

Senate Banking & Insurance Committee and Senate Aging & Youth Committee

Joint Public Hearing on Protecting Seniors from Financial Exploitation

Testimony of Jason Kavulich, Secretary of Aging

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# Welcome

Good morning, Chairman DiSanto, Street, Ward, Collett, members of the Senate Banking and Insurance Committee, Senate Aging and Youth Committee, and staff. I thank you for this opportunity to be here today to discuss the Older Adults Protective Services Act (OAPSA). The scheduling of this informational hearing and attendance by both committees is a strong indicator that we all recognize the importance of today’s topic, the need for a comprehensive update to the Older Adults Protective Services Act that includes the addition of preventing and reducing financial exploitation and enhancing the protection of more than 3.4 million older Pennsylvanians from fraud, abuse, neglect, and exploitation. On behalf of the Pennsylvania Department of Aging (Department), I would like to thank you for the opportunity to share with you today why it is imperative to update OAPSA.

# Background of OAPSA

The Department is required by the Older Americans Act to establish and maintain a statewide system of protective services for individuals 60 years of age and older. This statewide system is comprised of 52 Area Agencies on Aging who serve all 67 counties. The Older Adults Protective Services Act, or OAPSA, is the foundation upon which protective services are administered within Pennsylvania. Enacted in 1987, OAPSA serves as Pennsylvania’s framework for protecting the health, safety, and welfare of older adults who are at imminent risk of abuse, neglect, and exploitation. Through OAPSA, the Commonwealth has been able protect the rights of older adults while working to reduce or eliminate an older adult’s exposure to risk and abuse; all while respecting their individuality and autonomy.

The Department and stakeholders agree on the necessity of modernizing the almost 40-year-old statute. The world and protective services have evolved and changed significantly in the last four decades. To provide a better perspective, when OAPSA was first enacted in 1987, Ronald Reagan was president, the minimum wage was $3.35 an hour, and the world wide web and social media had not been invented. The world has changed significantly. In today’s world, we are more technologically advanced and connected, and with these improvements comes increased sophisticated and complex scams and financial exploitation. Unfortunately, OAPSA has not kept up with the pace of these changing times. An update to the statute is not only long overdue, but it is necessary to better protect and reflect the 21st century needs of older Pennsylvanians. With the fifth largest older adult population in the country and an older adult population that continues to grow daily, these updates only become more necessary and urgent with more older adults in need of protective services.

With the increase in the older adult population, the number of Reports Of Need, or RONS, continues to rise each year, with a projected 10% increase in growth for this state fiscal year. Over the next five years, the number of RONs is projected to increase accumulatively by 45%.

For the RONs received in State Fiscal Year (SFY) 2022-2023, the top three types of substantiated cases of abuse are:

* Self-neglect – 47%
* Caregiver neglect – 22%
* Financial exploitation – 18%

For the first time ever, in state fiscal year (SFY) 2022-2023, financial exploitation has taken over and replaced self-neglect as the top reported form of abuse. With the rise in financial exploitation as the top alleged reported form of abuse, OAPSA must be updated to include financial exploitation protections to address the current significant financial losses facing older Pennsylvanians.

A financial exploitation study conducted by the Department in 2019 found that older adults are at an increased risk for financial exploitation due to their accumulated wealth and retirement savings built throughout their lifetime. Financial exploitation is a challenging problem to solve as technology and the sophistication of fraud and exploitation towards older adults have become harder to discern, all the while, changes that occur during the natural aging process can make it more difficult for older adults to recognize scams.

The methods of financial exploitation in more than 50% of the sampled cases comprised of unauthorized bank withdrawals, making it the most pervasive method of exploitation in the study. Scams constituted the second most frequent form of financial exploitation, and loan fraud was the third highest type of exploitation.

Additionally, the study found that the average loss to each victim studied was approximately $40,000. Of the total substantiated financial exploitation cases reported to the Area Agencies on Aging during the study period, older Pennsylvanians lost an estimated 58 million dollars.

For a number of reasons, such as embarrassment, financial exploitation is significantly underreported. It is estimated that only 1 in 10 to 1 in 44 cases are ever reported. The findings from the study estimated losses in Pennsylvania, including unreported cases, to be around 2.5 billion dollars. This significant loss to older adults represents a lifetime of hard work and life savings.

This loss is not only felt by the older adult and their families but by the Commonwealth as well. When an older adult’s income and assets are impacted by financial exploitation, they are more likely to need state and federally funded programs and support to meet their basic needs. For example, more than 6.6 billion dollars was spent in SFY 2018-2019 on individuals ages 60 and older who are enrolled in

Medicaid. During this timeframe and after their first reported incident of financial exploitation, 322 older adults included in the study needed to enroll in Medicaid, and 178 older adults also enrolled in the Supplemental Nutrition Assistance Program, known as SNAP. Given how underreported financial exploitation is, the number of older adults enrolled in Medicaid as a direct result of exploitation is likely higher than we know.

Currently, OAPSA does not explicitly address financial exploitation, which is one component of the statute that must be addressed and updated. Area Agencies on Aging and law enforcement have limited resources and tools to combat financial exploitation and recoup these hard-earned savings of older adults. We need to work together to ensure proper protections are in place to prevent and reduce the risk of older adults losing their entire life savings. After their money is stolen, it is very challenging, if not impossible, to get it back. Imagine working your entire life – 50 years or more, saving for retirement, and in an instant, it’s gone along with all your retirement hopes and dreams. These older adults did all the right things to financially plan for their futures and did nothing wrong other than unwittingly trusting a scam artist. Now is the time for us to collectively work together to update OAPSA and protect older

Pennsylvanians.

# PDA OAPSA Language Proposal

The Department’s proposal includes necessary updates to OAPSA, including updating the list of mandatory reporters, expanding background check requirements, and addressing outstanding constitutional issues, among others.

Specifically, our updates include:

* Expand the list of mandatory reporters to reflect entities that were not in existence and add additional professionals who have access to older adults.
  + Since OAPSA’s passage in 1987, new types of facilities and providers caring for older adults have come into operation that are not captured under OAPSA’s current definition of facility.
  + The Department’s proposed language now includes assisted living residences, intermediate care facilities for individuals with intellectual disability, long-term care nursing facilities, residential care facilities, and hospitals.
  + Additionally, mandatory reporters have been extended and defined to include an administrator or employee of a facility, health care providers, a person who is licensed, certified, or otherwise regulated to provide health care services, administrators or employees of an Area Agency on Aging, and law enforcement officials.
* Expand the requirement for background checks to include all employees and administrators who have direct contact with older adults who receive care, services, or treatment from a facility.
  + This would include an applicant, an administrator who has or may have direct contact with a recipient, an operator who has or may have direct contact with a recipient, or a written notice of new arrest or conviction.
  + The Department’s proposed language adds additional language to require both FBI background checks and state police background checks prior to employment.
* Address the *Peake* Commonwealth Court decision by creating a waiver process and updating the list of prohibited criminal offenses to prevent an unconstitutional employment lifetime ban.
  + In 2015, the Commonwealth Court of Pennsylvania determined in P*eake v. Commonwealth* that the use of lifetime bans in OAPSA, as presently written, was unconstitutional.
  + The primary reason the court found the lifetime bans to be unconstitutional is because there was no provision in OAPSA to consider factors other than the offending crime itself in making a hiring determination.
  + To address this lack of provision in the current law, updates to OAPSA need to create a process to afford individuals who have committed a prohibited offense the opportunity to apply to the Department for a waiver of the employment ban to show they are no longer a danger to the health and welfare of care-dependent individuals.
* Prescriptive language around financial exploitation, including duties of financial institutions and penalties for failing to comply.
* Requiring collaboration between the Department of Aging, Department of Banking & Securities, the Area Agencies on Aging, and financial institutions in training for employees to better detect and report financial exploitation.
* Update language to align terminology and definitions with Adult Protective Services. For example:
  + Align the definition of abandonment o Align the definition of sexual harassment o Align the definition of employee
* Update language to align with the Adult Protective Services Federal Final Rule. For example:
  + Align the definition of abuse, neglect, and financial exploitation o Align the definition of sexual abuse o Align the definition of self-neglect

# Conclusion

Thank you for the time and the opportunity to testify today. I look forward to working with you to make these much-needed updates to OAPSA so that we can better support, serve, and protect older Pennsylvanians and make Pennsylvania the best state in which to live and age well for older adults now and generations to come.