

PROPOSED RULEMAKING

Title 6—AGING

PART I. DEPARTMENT OF AGING

[6 PA. CODE CH. 15]

Protective Services for Older Adults

The Department of Aging (Department), to safeguard more effectively the rights and protection of incapacitated older adults, proposes to amend Chapter 15 (relating to protective services for older adults), to read as set forth in Annex A. The Department proposes these amendments under the authority of the Older Adults Protective Services Act (OAPSA) (35 P. S. §§ 10225.101—10225.5102). Proposed amendments clarify definitions and operational elements to reflect the experience of the protective services agencies (Area Agencies on Aging (AAA)) over the last decade, and add sections to implement the requirements of recent legislation requiring applicants and specified employes at care-providing facilities to obtain criminal history record checks and requiring administrators and employes at these facilities to report suspected abuse.

Background

The OAPSA which became law on November 6, 1987, established a program of protective services for older adults designed to provide for the detection and reduction, correction or elimination of abuse, neglect, exploitation and abandonment. To implement the OAPSA, the Department established a Statewide network of 52 local older adult protective services programs administered by AAAs. Since 1988, AAAs have administered local protective services plans, which include provisions for receiving, on a 24-hour a day, 365 days per year basis, reports of older adults in need of protective services, investigating these reports, and, as necessary, providing an array of protective services tailored to the needs of the older adult.

For SFY 1996-97, AAAs received 7,578 reports of need for protective services; of these, 2,075, or 27.4%, were substantiated. Services most often provided to protective services clients during SFY 1996-97 included, in rank order: care management, home-delivered meals, personal care, legal assistance, transportation, overnight shelter, home support, home health and day care.

Amendments are proposed to Chapter 15 to accomplish the following:

1. Updating regulatory language to reflect state-of-the-art program terminology and to replace outdated statutory and regulatory citations.
2. Clarification of definitions in § 15.2 (relating to definitions), and of text throughout the regulations, to reflect a decade of experience by AAAs in implementing both the OAPSA and protective services regulations.
3. Addition of definitions and of new sections dealing with criminal history record information reports and mandatory reporting of suspected abuse, to implement changes to the OAPSA made by the act of December 18, 1996 (P. L. 1125, No. 169) (Act 169) (35 P. S. §§ 10225.501—10225.508) and the act of June 9, 1997 (P. L. 160, No. 13) (Act 13) (35 §§ 10225.701—10225.708).

Purpose of the Proposed Rulemaking

AAAs have been providing protective services under the OAPSA for a decade; many AAAs provided them for many years before passage of the OAPSA and implementing regulations. Through this experience, it became apparent that, in several instances, the protective services regulations repeated language in the OAPSA without providing additional clarity or guidance. In addition, several regulatory provisions either unnecessarily restricted AAAs in carrying out their responsibilities under the OAPSA or, because they were written in 1988, inadequately described the ways in which AAAs could most efficiently and effectively provide a program of protective services. The proposed amendments to existing regulations in Chapter 15, as set forth in Annex A, responsibly address the previously mentioned needs for improvement. They reflect the input of a work group of AAA Administrators representing the Pennsylvania Association of Area Agencies on Aging and the recommendations of protective services supervisors and caseworkers from across this Commonwealth who participated in discussion sessions and responded to Departmental surveys.

Sections 504 and 708 of the OAPSA (35 P. S. §§ 10225.504 and 10225.708) require the Department to promulgate regulations necessary to carry out Chapters 5 and 7 of the OAPSA dealing, respectively, with criminal history record checks for applicants for employment and for certain employes of specified care-providing facilities, and with mandatory reporting of suspected abuse by administrators and employes of these same facilities. The proposed amendments are responsive to these statutory requirements and reflect preliminary input from attendees at a meeting of stakeholders representing the Departments of Education, Health and Public Welfare, the Pennsylvania Associations of Home Health Agencies, Non-Profit Homes for the Aging, County-Affiliated Homes, AAA Administrators and the Pennsylvania Health Care Association.

The following is a brief description of significant proposed changes, listed by section, which modify requirements under the original regulations published in 1988 and which add requirements to implement Acts 169 and 13:

A. *General Provisions*

Section 15.2. The proposed rulemaking adds or amends definitions of "abuse," "case file," "client assessment," "neglect," "open disposition," "operator," "protective services" and "State-licensed facility" to clarify or to update terminology. Definitions of "administrator," "applicant," "care," "care-dependent individual," "employe," "facility," "home health agency," "intimidation," "law enforcement official," "recipient," "serious physical injury," "serious bodily injury," "sexual abuse" and "State Police" are proposed to be added to conform to the OAPSA.

B. *Program Administration*

Section 15.13. The proposed rulemaking deletes the prohibition on generic caseworkers and on using Ombudsman and OPTIONS caseworkers, and deletes the requirement for annual submission of caseload adjustment method.

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.

D. Investigating Reports of Need for Protective Services

1. *Section 15.41.* The proposed rulemaking adds language to emphasize the importance of collateral information in investigating reports.

2. *Section 15.42.* The proposed rulemaking adds language to emphasize the Department's right to intervene in an agency's investigation; and removes requirement that investigations are completed only after provision of services.

3. *Section 15.45.* The proposed rulemaking adds a requirement to use a licensing agency's after-hours phone number, if there is one.

E. Provision of Services

1. *Section 15.91.* The proposed rulemaking adds language to make it clear that protective services are provided only subsequent to an investigation.

2. *Section 15.95.* The proposed rulemaking removes the requirement that all protective services cases be reassessed every 30 days; requires that a reassessment be done before a case is terminated, transferred or whenever the agency judges it to be appropriate.

F. Staff Training

1. *Section 15.123.* The proposed rulemaking adds the requirement that the protective services investigation training curriculum include topic dealing with coordination with other State agencies.

2. *Section 15.127.* The proposed rulemaking makes three specified topics for annual in-service training optional, rather than mandatory.

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 employe 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, employes of designated facilities who must obtain State or Federal, or both, criminal history record checks as a condition of initial or continued employment; applicants, employes and facilities who bear the cost of these record checks; facilities which are prohibited from hiring applicants, or from retaining employes, 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 employes 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.

Cost and Paperwork Requirements

Costs imposed by this proposed rulemaking result from increased personnel costs to process criminal history background checks. In SFY 1998-99, the Department will incur costs of \$100,000 to process FBI checks. In SFY 1998-99, the State Police will incur costs estimated at \$161,625 to process the State Police Criminal Background checks.

Costs are also incurred by applicants for employment and specified employes at care-providing facilities to pay the fee for obtaining the State Police and FBI Criminal History Background checks. Alternatively, care-providing facilities may elect to bear these costs for employes and applicants. In SFY 1998-99, it is estimated that 3,746 persons will require FBI record checks, at a cost of \$24 for each record check. An estimated 15,077 persons will require Pennsylvania record checks, at a cost of \$10 for each record check, during this same period. The State Police receive the \$10 fee; the Department receives no part of the \$24 fee, which is passed through to the FBI.

There will be some increase in the costs of paperwork for care-providing facilities to make written reports of suspected abuse to AAAs and, in some cases, to law

enforcement officials. AAAs will be required in some cases to send reports of suspected abuse to the Department and coroners. Facilities will be required to send facility and individual supervision plans to AAAs and licensing agencies, and to make reports of suspected abuse available to specified persons and agencies.

Effectiveness/Sunset Date

The proposed amendments will take effect on the date of publication in the *Pennsylvania Bulletin* as final-form rulemaking.

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

Public Comment Period

Interested persons are invited to submit any comments, suggestions or objections regarding these proposed amendments to Robert F. Hussar, Chief, Division of Program and Regulatory Coordination, Department of Aging, 555 Walnut Street, Fifth Floor, Harrisburg, PA, 17101-1919, (717) 783-6207, within 30 days of the date of publication of this Notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 15, 1999, the Department submitted a copy of this proposed proposed rulemaking to IRRC, and the Chairpersons of the House Aging and Youth and the Senate Aging and Youth Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committee's comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of objections raised.

RICHARD BROWDIE,
Secretary

Fiscal Note: 1-17. (1) General Fund and Lottery Fund;

<i>State Police— General Government Operations (General Fund)</i>	<i>Department of Aging— General Government Operations (Lottery Fund)</i>
(2) Implementing Year 1998-99 is \$238,840	\$100,000;
(3) 1st Succeeding Year 1999-00 is \$241,200	\$ 85,000;
2nd Succeeding Year 2000-01 is \$246,560	\$ 89,000;
3rd Succeeding Year 2001-02 is \$251,920	\$ 93,000;
4th Succeeding Year 2002-03 is \$257,280	\$ 97,000;
5th Succeeding Year 2003-04 is \$262,640	\$101,000;
(4) 1997-98 \$119.612 Million	\$4.318 Million
1996-97 \$115.418 Million	\$4.298 Million
1995-96 \$109.830 Million	\$6.755 Million

(7) State Police—General Government Operations (General Fund) and Department of Aging—General Government Operations (Lottery Fund); (8) recommends adoption.

Annex A

TITLE 6. AGING

PART I. DEPARTMENT OF AGING

CHAPTER 15. PROTECTIVE SERVICES FOR OLDER ADULTS

GENERAL PROVISIONS

§ 15.1. Scope and authority.

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(b) This chapter applies to the Department, the Department of Health, the 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.

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§ 15.2. Definitions.

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

* * * * *

Abuse—

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

[(A)] (i) ***

[(B)] (ii) ***

[(C)] (iii) Sexual harassment, rape or abuse, as defined in [the] 23 Pa.C.S. §§ 6101—6117 (relating to the Protection From Abuse Act [(35 P. S. §§ 10181—10190).

(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.

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

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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, when] When applicable, it shall include, but not be limited to, the following elements:

* * * * *

(iii) [Client assessment] Assessment.

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(v) Notifications of [clients] older adults, alleged perpetrators, police [and the like], agencies, organizations, and individuals.

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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 instruments and procedures established by the Department for this purpose.

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Court—A court of common pleas or a district [justice] magistrate, if applicable.

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Employe—An individual who is employed by a facility. The term includes contract employes who have direct contact with residents or unsupervised access to their personal living quarters. The term also includes any person who is employed by, or who enters into a contractual relationship with, or who establishes any other agreement or arrangement with a home health care agency to provide care to a care-dependent individual in the individual's place of residence for a fee, stipend or monetary consideration of any kind.

* * * * *

Facility—Any of the following:

(i) A domiciliary care home as defined in section 2202-A of The Administrative Code of 1929 (71 P. S. § 581-2).

(ii) A home health care agency.

(iii) A long-term care nursing facility as defined in section 802.1 of the Health Care Facilities Act (35 P. S. § 448.802a).

(iv) An older adult daily living center as defined in section 2 of the Older Adult Daily Living Centers Licensing Act (62 P. S. § 1511.2).

(v) A personal care home as defined in section 1001 of the Public Welfare Code (62 P. S. § 1001) including those entities licensed as personal care homes who publicly advertise, promote or otherwise hold themselves out to the public as assisted living facilities.

Home health care agency—

(i) Any of the following:

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

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

(ii) The term includes private duty home care providers, homemaker/home health aide providers, companion care providers, registry services, 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.

*Intimidation—*An act or omission by a 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 the act or a law intended to protect older adults from mistreatment.

*Investigation—*A systematic inquiry conducted by the agency to determine if allegations made in a report of need for protective services can be substantiated or if the older adult referred to in the report 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—5537) 20 Pa.C.S. §§ 5501—5555, known as the [Incompetents] Incapacitated Persons Act.

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*Law enforcement official—*One of the following:

(i) A police officer of a municipality.

(ii) A district attorney.

(iii) The Pennsylvania State Police.

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*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.]

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*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 employe.

*Operator—*A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a facility.

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*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.

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

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*Serious bodily injury—*Injury resulting from abuse or neglect which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

*Serious physical injury—*An injury resulting from abuse or neglect that does one of the following:

(i) Causes a person severe pain.

(ii) Significantly impairs a person's physical functioning, either temporarily or permanently.

* * * * *

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

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

*State Police—*The Pennsylvania State Police.

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:

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* * * * *

(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.

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

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(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) ***

[(4)] (3) ***

[(5)] (4) ***

[(6)] (5) ***

[(7)] (6) ***

* * * * *

§ 15.13. Organization and structure of protective services functions.

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[(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) ***

[(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) ***

[(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) ***

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. When applicable, reports shall comply with §§ 15.141—15.147 (relating to reporting suspected abuse).

(b) No older adult will be found to be abused or neglected solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care. If these factors do result in a finding that the older adult is in need of protective services, the older adult or guardian must provide consent before services can be provided to reduce or remove the need for protective services, except in those cases involving emergency involuntary intervention.

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

(a) Protection from retaliation. Under the act, a person or entity who takes discriminatory, retaliatory or disciplinary action against an employe 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. A person, including the victim, with knowledge sufficient to justify making a report or cooperating with the agency, including possibly providing testimony in an administrative or judicial proceeding, shall be free from intimidation by an employer or by another person or entity. A 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.

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(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.

§ 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:

* * * * *

(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.

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§ 15.25. Report form and content.

(a) Standardized [reports] forms. ***

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§ 15.26. Screening and referral of reports received.

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(b) Referral categories and actions.

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(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 meet] meets one or more of the following criteria:

(A) Is [at least] under 60 years [old] of age.

(B) [Cannot] Has the capacity to perform or obtain, without help, services necessary to maintain physical or mental health, as set forth in § 15.2 (relating to definitions) 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 may 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.

§ 15.27. Handling of completed reports.

* * * * *

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

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 §§ 15.141—15.147.

* * * * *

§ 15.42. Standards for initiating and conducting investigations.

* * * * *

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

(e) *Interference.* If the Department determines that there may be interference with the course of a protective services investigation, the Department reserves the right to intervene in the agency's investigation.

§ 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 [records] case record [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.

* * * * *

§ 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 [a client] an assessment, the agency may seek, when appropriate, a court order under § 15.61 (relating to access to persons).

(c) On the basis of the [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.

* * * * *

§ 15.45. Situations involving State-licensed facilities.

* * * * *

(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.

* * * * *

§ 15.46. Law enforcement agencies as available resources.

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(f) *Simultaneous investigation.* **[If an investigation of a report results in a police investigation]** When both a report of need for protective services and a police report have been filed, the protective services investigation shall continue simultaneously with the police investigation. The agency may take steps to coordinate its investigation with the police investigation **and the investigation of the State Licensing Agency** and shall make available as provided under § 5.105 (relating to limited access to records and disclosure of information) relevant information from the case record.

* * * * *

AGENCY ACCESS TO PERSONS AND RECORDS

§ 15.61. Access to persons.

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

* * * * *

(2) Assess **[client]** the older person's need and develop a service plan for addressing determined needs.

* * * * *

(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.

* * * * *

§ 15.62. Access to records.

(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 **[a client]** an assessment and service plan, or the delivery of needed services to prevent further abuse, neglect, exploitation or abandonment of the older adult reported to need protective services, the protective services caseworker shall clearly inform the party denying access to the records of the legal authority for access as set forth in section **[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:

* * * * *

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 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.

* * * * *

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 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 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).

* * * * *

(4) Nothing in this chapter limits the rights of an older adult to file a petition under [**The Protection Abuse Act (35 P. S. §§ 10181—10190)**] 23 Pa.C.S. §§ 6101—6117 (relating to the Protection from Abuse Act).

* * * * *

PROVISION OF SERVICES

§ 15.91. General.

(a) *Protective [**Services**] services.* Protective services are 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 abandonment. Protective services activities include, but are not limited to, the following:

* * * * *

(7) Arranging for available services needed to fulfill service plans, which may include, as appropriate, arranging for services for other household members in order to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult. **A partial listing of the services which may be made available to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an older adult is found in § 15.93(c) (relating to service plan).**

* * * * *

(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).

* * * * *

§ 15.92. [Client needs assessment] Assessment.

(a) When a report is substantiated by the agency, or if [**a client**] **an** assessment is necessary to determine whether or not the report is substantiated, the agency shall, with the consent of the older adult, provide for a timely [**client**] assessment. If the older adult does not consent, the agency may apply § [§] 15.61 or § 15.71 (relating to access to persons; or involuntary intervention by emergency court order).

* * * * *

§ 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 or his appointed guardian, and other family members, if appropriate. Protective services may not be provided under the act to a person 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).

* * * * *

(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.

§ 15.95. Case management.

* * * * *

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

[(1) **Reassessment shall be carried out within 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 service 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.

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

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

§ 15.96. Termination of protective services.

* * * * *

(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. The]** **When the agency transfers a protective services case, the case record shall reflect the transfer of a client to another agency, the specific agency of referral and the acceptance of the referral by the other agency.**

CONFIDENTIALITY

§ 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 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 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 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).

§ 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.

* * * * *

§ 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.

* * * * *

(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.

* * * * *

FINANCIAL OBLIGATIONS

§ 15.111. Coordination of available resources.

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(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.

* * * * *

§ 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:

* * * * *

(4) Conducting [client] assessments and developing service plans under §§ 15.92 and 15.93 (relating to [client needs] assessment; and service plan).

* * * * *

§ 15.113. Time limitation on service purchases.

* * * * *

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

STAFF TRAINING AND EXPERIENCE STANDARDS

§ 15.121. Protective services staff qualifications.

* * * * *

(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:

* * * * *

§ 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:

* * * * *

(9) [**Incompetence**] **Incapacity.**

* * * * *

§ 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:

* * * * *

(6) Interviewing [**the**] reporters.

* * * * *

(8) Interviewing [**the victim**] victims.

* * * * *

(14) **Coordination with other State agencies.**

§ 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**] **may** include, but not be limited to, the following topics:

* * * * *

(*Editor's Note:* Sections 15.131—15.138 and 15.141—15.149 are proposed to be added. They are printed in regular type to enhance readability.)

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 employe 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 employe of his obligations under this section.

§ 15.133. Facility responsibilities

(a) A facility may not hire an applicant nor retain an employe 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 employe 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) Employees 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 employee, the Department will require the applicant or employee to obtain and submit to the Department court documents showing disposition, within 60 days of the date the Department notifies the applicant or employee. Failure to provide court documents as required will result in an administrative prohibition against hiring or retention.

(c) 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 employee in complying with this requirement if requested.

(e) Applicants and facility personnel shall obtain both Pennsylvania and FBI criminal history record information reports obtained no longer than 1 year prior to their application for employment. Administrators, operators and non-exempt employees shall, within the time limits required for submitting criminal checks, provide Pennsylvania and FBI checks obtained no longer than 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 employees, 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.

§ 15.135. 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 under 18 Pa.C.S. §§ 9152—9183 (relating to Criminal History Record Infor-

mation Act) and, if applicable, Federal regulations at 28 CFR 16.34 (relating to procedure to obtain change, correction or update of identification records).

(b) If an applicant's criminal history record is, as a result of a challenge by the applicant, changed so as to remove a disqualification for employment, a facility may reconsider the applicant's application for positions available at that time.

(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.

(a) Facility personnel may review, challenge and appeal the completeness or accuracy of criminal history record information report under 18 Pa.C.S. §§ 9152—9183 (relating to Criminal History Record Information Act) and, if applicable, Federal regulations in 28 CFR 16.34 (relating to procedure to obtain change, correction or update of identification records).

(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 shall reinstate the employee to either the employee's former position or an equivalent position.

(c) An employee's challenge to the criminal record information report is limited to the appeal rights set forth in 18 Pa.C.S. §§ 9152—9183.

§ 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) Employes 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.

§ 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 the following:

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

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

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

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

(5) The director, or an individual specifically designated in writing by the director, of a 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.*

(1) An administrator or a designee who intentionally or willfully fails to comply or obstructs compliance with §§ 15.141—15.147 or who intimidates or commits a retaliatory act against an employe 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).

(2) A facility owner that intentionally or willfully fails to comply with or obstructs compliance with §§ 15.141—15.147 or that intimidates or commits a retaliatory act against an employe 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 which regulates 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 will 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.

(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 notify the police.

§ 15.149. Immunity.

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

OTHER ADMINISTRATIVE PROVISIONS

§ 15.[131]161. Waivers.

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