SCOPE: County Mental Health/Mental Retardation Administrators
Community Home Directors
Non-State Operated Intermediate Care Facility for Mentally Retarded (ICF/MR) Directors
Adult Training Facility Directors
Vocational Facility Directors
Non-Licensed County Mental Retardation Funded Program Directors
Family Living Home Agency Directors

PURPOSE:

The purpose of this bulletin is to distribute Act 28 of 1995.

DISCUSSION:

On July 6, 1995, Act 28 was enacted with an effective date of September 4, 1995. A copy of the new legislation is attached.


Attachment

REFER COMMENTS AND QUESTIONS TO:

Appropriate Regional Program Manager
AN ACT

1 Amending Title 18 ( Crimes and Offenses) of the Pennsylvania Consolidated Statutes, defining the offense of neglect of care-dependent person; FURTHER PROVIDING FOR INSURANCE FRAUD; and further prohibiting prostitution.

5 The General Assembly of the Commonwealth of Pennsylvania hereby enactst as follows:

7 Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:


"(a) Offense defined.--A caretaker is guilty of neglect of a care-dependent person if he:

12 (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 provide care.

17 (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.

(b) Penalty.—

(1) A violation of subsection (a)(1) constitutes a
misdemeanor of the first degree if the victim suffers bodily
injury.

(2) A violation of subsection (a)(1) constitutes a
felony of the first degree if the victim suffers serious
bodily injury.

(3) A violation of subsection (a)(2) constitutes a
misdemeanor of the first degree if the victim suffers bodily
injury.

(4) A violation of subsection (a)(2) constitutes a
felony of the first degree if the victim suffers serious
bodily injury.

(c) Report during investigation.—When in the course of
conducting any regulatory or investigative responsibility, the
Department of Aging, the Department of Health or the Department
of Public Welfare has a reasonable cause to believe that a care-
dependent person or care-dependent persons residing in a
facility have suffered bodily injury or been unlawfully
restrained in violation of subsection (a)(1) or (2), a report
shall be made immediately to the local law enforcement agency or
to the Office of Attorney General.

(d) Enforcement.—

(1) The district attorneys of the several counties shall
have authority to investigate and to institute criminal
proceedings for any violations of this section.
(2) In addition to the authority conferred upon the
Attorney General under the act of October 15, 1980 (P.L.950,
No.164), known as the Commonwealth Attorneys Act, the
Attorney General shall have the authority to investigate and
institute criminal proceedings for any violation of this
section or any series of such violations involving more than
one county of this Commonwealth or involving any county of
this Commonwealth and another state. A person charged with a
violation of this section by the Attorney General shall not
have standing to challenge the authority of the Attorney
General to investigate or prosecute the case and, if any such
challenge is made, the challenge shall be dismissed and no
relief shall be available in the courts of this Commonwealth
to the person making the challenge.

(E) TREATMENT IN CONFORMANCE WITH CARE-DEPENDENT PERSON'S
RIGHT TO ACCEPT OR REFUSE SERVICES.—A CARETAKER OR ANY OTHER
INDIVIDUAL OR FACILITY MAY OFFER AN AFFIRMATIVE DEFENSE TO
CHARGES FILED PURSUANT TO THIS ACT SECTION IF THE CARETAKER,
INDIVIDUAL OR FACILITY CAN DEMONSTRATE THROUGH A PREPONDERANCE
OF THE EVIDENCE THAT THE ALLEGED VIOLATIONS RESULT DIRECTLY
FROM:

(1) THE CARETAKER'S, INDIVIDUAL'S OR FACILITY'S LAWFUL
COMPLIANCE WITH A CARE-DEPENDENT PERSON'S ADVANCE DIRECTIVE
FOR HEALTH CARE AS PROVIDED IN 20 PA.C.S. CH. 54 (RELATING TO
ADVANCE DIRECTIVE FOR HEALTH CARE);

(2) THE CARETAKER'S, INDIVIDUAL'S OR FACILITY'S LAWFUL
COMPLIANCE WITH THE CARE-DEPENDENT PERSON'S WRITTEN, SIGNED
AND WITNESSED INSTRUCTIONS, COMPOSED WHEN THE CARE-DEPENDENT
PERSON IS COMPETENT AS TO THE TREATMENT HE WISHES TO RECEIVE;

19950H0247B2045 - 3 -
(3) THE CARETAKER'S, INDIVIDUAL'S OR FACILITY'S LAWFUL COMPLIANCE WITH THE DIRECTION OF THE CARE-DEPENDENT PERSON'S ATTORNEY-IN-FACT ACTING PURSUANT TO A LAWFUL DURABLE POWER OF ATTORNEY; OR

(4) THE CARETAKER'S, INDIVIDUAL'S OR FACILITY'S LAWFUL COMPLIANCE WITH A "DO NOT RESUSCITATE" ORDER WRITTEN AND SIGNED BY THE CARE-DEPENDENT PERSON'S ATTENDING PHYSICIAN.

++ (F) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"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 health care.

"Caretaker." Any person who:

(1) is an owner, operator, manager or employee of 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;

(2) provides care to a care-dependent person in the setting described in paragraph (1); or

(3) has an obligation to care for a care-dependent person for monetary consideration in the settings described in paragraph (1), or in the care-dependent person's home.

"Person." A natural person, corporation, partnership, unincorporated association or other business entity.

SECTION 2. SECTION 4117(K)(2) OF TITLE 18 IS REPEALED.

Section 2 3. Section 5902(c) of Title 18 is amended and the section is amended by adding subsections to read:
§ 5902: Prostitution and related offenses.

**

(a.1) Grading of offenses under subsection (a).—An offense under subsection (a) constitutes a felony of the third degree if the person who committed the offense was knowingly human immunodeficiency virus (HIV) positive or infected with the acquired immune deficiency syndrome (AIDS) virus.

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(c) Grading of offenses under subsection (b).—

(1) An offense under subsection (b) constitutes a felony of the third degree if:

(i) the offense falls within paragraphs (b)(1), (b)(2) or (b)(3);

(ii) the actor compels another to engage in or promote prostitution;

(iii) the actor promotes prostitution of a child under the age of 16 years, whether or not he is aware of the age of the child; [or]

(iv) the actor promotes prostitution of his spouse, child, ward or any person for whose care, protection or support he is responsible[.]; or

(v) the person knowingly promoted prostitution of another who was HIV positive or infected with the AIDS virus.

(2) Otherwise the offense is a misdemeanor of the second degree.

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(e.1) Grading of offenses under subsection (e).—An offense under subsection (e) constitutes a felony of the third degree if the person who committed the offense was knowingly human
immunodeficiency virus (HIV) positive or infected with acquired
immune deficiency syndrome (AIDS) virus.

Section 34. This act shall take effect in 60 days.