

No. 1987-79

AN ACT

SB 5

Relating to the protection of the abused, neglected, exploited or abandoned elderly; establishing a uniform Statewide reporting and investigative system for suspected abuse, neglect, exploitation or abandonment of the elderly; providing protective services; providing for funding; and making repeals.

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

Section 1. Short title.

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

Section 2. 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.

Section 3. 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.

“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.

“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.

“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.

“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.

“Secretary.” The Secretary of Aging of the Commonwealth.

“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.

Section 4. 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 act. 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 act, 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).

Section 5. 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.

(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 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.

Section 6. 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 5. 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.

(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 identi-

ying 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 10.

Section 7. 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 10, an individual shall receive protective services voluntarily. In no event may protective services be provided under this act 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 10. Nothing in this act 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 6.

(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 protective services in order to:

- (1) Investigate reports under section 6.
- (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 10.

(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.

Section 8. 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 act.

Section 9. 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 5 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 5, 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.

Section 10. 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 act 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.

Section 11. 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 9(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 act 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 9(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 6.

Section 12. Financial obligations; liabilities and payments.

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

(1) Funding to provide or make available protective services under this act shall not supplant any public and private entitlements or resources for

which persons receiving protective services under this act 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 may be used to cover the costs of activities including, but not limited to, the following:

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

(ii) Receiving and maintaining records of reports of abuse under section 5.

(iii) Conducting investigations of reported abuse under section 6.

(iv) Carrying out client assessments and developing service plans under section 6.

(v) Petitioning the court under sections 7 and 10.

(vi) Providing emergency involuntary intervention under section 10.

(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 act 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 act 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.

Section 13. Regulations; enforcement.

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

(b) Enforcement.—This act shall be enforced only after promulgation of regulations by the department, which shall occur no later than 12 months following passage of this act, except that section 4 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.

Section 14. Funds for payment of administration of act.

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

Section 15. Repeals.

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

Section 16. Effective date.

This act shall take effect July 1, 1988.

APPROVED—The 6th day of November, A. D. 1987.

ROBERT P. CASEY