

Testimony Regarding House Bill 2549

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Representing the Pennsylvania Association of Area Agencies on Aging's
Protective Services and Guardianship Committee
With Members from all Area Agencies on Aging

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Thank you, Chairman Hennessey and Chairman Samuelson and Committee members, for the opportunity to speak with you today. I am Frederick Shrimp. I began my career with the Lycoming Clinton Counties Commission for Community Action (STEP) Inc. in 1976 as a caseworker in the Area Agency on Aging (AAA) department. I was a casework supervisor when the Older Adults Protective Services Act (OAPSA) was passed in 1987. I implemented our local protective services plan in March of 1989. I have been the director of STEP's Office of Aging for 19 years, but I still am the back-up and on-call protective services supervisor. I have served as chairperson for P4A's statewide protective services and guardianship committee for several years.

Since the implementation of OAPSA, AAAs have had the role in the community as the agency responsible to receive reports and investigate possible abuse, caretaker neglect, self-neglect, financial exploitation and abandonment of people age 60 and over. All the services that AAAs provide work toward the prevention of a need for protective services but respond to investigate and work toward the remedy of situations requiring protective services for older adults. I am grateful for this opportunity to make comments and ask questions regarding House Bill 2549, an

amendment to OAPSA. I also want to thank the committee staff who have been willing to listen to the concerns of the AAAs.

OAPSA should respect the dignity and rights of the older adult. The consent of the older adult must remain a high priority. In section 304.1 (d) regarding access to records I suggest that (1) and (2) may appear to contradict and give some the impression that records can be obtained without the older adult's consent. I suggest language such as "The Area Agency on Aging shall, subject to the consent of the older adult, have access to all records for the purpose of: (1) assessing an older adult's need for service (2) planning and delivery of services (3) investigating reports".

Going on in that section paragraph (4) appears confusing and I suggest replacing paragraphs (4) and (5) with language such as "A petition can be filed with the Court of Common Pleas for an order requiring the appropriate access when either of the following conditions apply:

- (1) The older adult has provided written consent for any confidential records to be disclosed and the keeper of the records denies access.
- (2) The agency can demonstrate that the older adult is denying access to records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment."

In Section 304.1 (c) regarding access to the older adult I suggest that (2) (iii) that it should state “A psychiatric or psychological evaluation of the older adult.” Psychologist rather than psychiatrist are often used for cognitive or behavior health evaluations. I would also suggest that in (3) (ii) that incompetence be added to the list of reasons to seek a court order for access.” The use of the word incompetence instead of incapacity is preferred to prevent confusion with the use of the term mental incapacity in the guardianship law.

In Section 307 Involuntary intervention by emergency court order currently reads in (2) that only a preponderance of evidence is needed to obtain an order for a plan for which the older adult has not consented. The level of evidence for an involuntary order must remain “clear and convincing evidence”. This standard has existed since the original act was passed in 1987 and must remain to protect the rights of older adults.

In Section 102 Legislative intent and in the definition of an older adult in need of protective services the term “at risk” has been added to imminent risk to the older adult. The term “risk” needs removed. The term risk is too vague and cannot be appropriately applied in investigations and services. For example: everyone is at risk of falling but only those with

certain medical conditions and disabilities are at imminent risk of falling. Everyone is at risk of taking a medication incorrectly but only those with mental confusion or disabilities are at imminent risk of taking medication incorrectly. Older adults may take risk of all sorts, but intervention is only needed when those actions put them at imminent risk.

On the topic of reporting, in Section 302 Reporting, the standard of voluntary reporting has been changed from the present law from “reasonable cause to believe” to “reasonable cause to suspect”.

“Reasonable cause to suspect” is the standard for mandatory reporting under the current law. I agree that it is logical to use the same standard for voluntary and mandatory reporting. I encourage the committee to look at any legal ramifications for the use of either term and decide which term best fits the legislative intent and use that same term for voluntary and mandatory reporters. Please note that the term “reasonable belief” is used in Section 301.1 for financial institutions instead of “reasonable suspicion”. It would be better to be consistent.

Under mandatory reports (e) (2) the mandatory reporter is required to immediately call law enforcement after calling the AAA to file a report of need for an investigation of possible financial exploitation. This

requirement should mirror the requirement in Section 304.1 for AAAs to notify law enforcement after receiving reports of need that does not include possible financial exploitation. Financial exploitation is not in the list for AAAs because of the high number of these reports being unsubstantiated and not wanting to burden law enforcement if no crime has been committed.

Continuing the goal of not putting an undue burden on law enforcement, why does the mandatory reporter and the AAA have to call law enforcement to notify police of a report of need concerning a suspicious death, serious bodily injury, serious physical injury or sexual abuse. That requires law enforcement to write up two reports on the same incident. I would hope that the legislature could trust the AAA to make that report and not require law enforcement to write up two reports.

Section 302 Reporting (e) (4) needs eliminated. This paragraph would allow a mandatory reporter to file an incident report in HCSIS and not call the AAA when the HCSIS report involve abuse, neglect or exploitation. The mandatory reporter must call in their report of need to the AAA. AAAs all can receive calls 24/7 every day. AAAs do not have access to HCSIS. How would the AAAs even know a report had been filed in HCSIS?

OAPSA requires that the report “be documented immediately in a manner set forth by the department.” The Department of Aging has established the questions we ask and the information that we gather. The use of HCSIS would be contrary to these other OAPSA documentation requirements.

AAAs welcome many of the provisions of Section 301.1 Duties of financial institutions and fiduciaries. The training requirements for financial institutions will be helpful in preventing exploitation. The ability of the financial institutions to withhold payment until further investigation to prevent suspected fraud may protect many older adults. I had been informed that financial institutions were voluntary reporters. However, in (4) (ii) the financial institution is mandated to make a report to the AAA and law enforcement if they have reasonable belief that exploitation is occurring and are refusing to make a disbursement because of their own investigation. Is it voluntary reporting unless the financial institution is refusing to complete a transaction and then it becomes mandatory reporting? If the notice to the older adult prevents the exploitation and the older adult and financial institution remedy the possible exploitation so it cannot happen in the future is mandatory reporting to AAAs and law enforcement required or necessary? Voluntary reporting would allow the financial institution to decide when a report is needed.

In (h) Standing, financial institutions are given the ability to petition the courts to prohibit the disbursement of funds, etc. I think it will confuse the courts to give financial institutions the authority to petition for involuntary orders under OAPSA. AAAs already have that standing and experience. The financial institution can make a report to the AAA and if the AAA agrees upon investigation and evaluating the least restrictive alternatives for the older adult, the AAA can petition the court. The AAA is a neutral party. The financial institution could have a conflict of interest for petitioning the court such as the financial institution's ability to make money by holding the older adult's money. This section also states in (i) the financial institution can obtain protective services for an older adult. What protective services could a financial institution order other than a financial transaction being blocked? Again, it would be confusing to the courts who are used to AAAs providing protective services and not financial institutions. This same section also states that a mandatory reporter would have standing to initiate a court proceeding and provide protective services. Is the use of the term mandatory reporter here limited to the voluntary reporter that has now become a mandatory reporter in this section under (4) (ii) or the list of mandatory reporters that is quite long and again would

be confusing to the courts. I highly recommend that standing in the courts under OAPSA be limited to the AAAs.

In Section 304.1 (d) (6) states that AAAs and the department “shall” compensate for records that we obtain. This should be changed to “may” compensate. As stated, it would appear AAAs would be required to ask for an invoice every time they requested a record from a hospital, nursing facility, bank, etc. AAAs compensate when a record holder requires compensation in order to obtain the record.

In summation, AAAs look forward to working with the Committee and Committee staff to remedy our concerns with the bill.