



Legislative Scorecard Summary

Pennsylvania Senate Bill 819 / House Bill 1930 Older Adults Protective Services Act

November 2019

The [Southwestern Pennsylvania Partnership for Aging \(SWPPA\)](#) 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 Senate Bill 819 regarding the Older Adults Protective Services Act, has moved from the Senate Aging and Youth Committee through the Appropriations Committee to the floor of the Senate where it passed 49-0 on October 29, 2019. It was referred to the House Aging and Older Adult Services Committee on October 30. On October 15, the PA House introduced HB 1930 on the same topic. An informational meeting is scheduled for November 18, 2019 in the House Aging & Older Adult Services Committee with a vote scheduled for November 20. The two bills do not match at this time. Members of SWPPA's Policy Committee reviewed the Senate bill 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 that 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 to include some redefinition of financial exploitation, and revise mandatory reporting. Bills were introduced in the previous two sessions of the General Assembly; neither moved out of committee for a full vote. The writers of this bill used information from hearings and feedback of the previous bills to alter it before introducing it this time.

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 7.

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Comments and Scoring of SB 819 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 (4)
4. Simple to Understand and Access	Score Medium (2.75)
5. Coordinated with Seamless Transitions through a Comprehensive Array of Services	Score Medium (2.5)
6. Focused on Prevention, Wellness and Early Connection to Home and Community-Based Services	Score Low (2)
7. Vested in a Viable and Competent Direct Care Workforce	Score Medium (3)
8. Focused on Continued Learning and Quality Improvement	Score Medium (3)
9. Financially Feasible and Encourage Public/Private Participation	Score Low (1)

Total Score of 24.75 out of a total possible 36 or 68.75%

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 legislation outlines a few remedies. They are primarily Older Americans Act funded services. Service plans might benefit from LIFE or other waiver services as well as other community-based options. The quality of service plans will depend upon regulation and the implementation and interpretation of the jurisdiction. Also, the addition of detail on financial exploitation may need revision. For example, the act limits access to bank records to 60 days in either direction of the complaint. Providers report that they often need and request 6 months to 1 year of records to establish patterns.

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

Areas of Alignment: In the opening section, the bill notes that in providing protective services, the state should not restrict “the personal liberty of older adults.” 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 the right to representation, seek to protect autonomy. The bill also enlarges the number of people who are mandated reporters to “health care providers” which includes physicians and health care professionals, as well as hospitals and other “health care facilities.” It reiterates that parties 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 with older adults.

Areas of Concern: The language of “imminent risk” is not entirely clear. A vague definition does not provide clarity about the scope of work under protective services. We offer possible language in the recommendations. Additionally, the bill allows for a person to work provisionally for 90 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.

Principle 3. Focused on Quality of Life and Quality of Care—Score HIGH (4)

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 with consideration and inclusion of family also suggests maximizing quality of life. Moreover, the plans are to, when at all possible, respect the wishes of the older adult and family. Because some older adults are at risk for or are actually being abused, neglected, and exploited, the legislation is necessary.

Areas of Concern: The bill’s intent aligns well. The types of regulations that are written and appropriations will determine the degree to which this bill is successful.

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, making mandated reporters beyond a facility-based definition, and is similar to other states’ OAPS laws. 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 definition for “imminent” in “imminent risk.” The sections on fiduciary definitions are too referential and not entirely clear.

Principle 5. Coordinated with Seamless Transitions through a Comprehensive Array of Services—Score MEDIUM (2.5)

Areas of Alignment: The legislation establishes access to records for investigations. Assessment and service plans are to be developed cooperatively with the older adult and their family members. The AAA may purchase needed services on a temporary basis. The training requirements, particularly for financial institutions, should result in greater knowledge and identification of risk and cooperation with AAAs and law enforcement. The inclusion of immunity can also promote reporting as well as financial institutions’ blocking access to funds.

Areas of Concern: The bill does not require/give guidelines for how to coordinate investigations. Access to ongoing services can be limited based on income and waiting lists, thus increasing risk. Financial institutions are given a lot of latitude on determining access to records, which could be a barrier to seamless transition. Banks may charge large research and copy fees which could be a deterrent for AAAs and a barrier to investigation. There is a list of services for referral which is somewhat limited and does not include a number of services, such as LIFE programs or durable medical equipment. The House’s previous version of the bill outlined this to some degree.

Principle 6. Focused on Prevention, Wellness and Early Connection to Home and Community-Based Services—Score MEDIUM LOW (2)

Areas of Alignment: This bill is more about remedy than prevention. The word prevention only appears in a discussion of financial services provider training. If such training is successful, instances of financial exploitation may be prevented, particularly since such institutions are empowered to refuse requests to disburse money. The idea of a “campaign” in section 201-A (p. 42) to inform and educate the public as well as professionals may result in prevention. The bill suggests that training to recognize abuse, neglect, and exploitation is required for mandatory reporters. The bill also addresses limits to employment by those with criminal history. 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. One additional note is that services can be provided to family members, which may serve as a form of prevention as it stabilizes a caregiving situation.

Areas of Concern: The addition of a general campaign is a welcome inclusion to this version of the bill as it was not present. The State Department of Aging is responsible. The effectiveness of this will depend both upon regulation and implementation, as well as appropriation to carry it out. The additional regulations about reporting leave financial institutions as voluntary reporters and hold financial institutions harmless for failure to report. In this sense, their potential role in prevention of greater harm may not be realized at all.

Principle 7. Vested in a Viable and Competent Direct Care Workforce—Medium (3)

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 also sets standards for annual reporting for new convictions. This should benefit both potential employees and employers. The bill lifts the previous “life-time employment” ban and provides for varying degrees of bans of employment depending upon the offense. Senate Bill 819 also provides for a process by which individuals may request a waiver to the ban by the Department of Aging for their review and consideration. Many advocates supported this position due to the need for direct care workers especially when the offense did not seem to justify the punishment, and there may have been extenuating circumstances that were not considered. 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. It is clear how this applies to new hires, but it is not clear how it applies to people hired prior to its passage. Will there be grandfathering? The bill also requires all employees to have FBI clearances within one year. This will create direct costs (for the clearances) as well as indirect costs (administering and overseeing this for the organization). The training and reporting requirements will also result in costs (time to train and access to training materials). The definition of facilities still excludes medical practices and hospitals.

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 that they must collect information. It also states that the state Department of Aging may access records to monitor implementation. These plans create 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 an area of great 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. It defers those to the regulatory process. As such, this may or may not be effective.

Principle 9. Financially Feasible and Encourage Public/Private Participation—Score Low (1.5)

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 OAPS across the state. It also allows for ongoing cost sharing where appropriate to the older adult.

Areas of Concern: The current protective services system appropriations have been flat funded, and at the same time, there has been an increase in reports of need (RONs) and investigations as a result of the Inspector General's 2018 report. This has already led to protective services being underfunded to carry out required responsibilities. The increased awareness of providers and the expanded group of mandatory reporters will, in all likelihood, result in additional reports of need, thus necessitating additional investigators across the system to absorb both natural and forced increases in investigations. 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. 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 in this bill.

Recommendations to Improve SB 819:

- Please add a definition of “imminent” and “imminent risk.” Suggested language could be “an immediate and identifiable injury or harm to an older person or their property that without intervention would compromise their health, welfare or safety.”
- On page 42, we suggest removing the word “incapacitated” from the bill so as not to cause confusion with the Pennsylvania guardianship law. Since a person must be adjudicated as incapacitated by a court of law, its use could cause a misunderstanding. In addition, the courts must adhere to very specific criteria regarding the adjudication process, and therefore it should only be used in that context.
- Consider further clarification of the fiduciary definitions, potentially adding some synopses similar to those in the section on criminal acts.
- On page 54, the bill has a provision that “the Area Agency on Aging or the department may compensate a person requested or ordered to provide records to the area agency on aging for the reasonable costs of producing records.” As law enforcement officials are not currently charged by banks when requesting such financial records, the same should hold true when area agencies on aging are investigating a report of need.
- Consider expanding the period of time for review of bank / financial records from 2 months to 6-12 months.
- If a 90-day provisional period of work during which a criminal history check is completed remains in the bill, we recommend that the bill state very clearly that such work must occur only in situations with direct supervision. The addition of informing the older adult helps but may not be sufficient.
- Please clarify if a “provisional hire period” is until you get clearances or until a waiver is granted?
- Consider adding a provision that triggers financial allocation to allow for average protective service caseloads of 30 (this is consistent with both national and state guidelines).
- Consider adding a provision requiring that the current documentation system for protective services investigations (SAMS) be reviewed as it was created for case/care management rather than protective services. There may be opportunity for additional efficiencies to reduce the time protective service workers spend on documentation.

Notes on HB 1930:

Given the rapidity with which HB 1930 is moving, SWPPA has not had time to do the same type of in-depth analysis of it as SB 819. Many of our recommendations for SB 819 can apply to this bill. Additionally, this bill seems quite similar to HB 2549 which did not pass in the previous session of the General Assembly. We scored that bill at that time. That document remains available for consideration and may be distributed along with this one.

Similarities we support:

- Like its counterpart, HB 1930 offers important changes to balance the protection and safety of vulnerable older adults with the need for a workforce and the rights of people to work in the medical and social service fields by adjusting the law on criminal backgrounds.
- The bill expands mandatory reporters to include those who are licensed as health and/or mental health professionals in the Commonwealth, regardless of place of employment.
 - While it is good to see direct discussion of hospitals with regard to mandatory reporting, it is odd that hospitals are still not “facilities.”
- Both bills further clarify definitions and meaning around financial exploitation, updating the law to better address a form of abuse that has increased.

Similarities that concern us:

- We anticipate an increased number of reports of need and the need for more investigators based on current trends locally and nationally, the increased awareness of elder abuse, and the increased number of mandatory reporters. The bill is not explicit in how it will pay for that or will provide the needed resources to communities.
- We have concerns that new clearance procedures will add costs and time for hiring and maintaining a workforce that is already insufficient to meet the need of vulnerable individuals attempting to age in place and may indirectly reduce the workforce instead of increase it.
- For financial exploitation, the time frames proposed may not be sufficient to meaningfully investigate and determine that financial exploitation is occurring.
- The “provisional hire period” needs clarification in both bills.

Differences that need to be addressed:

- This bill has more specificity with regard to financial institutions. It generally suggests that financial institutions should help protect older adults rather than placing an affirmative requirement that they do so.
- The definition of “employee” has been expanded in HB 1930. It could use clarification with regard to outside professionals and, as written, may create difficulties in reference to interns and students who are in training programs. Further clarification is recommended.