the following if the report is  
7       substantiated by the agency:

8             (1) Such an individual shall be notified by the agency  
9             at the conclusion of the investigation of the report that  
10            allegations have been made and shall be given a brief summary  
11            of the allegations.

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

15           (3) An alleged perpetrator is entitled to file an appeal  
16            with the department under 1 Pa. Code Part II (relating to  
17            general rules of administrative practice and procedure) to  
18            challenge the agency's finding resulting from the  
19            investigation of a report made under section 303.

20       Section 309. Financial obligations; liabilities and payments.

21       All individuals receiving services and all agencies providing  
22       services under this chapter shall comply with the following  
23       provisions regarding liability for the payment of services:

24             (1) Funding to provide or make available protective  
25             services under this chapter shall not supplant any public and  
26             private entitlements or resources for which persons receiving  
27             protective services under this chapter are or may be  
28             eligible, and shall not be available until such persons have  
29             exhausted their eligibility and receipt of benefits under  
30             said public and private entitlements or resources.

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

4           (i) Administering protective services plans required  
5 under section 301(c).

6           (ii) Receiving and maintaining records of reports of  
7 abuse under section 302.

8           (iii) Conducting investigations of reported abuse  
9 under section 303.

10          (iv) Carrying out client assessments and developing  
11 service plans under section 303.

12          (v) Petitioning the court under sections 304 and  
13 307.

14          (vi) Providing emergency involuntary intervention  
15 under section 307.

16          (vii) Arranging for available services needed to  
17 carry out service plans, which may include, as  
18 appropriate, arranging for services for other household  
19 members in order to reduce, correct or eliminate abuse,  
20 neglect, exploitation or abandonment of an older adult.

21          (viii) Purchasing, on a temporary basis, services  
22 determined by a service plan to be necessary to reduce,  
23 correct or eliminate abuse, neglect, exploitation or  
24 abandonment of an older adult when such services are not  
25 available within the existing resources of the agency or  
26 other appropriate provider. Purchase of services under  
27 this provision is limited to a 30-day period which may be  
28 renewed with adequate justification under regulations  
29 promulgated by the department.

30          (3) The obligation of the Commonwealth and the counties

1 to provide funds to the department or any agency for services  
2 provided pursuant to this chapter shall be entirely  
3 discharged by the appropriations made to the department or an  
4 agency. Provided that the agency has met its responsibility  
5 under the law, no action at law or equity shall be instituted  
6 in any court to require the department, any agency, county or  
7 the Commonwealth to provide benefits or services under this  
8 chapter for which appropriations from the Commonwealth or  
9 counties are not available.

10 (4) Protective services clients receiving the same  
11 services provided to others under an agency service plan  
12 shall not be required to pay a fee for any services not  
13 subject to cost sharing for other older adults.

14 Section 310. Regulations; enforcement.

15 (a) Promulgation of regulations.--The department shall  
16 promulgate the rules and regulations to carry out this chapter  
17 and shall be responsible for presenting to the General Assembly  
18 annually a report on the program and services performed.

19 (b) Enforcement.--This chapter shall be enforced only after  
20 promulgation of regulations by the department, which shall occur  
21 no later than 12 months following passage of this chapter,  
22 except that section 301 shall apply when the area agency on  
23 aging certifies to the department that it is prepared to fulfill  
24 its responsibilities. The certification shall be made within 90  
25 days following promulgation of regulations.

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

27 Funds necessary to administer this chapter shall be provided  
28 by annual appropriation by the General Assembly.]

29 Section 11. The act is amended by adding sections to read:

30 Section 312. Confidentiality of records.

1 (a) General rule.--Information contained in reports, records  
2 of investigation, assessments and service plans created under  
3 this act shall be considered confidential and shall be  
4 maintained under regulations issued by the department. Except as  
5 provided below, this information shall only be disclosed by area  
6 agency on aging staff for the purpose of development and  
7 implementation of protective services. Neither the department  
8 nor the AAA may release information that could be detrimental to  
9 an older adult, except that such information shall be released  
10 to law enforcement under subsection (b) (2). All information  
11 contained in protective services records is subject to other  
12 Federal and State confidentiality and security laws.

13 (b) Access.--

14 (1) Protective services records may be provided to:

15 (i) A court of competent jurisdiction or another  
16 party pursuant to a court order. A subpoena, other than a  
17 grand jury subpoena, shall not be deemed a court order  
18 for purposes of this section.

19 (ii) Law enforcement officials or the coroner, if  
20 the information is relevant to their investigation of  
21 abuse, neglect, exploitation or abandonment of the older  
22 adult.

23 (iii) A practitioner of the healing arts who is  
24 examining or treating the older adult and who suspects  
25 that the older adult is in need of protection under this  
26 act.

27 (iv) The director or an individual specifically  
28 designated in writing by the director of any hospital or  
29 other medical institution where the older adult is being  
30 treated, if the director or designee suspects that the

1           recipient is in need of protection under this act.

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

6           (3) The older adult who is the subject of a report or  
7 his guardian may receive, upon written request, all  
8 information contained in the report of need except  
9 information that would identify the person who made a report  
10 of suspected abuse, neglect, exploitation or abandonment or  
11 persons who cooperated in a subsequent investigation.

12           (4) A person who makes a report of suspected abuse,  
13 neglect, exploitation or abandonment may receive, upon  
14 written request, confirmation that the report was received  
15 and the AAA is acting in accordance with this act.

16           (5) For the purposes of monitoring agency performance or  
17 conducting other official duties, appropriate staff of the  
18 department, as designated by the secretary, may access AAA  
19 protective services records.

20           (6) The department or the AAA may collaborate or share  
21 information included in protective services records with  
22 State agencies for purposes of official Commonwealth  
23 business.

24           (7) The department or the AAA may share protective  
25 services records with another AAA that is performing duties  
26 under this act that are relevant to older adults within their  
27 jurisdictions.

28           (8) An employee of an agency of another state who  
29 performs older adult protective services similar to those  
30 under this act may access protective services records

1 relevant to older adults within their jurisdiction.

2 (c) Protecting identify of reporter and cooperating  
3 witnesses.--

4 (1) Except for disclosures to law enforcement officials,  
5 the release of records that would identify the individual who  
6 made a report under this act or an individual who cooperated  
7 in a subsequent investigation is prohibited.

8 (2) Where records are provided pursuant to court order,  
9 the identity of the reporter and cooperating witnesses shall  
10 be redacted, unless otherwise ordered by the court after an  
11 in camera review.

12 Section 313. Rights of older adults.

13 (a) General rule.--An area agency on aging shall discreetly  
14 notify the older adult during the investigation that a report  
15 has been made and shall provide the older adult a brief summary  
16 of the nature of the report.

17 (b) Release of information.--As provided in section  
18 312(b)(3), an older adult who is the subject of a report, or his  
19 guardian, may receive, upon written request, all information  
20 contained in the report of need except information that would  
21 identify the person who made a report of suspected abuse,  
22 neglect, exploitation or abandonment or persons who cooperated  
23 in a subsequent investigation.

24 (c) Appeal.--Any denial of protective services by the  
25 department or an authorized area agency on aging under this act  
26 may be appealed according to the provisions of the rules and  
27 regulations issued by the department under Article XXII-A of the  
28 act of April 9, 1929 (P.L.177, No.175), known as The  
29 Administrative Code of 1929.

30 Section 12. Section 501 of the act, added December 18, 1996

1 (P.L.1125, No.169), is repealed:

2 [Section 501. Definitions.

3 The following words and phrases when used in this chapter  
4 shall have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Applicant." An individual who submits an application, which  
7 is being considered for employment, to a facility.

8 "State Police." The Pennsylvania State Police.]

9 Section 13. Section 502 of the act, amended October 24, 2012  
10 (P.L.1412, No.175), is repealed:

11 [Section 502. Information relating to prospective facility  
12 personnel.

13 (a) General rule.--A facility shall require all applicants  
14 to submit with their applications, and shall require all  
15 administrators and any operators who have or may have direct  
16 contact with a recipient to submit, the following information  
17 obtained within the preceding one-year period:

18 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal  
19 history record information), a report of criminal history  
20 record information from the State Police or a statement from  
21 the State Police that their central repository contains no  
22 such information relating to that person. The criminal  
23 history record information shall be limited to that which is  
24 disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to  
25 general regulations).

26 (2) Where the applicant is not and for the two years  
27 immediately preceding the date of application has not been a  
28 resident of this Commonwealth, administration shall require  
29 the applicant to submit with the application for employment a  
30 report of Federal criminal history record information

1 pursuant to the Federal Bureau of Investigation's  
2 appropriation under the Departments of State, Justice, and  
3 Commerce, the Judiciary, and Related Agencies Appropriation  
4 Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department  
5 shall be the intermediary for the purposes of this paragraph.  
6 For the purposes of this paragraph, the applicant shall  
7 submit a full set of fingerprints in a manner prescribed by  
8 the department. The Commonwealth shall submit the  
9 fingerprints to the Federal Bureau of Investigation for a  
10 national criminal history record check. The information  
11 obtained from the criminal record check shall be used by the  
12 department to determine the applicant's eligibility. The  
13 determination shall be submitted to the administrator by the  
14 applicant prior to commencing employment. The administrator  
15 shall insure confidentiality of the information. The  
16 provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply if the  
17 request for a report of Federal criminal history record  
18 information is made pursuant to this section.

19 (b) (Reserved).]

20 Section 14. Section 503 of the act, amended June 9, 1997  
21 (P.L.160, No.13), is repealed:

22 [Section 503. Grounds for denying employment.

23 (a) General rule.--In no case shall a facility hire an  
24 applicant or retain an employee required to submit information  
25 pursuant to section 502(a) if the applicant's or employee's  
26 criminal history record information indicates the applicant or  
27 employee has been convicted of any of the following offenses:

28 (1) An offense designated as a felony under the act of  
29 April 14, 1972 (P.L.233, No.64), known as The Controlled  
30 Substance, Drug, Device and Cosmetic Act.

1           (2) An offense under one or more of the following  
2 provisions of 18 Pa.C.S. (relating to crimes and offenses):

3           Chapter 25 (relating to criminal homicide).

4           Section 2702 (relating to aggravated assault).

5           Section 2901 (relating to kidnapping).

6           Section 2902 (relating to unlawful restraint).

7           Section 3121 (relating to rape).

8           Section 3122.1 (relating to statutory sexual  
9 assault).

10          Section 3123 (relating to involuntary deviate sexual  
11 intercourse).

12          Section 3124.1 (relating to sexual assault).

13          Section 3125 (relating to aggravated indecent  
14 assault).

15          Section 3126 (relating to indecent assault).

16          Section 3127 (relating to indecent exposure).

17          Section 3301 (relating to arson and related  
18 offenses).

19          Section 3502 (relating to burglary).

20          Section 3701 (relating to robbery).

21          A felony offense under Chapter 39 (relating to theft  
22 and related offenses) or two or more misdemeanors under  
23 Chapter 39.

24          Section 4101 (relating to forgery).

25          Section 4114 (relating to securing execution of  
26 documents by deception).

27          Section 4302 (relating to incest).

28          Section 4303 (relating to concealing death of child).

29          Section 4304 (relating to endangering welfare of  
30 children).

1           Section 4305 (relating to dealing in infant  
2 children).

3           Section 4952 (relating to intimidation of witnesses  
4 or victims).

5           Section 4953 (relating to retaliation against witness  
6 or victim).

7           A felony offense under section 5902(b) (relating to  
8 prostitution and related offenses).

9           Section 5903(c) or (d) (relating to obscene and other  
10 sexual materials and performances).

11           Section 6301 (relating to corruption of minors).

12           Section 6312 (relating to sexual abuse of children).

13           (3) A Federal or out-of-State offense similar in nature  
14 to those crimes listed in paragraphs (1) and (2).

15           (c) Immunity.--An administrator or a facility shall not be  
16 held civilly liable for any action directly related to good  
17 faith compliance with this section.]

18           Section 15. The act is amended by adding a section to read:  
19 Section 503.1. Criminal history.

20           (a) General rule.--Prior to hiring or engaging an applicant,  
21 a facility shall require the applicant to submit to the facility  
22 the following information obtained within the preceding one-year  
23 period:

24           (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal  
25 history record information), a report of criminal history  
26 record information from the Pennsylvania State Police or a  
27 statement from the Pennsylvania State Police that their  
28 central repository contains no such information relating to  
29 the applicant. The provisions of 18 Pa.C.S. § 9121(b)(2)  
30 (relating to general regulations) shall not apply to criminal

1 history information or other criminal history record  
2 information requested or received under this section.

3 (2) Federal criminal history record information pursuant  
4 to the Federal Bureau of Investigation's appropriation under  
5 the Departments of State, Justice, and Commerce, the  
6 Judiciary, and Related Agencies Appropriation Act, 1973  
7 (Public Law 92-544, 86 Stat. 1109), subject to the following:

8 (i) The department shall be the intermediary for the  
9 purposes of this paragraph. The applicant shall submit a  
10 full set of fingerprints to the Federal Bureau of  
11 Investigation in a manner designated by the department.  
12 The provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply  
13 to criminal history information or other criminal history  
14 record information requested or received under this  
15 section.

16 (ii) Criminal history information shall be used by  
17 the department to determine the applicant's eligibility  
18 for employment with a facility. The employment  
19 determination shall be provided to the facility and the  
20 applicant prior to commencement of employment. The  
21 facility shall ensure confidentiality of the information.

22 (3) The department may require the applicant to submit  
23 additional information from a court or other authority within  
24 the time frame designated by the department. Failure to  
25 provide the requested information within the time frame  
26 designated by the department may result in employment  
27 ineligibility.

28 (b) Prohibited offenses.--The following offenses and Federal  
29 or out-of-State offenses similar in nature shall be prohibited,  
30 as follows:

1           (1) Lifetime ban. A facility may not hire or engage an  
2 applicant required to submit information pursuant to this act  
3 if the applicant's criminal history record information  
4 indicates the applicant has been convicted of an offense or  
5 attempt, solicitation or conspiracy to commit an offense  
6 under one of the following provisions of 18 Pa.C.S. (relating  
7 to crimes and offenses):

8           Chapter 25 (relating to criminal homicide).

9           Chapter 26 (relating to crimes against unborn child).

10          Section 2702 (relating to aggravated assault).

11          Section 2713 (relating to neglect of care-dependent  
12 person).

13          Section 2715 (relating to threat to use weapons of  
14 mass destruction).

15          Section 2716 (relating to weapons of mass  
16 destruction).

17          Section 2717 (relating to terrorism).

18          Section 2901 (relating to kidnapping).

19          Section 3121 (relating to rape).

20          Section 3122.1 (relating to statutory sexual  
21 assault).

22          Section 3123 (relating to involuntary deviate sexual  
23 intercourse).

24          Section 3124.1 (relating to sexual assault).

25          Section 3125 (relating to aggravated indecent  
26 assault).

27          Section 3126 (relating to indecent assault).

28          Section 3212 (relating to infanticide).

29          Section 4302 (relating to incest).

30          Section 4303 (relating to concealing death of child).

1           Section 4304 (relating to endangering welfare of  
2           children).

3           Section 4305 (relating to dealing in infant  
4           children).

5           Section 5510 (relating to abuse of corpse).

6           Section 6312 (relating to sexual abuse of children).

7           (2) Ten-year ban. A facility shall not hire or engage an  
8           applicant required to submit criminal history information  
9           pursuant to this act for a period of ten years from the date  
10           of conviction, if the applicant's criminal history record  
11           information indicates that the applicant has been convicted  
12           of:

13           (i) Any of the following provisions of 18 Pa.C.S.:

14           Section 2705 (relating to recklessly endangering  
15           another person) two or more misdemeanors.

16           Section 2902 (relating to unlawful restraint).

17           Section 3127 (relating to indecent exposure).

18           Section 3301 (relating to arson and related  
19           offenses).

20           Section 3502 (relating to burglary).

21           Section 3701 (relating to robbery).

22           A felony offense under Chapter 39 (relating to theft  
23           and related offenses).

24           Two or more misdemeanors under Chapter 39.

25           Section 4101 (relating to forgery).

26           Section 4106 (relating to access device fraud).

27           Section 4114 (relating to securing execution of  
28           documents by deception).

29           Section 4120 (relating to identity theft).

30           Section 4952 (relating to intimidation of witnesses

1 or victims).

2 Section 4953 (relating to retaliation against  
3 witness, victim or party).

4 A felony offense under section 5902(b) (relating to  
5 prostitution and related offenses).

6 Section 5903(c) or (d) (relating to obscene and other  
7 sexual materials and performances).

8 Section 6301 (relating to corruption of minors).

9 (ii) Any of the following provisions of 75 Pa.C.S.  
10 (relating to vehicles):

11 Section 3735 (relating to homicide by vehicle while  
12 driving under influence).

13 Section 3735.1 (relating to aggravated assault by  
14 vehicle while driving under the influence).

15 Section 3742 (relating to accidents involving death  
16 or personal injury).

17 Section 3802 (relating to driving under influence of  
18 alcohol or controlled substance) graded as a misdemeanor  
19 of the second degree or higher.

20 (iii) An offense designated as a felony under the  
21 act of April 14, 1972 (P.L.233, No.64), known as The  
22 Controlled Substance, Drug, Device and Cosmetic Act.

23 (3) A facility may hire an applicant subject to a 10-  
24 year ban under paragraph (2) prior to the expiration of the  
25 ban period, provided the applicant demonstrates a minimum  
26 five-year aggregate work history in care-dependent services,  
27 without disciplinary action or criminal conviction, from the  
28 date of conviction. Care-dependent services include health  
29 care, child care, mental health care, care of older adults or  
30 of persons with intellectual disabilities or physical

1 disabilities.

2 (c) Right to appeal.--An applicant or employee may challenge  
3 the decision of the department involving the Federal criminal  
4 history record by filing an appeal with the department in  
5 accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice  
6 and procedure of Commonwealth agencies).

7 (d) Employee disclosure.--

8 (1) The department shall develop a standardized form to  
9 be used by facilities for the written reporting by employees  
10 and administrators of any conviction for an offense  
11 enumerated under subsection (b). The form shall be published  
12 on the department's publicly accessible Internet website and  
13 in the Pennsylvania Bulletin.

14 (2) Facilities required to use the form under paragraph  
15 (1) shall comply with the following:

16 (i) The form shall contain a list of the prohibited  
17 offenses under subsection (b) and a space for the  
18 employee to indicate any convictions. Employees and  
19 administrators who have not been convicted of any  
20 enumerated offense shall respond "no conviction."

21 (ii) Employees and administrators shall be informed  
22 that failure to accurately report any conviction for an  
23 offense enumerated under subsection (b) shall subject the  
24 employee to criminal prosecution under 18 Pa.C.S. § 4904  
25 (relating to unsworn falsification to authorities).

26 (3) Facilities shall require employees and  
27 administrators to complete and submit the form on an annual  
28 basis. Employees and administrators shall advise their  
29 employers with written notice utilizing the form not later  
30 than 72 hours after a conviction.

1           (4) If an employee or administrator refuses to submit  
2 the form, the facility shall immediately require the employee  
3 to submit a current report of criminal history record  
4 information as required under subsection (a).

5 (e) Penalties.--

6           (1) An employee or administrator who discloses a  
7 conviction for an offense enumerated under subsection (b)  
8 shall be subject to termination.

9           (2) An employee or administrator who willfully fails to  
10 disclose a conviction for an offense enumerated under  
11 subsection (b) shall be subject to termination and may be  
12 subject to criminal prosecution under 18 Pa.C.S. § 4904.

13 (f) Provisional employees for limited periods.--

14           (1) Facilities may employ applicants on a provisional  
15 basis for a single period not to exceed 30 days, if all of  
16 the following conditions are met:

17           (i) The applicant has applied for a criminal history  
18 report required under subsection (a) (1) and (2) and  
19 provided the facility with a copy of the completed  
20 request forms.

21           (ii) The facility has no knowledge about the  
22 applicant that would disqualify the applicant from  
23 employment under 18 Pa.C.S. § 4911 (relating to tampering  
24 with public records or information).

25           (iii) The applicant swears or affirms in writing  
26 that the applicant is not disqualified from employment  
27 under this act.

28           (2) If the information obtained from the criminal  
29 history report reveals that the applicant is disqualified  
30 from employment, the applicant shall be dismissed

1 immediately.

2 (3) The department shall develop guidelines regarding  
3 the supervision of applicants. Supervision shall include  
4 random direct supervision by an employee who has been  
5 employed by the facility for a period of at least one year.

6 Section 16. Sections 504, 505, 506 and 507 of the act, added  
7 December 18, 1996 (P.L.1125, No.169), are repealed:

8 [Section 504. Regulations.

9 The department, in consultation with the Department of Health  
10 and the Department of Public Welfare, shall promulgate the  
11 regulations necessary to carry out this chapter.

12 Section 505. Violations.

13 (a) Administrative.--

14 (1) An administrator who intentionally or willfully  
15 fails to comply or obstructs compliance with the provisions  
16 of this chapter commits a violation of this chapter and shall  
17 be subject to an administrative penalty under paragraph (3).

18 (2) A facility owner that intentionally or willfully  
19 fails to comply with or obstructs compliance with this  
20 chapter commits a violation of this chapter and shall be  
21 subject to an administrative penalty under paragraph (3).

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

30 (b) Criminal.--

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

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

11 Section 506. Provisional employees for limited periods.

12 Notwithstanding section 502, administrators may employ  
13 applicants on a provisional basis for a single period not to  
14 exceed 30 days or, for applicants under section 502(a)(2), a  
15 period of 90 days, if all of the following conditions are met:

16 (1) The applicant has applied for the information  
17 required under section 502 and the applicant provides a copy  
18 of the appropriate completed request forms to the  
19 administrator.

20 (2) The administrator has no knowledge of information  
21 pertaining to the applicant which would disqualify him from  
22 employment pursuant to section 503, subject to 18 Pa.C.S. §  
23 4911 (relating to tampering with public records or  
24 information).

25 (3) The applicant swears or affirms in writing that he  
26 is not disqualified from employment under section 503.

27 (4) If the information obtained under section 502  
28 reveals that the applicant is disqualified from employment  
29 under section 503, the applicant shall be immediately  
30 dismissed by the administrator.

1           (5) The department shall develop guidelines regarding  
2 the supervision of applicants. For a home health care agency,  
3 supervision shall include random direct supervision by an  
4 employee who has been employed by the facility for a period  
5 of one year.

6 Section 507. State Police.

7           No later than one year following the effective date of this  
8 chapter, the State Police and the department shall report to the  
9 Aging and Youth Committee of the Senate and the Aging and Youth  
10 Committee of the House of Representatives with their findings  
11 and recommendations regarding the implementation of this  
12 chapter.]

13           Section 17. Sections 508, 702, 703, 704, 705 and 706 of the  
14 act, amended or added June 9, 1997 (P.L.160, No.13), are  
15 repealed:

16 [Section 508. Applicability.

17           This chapter shall apply as follows:

18           (1) An individual who, on the effective date of this  
19 chapter, has continuously for a period of one year been an  
20 employee of the same facility shall be exempt from section  
21 502 as a condition of continued employment.

22           (2) If an employee is not exempt under paragraph (1),  
23 the employee and the facility shall comply with section 502  
24 within one year of the effective date of this chapter.

25           (3) If an employee who is exempt under paragraph (1)  
26 seeks employment with a different facility, the employee and  
27 the facility shall comply with section 502.

28           (4) An employee who has obtained the information  
29 required under section 502 may transfer to another facility  
30 established and supervised by the same owner and is not

1 required to obtain additional reports before making the  
2 transfer.

3 Section 702. Reports to department and coroner.

4 (a) Department.--

5 (1) Within 48 hours of receipt of a written report under  
6 section 701(a) involving sexual abuse, serious physical  
7 injury, serious bodily injury or suspicious death, the agency  
8 shall transmit a written report to the department.

9 Supplemental reports shall be transmitted as they are  
10 obtained by the agency.

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

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

15 (ii) Where the suspected abuse occurred.

16 (iii) The age and sex of the alleged perpetrator and  
17 victim.

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

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

24 (vi) The source of the report.

25 (vii) The individual making the report and where  
26 that individual can be reached.

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

30 (ix) Any other information which the department may

1           require by regulation.

2           (b) Coroner.--For a report under section 701(a) which  
3 concerns the death of a recipient, if there is reasonable cause  
4 to suspect that the recipient died as a result of abuse, the  
5 agency shall give the oral report and forward a copy of the  
6 written report to the appropriate coroner within 24 hours.

7 Section 703. Investigation.

8           (a) Law enforcement officials.--Upon receipt of a report  
9 under section 701(b), law enforcement officials shall conduct an  
10 investigation to determine what criminal charges, if any, will  
11 be filed.

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

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

23          (d) Further notification.--Law enforcement officials shall  
24 notify the agency and the facility of a decision regarding  
25 criminal charges. The agency and the department shall keep a  
26 record of 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 Chapter  
29 3.

30 Section 704. Restrictions on employees.

1 (a) Plan of supervision.--Upon notification that an employee  
2 is alleged to have committed abuse, the facility shall  
3 immediately implement a plan of supervision or, where  
4 appropriate, suspension of the employee, subject to approval by  
5 the agency and by the Commonwealth agency with regulatory  
6 authority over the facility. A plan of supervision for a home  
7 health care agency must include periodic random direct  
8 inspections of care-dependent individuals by a facility employee  
9 who has been continuously employed by that facility for a period  
10 of at least one year.

11 (b) Prohibition.--Upon the filing of criminal charges  
12 against an employee, the Commonwealth agency which licenses the  
13 facility shall order the facility to immediately prohibit that  
14 employee from having access to recipients at the facility. If  
15 that employee is a director, operator, administrator or  
16 supervisor, that employee shall be subject to restrictions  
17 deemed appropriate by the Commonwealth agency which licenses the  
18 facility to assure the safety of recipients of the facility.  
19 Section 705. Confidentiality of and access to confidential  
20 reports.

21 (a) General rule.--Except as provided in subsection (b), a  
22 report under this chapter shall be confidential.

23 (b) Exceptions.--A report under this chapter shall be made  
24 available to all of the following:

25 (1) An employee of the department or of an agency in the  
26 course of official duties in connection with responsibilities  
27 under this chapter.

28 (2) An employee of the Department of Health or the  
29 Department of Public Welfare in the course of official  
30 duties.

1           (3) An employee of an agency of another state which  
2 performs protective services similar to those under this  
3 chapter.

4           (4) A practitioner of the healing arts who is examining  
5 or treating a recipient and who suspects that the recipient  
6 is in need of protection under this chapter.

7           (5) The director, or an individual specifically  
8 designated in writing by the director, of any hospital or  
9 other medical institution where a victim is being treated if  
10 the director or designee suspects that the recipient is in  
11 need of protection under this chapter.

12           (6) A guardian of the recipient.

13           (7) A court of competent jurisdiction pursuant to a  
14 court order.

15           (8) The Attorney General.

16           (9) Law enforcement officials of any jurisdiction as  
17 long as the information is relevant in the course of  
18 investigating cases of abuse.

19           (10) A mandated reporter under Chapter 3 who made a  
20 report of suspected abuse. Information released under this  
21 paragraph shall be limited to the following:

22                 (i) The final status of the report following the  
23 investigation.

24                 (ii) Services provided or to be provided by the  
25 agency.

26           (c) Excision of certain names.--The name of the person  
27 suspected of committing the abuse shall be excised from a report  
28 made available under subsection (b) (4), (5) and (10).

29           (d) Release of information to alleged perpetrator and  
30 victim.--Upon written request, an alleged perpetrator and victim

1 may receive a copy of all information except that prohibited  
2 from being disclosed by subsection (e).

3 (e) Protecting identity of person making report.--Except for  
4 reports to law enforcement officials, the release of data that  
5 would identify the individual who made a report under this  
6 chapter or an individual who cooperated in a subsequent  
7 investigation is prohibited. Law enforcement officials shall  
8 treat all reporting sources as confidential information.

9 Section 706. Penalties.

10 (a) Administrative.--

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

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

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

1 action).

2 (b) Criminal.--

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

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

13 (c) Penalties for failure to report.--A person required  
14 under this chapter to report a case of suspected abuse who  
15 willfully fails to do so commits a summary offense for the first  
16 violation and a misdemeanor of the third degree for a second or  
17 subsequent violation.]

18 Section 18. The act is amended by adding a section to read:

19 Section 706.1. Penalties.

20 (a) Civil penalties.--

21 (1) A mandatory reporter who fails to comply or  
22 obstructs compliance with the provisions of this act or who  
23 intimidates or commits a retaliatory act against an  
24 individual who complies in good faith with the provisions of  
25 this act commits a violation of this act and shall be subject  
26 to an administrative penalty. The department shall determine  
27 violations of this act and may issue an order assessing a  
28 civil penalty of not more than \$5,000. An order under this  
29 paragraph is subject to 2 Pa.C.S. Chs. 5 Subch. A (relating  
30 to practice and procedure of Commonwealth agencies) and 7

1 Subch. A (relating to judicial review of Commonwealth agency  
2 action).

3 (2) The Commonwealth agency or agencies which license a  
4 facility shall determine violations of section 503.1  
5 (relating to criminal history) and may issue an order  
6 assessing a civil penalty of not more than \$5,000.

7 (b) Damages for retaliatory action.--

8 (1) The older adult or any person making a report or  
9 cooperating with an area agency on aging, including providing  
10 testimony in any administrative or judicial proceeding, shall  
11 be free from any discriminatory, retaliatory or disciplinary  
12 action by an employer or by any other person or entity.

13 (2) Any person who violates this subsection is subject  
14 to a civil lawsuit by the reporter or the older adult wherein  
15 the reporter or older adult shall recover treble compensatory  
16 damages, compensatory and punitive damages or \$5,000,  
17 whichever is greater.

18 (c) Damages for intimidation.--

19 (1) Any person, including an older adult, with knowledge  
20 sufficient to justify making a report or cooperating with an  
21 area agency on aging, including possibly providing testimony  
22 in any administrative or judicial proceeding, shall be free  
23 from any intimidation by an employer or by any other person  
24 or entity.

25 (2) Any person who violates this subsection is subject  
26 to a civil lawsuit by the person intimidated or the older  
27 adult wherein the person intimidated or the older adult shall  
28 recover treble compensatory damages, compensatory and  
29 punitive damages or \$5,000, whichever is greater.

30 (d) Criminal penalties.--

1           (1) A mandatory reporter under this act who  
2 intentionally fails to report suspected abuse, neglect,  
3 exploitation or abandonment commits a summary offense for the  
4 first violation and a misdemeanor of the second degree for a  
5 second or subsequent violation and shall, upon conviction, be  
6 sentenced to pay a fine of \$5,000, or imprisonment for not  
7 more than one year, or both.

8           (2) It shall be unlawful for a person to knowingly or  
9 intentionally make or cause to be made a false statement or  
10 representation of a material fact in a report of need, in  
11 accordance with 18 Pa.C.S. § 4904 (relating to unsworn  
12 falsification to authorities). A person who makes a false  
13 statement is guilty of a misdemeanor of the second degree for  
14 each violation with a maximum penalty of \$10,000 and five  
15 years' imprisonment.

16 (e) Immunity.--

17           (1) Any person participating in the making of a report  
18 or who provides testimony in any administrative or judicial  
19 proceeding in any court of this Commonwealth, arising out of  
20 a report, shall be immune from any civil or criminal  
21 liability on account of the report or testimony related to  
22 good faith compliance with this act.

23           (2) This immunity shall not extend to liability for acts  
24 of abuse, neglect, exploitation or abandonment, even if such  
25 acts are the subject of the report or testimony.

26           (3) Any company, institution and all affiliated entities  
27 that employ a person required or permitted to make a report  
28 under this act shall not be held civilly liable for any  
29 action directly related to good faith compliance with this  
30 act.

1 (f) Funds.--Funds collected under this act by the department  
2 shall be dedicated for department programs to investigate and  
3 prevent the abuse, neglect, exploitation and abandonment of  
4 older adults.

5 Section 19. Section 707 of the act, added June 9, 1997  
6 (P.L.160, No.13), is repealed:

7 [Section 707. Immunity.

8 An administrator or a facility shall not be held civilly  
9 liable for any action directly related to good faith compliance  
10 with this chapter.]

11 Section 20. The act is amended by adding sections to read:

12 Section 707.1. Immunity from civil and criminal liability.

13 In the absence of willful misconduct or gross negligence, an  
14 area agency on aging, the director, employees of an area agency  
15 on aging, protective services workers or employees of the  
16 department shall not be civilly or criminally liable for any  
17 decision or action or resulting consequence of decisions or  
18 action when acting under and according to the provisions of this  
19 act.

20 Section 707.2. Funding.

21 Funds necessary to administer this act shall be provided by  
22 annual appropriation by the General Assembly.

23 Section 21. Section 708 of the act, added June 9, 1997  
24 (P.L.160, No.13), is amended to read:

25 Section 708. Regulations[.] and annual report.

26 (a) General rule.--The Department of Aging, the Department  
27 of Health and the Department of [Public Welfare] Human Services  
28 shall promulgate the regulations necessary to carry out this  
29 [chapter.] act.

30 (b) Duty to report.--The department shall present to the

1 General Assembly annually a report on the program and services  
2 performed.

3 Section 22. This act shall take effect as follows:

4 (1) The addition of section 301.1 of the act shall take  
5 effect in one year.

6 (2) This section shall take effect immediately.

7 (3) The remainder of this act shall take effect in 180  
8 days.