

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 changes reflecting stakeholder comments:

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

Title 6. Aging

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Authority

The provisions of this Chapter 15 issued under the act of November 6, 1987 (P. L. 381, No. 79) (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) AS DEFINED BY THE ACT AND REQUIRED CRIMINAL HISTORY INFORMATION REPORTS FOR EMPLOYEES AND ADMINISTRATORS OF FACILITIES AS SET FORTH BY THE ACT.**

(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. **THE APPLICANT IS THE PERSON SEEKING EMPLOYMENT, NOT THE PERSON PROCESSING THE APPLICATION.**

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, ~~X~~ 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 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 instrument(s) 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.

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

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.

consistent spelling throughout.

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 **A FACILITY**, 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 **IN THE INDIVIDUAL'S PLACE OF RESIDENCE. THE TERM DOES NOT INCLUDE A CONSUMER-EMPLOYED ATTENDANT. A VOLUNTEER IS NOT AN EMPLOYEE. THE TERM CONTRACT EMPLOYEE INCLUDES STUDENTS DOING AN INTERNSHIP OR CLINICAL ROTATION OR ANY OTHER PERSON WHO HAS BEEN GRANTED EXCLUSIVE ACCESS TO THE FACILITY TO PERFORM A SERVICE FOR A FEE.**

Exploitation - An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.

Facility - Any of the following: (1) a domiciliary care home as defined in Section 2202-A of the Act of April 9, 1929 (P.L. 177, No. 175), known as *The Administrative Code of 1929*; (2) A home health care agency; (3) A long-term care nursing facility as defined in Section 802.1 of the Act of July 19, 1979 (P.L. 130, No. 48), known as *The Health Care Facilities Act*; (4) an older adult daily living center as defined in Section 2 of the Act of July 11, 1990 (P.L. 499, No. 118), known as *The Older Adult Daily Living Centers Licensing Act*; (5) a personal care home as defined in Section 1001 of the Act of June 13, 1967 (P.L. 31, No. 21), known as *The Public Welfare Code*, including those entities licensed as personal care homes who publicly advertise, promote or otherwise hold themselves out to the public as assisted living facilities.

abuse is not defined, but not needed in the text

F.B.I. - FEDERAL BUREAU OF INVESTIGATION.

Home Health Care Agency - Any of the following: (1) A home health care organization or agency licensed by the Department of Health; (2) A public or private agency or organization, or part of an agency or organization, which provides care to a care-dependent individual in the individual's place of residence. The term shall include, but is not limited to, private duty home care providers, homemaker/home health aide providers, companion care providers, registry services, 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. THE TERM INCLUDES BUT IS NOT LIMITED TO:

- Home health or facility?*
- 1) **COMMUNITY RESIDENTIAL REHABILITATION SERVICES LICENSED UNDER 55 PA. CODE CHAPTER 5310.**
 - 2) **COMMUNITY HOMES AND FAMILY LIVING HOMES FOR INDIVIDUALS WITH MENTAL RETARDATION LICENSED UNDER 55 PA. CODE CHAPTER 6400 AND 55 PA. CODE CHAPTER 6500.**
 - 3) **INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH MENTAL RETARDATION LICENSED UNDER 55 PA. CODE CHAPTER 6600, INCLUDING STATE AND NON-STATE OPERATED FACILITIES AND HOMES.**
 - 4) **STATE MENTAL HOSPITALS.**

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 of need is an older adult in need of protective services.

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 TERM CARRIES NO REFERENCE TO CAPACITY OR INCAPACITY OR COMPETENCE OR INCOMPETENCE AS DEFINED IN PENNSYLVANIA GUARDIANSHIP STATUTES.**

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.

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.

*(consistent use of terminology)
criminal history record information report*

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: (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 - 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.

UNSUPERVISED ACCESS TO PERSONAL LIVING QUARTERS OF RESIDENTS – 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

standby
capability

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.

OPTIONS { (4) The agency may not designate as a protective services caseworker an area agency on aging ombudsman or a caseworker under the Department's Long Term Care Assessment and Management Program (LAMP). }

~~[(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.

use skills often enough to remain current.

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.

~~(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.

§ 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.

What is immediate?

(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.

What is early intervention?

(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}~~less than 60 years old.
- (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.

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, SUFFICIENT INFORMATION TO BEGIN AN INVESTIGATION SHALL BE 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.

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.

What is immediate?
Reasonable attempts?
Reasonable efforts?

(i) The investigation of a report categorized as emergency shall be initiated immediately following the referral of the report. The investigator **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 **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 **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 **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) In the event that the Department determines that there may be interference with the course of any protective services investigation, the Department reserves the right to intervene in the agency's investigation.

~~{(c)}~~ (d) 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)}~~ (e) 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.}

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 {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, AS AMENDED (1992), PUB. L. 100.175. DEPARTMENT OF AGING REAUTHORIZATION 71 P.S. §581-1 ET SEQ.** 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.

(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} In the event that both a report of need for protective services and a police report have been filed, the protective services

shall
§ 15.105
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 AND RECORDS

§ 15.61. Access to persons.

(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. Except in emergency or priority protective services cases, access to persons 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 {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 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 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 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 at Section 15.93(c).

(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 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. {Client needs a} Assessment.

(a) When a report is substantiated by the agency, or if an {client} 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 **OLDER ADULT'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

*Need to address
sharing info.
with licensing
agency.*

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 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 ~~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 AN OLDER ADULT WHO IS 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 **OLDER ADULT WHO IS A** 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 criminal history record information REPORT, obtained within the one-year period immediately preceding the date of application, as appropriate AS SET FORTH AT §15.134 (RELATING TO PROCEDURES):

(1) State Police report - Facilities shall require all applicants to submit a report of 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) ~~FBI~~ FEDERAL BUREAU OF INVESTIGATION 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 an ~~FBI~~ FEDERAL BUREAU OF INVESTIGATION criminal history record information report pursuant to the ~~FBI's~~ FEDERAL BUREAU OF INVESTIGATION'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) Applicants required to submit an ~~FBI~~ FEDERAL BUREAU OF INVESTIGATION criminal history record information report shall submit 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, the following documentation, 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.~~

Facility personnel employees ?

§ 15.132 Facility personnel requirements.

keep for consistent language.

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

(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 requirements within 90 30 days from the date of employment IF A RESIDENT OR 90 DAYS IF A NON-RESIDENT.

(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) 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 and/or supervised by the same operator are exempt from compliance with the requirements of Section 15.131.

(5) Employees at facilities which 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 REPORT requirements in paragraph (3) by providing A criminal history record information REPORT to the facility which supplies, arranges for, or refers them AND TO THE FACILITY AT WHICH THEY PROVIDE CARE. The grandfathering and transfer exemptions in paragraph (4) also, as 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.) RESPONSIBILITY FOR NOTIFICATION OF THE EMPLOYEE OF CRIMINAL HISTORY RECORD REPORT REQUIREMENTS RESTS WITH THE STAFFING AGENCY.

on a health care agency. New criminal history record information report is on file at the staffing agency.

(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.~~ **THE TRANSFER OF OWNERSHIP OF A FACILITY SHALL NOT CREATE A REQUIREMENT THAT PREVIOUSLY GRANDFATHERED EMPLOYEES PROVIDE CRIMINAL HISTORY RECORD INFORMATION TO THE NEW OWNER.**

~~(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.~~

§ 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 the 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 Cosmetic Act. FACILITIES ARE NOT PROHIBITED FROM EMPLOYING PERSONS WITH CONVICTIONS UNDER THE CONTROLLED SUBSTANCE, DRUG, DEVICE OR COSMETIC ACT THAT ARE GRADED AS LESS THAN FELONIES (I.E. MISDEMEANORS).~~

*Good
re-employment
of best of those
needed to prohibit
hiring.*

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

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. FACILITIES ARE NOT PROHIBITED FROM EMPLOYING PERSONS WITH SUMMARY

OFFENSES OR WITH ONLY ONE MISDEMEANOR 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).

- (C) ~~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.~~ **AN ARREST FOR A CRIME WHICH WOULD PROHIBIT HIRING AN APPLICANT OR RETAINING AN EMPLOYEE IF IT LED TO A CONVICTION IS NOT ITSELF GROUNDS FOR REJECTION OR TERMINATION OF THAT PERSON UNLESS AND UNTIL THERE IS A CONVICTION. HOWEVER, THE FACILITY MUST ASCERTAIN THE ULTIMATE DISPOSITION OF THAT ARREST OR OTHER OPEN DISPOSITION TO DETERMINE WHETHER IT EVER BECOMES OR BECAME A CONVICTION.**

(1) IF THE REASON FOR THE OPEN DISPOSITION IS THAT THE CHARGES HAVE NOT YET BEEN RESOLVED, THE ADMINISTRATOR OR DESIGNEE SHALL CHECK THE STATUS WITH THE EMPLOYEE EVERY 30 DAYS UNTIL A COURT DATE IS SET, AND THEREAFTER AS APPROPRIATE UNTIL THERE IS A DISPOSITION, IN ORDER TO RECEIVE THE DISPOSITION AS SOON AS POSSIBLE.

(2) IF THE REASON FOR THE OPEN DISPOSITION ON THE CRIMINAL RECORD IS THAT THE CHARGES WERE RESOLVED FAVORABLY TO THE APPLICANT OR EMPLOYEE (SUCH AS THE

CHARGES WERE DISMISSED OR THE PERSON WAS ACQUITTED), BUT THEY WERE NEVER EXPUNGED FROM HIS OR HER RECORD, THE ADMINISTRATOR OR DESIGNEE SHALL REQUIRE THE PERSON TO OBTAIN AND SUBMIT PROOF SHOWING THE DISPOSITION WITHIN 60 DAYS OF RECEIPT OF THE ORIGINAL REPORT. PROOF CAN BE COURT DOCUMENTS, OTHER OFFICIAL COURT RECORDS, OR OTHER PROOF DEEMED ACCEPTABLE TO THE DEPARTMENT. IF THE PERSON IS MAKING GOOD FAITH EFFORTS TO OBTAIN THE PROOF BUT CANNOT DO SO WITHIN 60 DAYS, THE ADMINISTRATOR OR DESIGNEE CAN MAKE A REQUEST TO THE DEPARTMENT FOR ADDITIONAL TIME FOR THE PERSON TO OBTAIN THE PROOF.

Expungement should be an option that could permit some individuals to work in the covered settings.

(3) NOTHING IN THIS SECTION REQUIRES AN APPLICANT OR EMPLOYEE TO FORMALLY EXPUNGE AN ARREST FROM HIS OR HER CRIMINAL RECORD IN ORDER TO AVOID THE PROHIBITION ON EMPLOYMENT.

(d) ~~A facility shall not hire an applicant nor retain an employee required to submit a criminal history record information report where the criminal background check reports~~ **REPORT SHOWS** 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) A facility shall ensure that applicant responsibility to obtain criminal history record check ~~(s)~~ **INFORMATION REPORTS** is explained to each applicant orally in a language understood by the applicant **AND IN WRITTEN FORM UNDERSTOOD BY THE APPLICANT.**

(f) A facility **AN ADMINISTRATOR** shall ensure that information obtained from the criminal history record remains confidential and is used solely to determine an applicant's eligibility for employment.

covered

(g) ~~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.~~ **FACILITIES SHALL MAINTAIN EMPLOYMENT RECORDS WHICH INCLUDE A COPY OF THE COMPLETED REQUEST FORM FOR THE OFFICIAL STATE POLICE CRIMINAL HISTORY RECORD CHECK FORM AND THE COMPLETED OFFICIAL STATE POLICE CRIMINAL HISTORY RECORD CHECK FORM ISSUED IN RESPONSE TO A REQUEST FOR A CRIMINAL BACKGROUND CHECK.**

consider language

(h) ~~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~~ **FEDERAL BUREAU OF INVESTIGATION** criminal history record check of

~~AND a copy of the FBI FEDERAL BUREAU OF INVESTIGATION 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.~~

(I) FACILITIES MUST PROVIDE WRITTEN NOTICE EXPLAINING THE RIGHT AND PROCEDURE FOR APPLICANT APPEAL OF THE DECISION NOT TO HIRE OR TO TERMINATE EMPLOYMENT PURSUANT TO THE ACT.

(II) THE ADMINISTRATOR OF A FACILITY SHALL POST NOTICES 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.

§ 15.134 Procedure

(a) Applicants and facility personnel AS DESCRIBED AT 15.132(a) 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 must 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 return the form to a designated individual for submission of the request by the facility.

(b) Applicants and facility personnel AS DESCRIBED AT 15.132(A) required to obtain a federal criminal history record information report from the FBI FEDERAL BUREAU OF INVESTIGATION shall obtain the information packet from the facility or contact the Department for instructions, all necessary forms and the required FBI FEDERAL BUREAU OF INVESTIGATION fingerprint card.

(1) Applicants and facility personnel shall return the FBI FEDERAL BUREAU OF INVESTIGATION fingerprint card and any forms, and a check in an 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 FEDERAL BUREAU OF INVESTIGATION~~.

(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 will contact the applicant **OR EMPLOYEE** with a written statement within ten 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. **AN ARREST FOR A CRIME WHICH WOULD PROHIBIT HIRING AN APPLICANT OR RETAINING AN EMPLOYEE IF IT LED TO A CONVICTION IS NOT ITSELF GROUNDS FOR REJECTION OR TERMINATION OF THAT PERSON UNLESS AND UNTIL THERE IS A CONVICTION. HOWEVER, THE FACILITY MUST ASCERTAIN THE ULTIMATE DISPOSITION OF THAT ARREST OR OTHER OPEN DISPOSITION TO DETERMINE WHETHER IT EVER BECOMES OR BECAME A CONVICTION.**

(I) IF THE REASON FOR THE OPEN DISPOSITION IS THAT THE CHARGES HAVE NOT YET BEEN RESOLVED, THE ADMINISTRATOR OR DESIGNEE SHALL CHECK THE STATUS WITH THE APPLICANT OR EMPLOYEE EVERY 30 DAYS UNTIL A COURT DATE IS SET, AND THEREAFTER AS APPROPRIATE UNTIL THERE IS A DISPOSITION, IN ORDER TO RECEIVE THE DISPOSITION AS SOON AS POSSIBLE.

(II) IF THE REASON FOR THE OPEN DISPOSITION ON THE CRIMINAL RECORD IS THAT THE CHARGES WERE RESOLVED FAVORABLY TO THE APPLICANT OR EMPLOYEE (SUCH AS THE CHARGES WERE DISMISSED OR THE PERSON WAS ACQUITTED), BUT THEY WERE NEVER EXPUNGED FROM HIS OR HER RECORD, THE ADMINISTRATOR OR DESIGNEE SHALL REQUIRE THE PERSON TO OBTAIN AND SUBMIT PROOF SHOWING THE DISPOSITION WITHIN 60 DAYS OF RECEIPT OF THE ORIGINAL REPORT. PROOF CAN BE COURT DOCUMENTS, OTHER OFFICIAL COURT RECORDS, OR OTHER PROOF DEEMED ACCEPTABLE TO THE DEPARTMENT. IF THE PERSON IS MAKING GOOD FAITH EFFORTS TO OBTAIN THE PROOF BUT CANNOT DO SO WITHIN 60 DAYS, THE ADMINISTRATOR OR

operator

operator

DESIGNEE CAN MAKE A REQUEST TO THE DEPARTMENT FOR ADDITIONAL TIME FOR THE PERSON TO OBTAIN THE PROOF.

(III) NOTHING IN THIS SECTION REQUIRES AN APPLICANT OR EMPLOYEE TO FORMALLY EXPUNGE AN ARREST FROM HIS OR HER CRIMINAL RECORD IN ORDER TO AVOID THE PROHIBITION ON EMPLOYMENT.

Expansion as an option to permit employment requirements - note facility personnel = employee

(c) Fees - While submission of criminal history record information to facility administrators or their designees is the responsibility of the applicant OR EMPLOYEE, facility 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 any applicant or employee in complying with this requirement if requested.

(e) Applicants and facility personnel shall obtain both Pennsylvania and FBI FEDERAL BUREAU OF INVESTIGATION 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 FEDERAL BUREAU OF INVESTIGATION 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 REPORT shall be obtained. THIS INFORMATION ALSO APPLIES TO CRIMINAL HISTORY RECORD CHECKS CONDUCTED BY THE PENNSYLVANIA DEPARTMENT OF EDUCATION, PURSUANT TO ACT 14 OF 1997, AS IT RELATES TO CERTIFIED NURSING ASSISTANT TRAINING.

applicant operators

NAs not certified in PA

(f) Applicants and facility personnel are responsible for reviewing all criminal history record information reports for accuracy.

Must be clear that this means the employee applicant the criminal history record information report, not employee processing the applic

must

(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. ANY INFORMATION THE APPLICANT OR EMPLOYEE SUBMITS TO REVERSE THE DEPARTMENT OF AGING'S DECISION WILL NEED TO BE SUBMITTED WITHIN ONE YEAR FROM THE DATE OF THE DEPARTMENT OF AGING'S DETERMINATION OF A PROHIBITIVE STATUS.

§ 15.135 Applicant rights of review.

(a) An applicant may review, challenge and appeal the completeness or accuracy of the applicant's 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 AND (18 P.S. §9125).

~~(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.~~

APPLICANTS MAY CHALLENGE THE CONVICTION(S) COMPARISON INTERPRETATION OF THE DEPARTMENT INVOLVING THEIR OFFENSES IDENTIFIED IN THE FEDERAL BUREAU OF INVESTIGATION CHECK. APPEALS MUST BE FILED WITHIN 30 DAYS FROM RECEIPT OF THE WRITTEN STATEMENT (6 PA. CODE 15.134(B)(2) PURSUANT TO 6 PA. CODE CHAPTER 3 AND 1 PA. CODE CHAPTER 35.

~~(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.

Facility personnel or employee (a) Facility personnel, AS DESCRIBED AT 15.132(a), 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, AND (18 P.S. §9125).

(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. **A FACILITY ACTING IN GOOD FAITH SHALL BE HELD HARMLESS.**

(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).

(D) FACILITY PERSONNEL MAY CHALLENGE THE CONVICTION(S) COMPARISON INTERPRETATION OF THE DEPARTMENT INVOLVING THEIR OFFENSES IDENTIFIED IN THE FEDERAL BUREAU OF INVESTIGATION CHECK. APPEALS MUST BE FILED WITHIN 30 DAYS FROM RECEIPT OF THE WRITTEN STATEMENT (6 PA. CODE 15.134(B)(2)) PURSUANT TO 6 PA. CODE CHAPTER 3 AND 1 PA. CODE CHAPTER 35.

§ 15.137 Provisional hiring.

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

(1) Applicants have applied for the information required under § 15.131 and provide the administrator with a copy of the completed request forms.

(2) The administrator has no knowledge about applicants which would disqualify them from employment pursuant to the Acts, subject to 18 Pa. C.S. § 4911 (relating to tampering with public record information).

(3) Applicants swear or affirm in writing that they are 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 must be dismissed immediately.

(5) The provisionally employed applicant receives:

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

(ii) Regular supervisory observation of the applicant carrying out his/her duties.

(6) For a home health care agency, the supervision of a provisionally employed applicant must include random, direct observation/evaluation of the applicant and care recipient by an employee who has been employed by the home health agency for at least one year.

(7) For a home health agency which has been in business for less than one year, supervision of a provisionally employed applicant must include random, direct observation/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.

(b) 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 to ensure that the required copy of the State Police or ~~FBI~~ **FEDERAL BUREAU OF INVESTIGATION** 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) Except as provided in (d), If inspection of the file on day 30 or 90, as appropriate, reveals that the information noted above has not been provided

operator designee

what is regular supervisory observation?

operator

to the employer, the applicant's employment shall be immediately suspended or terminated.

(d) If information regarding criminal history record INFORMATION reports 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 timeframes, the period of provisional employment is extended until the facility receives the required reports from the State Police or FBI FEDERAL BUREAU OF INVESTIGATION. DURING SUCH A PERIOD OF EXTENDED PROVISIONAL EMPLOYMENT, THE SUPERVISION STANDARDS SET FORTH IN § 15.137(A)(5)(6)(7) MUST BE COMPLIED WITH.

§ 15.138 Violations

(a) Administrative - *operator*

(1) An administrator or his designee who intentionally or willfully fails to comply or obstructs compliance with the provisions of § 15.131 through 15.136 of this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).

operator (2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with § 15.131 through 15.136 of this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).

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

(4) In order to assist Commonwealth agencies carry out the responsibilities set forth in paragraph (3), representatives of these agencies THE DEPARTMENTS OF AGING, HEALTH AND WELFARE who have knowledge of violations will report them to the appropriate Commonwealth licensing agency.

(b) Criminal -

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

(2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with this chapter commits a misdemeanor of the

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

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 must:

what is reasonable cause?
(1) Immediately make an oral report to the agency.

(2) Within 48 hours of making the oral report, make a written report to the agency AS SET FORTH AT § 15.143 (CONTENTS OF REPORTS).

Immediately defined?
(b) Employees making oral or written reports must immediately notify the facility administrator of these reports.

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

In the middle of night
(d) Employees required to report abuse may request facility administrators or their designees to make, or assist them to make, oral or written reports.

§ 15.142. Additional Reporting Requirements.

Operators
(a) Employees 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, must, 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 administrator or his 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) Within 48 hours of making the oral report, make a written report to law enforcement officials and the agency.

what does promptly mean?
(b) Law enforcement officials will promptly notify facility administrators or their designees that reports have been made with them.

(c) **EMPLOYEES OR ADMINISTRATORS SHALL IN ADDITION TO COMPLYING WITH THESE REQUIREMENTS, COMPLY WITH ANY REPORTING REQUIREMENTS OF THE COMMONWEALTH 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 SECTION 15.141 AND 15.142 (RELATING TO GENERAL REQUIREMENTS; AND ADDITIONAL REPORTING REQUIREMENTS) SHALL BE MADE ON FORMS SUPPLIED BY THE DEPARTMENT 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 alleged victim.

(ii) Where the suspected abuse occurred.

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

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

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

(vi) The source of the report.

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

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

(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 shall respond as follows:

(1) If the victim/recipient is aged 60 or older, the agency shall conduct an investigation to determine if the older person ADULT 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 (Investigating Reports of Need for Protective Services).

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

(3) If the victim/recipient is under age 18, 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/RECIPIENT RESIDES IN A NURSING HOME OR IS RECEIVING HOME HEALTH SERVICES, THE AGENCY SHALL NOTIFY THE DEPARTMENT OF PUBLIC WELFARE OFFICE WITH FACILITY LICENSING RESPONSIBILITIES AND THE REGIONAL OFFICE OF THE DEPARTMENT OF HEALTH AND FORWARD REPORTS TO THOSE OFFICES.

(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/RECIPIENT RESIDES IN A PERSONAL CARE HOME, THE AGENCY SHALL NOTIFY THE DEPARTMENT OF PUBLIC WELFARE REGIONAL OFFICE WITH FACILITY LICENSING RESPONSIBILITIES AND FORWARD REPORTS TO THAT OFFICE.

(6) If the under age 60 victim/recipient resides in a Domiciliary Care home or receives services from an (adult day care center,) the agency shall notify 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

Report to Health office with facility licensing responsibilities

see 6.14.14 2.11.13 a.h.h.

the

Mark (11-11-11) I, J, W

subsection. IF THE AGENCY HAS KNOWLEDGE OR BELIEVES THAT THE VICTIM/RECIPIENT HAS MENTAL RETARDATION OR MENTAL HEALTH ISSUES, 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.

add the licensure agency

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

§ 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.

Done immediately
(A) UPON NOTIFICATION THAT AN EMPLOYEE IS ALLEGED TO HAVE COMMITTED ABUSE, THE FACILITY SHALL IMMEDIATELY DEVELOP AND IMPLEMENT A PLAN OF SUPERVISION OR, WHEN 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.

How long for approval?
Sufficient resources needed for rapid approval.
(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 PLAN OF SUPERVISION ESTABLISHED BY A HOME HEALTH CARE AGENCY SHALL, IN ADDITION TO THE REQUIREMENTS IN SUBSECTION (A) AND (B) OF THIS SECTION, 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 1 YEAR. FOR A HOME HEALTH AGENCY IN BUSINESS FOR LESS THAN ONE YEAR, SUPERVISION SHALL INCLUDE RANDOM, DIRECT OBSERVATION/EVALUATION BY AN EMPLOYEE WITH PRIOR EMPLOYMENT EXPERIENCE OF AT LEAST 1 YEAR WITH ONE OR MORE OTHER HOME HEALTH CARE AGENCIES.

(D) UPON FILING OF CRIMINAL CHARGES AGAINST AN EMPLOYEE, THE COMMONWEALTH AGENCY WHICH LICENSED THE FACILITY SHALL ORDER THE FACILITY TO IMMEDIATELY PROHIBIT THAT EMPLOYEE FROM HAVING ACCESS TO RECIPIENTS AT THE

Director, operator, administrator = operator

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.

§ 15.147. Confidentiality of and access to confidential reports.

(a) General rule - Except as provided in subsection (b) 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 all of the following:

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

What is a medical institution?

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

(6) 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 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.

operator
(1) An administrator or his designee who intentionally or willfully fails to comply or obstructs compliance with the provisions of § 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 of this chapter or that intimidates or commits a retaliatory act against an employee who complies in good faith with this chapter commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).

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

(4) In order to assist Commonwealth agencies^{x0} carry out the responsibilities set forth in paragraph (3), representatives of these agencies **OF THE DEPARTMENTS OF HEALTH, WELFARE OR AGING** who have knowledge of violations will report them to the appropriate Commonwealth licensing agency.

(b) Criminal.

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

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

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

refusal to complete all reporting requirements, the agency shall IMMEDIATELY notify the police.

§ 15.149. Immunity.

An administrator or a facility shall 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.

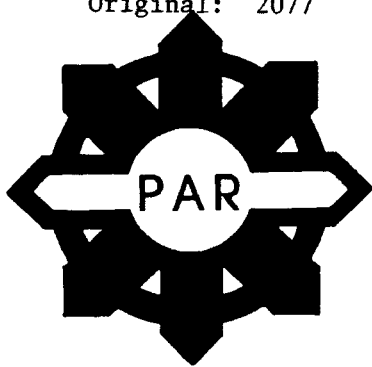
(b) A waiver request shall be made in writing to the Secretary. A request shall specifically identify and explain the burden created by the requirement for which the exception is being sought, the alternative method for fulfilling the basic intent of the requirement and evidence of the steps to be taken 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.

Original: 2077



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Pennsylvania Association of Resources
for People with Mental Retardation

2000 MAY 22 AM 9:33

REGULATORY
REVIEW COMMISSION

May 18, 2000

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Robert F. Hussar
Chief
Division of Program and Regulatory Coordination
Department of Aging
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1919

Re: Comments by The Pennsylvania Association of Resources for Persons With Mental Retardation ("PAR") on the Proposed Rulemaking By the Department of Aging Published in The Pennsylvania Bulletin on November 27, 1999, 6 Pa. Code Chapter 15, Protective Services for Older Adults

Dear Mr. Hussar:

I thank you for providing me with a copy of the March 29, 2000 revisions to the Rulemaking originally proposed by the Department of Aging ("Department") on November 27, 1999. On behalf of PAR and our members, I again want to thank you, Mr. Wood and all of the Department's staff who have reviewed the comments PAR submitted earlier for your openness and cooperation in working through the issues that we have raised. We agree that working together in an environment that promotes candid discussion and encourages suggestions serves everyone's interests. In that vein, in response to your request, I submit these additional comments regarding the March 29, 2000 revisions to the proposed Rulemaking:

- The revisions have clarified that several types of providers of services to people with mental retardation ("MR") are included within the definition of "home health care agency," as are state mental hospitals. Our concern is that other types of organizations that also would appear to fall under the definition of "home health care agency," e.g., hospices, psychiatric hospitals and units of hospitals, residential providers of mental health services, residential mental health service providers and residential drug and alcohol service providers, also are not listed as included within the definition. We are unable to explain why that is the case to PAR members and others who inquire about why MR service providers are included and these other health care providers are not. The unfortunate appearance created is that because MR

service providers specifically are listed in the Proposed Rulemaking, they must need the special supervision required under the provisions of the Older Adults Protective Services Act ("Act"), while other service providers do not need that level of oversight. Consequently, we request the Department include these other types of service providers that appear to fall within the definition by listing them as well to avoid the appearance of singling out MR service providers as needing special oversight.

- The term "unsupervised access to personal living quarters of residents" has been defined. We request an addition to that definition which would limit its application to individuals who have such access only on a regular basis, along with the other criteria in the proposed regulation in order to avoid application of this definition to individuals who would be called in to perform work on an emergency or isolated basis, e.g., a plumber or heating system repairman or exterminator for whom it would be impossible to obtain clearance checks before getting the necessary work done. We also request inclusion of the term "direct contact" as no definition has been proposed. We suggest that the definition provided in PAR's December 21, 1999 comments "direct contact means working with residents is a condition of employment and included in the job description for the position, such as a direct care worker or a facility nurse."
- We request deletion of the additions at the end of Section 15.133 which will require facilities to provide written notice explaining the right and procedure for applicants to appeal the decision not to hire or terminate employment pursuant to the Act and further require the administrator to post notices and use other appropriate means to notify employees, residents and other individuals of protections and obligations under the Act. We also request deletion of the requirement at Section 15.136 that a facility must reinstate an employee to the employee's former position or equivalent position if the employee's criminal history records information report is challenged by the employee and changed as a result of that challenge to remove any basis for termination. These proposals impose burdens upon the service providers that are neither mandated by the Act nor are within the service providers control and responsibility to carry out. If a service provider must terminate an employee from a position due to the requirements of the Act which the employee chooses to challenge and ultimately is successful in that challenge, the service provider should not be required to hold open a position pending outcome of that determination which could take a month or a year to conclude. Likewise, the service provider should not be required to provide written notice to applicants of the Act's procedures as well as the proposed appeal provisions. Establishing suitability for employment at the facility under the Act is the responsibility of the applicant, not the service provider.

Robert F. Hussar
May 18, 2000
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To the contrary, pursuant to Chapter 5 of the Act, the obligations of the facility are to ensure that it does not hire an applicant or retain an employee who has not been able to provide the necessary criminal history background reporting information either from the Pennsylvania State Police or the Federal Bureau of Investigation that establishes the applicant's or employee's eligibility for employment. While MR service providers particularly are sensitive to recruiting and retaining qualified and competent individuals to work at their facilities, and although MR service providers will work with those applicants who otherwise are qualified except for what appears to be an erroneous criminal history background information report, we respectfully request that the responsibility for supplying that information be placed upon the applicant as provided in the Act, and not upon the MR service providers.

I also ask to incorporate the comments submitted on behalf of PAR on December 21, 1999, January 18, 2000 and March 31, 2000 into this request for your continuing consideration, which I believe is a more concise and efficient manner of referencing those comments rather than reiterating the text of each of them here.

I thank you again for the opportunity to provide further comment upon the proposed Rulemaking as these concerns remain so important to PAR member organizations and the individuals with mental retardation to whom they provide services and supports.

Sincerely,



Shirley A. Walker
Executive Director

cc:

Jeffrey J. Wood, Esquire
Chief Counsel
Department of Aging

Jacqueline M. Welby, Esquire
Assistant Counsel
Department of Aging

James Bubb
Aging Specialist
Bureau of Home and Community-Based Services

✓ John R. McGinley, Chairman
Independent Regulatory Review Commission

Robert F. Hussar
May 18, 2000
Page - 4 -

The Honorable Feather O. Houstoun, Secretary
Department of Public Welfare

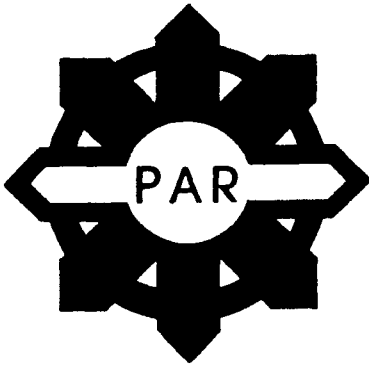
The Honorable Robert S. Zimmerman, Secretary
Department of Health

Charles Zogby, Director of Policy
Office of the Governor

Howard A. Burde, Deputy General Counsel
Office of General Counsel

Senator Timothy Murphy, Chair
Senate Committee on Aging and Youth

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Pennsylvania Association of Resources
for People with Mental Retardation

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REVIEW COMMISSION

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March 31, 2000

Robert F. Hussar
Chief
Division of Program and Regulatory Coordination
Department of Aging
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1919

Re: Comments by The Pennsylvania Association of Resources for Persons With Mental Retardation ("PAR") on the Proposed Rulemaking By the Department of Aging Published in The Pennsylvania Bulletin on November 27, 1999, 6 Pa. Code Chapter 15, Protective Services for Older Adults

Dear Mr. Hussar:

I want to thank you, as well as James Bubb, Jeffrey Wood and Jacqueline Welby, for the helpful discussion that Bill Lenahan and I had at your offices on January 28th and the follow-up discussions Mr. Lenahan has had with Mr. Wood and Ms. Welby and my follow-up discussion with you. We very much appreciate the openness and cooperation that we have encountered with everyone at the Department of Aging in responding to the comments I submitted on behalf of PAR. I especially appreciate your offer to contact me regarding those areas that are the main focus of PAR's December 21, 1999 and January 18, 2000 comments pertaining to Sections 15.131 through 15.137 and Sections 15.141 through 15.149 of the proposed rulemaking.

We remain concerned regarding the scope of the criminal history reporting requirements that impose a lifetime ban upon individuals who have shown themselves to be competent and caring staff in providing services at facilities for individuals with mental retardation. As you know, PAR has questioned the fundamental soundness of the statutory policy that imposes the lifetime ban on employment. We were encouraged by your willingness to consider adding the appeal provision for those applicants who are subject to the FBI background check that we suggested in our comments. We are also pleased that you have proposed an extension upon the timeframes specified in the statute for a new employee when the necessary Pennsylvania State Police or FBI report has not been returned within the established timeframes due to no fault of

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the employee. While these sensible approaches will not resolve the underlying problem, in certain instances they will help avoid further unnecessary disruption in the provision of services.

Regarding the reporting suspected abuse provisions, we continue to request the revision of the proposed rulemaking or the adoption of an inter-departmental memorandum of understanding as discussed in our January 18, 2000 supplement to our comments. We believe such an agreement would avoid the delay and confusion which will be prompted by the duplicative requirements of reporting to the local Area Agency on Aging ("AAA"), as well as the agency that licenses the facility. PAR's position that mandating immediate reporting of suspected abuse to the local AAA does not serve the best interests of individuals who live in community mental retardation facilities is fully discussed in my December 21, 1999 comments. I am writing at this time to enclose the incident reporting requirements which will help illustrate the point made in the December 21, 1999 comments. As you will see from a review of the materials, the provider of services to individuals with mental retardation must meet exacting standards in reporting any suspected abuse to the licensing agency. The additional requirement of reporting to the local AAA does not add any additional protection to those that have been in existence and followed for some time. To the contrary, the additional requirements of the statute and proposed rulemaking will only prompt confusion and corresponding delay in reporting suspected abuse where none presently exists.

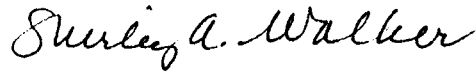
At Section 708 of the Older Adults Protective Services Act ("Act"), the General Assembly has directed the Department of Aging, the Department of Health and the Department of Public Welfare to promulgate regulations necessary to carry out the Act's reporting provisions. PAR asks the Department of Aging to coordinate this effort with the Department of Health and the Department of Public Welfare to find a common, practical solution to this circular reporting problem, rather than pursue a path that will make reporting suspected abuse more difficult. I realize that reaching such a solution may require discussion with the General Assembly about revisions to certain requirements of the Act. If that is necessary, PAR is prepared to work with you in that effort.

Lastly, I want to thank you for notifying us that the Department of Aging does not intend to pursue the provisions of Section 15.146 of the proposed rulemaking that would require facilities develop and submit generic supervision/suspension plans. We agree that a plan of supervision or suspension should be developed and implemented to fit the particular circumstances regarding a specific report of suspected abuse, rather than to meet a regulatory requirement which may or may not result in a plan that fits a specific situation. Likewise, in response to our inquiry regarding suspension or termination of employees, we are also pleased that the Department of Aging does not interpret the Act to require approval by the local AAA or the licensing Department before an employee may be suspended or terminated.

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I thank you again for the opportunity to provide further comment upon these concerns that are so important to PAR member organizations and the individuals with mental retardation whom they serve.

Sincerely,



Shirley A. Walker
Executive Director

Enclosure

cc:

Jeffrey J. Wood, Esquire
Chief Counsel
Department of Aging

Jacqueline M. Welby, Esquire
Assistant Counsel
Department of Aging

James Bubb
Aging Specialist
Bureau of Home and Community-Based Services

✓ John R. McGinley, Chairman
Independent Regulatory Review Commission

The Honorable Feather O. Houstoun, Secretary
Department of Public Welfare

The Honorable Robert S. Zimmerman, Secretary
Department of Health

Charles Zogby, Director of Policy
Office of the Governor

Howard A. Burde, Deputy General Counsel
Office of General Counsel

Senator Timothy Murphy, Chair
Senate Committee on Aging and Youth

RE: Duplication Between the Proposed Rulemaking Title 6 –Aging [6 P.A. Code Ch. 15] and Existing Mental Retardation Regulations and Policies Related to Incident Reporting Requirements and Criminal Background Checks

Mental retardation facilities have been included in the list of facilities subject to the Older Adults Protective Services Act ("OAPSA") and related Proposed Rulemaking from the Department of Aging (29 Pa.B. 6010). Although these provisions were intended to safeguard more effectively the rights of older adults in need of protective services, they have resulted in unnecessary and duplicative regulations that affect all adults receiving community mental retardation services.

Mental retardation facilities are already very stringently regulated and supervised by the Department of Public Welfare ("DPW"). In addition, all ICF/MR services also are subject to the jurisdiction of the Health Care Financing Administration ("HCFA") (for ICF/MR services). Any additional safeguards should not repeat the protections set forth in these existing regulations and policies.

The suspected abuse reporting and criminal background checks provisions of the OAPSA and the proposed rulemaking are so highly duplicative of existing regulations requiring incident reporting and criminal background checks that mental retardation facilities should be exempt from them.

Citations to the preceding regulations are listed below as evidence of duplication. This is not an exhaustive list, but illustrates the regulatory overlap and duplication that will be required for reporting suspected abuse and checking on applicants or employees criminal histories. (Abuse and Unusual Incidents are in one category because DPW includes abuse or suspected abuse in the definition of unusual incidents in terms of abuse.) Attached is an Appendix for reference.

***ABUSE/UNUSUAL INCIDENTS
Definitions, Reporting, Investigating***

OAPSA/Proposed Rulemaking

- Chapter 7, Sections 701, 703, 704 in Act 13 of the OAPSA (P.L. 160, (1997).
- Sections 15.141-15.149 under *H. Reporting Suspected Abuse*

Duplication/Directly Related Regulation:

- Title 55. Public Welfare; Department of Public Welfare
 - Chapter 2380: 2380.16, 2380.17, 2380.2, 2380.3
 - Chapter 2390: 2390.18, 2390.19, 2390.3, 2390.5
 - Chapter 6400: 6400.16, 6400.18, 6400.3, 6400.4
- Licensing Inspection Instrument for Adult Training Facility Regulations

- Chapter 2380: Regulation Numbers 16, 17
- Licensing Inspection Instrument for Vocational Facilities Regulations
 - Chapter 2390: Regulation Numbers 18, 19
- Licensing Inspection Instrument for Community Homes for Individuals with Mental Retardation Regulations
 - Chapter 6400: Regulation Numbers 16, 18
- HCFA Interpretative Guidelines for ICF/MR Services (State Operations Manual Transmittal Number 278, Appendix J)
 - J-29, S483.420, Tag Number W122
 - J-34-35, S483.420(a)(5), Tag Number W127
 - J-48, S483.420(c)(6), Tag Number W148
 - J-48, S483.420(d)(1), Tag Number 149
 - J-48-49, S483.420(d)(1)(i) Tag Number W150
 - J-50, S483.420(d)(2), Tag Number W153
 - J-50-51, S483.420(d)(1)(i), Tag Number 150
 - J-51, S483.420(d)(3), Tag Number W155
 - J-51, S483.420(d)(4), Tag Number W156
 - J-51, S483.420(d)(4), Tag Number W157

CRIMINAL BACKGROUND CHECKS

OAPSA/Proposed Rulemaking:

- Chapter 5, Sections 501-508 in Act 169 of the OAPSA (P.L. 1125, 1996)
- Section 503 in Act 13 (P.L. 160, 1997)
- Sections 15.131-15.137 under *G. Criminal History Record Information Reports in the Proposed Rulemaking.*

Duplication/Directly Related Regulation:

- Title 55. Public Welfare; Department of Public Welfare
 - Chapter 2380: 2380.20
 - Chapter 6400: 6400.21
- Licensing Inspection Instrument for Adult Training Facility Regulations
 - Chapter 2380: Regulation Number 20
- Licensing Inspection Instrument for Community Homes for Individuals with Mental Retardation Regulations
 - Chapter 6400: Regulation Number 21

- HCFA Interpretative Guidelines for ICF/MR Services (State Operations Manual Transmittal Number 278; Appendix J)
 - J-49-50, S483.420 (d)(i)(iii), Tag Number W152

Older Adults Protective Services Act (OAPSA); Act 13

Section 503. Grounds for denying employment.

(a) General rule.--In no case shall a facility hire an applicant or retain an employee required to submit information pursuant to section 502(a) if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted [under one or more provisions of 18 Pa.C.S. (relating to crimes and offenses):] of any of the following offenses:

[Section 2502(a) or (b) (relating to murder).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 4302 (relating to incest).

Section 6312 (relating to sexual abuse of children).

(b) Other offenses.--In no case may a facility hire an applicant or retain an employee required to submit information pursuant to section 502(a) if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted within ten years immediately preceding the date of the report of one or more of the following offenses:

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

(2) An offense under one or more of the following provisions of 18 Pa.C.S.:

Chapter 25 (relating to criminal homicide) except for section 2502(a) and (b).

Section 2702 (relating to aggravated assault).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

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

Section 4101 (relating to forgery).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

Section 4953 (relating to retaliation against witness

or victim).

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

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

Section 6301 (relating to corruption of minors).]

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

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

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

SECTION 3124.1 (RELATING TO SEXUAL ASSAULT).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

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

Section 4101 (relating to forgery).

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

SECTION 4302 (RELATING TO INCEST).

Section 4303 (relating to concealing death of child).

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Section 4304 (relating to endangering welfare of
Section 4305 (relating to dealing in infant
children).

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

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

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

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

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

(3) A Federal or out-of-State offense similar in nature

to those crimes listed in paragraphs (1) and (2).

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

SECTION 508. APPLICABILITY.

THIS CHAPTER SHALL APPLY AS FOLLOWS:

(1) AN INDIVIDUAL WHO, ON THE EFFECTIVE DATE OF THIS CHAPTER, HAS CONTINUOUSLY FOR A PERIOD OF [TWO YEARS] ONE YEAR BEEN AN EMPLOYEE OF THE SAME FACILITY SHALL BE EXEMPT FROM SECTION 502 AS A CONDITION OF CONTINUED EMPLOYMENT.

(2) IF AN EMPLOYEE IS NOT EXEMPT UNDER PARAGRAPH (1), THE EMPLOYEE AND THE FACILITY SHALL COMPLY WITH SECTION 502 WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS CHAPTER.

(3) IF AN EMPLOYEE WHO IS EXEMPT UNDER PARAGRAPH (1) SEEKS EMPLOYMENT WITH A DIFFERENT FACILITY, THE EMPLOYEE AND

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THE FACILITY SHALL COMPLY WITH SECTION 502.

(4) AN EMPLOYEE WHO HAS OBTAINED THE INFORMATION REQUIRED UNDER SECTION 502 MAY TRANSFER TO ANOTHER FACILITY ESTABLISHED AND SUPERVISED BY THE SAME OWNER AND IS NOT REQUIRED TO OBTAIN ADDITIONAL REPORTS BEFORE MAKING THE TRANSFER.

Section 3. The act is amended by adding a chapter to read:

CHAPTER 7

REPORTING SUSPECTED ABUSE BY EMPLOYEES

Section 701. Reporting by employees.

(a) Mandatory reporting to agency.--

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

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

(3) The employee may request the administrator to make, or to assist the employee to make, the oral and written reports required by this subsection.

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

(1) An employee or an administrator who has reasonable cause to suspect that a recipient is the victim of sexual abuse, SERIOUS PHYSICAL INJURY or serious bodily injury or that a death is suspicious shall, in addition to contacting

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the agency, immediately contact law enforcement officials to make an oral report. An employee shall notify the administrator immediately following the report to law enforcement officials.

(2) Within 48 hours of making the oral report, the employee and an administrator shall make a written report to

appropriate law enforcement officials.

(3) The law enforcement officials shall notify the administrator that a report has been made with the law enforcement officials.

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

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

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

(2) Name and address of the recipient's guardian or next of kin.

(3) Name and address of the facility.

(4) Nature of the alleged offense.

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

Section 702. Reports to department and coroner.

(a) Department.--

(1) Within 48 hours of receipt of a written report under section 701(a) involving sexual abuse, SERIOUS PHYSICAL INJURY, serious bodily injury or suspicious death, the agency

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shall transmit a written report to the department. Supplemental reports shall be transmitted as they are obtained by the agency.

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

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

(ii) Where the suspected abuse occurred.

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

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

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

(vi) The source of the report.

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

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

(ix) Any other information which the department may require by regulation.

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

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

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

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

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

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

Section 704. Restrictions on employees.

(a) Plan of supervision.--Upon notification that an employee is alleged to have committed abuse, the facility shall immediately implement a plan of supervision or, where appropriate, suspension of the employee, subject to approval by the agency and by the Commonwealth agency with regulatory authority over the facility. A plan of supervision for a home health care agency must include periodic random direct

inspections of care-dependent individuals by a facility employee who has been continuously employed by that facility for a period of at least one year.

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

Section 705. Confidentiality of and access to confidential reports.

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

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

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

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

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

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

(5) The director, or an individual specifically

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designated in writing by the director, of any hospital or other medical institution where a victim is being treated if the director or designee suspects that the recipient is in need of protection under this chapter.

(6) A guardian of the recipient.

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

(8) The Attorney General.

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

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

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

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

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

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

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

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treat all reporting sources as confidential information.

Section 706. Penalties.

(a) Administrative.--

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

(2) A facility owner that intentionally or willfully

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

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

(b) Criminal.--

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

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Older Adults Protective Services Act (OAPSA); Act 169

21 SECTION [3] 103. DEFINITIONS.

SECTION [14] 312. FUNDS FOR PAYMENT OF ADMINISTRATION OF [ACT] CHAPTER.

FUNDS NECESSARY TO ADMINISTER THIS [ACT] CHAPTER SHALL BE PROVIDED BY ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY.

SECTION 5. THE ACT IS AMENDED BY ADDING A CHAPTER TO READ:

CHAPTER 5

CRIMINAL HISTORY FOR EMPLOYEES

SECTION 501. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"APPLICANT." AN INDIVIDUAL WHO SUBMITS AN APPLICATION, WHICH IS BEING CONSIDERED FOR EMPLOYMENT, TO A FACILITY.

"STATE POLICE." THE PENNSYLVANIA STATE POLICE.

SECTION 502. INFORMATION RELATING TO PROSPECTIVE FACILITY PERSONNEL.

(A) GENERAL RULE.--A FACILITY SHALL REQUIRE ALL APPLICANTS TO SUBMIT WITH THEIR APPLICATIONS THE FOLLOWING INFORMATION OBTAINED WITHIN THE PRECEDING ONE-YEAR PERIOD:

(1) PURSUANT TO 18 PA.C.S. CH. 91 (RELATING TO CRIMINAL HISTORY RECORD INFORMATION), A REPORT OF CRIMINAL HISTORY RECORD INFORMATION FROM THE STATE POLICE OR A STATEMENT FROM THE STATE POLICE THAT THEIR CENTRAL REPOSITORY CONTAINS NO SUCH INFORMATION RELATING TO THAT PERSON. THE CRIMINAL HISTORY RECORD INFORMATION SHALL BE LIMITED TO THAT WHICH IS DISSEMINATED PURSUANT TO 18 PA.C.S. § 9121(B)(2) (RELATING TO

GENERAL REGULATIONS).

(2) WHERE THE APPLICANT IS NOT AND, FOR THE TWO YEARS IMMEDIATELY PRECEDING THE DATE OF APPLICATION, HAS NOT BEEN A RESIDENT OF THIS COMMONWEALTH, ADMINISTRATION SHALL REQUIRE

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THE APPLICANT TO SUBMIT WITH THE APPLICATION FOR EMPLOYMENT A REPORT OF FEDERAL CRIMINAL HISTORY RECORD INFORMATION PURSUANT TO THE FEDERAL BUREAU OF INVESTIGATION'S APPROPRIATION UNDER THE DEPARTMENTS OF STATE, JUSTICE, AND COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION ACT, 1973 (PUBLIC LAW 92-544, 86 STAT. 1109). THE DEPARTMENT SHALL BE THE INTERMEDIARY FOR THE PURPOSES OF THIS PARAGRAPH. FOR THE PURPOSES OF THIS PARAGRAPH, THE APPLICANT SHALL SUBMIT A FULL SET OF FINGERPRINTS TO THE STATE POLICE, WHICH SHALL FORWARD THEM TO THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK. THE INFORMATION OBTAINED FROM THE CRIMINAL RECORD CHECK SHALL BE USED BY THE DEPARTMENT TO DETERMINE THE APPLICANT'S ELIGIBILITY. THE DETERMINATION SHALL BE SUBMITTED TO THE ADMINISTRATOR BY THE APPLICANT PRIOR TO COMMENCING EMPLOYMENT. THE ADMINISTRATOR SHALL INSURE CONFIDENTIALITY OF THE INFORMATION.

(B) FEES.--THE STATE POLICE MAY CHARGE THE APPLICANT A FEE OF NOT MORE THAN \$10 TO CONDUCT THE CRIMINAL RECORD CHECK REQUIRED UNDER SUBSECTION (A) (1). THE STATE POLICE MAY CHARGE A FEE OF NOT MORE THAN THE ESTABLISHED CHARGE BY THE FEDERAL BUREAU OF INVESTIGATION FOR THE CRIMINAL HISTORY RECORD CHECK REQUIRED UNDER SUBSECTION (A) (2). THE STATE POLICE SHALL DEVELOP

A BILLING SYSTEM TO ALLOW FACILITIES AND ADMINISTRATORS TO ASSUME RESPONSIBILITY FOR THE FEE UNDER THIS SUBSECTION. THE STATE POLICE SHALL ALLOW FACILITIES OR ADMINISTRATORS TO ESTABLISH AN ACCOUNT FOR QUARTERLY PAYMENT.

SECTION 503. GROUNDS FOR DENYING EMPLOYMENT.

(A) GENERAL RULE.--IN NO CASE SHALL AN ADMINISTRATOR HIRE AN APPLICANT OR RETAIN AN EMPLOYEE, IF THE APPLICANT'S OR EMPLOYEE'S CRIMINAL HISTORY RECORD INFORMATION INDICATES THE
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APPLICANT OR EMPLOYEE HAS BEEN CONVICTED UNDER ONE OR MORE PROVISIONS OF 18 PA.C.S. (RELATING TO CRIMES AND OFFENSES):

SECTION 2502(A) OR (B) (RELATING TO MURDER).

SECTION 3121. (RELATING TO RAPE).

SECTION 3122.1. (RELATING TO STATUTORY SEXUAL ASSAULT).

SECTION 3123. (RELATING TO INVOLUNTARY DEVIATE SEXUAL INTERCOURSE).

SECTION 3124.1. (RELATING TO SEXUAL ASSAULT).

SECTION 3125. (RELATING TO AGGRAVATED INDECENT ASSAULT).

SECTION 3126. (RELATING TO INDECENT ASSAULT).

SECTION 4302. (RELATING TO INCEST).

SECTION 6312. (RELATING TO SEXUAL ABUSE OF CHILDREN).

(B) OTHER OFFENSES.--IN NO CASE MAY AN ADMINISTRATOR HIRE AN APPLICANT IF THE APPLICANT'S CRIMINAL HISTORY RECORD INFORMATION IMMEDIATELY PRECEDING THE DATE OF THE REPORT, OF ONE OR MORE OF THE FOLLOWING OFFENSES:

(1) AN OFFENSE DESIGNATED AS A FELONY UNDER THE ACT OF APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT.

(2) AN OFFENSE UNDER ONE OR MORE OF THE FOLLOWING PROVISIONS OF 18 PA.C.S.:

CHAPTER 25 (RELATING TO CRIMINAL HOMICIDE) EXCEPT FOR SECTION 2502(A) AND (B).

SECTION 2702 (RELATING TO AGGRAVATED ASSAULT).

SECTION 2901 (RELATING TO KIDNAPPING).

SECTION 2902 (RELATING TO UNLAWFUL RESTRAINT).

SECTION 3301 (RELATING TO ARSON AND RELATED

OFFENSES).

SECTION 3502 (RELATING TO BURGLARY).

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SECTION 3701 (RELATING TO ROBBERY).

A FELONY OFFENSE UNDER CHAPTER 39 (RELATING TO THEFT AND RELATED OFFENSES), OR TWO OR MORE MISDEMEANORS UNDER CHAPTER 39.

SECTION 4101 (RELATING TO FORGERY).

SECTION 4304 (RELATING TO ENDANGERING WELFARE OF CHILDREN).

SECTION 4305 (RELATING TO DEALING IN INFANT CHILDREN).

SECTION 4953 (RELATING TO RETALIATION AGAINST WITNESS OR VICTIM).

A FELONY OFFENSE UNDER SECTION 5902(B) (RELATING TO

PROSTITUTION AND RELATED OFFENSES).

SECTION 5903(C) OR (D) (RELATING TO OBSCENE AND OTHER SEXUAL MATERIALS AND PERFORMANCES).

SECTION 6301 (RELATING TO CORRUPTION OF MINORS).

(3) A FEDERAL OR OUT-OF-STATE OFFENSE SIMILAR IN NATURE TO THOSE CRIMES LISTED IN PARAGRAPHS (1) AND (2).

(C) IMMUNITY.--AN ADMINISTRATOR OR A FACILITY SHALL NOT BE HELD CIVILLY LIABLE FOR ANY ACTION DIRECTLY RELATED TO GOOD FAITH COMPLIANCE WITH THIS SECTION.

SECTION 504. REGULATIONS.

THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND THE DEPARTMENT OF PUBLIC WELFARE, SHALL PROMULGATE THE REGULATIONS NECESSARY TO CARRY OUT THIS CHAPTER.

SECTION 505. VIOLATIONS.

(A) ADMINISTRATIVE.--

(1) AN ADMINISTRATOR WHO INTENTIONALLY FAILS TO COMPLY OR OBSTRUCTS COMPLIANCE WITH THE PROVISIONS OF THIS CHAPTER COMMITS A VIOLATION OF THIS CHAPTER AND SHALL BE SUBJECT TO

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AN ADMINISTRATIVE PENALTY UNDER PARAGRAPH (3).

(2) A FACILITY OWNER THAT FAILS TO COMPLY WITH, OR OBSTRUCTS COMPLIANCE WITH, THIS CHAPTER COMMITS A VIOLATION OF THIS CHAPTER AND SHALL BE SUBJECT TO AN ADMINISTRATIVE PENALTY UNDER PARAGRAPH (3).

(3) THE COMMONWEALTH AGENCY OR COMMONWEALTH AGENCIES WHICH LICENSE THE FACILITY HAVE JURISDICTION TO DETERMINE VIOLATIONS OF THIS CHAPTER AND MAY ISSUE AN ORDER ASSESSING A CIVIL PENALTY OF NOT MORE THAN \$2,500. AN ORDER UNDER THIS PARAGRAPH IS SUBJECT TO 2 PA.C.S. CH. 5 SUBCH. A (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES) AND CH. 7 SUBCH. A (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH AGENCY ACTION).

(B) CRIMINAL.--

(1) AN ADMINISTRATOR WHO INTENTIONALLY FAILS TO COMPLY OR OBSTRUCTS COMPLIANCE WITH THIS CHAPTER COMMITS A SUMMARY OFFENSE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY A FINE OF \$300 OR TO IMPRISONMENT FOR NOT MORE THAN 90 DAYS, OR BOTH.

(2) A FACILITY OWNER THAT FAILS TO COMPLY WITH, OR OBSTRUCTS COMPLIANCE WITH, THIS CHAPTER COMMITS A SUMMARY OFFENSE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY A FINE OF \$300 OR TO IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR BOTH.

SECTION 506. PROVISIONAL EMPLOYEES FOR LIMITED PERIODS.

NOTWITHSTANDING SECTION 502, ADMINISTRATORS MAY EMPLOY APPLICANTS ON A PROVISIONAL BASIS FOR A SINGLE PERIOD NOT TO EXCEED 30 DAYS OR, FOR APPLICANTS UNDER SECTION 502(2), A PERIOD OF 90 DAYS, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(1) THE APPLICANT HAS APPLIED FOR THE INFORMATION

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REQUIRED UNDER SECTION 502 AND THE APPLICANT PROVIDES A COPY

OF THE APPROPRIATE COMPLETED REQUEST FORMS TO THE ADMINISTRATOR.

(2) THE ADMINISTRATOR HAS NO KNOWLEDGE OF INFORMATION PERTAINING TO THE APPLICANT WHICH WOULD DISQUALIFY HIM FROM 4911 (RELATING TO TAMPERING WITH PUBLIC RECORDS OR INFORMATION).

(3) THE APPLICANT SWEARS OR AFFIRMS IN WRITING THAT HE IS NOT DISQUALIFIED FROM EMPLOYMENT UNDER SECTION 503.

(4) IF THE INFORMATION OBTAINED UNDER SECTION 502 REVEALS THAT THE APPLICANT IS DISQUALIFIED FROM EMPLOYMENT UNDER SECTION 503, THE APPLICANT SHALL BE IMMEDIATELY DISMISSED BY THE ADMINISTRATOR.

SECTION 507. STATE POLICE.

NO LATER THAN ONE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS CHAPTER, THE STATE POLICE AND THE DEPARTMENT SHALL REPORT TO THE AGING AND YOUTH COMMITTEE OF THE SENATE AND THE AGING AND YOUTH COMMITTEE OF THE HOUSE OF REPRESENTATIVES WITH THEIR FINDINGS AND RECOMMENDATIONS REGARDING THE IMPLEMENTATION OF THIS CHAPTER.

SECTION 508. APPLICABILITY.

THIS CHAPTER SHALL APPLY AS FOLLOWS:

(1) AN INDIVIDUAL WHO, ON THE EFFECTIVE DATE OF THIS CHAPTER, HAS CONTINUOUSLY FOR A PERIOD OF TWO YEARS BEEN AN EMPLOYEE OF THE SAME FACILITY SHALL BE EXEMPT FROM SECTION 502 AS A CONDITION OF CONTINUED EMPLOYMENT.

(2) IF AN EMPLOYEE WHO IS EXEMPT UNDER PARAGRAPH (1) SEEKS EMPLOYMENT WITH A DIFFERENT FACILITY, THE EMPLOYEE AND THE FACILITY SHALL COMPLY WITH SECTION 502.

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PROPOSED RULEMAKING

Title 6--AGING

PART I. DEPARTMENT OF AGING

[6 PA. CODE CH. 15]

Protective Services for Older Adults

[29 Pa.B. 6010]

C. Reporting Suspected Abuse, Neglect, Abandonment or Exploitation

Section 15.22. The **proposed rulemaking** extends legal protection to persons who assist the Department; corrects language regarding damages; and adds a subsection on intimidation to conform to OAPSA.

G. Criminal History Record Information Reports

Eight sections are added to carry out the provisions of Chapter 5 of the OAPSA. In addition to restating, as necessary, the quasi-regulatory language in Chapter 5 of the OAPSA, these sections accomplish the following:

1. *Section 15.131.* Language operationalizes the Department's responsibility to serve as intermediary between applicants and specified employees and the FBI to obtain Federal criminal history record information for nonresidents; allows facilities to require proof of residency and includes list of acceptable documents.

2. *Section 15.132.* Subsection (a)(5) and (6) provide clarification regarding employee provision of criminal history record information at facilities which supply, arrange for, or refer employees to provide care in other facilities. Subsection (b) absolves facilities of liability for employee failure to comply with section 5 of the OAPSA.

3. *Section 15.133.* Subsection (c) requires facilities to take specified actions whenever required information is not contained in criminal history background checks. Subsections (e)--(i), respectively, require facilities to explain to applicants their responsibility to obtain criminal history reports; require facilities to assure confidentiality; exempt certain facilities from maintaining State and Federal criminal history records; and require exempted facilities to assure that employees have complied with criminal history record information requirements and that their records are available when necessary.

4. *Section 15.134.* Details procedures for obtaining State and Federal criminal history record information; allows facilities to assume responsibility for fees; requires facilities to assist applicants and employees completing necessary forms, if requested; and places responsibility on applicants and employees to obtain required information which is not contained in criminal history background checks, to review criminal history record reports for accuracy and to request a review of the Department's determination.

5. *Section 15.135.* Sets forth applicants' rights to review, challenge and appeal the accuracy of criminal history record information reports and, upon successful challenge, to be considered for any available positions for which they qualify.

6. *Section 15.136.* Sets forth the rights of facility personnel to review, challenge and appeal the accuracy of criminal history record information reports and, upon successful challenge, to be reinstated to their former, or to an equivalent, position.

7. *Section 15.137.* Subsection (a)(5) requires that provisionally-employed applicants receive an orientation, describes the orientation and requires that applicants receive regular supervisory observation. Subsection (d) extends the period of provisional employment when information regarding criminal history record reports has not been

received within specified timeframes because the State Police or FBI have not provided the information.

8. *Section 15.138.* Subsection (a)(4) requires representatives of Commonwealth agencies having knowledge of violations of the OAPSA to report them to the appropriate licensing agency.

H. *Reporting Suspected Abuse*

Nine sections are added to carry out the provisions of Chapter 7 of the OAPSA. In addition to restating, as necessary, the quasi-regulatory language in Chapter 7 of the OAPSA, these sections accomplish the following:

1. *Section 15.141.* Subsection (c) adds a requirement that AAAs notify State licensing agencies when written reports of abuse are received.

2. *Section 15.142.* Subsection (a)(2) details the procedure employees or administrators must follow in reporting to the Department.

3. *Section 15.143.* Subsection (a) allows facilities to duplicate report forms for submission to AAAs and law enforcement officials.

4. *Section 15.144.* Adopts the language of section 702 of the OAPSA; adds a requirement that AAAs provide the Department with a copy of all reports involving a victim/recipient under age 60.

5. *Section 15.145.* Subsection (a)(1)--(7) establish responsibility for conducting investigations in response to reports of abuse of persons over 60 and of persons under 60. They also direct that reports and notification be made to agencies consistent with victim/recipient place of residence or with the presence or absence of mental health or mental retardation issues.

6. *Section 15.146.* Subsections (a)--(e) require facilities, within 90 days of publication of these regulations, to develop and submit a facility supervision/suspension plan; establish minimum plan requirements; require that plans be approved and followed; require facilities, when notified that an employee has committed abuse, to develop, submit and implement an individual plan of supervision; require that individual plans be approved and followed.

7. *Section 15.147.* Adopts the language of section 705 of the OAPSA.

8. *Section 15.148.* Subsection (a)(4) requires representatives of Commonwealth agencies who have knowledge of violations to report them to the appropriate licensing agency. Subsection (c) requires AAAs

which learn of a person's refusal to complete all mandated reporting requirements to notify the police.

9. *Section 15.149.* Adopts the language of section 707 of the OAPSA.

Persons and Entities Affected

These **proposed** amendments will affect applicants and, with specified exceptions, employees of designated facilities who must obtain State or Federal, or both, criminal history record checks as a condition of initial or continued employment; applicants, employees and facilities who bear the cost of these record checks; facilities which are prohibited from hiring applicants, or from retaining employees, whose record reveals conviction of one or more specified offenses; the State Police, the FBI and the Department, which bear the cost of additional personnel to process criminal history record reports and related paperwork; and facility administrators and owners who are subject to civil or criminal penalties, or both, for committing specified prohibited acts or for failing to act.

These **proposed** amendments will also affect staff of the Departments of Aging, Health and Public Welfare, coroners' offices, law enforcement agencies, and AAAs, who will be receiving and investigating mandatory reports of abuse made by employees and administrators of facilities under their jurisdiction or in their geographic areas; residents of specified care-providing facilities who are victims of abuse; and administrators and staff of specified care-providing facilities, who are required to report suspected abuse and are subject to civil or criminal penalties, or both, for committing specified prohibited acts or for failing to act.

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 criminal history record information, obtained within the 1-year period immediately preceding the date of application, as appropriate:

(1) *State Police report.* Facilities shall require all applicants to submit a report of 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 the applicant.

(2) *FBI report.* Facilities shall require all applicants, who are not residents of this Commonwealth or have not resided in this Commonwealth for an uninterrupted period of 2 years preceding the date of application to the facility, to submit an FBI 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 (Pub. L. No. 92-544, 86 Stat. 1109).

(3) *Fingerprints.* Applicants required to submit an FBI criminal history record information report shall submit a full set of fingerprints to the Department which will be forwarded to the FBI, 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, the following documentation, 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) Employment records, including records of unemployment compensation.

§ 15.132. Facility personnel requirements.

(a) The following facility personnel are required to submit criminal history record information, as described in § 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 less than 1 year of continuous employment shall comply with resident and, as applicable, nonresident criminal history record information 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 requirements within 90 days from the date of employment.

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

(4) Exceptions are as follows:

(i) Employees of the facility on July 1, 1998, who were employed by the facility for a continuous period of at least 1 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 § 15.131.

(5) Employees at facilities which 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 criminal history record information to the facility which supplies, arranges for, or refers them. The grandfathering and transfer exemptions in paragraph (4) also, as 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 criminal history record information to the staffing agency).

(6) Employees referenced in paragraph (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.

§ 15.133. Facility responsibilities

(a) A facility may not hire an applicant nor retain an employee required to submit a criminal history record information report when the report reveals a felony conviction under The Controlled Substance, Drug, Device or Cosmetic Act (35 P. S. §§ 780-101--780-149).

(b) A facility may not hire an applicant nor retain any employee required to submit a criminal history record information report when the report reveals a conviction under one or more of the following provisions of 18 Pa.C.S. (relating to the Crimes Code):

- (1) Chapter 25 (relating to criminal homicide).
- (2) Section 2702 (relating to aggravated assault).
- (3) Section 2901 (relating to kidnapping).
- (4) Section 2902 (relating to unlawful restraint).
- (5) Section 3121 (relating to rape).
- (6) Section 3122.1 (relating to statutory sexual assault).
- (7) Section 3123 (relating to involuntary deviate sexual intercourse).
- (8) Section 3124.1 (relating to sexual assault).
- (9) Section 3125 (relating to aggravated indecent assault).
- (10) Section 3126 (relating to indecent assault).
- (11) Section 3127 (relating to indecent exposure).

- (12) Section 3301 (relating to arson and related offenses).
- (13) Section 3502 (relating to burglary).
- (14) Section 3701 (relating to robbery).
- (15) A felony offense under Chapter 39 (relating to theft and related offenses), or two or more misdemeanors under Chapter 39.
- (16) Section 4104 (relating to forgery).
- (17) Section 4114 (relating to securing execution of documents by deception).
- (18) Section 4302 (relating to incest).
- (19) Section 4303 (relating to concealing death of child).
- (20) Section 4304 (relating to endangering welfare of children).
- (21) Section 4305 (relating to dealing in infant children).
- (22) Section 4952 (relating to intimidation of witnesses or victims).
- (23) Section 4953 (relating to retaliation against witness or victim).
- (24) A felony offense under § 5902(b) (relating to prostitution and related offenses).
- (25) Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).
- (26) Section 6301 (relating to corruption of minors).
- (27) Section 6312 (relating to sexual abuse of children).

(c) 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 employe, the administrator or designee shall require the applicant or employe 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) A facility may not hire an applicant nor retain an employe required to submit a criminal history record information report when the criminal background check reports 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) A facility shall ensure that applicant responsibility to obtain criminal history record checks is explained to each applicant orally in a language understood by the applicant.

(f) 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.

(g) Facilities, except those referenced in § 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.

(h) Facilities, except those referenced in § 15.132 (a)(6) 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 employes supplied, referred or arranged by other facilities shall, at a minimum, obtain from those other facilities written assurance that:

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

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

§ 15.134. Procedure.

(a) Applicants and facility personnel 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. 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 return the form to a designated individual for submission of the request by the facility.

(b) Applicants and facility personnel 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 shall return the FBI fingerprint card and forms, and a check in an amount not to exceed the established fee set by the FBI. Upon receipt, the Department will submit the request to the State Police within 5 working days for transfer to the FBI. Checks shall be written to the FBI.

(2) Upon receipt of the completed criminal history record information report from the FBI, the Department will determine if the applicant is eligible for employment and will contact the applicant with a written statement within 10 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 employe, the Department will require the applicant or employe to obtain and submit to the Department court documents showing disposition, within 60 days of the date the Department notifies the applicant or employe. Failure to provide court documents as required will result in an administrative prohibition against hiring or retention.

(c) While submission of criminal history record information to facility administrators or their designees is the responsibility of the applicant, facility 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 employe 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 1 year prior to their application for employment. Administrators, operators and non-exempt employes shall, within the time limits required for submitting criminal checks, provide Pennsylvania and FBI checks obtained no longer than 1 year prior to their date of submission. If the date

of the record report exceeds the 1 year prior to application for employment or the required date of submission for administrators, operators and nonexempt employes, a new clearance shall be obtained.

(f) Applicants and facility personnel are responsible for reviewing all 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.

§ 15.137. Provisional hiring.

(a) Administrators may employ applicants on a provisional basis for a single period, not to exceed 30 days for applicants applying for the Pennsylvania criminal history record information report, and not to exceed 90 days for applicants applying for the FBI criminal history record information report, if all of the following conditions are met:

(1) Applicants have applied for the information required under § 15.131 (relating to prospective facility personnel) and provide the administrator with a copy of the completed request forms.

(2) The administrator has no knowledge about applicants which would disqualify them from employment under the acts, subject to 18 Pa.C.S. § 4911 (relating to tampering with public record information).

(3) Applicants swear or affirm in writing that they are not disqualified from employment under the act.

(4) If the information obtained from the criminal history record checks reveals that the applicant is disqualified from employment under § 15.133 (relating to facility responsibilities), the applicant shall be dismissed immediately.

(5) The provisionally employed applicant receives:

(i) 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) Regular supervisory observation of the applicant carrying out the applicant's duties.

(6) For a home health care agency, the supervision of a provisionally employed applicant shall include random, direct observation/evaluation of

the applicant and care recipient by an employe who has been employed by the home health agency for at least 1 year.

(7) For a home health agency which has been in business for less than 1 year, supervision of a provisionally employed applicant shall include random, direct observation/evaluation of the applicant and care recipient by an employe with prior employment experience of at least 1 year with one or more other home health care agencies.

(b) 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 to ensure that the required copy of the State Police or FBI 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) Except as provided in subsection (d), if inspection of the file on day 30 or 90, as appropriate, reveals that the information noted in subsections (a) and (b) has not been provided to the employer, the applicant's employment shall be immediately suspended or terminated.

(d) If information regarding criminal history record reports has not been provided as required due to the inability of the State Police or the FBI to provide it within the mandated time frames, the period of provisional employment is extended until the facility receives the required reports from the State Police or FBI.

§ 15.138. Violations.

(a) *Administrative.*

(1) An administrator or a designee who intentionally or willfully fails to comply or obstructs compliance with §§ 15.131--15.136 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--15.136 commits a violation of this chapter and shall be subject to an administrative penalty under paragraph (3).

(3) The Commonwealth agency which licenses the facility has jurisdiction to determine violations of this chapter and may issue an order assessing a civil penalty of not more than \$2,500. An order under this paragraph is subject to 2 Pa.C.S. Chapter 5, Subchapter A and Chapter 7,

Subchapter A (relating to practice and procedure of Commonwealth agencies; and judicial review of Commonwealth agency action).

(4) To assist Commonwealth agencies to implement 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.

(b) *Criminal.*

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

REPORTING SUSPECTED ABUSE

§ 15.141. General requirements.

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

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

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

(b) Employes making oral or written reports shall immediately notify the facility administrator 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) Employes required to report abuse may request facility administrators or their designees to make, or assist them to make, oral or written reports.

§ 15.142. Additional reporting requirements.

(a) Employees 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 § 15.141(a) (relating to general requirements):

(1) Immediately make an oral report to law enforcement officials. An employe shall immediately notify the 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) Within 48 hours of making the oral report, make a written report to law enforcement officials and the agency.

(b) Law enforcement officials will promptly notify facility administrators or their designees that reports have been made with them.

§ 15.143. Contents of reports.

(a) Written reports under §§ 15.141 and 15.142 (relating to general requirements; and additional reporting requirements) shall 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.

(b) The report shall include, at a minimum, the following information:

(1) The name, age and address of the recipient.

(2) The name and address of the recipient's guardian or next-of-kin.

(3) The facility name and address.

(4) A description of the incident.

(5) The 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 (relating to additional reporting requirements) 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 60 years of age, the agency shall transmit a copy of the report to the Department.

(3) 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 the 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.

§ 15.145. Investigation.

(a) *Response.* Upon receipt of a report under §§ 15.141 and 15.142 (relating to general requirements; and additional reporting requirements), protective services officials shall respond as follows:

(1) If the victim/recipient is aged 60 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--15.47 (relating to investigating reports of need for protective services).

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

(3) If the victim/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 60 years of age 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.

(5) If the under 60 years of age 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.

(6) If the under 60 years of age victim/recipient resides in a domiciliary care home or receives services from an adult day care center, the agency shall notify 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.

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

§ 15.146. Restrictions on employees.

(a) By _____ (*Editor's Note: The blank refers to a date 90 days after the effective date of adoption of this proposal*), 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 employe 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 employe.
 - (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 employes.
 - (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) Upon notification that an employe is alleged to have committed abuse, the facility shall immediately implement the plan of supervision or, when appropriate, suspension of the employe. The facility shall immediately submit to the agency and the Commonwealth agency with regulatory authority over the facility a copy of the employe'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) The plan of supervision established by a home health care agency shall, in addition to the requirements in subsections (a)--(e), include periodic, random direct observation/evaluation of the employe and care recipient by an individual continuously employed by the home health care agency for at least 1 year. For a home health agency in business for less than 1 year, supervision shall include random, direct observation/evaluation by an employe with prior employment experience of at least 1 year with one or more other home health care agencies.
 - (g) Upon filing of criminal charges against an employe, the Commonwealth agency which licenses the facility shall order the facility to immediately prohibit that employe from having access to recipients at the facility. If the employe is a director, operator, administrator or supervisor, the employe shall be subject to restrictions deemed appropriate by the Commonwealth agency which licenses the facility to assure the safety of recipients at the facility.

Appendix

Title 55

Chapter 2380

§ 2380.16. Abuse.

Abuse of an individual is prohibited. Abuse is an act or omission of an act that willfully deprives an individual of rights or human dignity or which may cause or causes actual physical injury or emotional harm to an individual, such as striking or kicking an individual; neglect; rape; sexual molestation, sexual exploitation or sexual harassment of an individual; sexual contact between a staff person and an individual; restraining an individual without following the requirements in this chapter; financial exploitation of an individual; humiliating an individual; or withholding regularly scheduled meals.

Source

The provisions of this § 2380.16 adopted December 29, 1978, effective December 30, 1978, 8 Pa.B. 3820; amended January 15, 1993, effective January 16, 1993, 23 Pa.B. 343. Immediately preceding text appears at serial page (131160).

§ 2380.17. Reporting of unusual incidents.

- (a) An unusual incident is:
- (1) Abuse or suspected abuse of an individual.
 - (2) Injury, trauma or illness requiring inpatient hospitalization, that occurs while the individual is at the facility or under the supervision of the facility.
 - (3) A suicide attempt by an individual.
 - (4) A violation or alleged violation of an individual's rights.
 - (5) An individual whose absence is unaccounted for, and is therefore presumed to be at risk.
 - (6) The misuse or alleged misuse of an individual's funds or property.

(7) An outbreak of a serious communicable disease, as defined in 28 Pa. Code § 27.2 (relating to reportable diseases) to the extent that confidentiality laws permit reporting.

(8) An incident requiring the services of a fire department or law enforcement agency.

(9) A condition, except for snow or ice conditions, that results in closure of the facility for more than 1 scheduled day of operation.

(b) Written policies and procedures on the prevention, reporting, investigation and management of unusual incidents shall be developed and kept at the facility.

(c) The facility shall orally notify, within 24 hours after abuse or suspected abuse of an individual or an incident requiring the services of a fire department or law enforcement agency occurs:

(1) The county mental health and mental retardation program of the county in which the facility is located if the individual involved in the unusual incident has mental illness or mental retardation.

(2) The funding agency.

(3) The appropriate regional office of mental retardation.

(d) The facility shall initiate an investigation of the unusual incident and complete and send copies of an unusual incident report on a form specified by the Department, within 72 hours after an unusual incident occurs, to:

(1) The county mental health and mental retardation program of the county in which the facility is located if the individual involved in the unusual incident has mental illness or mental retardation.

(2) The funding agency.

(3) The appropriate regional office of mental retardation.

(e) At the conclusion of the investigation the facility shall send a copy of the final unusual incident report to:

(1) The county mental health and mental retardation program of the county in which the facility is located if the individual involved in the unusual incident has mental illness or mental retardation.

(2) The funding agency.

- (3) The appropriate regional office of mental retardation.
- (f) A copy of unusual incident reports relating to an individual shall be kept in the individual's record.
- (g) A copy of unusual incident reports relating to the facility itself, such as those requiring the services of a fire department, shall be kept.
- (h) The individual's family, if appropriate, and the residential services provider, if applicable, shall be immediately notified in the event of an unusual incident relating to the individual.

Source

The provisions of this § 2380.17 adopted December 29, 1978, effective December 30, 1978, 8 Pa.B. 3820; amended January 15, 1993, effective January 16, 1993, 23 Pa.B. 343. Immediately preceding text appears at serial page (88775).

§ 2380.20. Criminal history record check.

- (a) An application for a Pennsylvania criminal history record check shall be submitted to the State Police for prospective employees of the facility who will have direct contact with individuals, and for part-time and temporary staff persons who will have direct contact with individuals, within 5 working days after the person's date of hire.
- (b) If a prospective employee who will have direct contact with individuals resides outside of this Commonwealth, an application for a Federal Bureau of Investigation (FBI) criminal history record check shall be submitted to the FBI in addition to the Pennsylvania criminal history record check, within 5 working days after the person's date of hire.
- (c) Pennsylvania and FBI criminal history record checks shall have been completed no more than 1 year prior to the person's date of hire.
- (d) A copy of the final reports received from the State Police, and the FBI, if applicable, shall be kept.

Source

The provisions of this § 2380.20 adopted December 29, 1978, effective December 30, 1978, 8 Pa.B. 3820; amended January 15, 1993, effective

January 16, 1993, 23 Pa.B. 343. Immediately preceding text appears at serial pages (88775) to (88776).

§ 2380.2. Applicability.

(a) This chapter applies to adult training facilities, except as provided in subsection (f).

(b) This chapter contains the minimum requirements that shall be met to obtain a certificate of compliance. Each adult training facility will be inspected by the Department each year and shall obtain a certificate of compliance to operate or continue to operate.

(c) This chapter applies to profit, nonprofit, publicly-funded and privately-funded facilities.

(d) This chapter applies to adult training facilities operated on the grounds of or in a community residential rehabilitation mental health facility or a community home for individuals with mental retardation if permitted in accordance with Chapter 6400 (relating to community homes for individuals with mental retardation).

(e) This chapter applies to adult training facilities operated on the grounds of or in a non-State operated intermediate care facility for the mentally retarded, unless it is medically necessary or in the individual's best interest to remain at home.

(f) This chapter does not apply to the following:

(1) Older adult daily living centers as defined in the Older Adult Daily Living Centers Licensing Act (62 P. S. § § 1511.1—1511.22), serving four or more adults who are 60 years of age or older or adults who are 59 years of age or younger but have a dementia-related disease, such as Alzheimer's disease, as a primary diagnosis, but serving no more than three adults with disabilities who are 59 years of age or younger and who do not have a dementia-related disease as a primary diagnosis.

(2) Vocational facilities as defined in Chapter 2390 (relating to vocational facilities).

(3) Partial hospitalization facilities as defined in Chapter 5210 (relating to partial hospitalization).

(4) Summer recreation programs, camping programs and socialization clubs.

(5) Adult day care facilities located in nursing homes that serve only individuals who live in the nursing home.

(6) Adult training facilities operated by the Department or the Department of Education.

(7) Community homes for individuals with mental retardation licensed in accordance with Chapter 6400 and intermediate care facilities for the mentally retarded licensed in accordance with Chapter 6600 (relating to intermediate care facilities for the mentally retarded) that provide day services in the same building in which the individuals live to individuals who remain at home because they are medically unable to attend a community day program or because it is in the individual's best interest to remain at the home.

(8) Activities occurring at a location other than the facility and the facility grounds, during the time an individual is away from the facility.

Source

The provisions of this § 2380.2 adopted December 29, 1978, effective December 30, 1978, 8 Pa.B. 3820; amended January 15, 1993, effective January 16, 1993, 23 Pa.B. 343. Immediately preceding text appears at serial pages (168737) and (131159).

§ 2380.3. Definitions.

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

Adult—A person 18 years of age or older.

Adult training facility or facility—A building or portion of a building in which services are provided to four or more individuals, who are 59 years of age or younger and who do not have a dementia-related disease as a primary diagnosis, for part of a 24-hour day, excluding care provided by relatives. Services include the provision of functional activities, assistance in meeting personal needs and assistance in performing basic daily activities.

Department—The Department of Public Welfare of the Commonwealth.

Firesafety expert—A local fire department, fire protection engineer, State certified fire protection instructor, college instructor in fire science, county or State fire school, volunteer fire person trained by a county or State fire school or an insurance company loss control representative.

IPP—Individual Program Plan.

Individual—An adult with disabilities who receives care in an adult training facility and who has developmental needs which require assistance to meet personal needs and to perform basic daily activities. Examples of adults with disabilities include adults who exhibit one or more of the following:

- (i) A physical disability such as blindness, visual impairment, deafness, hearing impairment, speech or language impairment or a physical handicap.
- (ii) A mental illness.
- (iii) A neurological disability such as cerebral palsy, autism or epilepsy.
- (iv) Mental retardation.
- (v) A traumatic brain injury.

Chapter 2390

Chapter 2390

§ 2390.18. Unusual incident report.

(a) An unusual incident report shall be completed by the facility on a form specified by the Department for a serious event, including death of a client, injury or illness of a client requiring inpatient hospitalization or a fire requiring the services of a fire department. The facility shall send copies of the report to the Regional Office of Mental Retardation and the funding agency within 24 hours after the event occurs. A copy of unusual incident reports shall be kept on file by the facility.

(b) If an unusual incident occurs during a weekend, the Regional Office of Mental Retardation and the funding agency shall be notified within 24 hours after the event occurs and the unusual incident report shall be sent on the first business day following the event.

Source

The provisions of this § 2390.18 adopted May 9, 1986, effective August 8, 1986, 16 Pa.B. 1693.

Cross References

This section cited in 55 Pa. Code Chapter 2390 Appendix A (relating to licensing inspection instrument for vocational facilities—statement of policy); 55 Pa. Code § 6000.402 (relating to optional applicability); and 55 Pa. Code Chapter 6000 Appendix A (relating to licensing weighting system for community residential MR facilities weights of regulations).

§ 2390.19. Abuse.

- (a) Abusive acts against clients are prohibited.
- (b) Staff or clients witnessing or having knowledge of an abusive act to a client shall report it to the chief executive officer or designee within 24 hours.
- (c) The chief executive officer or designee shall investigate reports of abuse and prepare and send a report to the Regional Office of Mental Retardation and the funding agency within 24 hours of the initial report. If the initial report occurs during a weekend, the Regional Office of Mental Retardation and the funding agency shall be notified within 24 hours after the initial report and the abuse investigation report shall be sent on the first business day following the initial report. The report shall either support or deny the allegation and make recommendations for appropriate action. The chief executive officer or designee shall implement changes immediately to prevent abuse in the future.
- (d) Incidents of criminal abuse shall be reported immediately to law enforcement authorities.

Source

The provisions of this § 2390.19 adopted May 9, 1986, effective August 8, 1986, 16 Pa.B. 1693.

Cross References

This section cited in 55 Pa. Code Chapter 2390 Appendix A (relating to licensing inspection instrument for vocational facilities—statement of policy); 55 Pa. Code § 6000.312 (relating to no license factors); 55 Pa. Code § 6000.313 (relating to provisional license factors); and 55 Pa. Code Chapter 6000 Appendix A (relating to licensing weighting system for community residential MR facilities weights of regulations).

§ 2390.3. Applicability.

(a) This chapter applies to vocational facilities, except as provided in subsection (b). The requirements apply to profit, nonprofit, publicly funded and privately funded facilities. This chapter contains the minimum requirements that shall be met in order to obtain a certificate of compliance. A vocational facility shall be individually inspected and obtain a certificate of compliance in order to operate. This chapter applies to vocational facilities providing service to one or more disabled clients.

(b) This chapter does not apply to the following:

(1) Vocational facilities or portions of vocational facilities operated by a public school district or intermediate unit.

(2) Vocational facilities operated by the Department.

(3) The client's own home in which homebound employment is provided.

(4) Facilities providing vocational evaluation exclusively.

(5) Private industry settings if disabled adults are integrated in work with other nondisabled employees at the work site.

(6) Approved private schools.

(7) Facilities serving exclusively drug and alcohol clients.

(8) Facilities licensed or approved by the Department's Office of Children, Youth and Families.

(c) If clients work at a location other than the facility and the facility grounds, this chapter does not apply during the time clients are away from the facility. While clients are present at the facility, the requirements of this chapter apply.

Source

The provisions of this § 2390.3 adopted May 9, 1980, effective May 10, 1980, 10 Pa.B. 1897; amended May 9, 1986, effective August 8, 1986, 16 Pa.B. 1693. Immediately preceding text appears at serial page (86923).

§ 2390.5. Definitions.

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

Abusive act—An act or omission of an act that willfully deprives a client of rights or which may cause or causes actual physical injury or emotional harm to a client.

Certificate of compliance—A document issued to a legal entity permitting it to operate a vocational facility at a given location, for a specific period of time, according to appropriate Commonwealth regulations.

Chief executive officer—The staff person responsible for the general management of the facility. Other terms such as “program director” or “administrator” may be used as long as the qualifications specified in § 2390.32 (relating to chief executive officer) are met.

Client—A disabled adult receiving services in a vocational facility.

Competitive employment—A job in a regular work setting with an employe-employer relationship, in which a disabled adult is hired to do a job that other nondisabled employees also do.

Criminal abuse—Crimes against the person such as assault and crimes against the property of the client such as theft or embezzlement.

Department—The Department of Public Welfare of the Commonwealth.

Disabled adult—A person who because of a disability requires special help or special services on a regular basis in order to function vocationally. The term includes persons who exhibit any of the following characteristics:

(i) A physical disability, such as visual impairment, hearing impairment, speech or language impairment or other physical handicap.

(ii) Social or emotional maladjustment.

(iii) A neurologically based condition such as cerebral palsy, autism or epilepsy.

(iv) Mental retardation.

Handicapped employment—A vocational program in which the

individual client does not require rehabilitation, habilitation or ongoing training in order to work at the facility.

Individual written program plan—A plan that is developed for a client on the basis of assessment data that specifies specific objectives and program services for the clients.

Interdisciplinary team—A group of persons representing one or more service areas relevant to identifying a client's needs, including at a minimum the county casemanager if the client is funded through the county mental health and mental retardation program, the client and the program specialist.

Sheltered employment—A program designed to enable the client to move out of the vocational facility into competitive employment or into a higher level vocational program focusing on the development of competitive worker traits and using work as the primary training method.

Training—Occupational training that follows a specific curriculum and is designed to teach skills for a specific occupation in the competitive labor market. The term also includes personal and work adjustment training that is designed to develop appropriate worker traits and teach an understanding of the expectations of a work environment to enable the client to progress into a higher level rehabilitation program or into competitive employment.

Vocational evaluation—The use of planned activities, systematic observation and testing to accomplish a formal assessment of a client, including an identification of program needs, potential for employment and identification of employment objectives.

Vocational facility (facility)—A premise in which rehabilitative, habilitative or handicapped employment or employment training is provided to one or more disabled clients for part of a 24-hour day.

Work activities center—A program focusing on working and behavioral/therapeutic techniques to enable clients to attain sufficient vocational, personal, social and independent living skills to progress to higher level vocational programs.

Work performance review—An assessment of the client's skill level.

Source

The provisions of this § 2390.5 adopted May 9, 1986, effective August 8, 1986, 16 Pa.B. 1693.

Chapter 6400

§ 6400.3. Applicability.

- (a) This chapter applies to community homes for people with mental retardation, except as provided in subsection (f).
- (b) This chapter contains the minimum requirements that shall be met to obtain a certificate of compliance. A certificate of compliance shall be obtained prior to operation of a community home for people with mental retardation.
- (c) This chapter applies to profit, nonprofit, publicly funded and privately funded homes.
- (d) Each home serving nine or more individuals shall be inspected by the Department each year and shall have an individual certificate of compliance specific for each building.
- (e) Each agency operating one or more homes serving eight or fewer individuals shall have at least a sample of its homes inspected by the Department each year. The certificate of compliance issued to an agency shall specify the location and maximum capacity of each home the agency is permitted to operate.
- (f) This chapter does not apply to the following:
 - (1) Private homes of persons providing care to a relative with mental retardation.
 - (2) Residential facilities operated by the Department.

(3) Intermediate care facilities for the mentally retarded licensed by the Department in accordance with Chapter 6600 (relating to intermediate care facilities for the mentally retarded).

(4) Foster family care homes licensed by the Office of Children, Youth and Families of the Department that serve only foster care children.

(5) Summer camps.

(6) Facilities serving exclusively personal care home, drug and alcohol, mental health or domiciliary care residents.

(7) Residential homes for three or fewer people with mental retardation who are 18 years of age or older and who need a yearly average of 30 hours or less direct staff contact per week per home.

(8) Child residential facilities which serve exclusively children, which are regulated under Chapter 3800 (relating to child residential and day treatment facilities).

(g) This chapter does not measure or assure compliance with other applicable Federal, State and local statutes, regulations, codes and ordinances. It is the responsibility of the home to comply with other applicable laws, regulations, codes and ordinances.

Authority

The provisions of this § 6400.3 amended under Articles IX and X of the Public Welfare Code (62 P. S. § § 901—922 and 1001—1080).

Source

The provisions of this § 6400.3 amended through January 22, 1982, effective March 1, 1982, 12 Pa.B. 384; amended August 9, 1991, effective November 8, 1991, 21 Pa.B. 3595; amended June 25, 1999, effective October 26, 1999, 29 Pa.B. 3295. Immediately preceding text appears at serial pages (251407) to (251408).

Cross References

This section cited in 55 Pa. Code § 6400.4 (relating to definitions).

§ 6400.16. Abuse.

Abuse of an individual is prohibited. Abuse is an act or omission of an act that willfully deprives an individual of rights or human dignity or which

may cause or causes actual physical injury or emotional harm to an individual, such as striking or kicking an individual; neglect; rape; sexual molestation, sexual exploitation or sexual harassment of an individual; sexual contact between a staff person and an individual; restraining an individual without following the requirements in this chapter; financial exploitation of an individual; humiliating an individual; or withholding regularly scheduled meals.

Source

The provisions of this § 6400.16 amended through January 22, 1982, effective March 1, 1982, 12 Pa.B. 384; amended August 9, 1991, effective November 8, 1991, 21 Pa.B. 3595. Immediately preceding text appears at serial page (133675).

Cross References

This section cited in 55 Pa. Code § 6000.403 (relating to nonapplicability).

§ 6400.18. Reporting of unusual incidents.

(a) An unusual incident is abuse or suspected abuse of an individual; injury, trauma or illness of an individual requiring inpatient hospitalization; suicide attempt by an individual; violation or alleged violation of an individual's rights; an individual who is missing for more than 24 hours or who could be in jeopardy if missing at all; alleged misuse or misuse of individual funds or property; outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to reportable diseases); an incident requiring the services of a fire department or law enforcement agency; and any condition that results in closure of the home for more than 1 day.

(b) Written policies and procedures on the prevention, reporting, investigation and management of unusual incidents shall be developed and kept at the home.

(c) The home shall orally notify the county mental retardation program of the county in which the home is located, the funding agency and the appropriate regional office of mental retardation, within 24 hours after abuse or suspected abuse of an individual or an incident requiring the services of a fire department or law enforcement agency occurs.

(d) The home shall initiate an investigation of the unusual incident and complete and send copies of an unusual incident report on a form specified by the Department to the county mental retardation program of the county.

in which the home is located, the funding agency and the appropriate regional office of mental retardation, within 72 hours after an unusual incident occurs.

(e) The home shall send a copy of the final unusual incident report to the county mental retardation program of the county in which the home is located, the funding agency and the appropriate regional office of mental retardation at the conclusion of the investigation.

(f) A copy of unusual incident reports relating to an individual shall be kept in the individual's record.

(g) A copy of unusual incident reports relating to the home itself, such as those requiring the services of a fire department, shall be kept.

(h) The individual's family or guardian shall be immediately notified in the event of an unusual incident relating to the individual, if appropriate.

Source

The provisions of this § 6400.18 amended through January 22, 1982, effective March 1, 1982, 12 Pa.B. 384; amended August 9, 1991, effective November 8, 1991, 21 Pa.B. 3595. Immediately preceding text appears at serial pages (133675) to (133676).

Cross References

This section cited in 55 Pa. Code § 6000.303 (relating to no license factors); and 55 Pa. Code § 6400.273 (relating to exceptions).

§ 6400.20. Record of incidents.

The home shall maintain a record of individual illnesses, seizures, acute emotional traumas and accidents requiring medical attention but not inpatient hospitalization, that occur at the home.

Source

The provisions of this § 6400.20 amended through January 22, 1982, effective March 1, 1982, 12 Pa.B. 384; amended August 9, 1991, effective November 8, 1991, 21 Pa.B. 3595. Immediately preceding text appears at serial page (133676).

§ 6400.21. Criminal history record check.

(a) An application for a Pennsylvania criminal history record check shall be submitted to the State Police for prospective employees of the home who will have direct contact with individuals, including part-time and temporary staff persons who will have direct contact with individuals, within 5 working days after the person's date of hire.

(b) If a prospective employee who will have direct contact with individuals resides outside this Commonwealth, an application for a Federal Bureau of Investigation (FBI) criminal history record check shall be submitted to the FBI in addition to the Pennsylvania criminal history record check, within 5 working days after the person's date of hire.

(c) The Pennsylvania and FBI criminal history record checks shall have been completed no more than 1 year prior to the person's date of hire.

(d) A copy of the final reports received from the State Police and the FBI, if applicable, shall be kept.

(e) If the home serves primarily individuals who are 17 years of age or younger, 23 Pa.C.S. § § 6301—6384 (relating to the Child Protective Services Law) applies.

Source

The provisions of this § 6400.21 amended through January 22, 1982, effective March 1, 1982, 12 Pa.B. 384; amended August 9, 1991, effective November 8, 1991, 21 Pa.B. 3595. Immediately preceding text appears at serial page (133676).

§ 6400.23. Grievance procedures.

The home shall have written grievance procedures for individuals, individual's families, advocates and staff persons, that assure investigation and resolution of complaints.

Source

The provisions of this § 6400.23 adopted August 9, 1991, effective November 8, 1991, 21 Pa.B. 3595.

§ 6400.3. Applicability.

(a) This chapter applies to community homes for people with mental retardation, except as provided in subsection (f).

(b) This chapter contains the minimum requirements that shall be met to obtain a certificate of compliance. A certificate of compliance shall be obtained prior to operation of a community home for people with mental retardation.

(c) This chapter applies to profit, nonprofit, publicly funded and privately funded homes.

(d) Each home serving nine or more individuals shall be inspected by the Department each year and shall have an individual certificate of compliance specific for each building.

(e) Each agency operating one or more homes serving eight or fewer individuals shall have at least a sample of its homes inspected by the Department each year. The certificate of compliance issued to an agency shall specify the location and maximum capacity of each home the agency is permitted to operate.

(f) This chapter does not apply to the following:

(1) Private homes of persons providing care to a relative with mental retardation.

(2) Residential facilities operated by the Department.

(3) Intermediate care facilities for the mentally retarded licensed by the Department in accordance with Chapter 6600 (relating to intermediate care facilities for the mentally retarded).

(4) Foster family care homes licensed by the Office of Children, Youth and Families of the Department that serve only foster care children.

(5) Summer camps.

(6) Facilities serving exclusively personal care home, drug and alcohol, mental health or domiciliary care residents.

(7) Residential homes for three or fewer people with mental retardation who are 18 years of age or older and who need a yearly average of 30 hours or less direct staff contact per week per home.

(8) Child residential facilities which serve exclusively children, which are regulated under Chapter 3800 (relating to child residential and day treatment facilities).

(g) This chapter does not measure or assure compliance with other applicable Federal, State and local statutes, regulations, codes and ordinances. It is the responsibility of the home to comply with other applicable laws, regulations, codes and ordinances.

Authority

The provisions of this § 6400.3 amended under Articles IX and X of the Public Welfare Code (62 P. S. § § 901—922 and 1001—1080).

Source

The provisions of this § 6400.3 amended through January 22, 1982, effective March 1, 1982, 12 Pa.B. 384; amended August 9, 1991, effective November 8, 1991, 21 Pa.B. 3595; amended June 25, 1999, effective October 26, 1999, 29 Pa.B. 3295. Immediately preceding text appears at serial pages (251407) to (251408).

Cross References

This section cited in 55 Pa. Code § 6400.4 (relating to definitions).

§ 6400.4. Definitions.

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

Agency—A person or legally constituted organization operating one or more community homes for people with mental retardation serving eight or fewer individuals.

Community home for people with mental retardation home—A building or separate dwelling unit in which residential care is provided to one or more individuals with mental retardation, except as provided in § 6400.3(f) (relating to applicability). Each apartment unit within an apartment building is considered a separate home. Each part of a duplex, if there is physical separation between the living areas, is considered a separate home.

Department—The Department of Public Welfare of the Commonwealth.

Fire safety expert—A local fire department, fire protection engineer, State certified fire protection instructor, college instructor in fire science, county or State fire school, volunteer fire person trained by a county or

State fire school or an insurance company loss control representative.

IPP—Individual program plan.

Individual—A person with mental retardation who resides, or receives residential respite care, in a home and who is not a relative of the owner of the home.

Mental retardation—Subaverage general intellectual functioning which originates during the developmental period and is associated with impairment of one or more of the following:

- (i) Maturation.
- (ii) Learning.
- (iii) Social adjustment.

Normalization—A principle designed to ensure for every person with mental retardation and the person's family the right to live a life as close as possible to that which is typical for the general population.

Relative—A parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half brother, half sister, aunt, uncle, niece or nephew.

Source

The provisions of this § 6400.4 amended through January 22, 1982, effective March 1, 1982, 12 Pa.B. 384; amended August 9, 1991, effective November 8, 1991, 21 Pa.B. 3595. Immediately preceding text appears at serial page (131348).

Appendix

Licensing Inspection Instrument Regulations

(Adult Training Facility – Chapter 2380; Vocational Facilities – Chapter 2390;
Community Homes For Individuals With Mental Retardation – Chapter 6400;
Family Living Homes – Chapter 6500)

Chapter 2380

(Abuse/Unusual Incidents)

****Regulation Number:** 17(a) **Inspection Source:** Site Records Interview

Regulation:

Abuse of an individual is prohibited. Abuse is any act or omission of an act that willfully deprives an individual of rights or human dignity or which may cause or causes actual physical injury or emotional harm to an individual, such as striking or kicking an individual; neglect; rape; sexual molestation, sexual exploitation or sexual harassment of an individual; sexual contact between a staff person and an individual; restraining an individual without following the requirements in this chapter; financial exploitation of an individual; humiliating an individual; or withholding regularly scheduled meals.

Explanation: This applies to abuse occurring at the facility.

Actions of one individual to another individual including rape, sexual molestation, sexual exploitation, and intentional actions causing physical injury that require medical attention by medical personnel at a medical facility are considered abuse.

Relating to improper use of restraints, this regulation should be cited if there is serious or widespread use of restraints without following the requirements of this chapter. Otherwise, the specific section(s) of 151-165 should be cited.

Record as non-compliance if there is any founded evidence of abuse since the previous annual licensing inspection for which appropriate corrective action was not taken. If appropriate corrective action was taken, noncompliance should not be cited. If a report of abuse is investigated and determined to be unfounded, record as compliance.

If a report of abuse is still under investigation at the time of inspection, record as non-compliance on the LIS and scoresheet. At the conclusion of the investigation, withdraw the non-compliance if the abuse is determined to be unfounded or if appropriate corrective action was taken.

****Regulation Number** 17(b) **Inspection Source:** Records

Regulation:

Written policies and procedures on the prevention; reporting, investigation and management of unusual incidents shall be developed and kept at the facility.

Explanation: An unusual incident is abuse or suspected abuse of an individual; injury; trauma or illness of an individual requiring inpatient hospitalization, that occurs while the individual is at the facility or under the supervision of the facility; suicide attempt by an individual; violation or alleged violation of an individual's rights; an individual whose absence is unaccounted for and therefore presumed to be at risk; misuse or alleged misuse of an individual's funds or property; outbreak of a serious communicable disease as defined in 28 Pa.Code S27.2 (relating to reportable disease) to the extent that confidentiality laws permit reporting; an incident requiring the services of a fire department or law enforcement agency; and a condition, except for snow or ice conditions, that results in closure of the facility for more than one scheduled day of operation.

"Requiring inpatient hospitalization" applies to injury, trauma, and illness.

This entire definition applies even if there is an individual to individual action.

Scheduled inpatient hospitalization that is not due to an injury, trauma or illness is not considered an unusual incident.

A planned closure day, such as for the purpose of holidays or staff training, is not a condition for which an unusual incident report must be filed. If the closure is due to an unplanned incident, such as a water main break, disease outbreak or other unanticipated emergency, this would be an unusual incident which would need to be reported.

"Outbreak" means two or more individuals at the facility have contracted the same disease since enrolling at the facility. Identification of individuals by name is not required.

**Regulation Number: 17(c) Inspection Source: Records Interview

Regulation:

The facility shall orally notify, within 24 hours after abuse or suspected abuse of an individual or an incident requiring the services of a fire department or law enforcement agency occurs:

-The county mental health and mental retardation program of the county in which the facility is located if the individual involved in the unusual incident has mental illness or mental retardation.

- The funding agency.
- The appropriate regional office of mental retardation.

Explanation: Notification by FAX is acceptable in place of oral notification.

Allegations of abuse or other unusual incidents received by a licensed facility must be reported on an unusual incident form in accordance with the procedures in the regulations, regardless of the location of the alleged unusual incident or abuse (e.g. even if the alleged unusual incident or abuse occurred at another licensed facility, while on vacation, or while living with or visiting friends or relatives, etc.) (exception: injury, trauma, or illness occurring away from the facility – see 17(b)). The licensed facility where the unusual incident or abuse allegedly occurred is also responsible for reporting the alleged abuse or unusual incident on an unusual incident form in accordance with the procedures in the regulations, upon receipt of the allegation. The licensed facility where the unusual incident or abuse occurred is responsible for conducting the investigation.

Individuals may not always feel comfortable or safe reporting allegations of abuse or other unusual incidents to the facility or location where the incident occurred. It is therefore critical that all allegations of abuse or unusual incidents be recorded immediately and forwarded to appropriate authorities for investigation.

It is recommended, but not required, that the facility receiving the initial allegation:

1. If appropriate, report the allegation to the licensed facility where the alleged abuse/unusual incident occurred.
2. Follow-up with the County office or Regional Office to be certain the alleged abuse/unusual incident was received and properly investigated.

****Regulation Number: 17(d) Inspection Source: Records Interview**

Regulation:

The facility shall initiate an investigation of the unusual incident and complete and send copies of an unusual incident report on a form specified by the Department, within 72 hours after an unusual incident occurs, to:

- The county mental health and mental retardation program of the county in which the facility is located if the individual involved in the unusual incident has mental illness or mental retardation.
- The funding agency.
- The appropriate regional office of mental retardation.

Explanation: This written report is required for all unusual incidents, including those reported orally in 17(c).

DPW Form MR 8-7/88 must be used to report unusual incidents. No other form is acceptable. The facility may use a computerized replica of DPW Form MR 8-7/88 if it is an exact duplication (same data content, location of data, headings, spacing, etc.). An attachment to the form or the back of the form may be used for additional information.

****Regulation Number: 17(e) Inspection Source: Records Interview**

Regulation:

At the conclusion of the investigation the facility shall send a copy of the final unusual incident report to:

- The county mental health and mental retardation program of the county in which the facility is located if the individual involved in the unusual incident has mental illness or mental retardation.
- The funding agency.
- The appropriate regional office of mental retardation.

Explanation: This final report is not required if the written report in 17(d) is marked "final report".

The final report must be on the DPW Form MR 8-7/88 or on a separate document identified by the agency's letterhead that includes the findings, evidence to support the findings, and if founded, corrective actions taken.

****Regulation Number: 17(f) Inspection Source: Records**

Regulation:

A copy of unusual incident reports relating to an individual shall be kept in the individual's record.

Explanation: Copies of unsubstantiated and non-founded reports of abuse, as well as founded reports, must be kept; unsubstantiated and non-founded reports may be kept in a separate file and not in the individual's record.

This is a duplicate requirement with 173(2). If there is noncompliance, cite 17(f), not 173(2).

****Regulation Number: 17(g) Inspection Source: Records**

Regulation:

Copies of unusual incident reports relating to the facility itself, such as those requiring the services of a fire department, shall be kept.

****Regulation Number:** 17(h) **Inspection Source:** Records Interview

Regulation:

The individual's family, if appropriate, and the residential service provider, if applicable, shall be immediately notified in the event of an unusual incident relating to the individual.

Explanation: Oral or written notification is acceptable.

Chapter 2390
(Abuse/Unusual Incidents)

****Regulation Number:** 18a-1 **Inspection Source:** Interview Records

Regulation:

Is there an unusual incident report on file that was completed by the facility on DPW form MR 8-7/88 for all serious events, including death of a client, injury or illness of a client requiring inpatient hospitalization or a fire requiring the services of a fire department?

Explanation: DPW form MR 8-7/88 must be used to report unusual incidents. No other form is acceptable. The facility may use a computerized replica of DPW form MR 8-7/88 if it is an exact duplication (same data content, location of data, headings, spacing, etc.). An attachment to the form or back of the form may be used for additional information.

Notification by FAX is acceptable in place of oral notification.

“Requiring inpatient hospitalization” applies to injury, and illness.

“Injury or illness of a client requiring inpatient hospitalization” refers only to injuries or illnesses occurring while the individual is at the facility or under the supervision of the facility.

****Regulation Number:** 18a-2 **Inspection Source:** Records

Regulation:

If the unusual incident occurred during the week did the facility send copies of each unusual incident report to the Regional Office of Mental Retardation and the funding agency within 24 hours after the incident occurred?

****Regulation Number: 18b Inspection Source: Records**

Regulation:

If the unusual incident occurred during a weekend was the Regional Office of Mental Retardation and the funding agency notified within 24 hours after the incident occurred and the unusual incident report sent on the first business day following the incident?

****Regulation Number: 19a Inspection Source: Interview Records Site**

Regulation:

Has there been any evidence of abuse of any client during the past 12 months?

Explanation: Abusive acts against clients are prohibited. An abusive act is any action or omission of an action that willfully deprives a client of his/her rights or which may cause or causes physical injury or emotional harm to a client.

Abusive acts include but are not limited to striking or kicking a client; neglect; rape; sexual molestation; sexual exploitation; or sexual harassment of a client; restraining a client that results in injury of the client; financial exploitation of a client, humiliating a client; and withholding regularly scheduled meals.

Actions of one client to another client, including rape, sexual molestation, sexual exploitation, and intentional actions causing physical injury that require medical attention by medical personnel at a medical facility, are considered abuse.

Allegations of abuse received by a licensed facility must be reported on an unusual incident form in accordance with the procedures in the regulations, regardless of the location of the abuse (e.g. even if the alleged abuse occurred at another licensed facility, while on vacation, or while living with or visiting friends or relatives, etc.). The licensed facility where the abuse allegedly occurred is also responsible for reporting the alleged unusual incident on an unusual incident form in accordance with the procedures in the regulations, upon receipt of the allegation. The licensed facility where the unusual incident occurred is responsible for conducting the investigation.

Individuals may not always feel comfortable or safe reporting allegations of abuse or other unusual incidents to the facility or location where the incident occurred. It is therefore critical that all allegations of abuse or unusual incidents be recorded immediately and forwarded to appropriate authorities for investigation.

It is recommended, but not required, that the facility receiving the initial allegation:

1. If appropriate, report the allegation to the licensed facility where the alleged abuse/unusual incident occurred.
2. Follow-up with the County office or Regional Office to be certain the alleged abuse/unusual incident was received and properly investigated.
Record as non-compliance if there is any founded evidence of abuse since the previous annual licensing inspection for which appropriate corrective action was not taken. If appropriate corrective action was taken, noncompliance should not be cited. If a report of abuse is investigated and determined to be unfounded, record as compliance.

If a report of abuse is still under investigation at the time of inspection, record as non-compliance on the LIS and scoresheet. At the conclusion of the investigation, withdraw the non-compliance if the abuse is determined to be unfounded or if appropriate corrective action was taken.

****Regulation Number: 19b Inspection Source: Interview Records Site**

Regulation:

Did staff or clients witnessing or having knowledge of an abusive act to a client report it to the chief executive officer or designee within 24 hours?

****Regulation Number 19c-1 Inspection Source: Records**

Regulation:

Did the chief executive officer or designee investigate all reports of abuse and prepare and send a report to the Regional Office of Mental Retardation and the funding agency within 24 hours of the initial report **OR** if the initial report occurs during a weekend were the Regional Office of Mental Retardation and the funding agency notified within 24 hours after the initial report and was the abuse investigation report sent on the first business day following the initial report?

Explanation: No standard abuse reporting form is required by the Department, however, it is recommended that DPW form MR 8-7/88 be used.

It is acceptable to complete and send a preliminary abuse report within 24 hours and later follow-up by completing and sending a more detailed final report after the investigation is completed.

All reports of abuse, suspected abuse, and alleged abuse, whether founded or unfounded, must be reported.

****Regulation Number: 19c-2 Inspection Source: Records**

chapter; financial exploitation of an individual; humiliating an individual; or withholding regularly scheduled meals.

Actions of one client to another client, including rape, sexual molestation, sexual exploitation, and intentional actions causing physical injury that require medical attention by medical personnel, including an RN or LPN, are considered abuse. Relating to improper use of restraints, this regulation should be cited if there is serious or widespread use of restraints without following the requirements of this chapter. Otherwise the specific section(s) of 191-206 should be cited.

If the abuse is widespread throughout the agency or home, if there are many cases of abuse, or if the abuse is very serious, 16 should be cited. If there is a one time, less serious, isolated incident of abuse, 33(a) should be cited.

****Regulation Number: 18(b) Inspection Source: Records**

Regulation:

Are written policies and procedures on the prevention, reporting, investigation and management of unusual incidents developed and kept at the home?

Explanation: An unusual incident is abuse or suspected abuse of an individual; injury; trauma or illness of an individual requiring inpatient hospitalization, that occurs while the individual is at the facility or under the supervision of the facility; suicide attempt by an individual; violation or alleged violation of an individual's rights; an individual whose absence is unaccounted for and therefore presumed to be at risk; misuse or alleged misuse of an individual's funds or property; outbreak of a serious communicable disease as defined in 28 Pa.Code S27.2 (relating to reportable disease) to the extent that confidentiality laws permit reporting; an incident requiring the services of a fire department or law enforcement agency; and a condition, except for snow or ice conditions, that results in closure of the facility for more than one scheduled day of operation.

“Requiring inpatient hospitalization” applies to injury, trauma, and illness.

This entire definition applies even if there is an individual to individual action.

Scheduled inpatient hospitalization that is not due to an injury, trauma or illness is not considered an unusual incident.

Closure means preventing individuals from living in the home. Closure does not include situations in which all individuals take extended vacations.

Regulation:

Does the home orally notify the county mental retardation program of the county in which the home is located, the funding agency and the appropriate Regional Office of Mental Retardation, within 24 hours after abuse or suspected abuse of an individual or an incident requiring the services of a fire department or law enforcement agency occurs?

Explanation: Notification by FAX is acceptable in place of oral notification.

Allegations of abuse received by a licensed facility must be reported on an unusual incident form in accordance with the procedures in the regulations, regardless of the location of the abuse (e.g. even if the alleged abuse occurred at another licensed facility, while on vacation, or while living with or visiting friends or relatives, etc.). The licensed facility where the abuse allegedly occurred is also responsible for reporting the alleged unusual incident on an unusual incident form in accordance with the procedures in the regulations, upon receipt of the allegation. The licensed facility where the unusual incident occurred is responsible for conducting the investigation.

Individuals may not always feel comfortable or safe reporting allegations of abuse or other unusual incidents to the facility or location where the incident occurred. It is therefore critical that all allegations of abuse or unusual incidents be recorded immediately and forwarded to appropriate authorities for investigation.

It is recommended, but not required, that the facility receiving the initial allegation:

1. If appropriate, report the allegation to the licensed facility where the alleged abuse/unusual incident occurred.
2. Follow-up with the County office or Regional Office to be certain the alleged abuse/unusual incident was received and properly investigated.

Regulation:

Does the home initiate an investigation of the unusual incident and complete and send copies of an unusual incident report on a form specified by the Department to the county

mental retardation program of the county in which the home is located, the funding agency and the appropriate Regional Office of Mental Retardation, within 72 hours after an unusual incident occurs?

Explanation: This written report is required for all unusual incidents, including those reported orally in 18(c) .

DPW form MR 8-7/88 must be used to report unusual incidents. No other form is acceptable. The facility may use a computerized replica of DPW form MR 8-7/88 if it is an exact duplication (same data content, location of data, headings, spacing, etc.). An attachment to the form or back of the form may be used for additional information.

If an individual is admitted to a hospital for surgery, and is readmitted a few days later due to medical complications related to the surgery, one unusual incident report with an amendment or addendum can be completed.

****Regulation Number: 18(e) Inspection Source: Records Interview**

Regulation:

Does the home send a copy of the final unusual incident report to the county mental retardation program of the county in which the home is located, the funding agency and the appropriate Regional Office of Mental Retardation, at the conclusion of the investigation?

Explanation: This final report is not required if the written report in 18(d) is marked "final report".

The final report must be on DPW Form MR 8-7/88 or on a separate document identified by the agency's letterhead that includes the findings, evidence to support the findings, and if founded, corrective actions taken.

****Regulation Number: 18(f) Inspection Source: Records**

Regulation:

Is a copy of each unusual incident report relating to an individual kept in the individual's record?

Explanation: Copies of unsubstantiated and non-founded reports of abuse, as well as founded reports, must be kept; unsubstantiated and non-founded reports may be kept in a separate file and not in the individual's record.

Regulation:

Did all abuse investigation reports either support or deny the allegation and make recommendations for appropriate action?

**Regulation Number: 19c-3 Inspection Source: Records Interview

Regulation:

Did the chief executive officer or designee implement changes immediately to prevent abuse in the future?

**Regulation Number: 19d Inspection Source: Records Interview

Regulation:

Were all incidents of criminal abuse reported immediately to law enforcement authorities?

Explanation: Criminal abuse includes crimes against the person such as assault and crimes against the property of the client such as theft or embezzlement.

This regulation was written primarily with staff abuse in mind. There is no regulatory requirement to report criminal abuse by a client unless the abuse results in inpatient hospitalization of another person.

Crimes must be reported even if all involved parties do not want to report to law enforcement authorities.

Chapter 6400

(Abuse/Unusual Incidents)

**Regulation Number: 16 Inspection Source: Site Records Interview

Regulation:

Has there been any abuse of any individual since the previous annual licensing inspection, for which appropriate corrective action was not taken?

Explanation: Abuse is any act or omission of an act that willfully deprives an individual of rights or human dignity or which may cause or causes actual physical injury or emotional harm to an individual, such as striking or kicking an individual; neglect; rape; sexual molestation, sexual exploitation or sexual harassment of an individual; sexual contact between a staff person and an individual; restraining an individual without following the requirements in this

This is a duplicate requirement with 213(2). If there is noncompliance, cite 18(f), not 213(2).

****Regulation Number: 18(g) Inspection Source: Records**

Regulation:

Are copies of unusual incident reports relating to the home itself, such as those requiring the services of a fire department, kept?

****Regulation Number: 18(h) Inspection Source: Records Interview**

Regulation:

Is the individual's family or guardian immediately notified in the event of an unusual incident relating to the individual, if appropriate?

Explanation: Oral or written notification is acceptable.

**Chapter 6500
(Abuse/Unusual Incidents)**

****Regulation Number: 18 Inspection Source: Site Records Interview**

Regulation:

Has there been any abuse of any individual since the previous annual licensing inspection, for which appropriate corrective action was not taken?

Explanation: Abuse is any act or omission of an act that willfully deprives an individual of rights or human dignity or which may cause or causes actual physical injury or emotional harm to an individual, such as striking or kicking an individual; neglect; rape; sexual molestation, sexual exploitation or sexual harassment of an individual; sexual contact between a staff person and an individual; restraining an individual without following the requirements in this chapter; financial exploitation of an individual; humiliating an individual; or withholding regularly scheduled meals.

Actions of one client to another client, including rape, sexual molestation, sexual exploitation, and intentional actions causing physical injury that require medical attention by medical personnel, including an RN or LPN, are considered abuse.

Relating to improper use of restraints, this regulation should be cited if there is serious or widespread use of restraints without following the requirements of this chapter. Otherwise, the specific section(s) of 161-176 should be cited.

If the abuse is widespread throughout the agency or home, if there are many cases of abuse, or if the abuse is very serious 18 should be cited. If there is a one time, less serious, isolated incident of abuse, 33(a) should be cited.

Record as non-compliance if there is any founded evidence of abuse since the previous annual licensing inspection for which appropriate corrective action was not taken. If appropriate corrective action was taken, noncompliance should not be cited. If a report of abuse is investigated and determined to be unfounded, record as compliance.

If a report of abuse is still under investigation at the time of inspection, record as non-compliance on the LIS and scoresheet. At the conclusion of the investigation, withdraw the non-compliance if the abuse is determined to be unfounded or if appropriate corrective action was taken.

****Regulation Number: 20(b) Inspection Source: Records**

Regulation:

Are written policies and procedures on the prevention, reporting, investigation and management of unusual incidents developed and kept at the home?

Explanation: An unusual incident is abuse or suspected abuse of an individual; injury; trauma or illness of an individual requiring inpatient hospitalization, that occurs while the individual is at the facility or under the supervision of the facility; suicide attempt by an individual; violation or alleged violation of an individual's rights; an individual whose absence is unaccounted for and therefore presumed to be at risk; misuse or alleged misuse of an individual's funds or property; outbreak of a serious communicable disease as defined in 28 Pa.Code S27.2 (relating to reportable disease) to the extent that confidentiality laws permit reporting; an incident requiring the services of a fire department or law enforcement agency; and a condition, except for snow or ice conditions, that results in closure of the facility for more than one scheduled day of operation.

"Requiring inpatient hospitalization" applies to injury, trauma, and illness.

This entire definition applies even if there is an individual to individual action.

Scheduled inpatient hospitalization that is not due to an injury, trauma or illness is not considered an unusual incident.

****Regulation Number: 20(c) Inspection Source: Records Interview**

Regulation:

Does the home orally notify the county mental retardation program of the county in which the home is located, the funding agency and the appropriate Regional Office of Mental Retardation, within 24 hours after abuse or suspected abuse of an individual or an incident requiring the services of a fire department or law enforcement agency occurs?

Explanation: Notification by FAX is acceptable in place of oral notification.

Allegations of abuse received by a licensed facility must be reported on an unusual incident form in accordance with the procedures in the regulations, regardless of the location of the abuse (e.g. even if the alleged abuse occurred at another licensed facility, while on vacation, or while living with or visiting friends or relatives, etc.). The licensed facility where the abuse allegedly occurred is also responsible for reporting the alleged unusual incident on an unusual incident form in accordance with the procedures in the regulations, upon receipt of the allegation. The licensed facility where the unusual incident occurred is responsible for conducting the investigation.

Individuals may not always feel comfortable or safe reporting allegations of abuse or other unusual incidents to the facility or location where the incident occurred. It is therefore critical that all allegations of abuse or unusual incidents be recorded immediately and forwarded to appropriate authorities for investigation.

It is recommended, but not required, that the facility receiving the initial allegation:

1. If appropriate, report the allegation to the licensed facility where the alleged abuse/unusual incident occurred.
2. Follow-up with the County office or Regional Office to be certain the alleged abuse/unusual incident was received and properly investigated.

****Regulation Number:** 20(d) **Inspection Source:**

Regulation:

Does the home initiate an investigation of the unusual incident and complete and send copies of an unusual incident report on a form specified by the Department to the county mental retardation program of the county in which the home is located, the funding agency and the appropriate Regional Office of Mental Retardation, within 72 hours after an unusual incident occurs?

Explanation: This written report is required for all unusual incidents, including those reported orally in 20(c).

DPW form MR 8-7/88 must be used to report unusual incidents. No other form is acceptable. The facility may use a computerized replica of DPW form MR 8-7/88 if it is an exact duplication (same data content, location of data, headings, spacing, etc.). An attachment to the form or back of the form may be used for additional information.

If an individual is admitted to a hospital for surgery, and is readmitted a few days later due to medical complications related to the surgery, one unusual incident report with an amendment or addendum can be completed.

****Regulation Number:** 20(e) **Inspection Source:** Records Interview

Regulation:

Does the home send a copy of the final unusual incident report to the county mental retardation program of the county in which the home is located, the funding agency and the appropriate Regional Office of Mental Retardation, at the conclusion of the investigation?

Explanation: This final report is not required if the written report in 20(d) is marked "final report".

The final report must be on DPW Form MR 8-7/88 or on a separate document identified by the agency's letterhead that includes the findings, evidence to support the findings, and if founded, corrective actions taken.

Chapter 2380
(Criminal Background Checks)

****Regulation Number:** 20(a) **Inspection Source:** Records

Regulation:

An application for a Pennsylvania criminal history record check shall be submitted to the State Police for prospective employees of the facility who will have direct contact with individuals, and for part-time and temporary staff persons who will have direct contact with individuals, within 5 working days after the person's date of hire.

Explanation: This is applicable for employees hired on or after April 16, 1993.

This applies to employees hired under contract if they will have direct contact with individuals.

This is applicable for Pennsylvania residents as well as out of state residents.

“Working days” means the days the employee works.

Checks are transferable from one agency to another agency as long as they are completed within 1 year prior to the date of hire at the new agency.

No checks are required if an employee transfers positions within the same agency, since the employee is not considered a new employee.

An FBI check may not be substituted for a State Police check.

The facility should keep a record of the dates applications were submitted, in order to verify compliance.

This applies to students and interns if they are paid employees.

This does not apply to volunteers.

****Regulation Number: 20(b) Inspection Source: Records**

Regulation:

If a prospective employee who will have direct contact with individuals resides outside of this Commonwealth, an application for a Federal Bureau of Investigation (FBI) criminal history record check shall be submitted to the FBI in addition to the Pennsylvania criminal history record check, within 5 working days after the person's date of hire.

Explanation: This is applicable for employees hired on or after April 16, 1993.

State of residency is determined by the address where the person lives; there is no minimum length of time in determining residency.

This requirement applies to prospective employees who reside (primary residence) outside of the United States.

College students who attend college in Pennsylvania and live in Pennsylvania while attending classes, but return home to another state for vacations or breaks, are considered residents of Pennsylvania for purposes of the criminal history record check. There is no period of time requirement associated with residency. Noncompliance may not be cited if an FBI check is not done on someone who currently resides in Pennsylvania. However, if there is doubt concerning a person's criminal history, further information could be required by the provider, in the form of an FBI check, if the person recently moved to Pennsylvania.

The facility should keep a record of the dates the applications were submitted, in order to verify compliance.

This does not apply to volunteers.

****Regulation Number: 20(c) Inspection Source: Records**

Regulation:

Pennsylvania and FBI criminal history record checks shall have been completed no more than 1 year prior to the person's date of hire.

Explanation: Checks are transferable from one agency to another as long as they are completed within 1 year prior to date of hire at the new agency.

****Regulation Number: 20(d) Inspection Source: Records**

Regulation:

A copy of the final reports received from the State Police, and the FBI, if applicable, shall be kept.

**Chapter 6400
(Criminal Background Checks)**

****Regulation Number: 21(a) Inspection Source: Records**

Regulation:

Is an application for a Pennsylvania criminal history record check submitted to the State Police for prospective employees of the home who will have direct contact with individuals, including part-time and temporary staff persons who will have direct contact with individuals, within 5 working days after the person's date of hire?

Explanation: This is applicable for employees hired on or after November 8, 1991.

This is applicable for Pennsylvania residents as well as out of state residents.

"Working days" means the days the employee works.

Checks are transferable from one agency to another agency as long as they are completed within 1 year prior to the date of hire at the new agency.

No checks are required if an employee transfers positions within the same agency, since the employee is not considered a new employee.

An FBI check may not be substituted for a State Police check.

The home should keep a record of the dates applications were submitted, in order to verify compliance.

This applies to students and interns if they are paid employees.

This does not apply to volunteers.

For additional guidance, see OMR Bulletin #00-88-07 issued 6/24/88 titled "Obtaining Criminal Clearances on Prospective Employees."

****Regulation Number: 21(b) Inspection Source: Records**

Regulation:

If a prospective employee who will have direct contact with individuals resides outside of this Commonwealth, an application for a Federal Bureau of Investigation (FBI) criminal history record check shall be submitted to the FBI in addition to the Pennsylvania criminal history record check, within 5 working days after the person's date of hire.

Explanation: This is applicable for employees hired on or after November 8, 1991.

State of residency is determined by the address where the person lives; there is no minimum length of time in determining residency.

This requirement applies to prospective employees who reside (primary residence) outside of the United States.

College students who attend college in Pennsylvania and live in Pennsylvania while attending classes, but return home to another state for vacations or breaks, are considered residents of Pennsylvania for purposes of the criminal history record check. There is no period of time requirement associated with residency. Noncompliance may not be cited if an FBI check is not done on someone who currently resides in Pennsylvania. However, if there is doubt concerning a person's criminal history, further information could be required by the provider, in the form of an FBI check, if the person recently moved to Pennsylvania.

The facility should keep a record of the dates the applications were submitted, in order to verify compliance.

This does not apply to volunteers.

****Regulation Number: 21(c) Inspection Source: Records**

Regulation:

Were the Pennsylvania and FBI criminal history record checks completed no more than 1 year prior to the person's date of hire?

Explanation: Checks are transferable from one agency to another as long as they are completed within 1 year prior to date of hire at the new agency.

****Regulation Number: 21(d) Inspection Source: Records**

Regulation:

Are copies of final reports received from the State Police, and the FBI if applicable, kept?

**Chapter 6500
(Criminal Background Checks)**

****Regulation Number: 23(a) Inspection Source: Records**

Regulation:

Is an application for a Pennsylvania criminal history record check submitted to the State Police for persons 18 years of age or older who reside in the home, prior to an individual living or receiving respite care in the home?

Explanation: This is applicable for persons who begin residing in the home after November 8, 1991.

Family members who were living in a licensed family living home prior to November 8, 1991 do not need criminal history checks.

This does apply to college students even if they are only home during the summer.

This requirement also applies for any person over 17 years of age who moves into the home and any person who reaches the age of 18 years, after the individual lives in the home.

An FBI check may not be substituted for a State Police Check.

The home or agency should keep a record of the dates applications were submitted, in order to verify compliance.

For additional guidance, see OMR Bulletin 00-88-07 issued 6/24/88, titled "Obtaining Criminal Clearances on Prospective Employees".

**Regulation Number: 23(b) Inspection Source: Records

Regulation:

If a person 18 years of age or older who resides in the home is not a Pennsylvania resident, is an application for a Federal Bureau of Investigation (FBI) criminal history record check submitted to the FBI in addition to the Pennsylvania criminal history record check, prior to an individual living or receiving respite care in the home?

Explanation: This is applicable for persons who begin living in the home after November 8, 1991.

This applies only if the home is not the person's primary residence and their primary living address is out-of-state.

This requirement also applies for any person over 17 years of age who moves into the home and any person who reaches the age of 18 years, after the individual lives in the home.

The home or agency should keep a record of the dates applications were submitted, in order to verify compliance.

**Regulation Number: 23(d) Inspection Source: Records

Regulation:

Were the Pennsylvania and FBI criminal history record checks completed no more than 1 year prior to an individual living or receiving respite care in the home?

**Regulation Number: 23(e) Inspection Source: Records

Regulation:

Are copies of the final reports received from the State Police, and the FBI if applicable, kept?

**HCFA Interpretive Guidelines for ICF/MR Services (State Operations Manual
Transmittal No. 278, Appendix J)
(Abuse/Unusual Incidents)**

****Tag Number:** W122

Regulation: S483.420 Condition of participation: Client protections.

**Guidance to Surveyors:
S483.420 Compliance Principles**

The Condition of Participation of Client Protections is met when:

- *Individuals are free from abuse and neglect;
- *Individuals are free from unnecessary drugs and restraints; and
- *Individual freedoms are promoted (e.g., individuals have choice and opportunities in their money management, community involvement, interpersonal relationships, daily routines, etc.)

The Condition of Participation of Client Protections is not met when:

- *Individuals have been abused, neglected or otherwise mistreated and the facility has not taken steps to protect individuals and prevent reoccurrence;
- *Individuals are subjected to the use of drugs or restraints without justification; or
- *Individual freedoms are denied or restricted without justification (e.g. systemic lack of privacy, of freedom of access to the community or to other individuals, in use of personal possessions and money, etc.)

S483.420 Guidelines

A citation of W127 or W150, which require that individuals are not subjected to verbal, sexual, or psychological abuse or punishment, is sufficient justification that the facility has failed to comply with the most fundamental of protections and, therefore, does not comply with this Condition of Participation.

****Tag Number:** W127

Regulation: Ensure that clients are not subjected to physical, verbal, sexual or psychological abuse or punishment.

**Guidance to Surveyors:
S483.420(a)(5) Facility Practices**

No patterns, isolated incidents, unexplained functional regression, or other evidence of physical, verbal, sexual or psychological abuse or punishment posing a serious and

immediate threat to individuals are present, are likely to occur, or have occurred without corrective action.

The following situations constitute evidence of abuse:

1. Individuals are involved in serious incidents (e.g. injuries, elopements) caused by one or more of the following:
 - *Insufficient or incompetent supervision, regardless of the location of the incident;
 - *Program structure not meeting individual needs;
 - *Failure to intervene when indicated (i.e. neglect);
 - *Active treatment strategies that have proven to be ineffective and have not been revised to meet individual needs;
 - *Placement in an unsafe environment
 - *Monitoring systems that are absent or are inadequate to prevent such incidents; or
 - *Placement with aggressive/assaultive individuals in the absence of adequate supervision.
2. Individuals are found with serious injuries of unknown origin that are suspicious based on the nature or circumstances of the injury, and on the functional or medical status of the individual.
3. Individuals are found with suspicious injuries of unknown origin and have been provided care and supervision by a person who has a confirmed history of abuse.
4. Individuals are subject to punitive techniques in the absence of positive teaching strategies or in the absence of their effectiveness.
5. Individuals suffer death/deterioration due to lack of medical attention and oversight.
6. There is observed abuse and the facility takes no action to correct the situation and protect the individual.

S483.420(a)(5) Guidelines

The facility is responsible to organize itself in such a manner that it proactively assures individuals are free from serious and immediate threat to their physical and psychological health and safety. Citing of this requirement indicates that there is a high probability that abuse to individuals could occur at any time, or already has occurred and may well occur again, if the individuals are not effectively protected from the serious physical or psychological harm or injury, or if the threat is not removed. A citation of this requirement, therefore, must result in a determination of Condition level non-compliance due to immediate and serious threat. Cross reference W122 for additional guidance.

“Threat,” as used in this guideline, is any condition/situation which could cause or result in severe, temporary or permanent injury or harm to the mental or physical condition of individuals, or in their death.

“Abuse refers to the ill-treatment, violation, revilement, malignment, exploitation and/or otherwise disregard of an individual, whether purposeful, or due to carelessness, inattentiveness, or omission of the perpetrator.

“Physical abuse” refers to any physical motion or action, (e.g. hitting, slapping, punching, kicking, pinching, etc.) by which bodily harm or trauma occurs. It includes use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment. Observe individuals to see if they are bruised, cut, burned (cigarettes, etc.).

“Verbal abuse” refers to any use of oral, written or gestured language by which abuse occurs. This includes pejorative and derogatory terms to describe persons with disabilities.

“Psychological abuse” includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation, sexual coercion, intimidation, whereby individuals suffer psychological harm or trauma.

Individuals must not be subjected to abuse by anyone (including, but not limited to, facility staff, consultants or volunteers, staff of other agencies serving the individual, family members or legal guardians, friends, other individuals, or themselves).

****Tag Number: W148**

Regulation: Notify promptly the client’s parents or guardian if any significant incidents, or changes in the client’s condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence.

Guidance to Surveyors:
S483.4209(c)(6) Guidelines

“Significant” incidents or changes in the individual’s condition refers to any type of occurrence or event, that is perceived to have some level of importance to the individual, family or guardian. Examples include, but are not limited to, allegations of mistreatment, psychological trauma experienced by the individual, loss or change of a program service staff person, entry or placement in new programs or agencies, day-to-day events on which family members express interest to be informed, etc.

S483.420(c)(6) Probes

Are family members/guardians informed of incidents/alleged abuse?

Are telephone numbers and addresses for parents and guardians kept and periodically updated?

What is the time frame for notification?

****Tag Number: 149**

Regulation: The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client.

S483.420(d)(1) Facility Practices

The facility, through implementation of its policies, has set up a structure which protects individuals from mistreatment, neglect, and abuse.

Guidelines

“Mistreatment” as used in this standard, includes behavior or facility practices that result in any type of individual exploitation such as financial, sexual, or criminal.

“Neglect” means failure to provide goods or services necessary to avoid physical or psychological harm.

See W127 for definitions related to “abuse.”

Probes

Is there a pattern of among incidents of alleged abuse, accidents, behavior programs, psychoactive drug use, staff training, and adequacy of staffing levels that may suggest possible mistreatment, neglect or abuse of individuals?

How does the facility monitor staff treatment of individuals to ensure that the requirements are not being violated?

****Tag Number: W150**

Regulation: Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment.

S483.420(d)(1)(i) Guidelines

See W127, Facility Practices, as related specifically to staff of the facility.

A citation of this requirement indicates that abuse to an individual by staff of the facility is highly likely to occur or has already occurred and may well occur again if the individual is not effectively protected. A citation of this requirement, therefore, must result in Condition-level non-compliance due to immediate and serious threat. Cross reference W122 and W127.

Probes

Can staff define what constitutes abuse and punishment?

Are programs or policies “masks” for punitive, abusive controls?

How does the facility actively promote respect for individuals?

How do staff members set acceptable behavioral limits for individuals?

Does group punishment occur?

Does demeaning, belittling or degrading punishment occur?

Do staff speak loudly, harshly? In negative, punishing terms? With threats, coercion?

Cross reference W127 for definitions and additional probes.

****Tag Number W153 -abuse**

Regulation: The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of an unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures.

S483.420(d)(2) Guidelines

The facility is responsible for reporting any injuries of unknown origin and any allegations of mistreatment to an individual residing in the facility regardless of who is the perpetrator (e.g. facility staff, parents, legal guardian, volunteer staff from outside agencies serving the individual, neighbors, or other individuals, etc.).

Probes

How many alleged violations have been reported this year? Last year?

What mechanisms are in place to ensure prompt detection, reporting, and appropriate follow-up?

**Tag Number W154/W155

Regulation: The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

S483.420(d)(3) Guidelines

The facility is responsible for investigating all injuries of unknown origin and allegations of mistreatment, neglect or abuse. The particular mechanisms developed by a facility for investigation are at its discretion, provided that alleged violations of individual rights are thoroughly investigated and appropriate actions are taken. Review reports of investigations to determine that necessary information relevant to the incident was obtained and considered.

Probes

After you review reports of investigation, do you identify a pattern to the depth, thoroughness, conclusions and actions taken that suggest:

- *Comprehensive and responsive investigations?
- *Well conducted but negated or altered reports?
- *Shallow or routinized investigations?

**Tag Number W156

Regulation: The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident.

S483.420(d)(4) Guidelines

Some States require that allegations of abuse must be reported to the police. HCFA cannot regulate the activities of the police. However, if the police take longer than five working days for their investigation, the facility is still required to complete an internal investigation report of findings within the five day timeframe. "Working days" means Monday through Friday, excluding State and Federal holidays.

Probes

If a report of known or suspected abuse or neglect involves the acts or omissions of the administrator, how has the provider arranged for an unbiased review of the allegation (such as, an authority outside of the facility investigating the report and, if necessary, taking appropriate corrective action)?

****Tag Number W157**

Regulation: If the alleged violation is verified, appropriate corrective action must be taken.

S483.420(d)(4) Facility Practices

The seriousness of the violation is considered by the facility to determine appropriate corrective action.

When the intentional action or inaction of a staff person has resulted in abuse, neglect or mistreatment which was a serious and immediate threat to the individual's health and safety, the staff person's employment is terminated.

The corrective action taken by the facility is reasonably likely to assure that the abuse, neglect, mistreatment or injury will not occur again.

Guidelines

This requirement refers to corrective action taken based upon findings of investigations of incidents which have occurred within the jurisdiction of the facility. It requires that the seriousness of infractions be weighed in the determination of what action is necessary by the facility to correct the situation appropriately. In cases of abuse, neglect or mistreatment by staff, where extenuating circumstances exist and dependent on the nature of the infraction, a remedy that is consistent with appropriate progressive disciplinary measures may be acceptable. When the intentional action or inaction of a staff person has resulted in abuse, neglect or mistreatment which poses a serious and immediate threat to individuals' health and safety, termination of employment is the only acceptable corrective action.

Appropriate corrective action is also required for findings of abuse, neglect or mistreatment by other individuals residing in the facility, staff of outside agencies, parents or any other person, and for injuries to individuals resulting from controllable environmental factors.

Appropriate corrective action is defined as that action which is reasonably likely to prevent the abuse, neglect, mistreatment or injury from recurring.

When an employee appeals a finding of abuse by the facility, whether through arbitration or in a court of law, the decision of the arbitrator or the court of law is then considered the final finding. If the arbitrator found that the charges lacked substance, the allegation would be considered unsubstantiated. The facility, however, is still required to ensure that individuals residing in the facility are not subjected to physical, verbal, sexual or psychological abuse or punishment by W127.

An arbitrator may find that the allegation of abuse is substantiated, but impose a lesser penalty than that which was sought by the facility. For example, the facility may seek termination of employment as the appropriate corrective action but the arbitrator determines that a 10 day suspension is more appropriate. The facts of the situation will have to be evaluated by the surveyor and a judgment made regarding appropriateness. Therefore, while the facility is permitted by the regulation to exercise judgment regarding appropriate corrective action, the surveyor must also exercise judgment and may determine that the corrective action is NOT reasonably likely to prevent the abuse from recurring.

Probes

After investigations have been completed, how many alleged violations culminated in progressive discipline actions? Staff discharges?

As a result of the facility's investigations, is there a pattern of reduction of allegations?

Criminal Background Checks

**Tag Number: W152

Regulation: The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect, or mistreatment.

S483.420(d)(1)(iii) Facility Practices

No one hired after October 3, 1988, has had a conviction or a prior employment history of child or client abuse, neglect or mistreatment of which the facility was aware based on pre-employment screening.

No one with a conviction or substantiated allegation of child or client abuse, neglect or mistreatment occurring while outside the jurisdiction of the ICF/MR after October 3, 1988, regardless of employment date, is employed by the facility.

Guidelines

This regulation applies to the hiring of new employees on or after 10/3/88. The facility is required to screen potential employees for a prior employment history of child or client abuse, neglect or mistreatment, as well as for any conviction based on those offenses. The abuse, neglect or mistreatment must be directed toward a child or an individual who is a client (resident, patient) in order for the prohibition of employment to apply.

This requirement also applies to acts of abuse, neglect or mistreatment committed by a current ICF/MR employee outside the jurisdiction of the ICF/MR (e.g. in the community or in another health care facility). A substantiated allegation of abuse, neglect or mistreatment which occurred after October 3, 1988 (regardless of the date of the person's employment in the ICF/MR), and which resulted in the termination of that person's employment from another health care facility, becomes a part of the person's employment history and the ICF/MR is prohibited from continuing to employ the individual. For example, an individual who abused a resident in a nursing facility and as a result, is barred from employment in the nursing home setting would also be prohibited from employment in the ICF/MR. While facilities are not required to periodically screen existing employees, if the facility becomes aware that such action has been taken against an employee, the facility is required to prohibit continued employment. This is also true of any conviction in a court of law for child or client (resident, patient) abuse, neglect, or mistreatment. Therefore, conviction for abusing one's own child is also a reason employment would be prohibited.

The definition of "mistreatment" under the guideline at W153 includes financial exploitation. Therefore, if an employee was convicted or had a prior employment history of theft of individuals' funds, that would also be a reason employment would be prohibited.

Access other information, as appropriate, including information contained in "closed" records, in order to adequately evaluate compliance.

Probes

How does the facility screen employees for previous convictions?

Who are the facility's new hire? Has the facility implemented its system in such a fashion to ensure that W152 has been achieved?