



**Testimony**

**of**

**Teresa Osborne**

**Secretary of Aging**

**Pennsylvania Department of Aging**

**Before the**

**House Aging & Older Adult Services Committee**

**House Bill 2549 of 2018**

**Older Adults Protective Services Act**

**September 6, 2018**

Good morning, Chairman Hennessey, Chairman Samuelson, and members of the House Aging & Older Adult Services Committee, staff, and stakeholders. While it is always my honor to come before this committee, considering that the subject matter for today's public hearing is the Older Adults Protective Services Act, I am especially grateful for the opportunity to present this testimony as protecting older and other vulnerable Pennsylvanians from all types of abuse, neglect, and exploitation is a priority for the Wolf Administration. Moreover, it's recognized that since the General Assembly first passed the commonwealth's Older Adults Protective Services Act on November 6, 1987, this House Committee, which has a rich history of operating with strong bipartisan leadership and has consistently focused on major issues of importance to older Pennsylvanians and their families, has continued a three-decades long commitment to ensuring that Pennsylvania's older adult protective services delivery system remains victim-oriented and grounded in an older adult's right to self-determination.

As Secretary of the Pennsylvania Department of Aging (herein referred to as the department) it is my privileged responsibility to uphold the provisions of the federal government's Older Americans Act, which requires the department to serve as a visible and effective advocate for older Americans, and the commonwealth's Older Adults Protective Services Act, which requires the department to maintain a statewide system of protective services for the older adults who need them. Of the many duties entrusted to my care, this particular responsibility - to ensure that victims of elder abuse have access to a coordinated community response that adequately responds to and addresses their needs and preserves their safety, dignity, and autonomy - is paramount.

On a personal level, my career in the field of aging began over 30 years ago, however for the sake of this testimony and our time together today, I share that twenty-eight years ago last month, I was hired by my local Area Agency on Aging (AAA) as an aging care manager and was assigned to the protective services unit. At that time, the commonwealth's older adults protective services act was only two years old. My roles in this protective services space advanced through the years, as I then served as a protective services supervisor, an AAA administrator, and ultimately a county director of human services. While protective services work was often challenging and emotionally taxing – for both the older adults served as well as for myself – this work has also been the most rewarding and most important of my life. It has afforded me the opportunity to uphold Pennsylvania's protective services law, which was designed to promote the safety, independence, and quality of life for older Pennsylvanians who are either being mistreated or who are in danger of mistreatment, and who are unable to protect themselves.

With the duties now entrusted to me to lead the state unit on aging, it is my responsibility to work with Pennsylvania's aging network, which includes fifty-two area agencies on aging that cover the sixty-seven counties of the commonwealth. It is the department's overall and my professional obligation and personal passion to work with every AAA as each AAA administers the provision of protective services under the law in its particular planning and service area. With regularity, I strive to listen to the needs of our AAA network by meeting with the protective services aging care managers and supervisors about their challenges, frustrations,

and successes; engaging in open dialogues with AAA administrators about their current needs, aggravations, and attainments; and connecting with the department staff who are responsible to support me in my oversight of this incredible responsibility to serve and protect older Pennsylvanians in need of protective services, and to delicately balance that need with the older adult's right to self-determination. While the protective service needs of older adults vary depending on the unique circumstances of the case, several issues are constant whereby protective services caseloads continue to increase as federal and state funding has remained flat. Noting that the General Assembly graciously supported the Wolf Administration's request for additional protective services funds specifically for the AAAs during this current fiscal year (2018/2019), increased caseloads, along with the complexity of financial exploitation cases, require us to continue to advocate for additional funding to implement the Older Adults Protective Services Act (herein referred to as the Act) as it currently stands. We must also ensure that we account for supplemental funding that will be needed to address any enhancements or revisions that the General Assembly may desire to make to the Act.

I very much appreciate the efforts that you, Chairman Hennessey, and this committee have taken in consideration of potential changes to the Act. To be certain, this Committee has led the way to ensure that when needed, amendments to the Act have been made to enhance Pennsylvania's response to elder abuse. Such amendments include Act 169 of 1996 which pertains to Criminal History Background Checks, and Act 13 of 1997 which pertains to Mandatory Abuse Reporting. With specific regard to Act 169 of 1996, it is

recognized that not all enhancements have been universally supported and unchallenged. Specifically, the December 30, 2015 decision of the Commonwealth Court in Peake v. Commonwealth, 132 A.3d 506 (Pa. Commw. Ct. 2015), unanimously found that Section 503(a) of the Act, which imposed a lifetime prohibition on the ability of individuals with particular convictions to be employed in licensed nursing homes and other long-term care facilities, to be unconstitutional. The court ruled that lifetime bans are not ‘substantially related’ to the purposes set forth in the Act, which is to provide for the detection and reduction, correction or elimination of abuse, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them. Obviously, it is imperative that a “Peake fix” is found. To this end, though there is no question that protecting the elderly and disabled who need long-term services and supports is a shared-interest in the commonwealth, and while the General Assembly may enact laws that restrict who may provide these needed supports and services to them, the department believes that although this proposed legislation does provide several important enhancements, due to concerns with certain aspects of House Bill 2549 of 2018, the Department of Aging cannot support it. Specifically, our concerns pivot to these main points: maintaining victim-oriented values and principles, reporting requirements, legal standing, and the structure of the proposed employment bans and waiver process.

For the past thirty-one years, the Older Adults Protective Services Act has stood as a model victim-oriented law; a law which delicately balances the need to take necessary steps to protect an older adult in need of protective services with their

inherent rights of choice, privacy, dignity, and self-determination. The Department holds the rights of the older adult in need of protective services with the utmost primacy. With respect to House Bill 2549 of 2018, this legislation appears to erode the current rights and protections for the older adult victim during the provision of protective services, as it would require the AAAs to initiate civil proceedings when law enforcement either defers or does not pursue prosecution or a criminal investigation. The Department strongly believes we cannot make good policy about older adults who are victims of abuse unless we make a concerted effort to include survivors of elder abuse in our work. A capacitated older adult must have the right to consent to this action. Not only does this proposed legislation appear to counter the older adult's right to self-determination, it also adds a new responsibility of litigation to the AAAs. Further, the legislation calls for the AAA to pursue civil or criminal remedies for substantiated cases of abuse. Just as any other older American has the right to choose whether or not to sue or press charges against an individual who may or may not have harmed them, an older Pennsylvanian also has a right to determine if pursuing such remedies is right for them. Adding this requirement deviates from the social services-type model that the provision of protective services in Pennsylvania is built upon whereby protective services workers focus on maximizing a vulnerable older adult's independence and choice, to the extent possible, based on the individual's capacity. This legislation appears to be steering protective services into the realm of law enforcement, which has never been the intent of the Act.

Since the Act's original passage, new types of facilities caring for older adults have been created, but have not yet been codified under the Act's definition of a facility. This bill, along with Senate Bill 899, updates the definition of facility to include the Program of All-Inclusive Care of the Elderly (PACE), which in Pennsylvania is called Living Independence for the Elderly (LIFE), along with and assisted living residences. This critical update would codify the mandatory requirement for staff in these licensed facilities to report abuse. The department is concerned however, that the proposed bill seems to also require mandatory reporters to report financial exploitation and would require financial services providers to report financial exploitation to both the AAAs and law enforcement. Experts across the country have called elder financial exploitation the crime of the 21<sup>st</sup> century and developing effective interventions has never been more important. Researchers tell us that older adults are attractive targets as they often have assets and a source of regular income. In addition, older adults may be especially vulnerable due to isolation, cognitive decline, physical disability, or chronic health conditions; and experience has shown us that elderly victims of financial exploitation are often robbed forever of their resources, dignity, and quality of life. While pleased that a process for handling financial exploitation is included in this bill, the Department is gravely concerned with the AAAs having the capacity and the resources to properly respond to the volume the reports of financial exploitation that would be generated if financial exploitation is made a requirement for mandatory reporters. Reports of need for protective services have increased from 20,133 in 2014-15 to 28,633 in 2016-17. Of those 28,633 reports in 2016-17, 28% were of financial exploitation. Financial exploitation cases are typically more time consuming and costly for the AAAs due to the amount of

bank records and other supporting documents that need to be gathered and reviewed. Consideration must be given to address the responsibilities of the Department, along with the staffing and training realities of the AAAs if we are required to implement the Act with this new mandatory reporting requirement.

Another primary concern in the realm of financial exploitation is new standing that is seemingly being given to financial services providers in court under this legislation, whereby a financial services provider could go to court to obtain protective services for an individual. Historically, the Act has given the department and its AAAs, as the agents of the Department under the Act, the sole responsibility to have standing in court for older adults who are reported to be in need of protective services. The provision of protective services, for many and varied reasons, is sometimes met with resistance by the older adult victim as their personal life is examined, friends, relatives, and medical professionals are questioned, and medical and financial records are pored over all to protect the older adult. While the Department and its network of AAAs are experts in the field of protective services, additional help is needed from the criminal justice professionals to identify forensic markers and issues, to enhance law enforcement's capacity to respond to elder cases of financial exploitation, and to increase prosecution of elder abuse. When law enforcement personnel or prosecutors are presented with a situation where a perpetrator befriends an older adult, borrows a large sum of money, and does not repay it, we need the authorities to actually recognize this as a crime, rather than a 'consensual transaction.' The issue of elder abuse, including financial exploitation, brings with it many challenges that are similar to those found in the areas of child abuse,

domestic violence, and sexual assault. Moreover, it presents several rather unique complexities surrounding the issues of capacity, consent, and the need for long-term services and supports. To this end, while we all recognize that elder abuse robs our seniors of their safety, their health, and their financial resources, in this space, we strongly believe that while financial service providers may submit reports of need for protective services to the AAA if they have reason to believe that financial exploitation is occurring, the financial service providers should not have standing in court to order the provision of protective services under the Act.

Additionally, this bill states that a report to the Department of Human Services' (DHS) HCSIS incident management program is sufficient for facilities to use as a mandatory report. This causes concern as the department and its AAA network, which are responsible for immediately receiving reports of need for protective services at all times under this bill, do not have access to HCSIS, which is tool used by DHS. As proposed, the required use of HCSIS would be a costly, extra step and could potentially delay the provision of protective services in potentially life-or-death situations.

As referenced earlier, since the Commonwealth Court's decision in Peake, the Department has advocated to reinstate an employment ban process that protects care-dependent persons from individuals who may do them harm. With respect to Peake, we recognize that the court gave specific guidance on what the commonwealth's prior employment ban process lacked: consideration for the offense an individual committed, along with evidence of their rehabilitation. We believe that the remedy to this issue is conveyed - in both this bill and in Senate

Bill 899 - through a waiver process. A waiver request would be considered by the Department to waive any employment ban if an individual with a ban-qualifying offense submits information showing that they have been successfully rehabilitated and would not be a threat to care-dependent persons. House Bill 2549 does not currently provide for the Department to review the relation of the ban-qualifying offense to the job the individual is seeking. We strongly believe this is an important component to any waiver process as it provides appropriate context for the reviewers to make a proper decision.

Moreover, the Department is concerned that this legislation starts its employment ban at the date of conviction. Commencing an employment ban from 25 years and under from the date of conviction, in effect appears to render an employment prohibition as a protection tool useless. Under this bill, for example, an individual convicted of multiple offenses with consecutive sentences could be convicted very early in the individual's professional career, serve a total sentence of 25 years and be ready to serve care-dependent individuals, without the need for a waiver, on day one of the individual's release. The Department would prefer the structure of the employment protections to mirror the employment language included in Senate Bill 899, which begins any employment ban from the date of release from prison or end of parole. The Department believes this structure respects the Court's decision while offering added protections for care-dependent populations.

Lastly, the Department desires to enhance its current PA Link to Community Care website, which when fully implemented will serve as a resource for older adults

and their families to search and identify available homecare agencies and individuals who provide personal care and related services in their local community to serve the older adult's care-related needs. Since the creation of this website, the Department has intended to include individuals who wish to serve as a homecare worker in the directory. In listening to older adults, we recognize that they desire to decide where and by whom they will receive their long-term care services and supports. Most importantly, our seniors deserve to have choice in where they live and how their needed services will be provided. Many older adults prefer to not use an agency model of care, rather they prefer to employ and retain their own individual care workers. In the absence of our directory, seniors and their families are securing homecare workers via word-of-mouth or on websites like Care.com or Craigslist.com to find a caregiver, which are not always the safest or the most reliable options. While the Department prefers to add a safer, more reliable option to link or connect homecare workers with older adults, we do not feel comfortable doing so without requiring the same background checks that are required by workers employed by an agency or a state-licensed facility. We believe that an addition to the department's PA LINK to Community Care directory under the Act will provide a safer decision-making option for older Pennsylvanians and their families, supports consumer choice, and upholds the older adult's right to self-determination.

With profound respect for the work that this committee had engaged in to support, serve, and protect older Pennsylvanians, the department agrees that our current Act does need several critical enhancements so that we can more effectively uphold our responsibilities. Both this bill and Senate Bill 899 attempt to make these enhancements, and the fact that these bills have so much in common

is proof that all parties involved are much closer to a unified approach to these issues than we have been before. However, these large areas of commonality (creating a waiver system, codifying definitions of financial exploitation) throw the areas of concern into sharp relief. If I did not raise these most critical concerns today, I would be remiss in fulfilling the duties entrusted to me on the day I took my oath of office. I must help raise awareness about elder abuse. I must help develop proper responses to it, and I must do my part to end it. But, I need your help, as underneath every word written in both the proposed legislation and in this written testimony is the fact that Pennsylvania's number of older persons continues to rise; and more older adults equates to the potential for more elder abuse. We are poised and prepared to continue to communicate, collaborate, and coordinate our efforts to ensure that every protective services action taken is balanced by the duty to protect the safety of the vulnerable older adults with their right to self-determination. Thank you for the opportunity to provide this testimony today. I look forward to continuing to work with the General Assembly toward the goal of an updated, robust, and comprehensive Older Adults Protective Services Act. At this time, I'd be happy to answer any questions you may have.