

House Aging and Older Adult Services Committee

12/09/13, 11:00 a.m., Room G-50 Irvis Office Building

By Jeff Cox, PLS

Committee(s): House Aging & Older Adult Services Committee

Audio:  ([click here](#)) (Note: Depending on your audio player and the length of the hearing this could take a few minutes to load.)

Meeting type: Public hearing

Subject: Elder Abuse

Bills discussed: [House Bill 31](#)

Keyword(s): Older Adult Protective Services Act, elder abuse, financial exploitation, drug thefts from older adults

Testimony: [Suzanne Sheaffer](#), Medical Analyst, Medicaid Fraud Section, Office of the Attorney General
[David Shallcross](#), Senior Public Protection Community Liaison, Elder Abuse Section, Office of the Attorney General
[Rebecca Warren](#), District Attorney, Montour County
[Crystal Lowe](#), Executive Director, Pennsylvania Association of Area Agencies on Aging
[Trula Hollywood](#), Executive Director, Area Agency on Aging for Luzerne/Montour Counties

Members Present: Chairman Tim Hennessey (R-Chester), Minority Chairman Steve Samuelson (D-Northampton), and Representatives Ryan Bizzarro (D-Erie), Michele Brooks (R-Mercer), Rosemary Brown (R-Monroe), Pamela DeLissio (D-Philadelphia), Harold English (R-Allegheny), Mark Gillen (R-Berks), Mauree Gingrich (R-Lebanon), Keith Greiner (R-Lancaster), Stephen McCarter (D-Montgomery), John McGinnis (R-Blair), Steven Mentzer (R-Lancaster), Daniel Miller (D-Allegheny), Eddie Pashinski (D-Luzerne), Pam Snyder (D-Greene) and RoseMarie Swanger (R-Lebanon).

The committee held a public hearing on elder abuse in Pennsylvania.

Chairman Hennessey said today's hearing was the third in a series of public hearings on this issue. He explained that the previous hearings covered the perspectives of those individuals who are the administrators of programs and services to combat elder abuse and the providers of long-term care and advocates for the elderly. Chairman Hennessey told the committee members that today's hearing would focus on those individuals representing the law enforcement and elder law perspective.

[Suzanne Sheaffer](#), Medical Analyst, Medicaid Fraud Section, Office of the Attorney General, explained to the committee that her Section not only investigates Medicaid Provider Fraud but also investigates allegations of neglect of care-dependent persons. She further explained that the Section is mostly federally funded and is tasked by federal regulation to investigate care-dependent neglect. According to Sheaffer, "Neglect of a care-dependent person is usually an elderly victim but recently, our Section is also receiving just as many complaints of care neglect in persons less than 60 years of age." She pointed out that the primary vehicle for investigating cases of care neglect is section 2713 of the Pennsylvania Crimes Code. Sheaffer explained that establishing a pattern of neglect can be difficult. She also said that law enforcement officers are not comfortable with a section 2713 charges and often charge offenses like disorderly conduct, simple assault and harassment "because those crimes are the ones they understand from their daily routines and do not require an understanding of complex medical conditions and comorbidities." Sheaffer also expressed her appreciation to Rep. Gingrich and to the members of the House for passage of [House Bill 31](#). She commented, "The Office of Attorney General has and continues to support this bill." Sheaffer also discussed Attorney General Kane's development and implementation of the Care-Dependent Neglect Team with the Medicaid Fraud Control Section. She explained, "The Team will be comprised of highly trained prosecutors, investigators and a forensic nurse who will have as their sole responsibility, the handling of these complex cases and will also educate the public and law enforcement regarding the issues of care-dependent neglect recognition and response."

[David Shallcross](#), Senior Public Protection Community Liaison, Elder Abuse Section, Office of the Attorney General, described Pennsylvania as "a target rich environment for people who want to take advantage of seniors." He told the committee that in 2012 the Elder Abuse Unit received 2,179 contacts for assistance via telephone, email, mail, and by fax with a majority of those contacts being related to financial fraud and exploitation followed by other forms of abuse and reports of neglect of care. Shallcross indicated the numbers for 2013 are on track to surpass last year's contacts and complaints. He explained that the Office of Attorney General's Education and Outreach Unit provides crime prevention seminars and presentations to inform the public on how to avoid being victimized. Shallcross also explained the Unit also has six specialists around the Commonwealth who address smaller groups of older Pennsylvanians in more specific ways. He pointed out the Elder Abuse Unit operates a Senior Helpline. Shallcross also testified, "Our Elder Abuse Unit provides training to local law enforcement and participated as instructors to PCCD crime prevention officer's courses." He added, "We continue to build relationships with state and local elder abuse task forces, coalitions and TRIAD programs throughout Pennsylvania." Shallcross told lawmakers, "It is a valuable investment of time and resources to operate closely with these organizations to meet and exchange concepts, ideas and most importantly, solutions to issues that impact the elderly of our communities."

Chairman Hennessey asked Shallcross for the toll free telephone number for the Senior Helpline and for its hours of operations. Shallcross responded that the telephone number is 1-866-623-2137 and it is answered by a live operator from 8:30 a.m. to 6:00 p.m., Monday through Friday. Chairman Hennessey wanted to know what message a caller receives if they call during off-hours. Shallcross said a caller is told if they need immediate assistance they should contact the local Office of the Area Agency on Aging and if it is an emergency they are told to dial 911.

[Rebecca Warren](#), District Attorney, Montour County, focused on financial exploitation through use of a Power of Attorney and abuse caused by theft of the older adult's pain medication. Regarding the use of a Power of Attorney, Warren spoke about one of her cases where the grandson Agent depleted his grandmother's investments, assets and income totaling almost \$140,000. She said in this case they were able to recover \$50,000 in advance restitution from the grandson and secure an agreement for repayment of all of the remaining monies owed. Warren added, "Sadly, in the other cases, the victims never receive full restitution due to the offender's lack of resources to repay the significant sums of monies stolen." She added, "The lack of repayment of restitution will most likely cause financial distress for those elderly victims who are still alive and residing in nursing home or assisted living facilities. Among Warren's recommendations are: prohibiting a Power of Attorney from being a license to steal; expanding ability of the Office of Protective Services/Area Agencies on Aging to secure discoverable information and records regarding the Agent's actions; and requiring the Agent to provide an annual accounting such as a Guardian is required to do."

Warren then discussed the proliferation of thefts of elderly persons' pain medications by healthcare providers. She said, "In the last two years, I have prosecuted a many of these cases." According to Warren, "These drug diversion cases can be very difficult to prosecute because in many instances, the nurses are clever enough to steal the medication in a way that allows them to dispose of the medication undetected, and no controlled substances are ever found in their possession." Warren's recommendations on this issue included:

- Regulating and monitoring temp agency health professionals more rigorously to prevent those who steal drugs from being able to transfer or work at different facilities
- Considering the implementation of a law which specifically addresses theft of medication from older adults in hospitals, nursing homes and other healthcare facilities
- Including theft of medication from older adults in the enhanced sentencing law of Title 42
- Encouraging the use of more secure methods of storing, documenting and dispensing narcotic medications in healthcare facilities
- Educating healthcare administrators, providers and facilities regarding this ever-increasing threat

[Crystal Lowe](#), Executive Director, Pennsylvania Association of Area Agencies on Aging, discussed the issue of "self-neglect." She noted the Older Adult Protective Services Act "within the definition of neglect, incorporates self-neglect." Lowe commented, "Not all states have taken this approach, but as we have, we need to recognize that our approach cannot be investigation and enforcement only." She added, "We see many people who exhibit poor judgment, who live in situations that most would consider uninhabitable. In the majority of the cases, our aim is to reduce the risk of harm, to stabilize the situation, and except as provided in section 307, individuals receive protective services voluntarily." Lowe discussed the number of categories that fall under self-neglect including long-term chronic self-neglect; dementia; illness, malnutrition and overmedication; depression; substance abuse; poverty; and isolation. She commented, "There are no easy answers and each case must be treated individually." Lowe explained, "Help by family, friends, services providers, protective services or healthcare interventions can be offered but the person has to accept that help." She cautioned, "I also wanted to remind us all that elder abuse is an extremely complex problem." Lowe went onto discuss the difference between active and passive neglect and how "protective services staff must walk a tight rope between autonomy and safety."

Lowe read the testimony for the following individual who was unable to attend the hearing because of the inclement weather:

- [Trula Hollywood](#), Executive Director, Area Agency on Aging for Luzerne/ Montour Counties.

Rep. McGinnis asked Warren about her recommendations regarding the theft of drugs from older adults. He concentrated on her recommendation to implement a law which specifically addresses theft of medication from older adults in hospitals, nursing homes and other healthcare facilities. Rep. McGinnis questioned the need for additional laws. Warren explained that this recommendation needs to be read along with her other recommendation including theft of medication from older adults in the enhanced sentencing law of Title 42. She said she wants to make it a more serious offense. Sheaffer described the consequences for a dying patient when they are denied Fentanyl such as in the case Warren cited in her testimony.

Rep. Brooks discussed the case included in the Hollywood testimony regarding the woman who used over \$250,000 of an elderly woman and her daughter's life savings for her gambling addiction. She noted that New Jersey recently enacted legislation allowing for online gambling. Rep. Brooks wondered how to prevent this same type of case happening if online gambling is legalized in Pennsylvania. Shallcross said a caregiver can take the same advantage of an elderly person through online shopping for example. Rep. Brooks responded that in those cases something is shipped to a mailing address and can be traced. She said this would not occur with online gambling unless an individual won. Shallcross said he does not participate in online gambling but he understands you have to set-up an account before you can participate. Rep. Brooks said she agreed with Lowe that the whole system cannot be criminalized. She asked if it would be helpful to better use the ombudsman program within the Department of Aging. Lowe responded that if there were more resources then more interventions could be done. She said that additional resources for the ombudsman would be helpful.

Rep. Pashinski expressed concern with the legislature's desire to help with this issue. He suggested the formation of a commission to develop solutions and make recommendations on how to combat the issue of elder abuse. Rep. Pashinski said the commission would be set up with an accelerated timeline to make its recommendations. He added that he is worried that without the commission the legislature would put forth a piecemeal approach instead of a comprehensive approach. Chairman Hennessey said he would consider a commission and suggested it would have to be done by introducing a resolution. He added he believed the purpose of the hearings is to hear from stakeholders and providers and develop amendments to strengthen the Older Adult Protective Services Act.

Rep. English was interested in know where the committee members could see some statistics on elder abuse. He also wanted to know about the use of warrants to look at financial records and about the

possible bonding of those who have a Power of Attorney. Lowe responded that the Department of Aging's website along with various federal websites has statistical information and reports. Regarding the issue of bonding, Lowe said she is a member of the Supreme Court's task force on guardianship. She pointed out that the information they have received indicates there is a wide disparity on the bonding of guardians throughout the Commonwealth but added the bonding of those with Power of Attorney would be an interesting discussion. Sheaffer said the AG's office will supply the committee with statistics. Warren added there are uniform crime reports available to the public. Regarding search warrants, she pointed out they are "difficult to get." Warren said the Area Agencies on Aging have been able to get the paperwork. Regarding the bonding, Warren commented that the suggestion has "merit." She said currently it is "virtually impossible" to get the money back when someone drains an older person's financial assets.

Rep. McCarter commented that is easy to come up with solutions but he is concerned with having the resources for those solutions. He wanted to know more about the Attorney General's Care-Dependent Neglect Team. Sheaffer explained that it is primarily federally funded and the Team will include one attorney; one supervisory agent; two additional agents plus herself; and a clerical person. She described the Team as "a good starting point" and added the Team "will be small but it will have a lot of knowledge and training." It was further explained that 75 percent of the funding will come from the federal Department of Health and Human Services and the remaining 25 percent will be state funding. Rep. McCarter expressed concern with letters seniors received during political campaigns from the parties and the candidates instilling in them a state of fear regarding their future if they do not contribute. He said he believes this issue needs to be addressed.

Noting Warren's recommendation encouraging the use of more secure methods of storing, documenting and dispensing narcotic medications in healthcare facilities, Rep. Brown wanted to know if something could be done such as requiring double signatures in issuing the drugs or having two people present when the drug is administered. Sheaffer explained that checks and balances are in place but the problem is the availability of a nurse and a witness. She also added described the people who divert the drugs as "very talented at what they do and they are very creative."

Rep. Miller asked if the majority financial exploitation is done by a family member or friend. Shallcross explained that financial exploitation is fraud committed by a family member or acquaintance while fraud is committed by an unknown third party. He said most cases his office receives inquiries about involve fraud closely followed by financial exploitation. Rep. Miller wanted to know if patient neglect more from a family member or is it in a facility. Sheaffer responded that originally it was mostly neglect in a facility but it now more and more family relationships through the Commonwealth's various waiver programs. Rep. Miller asked if neglect is more likely to happen in a facility or someone's home. Sheaffer said it is not a 50/50 split. She said there is a need to get a better handle on the waiver programs. Rep. Miller asked about the delay in the training of law enforcement. Sheaffer explained that it is easier for law enforcement to work with the statutes they are familiar with such as assault and domestic violence laws. She said care neglect cases can take up to two to five years. Rep. Miller asked if law enforcement is now being instructed on this topic. Sheaffer said law enforcement is now being taught.

Rep. Snyder wanted to know if people can anonymously call the various hotlines. The panel members all responded, "Yes."

Minority Chairman Samuelson said he is intrigued by Warren's recommendation of annual reporting and wanted to know if other states have that requirement. Warren responded that guardianships in Pennsylvania are required to provide annual reporting . She added that when someone knows the provided information is being provided to a third party it does act as a deterrent.

Chairman Hennessey commented that his brother is constantly receiving mailers regarding winning lotteries or contests. He wanted to know why someone like his brother receives these types of mailings. Shallcross explained data is constantly mined by marketers and vendors are constantly selling mailing lists.