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THE ADULT PROTECTIVE SERVICES (APS) ACT IN PENNSYLVANIA

What is the Adult Protective Services (APS) Act?

The Adult Protective Services (APS) Act, also known as Act 70 of 2010, took effect on April 7, 2011. This law was passed to protect adults between 18 and 59 years of age who cannot protect themselves from abuse, neglect, exploitation, or abandonment due to a physical or mental disability.

What does the Adult Protective Services (APS) Act do?

The APS Act requires Pennsylvania's Department of Public Welfare (DPW) to create a statewide program of APS Agencies to detect, prevent, reduce, or eliminate abuse, neglect, exploitation, and abandonment of adults with disabilities between 18 and 59 years of age. The statewide program must include a uniform system for reporting and investigating complaints of suspected abuse, neglect, exploitation, and abandonment. The program

must also provide for the availability and provision of protective services once an APS Agency determines that an adult is in need of services.

What are DPW's responsibilities with respect to the statewide Adult Protective Services (APS) program?

DPW must ensure that adults with disabilities are offered the least restrictive alternatives to protect them and that services are provided in the most integrated settings possible.

DPW must define the geographic areas to be served by APS Agencies, select APS Agencies based upon a competitive bidding process, and conduct an ongoing campaign to inform and educate adults with disabilities, families, caregivers, professionals and the general public about the need for and availability of protective services from APS Agencies.

DPW must also promulgate regulations to establish procedures to ensure no conflict of interest in the provision of adult protective services and the minimum standards of training and experience that APS Agencies must follow in the selection and assignment of staff for the provision of adult protective services. Additionally, DPW must ensure that APS Agencies have access to DPW's incident reporting system and must coordinate with

Pennsylvania's Department of Aging to ensure that adults who are the subject of a protective services report at the time of their 60th birthday have continuity in the delivery of protective services.

Do Adult Protective Services (APS) Agencies have to meet certain criteria?

Yes. APS Agencies selected by DPW must demonstrate knowledge of and experience working with adults with disabilities, including knowledge of service delivery principals important to adults and their families such as individual choice and use of the least restrictive alternatives. APS Agencies must be separate from agencies providing direct services to adults with disabilities and from county mental health and intellectual disability programs. APS Agencies must collaborate with other entities that advocate for adults with disabilities and must demonstrate that their programs will be advised by a body that includes at least 51% representation of adults with disabilities and their families.

How are Adult Protective Services (APS) Agencies selected?

DPW engages in a procurement process to select APS Agencies that will likely not be completed before July 1, 2014. Once APS Agencies are selected, it may then take additional time to get the APS system up and

running. In the interim, as discussed near the end of this fact sheet, there are other avenues that can be used to report adults with disabilities who are in need of protective services.

What must Adult Protective Services (APS) Agencies do?

APS Agencies must organize, staff, and operate a program of protective services for adults with disabilities between 18 and 59 years of age within their geographic area. This includes a system of receiving and investigating reports of adults who may be in need of protective services 24 hours a day, 7 days a week, including holidays. To the extent possible, the APS Agency must privately notify the adult with a disability who is the subject of an investigation that a report has been made and provide a brief summary of the nature of the report. Additional information contained in the report must be provided to the subject of the investigation upon request, except information about the person who made the report can be withheld if release of such information would be detrimental to the safety of that person.

APS Agencies must offer and arrange for the provision of protective services when a need is determined to exist. If an investigation confirms

the allegations made in a report, the APS Agency must provide for a timely assessment of the adult who is the subject of the report. The APS Agency will then use the assessment to prepare written findings that include a recommended course of action and the development of a service plan.

The service plan must: 1) provide for the least restrictive alternative to help the adult and encourage choice and continuity of care; 2) assure that services and supports are provided in the most integrated setting; 3) not include the relocation of the adult unless the adult consents or there is a court order to this effect; and 4) be written in plain language whenever possible and prepared in a manner which can be easily understood by an adult in need of protective services or that adult's court-appointed guardian.

APS Agencies must assure the privacy of all adults receiving services and the confidentiality of all records. APS Agencies must also identify and list other social service entities that have substantial contact with potential victims or perpetrators of abuse, neglect, exploitation, and abandonment, and must ensure that these entities have information about the unique aspects of various disabilities.

What is the scope of the Adult Protective Services (APS) Agencies' authority to investigate reports?

APS Agencies must have access to see and interview adults with disabilities who are reported to be in need of protective services and to have access to their records that are relevant to investigate the reports in order to gather evidence and determine if allegations in the reports are true. Access is also necessary to assess the needs of the adults in question and to develop and implement a service plan for addressing their needs when warranted. Subject to the exceptions below, however, the adult with a disability who is the subject of a report can refuse to talk with the APS Agency or to release confidential information to the APS Agency.

If an APS Agency is unable to see or interview an adult with disability reported to be in need of protective services or is denied access to his or her records either because the adult with disability or a third-party refuses access to the APS Agency, the APS Agency can petition the court to order appropriate access under certain circumstances. Specifically, an APS Agency may petition the court to order appropriate access to see and interview an adult with disability who has been reported to be in need of protective services if: 1) a caregiver or a third party has interfered with the completion of the investigation or the assessment, the development of a

service plan, or the delivery of services to the adult; or 2) the APS Agency can demonstrate that the adult refused access to the APS Agency because of coercion, extortion, or justifiable fear of further abuse, neglect, exploitation, or abandonment. An APS Agency may petition the court to order appropriate access to an adult's confidential records when: 1) the adult has provided written consent but the keeper of the records denies access; or 2) the APS Agency can demonstrate that the adult refused access to his or her records because of incompetence, coercion, extortion, or justifiable fear of future abuse, neglect, exploitation, or abandonment.

Can adults refuse an assessment or other services offered by an Adult Protective Services (APS) Agency?

Yes. Adults have the right to refuse some or all protective services that are offered because adults have the right to make choices about their lifestyles, relationships, bodies and health, even when those choices present risks to themselves or their property. However, information about protective services should be provided in a safe place and in a safe, understandable and responsive manner so an adult can make an informed choice about whether or not to accept services without fear of negative consequences. In an emergency situation where an adult is at imminent risk of death, serious injury (an injury that causes a person severe pain or significantly

impairs a person's physical or mental functioning, either temporarily or permanently), or serious bodily injury (an injury that creates a substantial risk of death or causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ) if protective services are not provided, an APS Agency may petition the court for an emergency order to provide the necessary services without consent of the adult with disability.

How do you report an incident of suspected abuse, neglect, exploitation, or abandonment to an Adult Protective Services (APS) Agency?

Any person who has reasonable cause to believe that an adult is in need of protective services may orally report such information to an APS Agency.

All oral reports will be reduced to writing immediately by the person who receives the report for the APS Agency. The person receiving the report will screen it and will immediately assign it to one of the following 4 categories: 1) priority; 2) non-priority; 3) another planning and service area; or 4) no need for protective services.

Reports assigned to the **priority** category require immediate attention because specific details in the report indicate the possibility that the adult

reported to need protective services is at imminent risk of death, serious injury, or serious bodily injury. The person receiving a priority report for an APS Agency must immediately contact a protective services caseworker and provide the caseworker with the information contained in the report. An investigation must be initiated immediately for a priority report and, to the extent feasible, the APS Agency must conduct a face-to-face interview with the reported adult in need of protective services.

A report will be assigned to the **non-priority** category when it does not appropriately fall within the priority category and, thus, does not require immediate attention by the APS Agency. A report in the non-priority category must be referred to a protective services caseworker within normal business hours and follow the established procedure for referring these reports. An investigation shall be initiated within 72 hours for a non-priority report.

A report will be assigned to the category for **another planning and service area** when the adult who is the subject of the report does not reside in the planning and service area of the APS Agency or, at that time, is not physically in the planning and service area. The report must be referred to

the APS Agency that has the DPW designated responsibility for protective services in the planning and service area in which the adult is located at the time of the report. The APS Agency to which a report has been referred must respond to priority and non-priority reports in the same manner as described above.

A report will be assigned to the **no need for protective services** category when the person reported to be in need of protective services meets either of the following criteria: 1) has the capacity to perform or obtain, without help, services necessary to maintain physical or mental health; or 2) is not at imminent risk or danger to his or her person or property.

Are there any consequences to reporting allegations?

Any person who makes a report or cooperates with an APS Agency, including providing testimony in any administrative or judicial proceeding, and any adult in need of protective services, must not be subject to intimidation or to any discriminatory, retaliatory, or disciplinary action by an employer or by any other person or entity. Any person who violates this rule can be sued in civil court for damages by the reporter or the adult in need of protective services.

Additionally, a person who participates in the making of a report or who provides testimony about a report in an administrative or judicial proceeding will 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 will not apply if the person reporting or testifying about a report committed an act of abuse, neglect, exploitation, or abandonment.

Who is required to report incidents of suspected abuse or neglect to an Adult Protective Services (APS) Agency?

Employees and administrators of facilities that serve adults with disabilities are required by law to make an oral report to an APS Agency if there is reasonable cause to suspect that an adult who receives care, services, or treatment in or from the facility is a victim of abuse or neglect. A facility includes, but is not limited to, an assisted living residence, a domiciliary care home, a home health care agency, an intermediate care facility for people with intellectual disabilities, a long-term care nursing facility, an older adult daily living center, a personal care home, a residential treatment facility, and 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. Within 48 hours of making the oral report, the

employee or administrator must make a written report to the APS Agency or submit the report to DPW's incident reporting system.

An employee or administrator of a facility who has reasonable cause to suspect that an adult who receives care, services, or treatment in or from the facility is the victim of sexual abuse, serious injury (an injury that causes a person severe pain or significantly impairs a person's physical or mental functioning, either temporarily or permanently), or serious bodily injury (an injury that creates a substantial risk of death or causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ) must immediately contact appropriate law enforcement officials to make an oral report in addition to contacting an APS Agency. This is also true if the employee or administrator believes that the death of an adult who receives care, services, or treatment in or from the facility is suspicious. A written report must be given to appropriate law enforcement officials within 48 hours of making the oral report. Upon receipt of the report, law enforcement officials must conduct an investigation to determine what criminal charges, if any, will be filed. Law enforcement officials, facilities, and APS Agencies must coordinate their

respective investigations, advise each other, and provide relevant and additional information to each other on an ongoing basis.

What happens if someone is being abused in a licensed facility?

Any report concerning an adult residing in a State-licensed facility will be sent by the APS Agency to the appropriate State licensing department and must be investigated under the procedures developed by DPW in consultation with the bureau responsible for the licensure of the facility.

The APS Agency may seek a court order to require the State-licensed facility to protect the health and safety of the adult who is the subject of the report when the APS Agency has evidence to believe that the licensed program continues to jeopardize the adult's health and safety.

Can an adult with disability who needs protective services and wants them be denied those services?

The APS Act does not require protective services to be available to adults with disabilities through APS agencies until funds are appropriated for that purpose. If the legislature does not fund adult protective services or APS Agencies exhaust their funding during any fiscal year, services can be denied. Currently, the Pennsylvania legislature has appropriated funding

for adult protective services and it is likely that funding for this purpose will continue.

When an adult who needs and wants protective services has access to other public or private resources that can pay for those services, those resources must be used for his or her protection in lieu of APS funding for as long as the individual continues to be eligible for them. For example, if an individual with an intellectual disability who is enrolled in the Consolidated Waiver can no longer live with her family due to neglect, Waiver funds can be used to provide her with residential services so there is no need to use APS funding. However, protective services will not be denied simply because an adult has access to other resources, such as waiver funding. Once need is determined, the APS Agency will not delay necessary services and will provide the resources and supports necessary to reduce or eliminate abuse, neglect, exploitation and abandonment.

If an adult with a disability is denied protective services pursuant to the APS Act for any reason and believes he or she is entitled to receive them, he or she may appeal the denial of services in accordance with rules and regulations issued by DPW.

How can you report suspected abuse or neglect until a statewide program of Adult Protective Services (APS) Agencies is available?

As noted above, DPW has not yet selected APS agencies. In the interim, you should report all APS complaints to Pennsylvania's statewide hotline for elder abuse at 1-800-490-8505. This Hotline is answered by a person who is trained to take an APS report 24 hours per day, 7 days per week. You may also contact the Disability Rights Network of Pennsylvania (contact information is below) and social service agencies that may be able to offer services to an adult who needs help. If the adult has a mental health disability or an intellectual disability, you should contact the county and State regional offices that serve individuals with this diagnosis. In an emergency situation where an adult is at imminent risk of personal harm or danger to his or her property, contact the appropriate law enforcement officials.

For additional assistance and resources, please check out the Disability Rights Network of Pennsylvania's website at www.drnpa.org.

You can also view DPW's current "Adult Protective Services Transition Process" document at:

http://documents.odpconsulting.net/alfresco/d/d/workspace/SpacesStore/b07a8606-326b-41df-a496-66a716cad057/Adult_Protective_Services_Transition_Process_2013_08_20.pdf.

Contact Information

If you need more information or need help, please contact the intake unit of the Disability Rights Network of Pennsylvania (DRN) at 800-692-7443 (voice) or 877-375-7139 (TDD). The email address is: intake@drnpa.org.

The mission of the Disability Rights Network is to advance, protect, and advocate for the human, civil, and legal rights of Pennsylvanians with disabilities. Due to our limited resources, the Disability Rights Network cannot provide individual services to every person with advocacy and legal issues. The Disability Rights Network prioritizes cases that have the potential to result in widespread, systemic changes to benefit persons with disabilities. While we cannot provide assistance to everyone, we do seek to provide every individual with information and referral options.

IMPORTANT: This publication is for general informational purposes

only. This publication is not intended, nor should be construed, to create an attorney-client relationship between the Disability Rights Network and any person. Nothing in this publication should be considered to be legal advice.

PLEASE NOTE: For information in alternative formats or a language other than English, contact the Disability Rights Network at 800-692-7443 Ext. 400, TDD: 877-375-7139, or drnpa-hbg@drnpa.org.

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