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## Executive Summary

The Commonwealth of Pennsylvania strives to continually improve systems to protect vulnerable populations from abuse and neglect. To this end Governor Wolf issued an Executive Order 2019-05 Protection of Vulnerable Populations which outlines myriad activities aimed at strengthening approaches. Additionally, in February 2022, the Wolf Administration created the Abuse/Neglect Registry Taskforce to address a gap in protection created by having no systematic method for tracking perpetrators of abuse or neglect of adults with disabilities in the commonwealth. Agencies that provide services to adults with disabilities currently do not have access to information related to substantiated abuse or neglect cases in which a prospective employee was the perpetrator. Adults with disabilities including older Pennsylvanians may experience avoidable harm when perpetrators of abuse and neglect are able to move from job to job without detection.

The Abuse/Neglect Registry Taskforce assembled and began meeting in March 2022. The Taskforce is comprised of a membership including: adults with disabilities; family members; protective services experts; Departments of Human Services, Health, Aging, and Education counsel, program and protective services staff; provider association representatives; advocacy organization representatives; and the four Executive Directors from the Human Services Committees in the General Assembly.

The Taskforce was given the following objectives: outline desirable parameters for a registry, identify challenges for implementation and provide recommendations for the adoption and implementation of an Abuse/Neglect Registry in Pennsylvania.

A majority of states maintain adult abuse/neglect registries of perpetrators. These registries vary significantly in scope, populations covered, perpetrators included, length of time perpetrators are listed on registries, and the private or public nature of the registry. The Taskforce had the benefit of learning from these states to inform discussion and decision-making. The Taskforce was also able to draw upon the expertise from existing registries in the commonwealth, namely Childline and the Certified Nursing Assistant registries.

Unlike many other states that narrowly define covered populations and registerable perpetrators based on criteria like funding streams or diagnosis, the Taskforce is ultimately recommending an inclusive definition of the population covered with this potential new protection and a similarly inclusive definition of perpetrator. The Taskforce was absolute in a desire to strengthen protective services for *all* vulnerable Pennsylvanians. The recommendations presented here are, therefore, well aligned with the approach to child protective services in the commonwealth.

The recommendations included in this document, with few exceptions, reflect a consensus of members and provide a blueprint for legislation and operational considerations.

**Taskforce Membership**

<b>Taskforce Member</b>	<b>Affiliation/Organization</b>
Ahrens, Kristin	DHS-Office of Developmental Programs
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Ferenz, Carol	Rehabilitation & Community Providers Association (RCPA)
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## Taskforce Recommendations

### *Registry Purpose:*

To protect vulnerable Pennsylvanians by preventing exposure to caregivers who have a history of substantiated abuse and/or neglect.

### *Populations Protected*

Adults with disabilities. An adult with a disability is defined as “a resident of this Commonwealth 18 years of age or older who has a physical or mental impairment that substantially limits one or more major life activities.”

### *Registered Perpetrators of Abuse or Neglect*

Any individual 18 years of age or older (at the time of the offense) who was a target of a protective investigation that substantiated the abuse, neglect or exploitation of an adult with a disability.

Any individual convicted of neglect of a care dependent person 18 Pa.C.S. § 2713

### *Registerable Offenses*

Offense Title	Offense Description (from APS Statute)	Additional Requirements for Offense to be Registerable
Abandonment	The desertion of an adult by a caregiver.	<p>Person <i>knowingly</i> abandons without justification their responsibilities and evades their duties that results in an act by which a person was harmed or was at imminent risk of harm.</p> <p>[Note legal concern with defensibility of inclusion on registry if the person does not experience harm.]</p>
Abuse	<p>The occurrence of one or more of the following acts:</p> <p>(1) The infliction of injury, unreasonable confinement, intimidation or</p>	<p>#1 – Person willfully, recklessly or negligently inflicts injury...</p> <p>#2 – No additional standard</p>

	<p>punishment with resulting physical harm, pain or mental anguish.                  (2) The willful deprivation by a caregiver of goods or services which are necessary to maintain physical or mental health.                  (3) 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.</p>	<p>#3 – Person <i>willfully, recklessly or negligently</i> commits sexual harassment, rape...</p>
<p>Exploitation</p>	<p>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 perpetrator or monetary or personal loss to the adult.</p>	<p>Person <i>willfully</i> commits an act or...</p>
<p>Financial Exploitation (text from HB1681)</p>	<p>The wrongful or unauthorized taking or attempt to take by withholding, appropriation, concealment or use of money, assets or property of an adult, including any act or omission taken by a person, including through the use of a power of attorney, guardianship, custodian, trustee, personal representative or conservatorship of an adult or by an individual who stands in a position of trust and confidence with the adult, including business transactions to: (1) obtain or attempt to obtain control, through deception, intimidation or undue influence, over the adult's money, assets or property to deprive the adult of the ownership, use,</p>	<p>Person <i>willfully</i> commits the wrongful...</p> <p>Thresholds for inclusion:</p> <ol style="list-style-type: none"> <li>1) Individual experiences financial harm or</li> <li>2) Perpetrator responsible for multiple instances of harm to multiple individuals</li> </ol>

	benefit or possession of the adult's money, assets or property; or (2) convert or attempt to convert money, assets or property of the adult to deprive the older adult of the ownership, use, benefit or possession of the adult's money, assets or property.	
Neglect	<p>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.</p> <p>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.</p>	The caregiver <i>willfully</i> or <i>recklessly</i> fails to provide goods...
Serious bodily injury	Injury that: {1) creates a substantial risk of death; or {2) causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ	Subcategory of abuse Person is responsible for <i>willfully, recklessly or negligently</i> causing an injury that...
Serious injury	An injury that: {1) causes a person severe pain; or {2) significantly impairs a person's physical or mental functioning, either temporarily or permanently.	Subcategory of abuse Person is responsible for <i>willfully, recklessly or negligently</i> causing an injury that...
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).	Subcategory of abuse

<p>Failure to Report by Mandatory Reporter</p>	<p>Failure to report abandonment, abuse, neglect, exploitation as defined in the Adult Protective Services or Older Adult Protective Services Statutes</p>	<p>Person is responsible for <i>willfully, repeatedly, or negligently</i> not reporting an instance of abuse or neglect. This applies whether the person is a direct witness or in a supervisory or managerial capacity with a responsibility to report.</p>
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## Burden of Proof for Inclusion in Registry

Clear and convincing evidence substantiating that a target committed a registerable offense is required for inclusion in the registry.

The burden of proving any claim or defense by clear and convincing evidence, means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

## Notification and Appeals Process for Individuals Placed on Registry

An adult who was found to have committed a registerable offense using a clear and convincing evidentiary standard will be notified that they are being placed on the registry. Upon determination that an adult has committed a registerable offense, the individual’s name will be placed on the registry.

### Notification

Notification to individuals that they are to be placed on the registry must occur electronically, if applicable, and by certified and registered mail. Notification to the employer at the time of the substantiated incident and a current employer, if applicable, must also be provided electronically, if applicable, and by certified and registered mail.

### Appeal Process

The individual has 30 days from the date of the notification of the determination to appeal the decision. If an individual placed on the registry files an appeal within 30 days of notification, an

administrative review modelled after the Childline administrative review process will occur within 60 days of filing. An individual may request to forgo the administrative review process.

If through administrative review the determination that the individual committed a registerable offense is reversed, the individual's name will be removed from the registry. If through administrative review the determination is affirmed, the case will move on to the Bureau of Hearings and Appeals for adjudication.

If an individual whose name is placed on the registry files an appeal within 30 days of notification, the registry will note "pending appeal" but the individual's name will remain on the registry until the case is adjudicated.

## Timeframe for Inclusion on Registry

An adult who was found to have committed a registerable offense using a clear and convincing evidentiary standard will be placed on the abuse/neglect registry indefinitely.

An individual placed on the registry may appeal any time 5 years after the date the individual's name was placed on the list.

An individual may not submit more than 1 appeal annually after the 5 year period.

The appeals process available to individuals on the registry for 5 or more years will take into consideration the following factors:

- Facts surrounding the offense(s) and nature of the offense(s)
- Severity and any recurrence or patterns of offense(s)
- Activities the individual has undertaken to rehabilitate or otherwise address potential underlying causes of behavior that led to committing of registerable offenses
- Employment or care history since inclusion on the registry that are relevant to the question of whether the individual poses a danger to adults with disabilities

## Access to Registry

The registry will be web-based and publicly available to anyone with a registered account which will allow for any employer, including non-DHS licensed or funded employers, to access the information in the registry.

The design for availability and use should parallel the existing Medicaid Exclusion List.

The registry platform procurement and design should anticipate housing data from other existing commonwealth registries (primarily Childline and the Department of Health's Certified



Nurse Assistant registries) to provide a singular registry related to the protection of vulnerable Pennsylvanians.

## Use of Registry

DHS, PDA, or DOH licensed or publicly funded providers or individuals serving adults with disabilities would be required to check the registry and employ policies and procedures similar to those in place for handling criminal background checks. Including this requirement in statute would ensure broad application of the requirement.

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## Major Implementation Considerations

### *Adult Protective Services (APS)*

The APS statute, subsequent draft regulations, and procedures do not identify or investigate to a target(s). There is currently no provision within the APS statute providing authority to name or investigate a target(s).

To implement an abuse and neglect registry the following will be required:

- Amend the APS Statute to include provisions related to the identification and investigation of potential perpetrators of abuse and neglect
- Amend or promulgate corresponding regulations governing the identification and investigation of target(s)
- Revise and re-train APS investigators to investigate to a target(s)
- Support investigatory changes through IT changes

### *Record Retention*

Amendments will be needed to both APS and OAPSA to authorize record retention policies that would support both detection of potential offenders over time (retain unsubstantiated reports) and allow for tracking and management of the indefinite inclusion of perpetrators of registerable offenses (substantiated reports). Current record retention policies for APS follow 35 P.S. §§ 10210.101--10210.704.

### *Additional Personnel*

The changes to Adult Protective Services to require investigation of a target(s) and the administration of a registry including notifications, administrative reviews and appeals will take additional resources for both the commonwealth's APS vendor and the commonwealth.

The commonwealth's current APS vendor would be unable to meet the requirements outlined in these recommendations without additional investigators. The Department of Human Services does not have adequate staffing in the Bureau of Hearings and Appeals to manage the anticipated increase in appeals. Nor does the Department have adequate staff to absorb the work of managing the contemplated notifications, administrative review processes, development and maintenance of the registry, and conducting analytics and reporting.

### *Direct Care Worker/Direct Support Professional Registry*

The commonwealth does not assign or maintain unique identifiers for direct care workers or direct support staff in adult service systems unless they are Certified Nursing Assistants or subject to Electronic Visit Verification (EVV) requirements.

Tracking allegations associated with a particular worker without unique identifiers may be problematic though the new OAPSA IT system holds some promise for functionality to track using SSN and DOB.

The registry as recommended will go well beyond workforce in DHS so unique identifiers would have some limited utility.

### *Minor Perpetrators*

For perpetrators who are minors at the time of the substantiated abuse or neglect, the taskforce recommends implementing a policy that parallels that of Childline.

Childline's policy related to minor perpetrators includes expungement of the record if all of the following conditions are met:

- Is over 21 years of age currently.
- Was under the age of 18 when the abuse ended.
- Has been on the data base for 5 years or longer.
- Has not been named in any subsequent indicated report or a report that is pending investigation.
- Has never been convicted or adjudicated delinquent by the court for offenses under §6344(c).
- The perpetrator did not use a deadly weapon under §2301.
- The outcome does not have a founded status.
- Is not a sexually violent child, as defined in §9799.12.
- Is not required to register as a sexual offender.

Given the public facing nature of the registry, handling of registered perpetrators who were minors at the time of the incident may have to be handled differently in terms of the posted information.

### *Funding*

Options for some cost sharing that could be considered are:

1. Require an annual fee to have an account to access the registry (preferred option, if cost sharing is required)
2. Require a per background check fee

The taskforce recommends that if cost sharing is desirable or required, that (1) any additional fees be considered in the context of the other required background checks for DHS, DOH and Aging funded or licensed providers in terms of cost and resources to manage and (2) the administrative burden of managing collection and processing of fees is included in the deliberations.

*Public Information*






The implementation of the registry should include broad information dissemination to all stakeholders in accessible formats including simplified language.

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## Additional Recommendations to Strengthen Protective Services in Pennsylvania

1. Amend OAPSA definition of "care dependent individual" to include sensory, communication and psychiatric disabilities.
2. Upon the passage of statutory changes required for implementation of a caregiver abuse registry for adults with disabilities, the taskforce should reconvene to provide detailed recommendations for a universal (inclusive of data from all PA Health and Human services registries) registry and requirements for child serving providers and adult serving providers to check prior to employment.
3. Processes for background checks for providers should be examined for the following:
  - Effectiveness and efficiencies. Current processes result in some duplication that is likely unnecessary.
  - Fees and costs to run programs. Fees should not exceed the cost of program administration. The portion of program administration funded through each collected type of fee should be publicly available.
4. Strengthen policies and procedures to ensure that law enforcement reports conclusions back to APS and OAPSA.

## Presentations and Reference Materials

Presenter	Title	Material
Chris Dubble	National Adult Protective Services Association-	<a href="#">NAPSA Registry Report</a>
Jen Snerr	PA Attorney General’s Office	<a href="#">Neglect of a Care-dependent Person</a> <a href="#">Abuse of a Care-dependent Person</a>  Adobe Acrobat Document
Julie Westwater	Deputy General Counsel DPPC	 Massachusetts Disable Persons Prote
Andrew Levrault	Deputy General Counsel DPPC	
Kevin Hoffman	Esquire-DOH OGC	 CNA Registry Data.msg
Kistler John	OCYF-Childline Registry	 Links to Data-Childline.msg   Childline-Presentation .msg