

The Arc of Pennsylvania Position Statement

The Need for Adult Protective Services in Pennsylvania

Policy Statement

People with intellectual and developmental disabilities must be protected from harm and injury which includes:

- Abuse, including physical, mental or sexual abuse
- Abandonment
- Exploitation, physical or financial
- Neglect

Issue

Pennsylvania is one of only five states in the nation that does not have a protective services system for citizens with intellectual and developmental disabilities between the ages of 18 to 59 years who are at imminent risk of injury or death due to neglect, abuse, abandonment or exploitation. Abuse, neglect, abandonment and exploitation by the general public, service providers, caregivers, and even their own families are real problems that must be addressed. We can no longer afford to ignore this vulnerable population. Some critics may advise the General Assembly that services currently available to older Pennsylvanian's, to those with intellectual and developmental disabilities, to those with mental illness, and to those being served by other systems adequately protect *all persons with disabilities* and thus an adult protective service program would be duplicative. However, we disagree with the assumption and can share stories of abuse and neglect that would justify the need and demonstrate the fact that Pennsylvania's system of protective services fails to adequately serve this population. These citizens are entitled to legislative statutes designed to protect them from harm while honoring their civil rights and offering support to reduce the risks of abuse, neglect, abandonment and exploitation.

Recommendations

The Arc of Pennsylvania recognizes the need for protective services for citizens with intellectual and developmental disabilities between the ages of 18 to 59 years and is also aware of the unique characteristics of the people that would be protected under this new statute. The following recommendation must be taken into account when developing regulatory policy.

1. Capacity to consent

If the court determines, based upon a preponderance of evidence, that any person with an intellectual or developmental disability has been or is being abused, neglected, abandoned, or exploited, an emergency exists and the person lacks capacity to consent to the provision of services, the court may order the provision of services on an emergency basis. The nature of petitioning the court invokes the prospect that some course of action is being imposed upon the person against their will. Therefore, the following must be considered:

- The court shall order *protective services* to remove the conditions creating *the emergency and gain access to the person and record*. A time limit must be placed on the order for *protective services*.
- If a change of residence is necessary, the *protective services* shall never authorize a placement in an institutional setting, but must find the least restrictive environment in the community.

- Whenever the court is petitioned, appointment of adequate legal counsel for the individual will be mandated. This mandate assures that the least restrictive intervention is pursued. If due to medical concerns, a short-term placement in a nursing home, hospital or rehabilitation facility is necessary, a plan must be developed which would allow the individual to return to the community once medically stable. Protective services would continue to monitor the individual until that has been accomplished.

2. Education/Training

- Protective services staff: Mandatory training must include information on indicators of abuse/neglect/abandonment and exploitation, and how to conduct effective investigations, specific training on investigating abusive caregiver dynamics.. The training must include the entire process of investigation, assessment and services planning with due regard for the rights of the adult in need of protective services. It must include a standardized training curriculum and be consistent across the Commonwealth.
- Families and people with disabilities: Training should be available on abuse prevention and reporting; caregiver stress, and community resources to help families care for loved ones with disabilities. This information must be available in different formats for families across the state.
- Service Providers and Supports Coordinators: Mandatory training must include mandated reporting and actions to be taken to ensure the health, safety and well being of individuals receiving services. The training program must: *be focused on prevention, include risk reduction techniques, include cross-systems education and be consistent across the Commonwealth.*
- Criminal Justice Personnel: Training should be provided to law enforcement officers, probation/parole officers, judges, attorneys and community medical personnel which is consistent across the Commonwealth and includes: *The Adult Protective Services Act, Mandated Reporting, Individual Rights and Guardianship options.*

3. Least Restrictive Intervention

It is critical that an adult protective services law mandate the least restrictive intervention. An adult receiving services, who may be at risk of abuse, neglect, exploitation, or abandonment, needs to feel safe in reporting their situation to the entity responsible to protect them. *Safety runs the gamut, from being free from retaliation that includes the fear of further abuse, neglect, abandonment or exploitation to the fear of being relocated to a more restrictive environment.* **Movement to an institution must not be an option as a response to founded reports of abuse, abandonment, exploitation or neglect. Institutionalization could be perceived as “punishing the victim” and would act as a deterrent to self-reporting.** If, due to medical concerns, a short-term placement in a nursing home, hospital or rehabilitation facility is necessary, a plan must be developed which would allow the individual to return to the community once medically stable. Protective services would continue to monitor the individual until that has been accomplished.

We support including language within the adult protective services program that protects individual rights. We are committed to the development and implementation of a protective services program for adults that recognizes the balance between society’s responsibility to protect its vulnerable members and intrusion into private affairs of its citizens, especially when a person reported to be in need of protective services disagrees with or refuses the services to be provided. . The plan crafted by the legislature must provide protections without compromising the individual’s right to make their own choices and to take their own risks. The Arc of Pennsylvania places a high value on each individual’s right to self-determination, personal privacy and autonomy.

4. Responsibility of Adult Protective Services Agents/Agency

Protective Services agencies must:

- Be available 24 hours a day, 7 days a week, 365 days a year.
- Have a certified professional staff complement.
- Have a telephone number that is toll free and accessible using a TTY.
- Have the capacity to provide outreach, education and advocacy about protective services using alternative formats to assure accessibility.
- Receive reports, conduct investigations within established timelines and maintain records (of reports, investigations, and service plans)
- Petition the court when necessary:
 1. To gain access to the person and conduct an investigation. Interventions would be reported to the court.
 2. In order to provide services for an adult who withholds consent, even after making a *fully informed choice*, and is determined to be at imminent risk of death or serious physical harm unless protective services are provided.

5. Administrative Structure:

The structure of an adult protective services program is one that would be administered by an independent state-level office. There is an inherent conflict of interest that exists in our current structure, whereby the department responsible to provide funding to service providers is also responsible to provide protective services to the individuals receiving the service.

The issue is most critical within local communities, where throughout our sixty-seven counties diverse services, policies, and enforcement of regulations are often subject to “local interpretation” that ignores consistency and threatens the quality of our state’s service delivery system. The state should initiate contracts for the provision of protective services with local entities that are:

- Independent from direct care service providers;
- Empowered to gain access to a person in need of protective services and to locate/coordinate the service(s) needed to protect him/her; and
- Charged with providing education and training on adult protective services, including mandated reporting and available community services.

Approved

The Arc of Pennsylvania Board of Directors 4/20/09