



The Honorable Maureen Madden
Majority Chair
House Aging and Adult Services Committee
Pennsylvania House of Representatives
301 Irvis Office Building
Harrisburg, PA 17120-2115

The Honorable Steven Mentzer
Minority Chair
House Aging and Adult Services Committee
Pennsylvania House of Representatives
41B East Wing
Harrisburg, PA 17120-2097

Dear Chairpersons Madden and Mentzer,

I am writing on behalf of the Pennsylvania Homecare Association (PHA), representing over 700 home health, hospice, and homecare members across the Commonwealth. Our member agencies employ thousands of direct care workers and home health personnel who provide essential care to hundreds of thousands of Pennsylvanians, enabling our aging and disabled populations to remain in their homes and communities. We wish to share our feedback regarding the proposed OAPSA omnibus rewrite.

The Older Adult Protective Services Act (OAPSA) is crucial to PHA, our members, and the constituencies they serve. PHA wholeheartedly supports the primary goal of this legislation—protecting vulnerable elderly adults from abuse, neglect, and exploitation. However, we have concerns about the practical implications of the legislation as currently drafted. PHA advocates for enhanced protections for seniors, including a comprehensive overhaul of the financial protection provisions of OAPSA.

However, we oppose this bill as written and urge you to consider the consequences for the home health care and long-term care industry, specifically:

Provider/Stakeholder Input Must Be Considered to Protect Access to Care

PHA would happily participate in discussions on how to revise OAPSA to best meet the needs of the long-term care community.

Over the past several years, significant provider effort resulted in revisions to formerly proposed bills that we would welcome revisiting to be able to ensure the safety of the most vulnerable in our Commonwealth. This proposal does not address key concerns that were previously discussed at length with revision recommendations being overlooked in this current proposal. This language addressed those provisions that were overly burdensome and those that put workforce availability at risk, which in turn creates access to care issues across the long-term care continuum in the Commonwealth. Should the Department like to revisit those revision recommendations, PHA would be willing to engage in this effort.

Additional and Costly Background Checks Delay and Deter Hiring During Severe Workforce Shortage

The legislation proposes that all applicants be subject to both the state police background check and the FBI background check, the latter to be administered by the Pennsylvania Department of Aging (PDA).

This move to subject *all applicants* to the federal background check is new and problematic for the following reasons:

1. PDA, is unlikely to be able to handle the higher volume of federal background checks. Currently they are only using federal checks on individuals that have not lived in PA for the prior two consecutive years. The home health care industry alone represents 292,577 jobs in Pennsylvania. Compounded by high turnover rates that will result in multiple criminal record reviews for the same individual who is changing employers, it is unlikely PDA will be capable of keeping pace with this increased workload without considerable investment from the Department.
2. The cost of these additional background checks will be borne by facilities. The cost has increased significantly over the past few years to \$25.25 per FBI background check, plus \$22.00 per criminal history record. Facilities having to now bear this cost for *all applicants* plus the proposed training requirements, which would result in additional wages, means that providers will have to make cuts in other places. Additionally, the Department must consider that reimbursement rates for set by the state for public assistance programs, such as Home and Community Based Services, will now need to reflect these additional costs in their rate setting methodologies, increasing budgetary costs that are not directly reflected in this proposed legislation. For providers such as those who offer Office of Long Term Living Personal Assistance Services, reimbursement rates of just over \$20/hour mean that increases to hiring costs will mean cuts to other areas of the program, potentially impacting quality of care or workforce benefits.
3. Medicaid beneficiaries receiving personal assistance services who choose to hire their own caregivers and direct their own care without an agency would also be required to the new background check requirements at the expense of the Commonwealth.
4. FBI fingerprint locations already are limited, especially in rural areas, and many have wait times for applicants to secure appointments, which will result in delays to hiring and thus access to care limitations. Applicants often end up spending significant time and money traveling to far locations for fingerprinting. This exacerbates an already precarious workforce crisis, especially for caregiving and nursing positions and places undue burden on this workforce.

Department of Aging as an Employment Clearing House Diminishes a Workforce Already in Crisis

This legislation proposes that the Department of Aging takes the responsibility of acting as a clearinghouse for both the Pennsylvania State Police criminal history report as well as the FBI fingerprinting and background checks for all applicants for employment, which in the long-term care industry will be thousands of individuals monthly. Currently, the Department only acts as an intermediary for FBI checks for a limited population of applicants – only individuals who have not lived in the state of Pennsylvania for the two years immediately preceding their application for employment.

PHA has serious concerns that the Department will create lengthy delays in the hiring process for Pennsylvania's critical home healthcare workforce. The proposed legislation requires that the Department make a determination within 30 days, a timeframe within which an applicant could find employment outside of the industry. Policy should dictate that we push people towards this profession,

not away from it. Furthermore, for the critical Direct Care Workforce, 30 days without employment hinders their ability to feed their families, pay rent and provide basic essentials for everyday life. While 30 days may seem satisfactory to a government entity, we assure you, this is unacceptable in real world applications.

The Department's increase in workload to act as a criminal record clearing house will be exponential compared to what they process today. The impacts of any delay to hiring, let alone delays that are weeks long (as that is the current wait time for FBI fingerprint processing) could be crippling to care delivery in Pennsylvania.

Lack of Employer Transparency in Hiring Decisions and Waiver Process

While we appreciate the Department's recognition that the legislation must reflect a due process option for individuals who have been deemed ineligible for employment, we must point out the lack of transparency for the employer who would no longer be a part of the deliberation surrounding the criminal conviction, and thus no longer responsible for the hiring decisions, or termination decision if provisionally hired.

In discussions with the Department regarding previous iterations of OAPSA, Department staff have repeatedly told providers that they would receive a notice stating only whether an applicant could be hired or not. They are not able to disclose what is on a criminal history check that was submitted to them, leaving the would-be-employer with only a portion of the information to make a hiring decision. Confounding the issue, OAPSA bills that had been previously introduced did not provide immunity for providers who hired someone with a waiver without knowing the full history of who they were hiring, leaving them in a difficult position whether to hire or not.

Furthermore, without this information, employers are less likely to take advantage of the waiver process as they would not be aware of why the applicant was denied employment in the first place. Applicants would likely be offput by the lengthy time to 1. Receive an employment determination, 2. Apply for a waiver and 3. Await department decisioning on a waiver application, deteriorating the workforce. In many home care programs, employees are family members or close friends to the patient. The department will see a volume of waiver applications from these models of care that are likely unprecedented. Determinations could result in a family member unable to care for their aging or ill loved one. Without a fair, timely and transparent waiver process, the industry could be left with a dwindling workforce that cannot meet the demand of Pennsylvania's aging population.

Excessive Conviction List Limits Workforce Availability

The list of convictions, which is much longer than those included in the original OAPSA statute, must be revisited to ensure that the prohibitions do not prevent employment for individuals that are otherwise qualified. For instance, there is a prohibition on employment for five years for anyone convicted of check fraud. This seems obvious to prevent the employment of someone who may be more likely to steal an older adult's money. However, many applicants for caregiving are low-income, single mothers who are working multiple jobs to make ends meet. There is a very real possibility that these individuals might have to choose to write a check for rent that they know will bounce and buy groceries or go without food for their families.

A thorough review of the list of criminal convictions contained in the legislation is necessary to make sure that the bill serves its intended purpose.

Grandfathering of Current Workforce

PHA would also like to address the issue of “grandfathering” for current employees. The homecare industry is unique in that placement of employees is not simply about filling open positions. Our agencies work to place care workers in the homes of individuals where the worker is essentially “part of the family.” For those employees who have been providing care to a consumer for several years, PHA respectfully recommends that the care worker be grandfathered under this legislation.

Provisional Hire Policies Diminish Workforce Hiring, Deter Workforce from the Industry, and Disparately Impact Rural Providers

Current language includes a provisional hiring period of 45 days, which conflicts with currently established Department of Health provisional hiring periods of 30 or 90 days, depending on whether an individual has lived in the Commonwealth in the 2 years prior to hire. Contradictory regulations confuse providers and hinder the use of provisional hiring. Without effective provisional hiring, the workforce time to hire will increase dramatically, adding a waiting window for 1. a criminal history check, 2. An FBI fingerprint check (which has to occur at a live site with available appointment times) and 3. a Department issued “eligibility for hire” designation following the review of #s 1. and 2.

PHA estimates this will delay hiring by 4 – 12 weeks, disparately impacting rural providers where fingerprinting locations and available appointments are scarce. This will also deter individuals from entering the home based care industry, as they can get hired more quickly in other industries.

Immunity for the Provider Community

First and foremost, the legislation, as currently drafted, does not contain any language that addresses immunity from civil liability for providers. The following is current law:

“§ 10225.503. Grounds for denying employment.

(c) Immunity.--An administrator or a facility shall not be held civilly liable for any action directly related to good faith compliance with this section.”

“§ 10225.707. Immunity.

An administrator or a facility shall not be held civilly liable for any action directly related to good faith compliance with this chapter.”

The homecare provider community is unaware of the policy determination behind the repeal of these sections from the OAPSA bill. Our providers already face the difficult task of appropriately placing care workers and home health workers with clients. With a workforce shortage already taking a toll on the home health industry, a provider who acts in good faith to their detriment based on a decision rendered by the Department of Aging should not be punished. Accordingly, we respectfully request that you replace the immunity language that is currently removed from OAPSA in your legislation.

Improved Data Transparency

As previously advocated for, improved transparency of data regarding older adult protective services and the needs of the Commonwealth would better inform revisions to OAPSA and help secure stakeholder consensus for provisions of the act and their applicability. We continue to advocate for this data transparency.

Conclusion

Historically, PHA has been an active partner in providing feedback and thought leadership on various proposals pertaining to OAPSA, which have included cumbersome hurdles to hiring practices for all long-term care providers. While PHA recognizes the need for concrete guidance on hiring practices, we caution that elements of the current proposal will create new, less-desirable challenges.

In summary, it is crucial to balance the need for thorough background checks and employment restrictions with the realities of workforce shortages and the practical challenges faced by providers. Overly stringent regulations may hinder the ability to provide quality care and meet the growing demand for services.

We welcome the opportunity to participate in stakeholder discussions to ensure this legislation achieves its primary goal of protecting vulnerable elderly adults from abuse, neglect, and exploitation without exacerbating workforce challenges.

Sincerely,



Mia Haney
Chief Executive Officer



Alexandra McMahon
Director of Government Relations

Your *partner* in
bringing *care home*

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