I. **Older Adult Protective Services Act**, 35 P.S. § 10225.101 *et seq.*

An Act providing for protection of abused, neglected, exploited or abandoned adults; establishing a uniform Statewide reporting and investigative system for suspected abuse, neglect, exploitation or abandonment of adults; providing for protective services; and prescribing penalties. Applies to adults over the age of 60.²

A. **Conduct**

1. **Neglect**: The failure to provide for oneself or the failure of a caretaker to provide goods or services essential to avoid a clear and serious threat to physical or mental health. No older adult who does not consent to the provision of protective services shall be found to be neglected solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care. *35 P.S. 10225.103*

2. **Abuse³** – the occurrence of one or more of the following acts

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

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

   (c) Sexual harassment, rape or abuse as defined in the October 7, 1976 (P.L. 1090, No. 218), known as the Protection from Abuse Act.

No older adult shall be found to be abused solely on the grounds of environmental factors which are beyond the control of the older adult or the caretaker, such as inadequate housing, furnishings, income, clothing, or medical care.

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¹ Hereinafter, OAPSA.

² A separate statute exists protecting the same class of adults who are between the ages of 18 and 59. This is known as the Adult Protective Services Act and is cited as 35 P.S. 10210.101 *et seq.*

³ *35 P.S. § 10225.103*
3. **Exploitation**: An act or course of conduct by a caretaker or other person against an older adult or an older adult's resources, without the informed consent of the older adult or with consent obtained through misrepresentation, coercion or threats of force, that results in monetary, personal or other benefit, gain or profit for the perpetrator or monetary or personal loss to the older adult.

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

B. **Vulnerable Adults**

1. **Older Adult in Need of Protective Services**

   An incapacitated older adult who is unable to perform or obtain services that are necessary to maintain physical or mental health, for whom there is no responsible caretaker and who is at imminent risk of danger to his person or property. *35 P.S. 10225.103*

C. **Persons/Entities Excluded From Statute**

1. Any person participating in the making of a report or who provides testimony in any administrative or judicial proceeding arising out of a report shall be immune from any civil or criminal liability on account of the report or testimony unless the person acted in bad faith or with malicious purpose. This immunity shall not extend to liability for acts of abuse, neglect, exploitation or abandonment, even if such acts are the subject of the report or testimony. *35 P.S. 10225.302(d)*

2. In the absence of willful misconduct or gross negligence, the agency, the director, employees of the agency, protective services workers or employees of the department shall not be civilly or criminally liable for any decision or action or resulting consequence of decisions or action when acting under and according to the provisions of this chapter. *35 P.S. 10225.305, See Collins v. Christie*, 2007 U.S. Dist. LEXIS 61579, 2007 WL 2407105 (E.D. Pa. Aug. 22, 2007).

3. An administrator or a facility shall not be held civilly liable for any action directly related to good faith compliance with this chapter. *35 P.S. 10225.707*

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* Exploitation will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.

* Abandonment will not be addressed in this compendium – instead, only the abuse and/or neglect portions of the statutes.

* Chapter 7: Reporting Suspected Abuse By Employees*
D. Criminal History for Employees

1. A facility shall require all applicants to submit with their applications:
   
   (a) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information), a report of criminal history record information from the State Police or a statement from the State Police that their central repository contains no such information relating to that person.

   (b) Where the applicant is not and for the two years immediately preceding the date of application has not been a resident of this Commonwealth, administration shall require the applicant to submit with the application for employment a report of Federal criminal history record information pursuant to the Federal Bureau of Investigation's appropriation under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544, 86 Stat. 1109).

2. In no case shall a facility hire an applicant or retain an employee required to submit information pursuant to section 502(a) if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted of any of the following offenses:

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

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

E. Reporting Requirements for Employees

1. Mandatory Reporting to Agency

   (a) An employee or an administrator who has reasonable cause to suspect that a recipient is a victim of abuse shall immediately make an oral report to the agency.

   (b) Within 48 hours of making the oral report, the employee or administrator shall make a written report to the agency.

2. Mandatory Reporting to Law Enforcement

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7 35 P.S. 10225.502(a)(1-2)
8 35 P.S. 10225.503(a)(1-2)
9 In 1997, the General Assembly added a mandatory reporting chapter to the OAPSA, requiring that employees and administrators in covered facilities report suspected abuse of patients to area agencies, as well as to law enforcement officials in cases of sexual abuse, serious bodily injury, or a suspicious death. See Nixon v. Dep’t of Pub. Welfare, 576 Pa. 385, 839 A.2d 277, 2003 Pa. LEXIS 2604 (Pa. 2003).
An employee or an administrator who has reasonable cause to suspect that a recipient is the victim of sexual abuse, serious physical injury or serious bodily injury or that a death is suspicious shall, in addition to contacting the agency and the department, immediately contact law enforcement officials to make an oral report.

Within 48 hours of making the oral report, the employee and an administrator shall make a written report to appropriate law enforcement officials.

F. Criminal Provision

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

G. Statute of Limitations: Two Years – 42 Pa C.S. §5524


I. Can Regulations Establish Standard of Care:

Yes. Courts in Pennsylvania have recognized that the absence of a private cause of action in a statutory scheme is an indicator that the statute did not contemplate enforcement of an individual harm. However, it is just an indicator or a factor to consider and does not necessarily preclude the statute’s use as a basis of a claim of negligence per se. A statute may still be used as a basis for a negligence per se claim when it is clear that, despite the absence of a private right of action, the policy of the statute will be furthered by such a claim because its purpose is to protect a particular group of individuals. Frantz v. HCR Manor Care, Inc., 2003 Pa. Dist. & Cnty. Dec. LEXIS 169, 64 Pa. D. & C. 4th 457 (Pa. County Ct. 2003).

II. DAMAGES

A. Damages Available

1. Compensatory Damages
2. Treble Compensatory Damages
3. Punitive Damages
4. Special Damages (when death is the result)

B. Does Pain and Suffering of Decedent/Resident Survive Death:

C. Attorney’s Fees Available: Yes

1. Attorney’s fees in Pennsylvania are limited to a specific set of criteria and in those circumstances; fees must be “reasonable.” 42 Pa.C.S. §2503

III. LEGISLATION AFFECTING STATUTE

A. Pending:

1. House Bill 130: Further defining the term “exploitation.”

2. House Resolution 343: Designating June 15 Elder Abuse Awareness Day in Pennsylvania

   (a) Senate Bill 71: Further defining the term “facility” and providing information related to prospective facility personnel.

   (b) Senate Bill 821: Providing for background checks for both applicants and recipients of OAPSA.