



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA 17120

16TH FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA 17120
(717) 787-3391

KATHLEEN G. KANE
ATTORNEY GENERAL

**Testimony on behalf of the
Pennsylvania Office of Attorney General
Before the Pennsylvania House of Representatives
Aging and Older Adult Services Committee
By Suzanne F. Sheaffer R.N., N.H.A., B.S.N., M.S.
Medical Analyst, Medicaid Fraud Control Section
December 9, 2013**

Good morning Chairman Hennessey, Chairman Samuelson, and members of the Committee. On behalf of the Office of Attorney General and the Medicaid Fraud Control Section, I would like to thank the Committee for this opportunity to address the impact of care-dependent neglect from a law enforcement perspective within the Commonwealth of Pennsylvania.

As the first nurse to be hired by the Office of Attorney General, I have enjoyed 12 years of service in protecting one of our most vulnerable populations within the Commonwealth, care-dependent persons. As a nurse, nursing home administrator and former deputy coroner, I truly understand the complexity of investigating and successfully prosecuting these medically and legally complex cases. The care-dependent victim always brings a host of medically complex issues as well as social dynamics that cause these investigations to be lengthy, costly and above all extremely difficult to prosecute. I look forward to discussing the issue comprehensively with you today.

The Medicaid Fraud Control Section not only investigates Medicaid Provider Fraud but is also responsible for investigating allegations of neglect of care-dependent persons. This Section is mostly federally funded and is tasked by Federal Regulation to investigate care-dependent neglect. According to the AARP Public Policy Institute, even though seniors and individuals with disabilities make up just one quarter of Medicaid enrollees, they account for 65% of Medicaid spending.

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. According to Section 2713 of the PA Crimes Code, neglect of a care-dependent person is the primary vehicle for investigating these cases. Under Section 2713 a neglect case can be a misdemeanor or felony level crime for an individual who is paid to provide care to dependent persons and because that care is not provided an injury or death occurs.

Establishing a pattern of neglect by a suspected caregiver can be difficult. Therefore, Section 2713 should be revisited to determine if the burden of proof needed to bring forth a prosecution may be unfair. Law enforcement officers are not comfortable with a Section 2713 charge; they often times charge offenses like disorderly conduct, simple assault and harassment because those crimes are the ones they understand from their daily routine and do not require an understanding of complex medical conditions and comorbidities.

I would like to thank Representative Gingrich and the members of the House of Representatives for successfully passing, House Bill 31. Several years ago, I had the honor and privilege to meet with Representative Gingrich following one of the most horrific care-dependent neglect cases in my career. It brings me great satisfaction to know, that our victims in the Reaching Out Personal Care Home neglect case did not receive their injuries and even death in vain. But rather their ability to tell their story has paved the way for Representative Gingrich and yourselves to protect care-dependent Pennsylvanians.

House Bill 31 would make it a crime in Pennsylvania for caregiver to physically or mentally abuse a care-dependent person, and for knowingly or intentionally endangering the welfare of a care-dependent person by failing to provide needed treatment, care, goods, or services. The bill requires the Department of Aging, the Department of Health and the Department of Public Welfare to submit a report of possible violations to local law enforcement or the Attorney General. Under the proposed House Bill 31, it will require these Agencies to **immediately** report to law enforcement agencies or the Attorney General's Office such allegations, instead of us receiving stale reports that are even more difficult to investigate because often times the victims have no recollection of the event, vital medical evidence is destroyed, the victim may have been cremated or they are already buried before the forensic investigation can occur. As of June 11, 2013, this legislation has passed the House unanimously and has been received by the Senate Judiciary Committee. The Office of Attorney General has and continues to support this bill. As the Forensic Nurse for the Office of Attorney General, I cannot tell you how important it is that this bill becomes law as soon as possible. Too many times, the threshold of Section 2713 is so high that these neglectful individuals are able to get away with neglecting care-dependent persons simply because there is no applicable charge to hold them criminally accountable. Because they have not been charged with a crime, they can move onto the next victim and start their pattern of neglectfully behavior all over again.

In addition to the passage of House Bill 31, training of current and future law enforcement officers at the state and municipal level is also of extreme importance. I would suggest that this training becomes a required part of the state and municipal law enforcement academy training as well as part of the annual updates required under their current law enforcement certification process. This education should include recognition of the neglect, emergency resources available to protect the care-dependent person and tips on successful investigation and prosecution of these complex cases.

In 2006, then Attorney General Corbett started an Elder Abuse Unit in the Office of Attorney General. Attorneys and investigators would work on Elder Abuse cases on an ad hoc basis, while still fulfilling their responsibility to their designated units. Now, seven years later, Attorney General Kathleen Kane has built a team comprised of a trained set of attorneys, investigators, and forensic nurses. We are sensitive to the issue of neglect and the complexity of the medical forensic investigation necessary to hold those offenders accountable. This team will work on patient neglect and abuse cases only. Many Medicaid Fraud Control Sections around the country have been handling neglect cases for the respective Attorney General offices. The federal grant which supports the Medicaid Fraud Control Section authorizes this Section to investigate and prosecute patient neglect and abuse. By incorporating this neglect team within the Medicaid Fraud Control Section, the Commonwealth has the added benefit of access to federal monetary resources.

Recommendations by the American Bar Association for improving the handling of elder abuse cases by prosecutors include creation of such special elder abuse units. The American Prosecutors Research Institute, conducted interviews with prosecutors and identified several barriers to prosecution including the priorities in a prosecutor's office change from elder abuse to gangs and guns on a daily basis. Clearly, it is critical to have a dedicated team that can remain focused on the complex medical-legal forensic investigation these cases bring. Accordingly, General Kane has begun the development and implementation of the Care-Dependent Neglect Team within the Commonwealth's Medicaid Fraud Control Section. 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. The Team will also educate the public and law enforcement regarding the issues of care-dependent neglect recognition and response.

This Care-Dependent Neglect Team in the Office of Attorney General would also serve as a resource to those County District Attorneys who are already active in these cases and will be a good resource for those DA's in smaller counties who do not have the resources available to them. Additionally, we will work with our colleagues in the Pennsylvania State Police, local law enforcement and Area Agencies on Aging because as the United States Government Accountability Office found in July of 2013, "coordination is the key to ensuring the efficient use of limited resources to address the increased demand of elder and care-dependent justice services in a constrained fiscal environment in the face of a growing older and more dependent adult population".

Again, we thank you for the opportunity to testify before you today on this very important issue. We continue to support the legislature's efforts in regards to House Bill 31 and the additional protections it affords the care-dependent citizens within the Commonwealth. We also look forward to working with the legislature in future endeavors to provide greater awareness of the problems of care-dependent abuse and neglect within the Commonwealth of Pennsylvania.