



Legislative Scorecard Summary

Pennsylvania House Bill 1930 Older Adults Protective Services Act (OAPSA)

December 2019

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. On October 15, the PA House introduced HB 1930 on Older Adult Protective Services Act (OAPSA). It is currently in the House Aging & Older Adult Services Committee. This bill is similar to PA House Bill 2549 which was under consideration in 2018 but did not pass. At the same time, a bill, PA Senate Bill 819 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. The two bills do not match at this time. Members of SWPPA's Policy Committee reviewed both bills, using the scorecard, addressing how each principle is reflected in the bill. This document is specifically in reference to HB 1930. Please see the scorecard for SB 819 for those comments.

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. This bill reflects 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, SWPAA supports passage of it including changes outlined in the recommendations on page 7.

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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 (3)
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 24.75 out of a total possible 36 or 69%

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 service plans that are a comprehensive assessment of needs and that support goal attainment. The service plans also address the special needs of other members of the household. It contains protections including the right to representation in proceedings, opportunity to refuse services unless court ordered, and a provision that low income 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 contains 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)(2) limits access to bank records to 60 calendar days in either direction of the complaint. Protective services workers 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 discourage voluntary reporters from doing so (for example section 312 (b) (5) and (6)).

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 “individual[s] licensed, certified or otherwise regulated to provide health care services.” This will now include physicians and other health care professionals who currently are not mandatory reporters. It reiterates parties that may 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 bill may result in more reports of abuse, exploitation, or neglect 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 under supervision for up to 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. It is not clear how criminal checks will apply in 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 “encourage[s] self-determination and continuity of care in the least restrictive setting” (p. 33). This 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. The addition of language regarding training of and reporting by financial institutions recognizes that financial exploitation poses serious threats to the quality of life and wellbeing of older adults.

Areas of Concern: Some members, but not all, have a concern about the access to records section beginning on page 30, line 21. In it, 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. AAA staff and contractors receive extensive training in confidentiality and handling sensitive records. Implementation of this bill may vary by AAA and could affect 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. The definition of “caretaker” as a person who has “affirmatively assumed responsibility” may not be clear to the general public since many people inherit or slip into such roles in their families. The discussion of exploitation suggests that coercion or consent are necessary components. As such, persons with dementia may consent and not believe they were coerced. The bill should protect this vulnerable group as they experience abuse and exploitation at higher rates than the general older adult population.

Principle 5. Coordinated with Seamless Transitions through a Comprehensive Array of Services—Score MEDIUM (3)

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 “good faith” reporting and enhance cooperation with protective services. The bill also encourages cooperation between AAA staff, mandatory reporters, and law enforcement officials. Monetary penalties for non-cooperation and failure to report as mandatory reporters have been raised, sending a message that provision of protective services is expected.

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 if or how the definition of “consent” necessary to access records will improve ability to protect or investigate suspected problems. In section 706.1(e), immunity is mentioned only for organizations in regard to “good faith” compliance. Individuals should have the same level of protection. While increased penalties are present for failure to report, there is little about banning people from employment for some period of time if they fail to make mandated reports.

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 in passing pages 16, 17 and 71. 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. The components of both the training for mandatory reporters and fiduciary institutions are not at all specified. This means they are dependent upon how the Department of Aging or fiduciaries implement them.

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: Completing background checks will create costs and burdens for either employees, employers, or both with regard to waiting times to begin work and the costs for completing the background checks. It may create a barrier that prevents people from coming into the field. The bill suggests a one year period to reach compliance for background checks for current employees. This could be costly and is probably not in organizational budgets at this point. There is no mention of grandfathering the current workforce. The training and reporting requirements will also result in costs (time to train and access to training materials). The bill is not clear on how new expectations impact people who are employed through consumer directed programs. The role of the Department of Aging regarding criminal background checks is not entirely clear. If it is not handled efficiently, it may further slow hiring. Allowing provisional hiring, for 90 days seems a long period of time. Yet, facilities state that this time frame helps in their hiring process as there are delays in getting clearances. As this bill is reconciled with the Senate version, there are concerns about how often employers and employees would have to renew such clearances and the burdens this will create. The bill does not address how to handle the small segment of the current workforce that has past convictions and that began working in the field during the interim time between the 2015 court decision and implementation of this law.

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 for people who have been in the state for less than two years. The appropriation of funds continues to be impacted by political wrangling around the budget. The increased awareness of providers and expanded group of mandatory reporters will, in all likelihood, result in an increase in reports. The current protective services system is already struggling to respond to increased reports in light of the Inspector General's report last year. It lacks resources now. There has been an increase in reports of financial exploitation nationwide and in Pennsylvania. Such investigations often take more time and require additional specialized expertise, such as forensic accountants. There is concern that appropriations will not accompany the higher expectations and standards in this bill. 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:
 - “evidence of rehabilitation” for the waiver process when a person has a past conviction
 - imminent as in “imminent risk.”
- Consider expanding the period of time for review of bank / financial records from 60 days to six to twelve months.
- 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.
- If a 90-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.
- 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 assuring that terminology is consistent such as “caretaker” and “care dependent” person.
- Assure that both individuals and organizations who comply in good faith have access to immunity.
- Look at Section 503.1(1)(3). It states “supervision of applicants.” A person is no longer an applicant if provisionally hired. They are a provisional employee at that point. Please change this.