

The Honorable Jason Kavulich  
Secretary  
Department of Aging  
Commonwealth of Pennsylvania  
555 Walnut Street  
Harrisburg, PA 17101

June 21, 2024

*Via Electronic Mail*

Dear Secretary Kavulich,

As the Pennsylvania Department of Aging (PDA) works to improve the network of care, housing, and infrastructure needed to support Pennsylvania's older adults, particularly as baby boomers continue to transition into retirement, we urge you to remain cognizant of the delicate ecosystem that makes up the network of supports our commonwealth's seniors rely on. While ensuring our state's older adults have critical access to protective services should be a priority, at the current moment, lack of funding and state investment in the industry is one of the largest threats to our state's seniors. Ensuring access to care through meaningful investment and addressing an ongoing workforce crisis must be the main focus.

The below-signed associations and interested parties appreciate the opportunity to comment on the proposed legislation to reform the Older Adult Protective Service Act (OAPSA) and request that the PDA reconvene a stakeholder group to discuss this in more detail. As currently drafted, we must oppose this legislation. The comments below reflect some of our current concerns as well as the nuance that providers and the Department previously negotiated following the introduction of Senate Bill 819 (R-2019). We look forward to a robust discussion with the Department and administration before further action on the proposed legislation.

### **Immunity**

**The proposed bill does not include immunity language for facilities** that make good faith efforts to comply with the bill section, which outlines the hiring or retention of applicants or employees with criminal histories, including provisional hiring of those individuals. Stakeholders have advocated for language that protects the facility's liability in attempting to hire/retain employees with a criminal history. An example of this language is:

“A facility that employs an individual shall not be held civilly liable for any action directly related to doing so in good faith compliance with subsection 702-A of this act.”

Including language to protect providers that do hire applicants affected by the justice system is needed. Additionally, there is also a **lack of civil provider protections from applicants who are awarded a waiver by the department but are ultimately not hired by the employer.**

## Availability of Background Checks

The current version **does not include any parameters/responsibilities for the department to meet in order to ensure adequate access to background check processing sites**. Providers advocated for these parameters to be included to ensure that obtaining a background check is not an additional barrier to employment. Among others, requirements may include:

- Ability to schedule appointments within 10 days.
- Nonstandard business hours of operation.
- At least one location in each PA County.
- Waiving background requirements if parameters were not met.

With the lack of availability of these sites, particularly in rural areas, there will undoubtedly be delays in hiring, not just for direct care but all aging services workers.

The proposed language would also **require providers** to bear the cost of these additional background checks. Costs have increased significantly over the past few years to \$25.25 per Federal Bureau of Investigation (FBI) background check, plus \$22.00 per criminal history record. Imposing these added costs, in addition to initial costs of onboarding and training, in the midst of a workforce crisis, for providers who are already underfunded for the care they provide further exemplifies the department's lack of understanding regarding the impact major reforms to OAPSA would have on the aging services community. While providers may elect to cover those costs, they should not be required to do so.

## Background check requirements

Current law only requires federal checks on individuals who have not lived in PA for the prior two consecutive years. The proposed bill states:

The following individuals shall submit to the criminal history information inquiry required under subsection (a):

- (1) An applicant.
- (2) An administrator who has or may have direct contact with a recipient.
- (3) An operator who has or may have direct contact with a recipient.

The drafted bill requires **applicants** to submit check prior to employment commencing. It is unclear whether current employees are “grandfathered” into the act.

“Operator” is not defined and it is unclear who that would include.

**Requiring both FBI and State background checks, even for applicants, still poses a barrier for aging services providers to hire**, especially when considering other prerequisites to working in long-term care, including license/certification, tuberculosis (TB) testing, etc., and the

concerns with the availability of testing sites discussed above.

### **Provisional hiring**

The bill allows for facilities to provisionally hire an applicant who has submitted Pennsylvania State Police (PSP) and FBI background checks if the facility has no knowledge about the applicant that would disqualify the applicant from employment and the applicant swears or affirms in writing that the applicant is not disqualified from employment under this act for a **single period of 45 days**. Stakeholders **previously advocated for a provisional hiring period of 90 days**. Given the availability of background check facilities and the potential for delays or appeals, extending the provisional hiring period would be appropriate.

### **Mandatory reporter protections**

Stakeholders advocated that language be included to protect mandatory reporters from liability for additional reporting requirements that the department may require in addition to the required reporting outlined in the bill. Sample language would be:

“If an area agency on aging does not advise any additional reporting, a mandatory reporter shall be deemed in compliance with this chapter and relevant licensure regulations.”

Additionally, the current draft states that a mandatory reporter must make an *immediate* oral report within 24 hours. The language is confusing and should require reporters to make an oral report to the Department within 24 hours.

### **Imprecise Definitions**

To ensure consistency in applicability and capture adequately those persons, entities, and facilities who deliver care, we recommend the following changes to Section 103-A. Definitions.

- **We recommend the following change to the definition of subsection 8 within the definition of "Facility."**

*(8) Any other public or private organization, entity, person, or part of an organization that uses Medicaid funds and is paid, in part, to provide care and support to care-dependent individuals in the older adult's place of residence or preferred community-based setting.*

- **We recommend the following change to the definition of "Employee" section (iii):**  
*(iii) Any person who is employed or who enters into a contractual relationship to provide care to an older adult for monetary consideration in the older adult's place of residence or preferred community-based setting.*

- **We recommend the following change to the definition of "Mandated Reporters":**

*Add "(6) caregivers"*

It is with these initial concerns in mind that we must oppose this legislation as currently drafted. We ask that you consider the funding and workforce crises that have culminated into an access to care crisis as you consider reforms to OAPSA. Again, all of our organizations welcome the opportunity to participate in stakeholder discussion to ensure this legislation achieves its primary goal of protecting vulnerable older adults from abuse, neglect, and exploitation while still avoiding unnecessary delays in hiring and liability risks for providers.

Again, 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.



**CC:**

The Honorable Valerie A. Arkoosh  
Department of Human Services

The Honorable Matt Bradford  
Pennsylvania House of Representatives

The Honorable Kim L. Ward  
Pennsylvania State Senate

The Honorable Bryan Cutler  
Pennsylvania House of Representatives

The Honorable Joe Pittman  
Pennsylvania State Senate

The Honorable Maureen Madden  
Pennsylvania House of Representatives

The Honorable Jay Costa  
Pennsylvania State Senate

The Honorable Steven Mentzer  
Pennsylvania House of Representatives

The Honorable Joanna McClinton  
Pennsylvania House of Representatives