



Pennsylvania Advocacy and Resources for Autism and Intellectual Disability

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Pennsylvania House Aging and Older Adult Services Committee

RE: PAR Testimony to House Aging and Older Adult Services Committee Regarding HB 2549 Amendments to the Older Adult Protective Services Act

PAR (Pennsylvania Advocacy and Resources for Autism and Intellectual Disability) is the statewide association dedicated to supports and services to Pennsylvanians with intellectual disability or autism (ID/A). Our members provide \$2 billion of the \$3 billion dedicated to community services in Pennsylvania and employ approximately 50,000 Direct Support Professionals (DSPs).

PAR appreciates the Committee's efforts to address the significant concerns that have arisen among providers of services to care dependent older adults since the Commonwealth Court's decision in Peake v. Commonwealth of Pennsylvania (December 2015) regarding the permissible hiring of individuals with a criminal history background. The adoptions of sensible guidelines and procedures that will govern the employability of individuals with a criminal history who are seeking employment in the human services industry will help to lessen providers' concerns relating to hiring practices and hopefully can enhance the job market for these individuals.

Below are comments and recommendations from our association regarding several proposed amendments.

Section 301.1 Duties of Financial Institutions and Fiduciaries

PAR supports the addition of the guidelines for Financial Institutions and Fiduciaries to the OAPSA.

Section 302 Reporting

PAR supports the proposed amendment at Section 302(e)(4) (Mandatory Reports) that recognizes a report to the Commonwealth's incident reporting system – the "Home and Community Services Information System" (HCSIS) as compliance with the Act's reporting requirements.

Section 503.1 Criminal History

PAR supports the State Police and FBI background check for all employees upon hire. We understand the increase of applicants that live in neighboring states. This is a change from the current law that requires the FBI check if the person has not lived in the Commonwealth for the prior two years. This new mandate will increase the cost of hiring staff. The State Police costs already from \$8.00 to \$22.00 without warning OR explanation as to the nearly threefold cost increase to providers. The FBI clearance cost is \$22.60.

(c 1-6) Waiver request criteria – PAR believes that waiver criteria #5 and #6 are completely unnecessary as they are outside the scope of the purpose of the proposed amendments. The purpose of the waiver processes to assess risk, not to determine a waiver applicants' abilities and competency and the legislation should not

conflate those two distinct determinations. The right to pursue a lawful occupation is guaranteed by the Pennsylvania Constitution and cannot be unreasonably restricted. It is one thing to inquire into an applicant's rehabilitation post convictions. But inquiry into the applicant's "prior or present relevant work experience" and "competency and proficiency in relevant work" is not nor should be within the purview of an agency hearing examiner who, most likely, is neither trained or skilled in human resources generally nor familiar, let alone experienced, with the nature and scope of the various and specific types of positions within the broad human services system industry. (In that regard, what of the background and experience of hearing officers to determine and individual's "rehabilitation"?)

The determination of any individuals' suitability for a position, apart from positions subject to licensure, are wholly the responsibility of an employer. Why subject waiver applicants to job specific considerations when determining whether, in the first instance, they can be eligible to apply for and accept a position? How to assess and weigh an eligible applicant's work experience and his/her competency and proficiency, whether for a position in dietary, or housekeeping or direct care, is the task of an employer, not the government. And recall, at subsections (g)k the proposed amendments expressly disclaim that the granting of a waiver does not guarantee employment. Exactly. That determination, including the evaluation of an applicant's work experience and general competency, is for the employer to make and the government should not assume that right and responsibility.

As to criterion #4, "evidence of rehabilitation," it is, as written, a rather vague and amorphous term. The legislation must provide more guidance to the agency on the foundational determination to assure fundamental fairness to every applicant and to assure uniformity and consistency in its application to every waiver request. Realizing the known challenges to obtaining employment post-conviction, will, for example, a letter of recommendation and the absence of recidivism constitute sufficient demonstration of rehabilitation? PAR supports the timing of the employment restriction to begin with the date of conviction.

(e) Waiver Duration – if the employee completes the annual form with no additional crimes, why require yet another waiver in three years? PAR recommends removing this unnecessary and redundant requirement that surely will strain the Department of Aging's ability to complete the waiver reviews in a timely manner.

(f) Exception – PAR recommends the addition of the portability of the waiver from one service model to another, i.e., from one residential program to another but not from residential to in-home services. In the later instance, a new waiver would be required.

Provisional hiring of employees for a limited period – PAR recommends that the time period for a provision hire be 90 days to accommodate the typical delays encountered in receipt of PA State Police and FBI reports.

Thank you for your consideration.

Sincerely,



Shirley Walker
President and CEO