

 COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF AGING Harrisburg, Pa. 17101	PENNSYLVANIA DEPARTMENT OF AGING	
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AGING TECHNICAL ASSISTANCE BULLETIN

SUBJECT: PROTECTIVE SERVICES ROLE IN LICENSED FACILITIES

**TO: EXECUTIVE STAFF
 AREA AGENCIES ON AGING
 PA COUNCIL ON AGING
 PA ASSOCIATION OF AREA AGENCIES ON AGING**

FROM: 
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 SECRETARY
 DEPARTMENT OF AGING**

DISPOSITION: Note well and retain for reference.

EFFECTIVE DATE: Immediately.

PURPOSE: To provide assistance to Intake and Protective Services staff in processing reports of need and completing protective services investigations.

BACKGROUND: The Department of Aging distributed "Protective Service Updates" to all AAA's for three consecutive years after Act 79 was passed. These updates provided answers to frequently asked questions. Several years have passed since the distribution of these updates. Recently, the Department has identified some issues regarding reports and investigations of licensed facilities.

**TECHNICAL
ASSISTANCE:**

The content of this ATAB is to provide AAAs clarification on their Protective Service role in specific situations regarding reports and investigations regarding licensed facilities:

- A resident hospitalized as a result of abuse or neglect.
- A resident placed in another facility after experiencing abuse or neglect.
- A resident abused or neglected by a employee who had subsequently been suspended or fired.
- A resident who died prior to the AAA's receipt of the Report of Need.

Attachments

PROTECTIVE SERVICE'S ROLE IN LICENSED FACILITIES

The Department of Aging has identified a significant issue regarding allegations of abuse or neglect in state-licensed facilities that requires clarification. The issue involved **who** and **when** to respond to allegations concerning the following situations:

1. The Area Agency on Aging receives information that an older adult is in a hospital because of alleged abuse or neglect at a licensed facility.
2. The Area Agency on Aging receives information that, after experiencing abuse or neglect at a licensed facility, an older adult was safely placed in another licensed facility.
3. The Area Agency on Aging receives information that an employee of a licensed facility abused or neglected an older adult and the facility terminated or suspended the worker's employment.
4. The Area Agency on Aging receives information that an older adult died while residing in a state-licensed facility. The reporter provides additional information that implies that alleged abuse or neglect may have attributed to the death of the older adult.

The intent of this Bulletin is to define the Department of Aging's opinion on how AAA's are to respond to these situations. The Report of Need is the vehicle to take information about possible abuse, neglect, or financial exploitation and process it in a manner to determine the need to initiate a protective service investigation. Completion of the form guides the Intake Worker in asking pertinent questions and documenting the critical information. It is very important that a Report of Need be completed whenever there may be any indication that an older adult is at risk.

The Intake person should not expect the caller to be knowledgeable about elder abuse or protective services. Rather, it is the Intake Worker's responsibility to ask probing questions to identify what the reporter is alleging. The presence or absence of risk, the consumer's environment and any other pertinent information must be obtained to help determine the appropriate referral category. It is essential that the Intake Worker accurately record the information obtained from the caller on the Report of Need form because the Protective Service Worker (PSW) must make the decision to change or confirm the category based solely on the information contained in the Report of Need. The Intake person or the PSW is **not** to make additional calls to assess risk that will effect the assigned category. These additional calls constitute the initiation of the investigation that a PSW must complete in its entirety and may be beyond the scope of the Intake person.

For further clarification on completion of Report of Need and investigation, see APD #93-24-02. While the forms are obsolete, the process remains unchanged. For current forms, please see APD #97-24-01.

Situation #1: The Area Agency on Aging receives information that an older adult is in a hospital because of alleged abuse or neglect at a licensed facility.

Scenario #1: Mrs. Brown resides at the ABC Personal Care Home. The provider transported her to a hospital when she became very ill. A hospital social worker contacted the local AAA to report Mrs. Brown was admitted for dehydration, malnutrition and multiple pressure sores.

The Department has heard and observed that on some occasions:

- The case was classified as "No Need for Protective Services" because the consumer is in a "protective setting" i.e. hospital.
- Investigation is left to the Ombudsman.

Clarification: It is important to note that the investigation focus is the point in time that the reported incident occurred, not the day that the report is made. (See attachment - PS Update 15.44a). The caregiver (i.e. PCH provider) in this scenario is presumed to be unable or unwilling to provide the necessary care and protection until proven to be so by investigation. Therefore, focus is on the older adult's circumstances at ABC Personal Care Home that led to the hospitalization as well as on the available medical information/opinions necessary for determining reason(s) for the hospitalization.

It is the Department's expectation that the AAA complete a Report of Need in this circumstance and conduct a **protective service** investigation for the following reasons:

- To document the reason for the hospitalization.
- To determine the potential for the consumer being discharged back to the facility.
- To determine if any other residents at the facility are at risk.
- To refer any facility-related issues to the Ombudsman.

(See attachments 1, 2, 3 and 4)

Situation #2: The Area Agency on Aging receives information that, after experiencing abuse or neglect at a licensed facility, an older adult was safely placed in another licensed facility.

Scenario #2: Mr. Jones resided at the Pleasant View Nursing facility. His daughter, very suspicious about unexplained bruising, transferred him to another nursing facility. Once safely placed, the daughter phoned the local AAA to "file a complaint."

Clarification: One could argue that since there is no present risk to the consumer, it does not fit the criteria. **Again, however, the investigation focus is the point in time that the reported incident occurred, not the day that the report was made.**

The caregiver, in this case a licensed nursing facility, is presumed to be unable or unwilling to provide the necessary care and protection until proven to be so by investigation.

It is the Department's expectation that the AAA complete a Report of Need in this circumstance and conduct a protective service investigation for the following reasons:

- To investigate the cause of the bruising to determine if the allegations of abuse are substantiated.
- If substantiated, to determine if any other residents at this facility may also be at risk thereby generating additional report(s) of need.
- To refer any facility-related issues to the Ombudsman.

The Wexford case of several years ago set a precedent to conduct an investigation to determine if residents at the first facility are at risk.

(See attachments 2, 3, 5 and 6)

Situation #3: The Area Agency on Aging receives information that an employee of a licensed facility abused or neglected an older adult and the facility terminated or suspended the worker's employment.

Scenario #3: A personal care aide physically accosted Mr. DeSantis (a long time resident of the We Care Nursing Facility) resulting in the need for medical attention for bruised ribs. To satisfy Act 13 requirements, the social worker informed the local AAA of the incident and the termination of the aide's employment.

The Department has heard and observed that on some occasions:

- The case is classified as "No Need for Protective Services" because the consumer is no longer at risk.
- The investigation is left to the Ombudsman.

Clarification: Again, the investigation focus is the point in time that the reported incident occurred, and not the day that the report was made.

It is the Department's expectation that the AAA complete a Report of Need in this circumstance and conduct a **protective service** investigation for the following reasons:

- To determine and document that the facility provided the appropriate care to the consumer.
- To verify that the facility actually suspended, or in this case terminated, the employee.

(See attachments 2 and 3).

It is important to note that the primary difference between the responsibility of the Ombudsman and Protective Service Worker is **risk**. The Department views the use of the Ombudsman as a "first line of defense" in such cases as an inefficient use of resources and time

and older adult dissatisfaction. The AAA's are encouraged to contact their Program Consultant with any questions or concerns regarding this bulletin or for consultation on actual case situations.

REMEMBER: If you are going to err, err on the side of safety for the older adult.

Situation #4: The Area Agency on Aging receives information that an older adult died while residing in a state-licensed facility. The reporter provides additional information that implies that alleged abuse or neglect may have contributed to the death of the older adult.

Scenario #4: Mrs. Jones was a resident at the Happy Acres Nursing Facility for several years. The day after her death, a niece called the local Area Agency on Aging to "file a complaint against the facility." The niece told the Intake Worker that physician's orders required turning and positioning every two hours and special skin care for pressure ulcers. She claimed that the pressure ulcers got worse and the facility was negligent in her care. She called the AAA to file a report because she attributed the death of her aunt to negligence.

Clarification: It is the Department's expectation that the AAA complete a Report of Need in this circumstance. Furthermore, current regulations require that: "if the death of an older adult reported to need protective services occurs **prior to the agency's investigation of the report ...** and when there is some nexus between the death and the need for protective services, the agency shall **immediately report that death to the police and the county coroner.**"

Although not specifically stated in the regulations, because of possible implications of Acts 28 and 13, the AAA's should report such incidents to the state licensing agency and local Ombudsman.

In this scenario, the agency is not required to conduct a protective services investigation.

NOTE: See attachment 7; also see attachment 8 for Act 13 and 28 reporting requirements.

ATTACHMENT #1

**Regulatory Reference 15.41
15.45
15.2**

- Q - Please clarify the Protective Services Update No. 1 answer concerning when a hospitalized person should be considered a protective services case.
- A - Basically the hospital issue arises in two ways: (1) the need for protective service is caused by the abuse, neglect, etc. of the victim by the hospital or, (2) the abuse, neglect, etc. is being perpetrated by a third party and hospitalization is just one of the services needed by the victim. When the hospital is the alleged perpetrator, it is clearly a protective services case which should be investigated as set forth in the regulations concerning state licensed facilities. In the second instance, the victim's temporary residence in the hospital should not routinely exclude him/her from access to the protection provided by the Act. Such reports should be evaluated to determine if the victim meets the criteria of an older adult in need of protective services. Refusing to accept a report of need for protective services solely because the victim is hospitalized is inappropriate. The level of risk and the existence of a responsible caretaker should be determined by considering the dynamics of the situation from which the victim came and to which he/she will return.

ATTACHMENT #2

Regulatory Reference 15.44 (a)

Q - How should the protective services investigator determine if a report of need for protective services is substantiated?

A- A report is considered to be substantiated when either of the following occurs: (a) The investigation confirms the details of the report of need, or (b) the person who is the subject of the report is determined to be in need of protective services. In the majority of cases, substantiation will be arrived at because both of the above have occurred: the details of the report are confirmed and the older person needs protective services. There are, however, instances where substantiation will be determined with only one of the above elements being present, such as where the details of the report are confirmed but there is no current need for protective services. This could happen if a report of need alleged verbal abuse of a nursing home resident by a nurse aide but before the protective services investigation was completed, the aide was terminated by the nursing home administrator. Since protection from the nurse aide was the needed protective service, the aide's termination eliminated the victim's current need for protective services.

However, the case would still be considered substantiated because the investigation found that the allegations in the report of need were true thereby demonstrating that the victim did need protective services at the time the alleged occurrences took place. The same would be true of a report of physical abuse by a son living with the victim if the son moved out of the house and the AAA is certain that his absence is permanent and that it has totally eliminated the need for protective services before the investigation has been completed.

When substantiating cases based on confirmation of reported allegations in the absence of a current need for protective services it is essential that the allegations which have been confirmed actually created a need for protective services at the time when they occurred. The confirmation of allegations which did not, at the time of their occurrence, create a need for protective services does not result in a substantiated case.

The other way that substantiation can occur is when the allegations in the report are found not to be true, but, the investigation reveals that, for other reasons, the older person meets the criteria set forth in the definition of an older adult in need of protective services. A common example of this type of substantiation is when the agency receives a report alleging physical abuse. Upon investigation it is discovered that the physical abuse allegations are unfounded but the older person is being financially exploited and is in need of protective services.

ATTACHMENT #3

Regulatory Reference § 15.2

- Q - How can a nursing home, hospital etc. resident be considered an "older adult in need of protective services" since they have a responsible caretaker ?
- A - The regulations define a responsible caretaker, in relevant part, as "a caretaker reported to have abused, neglected, exploited, or abandoned an older adult is presumed, subject to an investigation under this Chapter, to be unable or unwilling to provide the necessary care and protection." As such a report of need relating to a nursing home resident or hospital patient falls under the Act so long as the criteria found in the definition of an older adult in need of protective services are also present.

ATTACHMENT #4

Regulatory Reference 15.45 (a) (1) (2) (3) (4)

- Q - If a nursing home resident is hospitalized as a result of injuries received in the nursing home, should the incident be investigated by the protective services worker or the ombudsman.
- A - If it is alleged in the report of need that the injuries and hospitalization were as a result of abuse, neglect, exploitation or abandonment, the protective services worker should conduct the investigation. The caseworker should also notify the ombudsman of the report. If, in the course of the protective services investigation, it is determined that ombudsman services are appropriate, they should be requested by the protective services worker.

ATTACHMENT #5

Regulatory Reference § 15.45

- Q - If a LTC facility resident reported to be in need of Protective Services moves out of the facility before the Protective Services investigation begins, should the investigation be carried out by the protective services worker or the ombudsman?
- A - The protective services worker is responsible for conducting the investigation to substantiate the older person's need for protective services. The protective services worker will notify the ombudsman and inform him/her that a report has been received about a resident of the facility and that while an investigation is beginning, it will focus on the person reported to be in need of protective services. Since that person is no longer in the facility, actual investigation by the protective services worker in the facility may be minimal and focus on the individual not the facility. Facility related issues should be referred to the ombudsman for investigation/resolution.

The protective services worker should also notify the regional office of the licensing agency within 24 hours of the initiation of the investigation.

The investigation will require coordination and cooperation involving the protective services worker, the ombudsman, and the representative of the licensing agency.

ATTACHMENT #6

Regulatory Reference § 15.45
§ 15.41(b)
§ 15.13(4)

- Q - Does the fact that a state licensed facility resident is being abused by family or other residents rather than facility staff (or vice versa) have any impact on whether the investigation is conducted by an ombudsman or a protective services worker?
- A - No impact whatsoever. All reports of need for Protective Services must be investigated by a trained protective services worker. That worker cannot be an ombudsman.

ATTACHMENT #7

Regulatory Reference § 15.23
§ 15.2
§ 15.46(g)

- Q - If the agency receives a report of need for protective services after the death of the person who is the subject of the report, should it be handled as a protective services investigation?
- A - In order to do an investigation you must have a report that an older adult is in need of protective services. If a person is deceased they do not meet the definition of an older adult in need of protective services. That does not mean that there is nothing that the Agency can do to assist in such a case. It may be appropriate for the agency to assist family members or others through legal services, notification of police, or other elements of the service delivery system. However, if the older person was deceased before being reported to be in need of protective services there should not be a protective services investigation conducted, nor should any services provided by the agency be charged to protective services.

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

The act is effective for conduct committed after September 6, 1995.

Who is protected by the Act? Individuals, 18 years of age and above, who due to physical or cognitive disability or impairment, require assistance to meet their needs for food, shelter, clothing, personal care, or health care; and who reside in either a nursing home, domiciliary care home, community residential facility; or who receive home health services in their residence; or who receive services from another who has an obligation to care for the person for monetary consideration in either the care dependent person's home or in one of the previously described facilities; or who receives services from an adult daily living center.

Who is subject to prosecution under the Act? Caretakers are subject to prosecution under the Act. A caretaker is any person who: Owns, operates, manages or is employed in a nursing home, personal care home, domiciliary care home, community residential facility, adult daily living center, home health agency or home health service provider whether licensed or unlicensed who has responsibility to care for a care-dependent person. A caretaker is also any person who has an obligation to care for a care-dependent person in any described facility or the care-dependent's home and who receives monetary consideration for the care.

A caretaker can be a natural person, a corporation, a partnership, an unincorporated association or any other business entity. (This does not include governmental entities, boards or commissions).

What triggers prosecution? (a) Intentionally, knowingly, or recklessly causing bodily injury or serious bodily injury to a care-dependent person by failure to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for who he is responsible to provide care. (b) A caretaker may also be prosecuted if he intentionally or knowingly uses a physical restraint or a chemical restraint or medication on a care-dependent person, or isolates that person, contrary to law or regulation with resulting bodily or serious bodily injury.

What must be observed in order to implement the provisions of the Act? The care-dependent person must have suffered either bodily injury or serious bodily injury. Bodily injury is defined by the Crimes Code at §2301 as, "impairment of physical condition or substantial pain." Serious bodily injury is defined by the Crimes Code at §2301 as, "Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ."

Who must report? Personnel of PDA (or AAAs), DoH or DPW when they have reasonable cause to believe that a care-dependent person residing in a facility has suffered bodily injury or been unlawfully restrained in violation of the Act, shall report immediately to the local law enforcement agency or to the Office of the Attorney General. The Departments must make these reports when they become aware of care-dependent person's mistreatment in conducting regulatory or investigative responsibilities. (This would include licensure visits and inspections based on complaints.)

Purpose: Requires an employee or an administrator of a facility who has reasonable cause to believe that a recipient is a victim of abuse to immediately report the abuse the effective date was December 10, 1997.

Abuse: The occurrence of one or more of the following acts: (1) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish; (2) The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health; (3) Sexual harassment; and/or (4) Sexual Abuse which is intentionally, knowingly or recklessly causing or attempting to cause rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest.

Facility: The type of facilities impacted by the act are: long-term care nursing facility, personal care home, domiciliary care home, home health agency and an adult daily living center.

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

Serious Bodily Injury: An injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

Serious Physical Injury: An injury that causes a person severe pain or significantly impairs a person's physical functioning, either permanently or temporarily.

Process: When an employee or administrator has reasonable cause to believe that a recipient is a victim of abuse they shall immediately make an oral report to the local AAA. Within 48 hours of making the oral report the employee or administrator shall make a written report to the AAA.

If the employee or administrator believes the abuse involves sexual abuse, serious physical injury, serious bodily injury or suspicious death they are also required to make an immediate oral report to law enforcement and to PDA in addition to the oral and written report to the AAA. Within 48 hours of making the oral report the employee or administrator shall follow-up with a written report to law enforcement officials.

Within 48 hours of receiving a report of abuse involving sexual abuse, serious physical injury, serious bodily injury, suspicious death, the local AAA shall forward a written report to PDA.

When the local AAA receives a report concerning suspicious death, the AAA will make an oral report to the coroner and follow-up with a written report within 24 hours.

Failure to comply with Act 13 can result in administrative and criminal penalties. The licensing agency for the facility will have jurisdiction to determine any administrative violation and may issue a civil penalty up to \$2,500. Additional criminal fines and penalties of up to one year imprisonment are included for criminal violation of the act.

Purpose: Requires criminal history background checks for employees of NH, PCH, Dom Care, Home Health and ADC. Employees with convictions for prohibitive offenses are precluded from working in these facilities. The act takes effect July 1, 1998.

Prohibitive Offenses: Criminal Homicide, Aggravated Assault, Kidnapping, Unlawful Restraint, Rape, Statutory Sexual Assault, Involuntary Deviate Sexual Intercourse, Sexual Assault, Aggravated Indecent Assault, Indecent Assault, Arson and Related Offenses, Burglary, Robbery, Theft (Felony or 2 Misdemeanors), Forgery, Securing Execution of Documents by Deception, Incest, Concealing Death of a Child, Felony Drug Offense, Child Endangerment, Dealing in Infant Children, Intimidation of a Witness, Retaliation Against a Witness, Prostitution (Felony Offense), Obscene or Other Sexual Materials and Corruption of Minors.

Employee: An employee is defined as any applicant or new employee who has been hired since July 1, 1997. Employees who have been employed at the facility prior to July 1, 1997 are exempt from the check. Facilities have 1 year to do check on hires between 7/1/97 - 6/30/98. Includes contract employees with direct contact with residents or unsupervised access to their personal living quarters. Also includes persons employed or contracted to provide care to a care-dependent individual for monetary consideration in the individual's residence.

Facility: The type of facility impacted by the act are as follows: domiciliary care home, home health agency, long-term care nursing facility, adult day care facility, personal care home. The act also includes any private or public organization which provides care to a care-dependent person in their residence.

Process: An applicant/new hire who has been a resident of the state for the last 2 years uninterrupted needs to obtain a "Request for Criminal History Background Check" from the nearest PA State Police barracks. The applicant/new hire will complete the application and forward it with a money order or cashier's check for \$10 to the State Police for processing. The act does allow for the provisional hire of an employee for the 30 days if the employee can provide proof they have applied for the background check. If there is no criminal history record, the PSP will forward a letter stating the same. If there is a criminal record the PSP will forward a copy of the rap sheet to the applicant.

If the applicant has not been a PA resident for the 2 years before application, they will need to have PSP criminal history background check completed and a FBI Background Check. The applicant will obtain an FBI fingerprint card either from their prospective employer or by contacting PDA. After obtaining the fingerprint card the applicant will go to police to be fingerprinted. The completed card (fingerprints and requested information will be forwarded to PDA along with a money order or cashier's check for \$24 made payable to the FBI. The provisional hire of an employee required to obtain an FBI check for 90 days is allowed by the Act if the above noted conditions are met.

The fingerprints will be forwarded to the FBI for processing. The normal processing time is between 60 and 90 days. The act does allow for the provisional hire of an out-of-state employee for 90 days, if the employee can provide proof they have applied for the background check. When the application has been processed by the FBI the results will be returned to PDA. When there is no criminal history record information recorded, a clearance letter will be sent to the applicant/employer. If there is an open disposition for a prohibitive offense, the FBI rap sheet will be returned to the applicant for resolution. If there is a conviction for 1 of the prohibitive offenses, a prohibitive hire letter will be forwarded to the applicant/employer.