

**House Aging and Older Adult Services
Committee Hearing**

**Testimony on Elder Abuse,
HB 397, HB 398, HB 399, and HB 400**

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Good Morning Chairman Day, Chairman Samuelson and members of the House Aging and Older Adult Services Committee. Thank you for the work you do to protect seniors in Pennsylvania and the opportunity to provide testimony on Elder Abuse and share the great work our members do every day to ensure the health, safety and wellbeing of their residents.

My name is Anne Henry. I am the Senior Vice President and Chief Government Affairs Officer of LeadingAge PA, which is a trade association representing over 350 not-for-profit providers of senior housing, health care, and community services across the Commonwealth. Our members serve more than 75,000 older Pennsylvanians and employ over 50,000 dedicated caregivers on a daily basis. Our members offer a full array of long-term care and senior services including continuing care retirement communities sometimes called life plan communities, nursing homes, assisted living residences, personal care homes, affordable senior housing, LIFE programs, and home and community based services. LeadingAge PA advocates on behalf of our members at the state and federal levels to influence positive change and affect a healthy vision for the delivery of quality, affordable and ethical care for Pennsylvania's seniors.

First let me say that LeadingAge PA is supportive of HB 400 P.N. 1698 that would amend Title 18, Crimes and Offenses, to include postings to social media with the intent to ridicule or demean a care dependent person. We find this behavior to be reprehensible and fully believe that it should be punishable by law.

We also are supportive of including some laws that would safeguard care dependent individuals from financial exploitation but we may want to discuss some of the specific language included in HB 398 and HB 399 so that we can fully understand the intent as we move forward.

That said, I would like to take the opportunity to discuss how financial exploitation results in nursing homes being forced to write off tens and sometimes hundreds of thousands of dollars of bad debt. In order to qualify for Medical Assistance (MA) for nursing home care, the federal government requires that County Assistance Offices (CAOs) under the Department of Human Services (DHS) conduct a five-year look back to assure that assets were not transferred for less than fair market value. There are times when families, knowingly or not, transfer these assets which then renders the care dependent individual ineligible for MA for a period of time – sometimes years. The nursing home can attempt to discharge the individual but this isn't very realistic, or they can attempt to file suit against the resident or the family member that received the asset but this often results in significant legal fees with little to no recoupment. Hence, nursing homes are forced to provide free care resulting in significant bad debt write offs.

Once a person is approved for MA, if they have social security, a pension or other monthly income, DHS will require that a portion of this income be given to the nursing home as a contribution towards the individual's cost of care. Again, there are times when family members

utilize these funds for their own purposes and the nursing home has little to no recourse to obtain the funds owed to them as I previously explained.

One might think that all businesses have bad debt expense, which is generally true however; we are reaching a crisis in our MA nursing home funding. MA reimbursement has failed to keep pace with the increasing costs of care and service provision. Recently, LeadingAge PA commissioned a study by RKL LLP to compare publically reported costs to take care of individuals to the reimbursements from the MA program. The study found that not-for-profit nursing facilities are already losing in excess of \$80 per Medicaid resident per day in Pennsylvania. Nursing facilities across the commonwealth lose more than \$630 million dollars a year by serving residents on MA. More than 65% of all nursing home residents are paid for by MA. Again, one might think that this shortfall can be made up by private pay residents but these bills add up to over a \$100,000 per year. Most people just don't have the assets to sustain these payments for very long and private paying residents only account for about 15% of the population. Other payors like Medicare used to help fund the MA shortfall but these payments have not kept up over the last several years either.

With this extraordinary funding shortfall at the hands of the commonwealth, we have numerous members taking beds offline. As the trend continues, we anticipate aging individuals across our state will face challenges finding quality providers of care with capacity to meet their needs. If we are truly concerned about elder abuse, we must take steps to adequately fund our long-term care safety net to ensure that people in need of nursing home services will be able to find a quality provider.

Turning to HB 397, LeadingAge PA has several grave concerns regarding this bill. Our first concern relates to the significant workforce crisis that seems to be unending. Quality nursing homes can't find staff today even though they are providing a reasonable wage, good benefit packages, sign on bonuses and anything else they can think of or afford to do to fill vacant positions. We are fearful that HB 397 will only serve to make our staffing shortage worse. Good caring staff are already scrutinized by the Department of Health every time a survey is underway and some have left long-term care due to the pressures of these surveys. Having staff on camera where the care they are providing might be misinterpreted may be the final straw for them to find work outside of long-term care. LeadingAge PA members work very hard to have a culture of trust and mutual support between staff and residents. Electronic monitoring devices would serve to deteriorate this sense of community.

Our second concern with HB 397 is the intent of the resident's representative for the use of the electronic monitoring. Unfortunately, not all representatives act in the best interest of the resident. For instance, some residents are in nursing homes because they are placed there when their representative abused or neglected them in their home. In these cases, it does not seem appropriate that a representative's request for video monitoring should be granted by

the nursing home. It is the nursing home's ultimate responsibility to protect the resident and they can't do so unless they can say no to such a request.

We also need to spend some time thinking about the roommate. We can say that the camera must be pointed away but how can we assure the roommate's privacy if the electronic monitoring device is in the room when neither they nor their legal representative would have access to the material obtained from the device? The bill also lacks privacy protections for the recording or photographs produced from the monitoring device for the roommate or other visitors should they be included in the images.

We can also say that the person who wants the video monitoring can ask for a change of room but it can be quite some time before an appropriate room might be available especially as we see more and more beds taken offline across the commonwealth due to insufficient funding.

Finally, we should consider the individual prior to their nursing home stay, especially if they can no longer communicate their own wishes. Would they have ever wanted themselves on camera as they were receiving help bathing in the morning or preparing for bed in the evening? Would they have wanted themselves on camera as a dedicated caregiver attends to them because they are incontinent? I think these things should be considered before we grant such rights to a representative of the resident, which by the definition in this bill doesn't specifically require that the person be a legal representative such as a power of attorney or guardian.

For the reasons outlined, LeadingAge PA opposes patient care monitoring as outlined in HB 397, as it doesn't offer protections for unintended consequences.

I thank you for the opportunity to provide comment and testimony today. I would be happy to answer any questions you may have.