

# PROPOSED RULEMAKING

## DEPARTMENT OF LABOR AND INDUSTRY

[ 34 PA. CODE CH. 123 ]

### Impairment Ratings

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (BWC) proposes to amend Subchapter B (relating to Impairment Ratings) of Chapter 123 (relating to General Provisions—Part II) in conformance with the act of October 24, 2018 (P.L. 714, No. 111) (Act 111 of 2018) and recent case law.

#### Statutory Authority

The Department proposes these amendments under the authority contained in sections 401.1 and 435(a) of the Workers' Compensation Act (act) (77 P.S. §§ 710 and 991(a)) and section 2205 of The Administrative Code of 1929 (71 P.S. § 565).

#### Background

In 2016, the Pennsylvania Supreme Court determined that the then-existing provisions of the act governing Impairment Rating Evaluations (IREs) was an unconstitutional delegation of legislative authority. *Protz v. Workers' Compensation Appeal Bd. (Derry Area School District)*, 161 A.3d 827 (Pa. 2016). In response, the General Assembly enacted Act 111 of 2018, which repealed section 306(a.2) of the act (77 P.S. § 511.2) and replaced it with section 306(a.3) (77 P.S. § 511.3), altering the statutory scheme governing the IRE process. Section 306(a.3) has been found constitutional. *Pennsylvania AFL-CIO v. Commonwealth of Pennsylvania et al.*, 219 A.3d 306 (Pa. Cmwlth. 2019) *aff'd per curiam* (Aug. 18, 2020).

Act 111 of 2018 changed the IRE process in two ways; it required IRE determinations to be made under the American Medical Association (AMA) "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009) and it reduced the threshold impairment rating from 50% to 35%. See 77 P.S. § 511.3(1) and (2). The Department's existing regulations concerning impairment ratings are based on the now-repealed section 306(a.2) and are therefore inconsistent with the act.

The existing regulations do not specify the edition of the AMA Guides to the Evaluation of Permanent Impairment that must be used to conduct IREs. Additionally, the existing regulations provide that impairment rating of less than 50% is required to adjust the employee's benefit status from total to partial. See 34 Pa. Code § 123.105(d), (e) (relating to impairment rating determination). This is inconsistent with Act 111 of 2018, which provides that an employee is totally disabled if the impairment rating is equal to or greater than 35%.

In addition to the changes made in Act 111 of 2018, the IRE process has been the subject of a number of appellate court holdings. Cases decided since the regulations were enacted have addressed the timing of IREs and whether the relief, if appropriate, is automatic; whether an employer may designate the IRE physician for the second IRE; and the employee's basis for appeal of the adjustment of benefit status during employee's receipt of 500 weeks of partial disability benefits. Specifically, in *Gardner v. WCAB (Genesis Health Ventures)*, 888 A.2d 758, 759 (Pa. 2005), the Pennsylvania Supreme Court

clarified issues concerning the timing of IREs to obtain an automatic reduction in benefits. The Court held that "once a claimant receives, that is, comes into possession, of 104 weeks of total disability benefits, the insurer has sixty days from that date during which it must request that the claimant submit to an IRE for the purposes of obtaining the automatic relief set forth in 77 P.S. § 511.2(2)." *Id.* at 767-68. However, the failure to request submission to an IRE during this 60-day time limit does not preclude an insurer from requesting claimant submit to a later IRE, the results of which would not be self-executing, but rather subject to the "traditional administrative process." *Id.* at 768. The Court refers to the traditional administrative process in reference to the former subsection 306(a.2)(5) which, per the Court, "requires an adjudication or agreement under 77 P.S. § 512 before benefits may be modified. . ." *Id.* at 766; see also *Womack v. WCAB (School Dist. of Philadelphia)*, 83 A.3d 1139, 1146 (Pa. Cmwlth. 2014) (citing *Id.* at 768 (a utilization review matter which referenced the traditional administrative process as stated by Gardner as "an adjudication or agreement between the parties.")). In *Lewis v. WCAB (Wal-Mart Stores, Inc.)*, 856 A.2d 313, 317-18 (Pa. Cmwlth. 2004), Commonwealth Court held that the insurer has "the right to two IREs within a twelve-month period." Furthermore, the employer is not authorized to unilaterally designate an IRE physician; rather, "agreement of the parties or Bureau designation are the sole and exclusive avenues for physician selection." *Id.* at 319. Finally, in *Johnson v. WCAB (Sealy Components Group)*, 982 A.2d 1253, 1257, 1260 (Pa. Cmwlth. 2009), Commonwealth Court determined Claimant's appeal of the IRE determination (based on the lack of the doctor's qualifications) almost a year after she received a Notice of Change of Workers' Compensation Disability Status was prohibited because she "did not produce the determination mandated by Section 306(a.2)(4) of the Act showing that she met the threshold impairment rating. . ."

The proposed amendments adjust remaining regulatory sections to conform with Act 111 of 2018. They also address the appellate court holdings outlined previously and create a regulatory scheme consistent with the direction of the courts.

#### Compliance with Executive Order 1996-1

The Department engaged in public and stakeholder outreach during the drafting process. The Department sought comment from all participants in the workers' compensation system through its Workers' Compensation Automation and Integration System (WCAIS). WCAIS is the enterprise tool used regularly by every workers' compensation employer, insurer (or self-insurer) and legal practitioner to file and manage workers' compensation claims.

Four comments were received, which the Department has carefully reviewed. At least one comment dealt with a statutory provision that the Department does not have authority to alter. There was also a request to extend the comment period and a request for a copy of the regulation. An additional public comment period will follow publication of this proposed rulemaking. The Department will review all comments submitted in response to this proposed rulemaking.

*Purpose*

These proposed amendments seek consistency with Act 111 of 2018 and recent case law, thereby preventing confusion between the regulations and corresponding statute or case law. These changes will avoid unnecessary litigation resulting from outdated regulations which will prevent clogging of the dockets and result in cost savings to the courts and parties.

*Affected Persons*

The persons affected by the proposed amendments include the physicians performing IREs, workers' compensation judges and staff, Workers' Compensation Appeal Board and staff, appellate courts and administrators, attorneys practicing workers' compensation, the Department's BWC Health Care Services division, and parties seeking and defending against IREs. The parties in workers' compensation cases include injured employees, self-insured employers, employers, insurance companies issuing workers' compensation policies, and the Department's BWC representing special funds created under the act.

*Fiscal Impact*

The amendments will not result in increased costs to the public or private sectors. The proposed amendments are designed to conform the regulations to the act, as amended, which would reduce confusion and unnecessary litigation caused by outdated regulations. Because the workers' compensation system is funded through assessments on workers' compensation insurance carriers and self-insured employers, any savings realized in the administration of the system may result in savings to the regulated community through lowered assessments. See section 446 of the act (77 P.S. § 1000.2), creating the Workers' Compensation Administration Fund and providing for maintenance of the fund through an annual assessment.

*Summary of Proposed Rulemaking**§ 123.101. Purpose*

This section is proposed to be amended to delete an obsolete reference to section 306(a.2) of the act. Section 306(a.2), regarding IREs, was repealed by Act 111 of 2018 and replaced by section 306(a.3), regarding IREs.

*§ 123.102. IRE requests*

Subsection (a) is proposed to be amended to require the adjustment of an employee's benefits status be automatic and relate back to the expiration of the employee's receipt of 104 weeks of total disability benefits, if the evaluation is scheduled to occur during the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits. This subsection is further amended to indicate that if the evaluation is requested and occurs beyond the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits, then the adjustment of disability status must be achieved through litigation and, if successful, shall be effective as of the date of the evaluation or as determined by the evaluating physician.

The proposed amendments to subsection (c) confirm the adjustment of disability status shall be automatic and relate back to the expiration of the employee's receipt of 104 weeks of total disability benefits if the insurer requests the IRE during the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits and the employee fails, for any reason, to attend the IRE, resulting in the performance of the IRE more than 60 days beyond the expiration of the 104 week period.

Lastly, subsection (f) is proposed to be amended to refer to the correct section of the act based on Act 111 of 2018 and to again clarify that where an IRE is performed outside the 60-day window after the receipt of 104 weeks of total disability benefits because of the insurer's failure to timely request it must be subject to a modification or other appropriate petition before benefits can be reduced.

*§ 123.103. Physicians*

The proposed amendments to subsection (d), paragraphs (1) and (2), require physicians designated by the Department to perform IREs to attend a Departmentally approved training course on the performance of evaluations under the AMA "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009) and provide certification upon passage of a Departmentally approved examination on the performance of evaluations under the AMA "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009), to be consistent with the requirements of Act 111 of 2018 that impairment rating be determined under the AMA Guides 6th edition (second printing, April 2009).

*§ 123.104. Initial IRE; designation of physician by Department*

The title of this section is proposed to be amended to correctly identify that it deals with the designation of physicians by the Department, not limited to the initial IRE.

This section is proposed to be amended to delete the first sentence of subsection (b), which incorrectly indicates the Department's duty to designate an IRE physician pertains only to the initial IRE request.

*§ 123.105. Impairment rating determination*

Subsection (a) is proposed to be amended to conform with Act 111 of 2018 and require that IREs be performed using the 6th edition (second printing April 2009) of the AMA "Guides to the Evaluation of Permanent Impairment."

Proposed subsection (c) requires that the Face Sheet be attached to a Report of Medical Evaluation as specified in the AMA "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009).

Subsection (d), including paragraph (1), is proposed to be amended to reflect the change in the threshold impairment rating required to adjust the employee's benefits status from total to partial from less than 50% to less than 35%. It also reflects the applicability of this section to those evaluations conducted during the 60-day period subsequent to the expiration of the 104-week period, to reflect the changes in case law described previously in the Background section. See also subsection (e) as follows.

Subsection (d.1) is proposed to be added to address the timing of IREs and, if appropriate, whether the results of the IRE are automatic thereby requiring use of Form LIBC-764, "Notice of Change in Workers' Compensation Disability Status" (Form LIBC-764) or can only be achieved through litigation. Specifically, this subsection is proposed to be amended to clarify that Form LIBC-764 shall be used when the IRE is requested and performed during the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits and results in an impairment rating of less than 35%. This subsection is also proposed to be amended to require the adjustment of the disability status be achieved through the traditional administrative process, not by completing Form LIBC-764, if the evaluation is requested and occurs beyond the 60-day period subse-

quent to the expiration of the employee's receipt of 104 weeks of total disability benefits and results in an impairment rating of less than 35%.

Subsection (e) is proposed to be amended to reflect the change the threshold impairment rating required to adjust the employee's benefits status from total to partial from less than 50% to less than 35%.

Lastly, subsection (f) is proposed to be amended to provide that the employee may appeal the adjustment of benefit status to a workers' compensation judge at any time during the employee's receipt of 500 weeks of partial benefits provided there is a determination that the employee meets the threshold rating that is equal to or greater than 35% impairment under the 6th edition (second printing April 2009) of the AMA "Guides to the Evaluation of Permanent Impairment."

#### *Reporting, Record-Keeping and Paperwork Requirements*

The existing forms used by the parties and the BWC have already been modified to be consistent with Act 111 of 2018. The proposed amendments do not require further modification to the existing forms, and thus do not impose any additional reporting, recording or paperwork requirements on either the Commonwealth or the regulated community.

#### *Sunset Date*

A sunset date is not appropriate for this proposed rulemaking. The BWC will periodically monitor this proposed rulemaking and submit amendments as needed.

#### *Effective Date*

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

#### *Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Marianne H. Saylor, Esquire, Director, Bureau of Workers' Compensation, 651 Boas Street, 8th Floor, Harrisburg, PA 17121, [masaylor@pa.gov](mailto:masaylor@pa.gov) within 30 days after publication in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 12, 2023, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Labor and Industry Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

NANCY WALKER,  
*Acting Secretary*

**Fiscal Note:** 12-117. No fiscal impact; recommends adoption.

## Annex A

### TITLE 34. LABOR AND INDUSTRY PART VIII. BUREAU OF WORKERS' COMPENSATION

#### CHAPTER 123. GENERAL PROVISIONS—PART II Subchapter B. IMPAIRMENT RATINGS

##### § 123.101. Purpose.

This subchapter interprets section [ 306(a.2) ] 306(a.3) of the act [ (77 P.S. § 511.2) ] (77 P.S. § 511.3) which provides for a determination of whole body impairment due to the compensable injury after the receipt of 104 weeks of total disability compensation, unless otherwise agreed to by the parties.

##### § 123.102. IRE requests.

(a) During the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits, the insurer may request the employee's attendance at an IRE. If the evaluation is scheduled to occur during this 60-day time period, the adjustment of the benefit status shall **be automatic and** relate back to the expiration of the employee's receipt of 104 weeks of total disability benefits. **[ In all other cases, the adjustment of the disability status shall be effective as of the date of the evaluation or as determined by the evaluating physician. ]** **If the evaluation is requested and occurs beyond the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits, the adjustment of the disability status must be achieved through the traditional administrative process such as by filing a Petition for Modification and, if successful, the adjustment of the disability status shall be effective as of the date of the evaluation or as determined by the evaluating physician.**

(b) Absent agreement between the insurer and the employee, an IRE may not be performed prior to the expiration of the employee's receipt of 104 weeks of total disability benefits.

(c) When an insurer requests the employee's attendance at an IRE during the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits and the employee fails, for any reason, to attend the IRE, when the failure results in the performance of the IRE more than 60 days beyond the expiration of the 104-week period, the adjustment of disability status shall **be automatic and** relate back to the expiration of the employee's receipt of 104 weeks of total disability benefits.

(d) The employee's receipt of 104 weeks of total disability benefits shall be calculated on a cumulative basis.

(e) The insurer shall request the employee's attendance at the IRE in writing on Form LIBC-765, "Impairment Rating Evaluation Appointment," and specify therein the date, time and location of the evaluation and the name of the physician performing the evaluation, as agreed by the parties or designated by the Department. The request shall be made to the employee and employee's counsel, if known.

(f) Consistent with section [ 306(a.2)(6) ] 306(a.3)(6) of the act [ (77 P.S. § 511.2) ] (77 P.S. § 511.3(6)), the insurer's failure to request the evaluation during the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits

[ may ] **does** not result in a waiver of the insurer's right to compel the employee's attendance at an IRE, **however the results of the evaluation may only be used to reduce benefits through the traditional administrative process such as by filing a Petition for Modification.**

(g) The insurer maintains the right to request and receive an IRE twice in a 12-month period. The request and performance of IREs may not preclude the insurer from compelling the employee's attendance at independent medical examinations or other expert interviews under section 314 of the act (77 P.S. § 651).

(h) The employee's failure to attend the IRE under this section may result in a suspension of the employee's right to benefits consistent with section 314(a) of the act.

### § 123.103. Physicians.

\* \* \* \* \*

(d) In addition to the requirements of subsections (a) and (b), physicians designated by the Department to perform IREs shall meet training and certification requirements which may include, but are not limited to, one or more of the following:

(1) Required attendance at a Departmentally approved training course on the performance of evaluations under the American Medical Association "Guides to the Evaluation of Permanent Impairment[.]" **6th edition (second printing April 2009).**

(2) Certification upon passage of a Departmentally approved examination on the American Medical Association "Guides to the Evaluation of Permanent Impairment[.]" **6th edition (second printing April 2009).**

(3) Other requirements as approved by the Department.

### § 123.104. [ Initial IRE; designation ] **Designation** of physician by Department.

(a) The insurer is responsible for scheduling the initial IRE. Only the insurer may request that the Department designate an IRE physician.

(b) **[ The Department's duty to designate an IRE physician pertains only to the initial IRE. ]** A list of Departmentally approved IRE physicians will be available upon request.

(c) The request to designate a physician shall be made on Form LIBC-766, "Request for Designation of a Physician to Perform an Impairment Rating Evaluation."

(d) Within 20 days of receipt of the designation request, the Department will designate a physician to perform the IRE.

(e) The Department will provide the name and address of the physician designated to perform the IRE to the employee, the insurer and the attorneys for the parties, if known.

### § 123.105. Impairment rating determination.

(a) When properly requested under § 123.102 (relating to IRE requests), an IRE shall be conducted in all cases and an impairment rating determination must result under the **[ most recent edition of the American Medical Association ]** "Guides to the Evaluation of Permanent Impairment[.]" **6th edition (second printing April 2009).**

(b) To ascertain an accurate percentage of the employee's whole body impairment, when the evaluating physician determines that the compensable injury incorporates more than one pathology, the evaluating physician may refer the employee to one or more physicians specializing in the specific pathologies which constitute the compensable injury. Any physician chosen by the evaluating physician to assist in ascertaining the percentage of whole body impairment shall possess the qualifications as specified in § 123.103(a) and (b) (relating to physicians). The referring physician remains responsible for determining the whole body impairment rating of the employee.

(c) The physician performing the IRE shall complete Form LIBC-767, "Impairment Rating Determination Face Sheet" (Face Sheet), which sets forth the impairment rating of the compensable injury. The physician shall attach to the Face Sheet the "Report of Medical Evaluation" as specified in the American Medical Association "Guides to the Evaluation of Permanent Impairment[.]" **6th edition (second printing April 2009).** The Face Sheet and report shall be provided to the employee, employee's counsel, if known, insurer and the Department within 30 days from the date of the impairment evaluation.

(d) If the evaluation **is requested and performed during the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits and** results in an impairment rating of less than **[ 50 ] 35%**, the employee shall receive benefits partial in character. To adjust the status of the employee's benefits from total to partial, the insurer shall provide notice to the employee, the employee's counsel, if known, and the Department, on Form LIBC-764, "Notice of Change in Workers' Compensation Disability Status," of the following:

(1) The evaluation has resulted in an impairment rating of less than **[ 50 ] 35%**.

(2) Sixty days from the date of the notice the employee's benefit status shall be adjusted from total to partial.

(3) The adjustment of benefit status does not change the amount of the weekly workers' compensation benefit.

(4) An employee may only receive partial disability benefits for a maximum of 500 weeks.

(5) The employee may appeal the adjustment of benefit status to a workers' compensation judge by filing a Petition for Review with the Department.

**(d.1) If the evaluation is requested and occurs beyond the 60-day period subsequent to the expiration of the employee's receipt of 104 weeks of total disability benefits, and results in an impairment rating of less than 35%, the adjustment of the employee's disability status can only be achieved through the traditional administrative process such as by filing a petition for modification. This adjustment cannot be achieved by completing Form LIBC-764, "Notice of Change in Workers' Compensation Disability Status."**

(e) If the evaluation results in an impairment rating that is equal to or greater than **[ 50 ] 35%**, the employee shall be presumed to be totally disabled and shall continue to receive total disability compensation. The presumption of total disability may be rebutted at any time by a demonstration of earning power in accordance with section 306(b)(2) of the act (77 P.S. § 512(b)(2)) or by a subsequent IRE which results in an impairment rating of less than **[ 50 ] 35%**.

(f) At any time during the receipt of 500 weeks of partial disability compensation, the employee may appeal the adjustment of benefit status to a workers' compensation judge by filing a Petition for Review, **provided there is a determination that the employee meets the threshold impairment rating that is equal to or greater than 35% impairment under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009).**

[Pa.B. Doc. No. 23-534. Filed for public inspection April 21, 2023, 9:00 a.m.]

## DEPARTMENT OF HUMAN SERVICES

[ 55 PA. CODE CH. 15 ]

### Protective Services for Adults

#### *Statutory Authority*

Notice is hereby given that the Department of Human Services (Department) under the authority of section 701 of the act of October 7, 2010 (P.L. 484, No. 70), known as the Adult Protective Services Act (Act 70 or the act) (35 P.S. §§ 10210.101—10210.704), intends to adopt this proposed rulemaking set forth in Annex A.

#### *Effective Date*

This proposed rulemaking will be effective 60 calendar days after publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

#### *Purpose and Explanation of the Regulation*

The purpose of this proposed rulemaking is to strengthen and clarify the Statewide system of protective services that prevent, reduce or eliminate the abuse, neglect, exploitation or abandonment of adults 18 years of age or older but under 60 years of age who have a physical or mental impairment that substantially limits one or more major life activities.

Act 70 was enacted to provide a system to address situations of abuse, neglect, abandonment and exploitation of adults 18 years of age or older but under 60 years of age with disabilities. Prior to that time, the Commonwealth lacked the authority to help those who needed temporary intervention to ensure their well-being and ability to live safe and productive lives. A third-party agency (agency), selected by the Department through a competitive bidding process, began to implement the Adult Protective Services (APS) program on April 1, 2015. The agency receives allegations of abuse, neglect, exploitation or abandonment, which are referred by a Statewide hotline that is operated and maintained by the Department.

Act 70 provides for the detection, prevention, reduction and elimination of abuse, neglect, exploitation and abandonment for adults who lack the capacity to protect themselves and are at imminent risk of abuse, neglect, exploitation or abandonment. In providing protective services, Act 70 declares that adults in need of protective services have the right to make choices, subject to the laws and regulations of this Commonwealth, regarding their lifestyles, relationships, bodies and health, even when those choices present risks to themselves or their property. Adults in need of protective services also have

the right to refuse protective services and the right to receive services in the most integrated settings and in the manner least restrictive of individual liberties.

Act 70 directed the Department to develop, in consultation with the adults it protects, their families and advocates, and all other departments that are affected by the act, the regulations necessary to implement Act 70. See 35 P.S. § 10210.701(a). The Department commenced 23 stakeholder meetings between January 2011 and September 2015. Participants included advocates for people with physical disabilities, intellectual disabilities, brain injuries, provider associations for in-home care, long-term living along with county commissioners, a mental health consumer's association, a planning and advisory group for people with disabilities, a university-based research and advocacy entity, representatives from Department programs that serve adults with physical or mental impairments, and adults with disabilities. The stakeholder group advised the Department on many of the novel features of Act 70 related to adults with disabilities and provided diverse perspectives on how this proposed rulemaking should be crafted. The Department has incorporated many of the stakeholder group's recommendations into this proposed rulemaking.

This proposed rulemaking will enhance the rights and protections of adults 18 years of age or older but under 60 years of age who have a physical or mental impairment that substantially limits one or more major life activities by augmenting the statutory requirements of Act 70. Since the implementation of Act 70, explanation and elaboration needed on the statutory language was accomplished only through contract or written policy memorandum. This proposed rulemaking adds transparency and specificity to the Act 70 requirements to ensure consistent and timely investigations of allegations of abuse, neglect, exploitation or abandonment, and when necessary, to provide services to prevent, reduce or eliminate the risk to person or property. This regulation will also aid stakeholders in understanding the law and how it works to mitigate or reduce the effects of abuse and neglect. The act of November 6, 1987 (P.L. 381, No. 79), known as the Older Adults Protective Services Act (OAPSA) (35 P.S. §§ 10225.101—10225.5102) was the starting point for Act 70. Moreover, the OAPSA regulations codified at 6 Pa. Code Chapter 15 (relating to protective services for older adults) were also the starting point for these regulations. This helps ensure consistency throughout the protective services processes in this Commonwealth.

#### *Affected Individuals and Organizations*

Individuals with disabilities, who are 18 years of age or older but under 60 years of age, and who are at imminent risk of danger to their person or property, are affected by this proposed rulemaking. This proposed rulemaking provides a system of temporary interventions to ensure individuals' well-being and ability to live safe and productive lives.

A person in the community concerned about an imminent risk of danger to an adult's person or property is also affected. Facilities that receive public funds to provide care and support to adults with disabilities, and employees of those facilities, are also affected by this proposed rulemaking. This is because facilities are now mandated to follow oral and written reporting procedures when they have reason to suspect that a recipient is the victim of abuse, neglect, exploitation or abandonment.

Commonwealth agencies are also affected by this proposed rulemaking because they are notified when an adult reported to need protective services is a recipient of

one of their programs or is living in a facility that the agency licenses or regulates. In addition, law enforcement is affected by this proposed rulemaking because, during the protective services process, mandatory reporters are required to submit written and oral reports to law enforcement when mandatory reporters suspect that a recipient is a victim of designated types of abuse that also may be crimes. Upon receipt of these reports, law enforcement may be required to notify facility administrators, conduct criminal investigations and make notifications regarding criminal charges. Further, during protective services investigations, law enforcement may be called upon to conduct welfare checks, by which the police legally enter a residence when there is no response at the door and there are reasonable grounds to believe that an inhabitant is endangered.

#### *Accomplishments and Benefits*

This proposed rulemaking supports the existing APS reporting system, particularly for adults substantially limited by a physical or mental impairment and at imminent risk to their person or property, and for providing temporary interventions to ensure their well-being and ability to live safe and productive lives. This proposed rulemaking protects health and safety, privacy, autonomy and individual choice by strengthening and clarifying the requirements of Act 70 and adding transparency to the existing systems.

#### *Paperwork Requirements*

Written reports of alleged abuse, neglect, exploitation or abandonment shall be submitted for every oral report made by facilities designated as mandatory reporters. When a mandatory reporter is not required to report to a Commonwealth licensing or regulating agency, the reporter shall use a two-page mandatory abuse report form. This form is a paperwork requirement, which takes approximately a half-hour or less to complete. The reporter is required to submit the form within 48 hours by e-mail or fax to the agency, and in certain cases, to law enforcement. The 48-hour, written reporting requirement is required by Act 70. This regulation emphasizes that requirement and adds information on what happens to the report after it is received by the agency.

Facilities subject to this paperwork requirement include hospitals, county mental health and crisis centers, domestic violence agencies and individuals authorized by a Commonwealth licensing agency or board to practice some component of the healing arts for adults. In addition, skilled nursing facilities licensed by the Department of Health are subject to this paperwork requirement.

This proposed rulemaking does not change the timeframes set forth in Act 70 for the completion of required paperwork. The paperwork consists of written reports to be submitted to the agency and, when applicable, to law enforcement. No new legal, consulting or accounting procedures are required by the regulation.

#### *Proposed Rulemaking*

Section 15.1 (relating to scope) clarifies the purpose of the act. This section explains how Chapter 15 applies to adults in need of protective service, parties who make and investigate reports, as well as families and facilities.

Section 15.2 (relating to definitions) proposes to include definitions for the following terms: "abandonment," "abuse," "act," "administrator," "adult," "adult in need of protective services," "agency," "assessment," "care," "care-giver," "case record," "court," "department," "desertion," "employee," "exploitation," "facility," "geographic area,"

"health care provider," "incident reporting system," "informed consent," "intimidation," "investigation," "law enforcement official," "least restrictive alternative," "major life activities," "mandatory reporting," "mental anguish," "most integrated setting," "neglect," "pain," "protective services," "public funds," "recipient," "report," "Secretary," "serious bodily injury," "serious injury," "service plan," "sexual abuse," "State-licensed facility," "State-operated facility" and "subject." Many of these definitions come from Act 70 and others are taken from the OAPSA and modified to be relevant to Act 70 and this proposed rulemaking. This allows for consistency in protective services. About one-third of the definitions in this proposed rulemaking are new.

Section 15.3 (relating to waivers) creates the process for facilities to provide a written request to the Department for unreasonable and undue hardship. These waivers would be provided to the Secretary of the Department or their designee for consideration.

Section 15.11 (relating to administrative functions and responsibilities of the Department) reiterates statutory requirements related to contracted agencies, education and coordination. The Department must contract with one or more agencies. The Department is to develop and maintain an ongoing program of public information and education. The Department is also responsible for providing coordination, to the extent permitted by law, with child protective and older adult protective services.

Section 15.12 (relating to administrative functions and responsibilities of agencies) elaborates on the statutory requirement for the agency to investigate and provide protective services to adults. This section also proposes the scenarios under which an agency shall refer a report of need to another agency of the Department to avoid a conflict.

The following sections are related to the reporting of suspected abuse, neglect, exploitation or abandonment.

Section 15.21 (relating to general reporting provisions) proposes to restate the important statutory provision that anyone having reasonable cause to suspect abuse or neglect may report this to APS.

Section 15.22 (relating to safeguards for those who make or receive reports) provides for clarification of the individuals protected from discriminatory, retaliatory or disciplinary action in Act 70 due to a report and reiterates which individuals may bring civil suit for an employer or any other person who takes discriminatory, retaliatory or disciplinary action in relation to a report.

Section 15.23 (relating to receiving reports; general agency responsibility) reiterates the statutory requirement that there must be 24-hours a day, 7-days a week capability of receiving reports of adults in need of protective services. This section also proposes how the agency is to be accessible by requiring, for example, that certain professional staff will be accessible and the public will have access to a toll-free hotline to make reports of need. This hotline must have a TTY voice relay system or similar technology. TTY is a special device that lets people who are deaf, hard of hearing or speech-impaired use the telephone to communicate, by allowing them to type messages. In addition, individuals with limited English proficiency may report using language resources.

Section 15.24 (relating to anonymity of reporters) allows for the anonymity of reporters except for mandatory reporters as defined by the act.

Section 15.25 (relating to report form and content) clarifies that reports are to be received in a manner

prescribed by the Department and provides the minimum content that should be contained in a report.

Section 15.26 (relating to screening and referral of reports received) elaborates on the screening process in Act 70 and provides further clarification of the specific categorizations in which each report received can be placed. Each categorization (priority, non-priority, another geographic area, and no need or not eligible for protective services) must meet minimum requirements for initiation as well as minimum requirements for determining when reports are to be categorized as “no need” or “not eligible for protective services.”

Section 15.41 (relating to reports required to be investigated) reiterates Act 70’s requirement that all reports are to be investigated by the agency and the timeline for initiation of the investigation. The regulation requires that only trained investigators may conduct investigations and when trained investigators are not available, the agency must contact the Department.

Section 15.42 (relating to standards for initiating and conducting investigations) elaborates on the standards and timelines for initiating, conducting and concluding an investigation when the report is a priority, nonpriority or categorized as no need or not eligible for protective services. This proposed rulemaking also provides for when the Department can conduct an investigation and requires the agency to refer an investigation if there is a conflict of interest.

In §§ 15.43 and 15.44 (relating to resolution of unsubstantiated reports; and resolution of substantiated reports), this proposed rulemaking provides for the steps to be followed after an investigation finds that a report is unsubstantiated or substantiated. These sections also reiterate the act’s requirements for referral of needed services in an unsubstantiated report and the creation of a service plan for a substantiated report.

In § 15.45 (relating to State-licensed and State-operated facilities), the proposed rulemaking requires that when a report involves a State-licensed facility, the agency that provides APS is required to notify the State agency that licenses the facility. The agency is still responsible for investigating and providing protective services, if needed. The regulation also provides that the agency may seek judicial relief if it finds that the State-licensed facility is jeopardizing the adult’s health and safety.

This proposed rulemaking requires that the agency notify the appropriate entity that has jurisdiction over a State-licensed facility of a report of need for an adult in that facility. The agency that provides APS may coordinate its investigation with the licensing agency’s investigation to avoid duplication and develop remedies as permitted by law.

This proposed rulemaking also requires that, when an agency receives a report concerning a consumer who resides in a State-operated facility, the agency is to initiate the investigation by referring the report to the appropriate administrative or program office under its patient rights program. The agency must monitor the investigation, but the referral may suffice for the purposes of the agency’s investigatory duties. The referral to the appropriate administrative or program office does not relieve the agency of its responsibility to provide protective services.

In § 15.46 (relating to law enforcement officials), this proposed rulemaking reiterates the necessity for cooperation between law enforcement officials and APS casework-

ers. This proposed rulemaking seeks to elaborate on what is needed for coordination, such as established points of contact with law enforcement officials and procedures for when to make reports. This proposed rulemaking also provides for parameters on simultaneous investigations and when a protective services caseworker may request the assistance of a law enforcement officer for safety purposes.

Section 15.47 (relating to emergency medical services) reiterates the act’s requirement that a consumer has the right to normal protections of the emergency medical services or police protection that would be available to anyone, regardless of age, in similar circumstances.

Section 15.61 (relating to access to adults) reiterates the act’s language regarding when agencies shall have access to the adult that may need protective services, and how agencies may proceed if access is denied. In conjunction with §§ 15.62, 15.63, 15.71 and 15.72, this proposed rulemaking, along with the act, establishes a framework for agencies to access adults in need and their confidential records that are necessary to complete an investigation.

Sections 15.73—15.76 of this proposed rulemaking track the act’s language regarding actions taken when a court order for access or removal of a consumer is granted. This proposed rulemaking also requires that these emergency actions be documented in the case record.

Section 15.81 (relating to rights of adults reported to need protective services) was developed to clarify the rights that adults in need have under the act. The agency must ensure that these specific rights are protected. This section clarifies that these adults have the right to privacy and to additional information contained in the report, as well as the right to appeal, to request protection from abuse orders, to refuse protective services except as provided by court order, to obtain counsel if there are court proceedings and to have their personal information maintained in a confidential manner by the agency.

Sections 15.91—15.96 (relating to provision of services) provide clarification to the agency on the expectations of the Department on how to provide necessary services, how to determine what specific needs an adult has, how to develop a plan to identify the needed services and what may be included, how the delivery of the risk reducing services should take place, how to document in the case management system with what should be included, when case closure and termination are appropriate and how to complete such termination and closure.

Sections 15.101—15.105 (relating to confidentiality) provide how the agency is required to safeguard records to maintain confidentiality and prevent unauthorized access. This proposed rulemaking tracks the confidentiality requirements in the act and sets forth records retention requirements for unsubstantiated reports, proposes requirements regarding agency staff training and staff responsibilities, imposes penalties for violation of confidentiality requirements and imposes limits on access to records and disclosures of information.

Sections 15.111 and 15.112 (relating to financial obligations) clarify for the agency that funding authorized under the act may not be used for protective services when public or private entitlements or other resources are available to the adult. The agency shall determine if the adult is eligible for any public or private entitlements prior to authorizing protective service funding. Once eligibility is established and it is determined that re-

sources are not available, the agency may proceed with using protective service funding. The purchase of these services is limited to a 30-day period and may be renewed with the Department's approval.

In §§ 15.121—15.123 (relating to staff qualifications and training), this proposed rulemaking specifies the qualifications and training required for agency staff and the availability of the training provided by the Department.

In § 15.131 (relating to general reporting requirements), this proposed rulemaking specifies the general reporting requirements for mandatory reporters as required by the act. A mandatory reporter is required to make an immediate oral report to the APS Hotline, followed up within 48 hours with a written report to the appropriate protective services agency. In addition, as proposed by § 15.132 (relating to additional reporting requirements) and required by the act, if the allegation involves sexual abuse, serious injury, serious bodily injury or suspicious death, the administrator or employee shall also immediately make an oral report to local law enforcement and to the Department, followed up within 48 hours with a joint written report to law enforcement.

Section 15.133 (relating to contents of reports) clarifies that a report shall be made on a form prescribed by the Department and outlines the minimum content required in each report.

Section 15.134 (relating to reports to Department and coroner by agencies) restates the act's requirement of an agency to provide a report within 48 hours to the Department if the report involves sexual abuse, serious injury or serious bodily injury or suspicious death and provides for minimum reporting requirements. This section also restates the act's requirement for an agency to provide a report to a coroner or medical examiner if there is reasonable cause to suspect that the consumer died because of abuse or neglect.

Section 15.135 (relating to investigation) clarifies the requirements for the agency's response to receipt of a report under §§ 15.131 and 15.132.

Section 15.136 (relating to restrictions on employees) elaborates on the act's requirements for a facility to suspend an employee or implement an approved plan of supervision when the employee is alleged to have committed abuse.

Section 15.137 (relating to confidentiality of and access to confidential reports) reiterates the act's rules for confidentiality and exceptions to the rule for designated entities. This section also prohibits the release of information that would identify the individual who made a report under this chapter or an individual who cooperated in a subsequent investigation.

Section 15.138 (relating to penalties) clarifies the act's administrative penalties that will be imposed by the Department for violation of §§ 15.131—15.137, as well as the criminal penalties enacted in Act 70.

Section 15.139 (relating to immunity) restates the immunity provided by the act for an administrator or facility that acts in good faith.

Sections 15.150—15.153 (relating to appeals and fair hearings), in conjunction with § 15.81 and § 15.93 (relating to service plan) and the act, the regulation proposes how the agency shall safeguard the rights of adults in need of protective services, which include the right to refuse protective services. The Department is proposing to add an appeals procedure for the act's right to appeal the

denial of protective services. Under this appeals procedure, an adult or the adult's legal representative may file an informal complaint with the Department of Human Services, Adult Protective Services, 625 Forster Street, Room 631, Harrisburg, PA 17120. If the resolution of the informal complaint is not acceptable and the adult or the adult's legal representative timely notifies the Department in writing, the Department will submit a request for a formal hearing to the Department's Bureau of Hearings and Appeals.

#### *Fiscal Impact*

The total expenditures to the Commonwealth for operating APS was \$12,162,334.28 in Fiscal Year (FY) 2020-2021 and a similar amount is anticipated for FY 2021-2022 and FY 2022-2023.

#### *Contact Persons*

The primary contact for this proposed rulemaking is Brian Macdaid, Human Services Licensing, (717) 772-4982, bmacdaid@pa.gov.

The secondary contact for this proposed rulemaking is Laura E. Deitz, Director of Adult Protective Services, (717) 736-7050, ldeitz@pa.gov.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Brian Macdaid, Bureau of Human Services Licensing, Department of Human Services, Office of Administration, Health and Welfare Building, 625 Forster Street, Room 631, Harrisburg, PA 17120, RA-PWOLTLRegsPubCom@pa.gov within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-543 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TTY users) or (800) 654-5988 (voice users).

#### *Regulatory Review Act*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 30, 2023, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Human Services and the Senate Committee on Health and Human Services. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days after the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

VALERIE A. ARKOOSH,  
*Acting Secretary*

**Fiscal Note:** 14-543. Under section 612 of The Administrative Code of 1929 (71 P.S. § 232), (1) General Fund; (2) Implementing Year 2021-22 is \$7,952,000; (3) 1st Succeeding Year 2022-23 is \$8,183,000; 2nd Succeeding Year 2023-24 is \$8,420,000; 3rd Succeeding Year 2024-25 is \$8,664,000; 4th Succeeding Year 2025-26 is \$8,915,000; 5th Succeeding Year 2026-27 is \$9,166,000; (4) 2020-21



Program—\$106,235,000; 2019-20 Program—\$107,884,000; 2018-19 Program—\$96,196,000; (7) General Government Operations; (8) recommends adoption. The General Government Operations appropriation is able to absorb this increase.

(*Editor's Note:* The following chapter is proposed to be added and is printed in regular type to enhance readability.)

**Annex A**

**TITLE 55. HUMAN SERVICES**

**PART I. DEPARTMENT OF HUMAN SERVICES**

**Subpart B. RIGHTS**

**CHAPTER 15. PROTECTIVE SERVICES FOR ADULTS**

**GENERAL PROVISIONS**

- Sec.
- 15.1. Scope.
- 15.2. Definitions.
- 15.3. Waivers.

**PROGRAM ADMINISTRATION**

- 15.11. Administrative functions and responsibilities of the Department.
- 15.12. Administrative functions and responsibilities of agencies.

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

- 15.21. General reporting provisions.
- 15.22. Safeguards for those who make or receive reports.
- 15.23. Receiving reports; general agency responsibility.
- 15.24. Anonymity of reporters.
- 15.25. Report form and content.
- 15.26. Screening and referral of reports received.

**INVESTIGATING REPORTS OF NEED FOR PROTECTIVE SERVICES**

- 15.41. Reports required to be investigated.
- 15.42. Standards for initiating and conducting investigations.
- 15.43. Resolution of unsubstantiated reports.
- 15.44. Resolution of substantiated reports.
- 15.45. State-licensed and State-operated facilities.
- 15.46. Law enforcement officials.
- 15.47. Emergency medical services.

**AGENCY ACCESS TO PERSONS AND RECORDS**

- 15.61. Access to adults.
- 15.62. Access to records.
- 15.63. Access by consent.

**EMERGENCY INTERVENTION**

- 15.71. Involuntary intervention by emergency court order.
- 15.72. Petition.
- 15.73. Forcible entry.
- 15.74. Health and safety requirements.
- 15.75. Non-restrictive setting.
- 15.76. Documentation.

**INDIVIDUAL RIGHTS**

- 15.81. Rights of adults reported to need protective services.

**PROVISION OF SERVICES**

- 15.91. Protective services.
- 15.92. Assessment.
- 15.93. Service plan.
- 15.94. Service delivery.
- 15.95. Case management.
- 15.96. Termination of protective services.

**CONFIDENTIALITY**

- 15.101. Confidentiality of records.
- 15.102. Maintenance of case records.
- 15.103. Responsibilities of staff with access to confidential information.
- 15.104. Penalties for violation of confidentiality requirements.
- 15.105. Limited access to records and disclosure of information.

**FINANCIAL OBLIGATIONS**

- 15.111. Coordination of available resources.
- 15.112. Time limitation on service purchases.

**STAFF QUALIFICATIONS AND TRAINING**

- 15.121. Protective services staff qualifications.
- 15.122. Protective services staff training curriculum.
- 15.123. Availability of training.

**MANDATORY REPORTING OF SUSPECTED ABUSE, NEGLECT, EXPLOITATION OR ABANDONMENT**

- 15.131. General reporting requirements.
- 15.132. Additional reporting requirements.
- 15.133. Contents of reports.
- 15.134. Reports to Department and coroner by agencies.
- 15.135. Investigation.
- 15.136. Restrictions on employees.
- 15.137. Confidentiality of and access to confidential reports.
- 15.138. Penalties.
- 15.139. Immunity.

**APPEALS AND FAIR HEARINGS**

- 15.150. Right to appeal and fair hearing.
- 15.151. Notice of adverse action.
- 15.152. Informal complaints.
- 15.153. Formal hearings.

**GENERAL PROVISIONS**

**§ 15.1. Scope.**

(a) This chapter governs the administration and provision of protective services for adults under the act, and the mandatory reporting of the abuse, neglect, exploitation or abandonment of adults.

(b) This chapter applies to adults in need of protective services, their families, agencies selected to provide protective services for adults in need of protective services, parties who make and investigate reports of a need for protective services for adults and facilities.

**§ 15.2. Definitions.**

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

*Abandonment*—The desertion of an adult by a caregiver.

*Abuse*—The occurrence of one or more of the following acts:

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

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

(iii) Sexual harassment, rape or abuse as the term is defined in 23 Pa.C.S. § 6102 (relating to definitions).

The term does not include environmental factors which are beyond the control of an adult or a caregiver, including, but not limited to, inadequate housing, furnishings, income, clothing or medical care.

*Act*—The Adult Protective Services Act (35 P.S. §§ 10210.101—10210.704).

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

*Adult*—A resident of this Commonwealth 18 years of age or older but under 60 years of age who has a physical or mental impairment that substantially limits one or more major life activities.

*Adult in need of protective services*—An adult who needs the assistance of another person to obtain protective services to prevent imminent risk to person or property.

*Agency*—A local contracted provider of protective services.

*Assessment*—Social, physical and psychological findings along with a description of the person's current resources and needs.

*Care*—Services provided to meet an adult's need for personal care or health care. The following apply:

(1) Services may include homemaker services, assistance with activities of daily living, physical therapy, occupational therapy, speech therapy, social services, home-care aide services, companion-care services, private duty nursing services, respiratory therapy, intravenous therapy, in-home dialysis and durable medical equipment services, which are routinely provided unsupervised and which require interaction with an adult.

(2) The term does not include durable medical equipment delivery.

*Caregiver*—An individual or institution that has assumed the responsibility for the provision of care needed to maintain the physical or mental health of an 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 any individual if the responsibility would not otherwise exist in law.

*Case record*—A complete account of the information received and the actions taken by the agency on each report received. This includes documentation of informed consent provided or agency efforts to obtain consent. When applicable, it shall include the following elements:

- (i) The report of a need for protective services.
- (ii) The record of investigation.
- (iii) The written findings of the assessment.
- (iv) The service plan.
- (v) Notes of contact with the adult and others involved with the case.
- (vi) Court documents.
- (vii) Letters of notification to the adult.
- (viii) Reassessments when applicable.

*Court*—A court of common pleas or a magisterial district court, where applicable.

*Department*—The Department of Human Services of the Commonwealth.

*Desertion*—The willful failure, without just cause by the responsible caregiver, to provide for the care and protection of an adult.

*Employee*—An individual who is employed by a facility, including employees of affiliated corporate entities. The term includes:

- (i) A contract employee who has direct contact with residents or unsupervised access to their personal living quarters.
- (ii) A person who is employed or who enters into a contractual relationship to provide care to an adult for monetary consideration in the adult's place of residence.

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

*Facility*—The term means:

(i) An assisted living residence as defined in section 1001 of the Human Services Code (62 P.S. § 1001).

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

(iii) A home health care agency as defined in section 802.1 of the Health Care Facilities Act (35 P.S. § 448.802a).

(iv) An intermediate care facility for individuals with an intellectual disability.

(v) A long-term care nursing facility as defined in section 802.1 of the Health Care Facilities Act.

(vi) 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).

(vii) A personal care home as defined in section 1001 of the Human Services Code.

(viii) An organization or group of people that uses public funds and is paid, in part, to provide care and support to adults in a licensed or unlicensed setting. This shall include but is not limited to health care providers and organizations or groups of people that are regulated under 55 Pa. Code Chapters 2380, 2390, 5200, 5300, 6400 and 6500 and any other organization regulated under Chapter 6100 (relating to services for individuals with an intellectual disability or autism).

(ix) A residential treatment facility.

*Geographic area*—The geographic unit, or planning and service area, within this Commonwealth, for the allocation of funds for the delivery of services to adults residing in that unit.

*Health care provider*—A licensed hospital or health care facility or person who is licensed, certified or otherwise regulated to provide health care services under the laws of this Commonwealth, including but not limited to a physician, podiatrist, optometrist, psychologist, physical therapist, certified nurse practitioner, registered nurse, nurse midwife, physician's assistant, chiropractor, dentist or pharmacist or an individual accredited or certified to provide behavioral health services.

*Incident reporting system*—The Enterprise Incident Management System or its successor.

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

*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 any law intended to protect adults from mistreatment.

*Investigation*—A systematic inquiry conducted by the agency to determine if allegations made in a report for

protective services can be substantiated, if the adult needs protective services, or both.

*Law enforcement official*—The term includes:

- (i) A police officer of a municipality.
- (ii) A district attorney.
- (iii) The Pennsylvania State Police.
- (iv) A county sheriff.
- (v) The Attorney General.

*Least restrictive alternative*—The least intrusive service or environment that can effectively and safely address the adult's needs and preferences.

*Major life activities*—As defined in section 12102(2) of the Americans with Disabilities Act of 2008, including any amendments (42 U.S.C. § 12102(2)).

*Mandatory reporting*—The requirement that an employee or an administrator who has reasonable cause to suspect that a recipient is a victim of abuse or neglect shall immediately make an oral report to an agency.

*Mental anguish*—Emotional disturbances such as distress, anxiety, depression, grief or psychosomatic physical symptoms.

*Most integrated setting*—A setting that enables individuals with disabilities to interact with individuals who do not have disabilities to the fullest extent possible.

*Neglect*—The failure to provide for oneself or the failure of a caregiver to provide goods, care or services essential to avoid a clear and serious threat to the physical or mental health of an adult. The term does not include environmental factors that are beyond the control of an adult or the caregiver, including, but not limited to, inadequate housing, furnishings, income, clothing or medical care.

*Pain*—Physical suffering or discomfort caused by illness or injury.

*Protective services*—Those activities, resources and supports provided to adults under the act to detect, prevent, reduce or eliminate abuse, neglect, exploitation and abandonment.

*Public funds*—The term includes Federal, State, county or other governmental funding sources.

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

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

*Secretary*—The Secretary of Human Services of the Commonwealth.

*Serious bodily injury*—Injury that does one of the following:

- (i) Creates a substantial risk of death.
- (ii) Causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

*Serious injury*—Injury that does one of the following:

- (i) Causes a person severe pain.
- (ii) Significantly impairs a person's physical or mental functioning, either temporarily or permanently.

*Service plan*—A written plan that:

(i) Is cooperatively developed by agency staff, an adult in need of protective services and the adult's appointed guardian, if any, and other family members and advocates when appropriate.

(ii) Where possible, is based on multidisciplinary, comprehensive written assessments conducted by professionals who have met with the adult in need of protective services and are familiar with the adult's situation.

(iii) Provides for services in the most integrated setting and utilizes least restrictive alternatives.

(iv) Describes identified needs, goals to be achieved and specific services to support goal attainment, with regular follow-up and predetermined reassessment of client progress.

(v) Is updated as needed.

*Sexual abuse*—Intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault or incest, as defined by 18 Pa.C.S. (relating to crimes and offenses).

*State-licensed facility*—A facility licensed by a State agency.

*State-operated facility*—A facility operated by a State agency through individuals employed by the Commonwealth.

*Subject*—An individual identified in the report or during the investigation as the adult in need of protective services.

### § 15.3. Waivers.

(a) The Department may grant a waiver to a facility of a provision of this chapter which is not otherwise required under Federal and State law and does not jeopardize the health, safety or well-being of adults 18 years of age or older but under 60 years of age who have a physical or mental impairment that substantially limits one or more major life activities.

(b) The waiver request must be on a form prescribed by the Department.

(c) The waiver request must explain how the provision creates an unreasonable and undue hardship on the facility requesting the waiver.

(d) The waiver request will be reviewed by the Secretary of the Department or their designee.

## PROGRAM ADMINISTRATION

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

The Department will establish and maintain a State-wide system of protective services for adults. These services will be available and accessible through agencies with which the Department contracts to perform the service. In maintaining this system of protective services, the Department's functions and responsibilities include the following:

(1) Administering the adult protective services program in a manner designed to utilize least restrictive alternatives and to ensure services are provided in the most integrated setting.

(2) Developing and maintaining an ongoing program of public information and education to promote general awareness of and informed responses to the needs of adults for protective services available under this chapter.

This ongoing program shall require facilities to post notice of the availability of protective services and to provide notice to recipients and their families.

(3) Working with the Department of Aging, as permitted by law, to provide coordination with the older adult protective services system to ensure that when adults in need of protective services reach 60 years of age, they have continuity in the delivery of protective services.

(4) Providing coordination with the child protective services system, as permitted by law, to ensure that children who are the subject of a protective services report at 18 years of age have continuity in the delivery of protective services.

(5) Ensuring the agency has access to the incident reporting system for adult protective services.

(6) Using a competitive bidding process to contract with an agency.

**§ 15.12. Administrative functions and responsibilities of agencies.**

(a) An agency shall administer the delivery of protective services under this chapter in its geographic area.

(b) An agency shall be separate from entities providing direct services to adults, county mental health and intellectual disabilities service providers. An agency shall refer a report to the Department for investigation by another agency or the Department if one of the following applies:

(1) The adult reported to need protective services or perpetrator is a staff member of the agency or is related to a staff member of the agency.

(2) The adult reported to need protective services or perpetrator is affiliated with the agency as a volunteer, board member or advisor of the agency.

(3) The adult reported to need protective services or perpetrator is related to an immediate family member who is a volunteer, board member or advisor of the agency.

(4) The adult reported to need protective services or perpetrator has a financial relationship with the agency either as receiving or providing financial compensation to the agency.

(5) The report presents a conflict of interest or the appearance of a conflict of interest that may call into question the objectivity of the investigation, if investigated by the agency.

(c) The agency shall adhere to the contract standards and work statement contained in the agreement with the Department to perform the duties of an adult protective services agency.

(d) To the extent permitted by law, an agency shall collaborate with the Department or its designee in the exercise of its investigation and development of the service plan. The agency will maintain responsibility for acceptance of the final investigation and determination, as well as the development of the service plan.

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

**§ 15.21. General reporting provisions.**

(a) A person who has reasonable cause to believe that an adult is an adult in need of protective services may submit a report to the established Statewide toll-free hotline for adult protective services or to the agency.

(b) Reports shall comply with §§ 15.131—15.137.

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

(a) *Protection from retaliation.* An employer, or any other person or entity who takes discriminatory, retaliatory or disciplinary action against the following individuals commits a violation of the act and may be subject to a civil action:

(1) An employee or other person who makes a report.

(2) A person who cooperates with the agency or the Department to provide testimony or other information about a report.

(3) An adult reported to need protective services.

(b) *Damages.* The employer or any other person who takes the discriminatory, retaliatory or disciplinary action may be subject to a civil action by the person who made the report, the adult named in the report or the person who cooperated with the agency or the Department.

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

(a) *Twenty-four-hour capability.* The agency shall be capable of receiving reports of adults in need of protective services 24 hours a day, 7 days a week, including holidays.

(b) *Accessibility of professional staff.* The agency shall provide protective services caseworker accessibility 24 hours a day, 7 days a week, including holidays, to respond to referrals under § 15.26 (relating to screening and referral of reports received) that require immediate attention.

(c) *Toll-free public telephone or other communication access.* To facilitate reporting of adults in need of protective services, the Department shall provide toll-free telephone access to all persons, including persons who are deaf or hard of hearing and persons with limited English proficiency. Individuals who are deaf, hard of hearing or who have speech barriers may report using a Text Telephone (TTY) through voice relay or other similar technology. Individuals with limited English proficiency may report using language resources that the Department shall ensure are in place.

(d) *Reports from outside the geographic area.* If the adult reported to need protective services does not reside in the geographic area of the agency or, at that time, is not in the geographic area, the agency shall notify the agency which provides protective services in the geographic area where the adult is located and relay to that agency the information received in the report. Agencies shall cooperate and share information with such other entities, as needed.

**§ 15.24. Anonymity of reporters.**

(a) Except for reports made under § 15.131 (relating to general reporting requirements), a person who reports an alleged adult in need of protective services may remain anonymous. A person who receives an anonymous report shall inform the reporter of the statutory protection from retaliation and liability.

(b) An alleged adult in need of protective services is a person who is alleged to need the assistance of another person to obtain protective services to prevent imminent risk to person or property.

**§ 15.25. Report form and content.**

(a) *Standardized reports.* The person receiving a report shall record information from the reporter on a form prescribed by the Department.

(b) *Handling oral reports.* When a report is made orally, the person receiving the report shall immediately record the report on the form prescribed in subsection (a).

(c) *Minimum contents.* The person receiving a report shall make every effort to obtain the following information:

- (1) The date and time of the report.
- (2) The name, home address and preferred and secondary contact information for the person making the report, unless withheld under § 15.24 (relating to anonymity of reporters).
- (3) The name, address and, if available, age, gender and phone number of the adult reported to need protective services.
- (4) The name and phone number of the guardian, attorney-in-fact or next of kin for the adult reported to need protective services.
- (5) The nature of the incident which precipitated the report, including the date, time and location, if known.
- (6) The nature and extent of the need for protective services. The person receiving the report shall indicate whether the reporter perceives that the adult reported to need protective services is in a life-threatening situation.
- (7) The physical and mental condition of the adult reported to need protective services, if known.
- (8) The nature of the physical or mental impairment, if known.
- (9) Current location of the adult reported in need of protective services, if known.

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

(a) *Screening.* A person who met the qualifications in § 15.121(b) (relating to protective services staff qualifications) and completed the training in § 15.122 (relating to protective services staff training curriculum) who receives a report shall screen the report immediately and assign it to one of the following referral categories:

- (1) Priority.
- (2) Non-priority.
- (3) Another geographic area.
- (4) No need or not eligible for protective services.

(b) *Referral categories and actions.*

(1) *Priority.* A report placed in this category requires immediate attention because specific details in the report indicate the possibility that the adult reported to be in need of protective services is at imminent risk of death or serious injury or serious bodily injury. The person receiving a priority report shall immediately contact a protective services caseworker and provide that caseworker with the information contained in the report.

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

(3) *Another geographic area.* A report that meets the criteria under § 15.23(d) (relating to receiving reports; general agency responsibility) shall be placed in this category. The report shall be referred to the agency which has the designated responsibility for protective services in

the planning and service area in which the adult reported to need protective services is located at the time of the report. A report in this category will also meet the criteria for placement in one of the other categories in this subsection. The provisions for referral for the other category shall apply to a referral to another planning and service area. Agencies shall cooperate and share information with other agencies, as needed.

(4) *No need or not eligible for protective services.*

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

(A) Is not a resident of this Commonwealth.

(B) Is under 18 years of age or 60 years of age or older. Reports received for these identified age groups shall be immediately referred by the person who takes the report to either child protective services or older adult protective services.

(C) Does not have a physical or mental impairment that substantially limits one or more major life activity.

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

(E) 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 all necessary steps to confirm or reject the categorization of no need for protective services within 72 hours of receipt. If the caseworker confirms the screening categorization and upon the request of any interested party and without objection by the adult reported to need protective services, appropriate referrals shall be made to another community service provider within 72 hours of receipt. In the event the caseworker determines the allegations pertain to a person under 18 years of age or 60 years of age or older, the caseworker shall notify child protective services or older adult protective services immediately. The protective services case shall then be closed. If the caseworker rejects the categorization, the report shall be placed in the appropriate category and handled accordingly within 72 hours.

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

**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, determine immediate steps that are necessary to remove or reduce an imminent risk to person or property. The investigation shall include sufficient collateral information provided by interviews, documents, reports or other methods to make the determination.

(b) *Trained and identified investigators.* Only a person who has completed the minimum departmental training required for protective services caseworkers under §§ 15.122 and 15.123 (relating to protective services staff training curriculum; and availability of training) and met the qualifications in § 15.121(b) (relating to protective services staff qualifications) may conduct investigations under this section. The following apply:

(1) When, for reasons unexpected and beyond the agency's control, a trained staff person is not available to conduct investigations, the agency shall notify the Department and seek the Department's approval for its proposed plan for carrying out its investigation responsibilities under this section.

(2) The agency shall provide each investigator with official credentials that document the identity of the investigator and the legal authority to implement this chapter.

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

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

(a) *Requirements by report category.*

(1) *Priority report.*

(i) The investigation of a report categorized as a priority shall be initiated immediately following the referral of the report. The protective services caseworker shall make every effort to ensure the immediate safety of the adult in need of protective services and, to the extent feasible, a face-to-face visit shall be conducted within 24 hours after the report is received.

(ii) When the protective services caseworker makes every effort to gain access to the adult in need of protective services, and the protective services caseworker is denied access, the caseworker shall document the efforts made and act, as appropriate, under § 15.61 or § 15.71 (relating to access to adults; and involuntary intervention by emergency court order).

(2) *Non-priority report.*

(i) The investigation of a report categorized as non-priority shall be initiated in a timely manner, but no later than 72 hours after the report was received. The investigation of a non-priority report shall include a face-to-face visit to the adult in need of protective services no later than 72 hours after the report was received.

(ii) When the protective services caseworker makes efforts to gain access to the adult in need of protective services, and the protective services caseworker is denied access, the caseworker shall document the efforts made and take action, as appropriate, under § 15.61 or § 15.71.

(3) *No need or not eligible for protective services report.*

(i) The investigation of a report categorized as no need or not eligible for protective services shall consist of the protective services caseworker's review of the report categorization.

(ii) If the caseworker agrees with the initial categorization, appropriate referrals shall be made within 72 hours after the report was received, to another community service provider, if appropriate. If the allegations pertain to a person under 18 years of age or 60 years of age or

older, the caseworker shall immediately refer the report to child protective services or older adult protective services. If the caseworker does not agree with the initial categorization, the caseworker shall place the report in another category in this subsection and the report shall be addressed under the applicable provisions for investigating a report in that category.

(b) *Reports involving conflict of interest.* In the event a conflict of interest arises or is identified as described in § 15.12 (relating to administrative functions and responsibilities of agencies), the agency shall immediately refer the case for investigation by the Department or for referral to another agency for investigation.

(c) *Written records of investigative activities.* The caseworker shall document, in the case record, investigative activities, including home visits and other contacts with the adult in need of protective services, and other persons or organizations needed to facilitate the investigation. Documentation may include, but is not limited to, dated and signed photographs and statements related to suspected abuse, neglect, exploitation or abandonment.

(d) *Completing investigations of reports.* The agency shall make all reasonable efforts to complete an investigation of a report for protective services under this section as soon as possible but no later than 20 days after 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 or eliminate the imminent risk to the person or property of the adult in need of protective services.

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

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

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

(b) An unsubstantiated report, and all information obtained in investigating the unsubstantiated report, shall be maintained for a period of 1 year. The agency shall maintain the information in a manner that prevents unauthorized access, including electronic files. Paper files shall be maintained in a separate and locked file accessible only to authorized agency staff under § 15.102 (relating to maintenance of case records).

(c) When the subject of an unsubstantiated report has needs for other services, the subject shall be informed of the availability of services provided by other appropriate community service providers.

**§ 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 the agency determines that the subject of the report is in need of protective services, the report shall be classified as substantiated.

(b) Prior to substantiating the report, the agency shall attempt to assess the adult in need of protective services under § 15.92 (relating to assessment). An adult in need of protective services may refuse the assessment. If an adult in need of protective services refuses the assess-

ment, the agency may seek, when appropriate, a court order under § 15.61 (relating to access to adults).

(c) On the basis of the assessment, the agency shall provide for the development of a service plan of recommended actions that reflect the least restrictive alternatives for removing or reducing imminent risk to person or property and promote self-determination and continuity of care being provided at the time of the agency's intervention. The service plan may include, when appropriate, the pursuit of civil or criminal remedies. The service plan shall be developed in accordance with § 15.93 (relating to service plan).

(d) After the service plan is developed, the agency shall implement the service plan under § 15.94 (relating to service delivery).

**§ 15.45. State-licensed and State-operated facilities.**

(a) *General.* The following paragraphs apply to investigations of reports concerning adults reported to need protective services, who receive care in State-licensed facilities:

(1) The agency maintains general responsibility to investigate and provide protective services when there is an allegation of abuse, neglect, exploitation or abandonment of an adult who receives care in a State-licensed facility.

(2) The agency continues to maintain its general responsibility to investigate and provide protective services when there is an allegation of abuse, neglect, exploitation or abandonment of an adult who receives care in a State-licensed facility that is concurrently being investigated by another entity that has jurisdiction to investigate.

(3) The agency may seek judicial relief to require the State-licensed facility to protect the health and safety of the adult in need of protective services when the State-licensed facility is found to jeopardize the health and safety of the adult in need of protective services and this finding is supported by evidence of substantiated risk.

(4) The agency shall notify the area agency on aging ombudsman of reports and investigations concerning adults residing in State-licensed facilities for which the area agency on aging provides ombudsman services. In situations that ombudsman services, as established by section 712(g) of the Older Americans Act of 1965 (42 U.S.C. § 3058g) and section 2207-A of The Administrative Code of 1929 (71 P.S. § 581-7(d)), are determined to be appropriate, the agency shall request those services from the ombudsman.

(b) *Agency coordination with entities that have jurisdiction over State-licensed facilities.*

(1) Except as provided under subsection (c), the agency shall notify the appropriate entity that has jurisdiction over a State-licensed facility of a report for an adult receiving care in a State-licensed facility. The following apply:

(i) Notification shall identify the facility, the adult reported to need protective services and the nature of the report.

(ii) Notification shall be made immediately to the State agency that has jurisdiction over a State-licensed facility that a report has been received by the agency about an adult receiving services in a State-licensed facility.

(2) When an investigation is concurrently investigated by the agency and a State agency that has jurisdiction over a State-licensed facility, this investigation may suffice for the agency investigation. The agency will main-

tain responsibility for acceptance of the final investigation and determination, as well as the development of the service plan. The agency shall make every effort to coordinate its investigative activities and findings with the State agency that has jurisdiction over a State-licensed facility to avoid duplication of effort and to foster jointly developed remedies to situations requiring protective services intervention.

(c) *State-operated facilities.* If the agency receives a report concerning an adult in need of protective services who resides in a State-operated facility, the agency shall provide for an investigation of that report as follows:

(1) The agency shall initiate the investigation by referring the report to the appropriate administrative or program office for investigation under its patient rights program.

(2) The agency shall closely monitor an investigation referred under paragraph (1) to determine that the investigation is effectively implemented and that remedies have been implemented to correct the situation which led to the making of the report.

(3) The referral of an investigation to the Department may suffice for the agency investigation. The agency will maintain responsibility for acceptance of the final investigation and determination, as well as the development of the service plan. This does not relieve the agency of its authority and responsibility to provide protective services.

**§ 15.46. Law enforcement officials.**

(a) *General.* This chapter may not be interpreted to deny an adult in need of protective services access to the normal protections available from the police and other law enforcement officials as appropriate.

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

(1) Coordination with the following:

(i) Police departments in the geographic area.

(ii) The district attorney's offices in the geographic area.

(iii) Pennsylvania State Police barracks in the geographic area.

(iv) Officials of the court system.

(v) Legal assistance services.

(vi) The county coroners in the geographic area.

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

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

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

(5) Establish procedures for notifying the Department, upon notification by law enforcement officials, of any decision regarding criminal charges.

(c) *Role of law enforcement officials in protective services.* The agency's protective services caseworkers shall receive training as required under §§ 15.122 and 15.123

(relating to protective services staff training curriculum; and availability of training), which shall incorporate training in relevant areas of criminal law and the role of law enforcement officials when criminal conduct is encountered or suspected.

(d) *Civil and criminal information.* The agency shall take steps to inform adults in need of protective services of access to civil or criminal remedies and how to access them, as possible resolutions to situations of risk to person or property. If an adult in need of protective services requests the agency to contact law enforcement officials, the agency shall respond to that request immediately.

(e) *Police assistance to protective services caseworker.* A protective services caseworker may, as appropriate, request the assistance of a police officer when investigating a report which may pose a possible danger to the caseworker. As provided under § 15.73 (relating to forcible entry), forcible entry may be made only by a police officer after obtaining a court order. The police officer may be accompanied by a representative of the agency.

(f) *Simultaneous investigations.* When both a report 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, if applicable, the investigation by the State agency that has jurisdiction over the State-licensed facility. The agency shall make available to law enforcement, as provided under § 15.105 (relating to limited access to records and disclosure of information), relevant information from the case record.

(g) *Report of death.* If the death of an adult in need of protective services occurs prior to the agency's investigation of the report, during the investigation or at any time prior to the closure of the protective services case, the agency shall immediately report that death to the police and the county coroner if it is suspected there is a connection between the death and the need for protective services.

#### § 15.47. Emergency medical services.

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

### AGENCY ACCESS TO PERSONS AND RECORDS

#### § 15.61. Access to adults.

(a) *Access ensured by law.* The agency shall have access to adults reported to need protective services for the purpose of fulfilling its responsibility to do the following:

- (1) Investigate reports received under this chapter.
- (2) Assess the needs of the adult reported to need protective services and develop a service plan for addressing determined needs.

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

#### (b) *When access is denied.*

(1) The agency shall make good faith efforts to clearly inform a party denying access to an adult of the legal authority for access and the available recourse through a court order in the following circumstances:

(i) When access is necessary to complete the investigation or the assessment and service plan.

(ii) To deliver needed services to prevent further abuse, neglect, exploitation or abandonment of the adult in need of protective services.

(2) If the party continues to deny the agency access to the adult in need of protective services, the agency may petition the court for an order to require the appropriate access when one of the following conditions applies:

(i) A caregiver or a third party has interfered with the completion of the investigation, the assessment and service plan or the delivery of services.

(ii) The agency can demonstrate that the adult in need of protective services was denied access because of coercion, extortion or justifiable fear of future abuse, neglect, or exploitation or abandonment.

#### § 15.62. Access to records.

(a) *Access ensured by law.* The agency shall have access to records relevant to the following purposes:

(1) Investigations of reports received under this chapter.

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

(3) The delivery of services arranged for under the service plan developed by the agency to respond to an adult's assessed need for specific services.

#### (b) *When access to records is denied.*

(1) The agency shall clearly inform the party denying access to the records of the legal authority for access by the agency and the available recourse through a court order if the agency is denied access to necessary records in one of the following circumstances:

(i) To complete a proper investigation of a report for an assessment or a service plan.

(ii) To deliver needed services to prevent further abuse, neglect, exploitation or abandonment of the adult reported to need protective services.

(2) If the party continues to deny access to relevant records, the agency may petition a court for an order requiring the appropriate access when one of the following conditions applies:

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

(ii) The agency is able to demonstrate that the adult in need of protective services is denying access to records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment.

(c) *Request of certain records.* Records of State agencies, private organizations, financial institutions, fiduciaries, medical institutions and practitioners, and persons reasonably suspected of engaging in or facilitating the abuse, neglect, exploitation or abandonment of an adult, which the agency reasonably believes to be necessary to complete an investigation or assessment and service plan, shall be requested in written form and made available to the agency unless the disclosure is prohibited by any other provision of Federal or State law.



**§ 15.63. Access by consent.**

The agency's access to confidential records held by other entities or individuals and the agency's access to an adult in need of protective services shall require the consent of the adult or a court-appointed guardian except as provided under §§ 15.61, 15.62 and 15.71 (relating to access to adults; access to records; and involuntary intervention by emergency court order).

**EMERGENCY INTERVENTION**

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

(a) *General.*

(1) When there is clear and convincing evidence that an adult in need of protective services is at imminent risk of death, serious injury or serious bodily injury the agency may petition the court for an emergency order to provide the necessary services.

(2) Only the agency, through its official representative, may bring a petition for involuntary intervention by emergency court order.

(3) Notice of petition shall be provided to the adult in need of protective services, or the adult's legal representative, when filed.

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

(c) *Legal representation.* When the agency petitions the court for emergency involuntary intervention, the agency shall inform the adult of the right to be represented by legal counsel at all stages of the proceedings.

(1) *Notification.*

(i) If the adult in need of protective services has legal counsel known to the agency, the agency shall attempt to notify that legal counsel before it files a petition for emergency involuntary intervention.

(ii) If the agency has no knowledge of a legal counsel who represents the adult in need of protective services, the agency shall inform the adult or the adult's legal representative about other legal services that they may be able to access.

(iii) The notification shall contain enough information about the risk to the adult in need of protective services and the proposed remedy to enable counsel to determine if representation is necessary at the emergency hearing.

(iv) Notification to legal counsel shall include a copy of the petition with the affidavits attached, as well as the time, date and place of presentation of the petition except when § 15.72(b) (relating to petition) applies.

(2) *Right to counsel.* To protect the rights of an adult in need of protective services, an emergency court order shall provide that the adult has the right to legal counsel, which shall be appointed by the court at public expense.

**§ 15.72. Petition.**

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

(1) The name, age and physical description of the adult in need of protective services, insofar as these facts have been ascertained.

(2) The address or other location where the adult in need of protective services can be found.

(3) The name and relationship of a guardian, caregiver or other responsible party residing with the adult in need of protective services, when applicable.

(4) A description of how the adult in need of protective services is at imminent risk of death or serious injury or serious bodily injury.

(5) The physical and mental status, to the extent known, of the adult in need of protective services.

(6) The attempts made by the agency to obtain the informed consent of the adult in need of protective services or the adult's court-appointed guardian, when applicable, for the agency to provide protective services.

(7) The specific short-term, least restrictive, involuntary protective services that the agency is requesting.

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

(9) A description of how the agency will ensure the health and safety needs of any of the dependents of the adult in need of protective services, and that the personal property and the dwelling occupied by the adult in need of protective services are secure.

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

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

(12) A statement that reasonable efforts have been made to communicate with the adult in a language and manner the adult understands.

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

(b) *Oral petitions.* Nothing in this chapter precludes or prohibits the oral presentation of a petition for emergency involuntary intervention.

(c) *Affidavits.* Allegations shall be supported by affidavits provided by persons having that knowledge. The affidavits shall be attached to the petition.

(d) *Emergency order duration.* In the petition, the agency shall request an emergency order of a specific duration as may be warranted by the circumstances. The agency shall request the court to hold a hearing when the initial emergency order expires to review the need for an additional emergency court order or other continued court and protective services involvement, or both. The issuance of an emergency order is not evidence of the competency or incompetency of the adult.

**§ 15.73. Forcible entry.**

Where it is necessary to forcibly enter a premise, law enforcement officials shall obtain a court order and may be accompanied by a representative of an agency.

**§ 15.74. Health and safety requirements.**

The agency shall take reasonable steps to assure that while an adult in need of protective services is receiving services under an emergency court order, the health and safety needs of any of the dependents of the adult in need of protective services are met and that the personal property and the dwelling occupied by the adult in need of protective services are secure.

### § 15.75. Non-restrictive setting.

In those cases, in which an adult in need of protective services must be relocated, the agency shall request the court to order the adult in need of protective services to be relocated to the most integrated setting and the least restrictive alternative that ensures the health and safety of the adult in need of protective services.

### § 15.76. Documentation.

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

## INDIVIDUAL RIGHTS

### § 15.81. Rights of adults reported to need protective services.

The agency shall observe the following minimum requirements to safeguard the rights of an adult in need of protective services:

(1) During the investigation, the agency shall privately notify the adult that a report for protective services has been made. The agency shall provide the adult with a brief summary of the nature of the report.

(2) If the adult in need of protective services requests additional information contained in the record, the agency shall provide the information, subject to the requirements in § 15.105 (relating to limited access to records and disclosure of information).

(3) A denial of services by the Department or an authorized agency under this chapter may be appealed as provided under §§ 15.150—15.153 (relating to appeals and fair hearings).

(4) Nothing in this chapter limits the rights of an adult in need of protective services to file a petition with a court of competent jurisdiction requesting a protection from abuse order.

(5) An adult in need of protective services has the right to refuse protective services or withdraw consent for protective services, except as provided under a court order or as requested by a legal guardian. The agency shall obtain, when possible, the adult's signed statement refusing protective services or document unsuccessful efforts to obtain a signed statement.

(6) An adult in need of protective services has the right to legal counsel when the agency petitions the court for emergency or other orders to provide protective services. The act provides that to protect the rights of an adult in need of protective services, an emergency court order shall provide that the adult has a right to legal counsel which shall be appointed by the court at public expense.

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

## PROVISION OF SERVICES

### § 15.91. Protective services.

(a) *Protective services.* Protective services are activities, resources and supports provided when the agency determines that an adult needs protective services after the initiation of an investigation to detect, prevent, reduce or eliminate abuse, neglect, exploitation and abandonment. Protective services activities include the following:

- (1) Administering protective services plans.
- (2) Receiving and maintaining records of reports of abuse, neglect, exploitation or abandonment.
- (3) Conducting investigations of reported abuse, neglect, exploitation or abandonment.
- (4) Conducting assessments and developing service plans.
- (5) Petitioning the court.
- (6) Providing emergency involuntary intervention.
- (7) Arranging for available services needed to fulfill service plans, which may include, as appropriate, arranging for services for other household members to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an adult. A listing of examples of types of services that may be made available to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an adult in need of protective services is provided under § 15.93(d) (relating to service plan).
- (8) Purchasing, on a temporary basis, services determined by a service plan to be necessary to reduce, correct or eliminate abuse, neglect, exploitation or abandonment of an adult in need of protective services when the services are not available within the existing resources of the appropriate provider.

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

- (1) An adult in need of protective services requests the services.
- (2) Another interested person requests the services on behalf of an adult in need of protective services.
- (3) If, after investigation of a report, the agency determines the adult needs the protective services.

(c) *Voluntary consent.* The agency shall provide protective services to adults in need of protective services unless the adult in need of protective services refuses or withdraws consent.

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

- (1) When provided under § 15.71 (relating to involuntary intervention by emergency court order).
- (2) When requested by a legal guardian that has appropriate decision-making authority.

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

### § 15.92. Assessment.

(a) When a report is substantiated by the agency, or if an assessment is necessary to determine whether the report is substantiated, the agency shall conduct an assessment. If the adult reported to be in need of protective services refuses to participate in the assessment, the agency may petition the court as provided under §§ 15.61 or 15.71 (relating to access to adults; and involuntary intervention by emergency court order).

(b) The agency, to the extent feasible, shall make face-to-face contact with the adult reported to need protective services to evaluate and document information, including the following:

- (1) Personal appearance.
- (2) Physical environment.
- (3) Physical health.
- (4) Mental functioning.
- (5) Activities of daily living.
- (6) Instrumental activities of daily living.
- (7) Mobility.
- (8) Social environment.
- (9) Economic status, including incomes, resources and receipts of public and private benefits.
- (10) Nutrition.
- (11) Recent experiences, such as losses, separations and major changes in relationships or environments.
- (12) The need for a formal medical or psychiatric evaluation.

(c) The assessment shall be multidisciplinary, comprehensive and written by professionals who have met with the adult in need of protective services and are familiar with the adult's situation. Whenever possible, it shall include information given by the adult for each area of functioning.

(d) The assessment shall be written so that the reader can determine which information came from the adult and which constitutes the worker's or other professional's judgment.

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

#### § 15.93. Service plan.

(a) When a report is substantiated, a service plan shall be prepared for the adult in need of protective services.

(b) The service plan shall be cooperatively developed by agency staff, the adult in need of protective services, unless the adult refuses, and if applicable, the appointed guardian, caregiver and other appropriate individuals.

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

(d) The service plan shall describe the identified needs, the goals to be achieved, the specific services which will be used to support attainment of the goal and the procedures to be followed with regard to regular follow-up and assessment of progress. Specific services which may be used to implement the service plan include the following:

- (1) Medical services.
- (2) Psychiatric or psychological services.
- (3) Legal services.
- (4) Public or private entitlements or resources.
- (5) Financial management.
- (6) Personal or environmental safety.
- (7) Emergency shelter or temporary housing.
- (8) Transportation.

- (9) Home-delivered meals.
- (10) Attendant care.
- (11) Homemaker services.
- (12) Guardianship services.

(e) The service plan shall also address, if applicable, special needs of other dependents in the household unit, as they may affect the adult in need of protective services. The identification in a service plan of service needs of other dependents in the household does not obligate the agency to pay the costs of the services.

(f) The service plan shall describe the plan to transition the adult to long-term supports and services, if needed.

(g) The service plan shall be updated as the goals are met, or as new needs are identified, and to reflect how the risk was reduced or eliminated and reviewed with the supervisor. Refusal of any part of the service plan by the adult in need of protective services is documented on the service plan.

#### § 15.94. Service delivery.

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

(b) Protective services shall not be provided to an adult in need of protective services who refuses or withdraws consent, unless the services are requested by a guardian of the adult in need of protective services or provided under § 15.71 (relating to involuntary intervention by emergency court order).

(c) Prior to purchasing the service, the agency shall first determine if the adult in need of protective services is eligible for any public or private entitlements or resources.

#### § 15.95. Case management.

(a) *Coordination of services.* The agency is responsible for coordination of services being provided to the adult in need of protective services. The agency shall also ensure that services necessary to achieve the goals in the service plan are being provided.

(b) *Case records.* A separate record shall be established to contain information on protective services cases. Confidentiality of the protective services case record shall be maintained by the agency as set forth in §§ 15.101—15.105 (relating to confidentiality). The protective services case record shall include the following:

- (1) The report of a need for protective services.
- (2) The record of investigation.
- (3) The written findings of the assessment.
- (4) The service plan.
- (5) Notes of contact with the adult and others involved with the case.
- (6) Court documents.
- (7) Letters of notification to the adult.

(c) *Reassessment.* Protective services caseworkers shall conduct reassessments for adults in need of protective services. The following apply:

(1) Reassessment shall be written in the standardized format established by the Department.

(2) Reassessment shall be conducted before a protective services case is terminated or transferred or if there is a change in condition that affects the adult in need of protective services.

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

(a) The agency shall terminate protective services when the adult no longer meets the definition of an adult in need of protective services as defined under § 15.2 (relating to definitions).

(b) Except when the adult in need of protective services 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 adult.

(2) By closing the case when a court order for services has terminated and the adult in need of protective services is refusing further service intervention.

(3) By transferring the adult in need of protective services to another appropriate organization for appropriate supports.

(c) When the agency terminates protective services, the agency shall inform the adult in need of protective services and, if applicable, the appointed guardian, caregiver and other individuals, if appropriate, of this action and its rationale and shall attempt to secure a signed statement of understanding concerning the action from the adult in need of protective services or their authorized representatives, if applicable.

(d) When the agency transfers a protective services case, the case record shall reflect the transfer of the adult in need of protective services to another entity, the specific entity to which the referral was made and the acceptance of the referral by the other entity.

**CONFIDENTIALITY**

**§ 15.101. Confidentiality of records.**

Information contained in the agency's protective services case records shall be considered confidential and shall be maintained as set forth under this chapter.

**§ 15.102. Maintenance of case records.**

(a) Information contained in reports, records of investigation, assessments and service plans shall be considered confidential and shall be maintained under policies and procedures promulgated by the agency and approved by the Department to safeguard confidentiality.

(b) Protective services case records that are not stored electronically shall be kept in a locked storage cabinet when not in use by authorized persons.

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

(d) *Records retention for unsubstantiated reports.* 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 the

name of the adult reported to need protective services and other information collected shall be maintained for 1 year and shall be made accessible only to authorized staff for review when necessary to establish that a previous report was made.

(1) At the end of 1 year, case records maintained under this subsection shall be deleted or expunged, unless additional reports lead to the case records being reopened.

(2) The agency shall develop written procedures for the deletion or expungement of information in case records so that unauthorized persons are not able to gain access to information from case records. The procedures shall be submitted to the Department for approval.

(e) As provided under § 15.44 (relating to resolution of substantiated reports), when the agency is able to substantiate a report for protective services, and services are either provided, refused or not needed, the agency shall maintain the information for 3 years or as specified by the Department both electronically and in a separate locked file accessible only to authorized staff for review when necessary.

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

(a) The agency shall ensure that staff with access to case record information is trained regarding the confidentiality provisions of this chapter.

(b) A staff person who is authorized to have access to case record information is required to safeguard the confidentiality of that information. This requirement extends to known information related to a case but not recorded in writing.

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

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

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

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

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

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

(1) Protective services records may be provided to a court of competent jurisdiction or to another party pursuant to a court order. A subpoena shall not be a court order for purposes of this section.

(2) Protective services records may be provided to law enforcement officials or a coroner if the information is relevant to the official's or coroner's investigation of abuse, neglect, exploitation, abandonment or death of the

adult. The protective services records shall not be subject to the Right-to-Know Law (65 P.S. §§ 67.101—67.3104).

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

(4) The adult who is the subject of a report or the adult's guardian, if the guardian is not named as a perpetrator in the report, may receive, upon written request, a copy of the report except information that would identify the individual who made a report of suspected abuse, neglect, exploitation or abandonment or persons who cooperated in a subsequent investigation.

(5) An individual who makes a report of suspected abuse, neglect, exploitation or abandonment may receive, upon written request, confirmation from the Department that the report was received, and the agency is acting in accordance with this chapter.

(6) For the purposes of monitoring agency performance or conducting other official duties, appropriate staff of the Department, as designated by the Secretary, may access protective services records.

(7) To deliver protective services, records may be provided to a health care provider who is examining or treating the adult in need of protective services under this chapter.

#### FINANCIAL OBLIGATIONS

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

(a) The agency shall ensure that funding authorized under the act is not used to supplant public and private entitlements or resources for which adults in need of protective services are, or may be, eligible.

(b) For all adults in need of protective services, the agency shall attempt to establish the eligibility for appropriate public and private entitlements and resources and shall exhaust the eligibility for benefits prior to the utilization of funds authorized under the act for the provision of services.

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

##### § 15.112. Time limitation on service purchases.

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

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

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

#### STAFF QUALIFICATIONS AND TRAINING

##### § 15.121. Protective services staff qualifications.

(a) *General.* The agency shall ensure that staff directly involved with the protective services meets the minimum standards of training and experience in this chapter. The minimum standards apply to staff assigned to protective services on a full-time basis, a part-time basis or as standby staff.

(b) *Staff training and experience requirements.* Protective services staff shall meet the following:

(1) Have a Bachelor of Arts or Bachelor of Science degree or equivalent life experience as approved by the Department.

(2) Have work experience with persons with a physical or mental impairment, have worked as an investigator in child welfare or older adult protective services, or have demonstrated knowledge of investigative experience.

(3) Complete the curriculum described in § 15.122 (relating to protective services staff training curriculum).

(4) Receive in-service training in protective services annually as required by the Department.

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

The protective services staff training curriculum shall consist of a minimum of 30 hours of training, including the following topics:

(1) The act and other laws related to abuse, neglect, exploitation and abandonment.

(2) Americans with Disabilities Act (42 U.S.C. §§ 12101—12213), including the principles of the most integrated setting.

(3) Disability competence, including issues and barriers faced by adults with disabilities.

(4) Independent living.

(5) Individual choices in services and the rights of an adult to refuse services.

(6) The criminal and civil justice systems in the Commonwealth.

(7) Investigation process and techniques.

(8) Interviewing and observation techniques.

(9) Techniques to obtain documentary evidence.

(10) Personal safety for those conducting investigations.

(11) Cultural competence.

(12) Positive behavior approaches.

(13) Information and referral resources.

(14) Domestic violence and sexual assault.

(15) Experience of trauma.

(16) Confidentiality and protected information.

(17) Communication skills, including complex communication needs.

(18) Coordination with other State licensing departments and program offices.

(19) The service delivery system in the Commonwealth for persons with disabilities.

(20) Housing for persons with disabilities.

**§ 15.123. Availability of training.**

(a) The Department will provide for the review of curricula described in § 15.122 (relating to protective services staff training curriculum) that is chosen or developed by the agency and will require the training be conducted on an as needed basis. The Department will also provide for annual in-service training.

(b) Training may be developed and delivered in collaboration with persons with disabilities, family members and advocates.

**MANDATORY REPORTING OF SUSPECTED  
ABUSE, NEGLECT, EXPLOITATION OR  
ABANDONMENT**

**§ 15.131. General reporting requirements.**

(a) Administrators or employees, who have reasonable cause to suspect that a recipient is a victim of abuse or neglect, are required to complete the following:

(1) Immediately make an oral report to the Statewide hotline for adult protective services or to the agency.

(2) Make a written report to the agency within 48 hours.

(b) Mandatory reporting to the agency is satisfied when the administrator or employee submits a report to the incident reporting system.

(c) Employees making oral or written reports shall immediately notify the administrator or designee of the report.

(d) The agency shall notify the entities that have jurisdiction over State-licensed facilities and State-operated facilities immediately, when written reports of abuse, neglect, exploitation or abandonment are received.

(e) The agency shall coordinate with the Department to ensure that the needs of the adult in need of protective services are met and to identify what additional action is to be taken by the agency.

(f) Representatives of the Department of Aging, Department of Health and the Department of Human Services who suspect violations under this section will report them to the Department office that administers the adult protective services program. The report shall be made in writing and include, at a minimum, the facility, the administrator, owner, operator or designee suspected of committing the violation, and a description of the suspected violation.

**§ 15.132. Additional reporting requirements.**

(a) Administrators or employees who have reasonable cause to suspect that a recipient is the victim of sexual abuse, serious injury, serious bodily injury or that a recipient's death is suspicious, shall, in addition to the reporting requirements in § 15.131(a) (relating to general reporting requirements) do the following:

(1) Immediately make an oral report to law enforcement officials. An employee shall immediately notify the facility administrator or a designee following a report to law enforcement officials, unless the notification would jeopardize the investigation or subject the recipient to further risk.

(2) Make an oral report to the Department during the same day law enforcement officials are contacted or, if the incident occurs after normal business hours, at the opening of the next business day.

(3) Make a joint written report to law enforcement officials, the agency and the Department within 48 hours of making the oral report.

(b) Law enforcement officials shall notify facility administrators or their designees that a report has been made with them, unless the notification would jeopardize the investigation or subject the recipient to further risk.

(c) Administrators or employees shall, in addition to complying with these requirements, comply with reporting requirements of the entities that have jurisdiction over State-licensed facilities or State-operated facilities.

**§ 15.133. Contents of reports.**

(a) Written reports under §§ 15.131 and 15.132 (relating to general reporting requirements; and additional reporting requirements) shall be made on the form prescribed by the Department.

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

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

(2) Name, address of the adult's guardian, attorney-in-fact or next-of-kin.

(3) Facility name and address.

(4) Description of the incident.

(5) Specific comments or observations.

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

(a) *Department.*

(1) Within 48 hours of receipt of a written report under § 15.132 (relating to additional reporting requirements) involving sexual abuse, serious injury, serious bodily injury or suspicious death, the agency shall transmit a written report to the Department.

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

(i) The name and address of the adult in need of protective services.

(ii) Where the suspected abuse, neglect, exploitation or abandonment occurred.

(iii) The age and sex of the alleged perpetrator and adult in need of protective services.

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

(v) The name and relationship of the individual responsible for causing the alleged abuse or neglect to the adult in need of protective services, 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 adult and notification under subsection (b).

(ix) Name and address of the recipient's guardian, attorney-in-fact or next-of-kin.

(x) Name and address of the facility.

(b) *Coroner or medical examiner.* For a report under § 15.132 (relating to additional reporting requirements) that concerns the death of an adult, if there is reasonable cause to suspect that the adult died as a result of abuse or neglect, the agency shall give the oral report and forward a copy of the written report to the appropriate coroner or medical examiner within 24 hours.

(c) *Prohibition.* Except as permitted by law, the release of records that would identify the individual who made a report under this chapter or an individual who cooperated in a subsequent investigation is prohibited.

#### § 15.135. Investigation.

(a) *Agency response.* Upon receipt of a report under §§ 15.131 and 15.132 (relating to general reporting requirements; and additional reporting requirements), the agency shall respond as follows:

(1) If the report is about a person who is 60 years of age or older, the agency shall immediately notify the local area agency on aging.

(2) If the report is about a person who is under 18 years of age, the agency shall immediately call the Statewide child abuse hotline, "ChildLine."

(3) If the adult reported to need protective services resides in a personal care home or assisted living facility, the agency shall notify the Department.

(4) If the adult reported to need protective services resides in a domiciliary care home or receives services from an older adult daily living center, the agency shall notify the Department of Aging for purposes of initiating delivery of protective services.

(5) If the agency has knowledge or believes that the adult reported to need protective services has an intellectual disability, developmental disability, physical disability or a mental health condition, the agency shall notify the appropriate State agency that has jurisdiction over State-licensed facilities and State-operated facilities.

(b) *Cooperation.* To the fullest extent possible, law enforcement officials, the facility, the Department and the agency shall coordinate their respective investigations and shall advise each other and provide applicable additional information on an ongoing basis. Nothing in this subsection may be construed to alter investigation procedures developed by the Department.

#### § 15.136. Restrictions on employees.

(a) Upon notification that an employee is alleged to have committed abuse, the facility shall immediately suspend the employee or, where appropriate and subject to approval by the agency and by the applicable State agency entity that has jurisdiction over the State-licensed facility or State-operated facility, implement a plan of supervision.

(b) A plan of supervision for a home health care agency shall include periodic, random direct observation and evaluation of the employee and the recipients by an individual who provides oversight to the employee. For a home health agency in business for less than 1 year, supervision shall include random, direct observation and evaluation by an employee with prior employment experience.

(c) Following approval of an individual plan of supervision by the agency and the applicable State agency that has jurisdiction over the State-licensed facility or State-operated facility, the facility shall follow the plan. Changes to the plan must be approved by the agency and the applicable State agency that has jurisdiction over the

State-licensed facility or State-operated facility prior to the implementation of the changes.

(d) Upon being notified by law enforcement officials of a decision to file criminal charges against an employee, as a result of a report made in compliance with § 15.132 (relating to additional reporting requirements), the facility shall immediately do the following:

(1) Inform the State agency with jurisdiction over the State-licensed facility or State-operated facility.

(2) Deny the employee access to those served by the facility.

(3) Inform the State agency with jurisdiction over the State-licensed facility or State-operated facility that the employee has been denied access to those served by the facility.

(e) If the agency determines that the facility has failed to carry out its responsibilities under subsection (d), the agency shall notify the appropriate State agency with jurisdiction over the State-licensed facility or State-operated facility, which shall order the facility to immediately prohibit the employee from having access to those served by the facility.

(f) If the employee is a director, operator, administrator or supervisor, the employee shall be subject to restrictions by the State agency with jurisdiction over the State-licensed facility or State-operated facility.

#### § 15.137. Confidentiality of and access to confidential reports.

(a) *General rule.* Except as provided in subsection (b) and § 15.105 (relating to limited access to records and disclosure of information), a report under this chapter shall be confidential.

(b) *Exceptions.* A report under this chapter may be made available to the following:

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

(2) A licensed practitioner who is examining or treating an adult in need of protective services if the examination is for purposes of initiating the delivery of protective services under this chapter.

(3) The director, or an individual specifically designated in writing by the director, of a hospital or other medical institution where the adult in need of protective services resides, if the disclosure is for purposes of initiating the delivery of protective services under this chapter.

(4) The adult in need of protective services or the guardian of the adult.

(5) A court of competent jurisdiction under a court order.

(6) The Attorney General.

(7) Law enforcement officials of any jurisdiction in this Commonwealth, as long as the information is relevant in the course of investigating cases of abuse or neglect.

(c) *Protecting identity of person making report.* Except for reports to law enforcement officials, the release of information 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.

**§ 15.138. Penalties.**(a) *Administrative.*

(1) An administrator or a designee or facility owner who intentionally or willfully fails to comply or obstructs compliance with sections 501—507 of the act (35 P.S. §§ 10210.501—10210.507) or who intimidates or commits a retaliatory act against an employee who complies in good faith commits a violation and shall be subject to an administrative penalty consistent with section 506 of the act.

(2) *Penalties.*

(i) Penalties shall be determined by the State agency that has jurisdiction over the State-licensed facility or the State-operated facility.

(ii) The State agency that has jurisdiction over the State-licensed facility or the State-operated facility may issue an order assessing a civil penalty consistent with section 506 of the act.

(iii) An order issued under this paragraph is subject to due process as set forth in 2 Pa.C.S. §§ 501—508 and 551—555 (relating to practice and procedure of Commonwealth agencies; and practice and procedure of local agencies) and judicial review as set forth in 2 Pa.C.S. §§ 701—704 and 751—754 (relating to judicial review of Commonwealth agency action; and judicial review of local agency action).

(b) *Criminal.* An administrator or a designee of a facility or facility owner who intentionally or willfully fails to comply or obstructs compliance with sections 501—507 of the act commits a criminal offense consistent with section 506 of the act and shall, upon conviction, be sentenced consistent with section 506 of the act.

(c) *Penalties for failure to report.* A person required to report a case of suspected abuse or neglect under sections 501—507 of the act regarding mandatory reporting of suspected abuse, neglect, exploitation or abandonment and who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation. If the agency learns of a refusal to complete all reporting requirements, the agency shall notify the appropriate law enforcement official within 72 hours.

**§ 15.139. Immunity.**

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

**APPEALS AND FAIR HEARINGS****§ 15.150. Right to appeal and fair hearing.**

An adult who has been found not to be in need of protective services has the right to appeal the decision and to have a fair hearing.

**§ 15.151. Notice of adverse action.**

(a) The agency will provide advance written notice of any adverse action to the adult or their legal representative.

(b) The notice will include the following:

(1) The decision may be appealed in accordance with the procedures set forth in this chapter, starting with the informal complaint process under § 15.152 (relating to informal complaints).

(2) If an informal complaint is to be made, it must be filed within 30 days following the receipt of the written notice of adverse action.

(3) The agency will, if requested, provide assistance in filing the informal complaint. A request shall be made to the agency by the adult or the adult's legal representative within 30 days of receiving the adverse action notice.

(c) Copies of all notices of adverse action shall be retained by the agency and shall, where applicable, be made a part of the evidence taken in informal complaint proceedings and formal hearings.

**§ 15.152. Informal complaints.**

(a) *General requirement.* Prior to arranging for any formal hearings on appeals, the Department will require a party appealing under § 15.150 (relating to right to appeal and fair hearing) to proceed through the informal complaint process provided under this section.

(b) *Submission, form and content of informal complaints.*

(1) An informal complaint shall be filed in writing within 30 days following the date of the written notice of adverse action.

(2) Parties shall send their informal complaints to the Department.

(3) The complaint shall contain the following:

(i) Name and address of the complainant.

(ii) Party against whom the complaint is made.

(iii) A copy of the notice of adverse action.

(iv) A statement of all relevant facts and the grounds upon which the complaint is based.

(v) The relief or solution requested by the complainant.

(vi) While not required, the complaint may be accompanied by supporting papers.

(c) The Department shall, at a minimum, provide the following:

(1) *Investigation by the Department.* The Department will investigate each informal complaint. The investigation will include discussions and negotiations with all parties involved. The following apply:

(i) The Department shall confer with all parties directly involved in the adverse action to determine all pertinent facts, clarify all applicable statutes and regulations and develop an appropriate recommended resolution.

(ii) The Department shall notify the parties to the complaint in writing of its recommended resolution within a period of not more than 30 calendar days from the date of its receipt of the informal complaint.

(iii) The Department's written notification of a recommended resolution shall include that if the adult or their legal representative does not accept the resolution, the adult or their legal representative shall notify the Department within 10 calendar days from the date of the recommended resolution.

(d) *Cross reference.* This section supplements 1 Pa. Code §§ 35.5—35.7 (relating to informal complaints).



**§ 15.153. Formal hearings.**

(a) If the adult or their legal representative does not accept the resolution recommended by the Department under § 15.152 (relating to informal complaints) and so notifies the Department in writing within the required 10 calendar days, this written request shall be considered a request for formal hearing with the Department's Bureau of Hearings and Appeals.

(b) The Department shall forward a copy of the originally filed complaint to the Bureau of Hearings and

Appeals within 3 calendar days of the receipt of the notice submitted under subsection (a).

(c) The formal hearing shall be conducted in accordance with 1 Pa. Code. Part II (relating to General Rules of Administrative Practice and Procedure) to challenge the agency's finding resulting from the investigation of a report made under this chapter.

[Pa.B. Doc. No. 23-535. Filed for public inspection April 21, 2023, 9:00 a.m.]