**Written Testimony of**



**Delivered by**

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**Delivered before the**

**Senate Aging & Youth and Banking & Insurance Committees**

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Chairs DiSanto, Street, Ward, and Collett, and members of the Senate Banking & Insurance and Aging & Youth Committees,

Good morning, and thank you for the opportunity to participate in today’s hearing.

My name is Tim Ward, the director of Advocacy & Government Relations at the Pennsylvania Health Care Association, better known as PHCA.

We are proud to represent long-term care across the commonwealth, including government-run, nonprofit, and for-profit nursing homes, as well as personal care homes and assisted living communities. The residents our members serve are Pennsylvania seniors in need of care or adults with mental or physical disabilities.

Serving Pennsylvania’s seniors and adults with disabilities is the mission of long-term care providers. And our number one priority is ensuring the safety of our residents and employees as they receive and provide high-quality care.

When I arrived at PHCA in February 2021, the first meeting I sat in on was with a coalition group of Pennsylvania’s long-term care providers, who were seeking to strike the right balance on changes to the Older Adult Protective Service Act (OAPSA). It’s important to note that many of the statutory concerns our organization has here today, in 2024, have remained unchanged from that meeting back in 2021. Or, for that matter, they’ve remained unchanged since 2015.

But before I dive into the proposed changes to OAPSA that most concern members of the long-term care provider community, I would like to first address the current state of our workforce. Ultimately, some of the proposed changes that have been sought by both the previous and now current administrations will only exacerbate the long-term care workforce crisis.

And yes, it is a crisis.

# Pennsylvania Senior Demographics and Long-Term Care Workforce Crisis

By 2030, Pennsylvania will have more adults aged 65 and older than young adults and children aged 19 and younger. Our fastest-growing demographic today is adults aged 80 and older. That particular age group will nearly double by 2040 from what it was in 2020, pushing that demographic to 1.2 million people in 16 years.

Why does this matter? Because to be prepared for both current and future demands for long-term care services, we must have a workforce in place to meet the care needs of Pennsylvanians.

PHCA published a survey of our nursing facility members in June that revealed a continued access to care crisis for Pennsylvania seniors and adults with disabilities, fueled by a limited workforce and staffing mandates that require more caregivers than physically exist. The amount of facilities with 11 or more unfilled direct care positions has risen since last year and so has the amount of unused or vacant beds per facility. This isn’t the result of providers not trying to hire. If you speak with any long-term care provider today they will tell you they want to hire more caregivers. That’s why the wages have increased significantly –– but are still limited due to insufficient Medicaid reimbursements. Providers can’t hire more caregivers because the caregivers don’t exist

Approximately 50% of respondents in our survey denied admissions during the first quarter of 2024 because they did not have enough staff to care for additional residents. Nearly 75% of respondents had beds that went unused because they did not have enough caregivers to staff all beds.

Why do I share these statistics? Because we are concerned that the administration’s proposed updates to OAPSA will lead to additional employment roadblocks for long-term care providers to navigate as they contend with an already understaffed industry. Nursing home providers in particular are concerned because they’re struggling to meet the Department of Health’s recently implemented staffing requirements. And on top of that, the Centers for Medicare & Medicaid Services, or CMS, is finalizing a regulation that will implement a national staffing mandate. Combined, Pennsylvania providers will need to find 8,000 more qualified caregivers and nearly $540 million in state funds just to meet these two mandates.

The current workforce crisis in long-term care is relevant to the policy discussion surrounding amendments to OAPSA’s background check requirements, which we believe will create additional barriers to onboarding desperately needed caregivers and ancillary staff.

# Criminal History Background Checks

In 1996, OAPSA was amended to add a requirement that all applicants seeking employment in a facility covered by the Act, as well as incumbent employees with less than two years of service, submit a criminal background check. Since then, all applicants are required to undergo a Pennsylvania State Police criminal records check unless the individual has not resided in the commonwealth for the immediate preceding two years. In that case, OAPSA requires the applicant to undergo an FBI background check and fingerprinting.

Though OAPSA does not currently require providers to conduct regular, ongoing background checks of their employees, many of our providers routinely –– and in some instances that means daily –– run criminal records checks of all incumbent employees to ensure that individuals remain in compliance with the act. Historically, OAPSA has relied on employee disclosure, which has been sufficient to determine whether employees have new offenses. Though we are not aware of any problems or concerns concerning current law, providers have taken extra steps to ensure compliance with OAPSA and to protect their residents and staff. Providers also administer these routine checks as a way to ensure licensed staff have active licenses and to identify whose licensing is about to expire.

**I should also note that providers assume the costs of these regular employee criminal checks despite not being obligated under current statute.**

Under the administration’s proposed changes to OAPSA, all applicants applying for positions with a long-term care facility would be required to undergo both FBI and State Police background checks. The proposed language would also require providers to bear the cost of these additional background checks. For reference, the FBI background check is $25.25 per check and the State Police criminal history record is $22.00. Through their proposed updates to OAPSA, the administration is proposing yet another unfunded mandate to the provider community. For nursing homes, we estimate that requiring all applicants to obtain an FBI background check, regardless of their residency status, would cost approximately $1,052,377. When adding in those new requirements with the state police criminal records check, that amounts to $1,885,943, an average of $2,798 per nursing home. For assisted living residences and personal care homes, the new requirements amount to an additional $388,486 just for the FBI background checks and $696,198 once you include the state police records check.

To be clear, most providers elect to cover costs associated with background checks to support their recruitment efforts, but we do not believe they should be required to do so in statute. Pennsylvania’s long-term care providers are struggling with both workforce and financial challenges, and the administration’s proposal would further exacerbate both.

We are also concerned that the administration’s proposed language does not include any guardrails that will ensure there is adequate access to background check processing sites. As the department proposes an increase in applicants required to obtain fingerprinting for additional background checks, there must be assurances within any updates to OAPSA to ensure no new barriers to employment are created. The inclusion of the following provisions should be included in any updates to OAPSA that require all applicants to receive fingerprinting:

* Ability to schedule appointments within 10 days.
* Nonstandard business hours of operation.
* At least one location in each county.
* Waiving background check requirements if parameters are not met

Creating new barriers to employment, particularly in rural areas, will ultimately cause harm to a provider’s ability to deliver care to residents.

# Waiver Process

Under the administration’s proposal, the Department of Aging serves as a clearing house for the receipt and review of all state and federal background checks, as well as all initial employment determinations before the commencement of employment. Included in the draft language from the administration is the inclusion of responsibilities relating to the waiver process, including a 30-day response time and the establishment and administration of an appeals process. Any amendments to OAPSA mustn't create unnecessary delays to a provider’s ability to employ qualified workers. Workforce recruitment and retention are already at a crisis point in the commonwealth, and unwarranted administrative barriers will only exasperate employment challenges, creating additional threats to care access.

# Provisional Hiring

The administration is proposing a reduction of the provisional licensing timeframe from 90 days to 45 days while simultaneously increasing the background check requirements that add additional time to the clearance process. Additionally, provisional licensing would not be allowed if an applicant needs to seek a waiver from the department.

# Immunity

Since 1988, section 707 of OAPSA has afforded immunity protections for providers who make a “good faith compliance” on the bill section, which outlines the hiring or retention of applicants or employees with criminal histories, including provisional hiring of those employees. This immunity language has never served to do anything other than protect facilities that act in good faith with the law from being held civilly liable. Under the administration’s proposed language employers will be relying on the information on employability for applicants provided by the Department of Aging. The administration is proposing to repeal the immunity protections for providers under section 707 while affording themselves full immunity from civil liability for their determinations that an applicant is eligible for employment in our care settings.

We cannot accept any changes to OAPSA that repeals these longstanding immunity protections, which serve as a safeguard for employers who choose to give an employee with a criminal history a second chance. This language is not significantly different from the current immunity the General Assembly rendered under the Clean Slate Law, Act 56 of 2018.

In addition to the preservation of current immunity provisions afforded in OAPSA, we also advocate for a ‘good faith immunity’ provision, which would protect an employer from civil litigation if they decline to hire a convicted applicant due to their belief that the applicant continues to pose a risk to residents and employees. We also support language that would provide the various state licensing boards with protocols to deny and/or revoke licenses for anyone convicted of a prohibited offense under OAPSA. This would make a facility’s hiring decision clearer, as individuals with prohibited offenses would not have the license necessary to hold those positions, and eliminates the employer’s need to go through any further Peake analysis.

# Conclusion

As advocates for the vulnerable residents of our state, our number one priority is to ensure the safety of our residents and employees. Our members take the safety of their communities seriously, which is why many go above and beyond current statutory requirements to ensure compliance with OAPSA.

We welcome the opportunity to work with other stakeholders, the Shapiro administration, and the General Assembly to preserve the right balance of employee criminal record checks without unnecessary regulatory roadblocks that will impact a long-term care provider’s ability to recruit qualified staff to care for their residents.

We are committed to supporting the care of Pennsylvania seniors and adults with disabilities, and we respectfully ask that providers be at the table to address these important updates to OAPSA.

Thank you for the opportunity to testify, and I look forward to taking your questions.