



Legislative Scorecard Summary

Pennsylvania House Bill 2549 Older Adults Protective Services Act

August 2018

The Southwest Pennsylvania Partnership for Aging developed a scorecard implementing the Principles of an Ideal Long Term Living System for Pennsylvania's Older Adults. This scorecard is used to understand and analyze the potential impact of legislation. A bill, PA House Bill 2549, changing the Older Adults Protective services law is under consideration in the House and Senate in Pennsylvania's General Assembly and considered on a fast track from committee to the floors of both chambers. Members of SWPPA's Policy Committee reviewed the legislation and, using the scorecard, addressed how each principle is reflected in the bill.

Recent brief history: In December 2015 in the case of *Peake v. the Commonwealth of Pennsylvania*, the Commonwealth Court found that lifetime bans on employment in settings serving older adults based on convictions were unconstitutional and instructed the state it could not enforce this part of the statute. This necessitated opening the statute for older adult protective services. Upon its reopening, various interested parties sought to create a fairer process for potential employees, specifically include financial exploitation with some redefinition, and revisit mandatory reporting. A bill was introduced in the previous session of the General Assembly but was withdrawn when many stakeholders questioned aspects of it. The framers of this bill spent additional time negotiating with stakeholders before introducing it.

Conclusion of This Analysis: This is an important and complex piece of legislation that has profound impact upon the lives of people who experience abuse, neglect, or exploitation. While members of SWPPA have questions and concerns about specific details of the bill, SWPPA supports passage of it including changes outlined in the recommendations on page 6.

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Comments and Scoring by Principle

Scoring Summary

Principle	Score
1. Person Centered	Score Medium-High (3.5)
2. Able to Acknowledge that Risk Exists While Supporting Maximum Independence	Score Medium (3)
3. Focused on Quality of Life and Quality of Care	Score Medium-High (3.5)
4. Simple to Understand and Access	Score Medium (2.75)
5. Coordinated with Seamless Transitions through a Comprehensive Array of Services	Score Medium (2.75)
6. Focused on Prevention, Wellness and Early Connection to Home and Community-Based Services	Score Low (.5)
7. Vested in a Viable and Competent Direct Care Workforce	Score Medium-High (3.25)
8. Focused on Continued Learning and Quality Improvement	Score Medium (3)
9. Financially Feasible and Encourage Public/Private Participation	Score Medium (2.25)

Total Score of 24.5 out of a total possible 36 or 68%

Principle 1. Person Centered—Score MEDIUM-HIGH (3.5)

Areas of alignment: This legislation is, on its face, concerned with the person and well-being of older adults. Older adults who are abused, neglected or exploited are not living their optimal quality of life. The bill also recommends offering services and assistance through person-centered service plans as remedy. It contains protections including the right to representation in proceedings, opportunity to refuse services unless court ordered, and a provision that low income or resource-poor situations cannot be the cause to substantiate abuse or neglect.

Areas of Concern: The list of funded services is limited, without inclusion of durable medical equipment, emerging technologies, or home modification. The legislation does contain language that might make these a part of the remedy, but it will depend upon the implementation and interpretation of the jurisdiction. Also, the addition of detail on financial exploitation may need revision. For example, Section 304.1(d)(3) limits access to bank records to two months in either direction of the complaint. Providers report that they often need and request 6 months to 1 year of records to establish patterns. There is concern that the legislation does not protect the anonymity of reporters sufficiently. The threshold to release or access the name of a reporter could be higher so as not to chill or discourage voluntary reporters from doing so.

Principle 2. Able to Acknowledge that Risk Exists While Supporting Maximum Independence—Score MEDIUM (3)

Areas of Alignment: The bill makes mention of the well-being versus risk/autonomy concerns at the heart of many decisions facing older adults, their families, and their providers. Often the word “risk” is accompanied by “imminent” to limit the circumstances where autonomy could be challenged. Protections like right to representation and opportunities to refuse services also allow for older adults to choose to live in circumstances with which some people would disagree. The bill also enlarges the number of people who are mandated reporters to include physicians and “other licensed certified health care professionals.” It reiterates parties that can voluntarily report, including an emphasis on banks as they are likely to be more aware of financial exploitation. This expands the capacity of the Commonwealth to identify people who are being harmed and offer them services, the well-being aspect of this principle. The bill also addresses the quality of the workforce with regard to security/background checks of the professionals and paraprofessionals who work them.

Areas of Concern: There are places, in the bill where the language has been widened without the word “imminent” simply stating “at risk or imminent risk.” This would suggest a lowering of the standard. It may result in more reports as many older adults are living in arrangements where they are exposed to risk, particularly risk of financial exploitation through joint accounts. Additionally, the bill allows for a person to work provisionally for 30 days while the clearance / criminal history check process is completed. This could expose older adults to people who do pose a risk. This aspect of the bill is out of alignment with many providers’ internal policies and with AARP’s recommendations that such clearances should be complete before work begins. There is also some discrepancy on this point in this legislation and the guidance for consumer directed services.

Principle 3. Focused on Quality of Life and Quality of Care—Score MEDIUM-HIGH (3.5)

Areas of Alignment: There is a high degree of alignment as people who are being abused, neglected, and exploited are not living the best quality of life. The emphasis on individualized service plans also suggests maximizing quality of life. Because some older adults are at risk for or are actually being abused, neglected, and exploited, the legislation is necessary.

Areas of Concern: On page 30, line 26(4), Area Agencies on Aging (AAAs) are given power to access records. This places a lot of power in the hands of the AAAs and risks abuse. Some additional court oversight might be appropriate to access private records. Implementation may vary by jurisdiction in terms of using this legislation to improve quality of life for people.

Principle 4. Simple to Understand and Access—Score MEDIUM (2.75)

Areas of Alignment: Many of the core ideas of protecting vulnerable people remain clear, and the bill is strong in that regard. This includes attention to training and processes, including timelines. This adds clarity that could streamline what occurs when abuse, exploitation, or neglect are suspected. Additionally, there is an expansion and some greater clarity with regard to mandated and voluntary reporters, taking mandated reporters beyond a facility-based definition. It is clear that older adults have rights in this process.

Areas of Concern: The bill itself has so many details that it may not be easy to understand by the general public. There is very little specificity with regard to training older adults or the public about the topic of abuse/neglect/exploitation, or OAPS. It lacks definitions for several terms like “waiver evidence” and “incapacitated” (see recommendations).

Principle 5. Coordinated with Seamless Transitions through a Comprehensive Array of Services—Score MEDIUM (2.75)

Areas of Alignment: The legislation addresses what information may be shared, with whom, and how in order to coordinate care. It also standardizes assessment, including the concept of well-being. The training requirements, particularly for financial institutions should result in greater knowledge and identification of risk. The inclusion of immunity can also promote reporting.

Areas of Concern: The list of services for referral is limited and should at least include LIFE programs and assisted living. It is not clear how the definition of consent will improve, if at all, access to records necessary to investigate suspected problems.

Principle 6. Focused on Prevention, Wellness and Early Connection to Home and Community-Based Services—Score LOW (.5)

Areas of Alignment: This bill is really about remedy, even as prevention is mentioned on page 11. More than preventing the onset of elder abuse, neglect and exploitation in the first place, it tries to prevent further harm once it is noticed. The bill suggests that training to recognize abuse, neglect, and exploitation could also be used to prevent it but lacks specifics on this point.

Areas of Concern: There is a need for population level prevention of abuse, neglect, and exploitation in the first place.

Principle 7. Vested in a Viable and Competent Direct Care Workforce—Score MEDIUM-HIGH (3.25)

Areas of Alignment: An extensive part of this bill discusses workforce, altering the restrictions on who can work in this sector based on past criminal history. It is an improvement from previous law, which excluded too many people. It creates opportunity to build this workforce. It also sets standards for annual reporting for new convictions. This should benefit both potential employees and employers. The bill also addresses the competence of the workforce by setting forth guidance for training and expanding who is a mandated reporter.

Areas of Concern: This will create costs and burdens for either employees, employers, or both with regard to waiting times and the costs for completing the background checks. The training and reporting requirements will also result in costs (time to train and access to training materials). It also perpetuates differences between people hired through “facilities” and people who are employed through consumer directed programs. The definition of facilities still excludes medical practices and hospitals. The role of the Department of Aging regarding criminal background checks is not entirely clear. Section 50(2)(ii) makes it sound as if checks will go directly to the State Department of Aging rather than the employer and that the employer will need to await a determination from the State. This constitutes a change, which may further slow hiring.

Principle 8. Focused on Continued Learning and Quality Improvement—Score MEDIUM (3)

Areas of Agreement: The legislation continues expectations that AAAs must have OAPS as part of their annual plans, and the information that they must collect, and it states that the State Department of Aging must issue an annual report. This creates the opportunity to use that data to engage in improvements to statute, regulation, and implementation, particularly in the area of financial exploitation since that is the area of greatest change in the bill.

Areas of Concern: The bill contains little specificity about the data points/types that need to be collected or how to use them.

Principle 9. Financially Feasible and Encourage Public/Private Participation—Score MEDIUM (2.25)

Areas of Agreement: The legislation directs the General Assembly to appropriate necessary funds and AAAs to assure local implementation. It does not say that the implementation must be done by public entities, which is good since private entities (typically non-profits) already help to administer this across the state. It also allows for ongoing cost sharing where appropriate to the older adult.

Areas of Concern: The increased costs for background checks will be on employers or employees, particularly the FBI checks. The appropriation of funds continues to be impacted by political wrangling around the budget. The increased awareness of providers and expanded

group of reporters will, in all likelihood, result in an increase in reports. There is concern that appropriations will not accompany this. Financial support for new costs for oversight and support of implementation by the State Department of Aging is not specifically addressed.

Recommendations to Improve the Bill:

- Add some additional definitions to the bill for the following terms as they are not clear
 - other licensed certified health care professionals
 - waiver evidence
 - incapacitated
 - imminent as in “imminent risk”
- Consider expanding the period of time for review of bank / financial records from 2 months to six to 12 months (Section 304.1 (d)(3))
- Raise the level of protection for reporters so that release of the reporter’s name is on a need-to-know basis with court oversight, including protections in computer system access within SAMS.
- Raise the level of protection for consumers/oversight of AAAs to access records to include court oversight.
- If a 30-day provisional period of work during which criminal history check is completed remains in the bill, recommend that the bill state very clearly that such work must occur only in situations with direct supervision.
- Clarification of the lists of crimes. In the section on Lifetime Ban (page 51, line 7), there seems to be some overlap in the list of crimes with the section on a 25-year ban.
- Clarification of various components of Section 301.1. Language is needed giving some definition to “reasonable” belief. More information on the criteria necessary for banks to limit access to funds or extend such limitations would be helpful coupled with greater clarity about consumer process rights so as not to stoke fear that a report will unnecessarily freeze funds or harm people.
- Section 3(iv) probably should read “legal services” rather than “legal aid”
- Consistency between this law and other statutes and regulations. For example, people who provide services through consumer directed programs should also have training and reporting requirements. Or, as another example being sure that terminology is consistent such as “caretaker” and “care dependent” person.
- Clarify the process for determining eligibility to be employed via the background checks (Section 50(2)(ii))