

Testimony before the
Pennsylvania House Aging and Older Adult Services Committee

Hearing on House Bill 2549 – Amending the Older Adult Protective Services Act

September 6, 2018



Diane Menio, Executive Director
Two Penn Center ♦ 1500 JFK Blvd. ♦ Suite 1500 ♦ Philadelphia, PA 19102
800-356-3606
menio@carie.org
www.carie.org
www.caregivergps.org

Introduction

Good morning. My name is Diane Menio and I am the Executive Director for the Center for Advocacy for the Rights and Interests of the Elderly (CARIE). Thank you for sponsoring this important hearing and for the opportunity to present testimony today. As advocates for older adults, we appreciate your work to improve the Older Adult Protective Services Act and to protect older adults from the devastating consequences of elder abuse.

Founded in 1977, CARIE is a nonprofit organization dedicated to improving the quality of life for frail older adults. Our focus of concern spans the long term care continuum from those who live at home to those who are living in facilities. Older adults with physical or psychological impairments are often a silent group and are not able to advocate on their own behalf. We work to protect their rights and promote awareness of their special needs and concerns.

Background

As you know, Pennsylvania has seen a dramatic increase in elder abuse referrals to older adult protective services. Protecting older adults from abuse requires balancing the individual's autonomy while providing protections from further abuse. We appreciate the Committee's efforts to improve the Older Adult Protective Services Act especially the provisions addressing financial exploitation. Financial exploitation is typically complex and difficult to investigate, especially when the older adult has a cognitive impairment. Having policies in place to encourage earlier reporting and a faster response, may help stop the loss of assets and the detrimental outcomes victims endure. We offer the following recommendations to strengthen the bill.

House Bill 2549 Recommendations

Section 103. Definitions.

The addition of "Physician or other licensed or certified health care professional" (page 10, line12) as mandatory reporters presents a conundrum. Ideally, physicians, licensed or certified health care professionals as well as employees at financial institutions should be trained and required to report elder abuse when suspected. However, the current older adult protective services system is already strained by investigating ever growing numbers of reports and providing services. Adding additional "mandatory reporters" is a major expansion of older adult protective services that will further strain an overburdened system with increased referrals. Without a significant increase in funds, the intent of trying to address elder abuse early could backfire as the current system will not be able to meet even more demands.

“Written reports” requirements are listed throughout the bill. Should the list of mandatory reporters be expanded, it may prove cost-effective and efficient to have the Department of Aging create a secure online portal to receive complaints from mandatory reporters.

Since financial institutions are likely to be among the first to notice that an older customer is being financially exploited, it is important that Pennsylvania join the states that have enacted statutes mandating financial institutions to report potential cases of financial abuse and again, should fund this expansion. The Elder Abuse and Neglect Committee of the Pennsylvania Supreme Court Elder Law Task Force also made this recommendation in its Elder Abuse and Neglect Committee’s *Findings and Recommendations* report.¹ We suggest adding language to the bill by following statutory models from the other states with this requirement.

On page 10, line 30 adds “risk or imminent risk of danger to his person or property” to the definition of an older adult in need of protective services. While we support the addition of “risk,” this is a big change in policy. The Department of Aging should be instructed to carefully define this term in the regulations so there is consistency among counties. In addition, guardianship should not be pursued unless the older adult is at “imminent risk” and it is the only option.

In terms of “specific services” found on page 12, line 13, even though the bill states the list “need not be limited to”, we suggest adding victim services and counseling to help promote their use.

Finally, on page 12, line 29, “Sexual abuse” should be amended to include “any non-consensual sexual contact with an older adult and any sexual contact with an older adult not able to give consent.”

Section 301.1 Duties of financial institutions and fiduciaries.

House Bill 2549’s requirements for training and giving financial institutions the ability to temporarily stop cash flows from an account of an older adult to prevent further financial exploitation, are positive provisions found in the bill. Knowing the devastating impact and often irreparable harm of financial abuse, it’s important to emphasize that early reporting by financial institutions can help stop further abuse. Once money is gone, it’s extremely difficult to recover. Financial exploitation particularly when committed by family, a caregiver, or a close companion is often accompanied by other types of abuse. Early intervention can have a profound impact on the older adult’s health and well-being.

¹ The Pennsylvania Supreme Court Elder Law Task Force Elder Abuse and Neglect Committee *Findings and Recommendations* report <http://www.pacourts.us/assets/files/page-543/file-4023.pdf?cb=1535758979998>

We have concerns that some institutions may lack compliance programs and protocols needed to detect and report elder financial abuse. Language should be added to this section that encourages financial institutions to revise or develop robust compliance procedures to follow the training protocols and be in compliance with the law. It is important that employees not only recognize potential abuse but also understand the institution's policy and procedures such as how to report and where to refer.

In terms of "(b) Model training program" that is found on page 15, line 6, the Department of Aging should not only be required to work with the Department of Banking and Securities and representatives of the financial service industry but also older adults, their advocates, and law enforcement officials should also be consulted and included in the bill. In addition, language should be added to require that training meet evidence-based standards and include competency testing of trained participants.

Section 302. Reporting.

We recommend adding language to allow for anonymous reports to "Voluntary reports" found on page 20, line 27.

Section 308. Repeal

Lines 25-30 on page 39 and lines 1-11 on page 40 relating to the "Rights of alleged abusers" is being removed from the legislation. As under current law, when cases are substantiated, perpetrators should be offered the rights that currently exist. For example, there may be incidents when false claims are made. Therefore, we recommend maintaining the current language.

Section 11./Section 503.1. Criminal history.

This section should be expanded to include workers included in the PA Link to Community Care website's home care worker directory or any related commonwealth data base. Individual workers listed in any commonwealth directory or public data base should be required to meet criminal background requirements as defined in the bill for other direct care workers.

On page 56, lines 20-24, beginning with "(2) If new criminal charges are filed against an individual who has obtained a waiver from the department...", language should be added to require the Department of Aging and/or the employer to take any appropriate action to protect older adults or to ensure their safety.

Section 707.2 Funding.

In Pennsylvania, the Lottery Fund is the source of all funding for older adult protective services. Over the past five years, referrals for protective services investigations have increased 57%, and substantiated reports of older adult abuse and neglect have increased 41% but funding has not kept pace with this growth. While older adult protective services investigations

and related services received a much-needed boost in funding this fiscal year, the Pennsylvania Area Agency on Aging Association (P4A) estimates that over \$5 million dollars more is still needed to keep pace with growth. Funds are needed to hire staff and avoid diverting funds from other programs including senior centers, adult day programs, home care, and home-delivered meals to meet the increased demand for protective services.

Therefore, we recommend adding “budgetary needs” to “(b) Duty to report” found on page 71, line 9. The annual report by the department to the general assembly should include an analysis of not only metrics about programs and services but should include a budget analysis including the true funding needs of protective services. Including budgetary needs will offer the legislative body important information during the annual budget process and help ensure older adult protective services are adequately funded.

Private Right of Action/Civil Provisions on Elder Financial Exploitation

As recommended by Katherine Pearson at previous hearings, Pennsylvania should modify its civil provisions on elder financial exploitation, including creating a private right of action under the Older Adult Protective Services Act, to help older victims try to recover assets early.

The National Center for Victims of Crime, in collaboration with the American Bar Association Commission on Law and Aging, developed [The Model Civil Provisions on Elder Financial Exploitation](#) to assist states in adopting civil provisions on elder abuse. According to the report, “Access to the civil justice system is an opportunity - and in certain cases, the only opportunity - for victims to be made whole without facing as many of the obstacles presented by the criminal justice system. Unfortunately, there is far too little civil legal assistance available, and very few cases of financial exploitation are litigated.”² We recommend Pennsylvania adopt the related language and recommendations found in the report.

Conclusion

Elder abuse is a human rights and public health issue impacting many. We hope you are successful in strengthening the Older Adult Protective Services Act to reduce the incidence of elder abuse and improve Pennsylvania’s ability to respond to the problem. We are willing to work along with you to help advance a bill that works to ensure the dignity, autonomy and safety of older Pennsylvanians. Thank you again for the opportunity to comment and for sponsoring today’s hearing.

² The Model Civil Provisions on Elder Financial Exploitation, pages 11-12, at <http://victimsofcrime.org/docs/default-source/financial-fraud/model-civil-provisions-on-elder-financial-exploitation.pdf?sfvrsn=2>