Unconsolidated Pennsylvania Statutes

HEALTH AND SAFETY (Title 35)

OLDER ADULTS PROTECTIVE SERVICES ACT

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§ 10225.101. Short title.

This act shall be known and may be cited as the Older Adults Protective Services Act.

§ 10225.102. Legislative policy.

It is declared the policy of the Commonwealth of Pennsylvania that older adults who lack the capacity to protect themselves and are at imminent risk of abuse, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from abuse, neglect, exploitation and abandonment. It is the intent of the general assembly to provide for the detection and reduction, correction or elimination of abuse, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

§ 10225.103. Definitions.

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

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

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

1. the infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.
2. the willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health.
3. sexual harassment, rape or abuse, as defined in the act of October 7, 1976 (P.L.1090, No.218), known as the Protection from Abuse Act. No older adult shall be found to be abused solely on the grounds of environmental

factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.

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

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

"Care."
Services provided to meet a person's need for personal care or health care. Services may include homemaker services, assistance with activities of daily living, physical therapy, occupational therapy, speech therapy, medical social services, home care aide services, companion care services, private duty nursing services, respiratory therapy, intravenous therapy, in-home dialysis and durable medical equipment services, which are routinely provided unsupervised and which require interaction with the care-dependent person. The term does not include durable medical equipment delivery.

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

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

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

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

"Department."
The department of aging of the commonwealth.

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

"Exploitation."
An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that

results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.

"Facility."

Any of the following:

1. a domiciliary care home as defined in section 2202-A of the act of April 9, 1929 (P.L.177, No.175), known as the Administrative Code of 1929.
2. a home health care agency.
3. a long-term care nursing facility as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.
4. an older adult daily living center as defined in section 2 of the act of July 11, 1990 (P.L.499, No.118), known as the Older Adult Daily Living Centers Licensing Act.
5. a personal care home as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Home Health Care Agency."

Any of the following:

1. a home health care organization or agency licensed by the department of health.
2. a public or private agency or organization, or part of an agency or organization, which provides care to a care-dependent individual in the individual's place of residence.

"Intimidation."

An act or omission by any person or entity toward another person which is intended to, or with knowledge that the act or omission will, obstruct, impede, impair, prevent or interfere with the administration of this act or any law intended to protect older adults from mistreatment.

"Law enforcement official."

Any of the following:

1. a police officer of a municipality.
2. a district attorney.
3. the Pennsylvania State Police.

"Neglect."

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

"Older adult."

A person within the jurisdiction of the Commonwealth who is 60 years of age or older.

"Older adult in need of protective services."

An incapacitated older adult who is unable to perform or obtain services that are necessary to maintain physical or mental health, for whom there is no responsible caretaker and who is at imminent risk of danger to his person or property.

"Protective services."

Those activities, resources and supports provided to older adults under this act to detect, prevent, reduce or eliminate abuse, neglect, exploitation and abandonment.

"Protective setting."

A setting chosen by the agency where services can be provided in the least restrictive environment to protect the physical and mental well-being of the older adult.

"Recipient."

An individual who receives care, services or treatment in or from a facility.

"Secretary."

The Secretary of Aging of the Commonwealth.

"Serious bodily injury."

Injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

"Serious physical injury."

An injury that:

1. causes a person severe pain; or
2. significantly impairs a person's physical functioning, either temporarily or permanently.

"Service plan."

A written plan developed by the agency on the basis of comprehensive assessment of a client's need which describes identified needs, goals to be achieved and specific services to support goal attainment, with regular follow-up and predetermined reassessment of client progress. Specific services to support goal attainment may include, but is not limited to, homemaker services, home-delivered meals, attendant care, other in-home services, emergency shelter or food, legal aid services, transportation and other such services. Service plans are cooperatively developed by the agency staff, the client or the client's appointed guardian, and other family members when appropriate. The plan shall also address, where applicable, special needs of other members of the household unit as they may affect the older adult's need for protective services.

"Sexual abuse."

Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.

§ 10225.301. Duties of department and area agencies on aging.

(a) Public Information and Interdepartmental Consultation.--The department shall conduct an ongoing campaign designed to inform and educate older adults, professionals and the general public about the need for an availability of protective services under this chapter. The department shall consult with other departments of the commonwealth on the design and implementation of the ongoing public awareness campaign. The department shall also consider the concerns of area agencies on aging and the entities identified by them under subsection (c).

(b) Staff training.--The department shall establish minimum standards of training and experience which protective services providers funded by the department shall be required to follow in the selection and assignment of staff for the provision of protective services.

(c) Protective services plans.--Each area agency on aging shall include a protective services plan as part of its annual plan. The plan shall describe the local implementation of this chapter, including the organization, staffing, mode of operations and financing of protective services, as well as the provisions made for purchase of services, interagency relations, interagency agreements, service referral mechanisms and locus of responsibility for cases with multiservice agency needs. The description of the methods that will be used by the agency, its designees and its service providers to assure the privacy of older adults receiving services and the confidentiality of all records shall be established by the department. The department shall establish a schedule for the submission and approval of the plans. The plan shall include a list of all entities, whether public or private, that have been identified by the area agency on aging as having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment. This list shall be submitted to the department for purposes of the public information campaign under subsection (a).

§ 10225.302. Reporting; protection from retaliation; immunity.

(a) Reporting.--Any person having reasonable cause to believe that an older adult is in need of protective services may report such information to the agency which is the local provider of protective services. Where applicable, reports shall comply with the provisions of chapter 7.

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

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

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

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

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

§ 10225.303. Investigations of reports of need for protective services.

(a) Investigation.--It shall be the agency's responsibility to provide for an investigation of each report made under section 302. The investigation shall be initiated within 72 hours after the receipt of the report and shall be carried out under regulations issued by the department. These regulations shall provide for the methods of conducting investigations under this section and shall assure that steps are taken to avoid any conflict of interest between the investigator and service delivery functions. Reports and investigations under this section shall comply with chapter 7, where applicable

(b) Investigation Involving Licensed Facilities.--Any report concerning older adults residing in a state-licensed facility shall be investigated under procedures developed by the department in consultation with the state agency licensing such facility. If the report concerns a resident of a state-licensed facility for whom the area agency on aging provides ombudsman services, the ombudsman of the area agency on aging must be notified.

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

(d) Substantiated reports.--If the report is substantiated by the agency, or if the client assessment is necessary in order to determine whether or not the report is substantiated, the agency shall provide for a timely client assessment if the older adult consents to an assessment. Upon completion of the assessment, written findings shall be prepared which shall include recommended action. This service plan shall provide for the least restrictive alternative, encouraging client self-determination and continuity of care. The service plan shall be in writing and shall include a recommended course of action, which may include the pursuit of civil or criminal remedies. If an older adult found to be in need of protective services does not consent to a client assessment or the development of a service plan, the agency may apply to the case the provisions of section 307.

§ 10225.304. Provision of services; access to records and persons.

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

1. an older adult requests such services.
2. another interested person requests such services on behalf of an older adult.
3. if, after investigation of a report, the agency determines the older adult is in need of such services.

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

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

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

1. investigations of reports under section 303.
2. assessment of client need.
3. service planning when an older adult's need for protective services has been or is being established.
4. the delivery of services arranged for under the service plan developed by the agency to respond to an older adult's assessed need for specific services.

(e) Access to persons.--The agency shall have access to older persons who have been reported to be in need of protectiveservices in order to:

1. investigate reports under section 303 and chapter 7.
2. assess client need and develop a service plan for addressing needs determined.
3. provide for the delivery of services by the agency or other service provider arranged for under the service plan developed by the agency.

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

1. the caretaker or a third party has interfered with the completion of the investigation or the client assessment and service plan or the delivery of services.
2. the agency can demonstrate that the older adult reported to be in need of protective services is denying access because of coercion, extortion or justifiable fear of future abuse, neglect, or exploitation or abandonment.

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

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

1. the older adult has provided written consent for any confidential records to be disclosed and the keeper of the records denies access.
2. the agency can demonstrate that the older adult is denying access to records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment.

§ 10225. 305. Immunity from civil and criminal liability.

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

§ 10225.306. Confidentiality of records.

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

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

1. in the event that an investigation by the agency results in a report of criminal conduct, law enforcement officials shall have access to all relevant records maintained by the agency or the department.
2. in arranging specific services to carry out service plans, the agency may disclose to appropriate service providers such information as may be necessary to initiate the delivery of services.
3. a subject of a report made under section 302 may receive, upon written request, all information contained in the report except that prohibited from being disclosed by paragraph (4).
4. the release of information that would identify the person who made a report of suspected abuse, neglect, exploitation or abandonment or person who cooperated in a subsequent investigation, is hereby prohibited unless the secretary can determine that such a release will not be detrimental to the safety of such person.
5. when the department is involved in the hearing of an appeal by a subject of a report made under section 302, the appropriate department staff shall have access to all information in the report record relevant to the appeal.
6. for the purposes of monitoring agency performance, appropriate staff of the department may access agency protective services records.

§ 10225.307. Involuntary intervention by emergency court order.

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

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

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

(d) Forcible entry.--Where it is necessary to forcibly enter premises after obtaining a court order, a peace officer may do so, accompanied by a representative of the agency.

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

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

§ 10225.308. Individual rights.

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

1. the agency shall discreetly notify the older person during the investigation that a report has been made and shall provide the person with a brief summary of the nature of the report.
2. as provided under section 306(b)(3), the older adult may request, and the agency shall provide, additional information contained in the report.
3. any denial of services by the department or an authorized agency under this chapter may be appealed according to the provisions of the rules and regulations issued by the department under Article xxii-a of the act of April 9, 1929 (P.L.177, No.175), known as the Administrative Code of 1929.
4. nothing in this act shall limit the right of any older person to file a petition pursuant to the act of October 7, 1976 (P.L.1090, No.218), known as the Protection From Abuse Act.

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

1. such an individual shall be notified by the agency at the conclusion of the investigation of the report that allegations have been made and shall be given a brief summary of the allegations.
2. as provided under section 306(b)(3), the alleged perpetrator may request, and the agency shall provide, additional information contained in the report.
3. an alleged perpetrator is entitled to file an appeal with the department under 1 Pa. Code part II (relating to general rules of administrative practice and procedure) to challenge the agency's finding resulting from the investigation of a report made under section 303.

§ 10225.309. Financial obligations; liabilities and payments.

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

1. funding to provide or make available protective services under this chapter shall not supplant any public and private entitlements or resources for which persons receiving protective services under this chapter are or may be eligible, and shall not be available until such persons have exhausted their eligibility and receipt of benefits under said public and private entitlements or resources.
2. funding available to local protective services agencies under this [act] costs of activities including, but not limited to, the following:
    i. administering protective services plans required under section 301(c).
    ii. receiving and maintaining records of reports of abuse under section 302.
    iii. conducting investigations of reported abuse under section 303.
    iv. carrying out client assessments and developing service plans under section 303.
    v. petitioning the court under sections 304 and 307.
    vi. providing emergency involuntary intervention under section 307.
    vii. arranging for available services needed to carry out service plans, which may include, as appropriate, arranging for services for other household members in order to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult.
    viii. purchasing, on a temporary basis, services determined by a service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when such services are not available within the existing resources of the agency or other appropriate provider. Purchase of services under this provision is limited to a 30-day period which may be renewed with adequate justification under regulations promulgated by the department.
3. the obligation of the commonwealth and the counties to provide funds to the department or any agency for services provided pursuant to this chapter shall be entirely discharged by the appropriations made to the department or an agency. Provided that the agency has met its responsibility under the law, no action at law or equity shall be instituted in any court to require the department, any agency, county or the Commonwealth to provide benefits or services under this chapter for which appropriations from the Commonwealth or counties are not available.
4. protective services clients receiving the same services provided to others under an agency service plan shall not be required to pay a fee for any services not subject to cost sharing for other older adults.

§ 10225.310. Regulations; enforcement.

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

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

§ 10225.312. Funds for payment of administration of chapter.

Funds necessary to administer this chapter shall be provided by annual appropriation by the general assembly.

§ 10225.501. Definitions.

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

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

"State police."
The pennsylvania state police.

§ 10225.502. Information relating to prospective facility personnel.

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

1. pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information), a report of criminal history record information from the state police or a statement from the state police that their central repository contains no such information relating to that person. The criminal history record information shall be limited to that which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to general regulations).
2. where the applicant is not and, for the two years immediately preceding the date of application, has not been a resident of this commonwealth, administration shall require the applicant to submit with the application for employment a report of federal criminal history record information pursuant to the federal bureau of investigation's appropriation under the departments of state, justice, and commerce, the judiciary, and related agencies appropriation act, 1973 (Public Law 92-544, 86 Stat. 1109). The department shall be the intermediary for the purposes of this paragraph. For the purposes of this paragraph, the applicant shall submit a full set of fingerprints to the state police, which shall forward them to the federal bureau of investigation for a national criminal history record check. The information obtained from the criminal record check shall be used by the

department to determine the applicant's eligibility. The determination shall be submitted to the administrator by the applicant prior to commencing employment. The administrator shall insure confidentiality of the information.

(b) Fees.--The state police may charge the applicant a fee of not more than $10 to conduct the criminal record check required under subsection (a)(1). The state police may charge a fee of not more than the established charge by the federal bureau of investigation for the criminal history record check required under subsection (a)(2). The state police shall develop a billing system to allow facilities and administrators to assume responsibility for the fee under this subsection. The state police shall allow facilities or administrators to establish an account for quarterly payment.

§ 10225.503. Grounds for denying employment.

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

1. An offense designated as a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.
2. An offense under one or more of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):
    - Chapter 25 (relating to criminal homicide).
    - Section 2702 (relating to aggravated assault).
    - Section 2901 (relating to kidnapping).
    - Section 2902 (relating to unlawful restraint).
    - Section 3121 (relating to rape).
    - Section 3122.1 (relating to statutory sexual assault).
    - Section 3123 (relating to involuntary deviate sexual intercourse).
    - Section 3124.1 (relating to sexual assault).
    - Section 3125 (relating to aggravated indecent assault).
    - Section 3126 (relating to indecent assault).
    - Section 3127 (relating to indecent exposure).
    - Section 3301 (relating to arson and related offenses).
    - Section 3502 (relating to burglary).
    - Section 3701 (relating to robbery).
    - A felony offense under Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39.
    - Section 4101 (relating to forgery).
    - Section 4114 (relating to securing execution of documents by deception).
    - Section 4302 (relating to incest).
    - Section 4303 (relating to concealing death of child).
    - Section 4304 (relating to endangering welfare of children).
    - Section 4305 (relating to dealing in infant children).
    - Section 4952 (relating to intimidation of witnesses or victims).

- Section 4953 (relating to retaliation against witness or victim).
- A felony offense under section 5902(b) (relating to prostitution and related offenses).
- Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).
- Section 6301 (relating to corruption of minors).
- Section 6312 (relating to sexual abuse of children).

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

(b) [deleted.]

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

§ 10225.504. Regulations.

The department, in consultation with the department of health and the department of public welfare, shall promulgate the regulations necessary to carry out this chapter.

§ 10225.505. Violations.

(a) Administrative.--

1. an administrator who intentionally or willfully fails to comply or obstructs compliance with the provisions of this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).
2. a facility owner that intentionally or willfully fails to comply with, or obstructs compliance with, this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).
3. the Commonwealth agency or Commonwealth agencies which license the facility have jurisdiction to determine violations of this chapter and may issue an order assessing a civil penalty of not more than $2,500. An order under this paragraph is subject to 2 Pa.C.S. Ch. 5 subch. A (relating to practice and procedure of commonwealth agencies) and ch. 7 subch. A (relating to judicial review of commonwealth agency action).

(b) Criminal.--

1. an administrator who intentionally or willfully fails to comply or obstructs compliance with this chapter commits a summary offense misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than 90 days one year, or both.
2. a facility owner that intentionally or willfully fails to comply with, or obstructs compliance with, this chapter commits a summary offense misdemeanor of the

third degree and shall, upon conviction, be sentenced to pay a fine of $2,500 or to imprisonment for not more than one year, or both.

§ 10225.506. Provisional employees for limited periods.

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

1. the applicant has applied for the information required under section 502 and the applicant provides a copy of the appropriate completed request forms to the administrator.
2. the administrator has no knowledge of information pertaining to the applicant which would disqualify him from employment pursuant to section 503 subject to 18 Pa.C.S. § 4911 (relating to tampering with public records or information).
3. the applicant swears or affirms in writing that he is not disqualified from employment under section 503.
4. if the information obtained under section 502 reveals that the applicant is disqualified from employment under section 503, the applicant shall be immediately dismissed by the administrator.
5. the department shall develop guidelines regarding the supervision of applicants. For a home health care agency, supervision shall include random direct supervision by an employee who has been employed by the facility for a period of one year.

§ 10225.507. State police.

No later than one year following the effective date of this chapter, the state police and the department shall report to the aging and youth committee of the senate and the aging and youth committee of the house of representatives with their findings and recommendations regarding the implementation of this chapter.

§ 10225.508. Applicability.

This chapter shall apply as follows:

1. an individual who, on the effective date of this chapter, has continuously for a period of one year been an employee of the same facility shall be exempt from section 502 as a condition of continued employment.
2. if an employee is not exempt under paragraph (1), the employee and the facility shall comply with section 502 within one year of the effective date of this chapter.
3. if an employee who is exempt under paragraph (1) seeks employment with a different facility, the employee and the facility shall comply with section 502.
4. an employee who has obtained the information required under section 502 may transfer to another facility established and supervised by the same owner and is not required to obtain additional reports before making the transfer.

§ 10225.701. Reporting by employees.

(a) Mandatory reporting to agency.--

1. An employee or an administrator who has reasonable cause to suspect that a recipient is a victim of abuse shall immediately make an oral report to the agency. If applicable, the agency shall advise the employee or administrator of additional reporting requirements that may pertain under subsection (b). An employee shall notify the administrator immediately following the report to the agency.
2. Within 48 hours of making the oral report, the employee or administrator shall make a written report to the agency. The agency shall notify the administrator that a report of abuse has been made with the agency.
3. The employee may request the administrator to make, or to assist the employee to make, the oral and written reports required by this subsection.

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

1. An employee or an administrator who has reasonable cause to suspect that a recipient is the victim of sexual abuse, serious physical injury or serious bodily injury or that a death is suspicious shall, in addition to contacting the agency and the department, immediately contact law enforcement officials to make an oral report. An employee shall notify the administrator immediately following the report to law enforcement officials.
2. Within 48 hours of making the oral report, the employee and an administrator shall make a written report to appropriate law enforcement officials.
3. The law enforcement officials shall notify the administrator that a report has been made with the law enforcement officials.
4. The employee may request the administrator to make, or to assist the employee to make, the oral and written reports to law enforcement required by this subsection.

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

1. Name, age and address of the recipient.
2. Name and address of the recipient's guardian or next of kin.
3. Name and address of the facility.
4. Nature of the alleged offense.
5. Any specific comments or observations that are directly related to the alleged incident and the individual involved.

§ 10225.702. Reports to department and coroner.

(a) Department.--

1. Within 48 hours of receipt of a written report under section 701(a) involving sexual abuse, serious physical injury, serious bodily injury or suspicious death, the agency shall transmit a written report to the department. Supplemental reports shall be transmitted as they are obtained by the agency.
2. A report under this subsection shall be made in a manner and on forms prescribed by the department. The report shall include, at a minimum, the following information:
    i. The name and address of the alleged victim.
    ii. Where the suspected abuse occurred.
    iii. The age and sex of the alleged perpetrator and victim.
    iv. The nature and extent of the suspected abuse, including any evidence of prior abuse.
    v. The name and relationship of the individual responsible for causing the alleged abuse to the victim, if known, and any evidence of prior abuse by that individual.
    vi. The source of the report.
    vii. The individual making the report and where that individual can be reached.
    viii. The actions taken by the reporting source, including taking of photographs and x-rays, removal of recipient and notification under subsection (b).
    ix. Any other information which the department may require by regulation.

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

§ 10225.703. Investigation.

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

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

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

(d) Further notification.--Law enforcement officials shall notify the agency and the facility of a decision regarding criminal charges. The agency and the department shall keep a record of any decision regarding criminal charges.

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

§ 10225.704. Restrictions on employees.

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

(b) Prohibition.--Upon the filing of criminal charges against an employee, the Commonwealth agency which licenses the facility shall order the facility to immediately prohibit that employee from having access to recipients at the facility. If that employee is a director, operator, administrator or supervisor, that employee shall be subject to restrictions deemed appropriate by the Commonwealth agency which licenses the facility to assure the safety of recipients of the facility.

§ 10225.705. Confidentiality of and access to confidential reports.

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

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

1. An employee of the department or of an agency in the course of official duties in connection with responsibilities under this chapter.
2. An employee of the Department of Health or the Department of Public Welfare in the course of official duties.
3. An employee of an agency of another state which performs protective services similar to those under this chapter.
4. A practitioner of the healing arts who is examining or treating a recipient and who suspects that the recipient is in need of protection under this chapter.
5. The director, or an individual specifically designated in writing by the director, of any hospital or other medical institution where a victim is being treated if the director or designee suspects that the recipient is in need of protection under this chapter.
6. A guardian of the recipient.
7. A court of competent jurisdiction pursuant to a court order.
8. The Attorney General.
9. Law enforcement officials of any jurisdiction as long as the information is relevant in the course of investigating cases of abuse.

10. A mandated reporter under Chapter 3 who made a report of suspected abuse. Information released under this paragraph shall be limited to the following:
    i. The final status of the report following the investigation.
    ii. Services provided or to be provided by the agency.

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

(d) Release of information to alleged perpetrator and victim.--Upon written request, an alleged perpetrator and victim may receive a copy of all information, except that prohibited from being disclosed by subsection (e).

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

§ 10225.706. Penalties.

(a) Administrative.--

1. An administrator who intentionally or willfully fails to comply or obstructs compliance with the provisions of this chapter or who intimidates or commits a retaliatory act against an employee who complies in good faith with the provisions of this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).
2. A facility owner that intentionally or willfully fails to comply with or obstructs compliance with this chapter or that intimidates or commits a retaliatory act against an employee who complies in good faith with this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).
3. The Commonwealth agency or Commonwealth agencies which regulate the facility have jurisdiction to determine violations of this chapter and may issue an order assessing a civil penalty of not more than $2,500. An order under this paragraph is subject to 2 Pa.C.S. Ch. 5, Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7, Subch. A (relating to judicial review of Commonwealth agency action).

(b) Criminal.--

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

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

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

§ 10225.707. Immunity.

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

§ 10225.708. Regulations.

The Department of Aging, the Department of Health and the Department of Public Welfare shall promulgate the regulations necessary to carry out this chapter.

§ 10225.5101. Repeals.

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

§ 10225.5102. Effective date.

This act shall take effect July 1, 1988.