

Testimony:

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Good afternoon Chairman Hennessey, Chairman Samuelson and Committee Members. My name is Pattie Rodgers and I am the Vice President and Director of Operations for Waverly Care Associates, a homecare agency affiliated with Waverly Heights in Gladwyne. Our agency provides personal assistance services to 145 people each day and employs nearly 220 direct care workers. I am also here as the President of the Pennsylvania Homecare Association, which represents more than 700 homecare and hospice agencies that bring medical, personal and end of life care into the homes of thousands of older adults and individuals with disabilities each day.

Thank you for this opportunity to provide comments on House Bill 2549, which proposes critical changes to our state's Older Adult Protective Services Act (OAPSA). This law is very significant for the home-based provider community because its sole purpose is to protect and ensure the safety of older Pennsylvanians. Since the Commonwealth Court found portions of the law unconstitutional the 2015 *Peake* decision, our members have advocated for swift passage of revisions to the law to ensure that these protections will remain in place for our seniors. For too long, providers have had to adapt their policies and deal with far too many "grey areas" in their hiring practices. That is why I am pleased to have this opportunity today to share with you our thoughts on HB 2549.

Homecare is one-to-one care. It involves two people: a homecare professional, which could be an aide, nurse, social worker, or therapist and a patient, client or consumer who needs care in order to remain at home, living as independently as possible.

Many times, we are caring and supporting individuals with dementia or physical disabilities or assisting someone who is recovering from a hospital stay and needs to regain his or her strength in order to stay at home. So often, our homecare aides are lifelines for these individuals and we must ensure that they are qualified and competent to deliver this essential and very personal care in private homes. Having strong, concise and effective guidance in OAPSA will help support agencies' goals of keeping that person safe at home. To accomplish this, it is very important to make sure this legislation provides the necessary protections, while respecting and recognizing an individual's rehabilitation and right to work.

It has been nearly three years since the *Peake* decision, and the legislature is overdue in reinstating OAPSA. Here are some of the major issues and suggestions to consider in making this bill the best that it could be for protecting those in need:

Employment Restriction Tiers

The tiers of criminal offenses in OAPSA are critically important to providers because they give us an easy reference when deciding who can and cannot be hired in this field. It was this particular area of OAPSA that the Court struck down as unconstitutional due to its lifetime ban on employment without any option for the applicant to make his or her case on why they should still be hired. House Bill 2549 continues with a lifetime ban on certain offenses, but the key difference is the possibility of the individual receiving a “waiver” from the Department of Aging to be hired regardless of prior convictions. Our providers understand the need for a lifetime ban along with the other tiered employment restrictions within the bill, however we have concerns regarding the waiver process.

Before delving into the waiver process and our ideas for improvement, I would be remiss if I did not talk about the growing disparity between the agency model of care and the consumer or participant-directed model of homecare. This is an arrangement that is permitted under Medicaid for seniors and adults with disabilities who wish to hire their own direct care worker rather than go through an agency. The protections of OAPSA do not apply to the seniors that are in this model. These direct care workers, more than 20,000 statewide, may care for individuals behind closed doors without any restriction related to their criminal past. It is truly a shame that the legislation does not extend the same protections to this population. They are just as vulnerable, if not more so, than seniors who receive care through an agency.

Waiver Process

According to the legislation, the waiver remains valid for three years after the date it is issued or until the individual leaves employment with the organization. PHA would like to recommend that the waiver remain in place and applicable for a particular facility type or types, given the very mobile nature of the direct care workforce and the high turnover in long-term care. In homecare alone, Pennsylvania experiences a turnover of more than 65%. We suggest that the Department of Aging be granted the ability to issue a waiver for individuals to work in specific settings rather than with specific employers. For example, the waiver could give the applicant permission to work in a skilled nursing facility only, based on the supervision and facility-based nature of that work. On the other hand, the department may decide the individual is capable of working in homecare and in assisted living or personal care, but not in a nursing home.

Providers also want to emphasize the importance of holding the department accountable for the 30-day timeframe required for approval or denial of a waiver request. In a recent survey involving not just homecare providers but nursing facility and assisted living providers, PHA found that in any given week these facilities could be hiring five to ten individuals in order to keep up with turnover and the growing population in need of long-term care. We cannot afford to have any obstacle in our way.

We have concerns with some of the information that the department is meant to consider in granting the waiver. According to the legislation, the waiver request will ask for the following information:

- Length of time since the individual's conviction
- Circumstances around the conviction
- If incarcerated, a copy of the order from the jurisdiction, including date of release
- Evidence of the individual's rehabilitation
- Evidence of prior or present relevant work experience
- Evidence of competency and proficiency of the individual in relevant work

While we agree with most of these questions, we urge you to eliminate the requirement to show *evidence of competency and proficiency of the individual in relevant work*. This has nothing to do with the individual's rehabilitation but rather is information that only the hiring agency should be considering. In fact, each of the facilities covered under OAPSA have their own regulatory requirements for training and competency. This should not have any bearing on whether the individual is sufficiently rehabilitated to begin working in long-term services and supports.

Criminal History

Every effort should be made to review an individual's background prior to hire because of the vulnerable population that my agency and others serve. Our members fully support the requirement for applicants to receive a state police criminal background check and an FBI check, however it is also important to recognize the cost of these two unfunded mandates.

Last December, with very little advanced warning, the cost for obtaining a state criminal background check went from \$8 to \$22. If we add to this \$14 increase the cost of an FBI check, which is around \$24, this legislation will now call for agencies to pay \$38 more every time they hire a new employee. There is no financial reimbursement from the state for these costs. Medicaid reimbursement for personal assistance services has not been increased for more than five years. If you consider the actual cost to provide one hour of in-home care, agencies will be losing money due to these added costs upon hire. We encourage you to support a raise in the Medicaid reimbursement rate for homecare to offset this added financial burden.

There is another problem when it comes to FBI checks of which I want to make you aware. In late 2017, the state chose a new vendor, Identogo to process the fingerprinting for FBI checks. Providers are having ongoing problems with obtaining the clearances because there are not enough Identogo locations throughout the Commonwealth to handle the volume. The previous vendor, Cogent, allowed applicants to visit many local providers to be fingerprinted such as a local tag and title agency or driver's license center. Identogo requires applicants to visit one of the company's locations or a provider-operated location. The contract with Identogo was meant to guarantee that no applicant would need to drive more than 25 miles to visit a location, but this is certainly not the reality we're seeing. Even if they have a location nearby, applicants are still left waiting three to five weeks for an appointment time.

One PHA member agency in northeast PA, seeing the difficulty applicants were having in finding a convenient Identogo location, applied to become an approved fingerprint location themselves. Now the agency has a constant line out the door for fingerprinting and still runs about three weeks behind with appointments. Adding to this problem is needed to keep up with Identogo's training requirements for staff members that assist with the fingerprints. If there is turnover, the location must wait four to five weeks for an Identogo representative to come on site to train a replacement.

There are so many details to consider here that will have a great impact on long-term care providers with the new requirement for FBI checks for all employees. I can't stress enough the importance of adopting the necessary protections to ensure our seniors safety, while implementing sound and streamlined policies that do not prolong the hiring process at a time when we need more direct care workers to serve our growing aging population.

Provisional Hiring

As we look to resolve the crisis in our direct care workforce, we must balance the protection of our seniors with the urgent need to have qualified workers to care for more and more seniors. HB 2549 permits provisional hiring for up to 30 days, with random direct supervision by a current employee with at least one year's experience.

Currently, the state licensure requirement for homecare agencies permits employees waiting on an FBI check to work provisionally for up to 90 days. That is because once the applicant can finally be fingerprinted, the FBI usually does not deliver results for at least two weeks. We ask that the legislation be amended to reflect today's licensure requirement – keeping in mind that the employee also attests under penalty of law that he or she has no criminal background.

Financial Exploitation

Homecare aides are often the only eyes and ears in the home other than close family members. We are usually the first to spot suspicious activity that could be caused by financial abuse, such as unpaid bills, missing valuables or telephonic solicitation. We appreciate the legislation's focus on strengthening financial protections for seniors. We support the provisions that allow financial institutions to halt suspicious transactions before they occur. This is the most frustrating aspect of investigating and substantiating abuse by a family member or friend. So often, the funds are long gone and the senior cannot recover. The home-based care industry considers ourselves fierce protectors of the seniors we support in the home and this will be just one more tool to help us in that goal.

Protective Services

While homecare providers are not directly impacted by the legislation's provisions to amend the protective services process, as the frontline workers that interact most closely with the seniors the law is meant to protect, we would like to share with you a few concerns about this section of the bill:

- The legislative intent section was amended to create a Commonwealth policy for protecting seniors that are “at risk.” In today’s law, protective services are only guaranteed for those that are “at imminent risk.” In making this change that might seem insignificant, the legislature is opening the Commonwealth and the Area Agencies on Aging (AAAs) for liability if a senior or a senior’s family feels he or she was “at risk” enough to receive services. Let’s face it, anyone over the age of 65 could be seen as “at risk” for a serious fall in their home.
- The provisions related to involuntary intervention have been amended to create a new legal standard for when the Commonwealth may force a senior to accept protective services or care that they do not wish to receive. By inserting a “preponderance of evidence” standard rather than today’s “clear and convincing evidence,” the state is creating an adversarial and far too paternalistic system in which seniors do not maintain their own dignity of risk.
- Mandatory reporting provisions do impact homecare providers. There is a concern that the bill requires these individuals to contact the local police immediately if they suspect financial exploitation. PHA strongly believes this could do more harm than good. There are many instances where suspect financial abuse turns out to be a misunderstanding or a case of the homecare worker getting caught in the middle of a family dispute. We should use caution in involving law enforcement before all of the facts can be relayed to the AAA and investigated.

Thank You

In closing, on behalf of Waverly Care Associates and the Pennsylvania Homecare Association, I thank you for your interest in revising OAPSA and I urge you to act quickly. Since the *Peake* decision, agencies have been following the guidance provided by the Department of Aging, which is to review the five factors provided by the Commonwealth Court in determining whether to hire an individual:

- Nature of the crime
- Facts surrounding the conviction
- Time elapsed since the conviction
- Evidence of the individual's rehabilitation
- Nature and requirements of the job

While this guidance has been helpful, it still does not provide adequate or standardized rules for providers. Please make this legislation a priority NOW. We can’t wait for another legislative session to pass by without action.

Thank you for this opportunity and we look forward to working with you to ensure the new OAPSA protects seniors while supporting a qualified workforce.