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ACT 28 OF 1995 SUMMARY
18 Pa. C.S.A. Section 2713
NEGLECT OF CARE DEPENDENT PERSONS

1. What does the Act prohibit?

A **caregiver** is guilty of neglect of a **care-dependent** person if he:

(1) Intentionally, knowingly or recklessly causes bodily injury or serious bodily injury by failing to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a **care-dependent** person for whom he is responsible to care.

(2) Intentionally or knowingly uses a physical restraint or chemical restraint or medication on a care-dependent person, or isolates a **care-dependent** person contrary to law or regulation, such that bodily injury or serious bodily injury results.

2. Who is a care-dependent person?

Any adult, who due to physical or cognitive disability or impairment requires assistance to meet his needs for food, shelter, clothing, personal care or healthcare.

3. Who is a caretaker?

(1) Any person who is an owner, operator, manager or employee of: a nursing home; personal care home; domiciliary care home; community residential facility; intermediate care facility for the mentally retarded adult daily living center; home health agency; or home health service provider whether licensed or unlicensed.

(2) Any person **who** provides care to a care-dependent person in the settings described above.

(3) Any person who has an obligation to care for a care-dependent person for monetary consideration in the settings described in number one, above, or in the care-dependent person's home.

4. What is bodily injury?

The Pennsylvania Crimes Code, found at 18 Pa. C.S.A, Section 2301 defines bodily injury as, "Impairment of physical condition or substantial pain."

5. What is serious bodily injury?

The Pennsylvania Crimes Code, found at 18 Pa. C.S.A. Section 2301 defines serious bodily injury 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.”

6. What is the penalty for violation?

Violation of the act resulting in bodily injury is punished as a misdemeanor of the first degree, the penalty for which is a fine of not more than \$10,000 and a term of imprisonment of not more than 5 years. Violation of the act resulting in serious bodily injury is punished as a felony of the first degree, the penalty for which is a fine of not more than \$25,999 and a term of imprisonment of not more than 20 years.

7. Is there mandatory reporting under Act 28?

Yes.

Personnel and agents of the Pennsylvania Department of Aging, Health and Welfare, who, in the course of their regulatory or investigative duties, develop a reasonable cause to believe that a care-dependent person residing in a facility has suffered bodily injury or serious bodily injury, must immediately report this to the local law enforcement agency, or the Pennsylvania Attorney General.

8. Are there other forms of mandatory reporting in Pennsylvania?

Yes.

Act 13 of 1997.

Employees or administrators of facilities, who have reasonable cause to suspect that a recipient has suffered abuse or sexual abuse or serious physical injury or serious bodily injury, must report this to the local area agency on aging, and in cases of injury, sexual abuse or suspicious death, they must also report to the local law enforcement agency.

Section 5106 of the Crimes Code requires that personnel operant emergency rooms, hospitals or pharmacies, must report to local law enforcement when injured people are brought to them for treatment of injuries inflicted due to criminal conduct.

Injuries inflicted in violation of Act 28 are criminally inflicted injuries. Persons required to report under Act 3 and under Section 5106 of the Crimes code may be prosecuted for failure to report.

CHAPTER 18
CRIMES CODES OF PENNSYLVANIA

Section 5106. Failure to report injuries by firearm or criminal act

(a) **Offense defined.** - A physician, intern or resident, or any person conducting, managing or in charge of any hospital or pharmacy, or in charge of any ward or part of a hospital, to whom shall come or be brought any person -

(1) Suffering from any wound or other injury inflicted by his own act or by the act of another by means of a **deadly** weapon as defined in section 2301 of this title (relating to definitions);

or

(2) Upon whom injuries have been inflicted in violation of any penal law of this Commonwealth; commits a summary offense if he fails to report such injuries immediately, both by telephone and in writing, to the chief of police or other head of the police department of the local government, or to the Pennsylvania State Police. The report shall state the name of the injured person, if known, his whereabouts and the character and extent of his injuries.

(b) **Immunity granted.** - No physician or other person shall be subject to civil or criminal liability by reason of making a report required by this section.

(c) **Physician-patient privilege unavailable.** - In any judicial proceeding resulting from a report pursuant to this section, the physician patient privilege shall not apply in respect to evidence regarding such injuries or the cause thereof.

ACT 13 of 1997 SUMMARY

35 P.S. Sections 10211, ET, Seq.,

**MANDATORY REPORTING OF ABUSE TO PUBLIC
AUTHORITIES**

1. Act 13 requires facility employees and administrators, who have reasonable cause to suspect that a recipient of service is a victim of **abuse**, to immediately report that suspicion to the local area agency on aging and make a written **report** to that agency within 48 hours of the oral report.

2. If an employee or administrator has reasonable cause to suspect that a recipient is the victim of **sexual abuse, serious bodily injury or serious physical injury or that a death is suspicious**, that individual shall, in addition to contacting the local area agency on aging, contact local law enforcement, e.g., the police, state police or district attorney. Likewise, there is a 48-hour requirement of making a written report to local law enforcement officials.

3. Definitions of abuse, serious bodily injury and serious physical injury.

Abuse is defined as 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, rape or abuse.

Serious bodily injury is defined as 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 is defined as an injury that (1) causes a Person severe pain: or (2) significantly impairs a person's physical functioning, either temporarily or permanently.

(Definitions from Chapter 1 of the Pa. Older Adult Protective Services Act, 35 P.S. Sections 10211, ET. Seq.)

4. Local area agencies on aging have the obligation to report deaths, serious physical injury and serious bodily injury to the Pa. Dept. of Aging, and in deaths that are suspicious, the area agency on aging must report to the Coroner orally and in writing, within 24 hour-, of the oral report.

5. When a facility is notified that an employee is alleged to have committed abuse. The facility shall immediately implement a plan of supervision or, where appropriate, suspend the employee. If the plan is a supervisory one, the area agency on aging and the state agency licensing the facility must approve the supervisory plan. If criminal charges are filed against an employee the facility shall be ordered by the licensing agency to prohibit the employee from having recipient contact.

6. An administrator or facility owner who intentionally or willfully fails to simply or obstructs compliance, with the act may be subject to administrative or criminal sanctions for such failure.

7. An employee, or administrator, who fails to report under this act, may be found guilty of summary offense for the 1st violation and a misdemeanor of the 3rd degree for each additional offense.

ACT 169 OF 1996 SUMMARY

35 P.S. Sections 10211, ET. Seq.

PROHIBITION ON HIRING PERSONS WITH CRIMINAL CONVICTIONS

1. Recently added Chapter 5, Criminal History for Employees, to the Older Adult Protective Services Act (35 P.S. Sections 10211. ET. Seq.) requires facility operators to secure criminal history information on most employees and applicants for employment and prohibits the hiring of persons in direct care positions who have been convicted of particular crimes.
2. This act applies to **facilities** defined as nursing homes, personal care homes, domiciliary care providers, home health agencies, other agencies which provide care to care dependent persons in their residencies and older adult daily living centers. The act covers recipients of all ages.
3. No person who has been convicted of Criminal Homicide; Aggravated Assault; Kidnapping; Unlawful Restraint; Rape; Statutory Sexual Assault; Involuntary Deviate Sexual Intercourse; Sexual Assault; Aggravated Indecent Assault; Indecent Assault; Indecent Exposure; Arson; Burglary; Robbery; One felony or two misdemeanor convictions for Theft; Forgery; Securing execution of documents by deception; Incest; Concealing the death of a child; Endangering welfare of children; Dealing in infant children; Intimidation of witnesses or victims; Retaliation against a witness or victim; Felony conviction for Prostitution; Certain crimes related to Obscene materials; Crimes related to the Sexual Abuse of Children; or conviction of a Federal, or out-of-state crime similar to those described above; may never be employed within a facility in direct care.
4. No person who has been convicted of a Felony under the Controlled Substance, Drug, Device and Cosmetic Act may ever be employed within a facility in direct care.
5. Applicants must provide a state police check, obtained within the year prior to the date of employment, certifying that they do not fall into one of the above categories of offenses.
6. Facility administrators and owners who intentionally or willfully fail to comply, or obstruct compliance, with the act may be civilly fined and/or convicted of a misdemeanor of the 3rd degree.

7. The act provides for provisional employees for up to a 90 day period while a state police check is being sought, so long as the employees swears that he had committed non of the enumerated crimes, and other conditions are met.

The act provides for an exemption for individuals who, on the effective date of the legislation, **July 1, 1998**, have continuously for a period of one year been an employee of the same facility.

If an employee, who is exempt seeks employment with a different facility, he shall comply with the provisions of the act, e.g., get a state police check. And any employee who has obtained a check, may transfer to another facility established and supervised by the same owner and is not required to obtain additional reports.

Acknowledgement of Receipt of Information Regarding:

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