

<b>Regulatory Analysis Form</b>		<b>This space for use by IIRC</b>
(1) Agency Department of Aging		2001 DEC 27 AM 9:51 REVIEW COMMISSION
(2) I.D. Number (Governor's Office Use) 001-017		IIRC Number: #2077
(3) Short Title Protective Services for Older Adults		
(4) PA Code Cite 6 Pa. Code Chapter 15	(5) Agency Contacts & Telephone Numbers Primary Contact: Robert F. Hussar, 3-6207 Secondary Contact: James Bubb, 3-6207	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  The purpose of the amendments is to safeguard the rights and protection of incapacitated older adults more effectively by enhancing the system of activities, resources and supports which prevent, reduce, or eliminate abuse, neglect, exploitation or abandonment, and adding provisions for mandatory submission of criminal history record information and reporting of suspected abuse.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  These final form regulations are adopted under the authority of the Act of November 6, 1987 (P.L. 381, No. 79) as amended by the Acts of December 18, 1996 (P.L. 1125, No. 169) and June 9, 1997 (P.L. 160, No. 13) (35 P.S. Sections 10225.101 - 10225.5102). Following a December, 2001 decision by the Commonwealth Court of Pennsylvania, in <i>Nixon v. Commonwealth of PA</i> , No. 359, (Pa. Commonw. 2001), the Department amended the text of the regulations to remove both the listing of prohibited offenses and the use of information contained in criminal history reports to prohibit facilities from hiring applicants or retaining employees.		

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**(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.**

These final form regulations are mandated by the Older Adults Protective Services Act (35 P.S. Sections 10225.101 – 10225.5102), specifically in Section 10225.310 (relating to regulations; enforcement), requiring the publication of regulations no later than 12 months following passage of the Act, Section 10225.504 (relating to regulations), requiring the publication of regulations to carry out the provisions of the Act dealing with criminal history for employees, and Section 10225.708 (relating to regulations), requiring the publication of regulations to carry out provisions of the Act dealing with reporting of suspected abuse by employees.

**(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?**

Pennsylvania ranks third in the U.S. in percentage of older people and fifth in the number of people over the age of 60. As many as 1 in 20 older Pennsylvanians may be at risk of being abused. Elder abuse is a problem which will continue to grow as Pennsylvania's older population grows. Pennsylvania lawmakers debated for many years about the most appropriate method of preventing and treating elder abuse before enacting the Older Adults Protective Services Act in 1987. They tasked the Department of Aging with regulating and sustaining a program providing protective services through the network of 52 local Area Agencies on Aging.

**(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.**

As stated previously, an estimated 5% of older persons in Pennsylvania are unable to obtain or perform services necessary to maintain their physical or mental health, have no responsible caretaker, and are at imminent risk of danger to their person or property. Without the uniform system of activities, resources and supports created by the Older Adults Protective Services Act and implementing regulations, activities to prevent, reduce or eliminate abuse, neglect, exploitation or abandonment could not be assured.

**(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)**

Benefits to vulnerable older Pennsylvanians living in communities and OAPSA-defined facilities across the Commonwealth have been realized in several areas: 1), Reports of abuse, received by AAAs since SFY 1989-90, for the last 3 fiscal years are as follows: 1997/98: 8,175 received; 2,060 substantiated. 1998/99: 9,738 received; 2,589 substantiated. 1999/00: 10,991 received; 2,703 substantiated. In all substantiated cases, AAAs act to remove the older adult from threats to life or property. 2), 1,207 reports of abuse and serious physical or bodily injury, in OAPSA-defined facilities, have been received by the Department since 1997 (Such reports are mandated by OAPSA to be reported to the AAA, the Department, and the appropriate Commonwealth licensing agency.) As in 1), substantiated cases result in action to remove the older adult from threats to life or property. 3), Since 1998, the Department has provided clearances to 11,850 applicants or employees of OAPSA-defined facilities who were not Pennsylvania residents by providing written determinations of their eligibility for employment or retention based on completed FBI criminal history record information reports. During the same period, 103 applicants or employees were notified of their ineligibility for hiring or retention because of convictions for OAPSA-prohibited offenses. The Pennsylvania State Police have during the same period processed over 40,000 criminal history record information reports for applicants or employees who were Pennsylvania residents.

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**(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)**

Applicants for employment in OAPSA-defined facilities (domiciliary care homes, home health care agencies, long-term care nursing facilities, older adult daily living centers, and personal care facilities) and in DPW-defined home health care facilities (community residential rehabilitation services, community homes and family living homes for individuals with mental retardation, intermediate care facilities for individuals with mental retardation, including state and non-state operated facilities and homes, and state mental hospitals) whose criminal history record information reports show conviction of criminal offenses may, at facilities' discretion, not be considered for employment. Department of Aging data on criminal history record information reports show the following results – in SFY 1998/99, a total of 3,053 FBI reports resulted in 2,986 clearances (employable applicants) and 22 prohibitive hires (unemployable applicants), or .71%. In SFY 1999/00, 4,109 FBI reports; 3,943 clearances and 35 prohibitive hires, or .85%. In SFY, 5,110 reports; 4,921 clearances and 46 prohibitive hires, or .90%. (In each of these SFYs, the Department also received from the FBI 90, 131, and 143 open dispositions [open disposition means that the report does not contain sufficient information to make a decision regarding an applicant's employability]; If, for example, half of these open dispositions ultimately result in prohibitive hires, the number of prohibitive hires rises to just over 2% in each of the 3 fiscal years.) No comparable data are available from the Pennsylvania State Police, since their role is limited to processing and returning the completed criminal history record information reports to the applicants, and determination of employability or unemployability is made by the facilities. If it is assumed that the State Police are processing approximately 85% of all criminal history record information reports – for the 85% of applicants for employment at all of the above-listed facilities who are Pennsylvania residents – and that the percentage of unemployable applicants is similar to the experience of the Department, then resident applicants for employment may be denied employment in numbers ranging from just over 200 (1% unemployable) to just over 500 (2.34% unemployable).

**(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)**

Applicants at specified facilities must obtain criminal history record information reports; specified facilities must comply with mandatory abuse reporting requirements; Pennsylvania State Police and Department of Aging staff must process criminal history record information reports; facility employees, owners, and operators must comply with abuse reporting requirements; the Departments of Aging, Health and Public Welfare are responsible for monitoring, investigating, hearing appeals and imposing penalties; coroner's offices, law enforcement officials and Area Agencies on Aging must receive and investigate reports of suspected abuse. There are over 7,000 OAPSA-defined facilities, with well over 20,000 new hires each year. The Department of Aging, through the network of 52 Area Agencies on Aging, received and investigated 10,991 reports of abuse in SFY 1999-00.

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**(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.**

Following the publication of proposed rulemaking, the Department received comments from 7 Area Agencies on Aging, the Office of the Auditor General, the Pennsylvania Health Law Project, Community Legal Services of Philadelphia, the Pennsylvania Association of Non-Profit Homes for the Aging, Greenwich Services, the Center for Advocacy for the Rights and Interests of the Elderly, the Pennsylvania Association of Home Health Agencies, the AFL/CIO, the Pennsylvania Association of Resources for People with Mental Retardation (PAR), the Philadelphia Coalition of Community MH/MR Centers, the Independent Regulatory Review Commission (IRRC), the Department's Office of the Long-Term Care Ombudsman and one individual. Over the next several months the Department prepared a second draft and held meetings with staff from the Departments of Health and Public Welfare, IRRC and the Senate and House oversight committees. During this time the Department also met with Community Legal Services and PAR. The Department incorporated the second round of comments and prepared a third draft, and again held separate meetings with staff from the Departments of Health and Public Welfare, IRRC and the oversight committees. A final version, reflecting input from all of the above commenters, was discussed at a single, joint meeting with staff from the Departments of Health and Welfare, IRRC, the oversight committees, and the Governor's Policy Office. Additional changes were made to this final document following an August, 2001 meeting with staff from the Policy Offices of the Departments of Aging, Health and Public Welfare, Counsel and staff from these Department, and representatives from the Governor's Policy Office. Following discussions with OGC, the Department deleted unnecessary language throughout the text and added or changed language to enhance clarity.

**(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.**

No specific legal, accounting or consulting procedures are required. OAPSA-specified facilities are required to provide applicants with written explanation of criminal history record information (CHRI) requirements, store CHRI reports, assist applicants with filling out all necessary forms, and provide supervised observation of provisionally-employed applicants. These costs are not readily quantifiable and will correspond with the number of applicants at each facility. OAPSA-specified facilities are required to make oral and written reports of suspected abuse to multiple parties, assist employees to make oral and written reports, make additional oral and written reports in cases of sexual abuse, serious physical or bodily abuse, or suspicious recipient death, develop and implement, and share with the Area Agency on Aging and appropriate licensing agency, plans of supervision or suspension for employees alleged to have committed abuse, and provide more stringent direct supervision and observation of employees against whom criminal charges have been filed. These costs, which are not readily quantifiable, will also vary with the number of cases of abuse at each facility. The costs of reporting suspected abuse are somewhat ameliorated by agreements that facilities licensed by Public Welfare would use the Department's reporting form, and that the Department would accept a modified version of Health's reporting form.



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**(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.**

The mandating of reports of suspected abuse in OAPSA-specified facilities has increased the number of investigations and associated personnel and paperwork requirements for Area Agencies on Aging, 37 of which are under the auspice of county government. However, the amount expended by all Area Agencies on Aging for the provision of protective services since these requirements became effective has not risen to 94/95 levels. In the 3 SFYs prior to amendment of the OAPSA (SFYs 94/95 through 96/97), annual local costs were \$137,568, \$100,978, and \$75,421 (Aging report RPT740). In the 3 succeeding years, annual local costs were \$109,267, \$126,719, and \$128,632 (Aging report RPT740).

**(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.**

Costs to State government mandated by the OAPSA, and associated with implementation of these regulations, result from the processing of CHRI reports. The Department of Aging incurs the costs of processing the Federal Bureau of Investigation CHRI reports. The Pennsylvania State Police (PSP) incur the costs of processing the PSP CHRI reports. In 5 SFYs beginning in 1998, annual personnel, operating and fixed asset costs for the Department averaged an estimated \$110,796; for the PSP, they averaged an estimated \$171,618.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$ N/A	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>	1999-2000					
(1) <b>Regulated Community</b>	189,832	197,425	205,322	213,535	222,076	230,969
(2) <b>Local Government</b>	128,632	133,777	139,128	144,693	150,481	156,500
(3) <b>State Government</b>	324,840	381,560	384,920	395,280	406,640	418,400
<b>Total Costs</b>	643,304	712,762	728,370	753,508	779,197	805,860
<b>REVENUE LOSSES:</b>	N/A					
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

(20a) Explain how the cost estimates listed above were derived.

- (1) This figure is arrived at by stating the difference between the number of reports received annually by p.s. agencies, averaged over the 8 SFYs preceding the amendment of the OAPSA (7,504), and the number received in SFY 1999-2000 (10,991), or 3,487 (assuming 100% of the difference is attributable to mandatory reporting requirements) X 85.2% (14.8% of the 3,487 reports made were reports of serious abuse made directly to the Department; the balance were reports which did not involve sexual abuse, etc.) X \$50 (an estimated 2.5 hours work at \$20 per hour) = \$148,546; to this is added 3,487 X 14.8% (the number of reports of serious abuse received by the Department) X \$80 (an estimated 4 hours of work at \$20 per hour) = \$41,286, for a total of \$189,832. Outyear figures are derived by using a 4% inflator.
- (2) The SFY 99/00 figure of \$128,632 is obtained from Aging report RPT740; outyears are derived by using a 4% inflator. These are the county costs reported by Area Agencies of Aging to deliver protective services.
- (3) Amounts for each fiscal year are a total of the amount provided by the Department and by the Pennsylvania State Police to cover personnel, operating and fixed assets costs. Department figures for SFYs 02/03, 03/04 and 04/05 use a 4% inflator. State Police figures for outyears use a 3% inflator. The SFY figures for 99/00 are \$83,640 (Aging) and \$241,200 (State Police).

**Regulatory Analysis Form**

**(20b) Provide the past three year expenditure history for programs affected by the regulation.**

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<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
Protective(1)	\$4,373,294	\$4,427,700	\$4,546,862	\$5,061,418
Services (2)	\$6,798,390	\$7,058,587	\$7,562,417	\$8,066,535

**(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.**

Enhancing the health, safety and well-being of thousands of vulnerable individuals who receive care, services or treatment in, or from, the facilities listed in the OAPSA clearly outweighs the potential adverse effects. The costs of implementing these regulations, while substantial, will be spread among facilities which number well over 6,000.

**(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.**

None have been considered. The OAPSA, as amended, tasks the Department with promulgating regulations to implement statutory abuse reporting requirements. The Act is quite prescriptive regarding requirements imposed on State agencies, care-providing facilities, employees and applicants for employment at facilities, and Area Agencies on Aging. Little discretion is provided regarding what is to be done and how it is to be accomplished. The Department chose to fulfill its responsibility to serve as intermediary for the processing of CHRI reports for non-residents by increasing its own staff, rather than by contracting with another provider. This choice was deemed most consistent with the Department's responsibilities under the Act.

**(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.**

Please see number 22, above.

\*\* (1) Yearly totals are for Aging Block Grant and local funds for protective services intake and investigative activities.

(2) Yearly totals are for Aging Block Grant and local funds for (1) + assessments and an array of supportive services.

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**(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

No.

**(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

CHRI and abuse reporting requirements are more stringent than those of many states. It is probable that the CHRI reporting requirements would affect the supply of labor at OAPSA-specified facilities, particularly in locations close to the borders of neighboring states.

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

These regulations will affect the subsequent amendment of the Department's Fair Hearings and Appeals regulations (6 Pa. Code Chapter 3). They will also affect the operations of the Departments of Aging, Health and Public Welfare.

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

The Department provided information regarding compliance with OAPSA requirements to all affected facilities at the time the mandatory abuse reporting requirements became effective and met with affected state agencies about the law and about draft amendments to the protective services regulations. The Department will continue to meet with committees of the Pennsylvania Association of Area Agencies on Aging to discuss the law and the regulations, and will provide training materials to Area Agencies when these regulations are published as final rulemaking. In addition, training regarding the OAPSA and implementation of mandatory abuse reporting requirements has been available on-line at the Department's website for some time.

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**(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.**

Applicants for employment and specified employees will be required to obtain CHRI reports; the State Police and the Department will be required to process these reports; specified facilities will be required to retain copies of these reports. In addition, these facilities will be required to submit written reports of suspected abuse to Area Agencies on Aging and, in some cases, to law enforcement officials. Area Agencies will be required in some cases to send these reports to the Department and county coroners; facilities will be required to send supervision/suspension plans to Area Agencies and licensing agencies. Area Agencies will be required to make reports of suspected abuse available to specified persons and to retain such reports.

**(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.**

The amendments dealing with CHRI and mandatory abuse reporting requirements address the needs of often-vulnerable individuals, of any age, who receive care, services or treatment in or from OAPSA-specified facilities.

**(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?**

These regulations will be effective on the date of publication in the Pennsylvania Bulletin as final rulemaking. Compliance will be required at that time. No special permits, licenses, or other approvals are required.

**(31) Provide the schedule for continual review of the regulation.**

The continuing effectiveness of these regulations will be evaluated as part of the Department's annual review of the protective service program.

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REVIEW DIVISION

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<p>Copy below is hereby approved as to form and legality. Attorney General.</p> <p>BY _____ DEPUTY ATTORNEY GENERAL</p> <p>_____ DATE OF APPROVAL</p> <p>9 Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Department of Aging</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>001-017</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Richard Browdie</u></p> <p>TITLE: <u>Secretary</u></p>	<p>Copy below is hereby approved as to form and legality. Executive or independent Agencies.</p> <p>BY <u>Howell B. Buck</u></p> <p><u>December 21, 2001</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p>9 Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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Notice of Final Rulemaking  
Title 6 - Aging  
Part 1. Department of Aging  
(6 Pa. Code Ch. 15)

PROTECTIVE SERVICES FOR OLDER ADULTS

**KEY**

A. November, 1999 Proposed Rulemaking (PA Bulletin, 11/27/99):

1. Proposed additions are shown by underlining.
2. Proposed deletions are shown by { brackets }.

B. March, 2000 and September, 2001 changes reflecting stakeholder comments:

1. Additions are shown by **BOLD, CAPITALIZED LETTERS**.
2. Deletions are shown by ~~strike throughs~~.

**Title 6. Aging**

**CHAPTER 15. PROTECTIVE SERVICES FOR OLDER ADULTS**

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## OTHER ADMINISTRATIVE PROVISIONS

15. {131}161. Waivers.

### Authority

The provisions of this Chapter 15 issued under the act of November 6, 1987 (P. L. 381, No. 79; P.L. 1125, No. 169; P.L. 160, No. 13) (35 P. S. §§ 10225.101-10225.5102), unless otherwise noted.

### Source

The provisions of this Chapter 15 adopted November 25, 1988, effective November 26, 1988, 18 Pa.B. 5249, unless otherwise noted.

### Cross References

This chapter cited in 6 Pa. Code § 21.55 (relating to AAA placement activities).

## GENERAL PROVISIONS

### § 15.1. Scope and authority.

(a) This chapter governs the administration and provision of protective services for older adults under the act, **THE MANDATORY REPORTING OF THE ABUSE OF RECIPIENTS OF CARE (OF ANY AGE) AND REQUIRED CRIMINAL HISTORY RECORD INFORMATION REPORTS FOR APPLICANTS, EMPLOYEES AND ADMINISTRATORS OF FACILITIES.**

(b) This chapter applies to the Department, the Pennsylvania Department of Health, the Pennsylvania Department of Public Welfare, area agencies on aging, providers of protective services for older adults, parties to the making and investigation of reports of a need for protective services by older adults {and}, subjects of reports and investigations, and the facilities defined in this chapter.

(c) The Department will enforce this chapter and maintain responsibility for future revisions as the continuing operation of the program requires.

### § 15.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

**Abandonment** - The desertion of an older adult by a caretaker.

**Abuse** -

{ (i) } The occurrence of one or more of the following acts:

{ (A) } ~~(i)~~ The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

{ (B) } ~~(ii)~~ The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health.

{ (C) } ~~(iii)~~ Sexual harassment, rape or abuse, as defined in the Protection From Abuse Act ({35 P. S. §§ 10181-10190} 23 P. S. §§ 6101-6117).

{ (ii) } No older adult will 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. }

**Act** - The Older Adults Protective Services Act (35 P. S. §§ {10211-10224} 10225.101-10225.5102).

**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.

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

**Area Agency on Aging** - The single local agency designated within a planning and service area by the Department to develop and administer the delivery of a comprehensive and coordinated plan of social services and activities for older persons **ADULTS**.

**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 the act to impose responsibility on an individual if the responsibility would not otherwise exist in law. }

**Case file {or}, case record or record** - A complete record of the information received and the actions taken by the agency on each report of need received, {of an older adult in need of protective services. The case file shall, w}When applicable, it shall include, but not be limited to, the following elements:

- (i) The report of need.
- (ii) Records of agency investigative activities including related evidence and testimony.
- (iii) {Client a}Assessment.
- (iv) Documentation of informed consent provided or agency efforts to obtain consent.
- (v) Notifications of {clients} older adults, alleged perpetrators, police {and the like}, agencies, organizations, and individuals.
- (vi) Records of court, intervention, petition or action.
- (vii) Service plan.

**Client aAssessment** - A determination based upon a comprehensive review of a client's social, physical and psychological status along with a description of the person's current resources and needs using the instruments and procedures established by the Department for this purpose.

**Conflict of interest** - The conflict which may exist when the investigator of a report of the need for protective services has a personal or financial interest in, is responsible for, or is employed by others responsible for, the delivery of services which may be needed by an older adult to reduce or eliminate the need for protective services. A conflict of interest may also exist if an investigator has a specific personal or financial motivation to recommend services delivered by a specific agency or to allow referrals or case dispositions to be inappropriately influenced by the investigator's knowledge of agency staff, resource limitations or by agency constraints which affect agency staff or resource allocations.

**CONSUMER ATTENDANT – AN INDIVIDUAL WHO IS RECRUITED, HIRED, TRAINED, DIRECTED AND SUPERVISED BY THE CONSUMER FOR WHOM PERSONAL CARE SERVICES AND OTHER SUPPORT ACTIVITIES ARE BEING PROVIDED.**

**Court** - A court of common pleas or a district {justice} magistrate, if applicable.

**CRIMINAL HISTORY REPORT – ANY OF THE FOLLOWING:**

- (i) **FOR AN APPLICANT OR EMPLOYEE WHO IS A RESIDENT OF PENNSYLVANIA, A STATE POLICE CRIMINAL HISTORY RECORD.**
- (ii) **FOR A NON-RESIDENT APPLICANT OR EMPLOYEE, A STATE POLICE CRIMINAL HISTORY RECORD AND A FEDERAL CRIMINAL HISTORY RECORD.**

**Department** - The Department of Aging of the Commonwealth.

**Desertion** - The willful failure without just cause by the responsible caretaker to provide for the care and protection of an older adult who is in need of protective services.

**DIRECT CONTACT – TOUCHING OF A RECIPIENT BY AN EMPLOYEE CONSISTENT WITH THE PROFESSIONAL RESPONSIBILITIES OF THE EMPLOYEE.**

~~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 also includes any person who is employed by, or who enters into a contractual relationship with, or who establishes any other agreement or arrangement with a home health care agency to provide care to a care-dependent individual in the individual's place of residence for a fee, stipend, or monetary consideration of any kind

**- ANY OF THE FOLLOWING:**

- (i) **AN INDIVIDUAL WHO IS EMPLOYED BY A FACILITY.**
- (ii) **A FACILITY CONTRACT EMPLOYEE WHO HAS DIRECT CONTACT WITH RESIDENTS OR UNSUPERVISED ACCESS TO THEIR LIVING QUARTERS.**
- (iii) **AN INDIVIDUAL WHO IS EMPLOYED BY, OR WHO ENTERS INTO A CONTRACTUAL RELATIONSHIP WITH, OR WHO ESTABLISHES ANY OTHER AGREEMENT OR ARRANGEMENT WITH A HOME HEALTH CARE AGENCY TO PROVIDE CARE TO A CARE-DEPENDENT PERSON FOR A FEE, STIPEND OR MONETARY CONSIDERATION OF ANY KIND IN THE PERSON'S PLACE OF RESIDENCE.**
- (iv) **A STUDENT DOING AN INTERNSHIP OR CLINICAL ROTATION, OR ANY OTHER INDIVIDUAL, WHO HAS BEEN GRANTED ACCESS TO THE FACILITY TO PERFORM A CLINICAL SERVICE FOR A FEE.**
- (v) **AN INDIVIDUAL, EMPLOYED BY AN ENTITY WHICH SUPPLIES, ARRANGES FOR, OR REFERS PERSONNEL TO PROVIDE CARE TO CARE-DEPENDENT PERSONS, WHO IS EMPLOYED TO**

**PROVIDE CARE TO CARE-DEPENDENT PERSONS IN FACILITIES OR THEIR PLACES 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 (71 P.S. §§ 581-1 – 581-12); (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 (35 P.S. §§ 448.101 – 448.904(b) ); (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 (62 P.S. §§ 1511.1 – 1511.22); (5) a personal care home as defined in Section 1001 of the Act of June 13, 1967 (P.L. 31, No. 21) (62P.S. § 1001), known as The Public Welfare Code, including these entities licensed as personal care homes who publicly advertise, promote or otherwise hold themselves out to the public as assisted living facilities.

**FEDERAL CRIMINAL HISTORY RECORD – 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, (28 U.S.C.A. SECTION 534).**

**Home Health Care Agency –**

(i) Any of the following:

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

(B) 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.

(ii) The term includes private duty home care providers, homemaker/home health aide providers, companion care providers, registry services, OR intravenous therapy providers, or any other entity which supplies, arranges for, or refers personnel to provide care for which that entity receives a fee, consideration or compensation of any kind.

**Incapacitated older adult** - An older adult who, because of one or more functional limitations, needs the assistance of another person to perform or obtain services necessary to maintain physical or mental health. This term carries no reference to the competency or incompetency of an older adult as defined in the act of June 30, 1972 (P.L. 508, No. 164) (20 P.S.

~~§§ 5501-55{37} 55, known as the { Incompetents } Incapacitated Persons Act. THE DEFINITION OF CAPACITY OR INCAPACITY OR COMPETENCE OR INCOMPETENCE, AS DEFINED IN 20 Pa. C.S.A. §§ 5501 – 5555 (RELATING TO GUARDIANSHIP), DOES NOT APPLY TO THIS DEFINITION.~~

**Informed consent** - Consent obtained for a proposed course of protective service provision. The consent shall be based on a reasonable attempt to provide information which conveys, at a minimum, the risks, alternatives and outcomes of the various modes of protective service provision available under the circumstances.

**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.

**Investigation** - A systematic inquiry conducted by the agency to determine if allegations made in a report of need for protective services can be substantiated, and/or if the older adult referred to in the report need is an older adult in need of protective services, OR BOTH.

**Law Enforcement Official** - Any of the following: (1) A police officer of a municipality; (2) A district attorney; (3) The Pennsylvania State Police.

**Least restrictive alternative** - The appropriate course of action on behalf of the older adult which least intrudes upon the personal autonomy, rights and liberties of the older adult in circumstances where an older adult lacks the capacity to decide on matters and take actions essential to maintaining physical and mental health.

**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. { An older adult who does not consent to the provision of protective services will not 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 this 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 which there is no responsible caretaker and who is at imminent risk of danger to his person or property.

**Open disposition** - A situation in which a criminal history background check contains arrest information but does not contain information regarding one or more of the following: a final decision or sentencing announced by the court, the offense code, grading of the offense, or other information required in making a determination regarding an applicant or employee.

**Operator** - A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a facility. **AT LICENSED FACILITIES, THE LICENSEE IS THE OPERATOR.**

**Planning and service area** - The geographic unit within this Commonwealth, as designated by the Secretary, for the allocation of funds for the delivery of social services to older persons **ADULTS** residing in that unit.

**Police department** - A public agency of the Commonwealth or of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of the criminal or traffic laws, or both.

**Police officer** - A full-time or part-time employee of the Commonwealth, a city, borough, town, township or county police department assigned to criminal or traffic or criminal and traffic law enforcement duties. The term does not include persons employed to check parking meters or to perform only administrative duties, auxiliary and fire police.

**Protective services** - Activities, resources and supports provided to older adults under the act ~~, subsequent to an investigation,~~ to { detect, } prevent, reduce or eliminate abuse, neglect, exploitation { and } ~~or~~ abandonment.

**Protective services caseworker** - A protective services agency employee, regardless of staff title, who meets the minimum standards in §§ 15.121-15.127 (relating to staff training and experience standards) and is assigned by the agency under § 15.13(c) (relating to organization and structure of protective services functions) to perform the following protective services functions:

- (i) To receive reports of a need for protective services when necessary.
- (ii) To investigate reports received under this chapter.
- (iii) To assess the needs of protective services clients under this chapter.
- (iv) To develop and coordinate the implementation of service plans for protective services clients.

**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.

**Public or private entitlement or resource** - A publicly or privately funded health or human services program available either without charge or on a cost sharing basis to persons who qualify on the basis of one or more criteria, such as age, need, income or condition. The term includes various established financial assistance programs under public or private sponsorship. The term does not include individual personal income or financial assets.



**Recipient** - An individual **OF ANY AGE** who receives care, services or treatment in or from a facility.

**Report or report of need** - The written report of an older adult in need of protective services received under § 15.23 (relating to receiving reports; general agency responsibility) and recorded on the standardized protective services report form.

**Responsible caretaker** - A caretaker who is able and willing to provide the basic care and protection necessary to maintain the physical or mental health of an older adult. A caretaker reported to have abused, neglected, exploited or abandoned an older adult is presumed, subject to an investigation under this chapter, to be unable or unwilling to provide the necessary care and protection.

**Secretary** - The Secretary of the Department.

**Serious Bodily Injury** - ~~Injury resulting from abuse or neglect~~ 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 resulting from abuse or neglect~~ that does one of the following: (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 a comprehensive assessment of a ~~client's~~ **AN OLDER ADULT'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 are not limited to, homemaker services, home-delivered meals, attendant care, other in-home services, emergency shelter or food, legal aid services, transportation and other services. Service plans are cooperatively developed by the agency staff, the ~~client~~ **OLDER ADULT** or the ~~client's~~ **OLDER ADULT'S** appointed guardian and other family members when appropriate. The plan shall also address, if 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.

**State-licensed facility** - ~~An~~ For all purposes involved in the determination of whether an individual is an older adult in need of protective services, a state licensed facility is defined as an institution licensed by the Commonwealth to provide temporary or permanent residence to persons in need of personal care or medical care, including,

but not limited to, nursing homes, personal care homes, hospitals, State hospitals and mental retardation centers.

**State Police** - The Pennsylvania State Police.

**STATE POLICE CRIMINAL HISTORY RECORD – A REPORT OF CRIMINAL HISTORY RECORD INFORMATION FROM THE STATE POLICE OR A STATEMENT FROM THE STATE POLICE THAT THEIR CENTRAL REPOSITORY CONTAINS NO INFORMATION RELATING TO THAT PERSON.**

**UNSUPERVISED ACCESS – ACCESS TO PERSONAL LIVING QUARTERS OF RESIDENTS WHEN NOT ACCOMPANIED BY OR WITHIN DIRECT SUPERVISION OF AN EMPLOYEE OF THE FACILITY.**

### **Cross References**

This section cited in 6 Pa. Code § 15.92 (relating to {client needs} assessment); 6 Pa. Code § 15.96 (relating to termination of protective services); 6 Pa. Code § 15.101 (relating to general); and 6 Pa. Code § 15.111 (relating to coordination of available resources).

### **PROGRAM ADMINISTRATION**

#### **§ 15.11. Administrative functions and responsibilities of the Department.**

(a) General responsibilities. The Department will establish and maintain a Statewide system of protective services for older adults who need them. These services will be available and accessible through local protective services agencies. In maintaining this system of protective services, the Department's functions and responsibilities include, but are not limited to, the following:

(1) The review and approval of annual protective services plans submitted by area agencies under § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).

(2) The allocation of funds appropriated for the implementation of the act to area agencies on aging to administer local protective services plans.

(3) The establishment of minimum standards of training and experience for protective services staff.

(4) The development and maintenance of a fiscal and service data collection system to collect information on local reports of a need for protective services, investigations {of reports}, services provided and other relevant data on protective services activities.

(5) The monitoring of local protective services delivery for compliance with this chapter and approved area agency on aging protective services plans.

(6) The development and maintenance of an ongoing program of public information and education to promote general awareness of and informed responses to the needs of older adults for protective services available under this chapter.

(7) Ongoing coordination with State agencies.

(b) Local protective services plans. The Department will review the annual protective services plan submitted under § 15.12(b) by an area agency on aging and will notify the area agency of approval or disapproval within 60 days.

(c) Staff training and experience. The minimum standards of training and experience of protective services staff employed to carry out activities under this chapter are set forth at §§ 15.121-15.127 (relating to staff training and experience standards).

(d) Public information and education. The Department will develop and maintain a campaign of public information and education about the needs for and availability of protective services under this chapter. The target of this campaign will be older adults and the general public, as well as professionals and others employed in situations where they are likely to have frequent contact with older persons **ADULTS** who need protective services. In designing and implementing the ongoing public awareness campaign, the Department will consult with other Commonwealth agencies and consider the concerns of area agencies on aging and the local entities identified by area agencies as having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment.

#### **§ 15.12. Administrative functions and responsibilities of area agencies on aging.**

(a) General responsibilities. An area agency on aging shall administer the delivery of protective services under this chapter in its planning and service area. The functions and responsibilities of the area agency on aging in administering protective services include, but are not limited to, the following:

(1) The development and submission of a protective services plan under subsection (b).

(2) The oversight of the delivery of protective services for older adults, either directly or purchased under contract with another agency, in compliance with the area agency's approved protective services plan, this chapter and other applicable State and Federal regulations or statutes. The plan shall assure that the agency will provide for the receipt of reports of need for protective services, the conduct of investigations of reports, the assessment of ~~client~~ need and the development of service plans throughout the period covered by the plan. The plan shall also describe sources for specific services that may be required by older adults who have been assessed as needing them, and policies pertaining

to arranging for specific services if and when needs for specific services exceed supply.

(3) The coordination of the protective services related activities of local agencies and organizations having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment. These agencies and organizations include, but are not limited to, the following:

- (i) Local domestic violence agencies.
- (ii) County Assistance Offices.
- (iii) Local mental health/mental retardation programs.
- (iv) County offices of children and youth.
- (v) Law enforcement agencies.
- (vi) Legal services agencies.
- (vii) Emergency medical service agencies, hospital emergency rooms and social services staff.
- (viii) Home health agencies.
- (ix) Drug and alcohol prevention and treatment organizations.
- (x) Clergy associations and councils of churches.

(4) The local extension of the Department's ongoing campaign of public information and education about the need for, and availability of, protective services for older adults.

(5) The collection and submission to the Department of data on protective services activities. The data shall be recorded and reports submitted as required by the Department. At a minimum, the following information shall be included:

- (i) The number of substantiated and unsubstantiated reports.
- (ii) The number of reports made in various categories of need for protective services, such as physical abuse, financial exploitation, neglect, abandonment and the like.
- (iii) The demographic information on persons reported to be in need of protective services and on alleged perpetrators of abuse, neglect, exploitation and abandonment.
- (iv) The origins of reports.
- (v) The remedies and referrals.

(b) Protective services plan. {By February 24, 1989 an area agency on aging shall submit, as a supplement to its annual area plan, a protective services plan which includes a certification by the area agency that it is prepared to fulfill its responsibilities under the act.} The area agency on aging shall submit {thereafter}, on an annual basis, its protective services plan to the Department. The protective services plan shall contain, at a minimum, the following information:

(1) An explanation of the organizational structure and staffing of the area agency's protective services functions, including provisions for purchasing these services if applicable. For the purpose of advising the

agency on medically related issues encountered during {client} assessment and the development of service plans, the organizational structure shall include the consultation services of a registered nurse or physician licensed to practice in this Commonwealth.

{(2)} An explanation of how the area agency's organizational structure and staffing of protective services will prevent a conflict of interest between the investigation of reports received under this chapter and the area agency's service delivery functions. The explanation shall include assurances that the minimum criteria required under § 15.13 (relating to organization and structure of protective services functions) will be met.}

~~{(3)}~~{(2)} A description of the local process for delivering protective services to older adults who need them, including the 24-hour capability to receive reports, the investigation of reports and the necessary actions arising from investigations. The description shall focus on the specific local methodology to be implemented in activities for which this chapter allows for local differences and flexibility. The description of the plan for investigating reports shall include an explanation of steps to be taken to assure the standby capability required under § 15.41(c) (relating to reports required to be investigated). The description of the plan for seeking emergency court orders shall include the agency's identification of the providers of legal assistance who may be notified under § 15.71(b) (relating to involuntary intervention by emergency court order) when the agency petitions the court for emergency involuntary intervention.

~~{(4)}~~{(3)} A description of local funding for protective services which has, at the discretion of a county or local agency, been placed under the administrative control of the area agency on aging. There is no requirement by the Department that the area agency on aging obtain local funding for its protective services plan budget.

~~{(5)}~~{(4)} Documentation of applicable interagency relations, interagency agreements, service referral mechanisms and the locus of responsibility for cases with multi-service needs. The documentation shall include assurances that the area agency on aging has taken steps to avoid unnecessary duplication of existing efforts by other agencies which may carry responsibilities for some protective services activities.

~~{(6)}~~{(5)} A description of local methods to be used to assure the privacy and confidentiality of older adults receiving protective services as required under §§ 15.101-15.105 (relating to confidentiality).

~~{(7)}~~{(6)} A list of the entities, public and private, identified by the area agency on aging as having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment.

(c) Public awareness. The area agency on aging shall conduct within its planning and service area an ongoing campaign designed to inform and educate older adults, professionals and the general public about the need for and availability of protective services under this chapter. This ongoing

campaign shall utilize materials and methodology developed by the Department and supplemented by the area agency with relevant information on the local protective services system. Special emphasis shall be placed on informing the community on how to make reports and request services.

(d) Department approval required. An area agency on aging, which has not received the Department's approval for its protective services plan may not provide services under this chapter.

### **Cross References**

This section cited in 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.102 (relating to maintenance of case {files} records); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.13. Organization and structure of protective services functions.**

(a) General organization. The area agency on aging may provide protective services directly or under a purchase of services contract with another provider agency. In either case, the area agency on aging is responsible for the compliance of protective services activities with this chapter. The area agency on aging shall assure that the agency meets the minimum standards of organization and structure set forth in this section.

{(b) General structure. The agency shall provide for some separation of protective services functions from the general functions of other agency service management and casework. The agency may provide this separation by establishing a separately identifiable protective services unit. If the agency chooses not to establish a separate, identifiable protective services unit, the agency shall identify a subset of the staff in the organizational unit which has responsibility for protective services and the agency shall assign protective services cases as provided in subsection (c).}

{(c)} (b) Protective services caseworkers.

(1) The agency shall designate as a protective services caseworker at least one caseworker who meets the minimum standards in §§ 15.121-15.127 (relating to staff training and experience standards).

(2) The agency shall assign protective services cases to designated protective services caseworkers by allocating the anticipated agency caseload in a manner consistent with the agency's plan for caseload distribution.

(3) The agency's plan for caseload distribution shall be described in the agency's protective services plan and shall include the following specific information:

(i) The rationale for the proposed caseload distribution.

- (ii) How the subset of workers will be defined and selected, including an estimate of the anticipated caseload size to be assigned to each designated protective services caseworker.
- (iii) How the cases within a designated protective services caseworker's caseload will be prioritized.
- (iv) How that prioritization system will be maintained.
- (v) How the agency will develop and maintain the necessary specialized expertise required to fulfill protective services responsibilities.

~~{ (4) The agency may not designate as a A protective services caseworker **MAY NOT SERVE AS** an THE area agency on aging ombudsman or a caseworker under the Department's Long Term Care Assessment and Management Program (LAMP) **ON THE SAME CASE.** }~~

~~{ (5) }~~~~(4)~~ The protective services caseload assigned to a protective services caseworker may not be planned to exceed 30 ongoing protective services cases. {If the agency wishes to assign protective services cases to a protective services caseworker who also has other responsibilities, the agency shall set forth in its plan how it will assure that the caseworker's overall caseload is adjusted for the increased intensity of workload imposed by performing protective services functions.}

~~{ (6) }~~~~(5)~~ The case assignment system of the agency shall encourage the appropriate transfer of cases into and out of protective services caseloads as provided under § 15.96 (relating to termination of protective services).

~~{(d)}~~ (c) Other staff. The immediate supervisor of a protective services caseworker {is permitted to discharge nonprotective service duties. The supervisor} is required to be trained as set forth in §§ 15.121-15.127. {The supervisor may not be responsible for direct supervision of more than eight full-time protective services caseworkers.} An intake worker of the agency is permitted to discharge nonprotective service duties. An intake worker who receives a report of the need for protective services shall receive training as set forth in §§ 15.121-15.127.

~~{(e)}~~ (d) Conflict of interest. The area agency on aging shall describe in its protective services plan the steps it will take to avoid or minimize the potential of a conflict of interest between the investigative and service delivery functions in the protective services caseload. The description shall identify points in the organization and structure of protective services delivery where a potential conflict of interest may exist and explain the specific organizational responses which the area agency on aging will make to avoid or minimize that potential. The responses may include provisions for assuring some separation between the investigative and service delivery functions. The description shall also include proposed steps for addressing an actual conflict of interest if one arises. Nothing in this chapter constitutes an absolute bar to an area agency from delivering protective services and other area agency on aging services

{themselves} itself or through the same provider solely because of the potential existence of a conflict of interest.

{{f}} (e) Depth of agency capacity. The agency shall require sufficient staff of all categories to be trained under §§ 15.121-15.127 to insure that routine staff absences will not compromise the agency's ability to fulfill its responsibilities under the act. Trained standby staff members shall be available to provide protective services as required, but are not required to be regularly assigned to protective services duties.

### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); and 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging).

## **REPORTING SUSPECTED ABUSE, NEGLECT, ABANDONMENT OR EXPLOITATION**

### **§ 15.21. General reporting provisions.**

(a) A person who has reasonable cause to believe that an older adult needs protective services may report this to the local provider of protective services. An area agency on aging shall publicize, on an ongoing basis, the name, address and phone number of the agency where reports are to be made.

Where applicable, reports shall comply with the provisions of Sections 15.141 - 15.147 (relating to reporting suspected abuse).

~~(b) No older adult will be found to be abused or 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. If these factors do result in a finding that the older adult is in need of protective services, the older adult or guardian must provide consent before services can be provided to reduce or remove the need for protective services, except in those cases involving emergency involuntary intervention.~~

### **§ 15.22. Safeguards for those who make or receive reports.**

(a) Protection from retaliation. Under the act, a person or entity who takes discriminatory, retaliatory or disciplinary action against an employee or other person who makes a report, against a person who cooperates with the agency or the Department to provide testimony or other information about a report, or against a victim of abuse, commits a violation of the act. The person who takes the discriminatory, retaliatory or disciplinary action is subject to a civil lawsuit by the person who made the report, the victim of abuse named in the



report, or the person who cooperated with the agency or the Department. If the court which hears the lawsuit decides in favor of the plaintiff, the plaintiff shall recover triple compensatory damages, compensatory and punitive damages or \$5,000, whichever is greater, from the person or entity which committed the violation.

(b) Immunity from liability. As provided under the act, a person who participates in the making of a report or completion of an investigation or who provides testimony in an administrative or judicial proceeding arising out of a report shall be immune from civil or criminal liability because of these actions unless the person acted in bad faith or with malicious purpose. The act does not extend this immunity to liability for acts of abuse, neglect, exploitation or abandonment, even if the acts are the subject of the report or testimony.

(c) 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) **NOTIFICATION. THE ADMINISTRATOR OF A FACILITY SHALL POST NOTICES IN CONSPICUOUS AND ACCESSIBLE LOCATIONS AND USE OTHER APPROPRIATE MEANS TO NOTIFY EMPLOYEES, RESIDENTS, AND OTHER INDIVIDUALS OF PROTECTIONS AND OBLIGATIONS UNDER THE ACT, AND KEEP THEM INFORMED OF SUCH PROTECTIONS AND OBLIGATIONS.**

(e) **§ 15.23. Receiving reports; general agency responsibility.**

(a) Twenty-four hour capability. The agency shall be capable of receiving reports of older adults in need of protective services 24 hours a day, 7 days a week-including holidays. This capability may include the use of a local emergency response system or a crisis intervention agency.

(b) Accessibility of professional staff. Regardless of the arrangements made by the agency to receive reports outside the normal business hours of the agency, the agency shall provide 24 hours a day, 7 days a week - including holidays-accessibility to a protective services caseworker by a person receiving reports so that referrals required under § 15.26(b) (relating to screening and referral of reports received) may be made for immediate attention. If this accessibility is provided by means of telephone, telephone paging device or other alternatives to direct physical presence, the protective services caseworker shall be capable of returning the call within 30 minutes.

(c) Toll-free public telephone access. To facilitate reporting of older adults in need of protective services, the agency shall provide toll-free telephone

access to persons residing in the planning and service area served by the agency. If possible, the agency shall utilize the same telephone number everywhere in the planning and service area at all times. This number shall be extensively publicized throughout the planning and service area with special emphasis on older adults and persons likely to be in contact with victims or perpetrators of abuse, neglect, exploitation and abandonment.

(d) Reports from outside the planning and service area. The agency shall receive all reports made regardless of their place of origin or the location in this Commonwealth of the older adult in need of protective services. If the older adult who is the subject of a report does not reside in the planning and service area of the agency or, at that time, is not in the planning and service area, the agency shall notify the agency which provides protective services in the planning and service area where the older adult {can be} is located and relay to that agency the information received in the report.

### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15-26 (relating to screening and referral of reports received); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.44 (relating to resolution of substantiated reports); 6 Pa. Code § 15.105 (relating to limited access to records and disclosure of information); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.24. Receiving reports; agency intake process.**

(a) Personnel who may receive reports. A report shall be received only by persons who have received training on the minimum requirements and procedures for receiving, recording, screening and referring reports under § 15.124 (relating to protective services intake training curriculum). When the agency uses an answering service to receive calls from persons reporting a need for protective services, the agency shall have one of the following options:

(1) To provide the training for intake workers required under § 15.124 to appropriate staff of the answering service organization.

(2) To provide that all calls are forwarded directly to designated protective services intake workers or caseworkers of the agency for completion of a report of need form.

(b) Anonymity for reporters. A person who reports an older adult in need of protective services may remain anonymous, if desired. In an attempt to secure the reporter's name if additional information or assistance is needed for investigation or service provision, a person who receives a report shall inform an anonymous reporter of the statutory protection from retaliation and liability.

### § 15.25. Report form and content.

- (a) Standardized ~~{reports}~~ forms. An initial report received shall be committed to writing on the standardized report form required by the Department. Information subsequently obtained through investigations may be reported on other forms or sheets of paper for inclusion in the case record.
- (b) Handling oral reports. A report may be received in writing or orally. A report received orally shall be committed immediately to writing on the standardized form.
- (c) Minimum contents. The person receiving a report shall make every effort to obtain information necessary to complete the standardized report form. At a minimum, the completed report shall contain the following information:
- (1) The date and time of the report.
  - (2) The name, address and phone number of the person making the report, unless withheld.
  - (3) The name, address and, if available, age and phone number of the person reported to need protective services.
  - (4) The nature of the incident which precipitated the report.
  - (5) The nature and extent of the need for protective services. Indicate if the person is in a life threatening situation.
  - (6) The physical and mental status of the person in need, to the extent obtainable.

### § 15.26. Screening and referral of reports received.

- (a) Screening. A person **MEETING QUALIFICATIONS SET FORTH AT §15.121(c)(3)** who receives a report shall screen the report during and immediately following receipt of the report to assign it to one of the following referral categories:
- (1) Emergency.
  - (2) Priority.
  - (3) Nonpriority.
  - (4) Another planning and service area.
  - (5) No need for protective services.
- (b) Referral categories and actions.
- (1) Emergency. A report placed in this category requires immediate attention because specific details in the report indicate the possibility that the older person **ADULT** reported to need protective services is at imminent risk of death or serious physical harm. The person receiving an emergency report shall immediately contact a protective services caseworker designated under § 15.23(b) (relating to receiving reports; general agency responsibility) and provide that caseworker with the information contained in the report.

(2) Priority. A report placed in this category contains details which clearly suggest that the need for protective services is serious enough to require early intervention. The person receiving a priority report shall immediately contact a protective services caseworker designated under § 15.23(b) and provide that caseworker with the information in the report.

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

(4) Another planning and service area. A report which is covered under § 15.23(d) shall be placed in this category. It shall be referred to the agency which has the designated responsibility for protective services in the planning and service area in which the older person **ADULT** reported to need protective services is located at the time of the report. A report in this category will also meet the criteria for placement in one of the other categories in this subsection. The provisions for referral for the other category shall apply to a referral to another planning and service area.

(5) No need for protective services.

(i) A report shall be placed in this category when the person reported to be in need of protective services ~~{does not}~~ meets one or more of the following criteria:

(A) Is ~~{at least}~~ under 60 years ~~{old}~~ of age.

(B) ~~{Cannot}~~ Has the capacity to perform or obtain, without help, services necessary to maintain physical or mental health, ~~as set forth in Section 15.2, definition of an older adult in need of protective services.~~

(C) Has ~~{no}~~ a responsible caretaker at the time of the report.

(D) Is not at imminent risk of danger to his person or property.

(ii) A report in this category shall be referred to a protective services caseworker of the agency within the normal business hours of the agency's current or next day of business. The protective services caseworker shall review the details of the report and take whatever steps necessary to confirm or reject the categorization of no need for protective services. If the caseworker confirms the screening categorization, appropriate referrals shall be made to the area agency on aging ~~{service}~~ care management system or, if concerning an adult under 60 years of age, to another community agency. If the caseworker rejects the categorization, the report shall be placed in the appropriate category and be handled accordingly.

~~(iii) A report shall not be placed in this category due to the temporary relocation of the victim to a safe environment, such as a~~

~~hospital or emergency shelter, from which the victim will be released to return to the original abusive situation or to a new location which has not yet been determined to be safe~~ **IF THE OLDER ADULT IS TEMPORARILY RELOCATED TO A SAFE ENVIRONMENT AND WILL RETURN TO THE ORIGINAL ABUSIVE SITUATION OR TO A NEW LOCATION WHICH HAS NOT BEEN DETERMINED TO BE SAFE.**

### **Cross References**

This section cited in 6 Pa. Code § 15.23 (relating to receiving reports; general agency responsibility); 6 Pa. Code § 15.27 (relating to handling of completed reports); and 6 Pa. Code § 15.41 (relating to reports required to be investigated).

### **§ 15.27. Handling of completed reports.**

(a) Reports to be signed. Completed report forms shall be signed by the person who received the report.

(b) Appropriate routing of reports. A completed report form shall be promptly routed to appropriate staff of the agency under § 15.26(b) (relating to screening and referral of reports received) ~~and, if involving a state-licensed facility, provided to the appropriate state licensing agency,~~ and shall be handled in a manner which safeguards the confidentiality of information contained in the report. Sections 15.103 and 15.104 (relating to responsibilities of staff with access to confidential information; and penalties for violation of confidentiality provisions) also apply to staff of an emergency response agency under contract with the agency to receive reports during times when the agency is not open for business.

**(c) STATE LICENSED FACILITY. A REPORT INVOLVING A STATE-LICENSED FACILITY, AND CONTAINING SUFFICIENT INFORMATION TO BEGIN AN INVESTIGATION, SHALL BE PROVIDED TO THE APPROPRIATE STATE LICENSING AGENCY.**

### **INVESTIGATING REPORTS OF NEED FOR PROTECTIVE SERVICES**

### **§ 15.41. Reports required to be investigated.**

(a) General. The agency shall provide for an investigation of a report received under §§15.23 (relating to receiving reports; general agency responsibility) and referred under § 15.26 (relating to screening and referral of reports received) to determine if the report can be substantiated and, if so, immediate steps that are necessary to remove or reduce an imminent risk to person or property. The investigation shall be initiated within 72 hours

following the receipt of a report or sooner as provided under § 15.42 (relating to standards for initiating and conducting investigations) and include sufficient collateral information provided by interviews, documents, reports or other methods to determine if the older adult is in need of protective services.

Where applicable, reports and investigations shall comply with Sections 15.141 - 15.147.

(b) Trained and identified investigators. Only a person who has completed the minimum training required for protective services caseworkers by the Department under § 15.121-15.127 (relating to staff training and experience standards) may conduct investigations under this section. When, for reasons unexpected and beyond the agency's control, a trained staff person is not available to conduct investigations, the agency shall notify the Department and seek the Department's approval for its proposed plan for carrying out its investigation responsibilities under this section. The agency shall provide each investigator with official credentials which document the identity of the investigator and the legal authority to implement provisions of this chapter.

(c) Agency responsibility. The agency is responsible for assuring that an investigation under this section can be conducted whenever circumstances require it. This responsibility includes the provision of standby capability for use if the agency's regularly assigned staff is not available.

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§15.42. Standards for initiating and conducting investigations.**

(a) Requirements by report category.

(1) Emergency report.

(i) The investigation of a report categorized as emergency shall be initiated immediately following the referral of the report. The investigator **PROTECTIVE SERVICES CASEWORKER** shall make every attempt to ensure the immediate safety of the older adult and to conduct a face to face visit as soon as possible. The agency shall assure that reasonable attempts will be made to conduct a face to face visit within 24 hours after the report is received.

(ii) When, after reasonable efforts to gain access to the older adult, the investigator **PROTECTIVE SERVICES CASEWORKER** is denied access, the investigator **CASEWORKER** shall document the efforts made and take action, as appropriate, under §§ 15.61 or 15.71 (relating to access to persons; and involuntary intervention by emergency court order).

(2) Priority report. The investigation of a report categorized as priority shall be initiated as soon as possible. The agency shall assure that reasonable attempts to initiate the investigation will be made within 24 hours after the report is received. The investigation of a priority report is initiated only by contact with the older adult reported to need protective services. The agency's—investigator **PROTECTIVE SERVICES CASEWORKER** shall make every attempt to visit with the older adult face to face within the 24 hours provided. When, after reasonable efforts to gain access to the older adult, the investigator **CASEWORKER** is denied access, the investigator—**CASEWORKER** shall document the efforts made and take action, as appropriate, under §§ 15.61 or 15.71.

(3) Nonpriority report.

(i) The investigation of a report categorized as nonpriority shall be initiated in a timely manner but never later than 72 hours after the report was received. At the discretion of the agency, the initiation of an investigation of a nonpriority report shall include a visit to the older adult reported to need protective services when details in the report indicate a need to see and talk with the older adult face to face in order to secure or verify facts essential to the ongoing investigation.

(ii) The investigation of a report categorized as nonpriority shall include at least one visit to the older adult reported to need protective services at an appropriate point in the course of the investigation. Every attempt shall be made to visit with the older adult face to face. When, after reasonable efforts to gain access to the older adult, the investigator **PROTECTIVE SERVICES CASEWORKER** is denied access, the investigator **CASEWORKER** shall document the efforts made and, when appropriate, take action under §§ 15.61 or 15.71.

(4) No need report. The investigation of a report categorized as no need for protective services shall consist of the protective services caseworker's review of the report categorization. If the caseworker agrees with the initial categorization, appropriate referrals shall be made within 72 hours after the report was received, to the area agency on aging service management system or, if concerning an adult under 60 years of age to another community agency, if available. If the caseworker does not agree with the initial categorization, the report shall be placed in another category in this subsection and addressed under the applicable provisions for investigating a report in that category.

(b) Reports involving county or area agency on aging employees. If the agency is required to investigate a report which alleges that abuse, neglect, exploitation or abandonment has been perpetrated by an employee of the county, the area agency on aging or its subcontractor, the agency shall notify the Department as early as possible during the current or next day of normal

business hours. The notification shall be made by phone to a person designated by the Department and shall include the pertinent details of the report. A copy of the completed report of need shall be immediately forwarded by mail to the Department. Copies of written records of investigative activities shall also be forwarded to the Department for review. The Department reserves the right to intervene in the agency's investigation of a report under this subsection if it is determined appropriate to assure a fully objective investigation.

(c) Written records of investigative activities. The investigative activities, including home visits and other contacts with the older adult or other persons or organizations needed to facilitate the investigation, shall be documented in writing and placed in the case record. Documentation may include dated and signed photographs and statements related to suspected abuse.

(d) Completing investigations of reports. The agency shall make all reasonable efforts to complete an investigation of a report of need for protective services under this section as soon as possible and, in cases of abuse and neglect, at least within 20 days of the receipt of the report. {The investigation of the report is completed only when the report has been determined to be substantiated or unsubstantiated and, if substantiated, after necessary steps have been taken to reduce an imminent risk to the older adult's person or property.}

(e) ~~If the Department determines that there may be interference with the course of~~ a **AN AGENCY IS UNABLE TO CONDUCT, OR HAS NOT CONDUCTED, WHAT THE DEPARTMENT CONSIDERS AN ACCEPTABLE protective services investigation, the Department reserves the right to** MAY intervene in the agency's investigation, OR CONDUCT ITS OWN INVESTIGATION.

### Cross References

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.45 (relating to situations involving State-licensed facilities); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### § 15.43. Resolution of unsubstantiated reports.

(a) When, upon investigation of a report, it is determined that there is no need for protective services, the report shall be classified as {an} unsubstantiated {report}.

(b) A case opened by an unsubstantiated report shall be closed and information identifying the person who made the report and the alleged perpetrator of abuse, if applicable, shall be immediately deleted from the case record{s in the case file}.



(c) For the purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, the name of the person reported to need protective services and other information relevant to the circumstances which led to the report may be maintained for a period of 6 months in a separate locked file accessible only to limited authorized staff for review when it is necessary to establish that a previous report was made. At the end of 6 months, case {files} records maintained under this subsection shall be destroyed unless additional reports lead to their being reopened.

(d) When an older adult who is the subject of an unsubstantiated report has needs for other services, the older adult shall be informed of the availability of services through the area agency on aging service management system or another appropriate community agency.

### **Cross References**

This section cited in 6 Pa. Code § 15.102 (relating to maintenance of case {files} records); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.44. Resolution of substantiated reports.**

(a) When an investigation confirms the details of a report made under § 15.23 (relating to receiving reports; general agency responsibility) or determines that the subject of the report is an older adult in need of protective services, the report shall be classified as {a} substantiated {report}.

(b) The agency shall provide for a timely {client} assessment of the need for protective services by the older adult who is the subject of a substantiated report if the older adult gives informed consent to an assessment. If an older adult found to need protective services does not consent to an an {client} assessment, the agency may seek, when appropriate, a court order under § 15.61 (relating to access to persons).

(c) On the basis of the {completed client} assessment, the agency shall provide for the development of a service plan of recommended actions which reflect the least restrictive alternatives for removing or reducing imminent risk to person or property and promote ~~client~~ self-determination and continuity of care being provided at the time of the agency's intervention. The service plan may include, when appropriate, the pursuit of civil or criminal remedies.

(d) Developed service plans shall be put into effect under § 15.94 (relating to service delivery).

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## § 15.45. Situations involving State-licensed facilities.

(a) General. The following apply to investigations of reports concerning older adults who reside in State-licensed facilities:

(1) The agency continues to maintain its general responsibility for protective services when a licensing agency assumes, ~~or is assigned,~~ the role of investigating a report received by the agency.

(2) The response times provided in § 15.42(a) (relating to standards for initiating and conducting investigations) for initiating investigations of reports apply to initiating investigations of reports under this section. The initiation of the investigation under subsection (c) is accomplished by the referral of the report to the appropriate administrative office.

(3) The supervisor of a protective services caseworker who initiates an investigation under this section shall be informed during the current day or next day of normal agency operating hours concerning the report and shall consult frequently with the caseworker about the progress and findings of the investigation.

(4) The agency shall notify the area agency on aging ombudsman of reports and investigations concerning older adults residing in State licensed facilities for which the area agency on aging provides ombudsman services. In situations that ombudsman services, **AS ESTABLISHED BY THE OLDER AMERICANS ACT OF 1965 (42 U.S.C.A. §3058g) AND THE ADMINISTRATIVE CODE OF 1929 (71 P.S. §581-7(d))**, are determined to be appropriate, the agency shall request those services from the ombudsman.

(b) Agency coordination with the licensing agency.

(1) Except as provided under subsection (c), the agency shall notify the appropriate licensing agency under procedures developed by the Department, in consultation with the licensing agency, ~~Notification shall be made immediately using the licensing agency's after-hours reporting phone number, if one exists; if not, within 24 hours of the initiation of the investigation or before the close of business during the next day of the licensing agency's normal hours of business that an investigation has been initiated in a facility licensed by the State licensing agency. The notification shall identify the facility, the older adult and the nature of the report .~~

(i) **NOTIFICATION SHALL IDENTIFY THE FACILITY, THE OLDER ADULT AND THE NATURE OF THE REPORT.**

(ii) **NOTIFICATION SHALL BE MADE IMMEDIATELY BY TELEPHONE OR FACSIMILE TO THE APPROPRIATE FIELD OFFICE OF THE PENNSYLVANIA DEPARTMENT OF HEALTH THAT AN INVESTIGATION HAS BEEN**

**INITIATED IN A FACILITY LICENSED BY THE PENNSYLVANIA DEPARTMENT OF HEALTH.**

**(iii) NOTIFICATION SHALL BE MADE IMMEDIATELY BY TELEPHONE OR FACSIMILE TO THE APPROPRIATE FIELD OFFICE OR CENTRAL OFFICE OF THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE THAT AN INVESTIGATION HAS BEEN INITIATED IN A FACILITY LICENSED BY THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE.**

(2) During the course of the investigation the agency shall coordinate its investigative activities and findings with the licensing agency to avoid duplication of effort and to foster jointly developed remedies to situations requiring protective services intervention.

(c) State-operated mental health and mental retardation facilities. If the agency receives a report concerning an older adult who resides in a facility operated by the Department of Public Welfare under its Office of Mental Health or its Office of Mental Retardation, the agency shall provide for an investigation of that report as follows:

(1) The protective services caseworker or investigator to whom the report is referred shall initiate the investigation by referring the report to the appropriate administrative office under procedures jointly developed by the Department and the Department of Public Welfare for investigation under their patient rights program. The jointly developed procedures provide for specific points of contact between the agency and the Department of Public Welfare and establish a system which assures that the agency will be kept fully informed of the activities, findings and results of investigations through written records of the investigative activities and remedial actions as they develop.

(2) The agency shall closely monitor an investigation referred under paragraph (1) to determine that the investigation is effectively implemented and that appropriate remedies have been effected to correct the situation which led to the making of the report. The referral of an investigation to the Office of Mental Health or Office of Mental Retardation does not relieve the agency of its mandated authority and responsibility to provide protective services. If the agency determines that an older adult's need for protective services is not adequately being met under paragraph (1), the agency shall intervene and conduct its own investigation.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## **§ 15.46. Law enforcement agencies as available resources.**

(a) General. This chapter may not be interpreted to deny an older adult who needs protective services access to the normal protections available from the police and other law enforcement agencies as appropriate.

(b) Interagency coordination. To facilitate the cooperation of law enforcement officials with the provision of protective services when necessary, the agency shall fulfill the following minimum coordinating activities:

(1) Achieve specific coordination objectives with:

(i) Police departments in the planning and service area.

(ii) The district attorney's office.

(iii) State Police field installations for the planning and service area.

(iv) Officials of the court system.

(v) Legal assistance agencies.

(2) Establish designated points of contact with law enforcement agencies to facilitate access when necessary.

(3) Establish basic procedures to be followed when the agency makes reports of criminal conduct or requests for special assistance to law enforcement agencies and when the law enforcement agencies report the need for protective services to the agency.

(4) Provide for the necessary exchange of information about protective services for older adults and the role of law enforcement in the provision of those services.

(c) The role of law enforcement in protective services. The agency's protective services workers shall receive training as required under §§ 15.121-15.127 (relating to staff training and experience standards) in applicable sections of the criminal code and the role of law enforcement officials when criminal conduct is encountered or suspected.

(d) Legal options information. The agency shall take steps to inform older adults who need protective services of the various legal options, civil or criminal, available through appropriate agencies as possible remedies to situations of risk to person or property. If an older adult reported to need protective services requests the agency to contact a law enforcement agency, the agency shall respond to that request in an appropriate and timely manner.

(e) Police assistance to protective services worker. A protective services worker may, as appropriate, request the assistance of a police officer when investigating a report which indicates a possible danger to the worker. As provided under § 15.74 (relating to forcible entry), forcible entry may be made only by a police officer or State Trooper accompanied by a representative of the agency after obtaining a court order.

(f) Simultaneous investigation. {If an investigation of a report results in a police investigation} When both a report of need for protective services and a police report have been filed, the protective services investigation shall continue simultaneously with the police investigation. The agency may take

steps to coordinate its investigation with the police investigation and the investigation of the State Licensing Agency and shall make available as provided under § 15.105 (relating to limited access to records and disclosure of information) relevant information from the case record.

(g) Report of death. If the death of an older adult reported to need protective services occurs prior to the agency's investigation of the report, during the investigation or at any time prior to the closure of the protective services case, when there is some nexus between the death and the need for protective services, the agency shall immediately report that death to the police and the county coroner.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.47. Emergency medical services as available resources.**

This chapter may not be interpreted to deny an older adult who needs protective services access to the normal protections of the emergency medical services that would be available to anyone, regardless of age, in similar circumstances.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## **AGENCY ACCESS TO PERSONS OLDER ADULTS AND RECORDS**

### **§ 15.61. Access to ~~persons~~ OLDER ADULTS.**

(a) Access assured by law. The agency shall have access to older ~~persons~~ **ADULTS** who have been reported to need protective services to:

(1) Investigate reports received under this chapter.

(2) Assess {client} the older person's **ADULT'S** need and develop a service plan for addressing determined needs.

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

(b) Access to ~~persons~~ **OLDER ADULTS**. Except in emergency or priority protective services cases, access to ~~persons~~ **OLDER ADULTS** shall be between the hours of 7 a.m. and 9 p.m.

(c) When access is denied. If the agency is denied access to an older adult reported to need protective services and access is necessary to complete the

investigation or the {client} assessment and service plan, or the delivery of needed services to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to need protective services, the protective services caseworker shall make reasonable efforts to clearly inform the party denying access of the legal authority for access in section {7} 304 of the act (35 P. S. § {10217} 10225.304) and the available recourse through a court order. If the party continues to deny the agency access to the older adult, the agency may petition the court for an order to require the appropriate access when one of the following conditions applies:

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

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

### **Cross References**

This section cited in 6 Pa. Code § 15.42 (relating to standards for initiating and conducting investigations); 6 Pa. Code § 15.44 (relating to resolution of substantiated reports); 6 Pa. Code § 15.63 (relating to access by consent); 6 Pa. Code § 15.92 (relating to client needs assessment); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.62. Access to records.**

(a) Access assured by law. The agency shall have access to records relevant to:

(1) Investigations of reports received under this chapter.

(2) The assessment of ~~client~~ need and the development of a service plan when an older adult's need for protective services has been or is being established.

(3) 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.

(b) Access to records. Except in emergency or priority protective services cases, access to records shall be between the hours of 7 a.m. and 9 p.m.

(c) When access to records is denied. If the agency is denied access to records necessary for the completion of a proper investigation of a report or an an {client} assessment and service plan, or the delivery of needed services to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to need protective services, the protective services caseworker shall clearly inform the party denying access to the records of the legal authority for access as set forth in section {7} 304 of the act (35 P.S. § {10217}

10225.304) by the agency and the available recourse through a court order. If the party continues to deny access to relevant records, the agency may petition the court of common pleas for an order requiring the appropriate access when one of the following conditions applies:

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

(2) The agency is able to 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.

### **Cross References**

This section cited in 6 Pa. Code § 15.63 (relating to access by consent); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.63. 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 need protective services shall require the consent of the older adult or a court-appointed guardian except as provided under §§ 15.61, 15.62 or 15.71 (relating to access to persons; access to records; or involuntary intervention by emergency court order).

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## **EMERGENCY INTERVENTION**

### **§ 15.71. Involuntary intervention by emergency court order.**

(a) General. When there is clear and convincing evidence that, if protective services are not provided, the person **OLDER ADULT** 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 person to be protected shall be an older adult in need of protective services as defined in this chapter. The courts of common pleas of each judicial district shall ensure that a judge or district {justice} magistrate 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 delay until normal court hours would significantly increase the danger the

older adult faces. Only the agency, through its official representative, may bring a petition for involuntary intervention by emergency court order.

(b) Legal representation. When the agency petitions the court for emergency involuntary intervention, the agency shall make sure the older adult has the opportunity to be represented by counsel at all stages of the proceedings. If the older adult has an attorney known to the agency, the agency shall attempt to notify that attorney before it files a petition for emergency involuntary intervention. If the agency has no knowledge of an attorney who represents the older adult, the agency shall attempt to notify the legal services provider identified by the area agency on aging in its protective services plan to provide legal assistance under this chapter. The notification shall contain enough information about the risk to the older adult and the proposed remedy to enable counsel to determine if representation is necessary at the emergency hearing. Notification to counsel shall include a copy of the petition with the affidavits attached as well as the time, date and place of presentation of the petition except when § 15.72(b) (relating to the petition) applies.

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.42 (relating to standards for initiating and conducting investigations); 6 Pa. Code § 15.63 (relating to access by consent); 6 Pa. Code § 15.73 (relating to court appointed counsel); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.91 (relating to general); 6 Pa. Code § 15.92 (relating to {client needs} assessment); 6 Pa. Code § 15.93 (relating to service plan); 6 Pa. Code § 15.94 (relating to service delivery); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.72. The petition.**

(a) Contents. The petition which the agency files for an emergency court order of involuntary intervention shall state the following information:

- (1) The name, age and physical description of the older adult insofar as these facts have been ascertained.
- (2) The address or other location where the older adult can be found.
- (3) The name and relationship of a guardian, caregiver or other responsible party residing with the older adult, when applicable.
- (4) A description of how the older adult is at imminent risk of death or serious physical harm.
- (5) The physical and mental status of the older adult, to the extent known.



(6) The attempts made by the agency to obtain the informed consent of the older adult, or the older adult's court appointed guardian, when applicable, to the provision of protective services by the agency.

(7) The specific short-term, least restrictive, involuntary protective services which the agency is petitioning the court for an order to provide.

(8) A description of how the proposed services would remedy the situation or condition which presents an imminent risk of death or serious physical harm.

(9) A statement showing why the proposed services are not overbroad in extent or duration and why less restrictive alternatives as to their extent or duration are not adequate.

(10) A statement that other voluntary protective services have been offered, attempted or have failed to remedy the situation.

(11) A statement that reasonable efforts have been made to communicate with the older adult in a language the older adult understands in the case of an older adult who is hearing impaired or who does not understand the English language.

(12) Other relevant information deemed appropriate by the agency.

(b) Oral petitions. Nothing in this chapter precludes or prohibits the oral presentation of a petition for emergency involuntary intervention. When oral presentation is warranted, the written petition shall be prepared, filed and served on the older adult and counsel within 24 hours of the entry of the emergency order or on the next business day, when the 24-hour period would fall on a weekend or legal holiday.

(c) Affidavits. Allegations which are not based upon personal knowledge shall be supported by affidavits provided by persons having that knowledge. The affidavits shall be attached to the petition.

(d) Emergency order duration. In the petition, the agency shall request an emergency order of a specific duration which may not exceed 72 hours from the time the order is granted. The agency shall request the court of common pleas to hold a hearing when the initial emergency order expires to review the need for an additional emergency court order or other continued court and protective services involvement, or both. The issuance of an emergency order is not evidence of the competency or incompetency of the older adult.

### **Cross References**

This section cited in 6 Pa. Code § 15.71 (relating to involuntary intervention by emergency court order); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

**§ 15.73. Court appointed counsel.**

The act requires that an emergency order under this section provide that the older adult has the right to legal counsel. If no representation for the older adult is present at the time the emergency order is requested, the agency shall inform the court of its efforts to notify counsel under § 15.71(b) (relating to involuntary intervention by emergency court order). If the older adult is unable to provide for counsel, the court will appoint counsel as authorized by the act at the time the emergency order is entered to ensure that legal representation will be provided at the time of the emergency protective services review hearing.

**Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

**§ 15.74. Forcible entry.**

When the agency requests a court order for forcible entry to the premises where an older adult at imminent risk of death or serious physical harm is located, the agency shall request the court to direct that a local or State police officer carry out the forcible entry accompanied by a representative of the agency.

**Cross References**

This section cited in 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

**§ 15.75. Health and safety requirements.**

The agency shall take reasonable steps to assure protection of the older adult's dependents and property while the older adult is receiving services under an emergency court order. The agency is not responsible for the actual provision of all needed services but shall coordinate professional linkage referrals and follow-up to assure that the needed services and protections are being provided and maintained.

**Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## § 15.76. Documentation.

The agency shall document in the case record emergency intervention actions it takes.

### INDIVIDUAL RIGHTS OF PARTIES INVOLVED

## § 15.81. 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 need protective services:

(1) The agency shall discreetly notify the older ~~person~~ **ADULT** during the investigation that a report of need for protective services has been made and shall provide the ~~person~~ **OLDER ADULT** with a brief summary of the nature of the report. The protective services **CASE**worker performing the investigation shall determine when and how this notification is accomplished.

(2) If the older adult requests additional information contained in the ~~{report}~~ record, the agency shall provide the information subject to the requirements in § 15.105 (relating to limited access to records and disclosure of information).

(3) A denial of services by the Department or an authorized agency under this chapter may be appealed under Chapter 3 (relating to fair hearings and appeals).

(4) Nothing in this chapter limits the rights of an older adult to file a petition under the Protection from Abuse Act (~~{35}~~ 23 P.S. §§ ~~{10181-10190}~~ 6101-6117).

(5) An older adult determined to need protective services has the right to refuse protective services except as provided under a court order. The agency shall obtain, when possible, the older adult's signed statement refusing protective services or document unsuccessful efforts to obtain a signed statement.

(6) An older adult has the right to legal counsel when the agency petitions the court for emergency or other orders to provide protective services without the older adult's consent. The act provides that if an older adult is unable to provide for counsel, counsel shall be appointed by the court. Under § 15.71 (relating to involuntary intervention by emergency court order), the agency is required to take steps to involve counsel when emergency petitions are filed.

(7) As provided under §§ 15.101-15.105 (relating to confidentiality), an older adult has the right to the confidentiality of information received and maintained by the agency in reports, investigations, service plans and other elements of a case record.

## § 15.82. Rights of alleged abusers.

An individual who , **AS A RESULT OF A PROTECTIVE SERVICES INVESTIGATION, IS DETERMINED** ~~is alleged in a protective services report~~ to be a perpetrator of the abuse, neglect, exploitation or abandonment of an older adult is entitled to the following if the report is substantiated by the agency:

- (1) The agency shall notify the alleged perpetrator at the conclusion of the investigation of the report that allegations have been made and shall provide the alleged perpetrator with a brief summary of the allegations.
- (2) As provided under § 15.105 (relating to limited access to records and disclosure of information), 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 11 (relating to general rules of administrative practice and procedure) to challenge the agency's finding resulting from the investigation of a report made under this chapter. The agency's finding is that information, after an investigation is concluded, which substantiated the need for protective services. The appeal process applicable to clients **OLDER ADULTS** under Chapter 3 (relating to fair hearings and appeals) also applies to alleged perpetrators of abuse, neglect, exploitation or abandonment. This appeal shall be in writing to the Secretary and be postmarked within 30 days from the date of notification by the agency required under this section.

## PROVISION OF SERVICES

### § 15.91. General.

(a) Protective Services. Protective services are activities, resources and supports provided to older adults under the act ~~subsequent to~~ **AFTER THE INITIATION OF an investigation** to {detect,} prevent, reduce or eliminate abuse, neglect, exploitation and abandonment. Protective services activities include, but are not limited to, the following:

- (1) Administering protective services plans.
- (2) Receiving and maintaining records of reports of abuse.
- (3) Conducting investigations of reported abuse.
- (4) Conducting ~~client~~ assessments and developing service plans.
- (5) Petitioning the court.
- (6) Providing emergency involuntary intervention.
- (7) Arranging for available services needed to fulfill 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. A partial listing of the services which may be made available to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult is found in Section 15.93(c) (relating to service plan).

(8) Purchasing, on a temporary basis, as provided under § 15.112 (relating to uses of funding authorized by the act) services determined by a service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when the services are not available within the existing resources of the agency or other appropriate provider.

(b) Availability of protective services. The agency shall offer protective services under one or more of the following conditions:

(1) An older adult requests the services.

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

(3) If, after **INITIATION OF AN** investigation of a report, the agency determines the older adult needs the services.

(c) Informed consent required. The agency shall provide protective services only to ~~persons~~ **OLDER ADULTS** who give informed consent to the services. The consent shall be in writing when possible. If the ~~person~~ **OLDER ADULT** does not consent or, if after consenting, withdraws the consent, protective services may not be provided unless the provision of the services is allowable as a ~~client~~ consent exemption.

(d) ~~Client~~ **Consent exemptions.** Protective services may be provided to older adults in need of protective services without ~~client~~ consent only in the following situations:

(1) When ordered by a court under section {7} 304 of the act (35 P. S. § {10217} 10225.304).

(2) When requested by an older ~~person's~~ **ADULT'S** court-appointed guardian.

(3) When provided under § 15.71 (relating to involuntary intervention by emergency court order).

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

## § 15.92. {Client needs a} Assessment.

(a) When a report is substantiated by the agency, or if {a client} an assessment is necessary to determine whether or not the report is substantiated, the agency shall, with the consent of the older adult, provide for a timely {client} assessment. If the older adult does not consent, the agency

may apply §§ 15.61 or 15.71 (relating to access to persons; or involuntary intervention by emergency court order).

(b) The protective services caseworker shall make face-to-face contact with the older adult to evaluate and document information including, but not limited to, the following:

- (1) Personal appearance.
- (2) Physical environment.
- (3) Physical health.
- (4) Mental functioning.
- (5) Activities of daily living.
- (6) Social environment.
- (7) Economic status-including eligibility for public and private entitlements or resources as defined under § 15.2 (relating to definitions).
- (8) Nutrition.
- (9) Recent experiences-losses, separations, major changes in relationships or environments.
- (10) The need for a formal medical or psychiatric evaluation.

(c) The assessment shall be written and include, whenever possible, ~~client~~ **OLDER ADULT**-given information for each area of ~~client~~ functioning.

(d) The assessment shall be written so that the reader can determine which information came from the ~~client~~ **OLDER ADULT** and which constitutes the worker's judgment.

(e) The assessment shall be written in a standard format as required by the Department. Data entries shall be based on commonly accepted and defined nomenclature to make the data more usable across and within agencies and to ensure that ~~clients~~ **OLDER ADULTS** are evaluated uniformly according to the standardized definitions.

### Cross References

This section cited in 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### § 15.93. Service plan.

(a) Upon completion of the {client needs} assessment and with the consent of the older adult, a service plan shall be prepared. The service plan shall be cooperatively developed by the agency staff, the older ~~person~~ **ADULT** or his appointed guardian, and other family members, if appropriate. Protective services may not be provided under the act to a ~~person~~ **AN OLDER ADULT** who does not consent to the services or who, having consented, withdraws consent, unless the services are ordered by a court, requested by a court-appointed guardian of the older adult or provided under § 15.71 (relating to involuntary intervention by emergency court order).

(b) The service plan shall be in writing and shall include a recommended course of action which utilizes the least restrictive alternative, encourages client self-determination and continuity of care. The recommended course of action may also include pursuit of civil or criminal remedies.

(c) The service plan shall describe the older adult's identified needs, the goals to be achieved, the specific services which will be used to support attainment of the goals and the procedures to be followed with regard to regular follow-up and assessment of client progress. Specific services which may be used to implement the service plan include, but are not limited to:

- (1) Medical evaluations.
- (2) Psychiatric or psychological evaluations.
- (3) Legal services.
- (4) Public or private entitlements or resources.
- (5) Financial management.
- (6) Personal or environmental safety.
- (7) Emergency shelter.
- (8) Transportation.
- (9) Home delivered meals.
- (10) Attendant care.
- (11) Homemaker services.

(d) The service plan shall also address, if applicable, special needs of other members of the household unit as they may affect the older adult's need for protective services. The identification in a {service} care plan of service needs of other members of the older adult's household does not obligate the agency to pay the costs of the services.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.94. Service delivery.**

(a) The agency shall, with the consent of the older adult, provide for implementation of the course of action recommended in the service plan. The implementation may be provided by direct provision of services by the agency, purchase of services from another agency, referral to another agency, provision of services by family and friends or a combination of these or other methods.

(b) Protective services may not be provided under the act to a ~~person~~ **AN OLDER ADULT** who does not consent to services or who, having consented, withdraws consent, unless the services are ordered by a court, requested by a guardian of the older adult or provided under § 15.71 (relating to involuntary intervention by emergency court order).

## Cross References

This section cited in 6 Pa. Code § 15.44 (relating to resolution of substantiated reports).

### § 15.95. Case management.

(a) Coordination of services. The protective services caseworker is responsible for coordination of sources of services being provided to the older adult who needs protective services. The caseworker shall also take reasonable steps to assure that services necessary to achieve the goals in the service plan are being provided.

(b) Case records. A separate record shall be established to contain information on protective services cases. The protective service case record on an older adult shall be separated from other records maintained by the agency on that older adult. Confidentiality of the protective services case record shall be maintained by the agency as set forth in §§ 15.101-15.105 (relating to confidentiality). The protective services case record includes, but is not limited to, the following:

- (1) The report of a need for protective services.
- (2) The record of investigation.
- (3) The written findings of the client assessment.
- (4) The service plan.
- (5) Notes of contact with the client **OLDER ADULT** and others involved with the case.
- (6) Court documents-for example, petitions, orders and the like.
- (7) Letters of notification-abused and abuser.

(c) Reassessment. Reassessment shall be done for protective service clients.

{(1) Reassessment shall be carried out within the time limits specified in the service plan. It shall be done at least every 30 days if continuous protective service intervention is being provided as part of the service plan.

(2)} (1) Reassessment shall be {comprehensive and involve the areas of client functioning listed under § 15.92 (relating to client-needs assessment) and} written in the standardized format {selected for the original assessment} established by the Department.

{(3)} (2) Reassessment shall be done before a protective services client's case is terminated, {or if the level of client need has changed} transferred , or it is the agency's judgment that a reassessment is appropriate , OR THE OLDER ADULT'S CONDITION HAS CHANGED.



{(4) The reassessment shall be documented and followed by an updating of the service plan if changes occur in the client's needs, in goals to be achieved or in the pattern of service delivery.

(5) When services are being provided through the temporary purchase of services, the need for continuation of the services shall be discussed and efforts to provide the services through other resources described, as required under § 15.113 (relating to time limitation on service purchases).}

### **Cross References**

{This section cited in 6 Pa. Code § 15.113 (relating to time limitation on service purchases).}

### **§ 15.96. Termination of protective services.**

(a) The agency shall terminate protective services when the older adult is no longer "an older adult in need of protective services" under § 15.2 (relating to definitions).

(b) Except when the older adult withdraws consent to the delivery of protective services, the agency may terminate protective services in one of the following ways:

(1) By closing the case when no further service intervention is required by the {client} older adult.

(2) By closing the case when a court order for services has terminated and the {client} older adult does not consent to further service intervention.

(3) By transferring the {client} older adult to the service management system of the area agency.

(4) By transferring the {client} older adult to another appropriate agency.

(c) When the agency terminates protective services, the agency shall inform the older adult and, if applicable, responsible {caretakers} ~~caregivers~~ of this action and its rationale; { and shall attempt to secure a signed statement of understanding concerning the action. } When the agency transfers a protective services case, {T} the case record shall reflect the transfer of a client **AN OLDER ADULT** to another agency, the specific agency of referral and the acceptance of the referral by the other agency.

### **Cross References**

This section cited in 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions).

## CONFIDENTIALITY

### § 15.101. General.

Information contained in the agency's protective services case files, as defined under § 15.2 (relating to definitions), shall be considered confidential and shall be maintained under this chapter.

### Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### § 15.102. Maintenance of case {files} records.

(a) Protective services case {files} records shall be kept, when not in use by authorized persons, in a locked container and separate from other agency files. The report, the record of investigation, notes of contact with the ~~client~~ **OLDER ADULT** and others involved with the case, court documents and letters of notification may not be transferred to, or reprinted for, other agency files. The {client} assessment and service plan may be transferred to other agency case files with assurance by the agency that a ~~client's~~ **AN OLDER ADULT'S** complete protective services case record can be immediately produced.

(b) When an individual case {file} record is removed from its storage location for use by an authorized person, the person shall sign for the {file} record according to sign-out procedures developed by the agency.

(c) Except as provided under § 15.105 (relating to limited access to records and disclosure of information) only staff with direct responsibility for protective services functions may be authorized by the agency to have access to the protective services case {files} records. General access is restricted to protective services supervisors, protective services caseworkers and clerical staff assigned to type and maintain case records.

(d) As provided under § 15.43 (relating to resolution of unsubstantiated reports), when the agency cannot substantiate a report of a need for protective services the case opened by the unsubstantiated report shall be closed and information identifying the person who made the report and the alleged perpetrator of abuse, if applicable, shall be immediately deleted from {records in} the case {file} record.

(e) For the purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, the name of the ~~person~~ **OLDER ADULT** reported to be in need of protective services and other information relevant to

the circumstances which led to the report may be maintained for {a period of} 6 months in a separate locked file accessible only to authorized staff for review when necessary to establish that a previous report was made. At the end of 6 months, case {files} records maintained under this subsection shall be destroyed unless additional reports lead to their being reopened.

(f) The agency shall develop written procedures for the deletion or expungement of information in case {files} records and for the destruction of case {files} records so that unauthorized persons are not able to gain access to information from case {files} records. The procedures shall be submitted to the Department in the protective services plan required under § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.103. Responsibilities of staff with access to confidential information.**

(a) The agency shall assure that staff with access to information contained, or to be contained, in a case {file} record are fully aware of the confidentiality provisions of this chapter and of the local agency.

(b) A staff person who is authorized to have access to information contained, or to be contained, in a case {file} record is required to take every possible step to safeguard the confidentiality of that information. This requirement extends to known information related to a case but not recorded in writing.

(c) A staff person who is to be authorized to have access to confidential information related to protective services cases shall sign a statement provided by the Department, assuring knowledge of applicable confidentiality requirements and the penalties for violating them.

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.27 (relating to handling of completed reports); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); 6 Pa. Code § 15.104 (relating to penalties for violation of confidentiality requirements); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## § 15.104. Penalties for violation of confidentiality requirements.

(a) If a staff person who is authorized to have access to confidential information under this chapter is strongly suspected of violating the requirements in the signed confidentiality statement under § 15.103(c) (relating to responsibilities of staff with access to confidential information), that person shall be immediately suspended from protective services duties pending an investigation and determination of culpability.

(b) If a staff person who is authorized to have access to confidential information under this chapter is determined upon investigation to have violated the requirements in the signed confidentiality statement under § 15.103(c), that person shall be subject to the appropriate disciplinary action in the confidentiality statement.

### Cross References

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.27 (relating to handling of completed reports); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## § 15.105. Limited access to records and disclosure of information.

Information in a protective services case {file} record may not be disclosed, except as provided in this section.

(1) Information may be disclosed to a court of competent jurisdiction {or } under a court order. {Disclosure shall be made only to the court of common pleas.} The protective service agency shall disclose case {file} record information for the purpose of in camera review by the court.

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

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

(4) A subject of a report , **A COURT-APPOINTED GUARDIAN OR AN ATTORNEY PROVIDING LEGAL SERVICES TO THE SUBJECT OF THE REPORT** made under § 15.23 (relating to receiving reports; general agency responsibility) may receive, upon written request, information contained in the report except that prohibited from being disclosed by paragraph (5).

(5) The release of information that would identify the person who made a report of suspected abuse, neglect, exploitation or abandonment or a

person who cooperated in a subsequent investigation, is prohibited unless the Secretary can determine that the release will not be detrimental to the safety of the person. Prior to releasing information under this paragraph, the Secretary will notify the person whose identity would be released that the person has 45 days to advise the Secretary why this anticipated release would be detrimental to the safety of that person.

(6) When the Department is involved in the hearing of an appeal by a subject of a report made under § 15.23, the appropriate Department staff shall have access to information in the {report} case record relevant to the appeal.

(7) For the purposes of monitoring agency performance, appropriate staff of the Department may have access to agency protective services records.

(8) For the purposes of monitoring agency performance and carrying out other administrative responsibilities, individuals with local administrative authority over the protective services program may have access to agency protective services records.

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on area); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.82 (relating to rights of alleged abusers); 6 Pa. Code § 15.95 (relating to case management); 6 Pa. Code § 15.102 (relating to maintenance of case files); and 6 Pa. Code § 15.112 (relating to uses of finding authorized by the act).

## **FINANCIAL OBLIGATIONS**

### **§ 15.111. Coordination of available resources.**

(a) The agency shall insure that funding authorized under the act is not used to supplant public and private entitlements or resources as defined at § 15.2 (relating to definitions) for which ~~protective services clients~~ **OLDER ADULTS** are, or may be, eligible.

(b) The agency shall attempt to establish the {client's} older adult's eligibility for appropriate public and private entitlements and resources and shall exhaust the eligibility for benefits prior to the utilization of funds authorized by the act for the provision of services.

(c) The agency is required to coordinate the utilization of public and private entitlements and resources. This chapter does not establish a means test for the provision of protective services. A protective service client who receives a

service may not be required to pay a fee not required of other older adults receiving the same service.

### **§ 15.112. Uses of funding authorized by the act.**

The agency may utilize funding authorized by the act to pay for activities, including, but not limited to, the following:

- (1) Administering protective services plans as described at § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).
- (2) Receiving reports and maintaining records of reports as provided under §§ 15.23 and 15.101-15.105 (relating to receiving reports; general agency responsibility; and confidentiality).
- (3) Conducting investigations under §§ 15.41-15.47 (relating to investigating reports of need for protective services).
- (4) Conducting {client} assessments and developing service plans under §§ 15.92 and 15.93 (relating to {client needs} assessment; and service plan).
- (5) Petitioning the court under §§ 15.61-15.63 and 15.71-15.75 (relating to agency access to persons and records; and emergency intervention).
- (6) Providing emergency involuntary intervention under §§ 15.71-15.75.
- (7) Arranging for available services needed to carry out service plans, which may include, as appropriate, arranging for services for other household members to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult. The inclusion of services needed by other household members in the service plan will allow the agency to arrange for the provision of those services through public and private entitlements or resources for which the individuals are or may be eligible. The inclusion does not obligate the agency to pay for the services or to provide services which are not available from another appropriate provider.
- (8) Purchasing, on a temporary basis, services determined by the service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when the services are not available within the existing resources of the agency or another appropriate provider. Funding authorized by the act and expended under an area agency on aging protective services plan may not be used for the purchase of services which are already financed through other State-administered plans for local service delivery or through local public and private resources under those plans except with the specific prior approval of the Department. The protective services plan shall identify the agency's proposed expenditures for activities under this paragraph. The agency shall insure that every attempt has been made to provide the service through existing agency resources, appropriate utilization of other providers and the coordination of public and

private entitlements and resources prior to entering into the purchase of services for a protective services client.

### **Cross References**

This section cited in 6 Pa. Code § 15.91 (relating to general).

### **§ 15.113. Time limitation on service purchases.**

(a) After exhausting available steps to provide necessary services through existing agency resources, utilization of other providers and the coordination of public and private entitlements and resources, the agency may purchase those services on a time-limited basis.

(b) The purchase of services under this section is limited to a 30-day period which may be renewed only with adequate justification. The agency shall consider the 30-day period to be a maximum time limit for the purchase of services and not a standard time allotment. After the decision to purchase services has been made, the agency shall continue the pursuit of alternate ways to provide the services and terminate the purchase of services as soon as possible.

(c) If at the end of 30 days of continuous service purchase on behalf of an individual protective services client, the services are still necessary and still available only through purchase, complete justification of the need for services and documentation of the unavailability of the services shall be made a part of the ~~client~~ {reassessment required by} record as required by § 15.95(b) (relating to case management).

### **Cross References**

This section cited in 6 Pa. Code § 15.95 (relating to {case} care management).

### **§ 15.114. Obligation of the Commonwealth and the counties.**

The obligation of the Commonwealth and the counties to provide funds to the Department or an agency for services provided under this chapter shall be entirely discharged by the appropriations made to the Department or an agency. If the agency has met its responsibility under the law, no action at law or equity may be instituted in a court to require the Department, an agency, county or the Commonwealth to provide benefits or services under the act for which appropriations from the Commonwealth or counties are not available. The responsibility of the area agency on aging, the county and the Commonwealth to provide funding is met when resources authorized by the act and provided under approved area agency on aging plans have been expended.

## STAFF TRAINING AND EXPERIENCE STANDARDS

### § 15.121. Protective services staff qualifications.

(a) General. The area agency on aging shall assure that staff directly involved with the protective services caseload meet the minimum standards of training and experience in this chapter. The minimum standards apply to staff assigned to protective services on a full-time basis, a part-time basis or as standby staff. The minimum standards apply to incumbent staff as well as those hired after November 26, 1988.

(b) Criminal record. The protective services agency shall require persons to be hired or to be assigned to carry out responsibilities for protective services investigations, {client} assessments and service planning and arrangement to submit the following information:

(1) Under 18 Pa. C.S. §§ 9101-9183 (relating to the criminal history record information act), a report of criminal history record information from the State Police or a statement from the State Police that the State Police Central Repository contains no information relating to that person. The criminal history record information shall be limited to that which is disseminated under 18 Pa. C.S. § 9121(b)(2) (relating to general regulations).

(2) If the applicant or assignee is not a resident of this Commonwealth, a report of Federal criminal history record information under the Federal Bureau of Investigation appropriation of Title II of the Act of October 25, 1972 (Pub.L. 92-544, 86 Stat. 1109).

(c) Staff training and experience requirements. The minimum standards for protective services job functions are as follows:

(1) Protective services supervisor. A protective services supervisor shall:

(i) Have 3 years direct aging casework experience or an equivalent combination of education and experience.

(ii) Complete the curriculum described at § 15.122 (relating to protective services casework training curriculum).

(iii) Complete the curriculum described at § 15.123 (relating to protective services investigation training curriculum) if the protective services supervisor will be performing protective services investigations.

(iv) Complete written evaluations that assess competencies achieved by the learner.

(v) Undergo in-service training in protective services annually as required by the Department.

(2) Protective services caseworker. A protective services caseworker shall:

(i) Have 1 year direct aging casework experience.



- (ii) Complete the curriculum described at § 15.122.
  - (iii) Complete the curriculum described at § 15.123.
  - (iv) Complete written evaluations that assess competencies achieved by the learner.
  - (v) Undergo in-service training in protective services annually as required by the Department.
- (3) Protective services intake workers. Staff persons designated to receive reports of older adults who need protective services shall complete the curriculum under § 15.124 (relating to protective services intake training curriculum).

### Cross References

This section cited in 6 Pa. Code §15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.125 (relating to availability of training); and 6 Pa. Code § 15.126 (relating to training evaluation).

### § 15.122. Protective services casework training curriculum.

The protective services casework training curriculum shall consist of comprehensive training including, but not limited to, the following topics:

- (1) An overview of abuse, neglect, exploitation and abandonment.
- (2) Laws and regulations of the Commonwealth relating to elder abuse, neglect, exploitation and abandonment **OF OLDER ADULTS**.
- (3) Detection of abuse, neglect, exploitation and abandonment.
- (4) Protective services case assessments.
- (5) Provision of protective services.
- (6) Interviewing skills.
- (7) The resistant client **OLDER ADULT**.
- (8) Utilization of local resources.
- (9) ~~{ Incompetence }~~ **OR Incapacity**.
- (10) Relationships with other agencies.
- (11) Confidentiality.
- (12) Institutional investigations.
- (13) Service options for victims of abuse, neglect, exploitation and abandonment.
- (14) Informed consent.
- (15) Self-neglect.
- (16) Retaliation.

## **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.121 (relating to protective services staff qualifications); and 6 Pa. Code § 15.127 (relating to in-service training).

### **§ 15.123. Protective services investigation training curriculum.**

The protective services investigation training curriculum shall consist of comprehensive training including, but not limited to, the following topics:

- (1) Laws and regulations of the Commonwealth related to investigations and criminal procedures.
- (2) The criminal justice system.
- (3) Developing the investigative plan.
- (4) Investigative techniques.
- (5) Maintaining control of the interview.
- (6) Interviewing {the} reporters.
- (7) Interviewing collateral sources.
- (8) Interviewing {the} victims.
- (9) Observation techniques.
- (10) Techniques to obtain documentary evidence.
- (11) Techniques to gather and preserve physical evidence.
- (12) Closing the investigation.
- (13) Presenting testimony in court.
- (14) Coordination with other State Agencies.

## **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.121 (relating to protective services staff qualifications); and 6 Pa. Code § 15.127 (relating to in-service training).

#### **§ 15.124. Protective services intake training curriculum.**

The protective services intake training curriculum shall consist of training including, but not limited to, the following topics:

- (1) Interviewing the reporter.
- (2) Completion of the report form.
- (3) Preliminary case status assessment to determine report categories.
- (4) Requirements for referral of the report to the protective services staff.
- (5) Emergency procedures.
- (6) Confidentiality.

#### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.24 (relating to receiving reports; agency intake process); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); and 6 Pa. Code § 15.121 (relating to protective services staff qualifications).

#### **§ 15.125. Availability of training.**

(a) The Department will provide for the development of training curricula described in this section and will require the training to be conducted on a timely and recurring basis. The Department will also provide for annual in-service training.

(b) The agency shall utilize staff meeting the requirements in § 15.121(c)(1) and (2) (relating to protective services staff qualifications) to conduct training for protective services intake workers. The training shall be in conformity with the curriculum for protective services intake workers established by the Department.

#### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

## § 15.126. Training evaluation.

A person who completes the training set forth for each job function in § 15.121 (relating to protective services staff qualifications) shall complete written evaluations that assess competencies achieved by the learner.

### Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

## § 15.127. In-service training.

(a) In addition to the required training set forth in §§15.122 and 15.123 (relating to protective services casework training curriculum; and protective services investigation training curriculum), protective services supervisors and protective services caseworkers shall participate in in-service training in protective services as required by the Department each year beginning with the calendar year following completion of the required basic protective services training set forth in §11.122 (relating to protective services casework training curriculum).

(b) Annual in-service training **SHALL CONSIST OF A MINIMUM OF ONE DAY OF TRAINING AND** {shall} may include, but not be limited to, the following topics:

- (1) Update on laws and regulations relating to protective services.
- (2) Technical assistance for common problems.
- (3) Best practice presentations.

### Cross References

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code §§15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

## CRIMINAL HISTORY RECORD INFORMATION REPORTS

### § 15.131. Prospective facility personnel.

(a) General rule - A facility, as defined in § 15.2, shall require all applicants for employment to submit with their applications the following **WITH A criminal history record information REPORT**, obtained within the one-year **ONE YEAR** period immediately preceding the date of application, as appropriate **OR AS SET FORTH AT §15.134 (RELATING TO PROCEDURES), AS FOLLOWS:**

(1) State Police report **CRIMINAL HISTORY RECORD** - Facilities shall require all applicants to submit a report of **STATE POLICE criminal history record information** obtained from the State Police or a written statement from the State Police that their central repository contains no such information relating to such applicant.

(2) **FEDERAL CRIMINAL HISTORY RECORD. IF THE APPLICANT IS NOT AND FOR THE TWO YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION HAS NOT BEEN A RESIDENT OF THIS COMMONWEALTH, THE FACILITY SHALL REQUIRE THE APPLICANT FBI report** - Facilities shall require all applicants, who are not residents of Pennsylvania or have not resided in Pennsylvania for an uninterrupted period of two years preceding the date of application to the facility, to submit a n **FBI FEDERAL criminal history record information report** pursuant to the FBI's appropriation under the Departments of State, Justice and Commerce, the Judiciary and Related Agencies Appropriation Act of 1978 (Public Law 92-544, 86 Stat. 1109).

(3) Fingerprints. Applicants required to submit an **FBI criminal history record information report** shall submit **AND** a full set of fingerprints to the Department which will be forwarded to the **FBI FEDERAL BUREAU OF INVESTIGATION**, to comply with the requirement of this subsection.

(b) Proof of residency - Facilities may require an applicant to furnish proof of residency, including, but not limited to, **ANY ONE OF** the following documentation**S**, one or more of which shall be considered reasonable proof of residency:

(1) Motor vehicle records, such as a valid driver's license.

(2) Housing records, such as mortgage records, rent receipts or certification of residency in a nursing home.

(3) Public utility records and receipts, such as electric bills.

(4) Local tax records.

(5) A completed and signed, Federal, State or local income tax return with the applicant's name and address preprinted on it.

(6) Records of contacts with public or private social agencies.

(7) (6) Employment records, including records of unemployment compensation.

**§ 15.132 Facility personnel EMPLOYEE requirements.**

(a)- The following facility personnel EMPLOYEES are required to submit A criminal history record information REPORT, as described in Section 15.131 (Relating to prospective facility personnel):

(1) Persons serving as facility administrators and operators on July 1, 1998 who have direct contact with clients and were employed by the facility as administrators and operators for a period of less than one year of continuous employment shall comply with resident and, as applicable, non-resident criminal history record information REPORT requirements by July 1, 1999.

(2) Administrators and operators who have direct contact with clients and who began serving as administrators and operators after July 1, 1998, shall comply with the criminal history record information REPORT requirements within 90 30 days from the date of employment  
**PENNSYLVANIA RESIDENTS SHALL COMPLY WITHIN THIRTY DAYS OF EMPLOYMENT AND NON-RESIDENTS SHALL COMPLY WITHIN NINETY DAYS.**

(3) Employees of a facility on July 1, 1998, who were employed by the facility for a period of less than one year of continuous employment shall comply with the criminal history record information REPORT requirements by July 1, 1999.

**(4) (2) EMPLOYEES OF A FACILITY WHO WERE EMPLOYED AFTER JULY 1, 1998. PENNSYLVANIA RESIDENTS SHALL COMPLY WITHIN THIRTY DAYS OF EMPLOYMENT AND NON-RESIDENTS SHALL COMPLY WITHIN NINETY DAYS.**

**(4) (3) Exceptions:**

(i) Employees of the facility on July 1, 1998, who were employed by the facility for a continuous period of at least one year prior to July 1, 1998 are exempt from the requirements of this section.

(ii) Employees who have complied with the requirements of this section who transfer to another facility established or supervised, or both, by the same operator are exempt from compliance with the requirements of Section 15.131.

**(iii) EMPLOYEES WHO ARE EMPLOYED BY A NEW FACILITY SOLELY THROUGH A TRANSFER OF OWNERSHIP OF THAT FACILITY.**

**(iv) A CONSUMER ATTENDANT.**

- (v) AN INDIVIDUAL PROVIDING CARE TO A CARE-DEPENDENT PERSON, AND EMPLOYED BY THE CARE-DEPENDENT PERSON, OR BY ANOTHER PERSON DESIGNATED BY THE CARE-DEPENDENT PERSON, AND NOT BY OR THROUGH A HOME HEALTH CARE AGENCY.
- (vi) AN INDIVIDUAL, EMPLOYED BY AN ENTERPRISE THAT OPERATES FACILITIES AND NON FACILITIES IN THE SAME PHYSICAL LOCATION, WHO HAS NO EMPLOYMENT RESPONSIBILITIES IN THE FACILITY (EXAMPLE: AN INDIVIDUAL EMPLOYED BY A HOSPITAL WHICH ALSO HAS WITHIN IT A LONG-TERM CARE NURSING UNIT. THE INDIVIDUAL IS EMPLOYED TO WORK IN THE HOSPITAL).
- (vii) A CONTRACT EMPLOYEE WHO HAS NEITHER DIRECT CONTACT WITH RESIDENTS IN A FACILITY NOR UNSUPERVISED ACCESS.
- (viii) AN INDIVIDUAL, EMPLOYED BY A HOME HEALTH AGENCY OR OTHER ENTITY THAT SUPPLIES, ARRANGES FOR, OR REFERS PERSONNEL TO PROVIDE CARE TO CARE-DEPENDENT PERSONS, WHO IS EMPLOYED FOR PURPOSES OTHER THAN PROVIDING CARE IN A FACILITY OR IN A RECIPIENT'S PLACE OF RESIDENCE (EXAMPLE: AN INDIVIDUAL EMPLOYED AS A BOOKKEEPER BY AN AGENCY WHICH SUPPLIES HOMEMAKER/HOME HEALTH AIDES).
- (ix) AN INDIVIDUAL FUNCTIONING IN A FACILITY AS A VOLUNTEER.

~~(5) (b) Employees at facilities which THAT supply, arrange for, or refer their employees to provide care, as defined in this chapter, in other facilities shall comply with criminal history record information requirements in paragraph (3) by providing~~ **E A criminal history record information REPORT to the facility which THAT supplies, arranges for, or refers them AND TO THE FACILITY AT WHICH THEY PROVIDE CARE.** ~~The grandfathering and transfer exemptions OF THIS SECTION in paragraph (4) also, as ARE applicable, apply to these employees. (Example: Employees of a home health care staffing agency assigned by the agency to provide care in a long-term care nursing facility must provide~~ **A criminal history record information REPORT to the staffing agency AND TO THE LONG-TERM CARE NURSING FACILITY).** ~~THE STAFFING AGENCY SHALL BE RESPONSIBLE FOR NOTIFYING THE EMPLOYEE OF CRIMINAL HISTORY REPORT REQUIREMENTS.~~

~~(6) Exceptions: Employees referenced in (5) who have complied with applicable criminal history record information requirements in accordance~~

~~with this Chapter are not required to submit criminal history record information to the facilities to which they are supplied, referred, or for which their services are arranged.~~

- ~~(b) Employees are responsible for determining whether they are required to obtain a criminal history record information report as required by this Section. If an employee fails to comply with the requirements of this Section and is subsequently terminated for failure to comply within the required time period, the facility cannot be held liable for failure to inform the employee of his obligations under this Section.~~
- (c) CRIMINAL HISTORY REPORTS PROVIDED BY THE PENNSYLVANIA DEPARTMENT OF EDUCATION, PURSUANT TO THE NURSE AIDE RESIDENT ABUSE PREVENTION TRAINING ACT (63 P.S. §§671-680), WHICH MEET THE CRITERIA ESTABLISHED IN THIS CHAPTER MAY BE ACCEPTED TO SATISFY THE REQUIREMENTS OF THIS CHAPTER.**

### § 15.133 Facility responsibilities

~~(a) A facility shall not hire an applicant nor retain an employee required to submit a criminal history record information report where **IF** the **CRIMINAL HISTORY** report reveals a felony conviction under the act of April 14, 1972 (P.S. 238, No. 64) known as The Controlled Substance, Drug, Device or **AND** Cosmetic Act (35 P.S. §§780—101—780—149144).~~

~~(b) A facility shall not hire an applicant nor retain any employee required to submit a criminal history record information report where **IF** the **CRIMINAL HISTORY** report reveals a conviction under one or more of the **FOLLOWING** provisions of 18 Pa.C.S. (relating to the Crimes Code):~~

~~Chapter 25 (relating to criminal homicide):~~

~~§ 2702 (relating to aggravated assault):~~

~~§ 2901 (relating to kidnapping):~~

~~§ 2902 (relating to unlawful restraint):~~

~~§ 3121 (relating to rape):~~

~~§ 3122.1 (relating to statutory sexual assault):~~

~~§ 3123 (relating to involuntary deviate sexual intercourse):~~

~~§ 3124.1 (relating to sexual assault):~~

~~§ 3125 (relating to aggravated indecent assault):~~

~~§ 3126 (relating to indecent assault):~~

~~§ 3127 (relating to indecent exposure):~~

~~§ 3301 (relating to arson and related offenses):~~

~~§ 3502 (relating to burglary):~~

~~§ 3701 (relating to robbery):~~



~~A felony offense under Chapter 39 (relating to theft and related offenses), or two or more misdemeanors under Chapter 39. § 4104 (relating to forgery).~~

~~§ 4114 (relating to securing execution of documents by deception).~~

~~§ 4302 (relating to incest).~~

~~§ 4303 (relating to concealing death of child).~~

~~§ 4304 (relating to endangering welfare of children).~~

~~§ 4305 (relating to dealing in infant children).~~

~~§ 4952 (relating to intimidation of witnesses or victims).~~

~~§ 4953 (relating to retaliation against witness or victim).~~

~~A felony offense under § 5902(b) (relating to prostitution and related offenses).~~

~~§ 5903(c) or (d) (relating to obscene and other sexual materials and performances).~~

~~§ 6301 (relating to corruption of minors).~~

~~§ 6312 (relating to sexual abuse of children).~~

~~(1) — If a facility receives a report from the State Police showing open disposition for a crime which would prohibit hiring an applicant or retaining an employee, the administrator or designee shall require the applicant or employee to obtain and submit court documents showing disposition within 60 days of receipt of the original report. Failure to provide court documents as required will result in an administrative prohibition against hiring or retention. If the reason for open disposition is court scheduling, the administrator or designee shall check status every 30 days until a court date is set and, thereafter, as appropriate in order to receive the disposition as soon as possible.~~

~~(d)(e) A facility shall not hire an applicant nor retain an employee required to submit a criminal history record information report when IF the criminal background check reports **CRIMINAL HISTORY REPORT REVEALS** conviction of a Federal or out-of-state offense similar in nature, as determined by the Department, to those listed in subsections (a) and (b):~~

~~(e) (d) A facility shall ensure that applicant **OR EMPLOYEE** responsibility to obtain criminal history record check(s) **REPORTS** is explained to each applicant **OR EMPLOYEE** orally **AND IN WRITING** in a language understood by the applicant **OR EMPLOYEE**.~~

~~(f) (B) A facility shall ensure that information obtained from the criminal history record remains confidential and is used solely to determine an applicant's eligibility for employment. **FACILITIES SHALL MAINTAIN EMPLOYMENT RECORDS WHICH INCLUDE COPIES OF COMPLETED REQUEST FORMS FOR CRIMINAL HISTORY REPORTS, STATE POLICE CRIMINAL HISTORY RECORDS AND DEPARTMENT LETTERS OF**~~

## **DETERMINATION REGARDING FEDERAL CRIMINAL HISTORY RECORDS.**

~~(g) (C) Facilities, except those referenced in Section 15.132 (a)(6)) (relating to facility personnel requirements), shall maintain employment records which include a copy of the completed request form for the State Police criminal history record check or of the completed State Police criminal history record check, SP-4-64, issued in response to a request for a criminal background check. AN ADMINISTRATOR SHALL ASSURE THAT INFORMATION OBTAINED FROM STATE POLICE CRIMINAL HISTORY RECORDS AND DEPARTMENT LETTERS OF DETERMINATION REGARDING FEDERAL CRIMINAL HISTORY RECORDS REMAIN CONFIDENTIAL AND ARE USED SOLELY TO DETERMINE AN APPLICANT'S ELIGIBILITY FOR EMPLOYMENT OR AN EMPLOYEE'S ELIGIBILITY FOR RETENTION.~~

~~(h) (D) Facilities, except those referenced in Section 15.132 (a)(6)) (relating to facility personnel requirements), shall maintain employment records which include, as applicable, a copy of the completed request form for the FBI criminal history record check or a copy of the FBI criminal history record check form showing no convictions for one or more Federal or out-of-state offenses similar in nature to the provisions in subsection (b), as determined by the Department.~~

~~(i) Facilities at which care is provided by employees supplied, referred or arranged by other facilities shall, at a minimum, obtain from those other facilities written assurance that:~~

~~(1) Employees who are supplied, referred or arranged have complied with criminal history record information requirements in this Chapter.~~

~~(2) Employee criminal history record information will be made available when necessary.~~

**IF THE DECISION NOT TO HIRE OR TO TERMINATE EMPLOYMENT IS BASED IN WHOLE OR IN PART ON STATE POLICE CRIMINAL HISTORY RECORDS, DEPARTMENT LETTERS OF DETERMINATION REGARDING FEDERAL CRIMINAL HISTORY RECORDS, OR BOTH, FACILITIES MUST PROVIDE APPLICANTS AND EMPLOYEES WITH INFORMATION ON HOW TO APPEAL TO THE SOURCES OF CRIMINAL HISTORY RECORDS IF THEY BELIEVE THE RECORDS ARE IN ERROR.**

### **§ 15.134 Procedure.**

~~(a) Applicants and facility personnel~~ **EMPLOYEES** ~~required to obtain a criminal history record information report from the State Police may obtain forms from a State Policy facility.~~

~~(1) The State Police may charge a fee of not more than \$10.00. A facility's check, cashier's check, certified check or money order shall~~

accompany the request unless other payment arrangements are made with the State Police.

(2) Facilities may at their option require that applicants and facility personnel **EMPLOYEES TO** return the form to a designated individual for submission of the request by the facility.

(b) Applicants and facility personnel **EMPLOYEES** required to obtain a Federal criminal history record information report from the FBI shall obtain the information packet from the facility or contact the Department for instructions, all necessary forms and the required FBI fingerprint card.

(1) Applicants and facility personnel **EMPLOYEES** shall return the FBI **FEDERAL BUREAU OF INVESTIGATION** fingerprint card and forms, and a **CASHIER'S check, CERTIFIED CHECK, OR MONEY ORDER PAYABLE TO THE FEDERAL BUREAU OF INVESTIGATION** in an **THE EXACT** amount not to exceed the established fee set by the FBI **FEDERAL BUREAU OF INVESTIGATION.** Upon receipt, the Department will submit the request to the State Police within five working days for transfer to the FBI **FEDERAL BUREAU OF INVESTIGATION**. All checks should be written to the FBI.

(2) Upon receipt of the completed criminal history record information report from the FBI **FEDERAL BUREAU OF INVESTIGATION**, the Department will determine if the applicant is eligible for employment **OR IF THE EMPLOYEE MAY BE RETAINED.** and **THE DEPARTMENT** will contact the applicant **OR EMPLOYEE** with a written statement **LETTER OF DETERMINATION** within ten thirty working days.

~~(3) If the Department receives a report from the FBI showing open disposition for a crime which would prohibit hiring an applicant or retaining an employee, the Department shall require the applicant or employee to obtain and submit to the Department court documents showing disposition, within 60 days of the date the Department notifies the applicant or employee. Failure to provide court documents as required will result in an administrative prohibition against hiring or retention.~~

**(C) APPLICANTS AND EMPLOYEES SHALL COMPLETE ALL NECESSARY FORMS. FACILITIES SHALL ASSIST AN APPLICANT OR EMPLOYEE COMPLY WITH THIS REQUIREMENT IF REQUESTED.**

~~(D)(c) While submission of criminal history record information to facility administrators or their designees is the responsibility of the applicant ; fFacility administrators may assume financial responsibility for the fees through a quarterly payment system.~~

~~(d) Applicants and facility personnel are responsible to fill out all necessary forms to comply with this section. Facilities shall assist an applicant or employee in complying with this requirement if requested.~~

~~(e) Applicants and facility personnel shall obtain both Pennsylvania and FBI criminal history record information reports obtained no longer than one year prior to their application for employment. Administrators, operators and non-exempt employees shall, within the time limits required for submitting criminal checks, provide Pennsylvania and FBI checks obtained no longer than one year prior to their date of submission. If the date of the record report exceeds the one year prior to application for employment or the required date of submission for administrators, operators and non-exempt employees, a new clearance shall be obtained.~~

~~(f) (E) Applicants and facility personnel are~~ **EMPLOYEES ARE** ~~responsible for reviewing all THEIR OWN criminal history record information reports for accuracy.~~

~~(g) Applicants and facility personnel may question the Department's determination by submitting a request for review within 30 days of receipt of the determination.~~

### § 15.135 Applicant OR EMPLOYEE rights of review.

~~(a) An applicant OR EMPLOYEE may review, challenge and appeal the completeness or accuracy of the applicant's OR EMPLOYEE'S criminal history record information report under 18 Pa.C.S. Sections 9125, SECTIONS 9152-9183 (relating to the Criminal History Information Act), and, if applicable, OR Federal regulations at 28 CFR Section 16.34, OR BOTH.~~

~~(b) If an applicant's criminal history record is, as a result of a challenge by the applicant, changed so as to remove any disqualification for employment, a facility may reconsider the applicant's application for any positions available at that time.~~ **AN APPLICANT OR EMPLOYEE MAY CHALLENGE THE CONVICTION COMPARISON INTERPRETATION OF THE DEPARTMENT INVOLVING THE FEDERAL CRIMINAL HISTORY RECORD BY FILING AN APPEAL WITH THE DEPARTMENT UNDER 1 PA CODE CHAPTER 35 (RELATING TO FORMAL PROCEEDINGS IN ADMINISTRATIVE PRACTICE AND PROCEDURE) AND 6 PA CODE CHAPTER 3 (RELATING TO FAIR HEARINGS AND APPEALS). APPEALS MUST BE POSTMARKED WITHIN 30 DAYS FROM RECEIPT OF THE DEPARTMENT'S LETTER AND BE IN WRITING TO THE ATTENTION OF THE SECRETARY OF THE DEPARTMENT.**

~~(c) If an applicant's challenge to the criminal history record is deemed invalid, the applicant's rights for reconsideration by the facility are exhausted.~~

§ 15.136 Facility personnel rights of review and appeal. [Reserved]

~~(a) Facility personnel, may review, challenge and appeal the completeness or accuracy of criminal history record information report pursuant to the procedures set forth in the Criminal History Record Information Act (18 Pa. C.S.A. Sections 9152-9183) and, if applicable, Federal regulations at 28 CFR Section 16.34.~~

~~(b) If an employee's criminal history record information report is, as a result of a challenge by the employee, changed so as to remove any basis for termination, the facility must reinstate the employee to either the employee's former position or an equivalent position.~~

~~(c) An employee's challenge to the criminal record information report is limited to the appeal rights set forth in the Criminal History Record Information Act (18 Pa. C.S. Sections 9152-9183).~~

§ 15.137 Provisional hiring.

~~(a) Administrators **FACILITIES** may employ applicants on a provisional basis for a single period, not to exceed 30 days for applicants applying for the Pennsylvania **REQUESTING A STATE POLICE** criminal history record information report, and **A SINGLE PERIOD** not to exceed 90 days for applicants applying for the **REQUESTING A FBI FEDERAL** criminal history record information report, if all of the following conditions are met:~~

~~(1) Applicants **SHALL** have applied for the information required under § 15.131 **A CRIMINAL HISTORY REPORT** and provided **D** the administrator **FACILITY** with a copy of the completed request forms.~~

~~(2) The administrator **FACILITY SHALL** has **HAVE** no knowledge about **THE** applicants which **THAT** would disqualify them **THE APPLICANT** from employment pursuant to the Acts, subject to **UNDER 18 Pa. C.S. § 4911** (relating to tampering with public record information).~~

~~(3) **THE A** applicants **SHALL** swear or affirm in writing that they are **THE APPLICANT IS** not disqualified from employment under the Act.~~

~~(4) If the information obtained from the criminal history record checks reveals that applicants are disqualified from employment in accordance with § 15.133, the applicant shall be dismissed immediately.~~

~~(5) **(4)** The provisionally employed applicant **SHALL** receives:~~

~~(i) **A**An orientation which provides information on policies, procedures and laws which address standards of proper care and recognition and reporting of abuse or neglect, or both, of recipients.~~

~~(ii) **(3) THE FACILITY SHALL** **r**RegularLY supervisory**E** observation of the applicant carrying out the applicant's **ASSIGNED** duties. **THE RESULTS OF THE OBSERVATIONS SHALL BE DOCUMENTED IN THE EMPLOYEE PERSONNEL FILE.**~~

~~(6)~~ (4) For a A home health care agency, SHALL SUPERVISE the supervision of a provisionally employed applicant shall include THROUGH random, direct observation/ AND evaluation of the applicant and care recipient by an employee who has been employed by the home health agency for at least one year. THE RESULTS OF THE OBSERVATIONS SHALL BE DOCUMENTED IN THE EMPLOYEE PERSONNEL FILE.

~~(7)~~(5) For a A home health agency which has been in business for less than one year, supervision of a provisionally employed SHALL SUPERVISE THE applicant shall include THROUGH random, direct observation/ AND evaluation of the applicant and care recipient by an employee with prior employment experience of at least one year with one or more other home health care agencies. THE RESULTS OF THE OBSERVATIONS SHALL BE DOCUMENTED IN THE EMPLOYEE PERSONNEL FILE.

~~(B) IF THE INFORMATION OBTAINED FROM THE CRIMINAL HISTORY REPORT REVEALS THAT THE APPLICANT IS DISQUALIFIED FROM EMPLOYMENT IN ACCORDANCE WITH §15.33, THE APPLICANT SHALL BE DISMISSED IMMEDIATELY.~~

~~(b) (c) The administrator or designee shall on the 30th day of provisional employment for a Pennsylvania resident applicant or the 90th day for a non-resident applicant review the contents of the applicant's personnel file ON THE 30TH DAY OF PROVISIONAL EMPLOYMENT OF A PENNSYLVANIA RESIDENT APPLICANT OR THE 90TH DAY OF PROVISIONAL EMPLOYMENT OF A NON-RESIDENT APPLICANT to insure that the required copy of the State Police CRIMINAL HISTORY RECORD or FBI, THE LETTER OF DETERMINATION ISSUED BY THE DEPARTMENT, OR BOTH criminal background check results is physically present in the folder along with the correspondence from the State Police or the Department advising that the applicant's employment may be continued or must be terminated.~~

~~(c) (D) Except as provided in subsection (d)(E), if inspection of the file on day 30 or 90, as appropriate, reveals that the information noted in subsections (a) and (b) STATE POLICE CRIMINAL HISTORY RECORD, THE LETTER OF DETERMINATION ISSUED BY THE DEPARTMENT, OR BOTH has not been provided to the employer, the applicant's employment shall be immediately suspended or terminated.~~

~~(d) (E) If information regarding THE criminal history record reports, THE LETTER OF DETERMINATION ISSUED BY THE DEPARTMENT, OR BOTH, has not been provided as required due to the inability of the State Police or the FBI FEDERAL BUREAU OF INVESTIGATION to provide it within the mandated time frames THEM TIMELY, the period of provisional~~

employment is **SHALL BE** extended until the facility receives the required reports from the State Police or FBI. **DURING THE EXTENDED PROVISIONAL EMPLOYMENT PERIOD, THE SUPERVISION AND DOCUMENTATION REQUIREMENTS OF THIS SECTION SHALL BE CONTINUED.**

### § 15.138 Violations

#### (a) Administrative -

(1) An administrator or a designee OR FACILITY OWNER-OPERATOR who intentionally or willfully fails to comply or obstructs compliance with §§ 15.131 through 15.137 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 § 15.131 through 15.137 of this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).

(3) VIOLATIONS AND PENALTIES SHALL BE DETERMINED BY ~~±~~The Commonwealth agency which THAT licenses the facility, has jurisdiction to determine violations of this chapter and THE COMMONWEALTH AGENCY 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). AN ORDER ISSUED PURSUANT TO THIS PARAGRAPH IS SUBJECT TO DUE PROCESS AS SET FORTH IN 2 PA.C.S.A. §§ 501-555 (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES) AND JUDICIAL REVIEW IN 2 PA.C.S.A. §§ 701-754 (RELATING TO JUDICIAL REVIEW).

(4) (3) REPRESENTATIVES OF THE DEPARTMENTS OF AGING, HEALTH AND WELFARE WHO SUSPECT VIOLATIONS OF THIS SECTION To assist Commonwealth agencies carry out the responsibilities set forth in paragraph (3), representatives of these agencies who have knowledge of violations shall report them to the appropriate Commonwealth licensing agency UNDER PROCEDURES DEVELOPED BY THE DEPARTMENT IN CONSULTATION WITH THE LICENSING AGENCY. THE REPORT SHALL BE MADE IN WRITING AND INCLUDE, AT A MINIMUM, THE FACILITY, THE ADMINISTRATOR, OWNER, OPERATOR OR DESIGNEE SUSPECTED OF COMMITTING THE VIOLATION AND A DESCRIPTION OF THE SUSPECTED VIOLATION.

#### (b) Criminal -

(1) An administrator or a designee OR FACILITY OWNER who intentionally or willfully fails to comply or obstructs compliance with SECTIONS 15.131 THROUGH 15.137 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.

## REPORTING SUSPECTED ABUSE

### § 15.141. General requirements.

(a) Administrators or employees who have reasonable cause to suspect that a client RECIPIENT is a victim of abuse shall:

(1) Immediately make an oral report to the agency.

(2) Within 48 hours of making the oral report, mMake a written report to the agency WITHIN 48 HOURS.

(b) Employees making oral or written reports shall immediately notify the facility administrator OR DESIGNEE of these reports.

(c) Agencies shall notify facility administrators, or their designees, and State agencies with facility licensing responsibilities immediately when written reports of abuse are received.

(d) Employees required to report abuse may request facility administrators or their designees to make, or assist them THE EMPLOYEES to make, oral or written reports.

### § 15.142. Additional reporting requirements.

(a) ADMINISTRATORS OR EEmployees or administrators who have reasonable cause to suspect that a recipient is the victim of sexual abuse, serious physical injury or serious bodily injury, or that a recipient's death is suspicious, shall, in addition to the reporting requirements in Section 15.141(a):

(1) Immediately make an oral report to law enforcement officials. An employee shall immediately notify the FACILITY administrator or a designee following a report to law enforcement officials.

(2) Make an oral report to the Department during the current business day or, if the incident occurs after normal business hours, at the opening of the next business day.



- (3) MAKE A WRITTEN REPORT ~~W~~Within 48 hours of making the oral report, ~~make a written report~~ to law enforcement officials and the agency.
- (b) Law enforcement officials will SHALL promptly notify facility administrators or their designees that reports have been made with them.
- (C) ADMINISTRATORS OR EMPLOYEES SHALL, IN ADDITION TO COMPLYING WITH THESE REQUIREMENTS, COMPLY WITH ANY REPORTING REQUIREMENTS OF THE COMMONWEALTH LICENSING AGENCY THAT LICENSES OR FUNDS THE FACILITY.**

**§ 15.143. Contents of reports.**

- ~~(a) Written reports under Sections 15.141 and 15.142 must be made on forms supplied by the Department. The Department will provide facilities with initial supplies; facilities may duplicate report forms for submission to agencies and law enforcement officials.~~ **WRITTEN REPORTS UNDER §§ 15.141 AND 15.142 SHALL BE MADE ON FORMS SUPPLIED OR APPROVED BY THE DEPARTMENT.**
- (b) The report shall include, at a minimum, the following information:
- (1) Name, age and address of recipient.
  - (2) Name, address of recipient's guardian or next-of-kin.
  - (3) Facility name and address.
  - (4) Description of the incident.
  - (5) Specific comments or observations.

**§ 15.144. Reports to Department and coroner by agencies.**

- (a) Department
- (1) Within 48 hours of receipt of a written report under §15.142 involving sexual abuse, serious physical injury, serious bodily injury or suspicious death, the agency shall transmit a written report to the department.
  - ~~(2) Within 48 hours of receipt of a written report under § 15.142 involving a victim/recipient under age 60, the agency shall transmit a copy of the report to the Department.~~
  - (3) (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 evidence of prior abuse.

(v) The name and relationship of the individual responsible for causing the alleged abuse to the victim, if known, and 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).

(b) Coroner - For a report under §15.142 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. COUNTY CORONER OF THE COUNTY WHEREIN THE DEATH OCCURRED.

### § 15.145. Investigation.

(a) Upon receipt of a report under §§15.141 and 15.142, protective services officials **THE AGENCY** shall respond as follows:

(1) If the victim/ **OR** recipient is aged 60 YEARS OF AGE or older, the agency shall conduct an investigation to determine if the older person who is the subject of the report is in need of protective services. The investigation by the agency shall be conducted as set forth at §15.41 through 15.47 (relating to investigating reports of need for protective services).

(2) If the victim/ **OR** recipient is under 60 years of age, the agency may not conduct an investigation. **THE** Investigation of such **THE** reports shall be conducted by the state agency, if any, which **THAT** licensed the facility.

(3) If the victim/ **OR** recipient is under 18 years of age, the agency shall notify, and forward reports to, the regional office of the Department of Public Welfare, Office of Children, Youth and Families or the state "ChildLine" and the county office of child protective services.

(4) If the under age 60 victim/recipient resides in a nursing home or is receiving home health services, the agency shall notify the Regional Office of the Department of Health and forward reports to that Office. **IF THE VICTIM OR RECIPIENT RESIDES IN A NURSING HOME OR IS RECEIVING HOME HEALTH SERVICES, THE AGENCY SHALL NOTIFY AND FORWARD REPORTS TO THE DEPARTMENT OF HEALTH OFFICE WITH FACILITY LICENSING RESPONSIBILITIES AND THE REGIONAL OFFICE OF THE DEPARTMENT OF HEALTH.**

(5) If the under age 60 victim/recipient resides in a personal care home, the agency shall notify the Regional Office of the Department of Public

~~Welfare and forward reports to that Office.~~ **IF THE VICTIM OR RECIPIENT RESIDES IN A PERSONAL CARE HOME, THE AGENCY SHALL NOTIFY AND FORWARD REPORTS TO THE DEPARTMENT OF PUBLIC WELFARE REGIONAL OFFICE WITH FACILITY LICENSING RESPONSIBILITIES.**

~~(6) If the under age 60 victim/ OR recipient resides in a Domiciliary Care home or receives services from an adult day care center~~ **ADULT DAILY LIVING CENTER, the agency shall notify AND FORWARD REPORTS TO the Department and forward reports to that Department.**

~~(7) If the agency has knowledge or believes that the victim/recipient has mental retardation or mental health issues, the agency shall notify the county MH/MR office in addition to making other reports required by this subsection.~~ **IF THE AGENCY HAS KNOWLEDGE OR BELIEVES THAT THE VICTIM OR RECIPIENT HAS MENTAL RETARDATION OR A MENTAL HEALTH CONDITION, THE AGENCY SHALL NOTIFY THE DEPARTMENT OF PUBLIC WELFARE OFFICE WITH FACILITY LICENSING RESPONSIBILITIES AND THE COUNTY MH/MR OFFICE IN ADDITION TO MAKING OTHER REPORTS REQUIRED BY THIS SUBSECTION.**

~~(b) Cooperation. To the fullest extent possible, law enforcement officials, the facility ,~~ **THE COMMONWEALTH AGENCY THAT LICENSED THE FACILITY and the agency shall coordinate their respective investigations. Law enforcement officials, the facility , and the agency shall advise each other and provide applicable additional information on an ongoing basis.**

#### **§ 15.146. Restrictions on employees.**

~~(a) Facility plan of supervision. - Within 90 days of publication of these regulations, facilities shall develop and submit to the agency and the Commonwealth agency with regulatory authority over the facility a copy of their facility supervision/suspension plan. The plan shall:~~

~~(1) Describe policies and procedures to be followed upon notification that an employee is alleged to have committed abuse of a recipient.~~

~~(2) Describe how and by whom supervision of alleged abusers will be carried out.~~

~~(3) Describe the process of rendering a decision to suspend an employee.~~

~~(b) Following written approval of plans by the agency and the Commonwealth agency with regulatory authority over the facility, facilities shall follow these plans in instances involving allegations of abuse by employees.~~

~~(c) Changes to plans shall be approved in writing by the agency and the Commonwealth agency with regulatory authority over the facility prior to their implementation.~~

~~(d) Individual plan of supervision - Upon notification that an employee is alleged to have committed abuse, the facility shall immediately implement the plan of supervision or, where appropriate, suspension of the employee. The facility shall immediately submit to the agency and the Commonwealth agency with regulatory authority over the facility a copy of the employee's supervision plan pertaining to the specific instance of alleged abuse for approval.~~

~~(e) Following approval of an individual plan of supervision/suspension/termination by the agency and Commonwealth agency, the facility shall follow the plan. Changes to the plan must be approved by the agency and the Commonwealth agency with regulatory authority over the facility prior to their implementation.~~

~~(f) Supervision plan for home health agencies - The plan of supervision established by a home health care agency must, in addition to the requirements in (a) through (e), include periodic, random direct observation/evaluation of the employee and care recipient by an individual continuously employed by the home health care agency for at least one year. For a home health agency in business for less than one year, supervision must include random, direct observation/evaluation by an employee with prior employment experience of at least one year with one or more other home health care agencies.~~

~~(g) Prohibition - Upon 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 the employee is a director, operator, administrator or supervisor, the employee shall be subject to restrictions deemed appropriate by the Commonwealth agency which licenses the facility to assure the safety of recipients at the facility.~~

- (A) UPON NOTIFICATION THAT AN EMPLOYEE IS ALLEGED TO HAVE COMMITTED ABUSE, THE FACILITY SHALL, WITHIN 72 HOURS, IMMEDIATELY DEVELOP AND IMPLEMENT AN INDIVIDUAL PLAN OF SUPERVISION OR, WHEN APPROPRIATE, SUSPENSION OF THE EMPLOYEE. THE FACILITY SHALL WITHIN 72 HOURS SUBMIT TO THE AGENCY AND THE COMMONWEALTH AGENCY WITH REGULATORY AUTHORITY OVER THE FACILITY A COPY OF THE EMPLOYEE'S INDIVIDUAL PLAN OF SUPERVISION FOR APPROVAL WITHIN THE AGENCIES' ACCEPTED TIMEFRAMES.**
- (B) FOLLOWING APPROVAL OF AN INDIVIDUAL PLAN OF SUPERVISION BY THE AGENCY AND COMMONWEALTH AGENCY, THE FACILITY SHALL FOLLOW THE PLAN. CHANGES TO THE PLAN MUST BE APPROVED BY THE AGENCY AND THE COMMONWEALTH AGENCY WITH REGULATORY AUTHORITY OVER THE FACILITY PRIOR TO THEIR IMPLEMENTATION.**
- (C) THE INDIVIDUAL PLAN OF SUPERVISION ESTABLISHED BY A HOME HEALTH CARE AGENCY SHALL, IN ADDITION TO THE**

REQUIREMENTS OF THIS SECTION, INCLUDE PERIODIC, RANDOM DIRECT OBSERVATION AND EVALUATION OF THE EMPLOYEE AND CARE RECIPIENT BY AN INDIVIDUAL CONTINUOUSLY EMPLOYED BY THE HOME HEALTH CARE AGENCY FOR AT LEAST ONE YEAR. FOR A HOME HEALTH AGENCY IN BUSINESS FOR LESS THAN ONE YEAR, SUPERVISION SHALL INCLUDE RANDOM, DIRECT OBSERVATION

- (D) AND EVALUATION BY AN EMPLOYEE WITH PRIOR EMPLOYMENT EXPERIENCE OF AT LEAST ONE YEAR WITH ONE OR MORE OTHER HOME HEALTH CARE AGENCIES.
- (E) UPON BEING NOTIFIED BY LAW ENFORCEMENT OFFICIALS OF A DECISION TO FILE CRIMINAL CHARGES AGAINST AN EMPLOYEE, AS A RESULT OF A REPORT MADE IN COMPLIANCE WITH SECTION 15.142, THE FACILITY SHALL INFORM THE COMMONWEALTH AGENCY THAT LICENSES THE FACILITY. THE COMMONWEALTH LICENSING AGENCY SHALL ORDER THE FACILITY TO IMMEDIATELY DENY THE EMPLOYEE ACCESS TO RECIPIENTS AT THE FACILITY. IF THE EMPLOYEE IS A DIRECTOR, OPERATOR, ADMINISTRATOR OR SUPERVISOR, THE EMPLOYEE SHALL BE SUBJECT TO RESTRICTIONS BY THE COMMONWEALTH LICENSING AGENCY TO ASSURE THE SAFETY OF RECIPIENTS AT THE FACILITY.

**§ 15.147. Confidentiality of and access to confidential reports.**

(a) General rule. Except as provided in subsection (b) AND SECTION 15.105, all information concerning a report under this chapter shall be confidential.

(b) Exceptions. Relevant information concerning a report under this chapter shall be made available to 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, INCLUDING THE LONG TERM CARE OMBUDSMAN.

(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~~ THAT 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 a hospital or other medical institution where a THE victim is

being treated if the director or designee suspects that the recipient is in need of protection under this chapter.

(6) The recipient or the 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 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 **THE** 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.

## § 15.148. Penalties.

(a) Administrative.

(1) An administrator or a designee **OR FACILITY OWNER** who intentionally or willfully fails to comply or obstructs compliance with § 15.141 through 15.147 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 § 15.141 through 15.147 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) **VIOLATIONS AND PENALTIES SHALL BE DETERMINED BY THE** Commonwealth agency which **THAT** regulates the facility. has jurisdiction to determine violations of this chapter and **THE COMMONWEALTH AGENCY** 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):~~ **AN ORDER ISSUED PURSUANT TO THIS PARAGRAPH IS SUBJECT TO DUE PROCESS AS SET FORTH IN 2 PA.C.S.A. §§501-555 (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES) AND JUDICIAL REVIEW IN 2 PA.C.S.A. §§ 701-754 (RELATING TO JUDICIAL REVIEW).**

~~(4)~~ **(3) REPRESENTATIVES OF THE DEPARTMENTS OF AGING, HEALTH AND WELFARE WHO SUSPECT VIOLATIONS OF THIS SECTION** ~~In order to assist Commonwealth agencies to implement the responsibilities set forth in paragraph (3), representatives of these agencies who have knowledge of violations will report them to the appropriate Commonwealth licensing agency~~ **UNDER PROCEDURES DEVELOPED BY THE DEPARTMENT IN CONSULTATION WITH THE LICENSING AGENCY. THE REPORT SHALL BE MADE IN WRITING AND INCLUDE, AT A MINIMUM, THE FACILITY, THE ADMINISTRATOR, OWNER, OPERATOR OR DESIGNEE SUSPECTED OF COMMITTING THE VIOLATION AND A DESCRIPTION OF THE SUSPECTED VIOLATION.**

**(b) Criminal.**

~~(1)~~ **An administrator or a designee OR FACILITY OWNER who intentionally or willfully fails to comply, or obstructs compliance, with §§15.141 THROUGH 15.147 OF 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 UNDER §§ 15.141 THROUGH 15.147 AND 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. If the agency learns of a person's refusal to complete all reporting requirements, the agency shall notify the police WITHIN 72 HOURS.**

**§ 15.149. Immunity.**

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

**OTHER ADMINISTRATIVE PROVISIONS**

**§ 15.{131}161. Waivers.**

(a) The Department may, at its discretion and for justifiable reason, grant exceptions to and departures from this chapter to an area agency on aging when the area agency on aging can, by clear and convincing evidence, demonstrate that compliance would cause an unreasonable and undue hardship upon the area agency on aging and that an exception would not impair the health, safety or welfare of a ~~protective services client~~ **OLDER ADULTS** or otherwise compromise the intent of this chapter. The Department cannot, however, waive statutory requirements in the act.

(b) A waiver request shall be made in writing to the Secretary. A request shall specifically identify and explain the burden created by the requirement for which the exception is being sought, the alternative method for fulfilling the basic intent of the requirement and evidence of the steps to be taken to assure that the health, safety and welfare of ~~protective services clients~~ **OLDER ADULTS** will not be compromised.

(c) An exception granted under this chapter may be revoked by the Department at its discretion for a justifiable reason. Notice of revocation will be in writing and will include the reason for the action of the Department and a specific date upon which the exception will be terminated.

(d) In revoking an exception, the Department will provide for a reasonable time between the date of written notice of revocation and the date of termination of an exception for the agency to come into compliance with the applicable regulations.

(e) If an agency wishes to request a reconsideration of a denial or revocation of an exception, it shall do so in writing to the Secretary within 15 days of receipt of the adverse notification.



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**\* Requested additional information about the final-form regulations**

**Title 6. Aging**

**CHAPTER 15. PROTECTIVE SERVICES FOR OLDER ADULTS**

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#### **Authority**

The provisions of this Chapter 15 issued under the act of November 6, 1987 (P. L. 381, No. 79; P.L. 1125, No. 169; P.L. 160, No. 13) (35 P. S. §§ 10225.101-10225.5102), unless otherwise noted.

#### **Source**

The provisions of this Chapter 15 adopted November 25, 1988, effective November 26, 1988, 18 Pa.B. 5249, unless otherwise noted.

### **Cross References**

This chapter cited in 6 Pa. Code § 21.55 (relating to AAA placement activities).

## **GENERAL PROVISIONS**

### **§ 15.1. Scope and authority.**

(a) This chapter governs the administration and provision of protective services for older adults under the act, the mandatory reporting of the abuse of recipients of care and required criminal history reports for applicants, employees and administrators of facilities.

(b) This chapter applies to the Department, area agencies on aging, providers of protective services for older adults, parties to the making and investigation of reports of a need for protective services by older adults, subjects of reports and investigations, and the facilities defined in this chapter.

(c) The Department will enforce this chapter and maintain responsibility for future revisions as the continuing operation of the program requires.

### **§ 15.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

**Abandonment** - The desertion of an older adult by a caretaker.

**Abuse** -

(i) The occurrence of one or more of the following acts:

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

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

(C) Sexual harassment, rape or abuse, as defined in the Protection From Abuse Act (23 P. S. §§ 6101-6117).

(ii) No older adult will 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.

**Act** - The Older Adults Protective Services Act (35 P. S. §§ 10225.101-10225.5102).

**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.

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

**Area Agency on Aging** - The single local agency designated within a planning and service area by the Department to develop and administer the delivery of a comprehensive and coordinated plan of social services and activities for older adults.

**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, 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 the act to impose responsibility on an individual if the responsibility would not otherwise exist in law.

**Case file, case record or record** - A complete record of the information received and the actions taken by the agency on each report of need received. When applicable, it shall include, but not be limited to, the following elements:

- (i) The report of need.
- (ii) Records of agency investigative activities including related evidence and testimony.
- (iii) Assessment.



- (iv) Documentation of informed consent provided or agency efforts to obtain consent.
- (v) Notifications of older adults, alleged perpetrators, police, agencies, organizations, and individuals.
- (vi) Records of court, intervention, petition or action.
- (vii) Service plan.

**Assessment** - A determination based upon a comprehensive review of a client's social, physical and psychological status along with a description of the person's current resources and needs using the instruments and procedures established by the Department for this purpose.

**Conflict of interest** - The conflict which may exist when the investigator of a report of the need for protective services has a personal or financial interest in, is responsible for, or is employed by others responsible for, the delivery of services which may be needed by an older adult to reduce or eliminate the need for protective services. A conflict of interest may also exist if an investigator has a specific personal or financial motivation to recommend services delivered by a specific agency or to allow referrals or case dispositions to be inappropriately influenced by the investigator's knowledge of agency staff, resource limitations or by agency constraints which affect agency staff or resource allocations.

**Consumer attendant** – An individual who is recruited, hired, trained, directed and supervised by the consumer for whom personal care services and other support activities are being provided.

**Court** – A court of common pleas or a district magistrate, if applicable.

**Criminal history report** - Any of the following:

(i) For an applicant or employee who is a resident of Pennsylvania, a state police criminal history record.

(ii) For a non-resident applicant or employee, a state police criminal history record and a Federal criminal history record.

**Department** - The Department of Aging of the Commonwealth.

**Desertion** - The willful failure without just cause by the responsible caretaker to provide for the care and protection of an older adult who is in need of protective services.

**Direct contact** – touching of a recipient by an employee consistent with the professional responsibilities of the employee.

**Employee** -

- Any of the following:

(i) An individual who is employed by a facility.

(ii) A facility contract employee who has direct contact with residents or unsupervised access to their living quarters.

(iii) An individual who is employed by, or who enters into a contractual relationship with, or who establishes any other agreement or arrangement with a home health care agency to provide care to a

care-dependent person for a fee, stipend or monetary consideration of any kind in the person's place of residence.

- (iv) A student doing an internship or clinical rotation, or any other individual, who has been granted access to the facility to perform a clinical service for a fee.
- (v) An individual, employed by an entity which supplies, arranges for, or refers personnel to provide care to care-dependent persons, who is employed to provide care to care-dependent persons in facilities or their places 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 *The Administrative Code of 1929* (71 P.S. §§ 581-1 – 581-12); (2) A home health care agency; (3) A long-term care nursing facility as defined in *The Health Care Facilities Act* (35 P.S. §§ 448.101 – 448.904(b) ); (4) an older adult daily living center as defined in *The Older Adult Daily Living Centers Licensing Act* (62 P.S. §§ 1511.1 – 1511.22); (5) a personal care home as defined in the Act of June 13, 1967 (P.L. 31, No. 21) (62P.S. § 1001), known as *The Public Welfare Code*.

**Federal criminal history record** – 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, (28 u.s.c.a. section 534).

**Home Health Care Agency –**

- (i) Any of the following:
  - (A) A home health care organization or agency licensed by the Department of Health.
  - (B) 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.
- (ii) The term includes private duty home care providers, homemaker/home health aide providers, companion care providers, registry services, or intravenous therapy providers, or any other entity which supplies, arranges for, or refers personnel to provide care for which that entity receives a fee, consideration or compensation of any kind.

**Incapacitated older adult** - An older adult who, because of one or more functional limitations, needs the assistance of another person to perform

or obtain services necessary to maintain physical or mental health. The definition of capacity or incapacity or competence or incompetence, as defined in 20 Pa.C.S.A. §§ 5501 – 5555 (relating to guardianship), does not apply to this definition.

**Informed consent** - Consent obtained for a proposed course of protective service provision. The consent shall be based on a reasonable attempt to provide information which conveys, at a minimum, the risks, alternatives and outcomes of the various modes of protective service provision available under the circumstances.

**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.

**Investigation** - A systematic inquiry conducted by the agency to determine if allegations made in a report of need for protective services can be substantiated, or if the older adult referred to in the report need is an older adult in need of protective services, or both.

**Law Enforcement Official** - Any of the following: (1) A police officer (2) A district attorney; (3) The State Police.

**Least restrictive alternative** - The appropriate course of action on behalf of the older adult which least intrudes upon the personal autonomy, rights and liberties of the older adult in circumstances where an older adult lacks the capacity to decide on matters and take actions essential to maintaining physical and mental health.

**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. An older adult who does not consent to the provision of protective services will not 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 this 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 which there is no responsible caretaker and who is at imminent risk of danger to his person or property.

**Operator** - A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a facility. At licensed facilities, the licensee is the operator.

**Planning and service area** - The geographic unit within this Commonwealth, as designated by the Secretary, for the allocation of funds for the delivery of social services to older adults residing in that unit.

**Police department** - A public agency of the Commonwealth or of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of the criminal or traffic laws, or both.

**Police officer** - A full-time or part-time employee of the Commonwealth, a city, borough, town, township or county police department assigned to criminal or traffic or criminal and traffic law enforcement duties. The term does not include persons employed to check parking meters or to perform only administrative duties, auxiliary and fire police.

**Protective services** - Activities, resources and supports provided to older adults under the act to detect, prevent, reduce or eliminate abuse, neglect, exploitation and abandonment.

**Protective services caseworker** - A protective services agency employee, regardless of staff title, who meets the minimum standards in §§ 15.121-15.127 (relating to staff training and experience standards) and is assigned by the agency under § 15.13(c) (relating to organization and structure of protective services functions) to perform the following protective services functions:

- (i) To receive reports of a need for protective services when necessary.
- (ii) To investigate reports received under this chapter.
- (iii) To assess the needs of protective services clients under this chapter.
- (iv) To develop and coordinate the implementation of service plans for protective services clients.

**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.

**Public or private entitlement or resource** - A publicly or privately funded health or human services program available either without charge or on a cost sharing basis to persons who qualify on the basis of one or more criteria, such as age, need, income or condition. The term includes various established financial assistance programs under public or private sponsorship. The term does not include individual personal income or financial assets.

**Recipient** - An individual of any age who receives care, services or treatment in or from a facility.

**Report or report of need** - The written report of an older adult in need of protective services received under § 15.23 (relating to receiving reports; general agency responsibility) and recorded on the standardized protective services report form.

**Responsible caretaker** - A caretaker who is able and willing to provide the basic care and protection necessary to maintain the physical or mental health of an older adult. A caretaker reported to have abused,

neglected, exploited or abandoned an older adult is presumed, subject to an investigation under this chapter, to be unable or unwilling to provide the necessary care and protection.

**Secretary** - The Secretary of the Department.

**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 does one of the following: (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 a comprehensive assessment of an older adult'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 progress. Specific services to support goal attainment may include, but are not limited to, homemaker services, home-delivered meals, attendant care, other in-home services, emergency shelter or food, legal aid services, transportation and other services. Service plans are cooperatively developed by the agency staff, the older adult or the older adult's appointed guardian and other family members when appropriate. The plan shall also address, if 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.

**State-licensed facility** – For all purposes involved in the determination of whether an individual is an older adult in need of protective services, a state licensed facility is defined as an institution licensed by the Commonwealth to provide temporary or permanent residence to persons in need of personal care or medical care, including, but not limited to, nursing homes, personal care homes, hospitals, State hospitals and mental retardation centers.

**State Police** - The Pennsylvania State Police.

**State police criminal history record** – a report of criminal history record information from the state police or a statement from the state police that their central repository contains no information relating to that person.

**Unsupervised access** – access to personal living quarters of residents when not accompanied by or within direct supervision of an employee of the facility.

## **Cross References**

This section cited in 6 Pa. Code § 15.92 (relating to client needs assessment); 6 Pa. Code § 15.96 (relating to termination of protective services); 6 Pa. Code § 15.101 (relating to general); and 6 Pa. Code § 15.111 (relating to coordination of available resources).

## **PROGRAM ADMINISTRATION**

### **§ 15.11. Administrative functions and responsibilities of the Department.**

(a) General responsibilities. The Department will establish and maintain a statewide system of protective services for older adults who need them. These services will be available and accessible through local protective services agencies. In maintaining this system of protective services, the Department's functions and responsibilities include, but are not limited to, the following:

(1) The review and approval of annual protective services plans submitted by area agencies under § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).

(2) The allocation of funds appropriated for the implementation of the act to area agencies on aging to administer local protective services plans.

(3) The establishment of minimum standards of training and experience for protective services staff.

(4) The development and maintenance of a fiscal and service data collection system to collect information on local reports of a need for protective services, investigations, services provided and other relevant data on protective services activities.

(5) The monitoring of local protective services delivery for compliance with this chapter and approved area agency on aging protective services plans.

(6) The development and maintenance of an ongoing program of public information and education to promote general awareness of and informed responses to the needs of older adults for protective services available under this chapter.

(7) Ongoing coordination with State agencies.

(b) Local protective services plans. The Department will review the annual protective services plan submitted under § 15.12(b) by an area agency on aging and will notify the area agency of approval or disapproval within 60 days.

(c) Staff training and experience. The minimum standards of training and experience of protective services staff employed to carry out activities under this chapter are set forth at §§ 15.121-15.127 (relating to staff training and experience standards).

(d) Public information and education. The Department will develop and maintain a campaign of public information and education about the needs for

and availability of protective services under this chapter. The target of this campaign will be older adults and the general public, as well as professionals and others employed in situations where they are likely to have frequent contact with older adults who need protective services. In designing and implementing the ongoing public awareness campaign, the Department will consult with other Commonwealth agencies and consider the concerns of area agencies on aging and the local entities identified by area agencies as having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment.

**§ 15.12. Administrative functions and responsibilities of area agencies on aging.**

(a) General responsibilities. An area agency on aging shall administer the delivery of protective services under this chapter in its planning and service area. The functions and responsibilities of the area agency on aging in administering protective services include, but are not limited to, the following:

(1) The development and submission of a protective services plan under subsection (b).

(2) The oversight of the delivery of protective services for older adults, either directly or purchased under contract with another agency, in compliance with the area agency's approved protective services plan, this chapter and other applicable State and Federal regulations or statutes. The plan shall assure that the agency will provide for the receipt of reports of need for protective services, the conduct of investigations of reports, the assessment of need and the development of service plans throughout the period covered by the plan. The plan shall also describe sources for specific services that may be required by older adults who have been assessed as needing them, and policies pertaining to arranging for specific services if and when needs for specific services exceed supply.

(3) The coordination of the protective services related activities of local agencies and organizations having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment. These agencies and organizations include, but are not limited to, the following:

(i) Local domestic violence agencies.

(ii) County Assistance Offices.

(iii) Local mental health/mental retardation programs.

(iv) County offices of children and youth.

(v) Law enforcement agencies.

(vi) Legal services agencies.

(vii) Emergency medical service agencies, hospital emergency rooms and social services staff.

- (viii) Home health agencies.
  - (ix) Drug and alcohol prevention and treatment organizations.
  - (x) Clergy associations and councils of churches.
- (4) The local extension of the Department's ongoing campaign of public information and education about the need for, and availability of, protective services for older adults.
- (5) The collection and submission to the Department of data on protective services activities. The data shall be recorded and reports submitted as required by the Department. At a minimum, the following information shall be included:
- (i) The number of substantiated and unsubstantiated reports.
  - (ii) The number of reports made in various categories of need for protective services, such as physical abuse, financial exploitation, neglect, abandonment and the like.
  - (iii) The demographic information on persons reported to be in need of protective services and on alleged perpetrators of abuse, neglect, exploitation and abandonment.
  - (iv) The origins of reports.
  - (v) The remedies and referrals.
- (b) Protective services plan. The area agency on aging shall submit, on an annual basis, its protective services plan to the Department. The protective services plan shall contain, at a minimum, the following information:
- (1) An explanation of the organizational structure and staffing of the area agency's protective services functions, including provisions for purchasing these services if applicable. For the purpose of advising the agency on medically related issues encountered during client assessment and the development of service plans, the organizational structure shall include the consultation services of a registered nurse or physician licensed to practice in this Commonwealth.
  - (2) An explanation of how the area agency's organizational structure and staffing of protective services will prevent a conflict of interest between the investigation of reports received under this chapter and the area agency's service delivery functions. The explanation shall include assurances that the minimum criteria required under § 15.13 (relating to organization and structure of protective services functions) will be met.
  - (3) A description of the local process for delivering protective services to older adults who need them, including the 24-hour capability to receive reports, the investigation of reports and the necessary actions arising from investigations. The description shall focus on the specific local methodology to be implemented in activities for which this chapter allows for local differences and flexibility. The description of the plan for investigating reports shall include an explanation of steps to be taken to assure the standby capability required under § 15.41(c) (relating to reports required to be investigated). The description of the plan for



seeking emergency court orders shall include the agency's identification of the providers of legal assistance who may be notified under § 15.71(b) (relating to involuntary intervention by emergency court order) when the agency petitions the court for emergency involuntary intervention.

(4) A description of local funding for protective services which has, at the discretion of a county or local agency, been placed under the administrative control of the area agency on aging. There is no requirement by the Department that the area agency on aging obtain local funding for its protective services plan budget.

(5) Documentation of applicable interagency relations, interagency agreements, service referral mechanisms and the locus of responsibility for cases with multi-service needs. The documentation shall include assurances that the area agency on aging has taken steps to avoid unnecessary duplication of existing efforts by other agencies which may carry responsibilities for some protective services activities.

(6) A description of local methods to be used to assure the privacy and confidentiality of older adults receiving protective services as required under §§ 15.101-15.105 (relating to confidentiality).

(7) A list of the entities, public and private, identified by the area agency on aging as having substantial contact with potential victims or perpetrators of abuse, neglect, exploitation and abandonment.

(c) Public awareness. The area agency on aging shall conduct within its planning and service area an ongoing campaign designed to inform and educate older adults, professionals and the general public about the need for and availability of protective services under this chapter. This ongoing campaign shall utilize materials and methodology developed by the Department and supplemented by the area agency with relevant information on the local protective services system. Special emphasis shall be placed on informing the community on how to make reports and request services.

(d) Department approval required. An area agency on aging, which has not received the Department's approval for its protective services plan may not provide services under this chapter.

### **Cross References**

This section cited in 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.102 (relating to maintenance of case files records); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.13. Organization and structure of protective services functions.**

(a) General organization. The area agency on aging may provide protective services directly or under a purchase of services contract with another

provider agency. In either case, the area agency on aging is responsible for the compliance of protective services activities with this chapter. The area agency on aging shall assure that the agency meets the minimum standards of organization and structure set forth in this section.

(b) Protective services caseworkers.

(1) The agency shall designate as a protective services caseworker at least one caseworker who meets the minimum standards in §§ 15.121-15.127 (relating to staff training and experience standards).

(2) The agency shall assign protective services cases to designated protective services caseworkers by allocating the anticipated agency caseload in a manner consistent with the agency's plan for caseload distribution.

(3) The agency's plan for caseload distribution shall be described in the agency's protective services plan and shall include the following specific information:

(i) The rationale for the proposed caseload distribution.

(ii) How the subset of workers will be defined and selected, including an estimate of the anticipated caseload size to be assigned to each designated protective services caseworker.

(iii) How the cases within a designated protective services caseworker's caseload will be prioritized.

(iv) How that prioritization system will be maintained.

(v) How the agency will develop and maintain the necessary specialized expertise required to fulfill protective services responsibilities.

(4) A protective services caseworker may not serve as the area agency on aging ombudsman on the same case.

(5) The protective services caseload assigned to a protective services caseworker may not be planned to exceed 30 ongoing protective services cases.

(6) The case assignment system of the agency shall encourage the appropriate transfer of cases into and out of protective services caseloads as provided under § 15.96 (relating to termination of protective services).

(c) Other staff. The immediate supervisor of a protective services caseworker is required to be trained as set forth in §§ 15.121-15.127. An intake worker of the agency is permitted to discharge nonprotective service duties. An intake worker who receives a report of the need for protective services shall receive training as set forth in §§ 15.121-15.127.

(d) Conflict of interest. The area agency on aging shall describe in its protective services plan the steps it will take to avoid or minimize the potential of a conflict of interest between the investigative and service delivery functions in the protective services caseload. The description shall identify points in the organization and structure of protective services delivery where a potential

conflict of interest may exist and explain the specific organizational responses which the area agency on aging will make to avoid or minimize that potential. The responses may include provisions for assuring some separation between the investigative and service delivery functions. The description shall also include proposed steps for addressing an actual conflict of interest if one arises. Nothing in this chapter constitutes an absolute bar to an area agency from delivering protective services and other area agency on aging services itself or through the same provider solely because of the potential existence of a conflict of interest.

(e) Depth of agency capacity. The agency shall require sufficient staff of all categories to be trained under §§ 15.121-15.127 to insure that routine staff absences will not compromise the agency's ability to fulfill its responsibilities under the act. Trained standby staff members shall be available to provide protective services as required, but are not required to be regularly assigned to protective services duties.

### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); and 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging).

## **REPORTING SUSPECTED ABUSE, NEGLECT, ABANDONMENT OR EXPLOITATION**

### **§ 15.21. General reporting provisions.**

A person who has reasonable cause to believe that an older adult needs protective services may report this to the local provider of protective services. An area agency on aging shall publicize, on an ongoing basis, the name, address and phone number of the agency where reports are to be made.

Where applicable, reports shall comply with the provisions of Sections 15.141 - 15.147 (relating to reporting suspected abuse).

### **§ 15.22. Safeguards for those who make or receive reports.**

(a) Protection from retaliation. Under the act, a person or entity who takes discriminatory, retaliatory or disciplinary action against an employee or other person who makes a report, against a person who cooperates with the agency or the Department to provide testimony or other information about a report, or against a victim of abuse, commits a violation of the act. The person who takes the discriminatory, retaliatory or disciplinary action is subject to a civil lawsuit by the person who made the report, the victim of abuse named in the report, or the person who cooperated with the agency or the Department. If

the court which hears the lawsuit decides in favor of the plaintiff, the plaintiff shall recover triple compensatory damages, compensatory and punitive damages or \$5,000, whichever is greater, from the person or entity which committed the violation.

(b) Immunity from liability. As provided under the act, a person who participates in the making of a report or completion of an investigation or who provides testimony in an administrative or judicial proceeding arising out of a report shall be immune from civil or criminal liability because of these actions unless the person acted in bad faith or with malicious purpose. The act does not extend this immunity to liability for acts of abuse, neglect, exploitation or abandonment, even if the acts are the subject of the report or testimony.

(c) 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) Notification. The administrator of a facility shall post notices in conspicuous and accessible locations and use other appropriate means to notify employees, residents, and other individuals of protections and obligations under the act, and keep them informed of such protections and obligations.

### **§ 15.23. Receiving reports; general agency responsibility.**

(a) Twenty-four hour capability. The agency shall be capable of receiving reports of older adults in need of protective services 24 hours a day, 7 days a week-including holidays. This capability may include the use of a local emergency response system or a crisis intervention agency.

(b) Accessibility of professional staff. Regardless of the arrangements made by the agency to receive reports outside the normal business hours of the agency, the agency shall provide 24 hours a day, 7 days a week - including holidays-accessibility to a protective services caseworker by a person receiving reports so that referrals required under § 15.26(b) (relating to screening and referral of reports received) may be made for immediate attention. If this accessibility is provided by means of telephone, telephone paging device or other alternatives to direct physical presence, the protective services caseworker shall be capable of returning the call within 30 minutes.

(c) Toll-free public telephone access. To facilitate reporting of older adults in need of protective services, the agency shall provide toll-free telephone access to persons residing in the planning and service area served by the agency. If possible, the agency shall utilize the same telephone number

everywhere in the planning and service area at all times. This number shall be extensively publicized throughout the planning and service area with special emphasis on older adults and persons likely to be in contact with victims or perpetrators of abuse, neglect, exploitation and abandonment.

(d) Reports from outside the planning and service area. The agency shall receive all reports made regardless of their place of origin or the location in this Commonwealth of the older adult in need of protective services. If the older adult who is the subject of a report does not reside in the planning and service area of the agency or, at that time, is not in the planning and service area, the agency shall notify the agency which provides protective services in the planning and service area where the older adult is located and relay to that agency the information received in the report.

### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15-26 (relating to screening and referral of reports received); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.44 (relating to resolution of substantiated reports); 6 Pa. Code § 15.105 (relating to limited access to records and disclosure of information); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.24. Receiving reports; agency intake process.**

(a) Personnel who may receive reports. A report shall be received only by persons who have received training on the minimum requirements and procedures for receiving, recording, screening and referring reports under § 15.124 (relating to protective services intake training curriculum). When the agency uses an answering service to receive calls from persons reporting a need for protective services, the agency shall have one of the following options:

(1) To provide the training for intake workers required under § 15.124 to appropriate staff of the answering service organization.

(2) To provide that all calls are forwarded directly to designated protective services intake workers or caseworkers of the agency for completion of a report of need form.

(b) Anonymity for reporters. A person who reports an older adult in need of protective services may remain anonymous, if desired. In an attempt to secure the reporter's name if additional information or assistance is needed for investigation or service provision, a person who receives a report shall inform an anonymous reporter of the statutory protection from retaliation and liability.

### **§ 15.25. Report form and content.**

(a) Standardized reports. An initial report received shall be committed to writing on the standardized report form required by the Department. Information subsequently obtained through investigations may be reported on other forms or sheets of paper for inclusion in the case record.

(b) Handling oral reports. A report may be received in writing or orally. A report received orally shall be committed immediately to writing on the standardized form.

(c) Minimum contents. The person receiving a report shall make every effort to obtain information necessary to complete the standardized report form. At a minimum, the completed report shall contain the following information:

(1) The date and time of the report.

(2) The name, address and phone number of the person making the report, unless withheld.

(3) The name, address and, if available, age and phone number of the person reported to need protective services.

(4) The nature of the incident which precipitated the report.

(5) The nature and extent of the need for protective services. Indicate if the person is in a life threatening situation.

(6) The physical and mental status of the person in need, to the extent obtainable.

#### **§ 15.26. Screening and referral of reports received.**

(a) Screening. A person meeting qualifications set forth at §15.121(c)(3) who receives a report shall screen the report during and immediately following receipt of the report to assign it to one of the following referral categories:

(1) Emergency.

(2) Priority.

(3) Nonpriority.

(4) Another planning and service area.

(5) No need for protective services.

(b) Referral categories and actions.

(1) Emergency. A report placed in this category requires immediate attention because specific details in the report indicate the possibility that the older adult reported to need protective services is at imminent risk of death or serious physical harm. The person receiving an emergency report shall immediately contact a protective services caseworker designated under § 15.23(b) (relating to receiving reports; general agency responsibility) and provide that caseworker with the information contained in the report.

(2) Priority. A report placed in this category contains details which clearly suggest that the need for protective services is serious enough to require early intervention. The person receiving a priority report shall

immediately contact a protective services caseworker designated under § 15.23(b) and provide that caseworker with the information in the report.

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

(4) Another planning and service area. A report which is covered under § 15.23(d) shall be placed in this category. It shall be referred to the agency which has the designated responsibility for protective services in the planning and service area in which the older adult reported to need protective services is located at the time of the report. A report in this category will also meet the criteria for placement in one of the other categories in this subsection. The provisions for referral for the other category shall apply to a referral to another planning and service area.

(5) No need for protective services.

(i) A report shall be placed in this category when the person reported to be in need of protective services meets one or more of the following criteria:

(A) Is under 60 years of age.

(B) Has the capacity to perform or obtain, without help, services necessary to maintain physical or mental health.

(C) Has a responsible caretaker at the time of the report.

(D) Is not at imminent risk of danger to his person or property.

(ii) A report in this category shall be referred to a protective services caseworker of the agency within the normal business hours of the agency's current or next day of business. The protective services caseworker shall review the details of the report and take whatever steps necessary to confirm or reject the categorization of no need for protective services. If the caseworker confirms the screening categorization, appropriate referrals shall be made to the area agency on aging care management system or, if concerning an adult under 60 years of age, to another community agency. If the caseworker rejects the categorization, the report shall be placed in the appropriate category and be handled accordingly.

(iii) A report shall not be placed in this category if the older adult is temporarily relocated to a safe environment and will return to the original abusive situation or to a new location which has not been determined to be safe.

## **Cross References**

This section cited in 6 Pa. Code § 15.23 (relating to receiving reports; general agency responsibility); 6 Pa. Code § 15.27 (relating to handling of completed reports); and 6 Pa. Code § 15.41 (relating to reports required to be investigated).

### **§ 15.27. Handling of completed reports.**

(a) Reports to be signed. Completed report forms shall be signed by the person who received the report.

(b) Appropriate routing of reports. A completed report form shall be promptly routed to appropriate staff of the agency under § 15.26(b) (relating to screening and referral of reports received) and shall be handled in a manner which safeguards the confidentiality of information contained in the report. Sections 15.103 and 15.104 (relating to responsibilities of staff with access to confidential information; and penalties for violation of confidentiality provisions) also apply to staff of an emergency response agency under contract with the agency to receive reports during times when the agency is not open for business.

(c) State licensed facility. A report involving a state-licensed facility, and containing sufficient information to begin an investigation, shall be provided to the appropriate state licensing agency.

## **INVESTIGATING REPORTS OF NEED FOR PROTECTIVE SERVICES**

### **§ 15.41. Reports required to be investigated.**

(a) General. The agency shall provide for an investigation of a report received under §§15.23 (relating to receiving reports; general agency responsibility) and referred under § 15.26 (relating to screening and referral of reports received) to determine if the report can be substantiated and, if so, immediate steps that are necessary to remove or reduce an imminent risk to person or property. The investigation shall be initiated within 72 hours following the receipt of a report or sooner as provided under § 15.42 (relating to standards for initiating and conducting investigations) and include sufficient collateral information provided by interviews, documents, reports or other methods to determine if the older adult is in need of protective services.

Where applicable, reports and investigations shall comply with Sections 15.141 - 15.147.

(b) Trained and identified investigators. Only a person who has completed the minimum training required for protective services caseworkers by the Department under § 15.121-15.127 (relating to staff training and experience standards) may conduct investigations under this section. When, for reasons unexpected and beyond the agency's control, a trained staff person is not available to conduct investigations, the agency shall notify the Department and



seek the Department's approval for its proposed plan for carrying out its investigation responsibilities under this section. The agency shall provide each investigator with official credentials which document the identity of the investigator and the legal authority to implement provisions of this chapter.

(c) Agency responsibility. The agency is responsible for assuring that an investigation under this section can be conducted whenever circumstances require it. This responsibility includes the provision of standby capability for use if the agency's regularly assigned staff is not available.

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§15.42. Standards for initiating and conducting investigations.**

(a) Requirements by report category.

(1) Emergency report.

(i) The investigation of a report categorized as emergency shall be initiated immediately following the referral of the report. The protective services caseworker shall make every attempt to ensure the immediate safety of the older adult and to conduct a face to face visit as soon as possible. The agency shall assure that reasonable attempts will be made to conduct a face-to-face visit within 24 hours after the report is received.

(ii) When, after reasonable efforts to gain access to the older adult, the protective services caseworker is denied access, the caseworker shall document the efforts made and take action, as appropriate, under §§ 15.61 or 15.71 (relating to access to persons; and involuntary intervention by emergency court order).

(2) Priority report. The investigation of a report categorized as priority shall be initiated as soon as possible. The agency shall assure that reasonable attempts to initiate the investigation will be made within 24 hours after the report is received. The investigation of a priority report is initiated only by contact with the older adult reported to need protective services. The protective services caseworker shall make every attempt to visit with the older adult face to face within the 24 hours provided. When, after reasonable efforts to gain access to the older adult, the caseworker is denied access, the caseworker shall document the efforts made and take action, as appropriate, under §§ 15.61 or 15.71.

(3) Nonpriority report.

(i) The investigation of a report categorized as nonpriority shall be initiated in a timely manner but never later than 72 hours after the

report was received. At the discretion of the agency, the initiation of an investigation of a nonpriority report shall include a visit to the older adult reported to need protective services when details in the report indicate a need to see and talk with the older adult face to face in order to secure or verify facts essential to the ongoing investigation.

(ii) The investigation of a report categorized as nonpriority shall include at least one visit to the older adult reported to need protective services at an appropriate point in the course of the investigation. Every attempt shall be made to visit with the older adult face to face. When, after reasonable efforts to gain access to the older adult, the protective services caseworker is denied access, the caseworker shall document the efforts made and, when appropriate, take action under §§ 15.61 or 15.71.

(4) No need report. The investigation of a report categorized as no need for protective services shall consist of the protective services caseworker's review of the report categorization. If the caseworker agrees with the initial categorization, appropriate referrals shall be made within 72 hours after the report was received, to the area agency on aging service management system or, if concerning an adult under 60 years of age to another community agency, if available. If the caseworker does not agree with the initial categorization, the report shall be placed in another category in this subsection and addressed under the applicable provisions for investigating a report in that category.

(b) Reports involving county or area agency on aging employees. If the agency is required to investigate a report which alleges that abuse, neglect, exploitation or abandonment has been perpetrated by an employee of the county, the area agency on aging or its subcontractor, the agency shall notify the Department as early as possible during the current or next day of normal business hours. The notification shall be made by phone to a person designated by the Department and shall include the pertinent details of the report. A copy of the completed report of need shall be immediately forwarded by mail to the Department. Copies of written records of investigative activities shall also be forwarded to the Department for review. The Department reserves the right to intervene in the agency's investigation of a report under this subsection if it is determined appropriate to assure a fully objective investigation.

(c) Written records of investigative activities. The investigative activities, including home visits and other contacts with the older adult or other persons or organizations needed to facilitate the investigation, shall be documented in writing and placed in the case record. Documentation may include dated and signed photographs and statements related to suspected abuse.

(d) Completing investigations of reports. The agency shall make all reasonable efforts to complete an investigation of a report of need for

protective services under this section as soon as possible and, in cases of abuse and neglect, at least within 20 days of the receipt of the report. The investigation of the report is completed only when the report has been determined to be substantiated or unsubstantiated and, if substantiated, after necessary steps have been taken to reduce an imminent risk to the older adult's person or property.

(e) If the Department determines that an agency is unable to conduct, or has not conducted, what the department considers an acceptable protective services investigation, the Department may intervene in the agency's investigation, or conduct its own investigation.

### **Cross References**

This section cited in 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.45 (relating to situations involving State-licensed facilities); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.43. Resolution of unsubstantiated reports.**

(a) When, upon investigation of a report, it is determined that there is no need for protective services, the report shall be classified as unsubstantiated .

(b) A case opened by an unsubstantiated report shall be closed and information identifying the person who made the report and the alleged perpetrator of abuse, if applicable, shall be immediately deleted from the case record.

(c) For the purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, the name of the person reported to need protective services and other information relevant to the circumstances which led to the report may be maintained for a period of 6 months in a separate locked file accessible only to limited authorized staff for review when it is necessary to establish that a previous report was made. At the end of 6 months, case records maintained under this subsection shall be destroyed unless additional reports lead to their being reopened.

(d) When an older adult who is the subject of an unsubstantiated report has needs for other services, the older adult shall be informed of the availability of services through the area agency on aging service management system or another appropriate community agency.

### **Cross References**

This section cited in 6 Pa. Code § 15.102 (relating to maintenance of case records); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

#### **§ 15.44. Resolution of substantiated reports.**

- (a) When an investigation confirms the details of a report made under § 15.23 (relating to receiving reports; general agency responsibility) or determines that the subject of the report is an older adult in need of protective services, the report shall be classified as substantiated.
- (b) The agency shall provide for a timely assessment of the need for protective services by the older adult who is the subject of a substantiated report if the older adult gives informed consent to an assessment. If an older adult found to need protective services does not consent to an assessment, the agency may seek, when appropriate, a court order under § 15.61 (relating to access to persons).
- (c) On the basis of the assessment, the agency shall provide for the development of a service plan of recommended actions which reflect the least restrictive alternatives for removing or reducing imminent risk to person or property and promote self-determination and continuity of care being provided at the time of the agency's intervention. The service plan may include, when appropriate, the pursuit of civil or criminal remedies.
- (d) Developed service plans shall be put into effect under § 15.94 (relating to service delivery).

#### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

#### **§ 15.45. Situations involving State-licensed facilities.**

- (a) General. The following apply to investigations of reports concerning older adults who reside in State-licensed facilities:
  - (1) The agency continues to maintain its general responsibility for protective services when a licensing agency assumes, or is assigned, the role of investigating a report received by the agency.
  - (2) The response times provided in § 15.42(a) (relating to standards for initiating and conducting investigations) for initiating investigations of reports apply to initiating investigations of reports under this section. The initiation of the investigation under subsection (c) is accomplished by the referral of the report to the appropriate administrative office.
  - (3) The supervisor of a protective services caseworker who initiates an investigation under this section shall be informed during the current day or next day of normal agency operating hours concerning the report and shall consult frequently with the caseworker about the progress and findings of the investigation.

(4) The agency shall notify the area agency on aging ombudsman of reports and investigations concerning older adults residing in State licensed facilities for which the area agency on aging provides ombudsman services. In situations that ombudsman services, as established by the Older Americans Act of 1965 (42 U.S.C.A. §3058g) and the Administrative Code of 1929 (71 P.S. §581-7(d)), are determined to be appropriate, the agency shall request those services from the ombudsman.

(b) Agency coordination with the licensing agency.

(1) Except as provided under subsection (c), the agency shall notify the appropriate licensing agency under procedures developed by the Department, in consultation with the licensing agency.

(i) Notification shall identify the facility, the older adult and the nature of the report.

(ii) Notification shall be made immediately by telephone or facsimile to the appropriate field office of the Pennsylvania Department of Health that an investigation has been initiated in a facility licensed by the Pennsylvania Department of Health.

(iii) Notification shall be made immediately by telephone or facsimile to the appropriate field office or central office of the Pennsylvania Department of Public Welfare that an investigation has been initiated in a facility licensed by the Pennsylvania Department of Public Welfare.

(2) During the course of the investigation the agency shall coordinate its investigative activities and findings with the licensing agency to avoid duplication of effort and to foster jointly developed remedies to situations requiring protective services intervention.

(c) State-operated mental health and mental retardation facilities. If the agency receives a report concerning an older adult who resides in a facility operated by the Department of Public Welfare under its Office of Mental Health or its Office of Mental Retardation, the agency shall provide for an investigation of that report as follows:

(1) The protective services caseworker or investigator to whom the report is referred shall initiate the investigation by referring the report to the appropriate administrative office under procedures jointly developed by the Department and the Department of Public Welfare for investigation under their patient rights program. The jointly developed procedures provide for specific points of contact between the agency and the Department of Public Welfare and establish a system which assures that the agency will be kept fully informed of the activities, findings and results of investigations through written records of the investigative activities and remedial actions as they develop.

(2) The agency shall closely monitor an investigation referred under paragraph (1) to determine that the investigation is effectively implemented and that appropriate remedies have been effected to correct the situation which led to the making of the report. The referral of an investigation to the Office of Mental Health or Office of Mental Retardation does not relieve the agency of its mandated authority and responsibility to provide protective services. If the agency determines that an older adult's need for protective services is not adequately being met under paragraph (1), the agency shall intervene and conduct its own investigation.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.46. Law enforcement agencies as available resources.**

(a) General. This chapter may not be interpreted to deny an older adult who needs protective services access to the normal protections available from the police and other law enforcement agencies as appropriate.

(b) Interagency coordination. To facilitate the cooperation of law enforcement officials with the provision of protective services when necessary, the agency shall fulfill the following minimum coordinating activities:

(1) Achieve specific coordination objectives with:

(i) Police departments in the planning and service area.

(ii) The district attorney's office.

(iii) State Police field installations for the planning and service area.

(iv) Officials of the court system.

(v) Legal assistance agencies.

(2) Establish designated points of contact with law enforcement agencies to facilitate access when necessary.

(3) Establish basic procedures to be followed when the agency makes reports of criminal conduct or requests for special assistance to law enforcement agencies and when the law enforcement agencies report the need for protective services to the agency.

(4) Provide for the necessary exchange of information about protective services for older adults and the role of law enforcement in the provision of those services.

(c) The role of law enforcement in protective services. The agency's protective services workers shall receive training as required under §§ 15.121-15.127 (relating to staff training and experience standards) in applicable sections of the criminal code and the role of law enforcement officials when criminal conduct is encountered or suspected.

(d) Legal options information. The agency shall take steps to inform older adults who need protective services of the various legal options, civil or criminal, available through appropriate agencies as possible remedies to situations of risk to person or property. If an older adult reported to need protective services requests the agency to contact a law enforcement agency, the agency shall respond to that request in an appropriate and timely manner.

(e) Police assistance to protective services worker. A protective services worker may, as appropriate, request the assistance of a police officer when investigating a report which indicates a possible danger to the worker. As provided under § 15.74 (relating to forcible entry), forcible entry may be made only by a police officer or State Trooper accompanied by a representative of the agency after obtaining a court order.

(f) Simultaneous investigation. When both a report of need for protective services and a police report have been filed, the protective services investigation shall continue simultaneously with the police investigation. The agency may take steps to coordinate its investigation with the police investigation and the investigation of the State Licensing Agency and shall make available as provided under § 15.105 (relating to limited access to records and disclosure of information) relevant information from the case record.

(g) Report of death. If the death of an older adult reported to need protective services occurs prior to the agency's investigation of the report, during the investigation or at any time prior to the closure of the protective services case, when there is some nexus between the death and the need for protective services, the agency shall immediately report that death to the police and the county coroner.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.47. Emergency medical services as available resources.**

This chapter may not be interpreted to deny an older adult who needs protective services access to the normal protections of the emergency medical services that would be available to anyone, regardless of age, in similar circumstances.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## **AGENCY ACCESS TO OLDER ADULTS AND RECORDS**

### **§ 15.61. Access to older adults.**

- (a) Access assured by law. The agency shall have access to older adults who have been reported to need protective services to:
- (1) Investigate reports received under this chapter.
  - (2) Assess the older adult's need and develop a service plan for addressing determined needs.
  - (3) Provide for the delivery of services by the agency or other service provider arranged for under the service plan developed by the agency.
- (b) Access to older adults. Except in emergency or priority protective services cases, access to older adults shall be between the hours of 7 a.m. and 9 p.m.
- (c) When access is denied. If the agency is denied access to an older adult reported to need protective services and access is necessary to complete the investigation or the assessment and service plan, or the delivery of needed services to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to need protective services, the protective services caseworker shall make reasonable efforts to clearly inform the party denying access of the legal authority for access in section 304 of the act (35 P. S. § 10225.304) and the available recourse through a court order. If the party continues to deny the agency access to the older adult, the agency may petition the court for an order to require the appropriate access when one of the following conditions applies:
- (1) The caretaker or a third party has interfered with the completion of the investigation, the assessment and service plan or the delivery of services.
  - (2) The agency can demonstrate that the older adult reported to need protective services is denying access because of coercion, extortion or justifiable fear of future abuse, neglect, or exploitation or abandonment.

### **Cross References**

This section cited in 6 Pa. Code § 15.42 (relating to standards for initiating and conducting investigations); 6 Pa. Code § 15.44 (relating to resolution of substantiated reports); 6 Pa. Code § 15.63 (relating to access by consent); 6 Pa. Code § 15.92 (relating to client needs assessment); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.62. Access to records.**

- (a) Access assured by law. The agency shall have access to records relevant to:
- (1) Investigations of reports received under this chapter.



(2) The assessment of need and the development of a service plan when an older adult's need for protective services has been or is being established.

(3) 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.

(b) Access to records. Except in emergency or priority protective services cases, access to records shall be between the hours of 7 a.m. and 9 p.m.

(c) When access to records is denied. If the agency is denied access to records necessary for the completion of a proper investigation of a report or an assessment and service plan, or the delivery of needed services to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to need protective services, the protective services caseworker shall clearly inform the party denying access to the records of the legal authority for access as set forth in section 304 of the act (35 P.S. § 10225.304) by the agency and the available recourse through a court order. If the party continues to deny access to relevant records, the agency may petition the court of common pleas for an order requiring the appropriate access when one of the following conditions applies:

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

(2) The agency is able to 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.

### **Cross References**

This section cited in 6 Pa. Code § 15.63 (relating to access by consent); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.63. 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 need protective services shall require the consent of the older adult or a court-appointed guardian except as provided under §§ 15.61, 15.62 or 15.71 (relating to access to persons; access to records; or involuntary intervention by emergency court order).

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## **EMERGENCY INTERVENTION**

### **§ 15.71. Involuntary intervention by emergency court order.**

(a) General. When there is clear and convincing evidence that, if protective services are not provided, the older adult 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 person to be protected shall be an older adult in need of protective services as defined in this chapter. The courts of common pleas of each judicial district shall ensure that a judge or district magistrate 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 delay until normal court hours would significantly increase the danger the older adult faces. Only the agency, through its official representative, may bring a petition for involuntary intervention by emergency court order.

(b) Legal representation. When the agency petitions the court for emergency involuntary intervention, the agency shall make sure the older adult has the opportunity to be represented by counsel at all stages of the proceedings. If the older adult has an attorney known to the agency, the agency shall attempt to notify that attorney before it files a petition for emergency involuntary intervention. If the agency has no knowledge of an attorney who represents the older adult, the agency shall attempt to notify the legal services provider identified by the area agency on aging in its protective services plan to provide legal assistance under this chapter. The notification shall contain enough information about the risk to the older adult and the proposed remedy to enable counsel to determine if representation is necessary at the emergency hearing. Notification to counsel shall include a copy of the petition with the affidavits attached as well as the time, date and place of presentation of the petition except when § 15.72(b) (relating to the petition) applies.

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.42 (relating to standards for initiating and conducting investigations); 6 Pa. Code § 15.63 (relating to access by consent); 6 Pa. Code § 15.73 (relating to court appointed counsel); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.91 (relating to general); 6 Pa. Code § 15.92 (relating to {client needs} assessment); 6 Pa. Code § 15.93 (relating to service plan); 6 Pa. Code § 15.94 (relating to service delivery); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.72. The petition.**

(a) Contents. The petition which the agency files for an emergency court order of involuntary intervention shall state the following information:

(1) The name, age and physical description of the older adult insofar as these facts have been ascertained.

(2) The address or other location where the older adult can be found.

(3) The name and relationship of a guardian, caregiver or other responsible party residing with the older adult, when applicable.

(4) A description of how the older adult is at imminent risk of death or serious physical harm.

(5) The physical and mental status of the older adult, to the extent known.

(6) The attempts made by the agency to obtain the informed consent of the older adult, or the older adult's court appointed guardian, when applicable, to the provision of protective services by the agency.

(7) The specific short-term, least restrictive, involuntary protective services which the agency is petitioning the court for an order to provide.

(8) A description of how the proposed services would remedy the situation or condition which presents an imminent risk of death or serious physical harm.

(9) A statement showing why the proposed services are not overbroad in extent or duration and why less restrictive alternatives as to their extent or duration are not adequate.

(10) A statement that other voluntary protective services have been offered, attempted or have failed to remedy the situation.

(11) A statement that reasonable efforts have been made to communicate with the older adult in a language the older adult understands in the case of an older adult who is hearing impaired or who does not understand the English language.

(12) Other relevant information deemed appropriate by the agency.

(b) Oral petitions. Nothing in this chapter precludes or prohibits the oral presentation of a petition for emergency involuntary intervention. When oral presentation is warranted, the written petition shall be prepared, filed and served on the older adult and counsel within 24 hours of the entry of the emergency order or on the next business day, when the 24-hour period would fall on a weekend or legal holiday.

(c) Affidavits. Allegations which are not based upon personal knowledge shall be supported by affidavits provided by persons having that knowledge. The affidavits shall be attached to the petition.

(d) Emergency order duration. In the petition, the agency shall request an emergency order of a specific duration which may not exceed 72 hours from the time the order is granted. The agency shall request the court of common pleas to hold a hearing when the initial emergency order expires to review the need for an additional emergency court order or other continued court and

protective services involvement, or both. The issuance of an emergency order is not evidence of the competency or incompetency of the older adult.

### **Cross References**

This section cited in 6 Pa. Code § 15.71 (relating to involuntary intervention by emergency court order); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.73. Court appointed counsel.**

The act requires that an emergency order under this section provide that the older adult has the right to legal counsel. If no representation for the older adult is present at the time the emergency order is requested, the agency shall inform the court of its efforts to notify counsel under § 15.71(b) (relating to involuntary intervention by emergency court order). If the older adult is unable to provide for counsel, the court will appoint counsel as authorized by the act at the time the emergency order is entered to ensure that legal representation will be provided at the time of the emergency protective services review hearing.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.74. Forcible entry.**

When the agency requests a court order for forcible entry to the premises where an older adult at imminent risk of death or serious physical harm is located, the agency shall request the court to direct that a local or State police officer carry out the forcible entry accompanied by a representative of the agency.

### **Cross References**

This section cited in 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.75. Health and safety requirements.**

The agency shall take reasonable steps to assure protection of the older adult's dependents and property while the older adult is receiving services under an emergency court order. The agency is not responsible for the actual provision of all needed services but shall coordinate professional linkage referrals and follow-up to assure that the needed services and protections are being provided and maintained.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

#### **§ 15.76. Documentation.**

The agency shall document in the case record emergency intervention actions it takes.

### **INDIVIDUAL RIGHTS OF PARTIES INVOLVED**

#### **§ 15.81. 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 need protective services:

(1) The agency shall discreetly notify the older adult during the investigation that a report of need for protective services has been made and shall provide the person older adult with a brief summary of the nature of the report. The protective services caseworker performing the investigation shall determine when and how this notification is accomplished.

(2) If the older adult requests additional information contained in the record, the agency shall provide the information subject to the requirements in § 15.105 (relating to limited access to records and disclosure of information).

(3) A denial of services by the Department or an authorized agency under this chapter may be appealed under Chapter 3 (relating to fair hearings and appeals).

(4) Nothing in this chapter limits the rights of an older adult to file a petition under the Protection from Abuse Act (23 P.S. §§ 6101-6117).

(5) An older adult determined to need protective services has the right to refuse protective services except as provided under a court order. The agency shall obtain, when possible, the older adult's signed statement refusing protective services or document unsuccessful efforts to obtain a signed statement.

(6) An older adult has the right to legal counsel when the agency petitions the court for emergency or other orders to provide protective services without the older adult's consent. The act provides that if an older adult is unable to provide for counsel, counsel shall be appointed by the court. Under § 15.71 (relating to involuntary intervention by emergency court order), the agency is required to take steps to involve counsel when emergency petitions are filed.

(7) As provided under §§ 15.101-15.105 (relating to confidentiality), an older adult has the right to the confidentiality of information received and maintained by the agency in reports, investigations, service plans and other elements of a case record.

### **§ 15.82. Rights of alleged abusers.**

An individual who, as a result of a protective services investigation, is determined to be a perpetrator of the abuse, neglect, exploitation or abandonment of an older adult is entitled to the following if the report is substantiated by the agency:

(1) The agency shall notify the alleged perpetrator at the conclusion of the investigation of the report that allegations have been made and shall provide the alleged perpetrator with a brief summary of the allegations.

(2) As provided under § 15.105 (relating to limited access to records and disclosure of information), 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 11 (relating to general rules of administrative practice and procedure) to challenge the agency's finding resulting from the investigation of a report made under this chapter. The agency's finding is that information, after an investigation is concluded, which substantiated the need for protective services. The appeal process applicable to older adults under Chapter 3 (relating to fair hearings and appeals) also applies to alleged perpetrators of abuse, neglect, exploitation or abandonment. This appeal shall be in writing to the Secretary and be postmarked within 30 days from the date of notification by the agency required under this section.

## **PROVISION OF SERVICES**

### **§ 15.91. General.**

(a) Protective Services. Protective services are activities, resources and supports provided to older adults under the act after the initiation of an investigation to prevent, reduce or eliminate abuse, neglect, exploitation and

abandonment. Protective services activities include, but are not limited to, the following:

- (1) Administering protective services plans.
- (2) Receiving and maintaining records of reports of abuse.
- (3) Conducting investigations of reported abuse.
- (4) Conducting assessments and developing service plans.
- (5) Petitioning the court.
- (6) Providing emergency involuntary intervention.
- (7) Arranging for available services needed to fulfill 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. A partial listing of the services which may be made available to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult is found in Section 15.93(c) (relating to service plan).
- (8) Purchasing, on a temporary basis, as provided under § 15.112 (relating to uses of funding authorized by the act) services determined by a service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when the services are not available within the existing resources of the agency or other appropriate provider.

(b) Availability of protective services. The agency shall offer protective services under one or more of the following conditions:

- (1) An older adult requests the services.
- (2) Another interested person requests the services on behalf of an older adult.
- (3) If, after initiation of an investigation of a report, the agency determines the older adult needs the services.

(c) Informed consent required. The agency shall provide protective services only to older adults who give informed consent to the services. The consent shall be in writing when possible. If the older adult does not consent or, if after consenting, withdraws the consent, protective services may not be provided unless the provision of the services is allowable as a consent exemption.

(d) Consent exemptions. Protective services may be provided to older adults in need of protective services without consent only in the following situations:

- (1) When ordered by a court under section 304 of the act (35 P. S. § 10225.304).
- (2) When requested by an older adult's court-appointed guardian.
- (3) When provided under § 15.71 (relating to involuntary intervention by emergency court order).

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

## **§ 15.92. Assessment.**

(a) When a report is substantiated by the agency, or if an assessment is necessary to determine whether or not the report is substantiated, the agency shall, with the consent of the older adult, provide for a timely assessment. If the older adult does not consent, the agency may apply §§ 15.61 or 15.71 (relating to access to persons; or involuntary intervention by emergency court order).

(b) The protective services caseworker shall make face-to-face contact with the older adult to evaluate and document information including, but not limited to, the following:

- (1) Personal appearance.
- (2) Physical environment.
- (3) Physical health.
- (4) Mental functioning.
- (5) Activities of daily living.
- (6) Social environment.
- (7) Economic status-including eligibility for public and private entitlements or resources as defined under § 15.2 (relating to definitions).
- (8) Nutrition.
- (9) Recent experiences-losses, separations, major changes in relationships or environments.
- (10) The need for a formal medical or psychiatric evaluation.

(c) The assessment shall be written and include, whenever possible, older adult-given information for each area of functioning.

(d) The assessment shall be written so that the reader can determine which information came from the older adult and which constitutes the worker's judgment.

(e) The assessment shall be written in a standard format as required by the Department. Data entries shall be based on commonly accepted and defined nomenclature to make the data more usable across and within agencies and to ensure that older adults are evaluated uniformly according to the standardized definitions.

### **Cross References**

This section cited in 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## **§ 15.93. Service plan.**

(a) Upon completion of the assessment and with the consent of the older adult, a service plan shall be prepared. The service plan shall be



cooperatively developed by the agency staff, the older adult or his appointed guardian, and other family members, if appropriate. Protective services may not be provided under the act to an older adult who does not consent to the services or who, having consented, withdraws consent, unless the services are ordered by a court, requested by a court-appointed guardian of the older adult or provided under § 15.71 (relating to involuntary intervention by emergency court order).

(b) The service plan shall be in writing and shall include a recommended course of action which utilizes the least restrictive alternative, encourages self-determination and continuity of care. The recommended course of action may also include pursuit of civil or criminal remedies.

(c) The service plan shall describe the older adult's identified needs, the goals to be achieved, the specific services which will be used to support attainment of the goals and the procedures to be followed with regard to regular follow-up and assessment of progress. Specific services which may be used to implement the service plan include, but are not limited to:

- (1) Medical evaluations.
- (2) Psychiatric or psychological evaluations.
- (3) Legal services.
- (4) Public or private entitlements or resources.
- (5) Financial management.
- (6) Personal or environmental safety.
- (7) Emergency shelter.
- (8) Transportation.
- (9) Home delivered meals.
- (10) Attendant care.
- (11) Homemaker services.

(d) The service plan shall also address, if applicable, special needs of other members of the household unit as they may affect the older adult's need for protective services. The identification in a service plan of service needs of other members of the older adult's household does not obligate the agency to pay the costs of the services.

### **Cross References**

This section cited in 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.94. Service delivery.**

(a) The agency shall, with the consent of the older adult, provide for implementation of the course of action recommended in the service plan. The implementation may be provided by direct provision of services by the agency, purchase of services from another agency, referral to another agency,

provision of services by family and friends or a combination of these or other methods.

(b) Protective services may not be provided under the act to an older adult who does not consent to services or who, having consented, withdraws consent, unless the services are ordered by a court, requested by a guardian of the older adult or provided under § 15.71 (relating to involuntary intervention by emergency court order).

### **Cross References**

This section cited in 6 Pa. Code § 15.44 (relating to resolution of substantiated reports).

#### **§ 15.95. Case management.**

(a) Coordination of services. The protective services caseworker is responsible for coordination of sources of services being provided to the older adult who needs protective services. The caseworker shall also take reasonable steps to assure that services necessary to achieve the goals in the service plan are being provided.

(b) Case records. A separate record shall be established to contain information on protective services cases. The protective service case record on an older adult shall be separated from other records maintained by the agency on that older adult. Confidentiality of the protective services case record shall be maintained by the agency as set forth in §§ 15.101-15.105 (relating to confidentiality). The protective services case record includes, but is not limited to, the following:

- (1) The report of a need for protective services.
- (2) The record of investigation.
- (3) The written findings of the assessment.
- (4) The service plan.
- (5) Notes of contact with the older adult and others involved with the case.
- (6) Court documents-for example, petitions, orders and the like.
- (7) Letters of notification-abused and abuser.

(c) Reassessment. Reassessment shall be done for protective service clients.

- (1) Reassessment shall be written in the standardized format established by the Department.
- (2) Reassessment shall be done before a protective services case is terminated, transferred, it is the agency's judgment that a reassessment is appropriate, or the older adult's condition has changed.

**§ 15.96. Termination of protective services.**

- (a) The agency shall terminate protective services when the older adult is no longer "an older adult in need of protective services" under § 15.2 (relating to definitions).
- (b) Except when the older adult withdraws consent to the delivery of protective services, the agency may terminate protective services in one of the following ways:
  - (1) By closing the case when no further service intervention is required by the older adult.
  - (2) By closing the case when a court order for services has terminated and the older adult does not consent to further service intervention.
  - (3) By transferring the older adult to the service management system of the area agency.
  - (4) By transferring the older adult to another appropriate agency.
- (c) When the agency terminates protective services, the agency shall inform the older adult and, if applicable, responsible caretakers of this action and its rationale and shall attempt to secure a signed statement of understanding concerning the action. When the agency transfers a protective services case, the case record shall reflect the transfer of an older adult to another agency, the specific agency of referral and the acceptance of the referral by the other agency.

**Cross References**

This section cited in 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions).

**CONFIDENTIALITY**

**§ 15.101. General.**

Information contained in the agency's protective services case files, as defined under § 15.2 (relating to definitions), shall be considered confidential and shall be maintained under this chapter.

**Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.81 (relating to rights of

protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.102. Maintenance of case records.**

(a) Protective services case records shall be kept, when not in use by authorized persons, in a locked container and separate from other agency files. The report, the record of investigation, notes of contact with the older adult and others involved with the case, court documents and letters of notification may not be transferred to, or reprinted for, other agency files. The assessment and service plan may be transferred to other agency case files with assurance by the agency that an older adult's complete protective services case record can be immediately produced.

(b) When an individual case record is removed from its storage location for use by an authorized person, the person shall sign for the record according to sign-out procedures developed by the agency.

(c) Except as provided under § 15.105 (relating to limited access to records and disclosure of information) only staff with direct responsibility for protective services functions may be authorized by the agency to have access to the protective services case records. General access is restricted to protective services supervisors, protective services caseworkers and clerical staff assigned to type and maintain case records.

(d) As provided under § 15.43 (relating to resolution of unsubstantiated reports), when the agency cannot substantiate a report of a need for protective services the case opened by the unsubstantiated report shall be closed and information identifying the person who made the report and the alleged perpetrator of abuse, if applicable, shall be immediately deleted from the case record.

(e) For the purposes of substantiating a pattern of abuse, neglect, exploitation or abandonment, the name of the older adult reported to be in need of protective services and other information relevant to the circumstances which led to the report may be maintained for 6 months in a separate locked file accessible only to authorized staff for review when necessary to establish that a previous report was made. At the end of 6 months, case records maintained under this subsection shall be destroyed unless additional reports lead to their being reopened.

(f) The agency shall develop written procedures for the deletion or expungement of information in case records and for the destruction of case records so that unauthorized persons are not able to gain access to information from case records. The procedures shall be submitted to the Department in the protective services plan required under § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.103. Responsibilities of staff with access to confidential information.**

- (a) The agency shall assure that staff with access to information contained, or to be contained, in a case record are fully aware of the confidentiality provisions of this chapter and of the local agency.
- (b) A staff person who is authorized to have access to information contained, or to be contained, in a case record is required to take every possible step to safeguard the confidentiality of that information. This requirement extends to known information related to a case but not recorded in writing.
- (c) A staff person who is to be authorized to have access to confidential information related to protective services cases shall sign a statement provided by the Department, assuring knowledge of applicable confidentiality requirements and the penalties for violating them.

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.27 (relating to handling of completed reports); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); 6 Pa. Code § 15.104 (relating to penalties for violation of confidentiality requirements); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.104. Penalties for violation of confidentiality requirements.**

- (a) If a staff person who is authorized to have access to confidential information under this chapter is strongly suspected of violating the requirements in the signed confidentiality statement under § 15.103(c) (relating to responsibilities of staff with access to confidential information), that person shall be immediately suspended from protective services duties pending an investigation and determination of culpability.
- (b) If a staff person who is authorized to have access to confidential information under this chapter is determined upon investigation to have violated the requirements in the signed confidentiality statement under § 15.103(c), that person shall be subject to the appropriate disciplinary action in the confidentiality statement.

## **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on aging); 6 Pa. Code § 15.27 (relating to handling of completed reports); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.95 (relating to case management); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

### **§ 15.105. Limited access to records and disclosure of information.**

Information in a protective services case record may not be disclosed, except as provided in this section.

(1) Information may be disclosed to a court of competent jurisdiction or under a court order. The protective service agency shall disclose case record information for the purpose of in camera review by the court.

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

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

(4) A subject of a report, a court-appointed guardian or an attorney providing legal services to the subject of the report made under § 15.23 (relating to receiving reports; general agency responsibility) may receive, upon written request, information contained in the report except that prohibited from being disclosed by paragraph (5).

(5) The release of information that would identify the person who made a report of suspected abuse, neglect, exploitation or abandonment or a person who cooperated in a subsequent investigation, is prohibited unless the Secretary can determine that the release will not be detrimental to the safety of the person. Prior to releasing information under this paragraph, the Secretary will notify the person whose identity would be released that the person has 45 days to advise the Secretary why this anticipated release would be detrimental to the safety of that person.

(6) When the Department is involved in the hearing of an appeal by a subject of a report made under § 15.23, the appropriate Department staff shall have access to information in the case record relevant to the appeal.

(7) For the purposes of monitoring agency performance, appropriate staff of the Department may have access to agency protective services records.

(8) For the purposes of monitoring agency performance and carrying out other administrative responsibilities, individuals with local administrative

authority over the protective services program may have access to agency protective services records.

### **Cross References**

This section cited in 6 Pa. Code § 15.12 (relating to administrative functions and responsibilities of area agencies on area); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.81 (relating to rights of protective services clients); 6 Pa. Code § 15.82 (relating to rights of alleged abusers); 6 Pa. Code § 15.95 (relating to case management); 6 Pa. Code § 15.102 (relating to maintenance of case files); and 6 Pa. Code § 15.112 (relating to uses of funding authorized by the act).

## **FINANCIAL OBLIGATIONS**

### **§ 15.111. Coordination of available resources.**

(a) The agency shall insure that funding authorized under the act is not used to supplant public and private entitlements or resources as defined at § 15.2 (relating to definitions) for which older adults are, or may be, eligible.

(b) The agency shall attempt to establish the older adult's eligibility for appropriate public and private entitlements and resources and shall exhaust the eligibility for benefits prior to the utilization of funds authorized by the act for the provision of services.

(c) The agency is required to coordinate the utilization of public and private entitlements and resources. This chapter does not establish a means test for the provision of protective services. A protective service client who receives a service may not be required to pay a fee not required of other older adults receiving the same service.

### **§ 15.112. Uses of funding authorized by the act.**

The agency may utilize funding authorized by the act to pay for activities, including, but not limited to, the following:

(1) Administering protective services plans as described at § 15.12(b) (relating to administrative functions and responsibilities of area agencies on aging).

(2) Receiving reports and maintaining records of reports as provided under §§ 15.23 and 15.101-15.105 (relating to receiving reports; general agency responsibility; and confidentiality).

(3) Conducting investigations under §§ 15.41-15.47 (relating to investigating reports of need for protective services).

(4) Conducting assessments and developing service plans under §§ 15.92 and 15.93 (relating to assessment and service plan).

(5) Petitioning the court under §§ 15.61-15.63 and 15.71-15.75 (relating to agency access to persons and records; and emergency intervention).

(6) Providing emergency involuntary intervention under §§ 15.71-15.75.

(7) Arranging for available services needed to carry out service plans, which may include, as appropriate, arranging for services for other household members to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult. The inclusion of services needed by other household members in the service plan will allow the agency to arrange for the provision of those services through public and private entitlements or resources for which the individuals are or may be eligible. The inclusion does not obligate the agency to pay for the services or to provide services which are not available from another appropriate provider.

(8) Purchasing, on a temporary basis, services determined by the service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult when the services are not available within the existing resources of the agency or another appropriate provider. Funding authorized by the act and expended under an area agency on aging protective services plan may not be used for the purchase of services which are already financed through other State-administered plans for local service delivery or through local public and private resources under those plans except with the specific prior approval of the Department. The protective services plan shall identify the agency's proposed expenditures for activities under this paragraph. The agency shall insure that every attempt has been made to provide the service through existing agency resources, appropriate utilization of other providers and the coordination of public and private entitlements and resources prior to entering into the purchase of services for a protective services client.

### **Cross References**

This section cited in 6 Pa. Code § 15.91 (relating to general).

#### **§ 15.113. Time limitation on service purchases.**

(a) After exhausting available steps to provide necessary services through existing agency resources, utilization of other providers and the coordination of public and private entitlements and resources, the agency may purchase those services on a time-limited basis.

(b) The purchase of services under this section is limited to a 30-day period which may be renewed only with adequate justification. The agency shall consider the 30-day period to be a maximum time limit for the purchase of services and not a standard time allotment. After the decision to purchase services has been made, the agency shall continue the pursuit of alternate



ways to provide the services and terminate the purchase of services as soon as possible.

(c) If at the end of 30 days of continuous service purchase on behalf of an individual protective services client, the services are still necessary and still available only through purchase, complete justification of the need for services and documentation of the unavailability of the services shall be made a part of the record as required by § 15.95(b) (relating to case management).

### **Cross References**

This section cited in 6 Pa. Code § 15.95 (relating to {case} care management).

#### **§ 15.114. Obligation of the Commonwealth and the counties.**

The obligation of the Commonwealth and the counties to provide funds to the Department or an agency for services provided under this chapter shall be entirely discharged by the appropriations made to the Department or an agency. If the agency has met its responsibility under the law, no action at law or equity may be instituted in a court to require the Department, an agency, county or the Commonwealth to provide benefits or services under the act for which appropriations from the Commonwealth or counties are not available. The responsibility of the area agency on aging, the county and the Commonwealth to provide funding is met when resources authorized by the act and provided under approved area agency on aging plans have been expended.

### **STAFF TRAINING AND EXPERIENCE STANDARDS**

#### **§ 15.121. Protective services staff qualifications.**

(a) General. The area agency on aging shall assure that staff directly involved with the protective services caseload meet the minimum standards of training and experience in this chapter. The minimum standards apply to staff assigned to protective services on a full-time basis, a part-time basis or as standby staff. The minimum standards apply to incumbent staff as well as those hired after November 26, 1988.

(b) Criminal record. The protective services agency shall require persons to be hired or to be assigned to carry out responsibilities for protective services investigations, assessments and service planning and arrangement to submit the following information:

(1) Under 18 Pa. C.S. §§ 9101-9183 (relating to the criminal history record information act), a report of criminal history record information from the State Police or a statement from the State Police that the State Police Central Repository contains no information relating to that person.

The criminal history record information shall be limited to that which is disseminated under 18 Pa. C.S. § 9121(b)(2) (relating to general regulations).

(2) If the applicant or assignee is not a resident of this Commonwealth, a report of Federal criminal history record information under the Federal Bureau of Investigation appropriation of Title II of the Act of October 25, 1972 (Pub.L. 92-544, 86 Stat. 1109).

(c) Staff training and experience requirements. The minimum standards for protective services job functions are as follows:

(1) Protective services supervisor. A protective services supervisor shall:

(i) Have 3 years direct aging casework experience or an equivalent combination of education and experience.

(ii) Complete the curriculum described at § 15.122 (relating to protective services casework training curriculum).

(iii) Complete the curriculum described at § 15.123 (relating to protective services investigation training curriculum) if the protective services supervisor will be performing protective services investigations.

(iv) Complete written evaluations that assess competencies achieved by the learner.

(v) Undergo in-service training in protective services annually as required by the Department.

(2) Protective services caseworker. A protective services caseworker shall:

(i) Have 1 year direct aging casework experience.

(ii) Complete the curriculum described at § 15.122.

(iii) Complete the curriculum described at § 15.123.

(iv) Complete written evaluations that assess competencies achieved by the learner.

(v) Undergo in-service training in protective services annually as required by the Department.

(3) Protective services intake workers. Staff persons designated to receive reports of older adults who need protective services shall complete the curriculum under § 15.124 (relating to protective services intake training curriculum).

### **Cross References**

This section cited in 6 Pa. Code §15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6

Pa. Code § 15.125 (relating to availability of training); and 6 Pa. Code § 15.126 (relating to training evaluation).

### **§ 15.122. Protective services casework training curriculum.**

The protective services casework training curriculum shall consist of comprehensive training including, but not limited to, the following topics:

- (1) An overview of abuse, neglect, exploitation and abandonment.
- (2) Laws and regulations of the Commonwealth relating to abuse, neglect, exploitation and abandonment of older adults.
- (3) Detection of abuse, neglect, exploitation and abandonment.
- (4) Protective services case assessments.
- (5) Provision of protective services.
- (6) Interviewing skills.
- (7) The resistant older adult.
- (8) Utilization of local resources.
- (9) Incompetence or Incapacity.
- (10) Relationships with other agencies.
- (11) Confidentiality.
- (12) Institutional investigations.
- (13) Service options for victims of abuse, neglect, exploitation and abandonment.
- (14) Informed consent.
- (15) Self-neglect.
- (16) Retaliation.

### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.121 (relating to protective services staff qualifications); and 6 Pa. Code § 15.127 (relating to in-service training).

### **§ 15.123. Protective services investigation training curriculum.**

The protective services investigation training curriculum shall consist of comprehensive training including, but not limited to, the following topics:

- (1) Laws and regulations of the Commonwealth related to investigations and criminal procedures.
- (2) The criminal justice system.
- (3) Developing the investigative plan.

- (4) Investigative techniques.
- (5) Maintaining control of the interview.
- (6) Interviewing reporters.
- (7) Interviewing collateral sources.
- (8) Interviewing victims.
- (9) Observation techniques.
- (10) Techniques to obtain documentary evidence.
- (11) Techniques to gather and preserve physical evidence.
- (12) Closing the investigation.
- (13) Presenting testimony in court.
- (14) Coordination with other State Agencies.

### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); 6 Pa. Code § 15.121 (relating to protective services staff qualifications); and 6 Pa. Code § 15.127 (relating to in-service training).

### **§ 15.124. Protective services intake training curriculum.**

The protective services intake training curriculum shall consist of training including, but not limited to, the following topics:

- (1) Interviewing the reporter.
- (2) Completion of the report form.
- (3) Preliminary case status assessment to determine report categories.
- (4) Requirements for referral of the report to the protective services staff.
- (5) Emergency procedures.
- (6) Confidentiality.

### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.24 (relating to receiving reports; agency intake

process); 6 Pa. Code § 15.41 (relating to reports required to be investigated); 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources); and 6 Pa. Code § 15.121 (relating to protective services staff qualifications).

#### **§ 15.125. Availability of training.**

(a) The Department will provide for the development of training curricula described in this section and will require the training to be conducted on a timely and recurring basis. The Department will also provide for annual in-service training.

(b) The agency shall utilize staff meeting the requirements in § 15.121(c)(1) and (2) (relating to protective services staff qualifications) to conduct training for protective services intake workers. The training shall be in conformity with the curriculum for protective services intake workers established by the Department.

#### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

#### **§ 15.126. Training evaluation.**

A person who completes the training set forth for each job function in § 15.121 (relating to protective services staff qualifications) shall complete written evaluations that assess competencies achieved by the learner.

#### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code § 15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

#### **§ 15.127. In-service training.**

(a) In addition to the required training set forth in §§15.122 and 15.123 (relating to protective services casework training curriculum; and protective

services investigation training curriculum), protective services supervisors and protective services caseworkers shall participate in in-service training in protective services as required by the Department each year beginning with the calendar year following completion of the required basic protective services training set forth in §11.122 (relating to protective services casework training curriculum).

(b) Annual in-service training shall consist of a minimum of one day of training and may include, but not be limited to, the following topics:

- (1) Update on laws and regulations relating to protective services.
- (2) Technical assistance for common problems.
- (3) Best practice presentations.

### **Cross References**

This section cited in 6 Pa. Code § 15.2 (relating to definitions); 6 Pa. Code §§15.11 (relating to administrative functions and responsibilities of the Department); 6 Pa. Code § 15.13 (relating to organization and structure of protective services functions); 6 Pa. Code § 15.41 (relating to reports required to be investigated); and 6 Pa. Code § 15.46 (relating to law enforcement agencies as available resources).

## **CRIMINAL HISTORY RECORD INFORMATION REPORTS**

### **§ 15.131. Prospective facility personnel.**

(a) General rule - A facility, shall require applicants for employment to submit applications with a criminal history report, obtained within one year immediately preceding the date of application, or as set forth at §15.134 (relating to procedures), as follows:

- (1) State police criminal history record - Facilities shall require all applicants to submit a state police criminal history record.
- (2) Federal criminal history record. If the applicant is not and for the two years immediately preceding the date of application has not been a resident of this Commonwealth, the facility shall require the applicant to submit a federal criminal history record and a full set of fingerprints to the Department which will be forwarded to the Federal Bureau of Investigation.

(b) Proof of residency - Facilities may require an applicant to furnish proof of residency, including, but not limited to, any one of the following documents:

- (1) Motor vehicle records, such as a valid driver's license.

- (2) Housing records, such as mortgage records, rent receipts or certification of residency in a nursing home.
- (3) Public utility records and receipts, such as electric bills.
- (4) Local tax records.
- (5) A completed and signed, Federal, State or local income tax return with the applicant's name and address preprinted on it.
- (6) Employment records, including records of unemployment compensation.

**§ 15.132 Employee requirements.**

- (a) The following employees are required to submit a criminal history report:
  - (1) Administrators and operators who have direct contact with clients and who began serving as administrators and operators after July 1, 1998 . Pennsylvania residents shall comply within thirty days of employment and non-residents shall comply within ninety days.
  - (2) employees of a facility who were employed after July 1, 1998. Pennsylvania residents shall comply within thirty days of employment and non-residents shall comply within ninety days.
  - (3) Exceptions:
    - (i) Employees of the facility on July 1, 1998, who were employed by the facility for a continuous period of at least one year prior to July 1, 1998.
    - (ii) Employees who have complied with the requirements of this Section who transfer to another facility established or supervised, or both, by the same operator.
    - (iii) Employees who are employed by a new facility solely through a transfer of ownership of that facility.
    - (iv) A consumer attendant.
    - (v) An individual providing care to a care-dependent person, and employed by the care-dependent person, or by another person designated by the care-dependent person, and not by or through a home health care agency.
    - (vi) An individual, employed by an enterprise that operates facilities and non facilities in the same physical location, who has no employment responsibilities in the facility (Example: an individual employed by a hospital which also has within it a long-term care nursing unit. The individual is employed to work in the hospital).
    - (vii) A contract employee who has neither direct contact with residents in a facility nor unsupervised access.
    - (viii) An individual, employed by a home health agency or other entity that supplies, arranges for, or refers personnel to provide

care to care-dependent persons, who is employed for purposes other than providing care in a facility or in a recipient's place of residence (example: an individual employed as a bookkeeper by an agency which supplies homemaker/home health aides)

(ix) an individual functioning in a facility as a volunteer.

(b) Employees at facilities that supply, arrange for, or refer their employees to provide care in other facilities shall provide a criminal history report to the facility that supplies, arranges for, or refers them and to the facility at which they provide care. The exemptions of this Section are applicable to these employees. (Example: Employees of a home health care staffing agency assigned by the agency to provide care in a long-term care nursing facility must provide a criminal history report to the staffing agency and to the long-term care nursing facility). The staffing agency shall be responsible for notifying the employee of criminal history report requirements.

(c) Criminal history reports provided by the Pennsylvania Department of Education, pursuant to the Nurse Aide Resident Abuse Prevention Training Act (63 P.S. §§671-680), which meet the criteria established in this chapter may be accepted to satisfy the requirements of this chapter.

### **§ 15.133 Facility responsibilities**

(a) A facility shall ensure that applicant or employee responsibility to obtain criminal history reports is explained to each applicant or employee orally and in writing in a language understood by the applicant or employee.

(b) Facilities shall maintain employment records which include copies of completed request forms for criminal history reports, state police criminal history records and department letters regarding federal criminal history records.

(c) An administrator shall assure that information obtained from state police criminal history records and department letters regarding federal criminal history records remain confidential and are used solely to determine an applicant's eligibility for employment or an employee's eligibility for retention.

(d) If the decision not to hire or to terminate employment is based in whole or in part on state police criminal history records, department letters regarding federal criminal history records, or both, facilities must provide applicants and employees with information on how to appeal to the sources of criminal history records if they believe the records are in error.

### **§ 15.134 Procedure.**

(a) Applicants and employees required to obtain a criminal history record from the State Police may obtain forms from a State Policy facility.



- (1) The State Police may charge a fee of not more than \$10.00. A facility's check, cashier's check, certified check or money order shall accompany the request unless other payment arrangements are made with the State Police.
- (2) Facilities may at their option require applicants and employees to return the form to a designated individual for submission by the facility.
- (b) Applicants and employees required to obtain a Federal criminal history record shall obtain the information packet from the facility or the Department.
  - (1) Applicants and employees shall return the Federal Bureau of Investigation fingerprint card and forms, and a cashier's check, certified check, or money order payable to the Federal Bureau of Investigation in the exact amount established by the Federal Bureau of Investigation. Upon receipt, the Department will submit the request to the State Police for transfer to the Federal Bureau of Investigation.
  - (2) Upon receipt of the criminal history record from the Federal Bureau of Investigation, the Department will contact the applicant or employee with a written letter.
- (c) Applicants and employees shall complete all necessary forms. Facilities shall assist an applicant or employee comply with this requirement if requested.
- (d) Facility administrators may assume financial responsibility for the fees through a quarterly payment system.
- (e) Applicants and employees are responsible for reviewing their own criminal history reports for accuracy

**Section 15.135. Applicant or employee rights of review.**

- (a) An applicant or employee may review, challenge and appeal the completeness or accuracy of the applicant's or employee's criminal history report under 18 Pa.C.S. Sections 9125, Sections 9152-9183 (relating to the Criminal History Information Act), or 28 CFR Section 16.34, or both.
- (b) An applicant or employee may challenge the conviction comparison interpretation of the Department involving the Federal criminal history record by filing an appeal with the Department under 1 PA Code Chapter 35 (relating to formal proceedings in administrative practice and procedure) and 6 PA Code Chapter 3 (relating to fair hearings and appeals). Appeals must be postmarked within 30 days from receipt of the Department's letter and be in writing to the attention of the Secretary of the Department.

**§ 15.136 Facility personnel rights of review and appeal. [Reserved]**

## **§ 15.137 Provisional hiring.**

(a) Facilities may employ applicants on a provisional basis for a single period, not to exceed 30 days for applicants requesting a state police criminal history record, and a single period not to exceed 90 days for applicants requesting a Federal criminal history record, if all of the following conditions are met:

(1) Applicants shall have applied for a criminal history report and provided the facility with a copy of the completed request forms.

(2) The provisionally employed applicant shall receive an orientation which provides information on policies, procedures and laws which address standards of proper care and recognition and reporting of abuse or neglect, or both, of recipients.

(3) The facility shall regularly supervise the applicant carrying out assigned duties. The results of the observations shall be documented in the employee personnel file.

(4) A home health care agency shall supervise the applicant through random, direct observation and evaluation of the applicant and care recipient by an employee who has been employed by the home health agency for at least one year. The results of the observations shall be documented in the employee personnel file.

(5) A home health agency which has been in business for less than one year shall supervise the applicant through random, direct observation and evaluation of the applicant and care recipient by an employee with prior employment experience of at least one year with one or more other home health care agencies. The results of the observations shall be documented in the employee personnel file.

(b) If the criminal history record, the letter issued by the Department, or both, have not been provided due to the inability of the state police or the Federal Bureau of Investigation to provide them timely, the period of provisional employment shall be extended until the facility receives the required reports. During the extended provisional employment period, the supervision and documentation requirements of this Section shall be continued.

## **§ 15.138 Violations**

(a) Administrative

(1) An administrator or designee or facility owner-operator who intentionally or willfully fails to comply or obstructs compliance

with §§ 15.131 through 15.137 commits a violation of this chapter and shall be subject to an administrative penalty.

(2) Violations and penalties shall be determined by the Commonwealth agency that licenses the facility the commonwealth agency may issue an order assessing a civil penalty of not more than \$2,500. An order issued pursuant to this paragraph is subject to due process as set forth in 2 pa.c.s.a. §§ 501-555 (relating to practice and procedure of commonwealth agencies) and judicial review in 2 pa.c.s.a. §§ 701-754 (relating to judicial review).

(3) Representatives of the Departments of Aging, Health and Welfare who suspect violations of this section shall report them to the appropriate Commonwealth licensing agency under procedures developed by the Department in consultation with the licensing agency. The report shall be made in writing and include, at a minimum, the facility, the administrator, owner, operator or designee suspected of committing the violation and a description of the suspected violation.

(b) Criminal -

An administrator or designee or facility owner who intentionally or willfully fails to comply or obstructs compliance with sections 15.131 through 15.137 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.

## **REPORTING SUSPECTED ABUSE**

### **§ 15.141. General requirements.**

(a) Administrators or employees who have reasonable cause to suspect that a recipient is a victim of abuse shall:

(1) Immediately make an oral report to the agency.

(2) Make a written report to the agency within 48 hours.

(b) Employees making oral or written reports shall immediately notify the administrator or designee of these reports.

(c) Agencies shall notify administrators, or their designees, and State agencies with facility licensing responsibilities immediately when written reports of abuse are received.

(d) Employees required to report abuse may request administrators or their designees to make, or assist the employees to make, oral or written reports.

### **§ 15.142. Additional reporting requirements.**

(a) Administrators or employees who have reasonable cause to suspect that a recipient is the victim of sexual abuse, serious physical injury or serious bodily injury, or that a recipient's death is suspicious, shall, in addition to the reporting requirements in Section 15.141(a):

(1) Immediately make an oral report to law enforcement officials. An employee shall immediately notify the facility administrator or a designee following a report to law enforcement officials.

(2) Make an oral report to the Department during the current business day or, if the incident occurs after normal business hours, at the opening of the next business day.

(3) Make a written report within 48 hours of making the oral report to law enforcement officials and the agency.

(b) Law enforcement officials shall promptly notify facility administrators or their designees that reports have been made with them.

(c) Administrators or employees shall, in addition to complying with these requirements, comply with any reporting requirements of the commonwealth licensing agency that licenses or funds the facility.

#### **§ 15.143. Contents of reports.**

(a) Written reports under §§ 15.141 and 15.142 shall be made on forms supplied or approved by the Department.

(b) The report shall include, at a minimum, the following information:

(1) Name, age and address of recipient.

(2) Name, address of recipient's guardian or next-of-kin.

(3) Facility name and address.

(4) Description of the incident.

(5) Specific comments or observations.

#### **§ 15.144. Reports to Department and coroner by agencies.**

(a) Department

(1) Within 48 hours of receipt of a written report under §15.142 involving sexual abuse, serious physical injury, serious bodily injury or suspicious death, the agency shall transmit a written report to the department.

(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 evidence of prior abuse.

(v) The name and relationship of the individual responsible for causing the alleged abuse to the victim, if known, and 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).

(b) Coroner - For a report under §15.142 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 county coroner of the county wherein the death occurred.

### **§ 15.145. Investigation.**

(a) Upon receipt of a report under §§15.141 and 15.142, the agency shall respond as follows:

(1) If the victim or recipient is 60 years of age or older, the agency shall conduct an investigation to determine if the older person who is the subject of the report is in need of protective services. The investigation by the agency shall be conducted as set forth at §15.41 through 15.47

(2) If the victim or recipient is under 60 years of age, the agency may not conduct an investigation. The investigation of the reports shall be conducted by the state agency, if any, that licensed the facility.

(3) If the victim or recipient is under 18 years of age, the agency shall notify and forward reports to, the regional office of the Department of Public Welfare, Office of Children, Youth and Families or the state "ChildLine" and the county office of child protective services.

(4) If the victim or recipient resides in a nursing home or is receiving home health services, the agency shall notify and forward reports to the Department of Health office with facility licensing responsibilities and the regional office of the Department of Health.

(5) If the victim or recipient resides in a personal care home, the agency shall notify and forward reports to the Department of Public Welfare regional office with facility licensing responsibilities.

(6) If the victim or recipient resides in a Domiciliary Care home or receives services from an adult daily living center, the agency shall notify and forward reports to the Department

(7) If the agency has knowledge or believes that the victim or recipient has mental retardation or a mental health condition, the agency shall notify the Department of Public Welfare office with facility licensing

responsibilities and the county MH/MR office in addition to making other reports required by this subsection.

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

#### **§ 15.146. Restrictions on employees.**

- (A) Upon notification that an employee is alleged to have committed abuse, the facility shall immediately develop and implement an individual plan of supervision or, when appropriate, suspension of the employee. The facility shall submit to the agency and the Commonwealth agency with regulatory authority over the facility a copy of the employee's individual plan of supervision for approval within the agencies' accepted timeframes.
- (B) Following approval of an individual plan of supervision by the agency and Commonwealth agency, the facility shall follow the plan. Changes to the plan must be approved by the agency and the Commonwealth agency with regulatory authority over the facility prior to their implementation.
- (C) The individual plan of supervision established by a home health care agency shall, in addition to the requirements of this section, include periodic, random direct observation and evaluation of the employee and care recipient by an individual continuously employed by the home health care agency for at least one year. For a home health agency in business for less than one year, supervision shall include random, direct observation
- (D) And evaluation by an employee with prior employment experience of at least one year with one or more other home health care agencies.
- (E) Upon being notified by law enforcement officials of a decision to file criminal charges against an employee, as a result of a report made in compliance with section 15.142, the facility shall inform the Commonwealth agency that licenses the facility. The Commonwealth licensing agency shall order the facility to immediately deny the employee access to recipients at the facility. If the employee is a director, operator, administrator or supervisor, the employee shall be subject to restrictions by the Commonwealth licensing agency to assure the safety of recipients at the facility.

#### **§ 15.147. Confidentiality of and access to confidential reports.**

(a) General rule. Except as provided in subsection (b) and section 15.105, all information concerning a report under this chapter shall be confidential.

(b) Exceptions. Relevant information concerning a report under this chapter shall be made available to 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, including the long term care ombudsman.

(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 that 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 a hospital or other medical institution where the victim is being treated if the director or designee suspects the recipient is in need of protection under this chapter.

(6) The recipient or the 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 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, the 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.

## **§ 15.148. Penalties.**

(a) Administrative.

(1) An administrator or a designee or facility owner who intentionally or willfully fails to comply or obstructs compliance with § 15.141 through 15.147 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.

(2) Violations and penalties shall be determined by the Commonwealth agency that regulates the facility. The commonwealth agency may issue an order assessing a civil penalty of not more than \$2,500. An order issued pursuant to this paragraph is subject to due process as set forth in 2 Pa.C.S.A. §§501-555 (relating to practice and procedure of Commonwealth agencies) and judicial review in 2 Pa.C.S.A. §§ 701-754 (relating to judicial review).

(3) Representatives of the Departments of Aging, Health and Welfare who suspect violations of this section will report them to the appropriate Commonwealth licensing agency under procedures developed by the Department in consultation with the licensing agency. The report shall be made in writing and include, at a minimum, the facility, the administrator, owner, operator or designee suspected of committing the violation and a description of the suspected violation.

(b) Criminal. An administrator or a designee or facility owner who intentionally or willfully fails to comply, or obstructs compliance, with Sections 15.141 through 15.147 of 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 to report a case of suspected abuse under §§ 15.141 through 15.147 and 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. If the agency learns of a refusal to complete all reporting requirements, the agency shall notify the police within 72 hours.

#### **§ 15.149. Immunity.**

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

### **OTHER ADMINISTRATIVE PROVISIONS**

#### **§ 15.161. Waivers.**



(a) The Department may, at its discretion and for justifiable reason, grant exceptions to and departures from this chapter to an area agency on aging when the area agency on aging can, by clear and convincing evidence, demonstrate that compliance would cause an unreasonable and undue hardship upon the area agency on aging and that an exception would not impair the health, safety or welfare of older adults or otherwise compromise the intent of this chapter. The Department cannot, however, waive statutory requirements in the act.

(b) A waiver request shall be made in writing to the Secretary. A request shall specifically identify and explain the burden created by the requirement for which the exception is being sought, the alternative method for fulfilling the basic intent of the requirement and evidence of the steps to be taken to assure that the health, safety and welfare of older adults will not be compromised.

(c) An exception granted under this chapter may be revoked by the Department at its discretion for a justifiable reason. Notice of revocation will be in writing and will include the reason for the action of the Department and a specific date upon which the exception will be terminated.

(d) In revoking an exception, the Department will provide for a reasonable time between the date of written notice of revocation and the date of termination of an exception for the agency to come into compliance with the applicable regulations.

(e) If an agency wishes to request a reconsideration of a denial or revocation of an exception, it shall do so in writing to the Secretary within 15 days of receipt of the adverse notification.

**CONTINUATION SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

**NOTICE OF FINAL RULEMAKING**

**PROTECTIVE SERVICES FOR OLDER ADULTS**

The Department of Aging, in order to safeguard more effectively the rights and protection of incapacitated older adults, amends 6 Pa. Code Chapter 15, Protective Services for Older Adults, as set forth in Annex A. The Department amends these regulations under the authority of the Act of November 6, 1987 (P.L. 381, No. 79) as amended by the Acts of December 18, 1996 (P.L. 1125, No. 169) and June 9, 1987 (P.L. 160, No. 13) (35 P.S. Sections 10225.101 – 10225.5102). Amendments clarify definitions and operational elements to reflect the experience of protective services agencies (Area Agencies on Aging) over the past thirteen years, and add sections to implement the requirements of legislation requiring applicants and specified employees at specified care-providing facilities to obtain criminal history record information reports and requiring administrators and employees at these facilities to report suspected abuse. The Department amended Sections 15.1 through 15.46, 15.61 and 15.62, 15.71, 15.81 through 15.96, 15.102 and 15.103, 15.105 through 15.113, 15.121 through 15.123, 15.127, and 15.161 in order to update terms and practices, conform to recent legislation, or respond to comments. The Department added Sections 15.131 through 15.138, dealing with mandated criminal history record information reporting , and 15.141 through 15.149, dealing with mandated reporting of suspected abuse.

Following a December, 2001 decision by the Commonwealth Court of Pennsylvania in *Nixon v. Commonwealth of PA*, No. 359, (Pa. Commonw. 2001), the Department amended Sections 15.133 through 15.135 and Section 15.137 to remove the listing of prohibited offenses and mandatory use of information contained in criminal history reports to prohibit facilities from hiring applicants or retaining employees.

The Department published Notice of proposed rulemaking in the November 27, 1999 issue of the Pennsylvania Bulletin (29 Pa. B. 6010) and provided a 30-day public comment period. The Department received comments from 7 Area Agencies on Aging, the Office of the Auditor General, the Pennsylvania Health Law Project, Community Legal Services of Philadelphia, the Pennsylvania Association of Non-Profit Homes for the Aging, Greenwich Services, staff of the Senate and House Aging and Youth Committees, the Center for Advocacy for the Rights and Interests of the Elderly, the Pennsylvania Association of Home Health Agencies, the AFL/CIO, the Pennsylvania Association of Resources for People with Mental Retardation, the Philadelphia Coalition of Community MH/MR Centers, the Independent Regulatory Review Commission, the Department's Office of the Long-term Care Ombudsman, and one individual.

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**CONTINUATION SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

SUMMARY

Amendments more effectively safeguard the rights and protections of incapacitated older adults, and recipients of any age in specified facilities, by enhancing the system of activities, resources, and supports which prevent, reduce, or eliminate abuse, neglect, exploitation, and abandonment, and by adding provisions for mandatory submission of criminal history record information and mandatory reporting of suspected abuse.

DISCUSSION OF COMMENTS

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## **Comment and Response Document**

### **Section 15.1. Scope and authority.**

#### *Comments:*

Several state agencies, advocacy organizations and the Independent Regulatory Review Commission (IRRC) suggested that the Department clarify the applicability of regulations to persons under age 60. Many commenters requested clarification of which facilities were covered. The Department of Public Welfare (DPW) supported the Department's decision to add the DPW and the Department of Health (DOH) to (b); IRRC asked that the Department delete reference to DPW and DOH. The Office of General Counsel (OGC) recommended that the Department add "facilities" to the statement of scope in (b).

#### *Responses:*

The Department initially added language in (a) to make clear that these regulations cover both mandatory reporting of abuse of recipients of care of any age and criminal history record information reports for applicants and employees, as set forth in the Older Adults Protective Services Act (OAPSA). However, the phrase "of any age" was deleted from (a) following an August, 2001 meeting with Policy Office staff, counsel and program staff from the Departments of Aging, Health and Public Welfare, because its inclusion served to confuse many providers and members of the public rather than to help clarify issues of scope and authority. The Department amended (b) to remove reference to the DOH and DPW after discussions with IRRC, DPW and DOH. The Department added the phrase "and the facilities defined in this chapter" to (b). In addition, the definitions for "administrator", "care" and "care-dependent individual" were

taken verbatim from the OAPSA in order to help clarify questions about the scope and authority of the regulations.

**Section 15.2. Definitions.**

*Comments:*

The OGC asked that the Department remove (ii) in the definition of “abuse” to a more substantive Section of the regulations. The Department complied in proposed rulemaking. In subsequent discussions, IRRC and staff from the Senate and House Aging and Youth Committees (oversight committees) recommended that the Department return (ii) to the definition, so that the regulation would conform to the language of the OAPSA (35 P.S. Sections 10225.101 – 10225.5102).

*Response:*

The Department restored (ii) to the definition of “abuse”.

*Comments:*

Several commenters felt that the definition of “applicant”, taken verbatim from the OAPSA, allowed multiple interpretations. For example, the person submitting an application to a facility was not necessarily the person who sought employment.

*Response:*

Following discussion with OGC, the Department reverted to the language of the OAPSA for the definition of “applicant”.

*Comment:* The Pennsylvania Association of Non-Profit Homes for the Aging (PANPHA) noted that the phrase “medical social services” in the definition of “care” should be broadened to include other appropriate types of social services.

*Response:*

The Department deleted the word “medical”.

*Comment:*

At the direction of OGC and the suggestion of the PA Health Law Project, the Department deleted the last sentence, addressing the intent of the OAPSA, from the definition of “caretaker” in proposed rulemaking. Subsequently, IRRC directed the Department to reinstate the last sentence, in conformity with the definition in the OAPSA.

*Response:*

The Department reinstated the final sentence, which states that it is not the intent of the Act to impose responsibility on an individual if the responsibility would not otherwise exist in law.

*Comment and Response:* After discussion with OGC, the Department added a definition of “criminal history report” in order to provide a succinct way of referring simultaneously to State Police and Federal criminal history records.

*Comment:*

DPW suggested that the Department amend the definition of “employee” to exclude a “consumer-employed and directed attendant” from the definition, since these attendants are not employed by facilities as defined in the OAPSA.

*Response:*

The Department added the requested language to the definition of “employee” so as to exclude consumer-employed and directed attendants. However, following an August, 2001 meeting with Policy Office staff, Counsel, and program staff from the Departments

of Aging, Health and Public Welfare, the Department decided to remove this substantive exclusionary language for consumer- employed and directed attendants, as well as all other language excluding other classes of persons, from the definition of “employee” to Section 15.132 (relating to employee requirements). The Department also changed the format of the presentation of classes of persons to be considered employees, removing the continuous paragraph adopted verbatim from OAPSA, and instead identifying each class separately, using lower-case roman numerals from (i) to (v).

*Comment:*

(As proposed, the definition of “employee” was taken verbatim from the OAPSA, but modified in several ways: The Department added language in (iii) of Section 15.2 to broaden the scope of the statutory “...who is employed or who enters into a contractual relationship...” by adding the phrase “...or who establishes any other agreement or arrangement...”. The Department also added the phrase “...with a home health care agency...” to emphasize the inclusion of home health care agencies as facilities employing persons under the OAPSA.)

DPW requested the addition of a definition of “off site” and “on site” employees, of “direct contact”, and of “unsupervised access”. IRRRC also asked for an explanation of the latter two terms and for an explanation of any deviation from the definitions in the OAPSA. PANPHA, DPW and others asked that the Department define “contract employee”. DPW asked that the Department add the phrase “a facility...” following “...or who enters into a contractual relationship with...” and that an exclusion for volunteers be added.

*Responses:*

The Department added separate definitions proposed by DPW for “direct contact” and for “unsupervised access”, in order to enable facilities to determine which applicants and employees needed to submit criminal history record information (CHRI) reports; added an exception for persons who are employed by a care-dependent person or that person’s designee, rather than by a home health care agency (See 15.132 (a)(3)(v) ; further defined “contract employee” (See 15.2 (iv)); and added an exception for volunteers (See 15.132 (a)(3)(ix) ). The IRRC and oversight committees initially asked ix that the Department remove language which was not part of the definition in the OAPSA. After discussion with several major stakeholders, it was decided to retain the excepted classes in 15.132 (a)(3) , are of great importance because they affect who is, and is not, considered an employee of a facility for purposes of reporting abuse and of obtaining CHRI reports.

*Comment:*

As proposed, the definition of “facility” was taken from the OAPSA, except for the addition of the phrase “...including those entities licensed as personal care homes who publicly advertise, promote or otherwise hold themselves out to the public as assisted living facilities...” immediately following the listing of personal care homes. IRRC requested an explanation for this addition. The oversight committees asked the Department not to introduce another level of care to this discussion, since a complete definition of assisted living did not yet exist in statute or regulation.

*Response:*

The Department deleted this phrase from the definition of “facility”.



*Comment and Response:* After discussion with OGC, the Department added a definition for “Federal criminal history record”.

*Comments:*

As proposed, the definition of “home health care agency” (hhca) was taken from the OAPSA, except for the addition of wording provided in a comment from the Pennsylvania Association of Home Health Agencies (PAHHA) specifying types of providers to be included in the definition. IRRC questioned the need to add the list provided by PAHHA. DPW requested a more complete definition of “hhca” to clarify who must comply. IRRC requested an explanation for the addition of the list of providers. Several Area Agencies on Aging (AAAs) asked that the regulations be more specific in identifying covered facilities.

*Responses:*

After initial discussion with commenters, the Department retained the list of types of providers in (ii) included as “hcas”. However, after meeting with Policy Office staff, Counsel, and staff from the Departments of Aging, Health and Public Welfare in August of 2001, it was decided to remove the phrase “...or any other entity which supplies, arranges for, or refers personnel to provide care for which that entity receives a fee, consideration, or compensation of any kind;...” because it raised questions about the applicability of the regulations to care managers. Instead, the Department added a class of individuals to the definition of “employee” at 15.2 (v) : “An individual, employed by an entity which supplies, arranges for, or refers personnel to provide care to care-dependent persons, who is employed to provide care to care-dependent persons in facilities or in their places of residence.” At DPW’s request, the Department added a

listing of facilities regulated by DPW: Community Residential Rehabilitation Services, Community Homes and Family Living Homes for Individuals with Mental Retardation, Intermediate Care Facilities for Individuals with Mental Retardation, including state and non-state operated facilities and homes, and State Mental Hospitals. However, following a subsequent discussion with DPW, the DOH, the oversight committees and IRRRC, it was decided to remove this listing from the regulations. DPW decided to issue a Bulletin including the above-listed facilities within the scope of the OAPSA; DOH decided to issue a written document stating that Drug and Alcohol programs are not included within the scope of the OAPSA.

*Comments:*

Regarding the definition of "incapacitated older adult", the Philadelphia Corporation for Aging (PCA) recommended that the Department not amend the text so as to preclude consideration of both capacity and incompetency. IRRRC recommended that the Department replace the reference to the Incapacitated Persons Act (20 P.S. Sections 5501-5537) with a statement which made it clear that "incapacitated", as used in the definition of "incapacitated older adult", focuses on functional limitations, and cannot be used to infer competency or incompetency, or capacity or incapacity, as these terms are used in the Incapacitated Persons Act.

*Response:*

The Department agreed with the commenters and added a new last sentence in accordance with these recommendations.

*Comments:*

As proposed in November, 1999, the definition of “neglect” was amended to remove the second sentence, which established that an older person would not be found to be neglected solely on the grounds of environmental factors beyond the person’s control, at the request of the OGC. OGC felt that the language was substantive and should be moved to an appropriate section in the body of the regulations. IRRRC asked the Department to reinstate this sentence, since it was part of the definition in the OAPSA. The oversight committees made an identical request, fearing that removal of this sentence might allow an offending facility or individual to escape a finding of neglect.

*Response:*

The Department reinstated the second sentence to the paragraph containing the definition of “neglect”.

*Comment:*

As proposed, the Department added a new subsection and a new paragraph dealing with “open disposition” in Sections 15.133 (c) (relating to facility responsibilities) and 15.134 (b)(3) (relating to procedure). The term describes a situation in which CHRI reports contain arrest information but do not contain other information required to make a determination regarding employment or retention under the OAPSA. The Department proposed additional procedures and time in order to obtain all necessary information. The Pennsylvania Association of Resources for People with Mental Retardation (PAR) commented favorably. IRRRC, Community Legal Services, Inc. (CLS) and the oversight committees questioned the Department’s authority to propose these additions to requirements in the OAPSA.

*Response:*

The Department concurred with the position of the negative commenters, and removed the proposed additions to Sections 133 and 134. Therefore, the Department also deleted the definition of “open disposition”.

*Comment:*

DPW and DOH recommended that the Department add a sentence to the definition of “operator” to make it clear that, at licensed facilities, the licensee is the operator.

*Response:*

The Department concurred and added this sentence to the definition of “operator”.

*Comment:*

As proposed in November, 1999, the Department modified the original regulatory definition of “protective services” published in 1988 and taken from the OAPSA, by adding the phrase “...subsequent to an investigation” and deleting the phrase “...to detect...” These amendments were designed to correct a possible source of misunderstanding in the original language: protective services cannot, under the OAPSA, be provided without client consent. Including investigations as a protective service would therefore allow an alleged victim of abuse, neglect, exploitation or abandonment to refuse to allow an investigation of a report of the need for protective services. IRRC directed the Department to reinstate the original language in the definition of protective services.

*Response:*

The Department agreed to reinstate the statutory language. However, the Department amended the language in Section 15.91 (relating to General), which explains the

provision of protective services, to make it clear that protective services are provided subsequent to the initiation of an investigation.

*Comment:*

In November, 1999, proposed rulemaking, the Department added the statutory definition of "recipient" in order to bring the regulations into conformity with the definition in the OAPSA, as amended (35 P.S. Sections 10225.101 – 10225.5102). After initial discussion with DPW and others, the Department amended the definition by adding the phrase "...of any age..." to make it clear that the protections of the OAPSA, as applied to individuals receiving care, services or treatment in facilities defined in the OAPSA, are available without regard to age. DOH initially objected to the additional phrase. After further discussion with DOH, DPW, IRRRC and the oversight committees, it was agreed that this additional phrase would be retained.

*Response:*

The Department amended the definition of "recipient" to include persons "of any age".

*Comment:*

In November, 1999, proposed rulemaking, the Department added definitions of "serious bodily injury" and "serious physical injury" to bring the regulations into conformity with the definitions in the OAPSA, as amended (35 P.S. Sections 10225.101 – 10225.5102). The Department modified both definitions by adding the phrase "...resulting from abuse or neglect..." This was done, at the request of PANPHA and others, in order to distinguish injuries which were the result of abuse, neglect, exploitation and abandonment from those which, for example, occurred because of an accident which did not involve the facility or another person. However, the IRRRC and oversight

committees directed the Department to reinstate the language of the OAPSA; the oversight committees believed that insertion of such language might allow an offending facility or individual to escape a finding of abuse.

*Response:*

The Department agreed with the comments of IRRC and the oversight committees, and removed the phrase "...resulting from abuse or neglect..." from both definitions.

*Comment:*

The Department proposed to modify the definition of "state-licensed facility" contained in the 1988 rulemaking by adding the phrase "For all purposes involved in the determination of whether an individual is an older adult in need of protective services, a state-licensed facility is defined as..." to distinguish the term "state-licensed facility", used in the OAPSA (Section 10225.303 (b)) (relating to investigations involving licensed facilities), from the term "facility" (Section 10225.1) (relating to Definitions). The Department received no comments on this proposed modification.

*Response:*

The Department adopted the definition as modified.

*Comment and Response:* After discussion with OGC, the Department added a definition of "State Police criminal history record".

*Comments:*

IRRC, DPW and several other individual commenters asked the Department to add a definition of "...unsupervised access to personal living quarters of residents" in order to clarify the circumstances under which contract employees of facilities would be required to obtain CHRI reports. DPW provided specific suggested language.

*Response:*

The Department concurred with commenters and added the suggested definition of “unsupervised access” .

Section 15.12(b)(2). Administrative functions & responsibilities of AAAs.

*Comment:*

The Department inadvertently proposed to delete Section 15.12 (b)(2), concerning information required in the agency’s protective services plan about protection against conflict-of-interest between the investigation of reports received and the AAA’s service delivery functions. IRRC and CLS questioned this deletion. Agencies were to explain how their organizational structure and staffing would prevent such conflicts.

*Response:*

The Department acknowledged the error and reinstated the original language in Section 15.12 (b)(2).

**Section 15.13. Organization and structure of protective services functions.***Comment:*

The Department, through the network of Area Agencies on Aging, has been providing protective services across Pennsylvania for well over a decade. This experience, and consultation with AAAs and others, led the Department to propose removing unnecessarily-restrictive provisions of Section 15.13. These were in subsection (b), which described the separation of protective service from general service management and casework in an overly-prescriptive manner; in proposed subsection (c)(4), which prohibited an ombudsman or OPTIONS worker from also serving as a protective services worker; in a portion of proposed subsection (c)(5), which required agencies to

specify how they would adjust caseload sizes; and in a portion of proposed subsection (d), which granted permission for protective services supervisors to discharge non-protective service duties and prohibited them from directly supervising more than 8 full-time protective services workers. A single AAA, as well as CLS, PANPHA, IRRC, the oversight committees and the Center for Advocacy for the Rights and Interests of the Elderly (CARIE) asked the Department to review one or more of these decisions.

*Responses:*

The Department re-examined these subsections and believed that the overall structural parameters established by Section 15.13, reinforced by the aging network's experience in administering protective services over the years, allowed it to remove subsections 15.13 (b), part of (c)(4), and parts of (d). After discussion with the Department's LTC Ombudsman and several commenters, the Department restored Section 15.13 (b)(4), which prohibits a protective services caseworker from serving as an Ombudsman or OPTIONS caseworker on the same case.

**Section 15.21 (b). General reporting provisions.**

*Comments:*

(Please see prior sections for comments made, and the Department's response, on the definitions of "abuse" and "neglect".) At the direction of OGC, the Department removed the explanatory sentence regarding environmental factors beyond the control of the older adult or caretaker from the definitions of "abuse" and "neglect" and moved it to Section 15.21 (b). In addition, the Department inserted a sentence providing guidance to AAAs and emphasizing the rights of older adults in such circumstances. Both IRRC and the oversight committees recommended that the Department remove subparagraph



(b) from Section 15.21 and return to the definitions of “abuse” and “neglect” the language taken from the OAPSA.

*Response:*

The Department complied with these recommendations, and removed the language from subparagraph (b) and reinstated OAPSA language to both definitions. In order to comport fully with the wording of OAPSA, the Department also deleted the second sentence in Section 15.21 (b), which was not language adopted from OAPSA.

**Section 15.22. Safeguards for those who make or receive reports.**

*Comments:*

The Office of the Auditor General recommended that the Department add a subsection requiring facilities to post notices to inform employees, applicants, residents and others of protections and obligations under the OAPSA. DPW and the oversight committees recommended addition of a requirement that such notices be posted in conspicuous and accessible locations in facilities.

*Response:*

The Department concurred in the above recommendations, and added a new subparagraph (d) to provide these safeguards.

**Section 15. 26. Screening and referral of reports received.**

*Comment:*

The Department received a single comment expressing the opinion that supervisors, rather than intake workers, should be given the responsibility to assign reports to the appropriate referral categories.

*Response:*

The Department does not agree with this recommendation. The practice of AAAs in delivering protective services since 1988 confirms the effectiveness of the existing administrative structures. However, in response to a request for clarification from IRRC, the Department has added a reference in subsection (a) to Section 15.121 (c)(3) (relating to protective services staff qualifications) to reinforce the fact that intake workers must complete the prescribed intake training curriculum, including the training topics specified in Section 15.124 (relating to protective services intake training curriculum).

**Section 15. 27. Handling of completed reports.**

*Comments:*

In response to negative comments from PCA regarding the original (1988) regulatory language requiring a completed report of need form to be shared with other agencies, the Department narrowed the scope of information from the form which was to be shared with other state licensing agencies in the case of a report involving state-licensed facilities. The amended version required “sufficient information to begin an investigation...”. Discussions with DPW and DOH led to recommendations that the Department return to the original language, or that the Department require information sufficient to complete an investigation, or that the Department require the information provided in the Act 13 Mandatory Abuse Form.

*Response:*

The Department has weighed the differing, often conflicting, advice given by commenters against the need to protect persons making reports and cooperating with

investigations. The Department has decided to require agencies to supply to appropriate state licensing agencies information sufficient to begin an investigation.

**Section 15.41. Reports required to be investigated.**

*Comments:*

IRRC suggested that the Department clarify responsibilities to investigate reports of need for protective services, since Act 13 (35 P.S. Sections 10225.701-10225.708) requires reporting suspected abuse of “recipients” of any age, while the Department has the authority to investigate reports of abuse only for persons 60 years of age and older.

*Response:*

The Department added a phrase to subparagraph (a) to clarify the investigative responsibilities of all state licensing agencies.

**Section 15.42. Standards for initiating and conducting investigations.**

*Comments:*

Two commenters objected to the Department’s deletion of the second sentence from subsection (d)(completing investigations of reports), which had been in the regulations since they were written in 1988. This sentence made clear that substantiated investigations were considered completed only after steps had been taken to reduce imminent risk to the older adult’s person or property. The Department proposed this deletion because of advice that the legal rights of alleged perpetrators required their immediate notification, upon completion and substantiation of reports. PCA objected and noted concern for the rights of abused persons to privacy and protection. The oversight committees questioned why the Department removed the second sentence in (d). IRRC and PANPHA objected to the addition of (e), which allowed the Department to

become involved in an agency's investigation when it determined that there was interference in a protective services investigation. Their objection was based on the fact that the term "interference" was not clear. The oversight committees questioned why the Department added (e).

*Responses:*

In response to the commenters, and after further legal consultation, the Department has reinstated the language in (d), making it clear that the investigation of a substantiated report is complete only after steps have been taken to reduce imminent risk to the older adult. The Department has removed the unclear term "interference" from (e) and substituted language which protects the Department's right to intervene in an agency's protective services investigation or to conduct its own investigation when it feels that an agency is unable to conduct, or has not conducted, what the Department considers an acceptable investigation.

**Section 15.45. Situations involving state-licensed facilities.**

*Comments:*

DOH questioned the necessity of the phrase "or is assigned" in (a)(1) regarding the investigation of reports, asking who would be assigning this role to other Departments. IRRC recommended that the Department add language to (a)(4) citing relevant Federal and state statutes which set forth the services provided by the state long-term care Ombudsman.

*Responses:*

The Department concurred with both recommendations and deleted the objectionable phrase in (a)(1) and added language in (c)(4) citing the relevant part of the Older

Americans Act (42 U.S.C.A. Section 3058g) and The Administrative Code of 1929 (71 P. S. Section 581-7(d)). The Department made an additional change following an August, 2001 meeting with Policy Office staff, counsel and program staff from the Departments of Aging, Health and Public Welfare. The Department amended language in (b)(1) to describe procedures, requested by the Departments of Health and Public Welfare, to be used by AAAs to notify these Departments of the initiation of investigations of reports of need for protective services for older adults who reside in facilities licensed by these Departments.

**Section 15.82. Rights of alleged abusers.**

*Comments:*

A single comment was offered on this Section, which was not amended in the November, 1999, proposed rulemaking. Northampton AAA expressed support for the language in Section 15.82, which was taken from the OAPSA, providing alleged abusers with a brief summary of the allegations and, upon request, additional information, as set forth later in the regulations. The Department modified the opening sentence of Section 15.82 to make it clear that a person will not necessarily be found to be an abuser because that person was alleged in a protective services report to be a perpetrator of abuse, neglect, exploitation or abandonment. Rather, consistent with the Department's Aging Program Directive #00-24-02, "Perpetrator Designation and Notification in Protective Services Cases", a person who, as a result of a protective services investigation, is determined to be a perpetrator will be entitled to the rights set forth in Section 15.82. A copy of this Program Directive may be obtained by writing to:

Robert F. Hussar, Pennsylvania Department of Aging, 555 Walnut Street, 5<sup>th</sup> Floor,  
Harrisburg, PA 19101-1919.

**Section 15.91. General.**

*Comments:*

In the November, 1999 rulemaking, the Department proposed to amend (a) by adding the phrase “subsequent to an investigation” and deleting the word “detect” to make it clear that, although investigative activities may be included on the list of protective services (Section 15.91 (a)(3)), the investigation of reports of need for protective services must occur promptly and cannot wait for the approval of the older adults who are the subjects of such reports – even though, by definition, protective services cannot be provided without the consent of the older adult. These two changes were intended to make it clear that agencies will promptly conduct investigations of reports of the need for protective services; thereafter, other protective services will be introduced as required, and only with the consent of the older adults for whom they are intended. However, both Blair AAA and IRRC commented that the added phrase had the unintended effect of making it unclear whether protective services could be introduced after the initiation of an investigation, or only at its completion.

*Response:*

The Department agreed with the commenters and added the phrase “...initiation of” at (a) and at (b)(3) to make it clear that provision of protective services did not have to wait until the completion of the investigation.

**Section 15.95. Case management.**

*Comment:*

The Pennsylvania Health Law Project, the oversight committees and IRRC objected to the deletion of the phrase at (c)(3) "...or if the level of the client's need has changed..." from the list of circumstances requiring reassessment.

*Response:*

The Department agreed, and added the slightly-modified phrase "...or the older adult's condition has changed..." at the end of (c)(2).

**Section 15.96. Termination of protective services.**

*Comments:*

The Department proposed deleting the requirement at (c) to "...attempt to secure a signed statement of understanding concerning the action" to supplement the agency's action to inform older adults and responsible caregivers when the agency terminates protective services. It was felt, based on the experiences of many AAAs, that the requirement to inform such persons of the action and its rationale was sufficient. One AAA wrote to applaud this deletion. However, IRRC and the PA Health Law Project objected to the deletion.

*Response:*

The Department agreed with the latter two commenters and reinstated the requirement to attempt to secure a signed statement of understanding.

**Section 15. 105. Limited access to records and disclosure of information.**

*Comments:*

IRRC and the oversight committees recommended that the Department reinstate the word "or" in (1) between "court of competent jurisdiction" and "under a court order", in order to comport with the language of the OAPSA. IRRC asked that the Department add

“court-appointed guardians and attorneys providing legal services to subjects of reports” to the list of those to whom information in case records might be disclosed in (4); DPW asked that DPW be added to the list; PANPHA asked that the state licensing agency be added.

*Responses:*

The Department reinstated the word “or” in (1) to comport with the language in the OAPSA, and added to (4) the wording suggested by IRRRC. The Department did not add the wording suggested by PANPHA or DPW, believing that the additions would exceed the range of allowable recipients contemplated in the language of Chapter 3 of the OAPSA.

**Section 15.122. Protective services caseworker training curriculum.**

*Comment:*

PCA recommended removal of the bracket at (9) around “incompetence”, so as to include training on both incompetence and on incapacity.

*Response:*

The Department concurred and removed the brackets and added the word “or” so that both topics are now included in the protective services caseworker training curriculum.

**Section 15. 123. Protective services investigation training curriculum.**

*Comments and response:*

In consultation with DOH and DPW, the Department added (14), requiring that the protective services investigation training curriculum must include training on the topic of coordination with other state agencies.

**Section 15.127. In-service training.**



*Comments:*

IRRC recommended that the Department specify the minimum number of hours for annual training. The PA Health Law Project recommended that the Department retain the mandatory inclusion of all three listed topics.

*Responses:*

The Department added language at (b) requiring a minimum of one day of inservice training each year, but decided to retain the flexibility to include as topics one or more of those listed, as well as other topics.

**Section 15.131. Prospective facility personnel.***Comments.*

IRRC recommended that the phrase "...as appropriate..." be deleted at the end of (a), since it was unnecessary, and recommended insertion of a reference to Section 15.134 (relating to Procedure), which explains the procedures for obtaining a CHRI report.

Regarding (b)(6) (relating to proof of residency), IRRC asked what types of documents were to be used, and how they would be used as proof of residency, to determine if it would be necessary to submit a Federal CHRI report to a facility.

*Response:*

The Department agreed with IRRC's recommendations and deleted "as appropriate" from (a), inserted a reference to Section 15.134, and deleted (b)(6). After meeting with OGC, the Department amended this Section by removing unnecessary language and adding language for clarity.

**Section 15. 132. Facility personnel requirements.**

*Comments:*

Both IRRC and the oversight committees objected to the time limit of 90 days in (a)(2) for administrators and operators beginning employment after July 1, 1998 to comply with CHRI reporting requirements, and said the proposed standard did not comport with statutory language. Both IRRC and the oversight committees objected to subparagraph (b), which placed on employees the responsibility for determining whether to submit CHRI reports. Both of these commenters stated that they believed the OAPSA placed this responsibility on facilities. IRRC felt that, in (a)(5), it was not clear which facilities (i.e., the facility which supplied, referred or arranged for its employees to provide care in other facilities, or the facility where those employees are actually providing the care) had the responsibility to notify employees of their obligation to supply CHRI reports. IRRC also recommended that the Department make clear that CHRI reporting requirements did not apply to employees of organizations which also had a "facility", as defined in the OAPSA, within them (e.g., a hospital which had a skilled nursing unit within it) so long as the employees did not work in or have access to the OAPSA-defined "facility" and were not in contact with care recipients in the OAPSA-defined "facility". DPW objected to the Department's use of July 1, 1997 as the "grandfather" date for all facility employees, meaning that employees who were employed by the facility for a continuous period of at least one year prior to July 1, 1998 were exempt from compliance with CHRI reporting requirements. DPW felt that there were two "grandfather" dates: July 1, 1997 for facility administrators and operators, and July 1, 1998 for all other employees. The oversight committees strongly recommended that the

Department retain the language in the proposed rulemaking requiring a single “grandfather” date of July 1, 1997 for all employees.

*Responses:*

The Department accepted all of the comments. The Department amended (a)(2) to make the reporting requirements there the same (i.e., 30 and 90 days) as those for applicants and other facility employees. The Department deleted (b) entirely, and amended Section 15.133 (a) (relating to facility responsibilities) to make it clear that facilities had the responsibility, both orally and in writing, to inform applicants and employees of their responsibility to obtain CHRI reports. The Department amended (B) to require employees at facilities which supply, arrange for or refer such employees to provide care in OAPSA-defined facilities to provide CHRI reports both to the facility which supplied, arranged for, or referred them, and to the facility at which they actually provided care. Amendment of (B) (5) also placed responsibility for notifying employees of their CHRI reporting requirements on the staffing agency. In response to IRRRC’s concerns about the application of reporting requirements to employees of organizations which also had an OAPSA-defined facility within them, the Department also amended Section 15.132 (relating to employee requirements) to make it clear that CHRI reporting requirements applied only to individuals who were employed to work in the OAPSA-defined facility, or had direct contact with residents in the OAPSA-defined facility or unsupervised access to the living quarters of residents in the OAPSA-defined facility. Following an August, 2001 meeting with Policy Office staff, Counsel, and program staff from the Departments of Aging, Health and Public Welfare, it was decided that all language excluding classes of persons from the definition of “employee” be moved to

Section 15.132 (relating to employee requirements); this exclusion became Section 15.132 (a)(3)(vi). A final excluded class of persons, those individuals, employed by home health care agencies or other entities which supply, arrange for, or refer personnel to provide care to care-dependent persons, who are employed for purposes other than providing care in facilities defined in Section 15.2, was added at 15.132 (a)(3)(viii) .

As regards the “grandfather” issue, it was agreed, after extensive discussion with DPW, the oversight committees, OGC, the chief counsels of DPW and the Department, and others, that the Department would retain the single “grandfather” date of July 1, 1997 for all facility employees. In response to recommendations from several legal services agencies, and after discussion with OGC, the Department added (a)(3)(iii) to make it clear that the transfer of ownership of a facility did not constitute the creation of a new facility. Previously-“grandfathered” employees at such facilities were therefore not required to provide CHRI reports to the new owner. After discussion with OGC, the Department amended this Section by removing obsolete time references at (a)(1) and (3), removed unnecessary language throughout, and removed language dealing with criminal history reports received from the Department of Education from Section 134(c) and placed it in a new (C).

### **Section 15.133. Facility responsibilities.**

#### *Comments and Responses:*

**General:** PAR objected to the lifetime bar to employment or retention for persons whose CHRI reports revealed a conviction of the crimes enumerated (b), which was

taken verbatim from the OAPSA, and urged the Department to press for a change to the statute.

Comments:

**Subsections (a) and (b):** CLS urged the Department to add language to emphasize the fact that facilities could hire or retain both persons with convictions under the Controlled Substance Act (P.S. 238, No. 64) graded as less than felonies, and those persons with summary offenses or only one misdemeanor under Chapter 39 (relating to theft and related offenses). Their recommendations were prompted by actual situations in which facilities were interpreting the provisions of OAPSA in an overly-broad manner, and were terminating or not hiring, for example, without regard for convictions graded less than felonies, persons with summary offenses, persons with only one misdemeanor under Chapter 39, or for persons in other, similar circumstances. Both DPW and the oversight committees recommended that the Department not change the language used in the text of the proposed rulemaking, which was taken from the OAPSA.

*Responses:*

The text of subsections (a) and (b) was originally retained as proposed. However, pursuant to the decision of the Commonwealth Court of Pennsylvania in *Nixon v. Commonwealth of PA*, No. 359, (Pa. Commonw. 2001), the Department deleted subsections (a) and (b).

Comments:

**Subsection (c):** The oversight committees asked why the Department added a procedure for open disposition and questioned whether it was based on the OAPSA. IRRC and the Philadelphia Coalition of Community MH/MR Centers objected to introducing open disposition because the OAPSA clearly prohibited hiring or retention only when CHRI reports showed conviction of specified offenses, not because the reports showed open disposition. CLS provided substitute language to set forth the responsibilities of facilities to ascertain the ultimate disposition of arrests or other open dispositions and procedures to determine whether such dispositions ever become or became a conviction. The oversight committees reviewed this proposed substitution language and recommended that the Department return to the text of (c) as published in proposed rulemaking.

*Responses:*

The Department deleted (c), removing both the language from the proposed rulemaking and the modified language adopted from comments made by CLS. It did so because the OAPSA did not address the question of open disposition; therefore, these final regulations do not contain any reference to open disposition. This means that a person applying for employment or an employee required to obtain a CHRI report cannot be rejected for employment or terminated from employment on the basis of a CHRI report which shows an open disposition.

*Comments:*

**Subsection (d):** IRRRC and CLS recommended the Department clarify how it would determine that Federal or out-of-state offenses shown on CHRI reports were “similar in nature” to those listed in (a) and (b).

*Response:*

In response to IRRRC and CLS, the Department added language to Section 15.135(b) (relating to applicant or employee rights of review) making it clear that applicants or employees could challenge the Department’s conviction comparison interpretations by appealing to the Department. However, pursuant to the Commonwealth Court’s decision in *Nixon v. Commonwealth of PA*, the Department deleted subsection (d).

*Comments:*

**Subsection (e):** CLS stated that the facility’s explanation to applicants or employees of their responsibility to obtain CHRI reports should be given orally and in writing. IRRRC recommended that the phrase “or employee” be added after “applicant” throughout the text of the subsection, to correct its inadvertent omission.

*Responses:*

The Department agreed with the commenters and made both changes. Following discussion with OGC, the Department reworded this subsection, which became subsection (a).

*Comments:*

**Subsection (f):** DPW recommended that the Department make “an administrator”, not “a facility”, responsible for ensuring confidentiality of information obtained from CHRI reports. IRRC and CLS noted that the confidentiality provisions must apply to employees as well.

*Responses:*

The Department agreed with the commenters and made both changes. After discussion with OGC, the Department renumbered this subsection as (C).

*Comments:*

**Subsections (g) and (h):** DPW and the oversight committees objected to wording which made it unclear whether a copy of the completed request forms for the State Police and FBI CHRI reports, or the completed State Police and FBI CHRI reports, would be maintained in facility records. CLS stated regarding (h), as they did in commenting on (d), that the term “similar in nature” was unclear. DPW and the oversight committees asked which special appeal rights applied to this subsection.

*Response:*

The Department agreed with the commenters, and changed both subsections to state that copies of the request forms for PSP and FBI CHRI reports, copies of the actual PSP criminal history records, and the Department’s letters regarding Federal criminal history records be maintained in facility employment records. Following the decision of Commonwealth Court in *Nixon v. Commonwealth of PA*, the Department deleted subsection (h).



*Comments:*

**Subsection (i):** The oversight committees stated that all information relating to CHRI reports must be on-site at all facilities, including those at which care was provided by employees supplied, referred or arranged by other facilities. CLS and IRRC stated that the requirement at (i)(2) that CHRI reports be available “when necessary” was vague and unclear.

*Responses:*

In line with changes made to Section 15.132(B) (relating to employee requirements) requiring that CHRI reports be made available to all OAPSA-defined facilities, the Department deleted subsection (i), which required only that CHRI reports be made available to specified facilities when necessary, in its entirety.

**New subchapter (D):** This subchapter was drafted to make clear the responsibility to provide notice explaining the right and procedure for appeal to applicants and employees who were not hired or retained because of information in CHRI reports. The oversight committees stated that they were unclear about which appeal rights in OAPSA and in 18 Pa.C.S. Section 9125 were being referenced in this subsection. After discussion with staff of the committees, the Department amended language in **(D)** to require facilities to provide information to applicants and employees on how to appeal to the source of the criminal history record if they believed the records were in error.

**Section 15.134. Procedure.****Subsection (a):**

*Comments:*

CLS objected to the Department's specification of procedures both for applicants and employees to obtain State Police CHRI reports. They believed that the OAPSA required facilities to pay for CHRI reports for employees.

*Response:*

The Department does not believe the OAPSA placed responsibility for paying for CHRI reports on facilities. The Department has retained the requirement as proposed, but has replaced the unclear term "facility personnel" with "employees" throughout the text.

**Subsection (b)(2):***Comments:*

The oversight committees questioned the change from 10 to 30 working days for the Department to notify applicants and employees in writing of the results of the CHRI report from the FBI.

*Response:*

The Department continues to believe, in light of three years of experience serving as the intermediary for FBI CHRI reports, that the amount of time required for notification varies greatly. The Department has decided to amend (b)(2) so as to require the Department to contact applicants or employees in writing, but has deleted reference to a specific minimum amount of time. The Department has also amended (b) (1) so as to require the Department, upon the applicant's or employee's return of the completed FBI

materials, to submit the request to the State Police, but has deleted reference to a specified period of time.

**Subsection (b)(3):**

*Comments:*

CLS pointed out that the OAPSA prohibited hiring or retention only for conviction of specified offenses, not for open disposition, and suggested alternative language to assist the facility to ascertain ultimate disposition. The oversight committees questioned the Department's decision to strike (b)(3), which required applicants and employees to submit court documents within 60 days of being notified by the Department of receipt of an FBI CHRI report showing open disposition, or be prohibited from being hired or retained.

*Response:*

For reasons given in the discussion of comments, the Department deleted both the language in the proposed rulemaking and the modified language adapted from comments made by CLS.

**Subsection (c):**

*Comments:*

As they did regarding (a), CLS commented that the OAPSA did not require employees to pay for CHRI reports.

*Response:*

The Department disagrees and has added the phrase “or employee” to remedy its inadvertent omission. The Department removed unnecessary language and renumbered this subsection as (D).

**Subsection (d):**

*Comments:*

PANPHA asked that the term “facility personnel” be clarified. CLS recommended that the phrase “if requested” be deleted, because the facilities have an obligation to assist applicants and employees to fill out all necessary forms.

*Responses:*

The term “facility personnel” has been deleted from the regulations and replaced with the term “employees”. The Department believes the phrase “if requested” is appropriate, and has retained the proposed language. The Department renumbered this subsection as (C).

**Subsection (e):**

*Comments:*

IRRC stated that the phrase “within the time limits required for submitting criminal checks” was not clear. PANPHA recommended that the word “clearance”, referring to the CHRI report, be changed to “report”.

*Responses:*

The Department agreed with the commenters and deleted the unclear phrase and changed “clearance” to “report”. The Department also added language to (e) to allow the use of CHRI reports made to the Department of Education pursuant to the Nurse Aide Resident Abuse Training Act (63 P. S. Sections 671 – 680) in satisfying the requirements set forth in these regulations. Language was modified in response to the comments from PANPHA. After discussion with OGC, the Department deleted language regarding time for submitting reports and relocated language regarding reports received from the Department of Education to Section 132 (relating to employee requirements).

**Subsection (f):**

*Comments:*

IRRC noted that the use of the term “facility personnel” was confusing. IRRC further noted that there was no provision in this Section for access by applicants or employees to their FBI report, and that there should be one. IRRC also directed that the requirement in Section 9125 of the Criminal History Record Information Act that employers notify applicants and employees in writing, when a decision not to hire or to retain is based in whole or in part on the CHRI report, be referenced in the regulations.

*Responses:*

The Department replaced the term “facility personnel” with “employees throughout the regulations. In (b)(2), the Department was required , upon receipt of the completed FBI CHRI record, to contact the employee or applicant in writing. The Department further amended Section 15.135(b) to allow applicants or employees to challenge the

Department's conviction comparison interpretation of the offenses identified in the FBI CHRI report by appealing within 30 days of receipt of the written statement required in (b)(2). The Department believes these two parts of the regulations provide applicants and employees access to the FBI report and the opportunity to appeal the Department's interpretation of the report. In addition, the regulations at Sections 15.133 (D) and 135(a) make clear to applicants and employees the right to receive information on how to appeal to the source of CHRI reports and to review, challenge and appeal the completeness or accuracy of their State Police and FBI CHRI reports. The Department renumbered this subsection as (E).

**Subsection (g):**

*Comments:*

IRRC stated that detail was needed in (g) regarding the process by which applicants and employees could "question" the Department's determination. PAR asked if (g) were equivalent to a provision for appealing the accuracy of the FBI CHRI report.

*Responses:*

The Department agreed, and deleted the language proposed at (g) and replaced it with a provision empowering applicants and employees to reverse the Department's decision by submitting information within one year of that decision. After discussion with OGC, the Department deleted this provision, since the Department specified the procedures for appealing the completeness or accuracy of the FBI CHRI report in Section

15.135(a) and for appealing its conviction comparison interpretation of the FBI CHRI report in a new Section 15.135(b).

**Section 15.135. Applicant or employee rights of review.**

*Comments:*

IRRC stated that (b) and (c) were unnecessary, since they are addressed in the Criminal History Record Information Act. They recommended adding a reference to 18 Pa. C.S. Section 9125 to the citations in (a). CLS stated that the regulations should state that an employer's hiring determination must be made subject to 18 Pa.C.S. Section 9125 and that facilities must reconsider applications for employment where the accuracy of CHRI reports are successfully challenged. DPW questioned whether this Section created the right to appeal or was notification of appeal rights available elsewhere.

*Responses:*

The Department agreed with IRRC and deleted (b) and (c) and added a reference to 18 Pa.C.S. Sections 9125 and 9152-9183 in (a). The Department decided that regulating the obligation of employers to hire applicants who successfully challenged the completeness or accuracy of their CHRI reports was beyond the scope of these regulations, and was dealt with in the statutes cited in (a). The Department did make clear the right of applicants and employees to challenge and appeal the Department's conviction comparison interpretation in a new (b).

**Section 15.136. Facility personnel rights of review and appeal.**

*Comments:*

IRRC recommended that the Department include reference to Federal procedures for challenging the accuracy of FBI CHRI reports. PAR recommended an expedited appeals process. PANPHA commented that facilities should be held harmless for terminations when CHRI reports are successfully challenged. PAR, PANPHA and the oversight committees recommended deletion of (b), which dealt with facility obligation to reinstate employees who successfully challenge their CHRI reports. Regarding (b), DPW noted that most employees of private facilities have no rights of appeal when they are terminated. CLS pointed out that no provision covered situations in which employees are terminated when facilities misapply the law, in error or in excess of caution, or when crimes are reclassified.

*Responses:*

The Department deleted Section 15.136 in its entirety, and amended Section 15.135 to include employee rights of review. Section 15.135 includes reference to Federal regulations setting forth procedures for challenging the accuracy of FBI CHRI reports. Section 15.135(b) includes provisions for appealing the Department's conviction comparison interpretations for offenses identified in FBI CHRI reports. The Department believes, after discussion with counsel, that any establishment or limitation of applicant or employee appeal rights in these regulations, beyond the aforementioned provisions, would exceed the Department's authority under the OAPSA. The Department has in these regulations made applicants and employees aware of the opportunity to review, challenge and appeal the completeness or accuracy of State Police and FBI CHRI



reports and of the opportunity to challenge and appeal the Department's conviction comparison interpretations including offenses identified in FBI CHRI reports.

**Section 15.137. Provisional hiring.**

*Comments:*

IRRC, the oversight committees and PANPHA recommended that the Department strengthen the language in (a)(5)(ii) regarding the supervision of provisionally-hired staff. CLS commended the Department for the addition of (d), extending the period of provisional hiring when CHRI reports have not been provided due to the inability of the State Police or FBI to provide them within mandated timeframes. The oversight committees asked whether (c) and (d) impermissibly extended the OAPSA timeframes for provisional hiring.

*Responses:*

The Department added language at (a)(5)(ii), (6) and (7) strengthening mandatory supervisory requirements by requiring facilities to document the results of regular supervisory observations in employee personnel files, thereby making facilities aware of their specific responsibilities and providing licensing agencies with a regular method of ascertaining facility compliance with these provisions. Following the decision of the Commonwealth Court in *Nixon v. Commonwealth of PA*, the Department removed unnecessary language and deleted (a)(2),(3), and(4); renumbered (a)(5)(i) as (a)(2); renumbered (a)(5)(ii) as (a)(3); renumbered (a)(6) as (a)(4); renumbered (a)(7) as (a)(5); deleted (b) and (c); relettered (d) as (b).

**Section 15.138. Violations.***Comments:*

IRRC and PANPHA commented that the use of the term “agencies” in (a)(4) was not clear.

*Responses:*

The Department agreed with commenters and added language to make it clear that the agencies referred to were the Commonwealth agencies with jurisdiction to license the facilities covered by these regulations. The Department added language at (4) to assist licensing agencies carry out their mandated responsibilities by requiring representatives of the Departments of Aging, Health and Public Welfare who have suspicions of violations to report them under procedures developed by the Department in consultation with DOH and DPW. After discussion with OGC, the Department deleted unnecessary language, added language for clarity, updated citations to better address due process concerns, and deleted (a)(3)(i).

**Reporting Suspected Abuse****Section 15.141. General requirements.***Comments:*

The York AAA asked for clarification regarding the format of facility written reports to the agency. DPW suggested that the word “client” in (a) be changed to “recipient”. PANPHA asked that “reasonable cause” and “immediately” be defined in (a) and suggested that the employee report to the operator or designee instead of to the administrator. PAR

urged that language in (a) be changed to require employees to report to the agency, or to the agency which licenses the facility, as appropriate. The oversight committees recommended that, in (b), the employee be able to report to another in-facility person, should the administrator be unavailable.

*Responses:*

The Department changed “client” to “recipient”. The Department did not agree to further define “reasonable cause” and “immediately”, believing that the proposed language, taken from the OAPSA, was sufficiently clear. The Department did not agree to require employees to report to operators or their designees, again believing the language and meaning of OAPSA to be sufficiently clear. The Department also did not agree to give employees the option of reporting either to the AAA or to the facility licensing agency, since the language in OAPSA set forth reporting requirements in an unambiguous manner. In response to the oversight committees, the Department added to (b) the phrase “...or designee” following “administrator”.

**Section 15.142. Additional reporting requirements.**

*Comments:*

PAR urged amendment of (a)(2) to give employees and administrators the option to make the oral report either to the AAA or to the facility licensing agency. DPW recommended the addition of a new (c) to require a licensed facility to comply with all reporting requirements – both those of the agency which licensed the facility and those set forth in these regulations.

*Responses:*

The Department did not agree to amend (a)(2) to afford employees and administrators the option urged by PAR, since the language in OAPSA set forth reporting requirements in an unambiguous manner. After consultation with DOH and DPW, the Department agreed to add a new (c) as proposed by DPW.

**Section 15.143. Content of reports.**

*Comments:*

IRRC recommended that the Department tell facilities and individuals how to obtain copies of the reporting forms described in (a). PANPHA asked whether facilities would receive copies of the forms. DPW asked if the Department would approve DPW forms which contained all of the necessary information and suggested that (a) include wording to allow the use of forms approved by the Department, in addition to the Department's own forms. DOH objected to use of a separate reporting form and asked to use their PB-22 form.

*Responses:*

The Department replaced the proposed (a) in its entirety, and replaced it with language requiring reports on forms either supplied by the Department or approved by the Department. The Department has worked with DOH to add required informational elements to Health's PB-22 form, so that facilities under Health's licensing jurisdiction may submit the amended PB-22 to the Department in fulfillment of requirements in these regulations.

**Section 15.144. Reports to department and coroner by agencies.**

*Comments:*

IRRC commented that (b) did not make clear whether the “appropriate coroner” is the coroner in the county where a death occurred or in the county where a death was reported. They recommended the term “county coroner” be used and that the regulations identify to which coroner reports must be made. DPW pointed out that (a)(2) was duplicative of (a)(1), since victims/recipients under age 60 were covered by the general requirement in (a)(1). The Pennsylvania Health Law Project commented favorably on this Section because it enabled the Department to monitor, respond to, and forward reports of abuse of care recipients of all ages.

*Responses:*

The Department agreed with the comments of IRRC and DPW and deleted (a)(2) entirely and amended (b) to delete “appropriate coroner” and add “county coroner of the county wherein the death occurred”.

**Section 15. 145. Investigations.**

*Comments:*

DOH suggested that, rather than delineate which agencies should receive reports in (a)(1) through (7), subsection (a) could contain a general statement that the relevant state licensing agency was to receive reports. DOH and PANPHA asked why, in (b), state licensing agencies were not listed as participants in cooperative investigative efforts. PANPHA commented that the phrase “...MH or MR issues” in (a)(7) was unclear. The Center for Advocacy for the Rights and Interests of the Elderly (CARIE) noted that many home health agencies were not licensed, and stated that the regulations were not clear regarding the responsibility to investigate reports of abuse of persons under age 60 in such unlicensed facilities. DPW recommended striking the

phrase “under 60 years of age” in (a)(4) and (5), rewording (a)(5) to better describe receipt of reports, and adding “the DPW Office with facility licensing responsibilities” to (a)(7).

*Responses:*

The Department did not agree with DOH's suggestion regarding a general statement on reporting responsibilities. The Department believed it important specifically to delineate investigative responsibilities by age, facility, and situations in which victims or recipients have mental health or mental retardation needs, and has not substituted a general statement. Subsection (b), dealing with cooperation, has been amended to add Commonwealth agencies which license facilities to the list of those mandated to coordinate investigations of reports of abuse. Subsection (a)(7) was amended to refer to victims or recipients who have mental health conditions or mental retardation. The Department concurs with the statement made by CARIE that these regulations do not address the need to investigate reports of suspected abuse of persons under 60 receiving care in unlicensed home health agencies. The Department has authority under OAPSA to receive reports of suspected abuse of victims or recipients from administrators and staffpersons in OAPSA-designated facilities. But the Department has the statutory authority to investigate such reports only for persons 60 years of age or older. The Department refers reports regarding victims or recipients under 60 years of age to the state agencies which license the specific OAPSA-mandated facilities. CARIE is correct in identifying the lack of statutory authority to investigate reports of suspected abuse of persons between the ages of 18 and 59 receiving care in OAPSA-designated

facilities which are not licensed by a state agency. Finally, the Department amended (a)(4), (5) and (7) as requested by DPW.

**Section 15. 146. Restrictions on employees.**

*Comments:*

IRRC asked that the Department estimate the cost to AAAs of complying with (a) and (b), requiring them to approve facility supervision/ suspension plans. PANPHA recommended that the Department be mindful of the sizeable need for resources by AAAs and licensing agencies to review thousands of facility supervision/suspension plans. Since OAPSA did not require advance submission of master facility plans, IRRC asked why the regulations required facility plans under (a) before specific allegations were made about any employees. IRRC and PANPHA noted that there were no provisions in (a), (b) and (c) regarding required plan content or criteria for plan approval and no timeframes for agency review and approval. IRRC and the Blair county AAA asked who would provide facilities with technical assistance regarding these requirements. IRRC and the Northampton county AAA asked, in the case of a home health agency, which agency would review – the AAA where the home health agency was based, or the AAA where the recipient was located. DOH commented that (d) should contain a list of crimes which activated facility plans. DOH also noted there were no requirements for informing state licensing agencies that criminal charges had been filed against an employee. DOH recommended that facilities be required to track and to report criminal charges filed against facility employees to the state licensing agency. PCA commented that Section 15.146 was one of the most onerous unfunded mandates ever imposed on AAAs. DPW suggested amending (a) to require, not submission of a

copy of the facility's supervision or suspension plan, but development of the facility's policies and procedures regarding its system to develop plans of supervision, the process to be followed, a list of acceptable methods of supervision and the process to notify employees of the decision to suspend them. DPW also recommended deleting (b) and (c). IRRRC and PANPHA recommended that the Department replace the term "immediately" in (d) and (g) with a specific timeframe for action. In a subsequent draft, the Department replaced "immediately" with the phrase "within 72 hours". In commenting on this second draft, the oversight committees and DPW recommended that the Department replace this specific compliance time with "immediately".

*Responses:*

The Department deleted Section 15.146 (a) through (g) in its entirety. Many commenters had objected to the requirements in (a), (b) and (c) for facilities to develop, submit, and follow facility supervision and suspension plans, because they were extremely onerous for facilities and for AAAs and state licensing agencies, reviewing them, and were not required by the OAPSA. The Department agreed with the commenters and deleted all references to the general facility supervision and suspension plans described in the proposed Section 15.146 (a), (b) and (c).

In the new Section 15.146, subsections (a) through (d) correspond, and are amended versions of, subsections (d) through (g) in the proposed rulemaking. The Department did not agree to add a special list of crimes in the amended (d), since the regulations contain a definition of "abuse". In response to the DOH comments, the Department modified amended (d) to require facilities which have been notified by law enforcement officials of the filing of criminal charges against an employee to inform



Commonwealth licensing agencies of such filing. The Department responded to PCA's comment about onerous unfunded mandates by eliminating the requirement to submit general facility supervision and suspension plans. The burdens imposed by the remaining subsections of Section 15.146 remain, since they are required by the OAPSA. After discussion with many of those who commented on both the proposed rulemaking and on a revised, second draft of the regulations about plan development and submission times, the Department amended (a) to require facilities to develop and implement plans of supervision and suspension immediately upon notification that an employee is alleged to have committed abuse. Amended (a) also requires facilities to submit employee-specific plans to AAAs and to Commonwealth agencies with regulatory authority over those facilities within the agencies' accepted timeframes.

**Section 15.147. Confidentiality of and access to confidential reports.**

*Comments:*

PANPHA asked, regarding subsection (b)(5), that the phrase "other medical institution" be explained. IRRC recommended that the phrase "when an investigation by an agency results in a report of criminal conduct" be incorporated into the language of subsections (b) and (e) to comport with Section 10225.306(b)(1) of the OAPSA (relating to limited access to the agency's protective services records), which requires a report of criminal conduct before law enforcement officials may gain access to reports. IRRC noted that Section 10225.303(b) of the OAPSA (relating to investigations involving licensed facilities) requires ombudsman notification when reports concern residents of state-licensed facilities, and that Section 10225.306(b)(2) of the OAPSA (relating to limited access to the agency's protective services records) provides for limited disclosure of

confidential information to service providers. IRRRC asked if this latter subsection also provided access for an ombudsman. Regarding the issue of the ombudsman, CLS and CARIE urged the Department to revise (b)(1) to permit disclosure of relevant information to the ombudsman. CLS also asked that an attorney providing legal services to an alleged victim be given access to relevant information. The Northampton AAA commented that (d), allowing release of certain information to alleged perpetrators, might lead to increased risk for older adults and increased liability to AAAs and the Commonwealth. The AAA also expressed concern about the apparent inconsistency between Section 15.82(1) and (2) and Section 15.147 (d) regarding release of information. In Section 15.82(1) and (2), alleged perpetrators must be provided with a brief summary of the allegations and, upon request, with additional information contained in the report. In Section 15.147 (d), alleged perpetrators, upon request, may receive a copy of all information, minus information identifying the reporter. York AAA questioned the use of the word "all" in the phrase at Section 15.147 (d) "...an alleged perpetrator...may receive a copy of all information."

*Responses:*

The Department did not feel the need to further specify "other medical institutions where a victim is being treated" in (a)(5), believing the range of reasonable possibilities to be relatively limited and being confident in the ability of agencies to discern the appropriateness of requests for information under the OAPSA.

Paragraph (2) of Section 15.105 (relating to limited access to records and disclosure of information), allowing law enforcement officials access to protective services records only if an agency investigation results in a report of criminal conduct,

has been part of these regulations since they were written in 1988, and was taken from Section 10225.306(b)(1) of the OAPSA (relating to limited access to the agency's protective services records). The Department has not followed the recommendation of IRRRC to incorporate similar language into subsections (b) and (e) of Section 15.147 because the wording of these two subsections was likewise taken from the OAPSA, Section 10225.705 (relating to confidentiality of and access to confidential reports). The OAPSA, as amended, contains two separate Sections dealing with confidentiality of, and access to, protective services records : Section 10225.306 and Section 10225.705. In compliance with these two Sections, the Department promulgated 6 Pa. Code 15.105 in 1988 and is now acting to promulgate 6 Pa. Code 15.147. The Department feels obliged to retain both Sections in order to comply with the amended OAPSA. Therefore, the conditions under which law enforcement officials have access to protective services records developed from voluntary reports of abuse under Chapter 3 of the OAPSA differ from those which obtain when protective services records are developed from mandatory reporting of abuse by employees and administrators of OAPSA-specified facilities made under Chapter 7 of the OAPSA.

The Department agreed with IRRRC that Section 10225.306 (b)(2) of OAPSA, when considered in conjunction with Section 10225.303 (b) of the OAPSA, allows for agencies to disclose information to the local ombudsmen, whose work complements and strengthens the work of protective services staff and who operate under strict rules of confidentiality. The Department responded to requests from CLS and CARIE to modify the language of (b)(1) to include the ombudsman as one of the agency and Departmental employees allowed access to relevant information in reports made under

these regulations. The Department complied with the request from CLS to add attorneys providing legal services to alleged victims to the list of persons with access to relevant information by amending the language of Section 15.105 (4).

As regards the comments from the Northampton and York Area Agencies on Aging regarding provision of information to alleged perpetrators, the Department notes that, as was the case with confidentiality discussed above, the amended OAPSA contains two separate Sections dealing with the same subject. The first, Section 10225.308 (b)(1) and (2) (relating to individual rights), allows alleged perpetrators to receive a brief summary of the information in a report and, upon request, additional information in the report. The second, Section 10225.705 (relating to confidentiality of and access to confidential reports), allows alleged perpetrators, upon request, to receive a copy of all information in a report except data identifying the person who made the report or the person who cooperated in a subsequent investigation. The Department has again taken statutory language from these two Sections and written the parallel regulatory sections, Section 15.82 (1) and (2) and Section 15.147 (d), cited by the AAAs. The Department again feels constrained to adhere to the language of the OAPSA. Therefore, the amount of information given to alleged perpetrators identified through voluntary reports of abuse under Chapter 3 of the OAPSA differs from the amount given to alleged perpetrators identified through mandatory reports of abuse by administrators and staff of OAPSA-specified facilities under Chapter 7 of the OAPSA.

**Section 15.148. Penalties.**

*Comments:*

DPW and PANPHA noted that the multiple use of the term “agency” throughout (a) (4) was somewhat confusing, and should be clarified. PCA recommended that the Department be clear in (a)(4) regarding circumstances in which licensing agencies will act. PCA also recommended that the Department depersonalize the second sentence in (c) so as not to unnecessarily restrict the agency’s freedom to act.

In response to initial comments by IRRRC that (c) should specify a time within which the Department would notify the police, the Department originally amended (c) to require immediate notification to the police when an agency learned of a refusal to complete all reporting requirements. In commenting on a later draft of the regulations, IRRRC directed the Department to be more specific.. The oversight committees and DPW recommended that the Department reinstate the original requirement to notify the police immediately.

*Responses:*

The Department amended the renumbered (a) (3) to specifically refer to the Departments of Health, Welfare and Aging. In response to PCA, the Department amended the standard by which agency representatives would report violations, from , those having “knowledge” of violations to those who “suspect” violations thereby affording these representatives greater latitude in carrying out their responsibilities to protect recipients of care. The Department also added language to describe procedures under which agency representatives would report, and to identify the minimum required elements to be included in their written reports.

The Department amended (c) to remove the word “person’s” from the second sentence, so as to afford agencies greater latitude to carry out their mandated

responsibilities to notify the police. After consultation with the commenters, the Department chose to require notification of police within 72 hours rather than immediately. The Department agreed with several commenters that the term "immediately" is without specific, measurable meaning. In addition, allowing 72 hours as the outside limit for action will allow an agency sufficient time to adequately gain information about a refusal to complete reporting requirements and does not preclude an agency from acting more quickly when circumstances indicate the need to do so.

**CONTINUATION SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

**FISCAL IMPACT**

Costs to the Commonwealth mandated by the Older Adults Protective Services Act (OAPSA), and associated with implementation of these final-form regulations, result from the need to process Criminal History Record Information (CHRI) reports. The Department of Aging incurs the costs of processing the Federal Bureau of Investigation (FBI) reports. The Pennsylvania State Police (PSP) incur the costs of processing the PSP CHRI reports. The mandating of reports of suspected abuse in OAPSA-specified facilities has increased the number of investigations and associated personnel requirements for Area Agencies on Aging, which serve as the local protective services agency, 37 of which are under the auspice of county government. Applicants for employment at OAPSA-specified facilities, or, at their option, specified care-providing facilities (domiciliary care homes, home health care agencies, long-term care nursing facilities, older adult daily living centers, and personal care facilities), and those at facilities defined as home health care agencies by the Department of Public Welfare (community residential rehabilitation services, community homes and family living homes for individuals with mental retardation, intermediate care facilities for individuals with mental retardation, including state and non-state operated facilities and homes, and state mental hospitals), must bear the costs of obtaining mandatory CHRI reports. The fee for the PSP CHRI report is \$10; the fee for the FBI CHRI report is \$24. No additional costs are imposed on members of the general public.

**PAPERWORK REQUIREMENTS**

Applicants for employment will be required to obtain CHRI reports; the PSP and the Department will be required to process these reports; specified care-providing facilities will be required to retain copies of these reports. In addition these facilities will be required to submit written reports of suspected abuse to Area Agencies on Aging and, in some cases, to law enforcement officials; Area Agencies will be required in some cases to send these reports to the Department and county coroners; specified facilities will be required to send individual supervision or suspension plans to Area Agencies and licensing agencies and to retain such reports. Area Agencies will be required to make reports of suspected abuse available to specified persons and agencies. Specified facilities are required to provide applicants with written explanation of CHRI report requirements and to retain such reports.

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**CONTINUATION SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

EFFECTIVE DATE / SUNSET DATE

Final-form regulations will take effect on the date of publication in the Pennsylvania Bulletin. No sunset date has been established. The effectiveness of these regulations will be evaluated as part of the Department's annual review of the protective services program.

STATUTORY AUTHORITY

The Department adopts these amendments under the authority of the Act of November 6, 1987 (P.L. 381, No. 79) as amended by the Acts of December 18, 1996 (P.L. 1125, No. 169) and June 9, 1997 (P.L. 160, No. 13) (35 P.S. Sections 10225.101 – 10225.5102).

REGULATORY REVIEW

Under Section 5(a) of the Regulatory Review Act (Act), (71 P.S. Section 745.5(a)), on November 15, 1999, the Department submitted a copy of Notice of Proposed Rulemaking, published at 29 Pa. B. 48, to IRRC and the Chairpersons of the House Committee on Aging and Youth and the Senate Committee on Aging and Youth for review and comment. In compliance with Section 5(c) of the Act, the Department also provided IRRC and the committees with copies of all comments received, as well as other documentation.

In compliance with Section 5.1(a) of the Act, the Department submitted a copy of this final-form regulation to IRRC and the Committees on 12/27/01. In addition, the Department provided IRRC and the Committees with information pertaining to commentators and a copy of the detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

In preparing this final-form regulation the Department has considered all comments received from IRRC, the Committees and the public.

This final-form regulation was (deemed) approved by the House Committee on Aging and Youth on \_\_\_\_\_ and (deemed) approved by the Senate Committee on Aging and Youth on \_\_\_\_\_. IRRC met on \_\_\_\_\_ and approved the regulation in accordance with Section 5.1(e) of the Act.

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**CONTINUATION SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

**CONTACT PERSON**

Questions regarding these final-form regulations may be submitted to Robert F. Hussar, Regulatory Coordinator, Office of Program Management, Department of Aging, 555 Walnut Street, 5<sup>th</sup> Floor, Harrisburg, PA 17101-1919, telephone (717)783-6207. Persons with disabilities may submit questions in alternative formats such as audio tape, Braille, or by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

**FINDINGS**

The Department finds that:

- (1) Public notice of intention to adopt the final-form regulations adopted by this order has been given under Sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. Sections 1201 and 1202), and the regulations thereunder, 1 Pa. Code Sections 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The adoption of final-form regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

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**CONTINUATION SHEET  
FOR FILING DOCUMENTS  
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ORDER

The Department, acting under the authorizing statute, orders that:

- (a) The regulations of the Department, at 6 Pa. Code Chapter 15, are amended by amending Sections 15.1 – 15.46, 15.61 – 15.62, 15.71, 15.81 – 15.96, 15.102 – 15.103, 15.105 – 15.113, 15.121 – 15.123, 15.127 and 15.161, and by adding Sections 15.131 – 138 and 15.141 – 15.149 to read as set forth in Annex A.
- (b) The Secretary of Aging shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as required by law.
- (c) The Secretary of Aging shall submit this order, Annex A and a Regulatory Analysis Form to IRRC, the House Committee on Aging and Youth and the Senate Committee on Aging and Youth for their review and action as required by law.
- (d) The Secretary of Aging shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (e) This order shall take effect upon publication in the Pennsylvania Bulletin.

Richard Browdie  
Secretary

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF AGING  
555 Walnut Street, 5th Floor  
HARRISBURG, PENNSYLVANIA  
17101-1919

SECRETARY OF AGING

December 26, 2001

(717) 783-1550

Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harrisstown II  
333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Department of Aging Final – Form Regulations  
Amendments to Older Adults Protective Services Regulations  
6 Pa. Code Chapter 15, #001-017

Dear Mr. Nyce:

Enclosed please find a copy of final-form regulations for review by the Commission pursuant to the Regulatory Review Act (Act) (P.L. 73, No. 19) (71 P.S. Sections 745.1-745.15). Section 5.1 (a) of the Act provides that, upon completion of the agency's review of comments following proposed rulemaking, the agency is to submit to the Commission a copy of the agency's response to the comments received, the names and addresses of commentators who have requested additional information about the final-form regulations, and the text of the final-form regulations which the agency intends to adopt.

Ten commentators have requested additional information relating to the final-form regulations. A list of their names is enclosed. The Department received 22 comments to the proposed rulemaking.

Section 5.1 (e) of the Act provides that within 10 days following the expiration of the standing committee review period, or at its next regularly-scheduled meeting, the Commission shall approve or disapprove the final form regulations.

The Department will provide the Commission with any assistance it requires to facilitate a thorough review of the regulations. If you have any questions, please contact Robert F. Hussar, Regulatory Coordinator, (717) 783-6207.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Browdie". The signature is written in a cursive style with a large initial "R".

Richard Browdie  
Secretary

Attachments

RB/RH/kk

12/26/01 WED 12:08 FAX 717 772 2730  
Dec 26 01 09:21a ali kukovich

PA DEPT OF AGING PACE  
1724-861-8906

002  
P. 1

12/28/01 WED 10:14 FAX 717 772 2730 PA DEPT OF AGING PACE

001

OFFICE OF GENERAL COUNSEL

### TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 001 - 017  
SUBJECT: Protective Services for Older Adults  
AGENCY: Pennsylvania Department of Aging

# 2077

#### TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

- a.  With Revisions
- b.  Without Revisions

RECEIVED  
REGULATORY REVIEW COMMISSION  
DEC 27 11 09:53

#### FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
12/27/01	<i>Walt Thompson</i>	HOUSE COMMITTEE ON AGING AND OLDER ADULTS <i>RM</i>
12/27/01	<i>Dennis A. ...</i>	
12/27	<i>L. M. ...</i>	SENATE COMMITTEE ON AGING AND YOUTH <i>RM</i>
12-27-01	<i>...</i>	
12-27-01	<i>...</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

July 28, 1999