

**Testimony of Brian M. Duke**  
**Before the House Aging & Older Adult Services Committee**  
***The Role of Government in Addressing Elder Abuse***  
**January 25, 2012**

Thank you to Chairman Hennessey and Chairman Curry and Members of the Committee for the opportunity to be here today to speak about the role of the Department of Aging in addressing elder abuse in Pennsylvania. The Older Adults Protective Services Act (OAPSA) tasks us with providing protective services to older adults in Pennsylvania, which we do through the network of Area Agencies on Aging (AAAs). I recognize Alan Smith and the important contributions of the Pennsylvania Association of Area Agencies on Aging (P4A) in this area. I would like to take this opportunity to recognize the other panelists at today's meeting who have been supportive of our efforts in the prevention of elder abuse: Temple University, where the Department of Aging's Institute on Protective Services is located, and through Dr. Costen's leadership is assisting us with statewide trainings and the expansion of elder abuse task forces; District Attorney Gene Vittone, who, through the combined efforts of the Department's Institute on Protective Services and the Washington County Area Agency on Aging, is a great example of all the good work elder abuse task forces are doing at the county level; and finally, Alexis Barbieri from the Office of Attorney General, who, through their Elder Abuse Unit, assists older Pennsylvanians in the prevention of crime and fraud.

To provide some brief background, the Older Adults Protective Services Act (OAPSA) was created under Act 79 of 1987 and became effective July 1, 1988. Subsequently, Act 169 of 1996 added a Criminal History Background Check requirement for employees working in facilities defined under the Act. And in 1997, Act 13 established mandatory abuse reporting requirements for administrators and employees of facilities. The OAPSA regulations can be found in Title 6, Chapter 15 of the PA Code – last amended in 2002.

The OAPSA requires the AAAs to be able to receive reports of suspected abuse 24 hours a day, seven days a week, and the regulations stipulate that they must have a toll-free number for use in their service areas. In addition, the Department has established a state-wide elder abuse hotline number (1-800-490-8505), and calls to this number are routed to the appropriate AAA, which may also utilize a local emergency response call center during off-hours.

Anyone who suspects abuse, neglect, exploitation or abandonment may voluntarily make a report anonymously by calling their AAA or the elder abuse hotline and is afforded appropriate legal protections. The Act 13 amendments designated mandatory reporters of abuse as employees and administrators of the following facilities who are required to report abuse that they witness: domiciliary care homes, home health care agencies, long-term care nursing facilities, older adult daily living centers, and personal care homes.

What happens once a report of suspected abuse is made to the AAA? First there is a determination of whether the individual meets the criteria for Older Adult Protective Services. An individual must be: age 60 or older, a Pennsylvania resident, incapacitated, have no responsible caregiver, and be at imminent risk. If all of these criteria are met, the case is assigned a priority for investigation (as outlined in our regulations). If the older adult is at risk of death or serious physical harm, it is classified as an "Emergency" and given immediate attention. If it is serious enough to require early intervention, it is classified as a "Priority" and must be investigated within 24 hours. If it doesn't require immediate attention, it is classified as "Non-Priority" and must be investigated within 72 hours. Finally, if it doesn't

meet the criteria for protective services, as outlined above, it is classified as “No Need” and appropriate referrals are made.

The investigation itself is conducted by trained AAA Protective Service workers, in conjunction with law enforcement, as appropriate. The purpose of the investigation is to determine if the older adult is in need of protective services. There are two possible outcomes. If it is an unsubstantiated case – meaning that the investigation has found the person not to be in need of protective services – the AAA will then provide information on the availability of other services, refer to other programs as appropriate (such as waiver services or legal assistance), the case will be closed and any information related to the report and investigation will be deleted after 6 months, as required by current law. If, however, the case is substantiated – meaning that the investigation found the older adult to be in need of protective services, an assessment of the older adult’s level of risk is done and a Protective Services Plan is developed in conjunction with the older adult, to reduce risk and meet their identified needs. When appropriate, the AAA may petition the court to take emergency measures such as an involuntary intervention, to obtain access to the person or their records, or to petition for guardianship. But for all substantiated cases, the AAA will arrange for or purchase services needed to fulfill the service plan, with the older adult’s consent, and do a reassessment at a later date to ensure that older adult’s needs are being met.

While the investigation is conducted by the AAA, the Department of Aging’s role is that of oversight and assistance. During the course of an investigation, the Department will take an active role in the following circumstances: if there is suspected sexual abuse, serious physical injury, serious bodily injury or suspicious death (the “Four Serious” categories of abuse), the law requires the AAA to forward such reports to the Department. The law also requires the Department to review all conflict-of-interest cases (e.g., county employee with a family member at a facility under investigation). In addition, the Department requests AAAs to notify us of any high-profile or serious cases. When the Department receives any inquiries or complaints related to a protective services case (for example, from a legislative office), then we will also get involved.

The Department may take the following additional actions related to oversight of a protective services case. We notify licensing agencies (i.e. Department of Health for nursing facilities, Department of Public Welfare for personal care homes) and coordinate investigations with them, as required by law. We work with AAAs to provide technical assistance with difficult cases – providing guidance, best practices, connections to other agencies, etc. We also review open cases to evaluate for proper investigation, thorough documentation, appropriate provision of services, etc. and may reach out to AAAs to ask questions and gain additional information related to a case. We have the capability to monitor cases both in the field and remotely from the Department through our SAMS database.

The law tasks the Department with setting the minimum standards of training and experience for protective services workers at the AAAs, which we do through approving curricula for their initial “basic training” and annual enrichment courses that are required (as outlined in the regulations). In addition to those requirements, the Department hosts broader trainings such as the Solicitors Training, which we have held the past 2 years. We conduct an annual Protective Services Conference (March 27-29 this year), in which we evaluate trends, challenges, and invite experts to present. This conference is primarily for the AAAs, but will be open to include other partners. Topics for trainings may include: financial exploitation, conducting an effective investigation, documentation, etc. The Department functions as a clearinghouse for best practices, and actively engages experts in the field on topics that are raised by the local agencies. In addition to these types of trainings, we develop, communicate and assist with the implementation of policies and procedures in order to support the AAAs in their compliance with OAPSA.

One of the Department's primary responsibilities is assuring the quality of the AAAs' protective services programs. AAAs are required to submit annual protective services plans to the Department for approval each fiscal year. Plans must include administrative functions, delivery of protective services, description of local collaborations, and community outreach activities. The Department is responsible for the monitoring of local programs, which is done on an annual basis through combined virtual and in-person oversight. Through our review, we are able to identify trends and training needs. Currently, the most prevalent forms of abuse that we see are: self-neglect, caregiver neglect, and financial exploitation – and the largest increase has been in financial exploitation. This type of information is captured in our annual Protective Services Report provided to the General Assembly, which is required by law.

Another function of the Department is carried out by the Criminal History Background Check unit. The Act 169 amendments to the law require prospective employees seeking to work in long-term care facilities to complete criminal history background checks. If someone has lived in PA for the past 2 years, they must only complete a PA State Police Check. If someone has not lived in PA for the past 2 years, they must also complete an FBI Background Check – which is processed by the Department. If the applicant has been convicted of any of the listed offenses in the law, they are prohibited from employment. In the case of *Nixon v. Commonwealth*, the Commonwealth Court and Supreme Court of Pennsylvania found the criminal history background check provisions to be unconstitutional, and the Department has been operating under an interim policy pending revisions to the law.

In doing this important work to protect older Pennsylvanians from abuse, we are fortunate to have many valuable partners with whom we collaborate in a variety of ways. The Institute on Protective Services is a valuable resource through our contract with Temple University. The 30+ Elder Abuse Taskforces across the state connect us with attorneys, AAAs, and consumer advocates to better address Protective Services issues. The Protective Services & Guardianship Committee brings together Department staff, AAA directors, Protective Services workers, legislative staff, and other stakeholders to discuss current issues on a quarterly basis. We work closely with other State licensing entities such as the Departments of Public Welfare and Health on investigations, and send them quarterly reports on the four serious categories of abuse by county and facility type. More recently, the Department has benefited from working with the PA Securities Commission, which conducts education and outreach on recognizing the signs of cognitive decline in older adults and assisting with investigation of financial exploitation.

As we look to the future, the Department recognizes the challenges that we face in meeting an increasing demand in a time of limited resources. I hope to continue to work in collaboration with our partners in increasing the awareness of our Protective Services program and its effectiveness throughout the state. The Department is undertaking a significant project to amend the Older Adult Protective Services Act in order to make critical changes to the program that will allow us to better serve and protect vulnerable older Pennsylvanians. And in taking a holistic view of all of our Aging programs, we hope that in working toward health and wellness, targeting services to right care, right time, right place, and bringing the best of Pennsylvania to Pennsylvanians, we will be successful in preventing instances of abuse.

Thank you for your time today and I am happy to answer any questions you may have today or in the future.