

Hold Harmless Testimony

House Aging and Older Adult Committee

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Presented by M. Crystal Lowe, Executive Director

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Good morning, Chairman Hennessey, Representative Samuelson and other members of the Aging and Older Adult Committee. My name is M. Crystal Lowe, and I am the Executive Director of the Pennsylvania Association of Area Agencies on Aging (P4A). Thank you for allowing me to share with you our organization's perspectives on the hold harmless provisions impacting the distribution of funding to Area Agencies on Aging. I am here today to speak from the perspective of the 52 Area Agencies on Aging which serves all of Pennsylvania's 67 counties, but more importantly on behalf of seniors who receive a full range of supports and services from AAAs. The hold harmless provision is inexorably tied to the allocation formula, creating a conundrum within a labyrinth. These two issues have been at the center of angst for nearly 20 years, as they guide what each community can do to help its seniors maximize their independence and protect their most vulnerable. There are no easy answers, but we hope this discussion will inform you and offer ideas about how resolution may be achieved.

In addition to some background, I plan to discuss recent efforts to address hold harmless and the allocation formula under the previous administration as well as share with you some of what we learned through that yearlong study.

William Orzechowski, Executive Director of the Office of Human Services serving Cameron/Elk/McKean AAA, reminded me that in the first years of AAAs, the process for allocating funds to area agencies amounted to a phone call from the Department of Public Welfare Office of Aging, since there was no Department of Aging yet. In that call, each area agency was asked how much money they could spend in the next twelve months. Then the area agency was asked by DPW if it could please see clear to spend even more. Soon thereafter, growth in the number of area agencies, and maturation in the area agencies most recently formed, finally led to requests exceeding the funds available. One of the

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first things the newly created Department of Aging began to do in 1980-81 was to develop a formula to allocate dollars in a “fair” and “reasonable” manner.

Since those formative years, how the money is distributed remains source of contention for our network. The hold harmless provision was instituted to minimize harm. The idea being that funding could not be reduced from year to year. The idea was good in some respects, but is contradictory to the idea of a funding formula which is to guide the distribution of funding based on objective factors, which may or may not change over time.

The purpose of a formula is to allocate resources using a numerical representation of factors. The Older Americans Act requires the use of a formula based on “data” and the Census is the most common source of information. As you are aware, a full census is completed only every ten years, although, most recently, some segments are updated at five or two year increments. This delay in having “accurate” numbers has contributed to the significant drift in the potential distribution of resources. The allocation formula has been reviewed in depth a number of times over the past 20 years and is required to be re-evaluated every four years as part of the state’s four year Department of Aging plan. With hold harmless in place, in the absence of new money, no real change in distribution takes place.

Beginning in the fall of 2009, former Secretary of Aging initiated a discussion with the AAA network to review the current allocation formula, as well as tackle an approach to hold harmless. The network came to the table willingly, with the understanding that this would not be “a zero sum discussion”. As a network we recognize there are inequities in funding BUT, with the history of little or no increases in funding, and the increasing of cost of doing business, no AAA could afford to lose money. The formula and hold harmless needed to be discussed together. Changing the formula, with hold harmless is a meaningless exercise for the most part. It can only be used with “new money”. The impact of lifting hold harmless depends upon the formula. “Winners” and “losers” vary based on the factors used.

The Older Americans Act requires that each state develop a formula that takes into account the best available data. After consulting with AAAs in the state, the state agency must develop formula to

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reflect the proportion of people age 60 and older in greatest **economic and social need, with particular attention to low income minority individuals.**

Pennsylvania added the Hold Harmless Provision, Act 1988-153 581-10 (Admin Code 2210) Allocation of Resources which states, "The Area Agency on Aging must receive a basic allocation of state and federal resources weighted by the proportion of the state's older poor persons who reside in its service area in relation to the total number of older poor persons who reside in the Commonwealth of Pennsylvania utilizing poverty threshold income standards as determined by the US Office of Management and Budget except that each area agency shall be held harmless to the amount of state funds received in the preceding program year."

"The Department of Aging may allocate additional money based upon the total number of older persons who reside in the Planning and Service Area (PSA), the availability of transportation services, the rural urban distribution of older persons, attendant rural program cost differentials, the need for social and medical services, the amount of funds devoted by county commissioners for older persons, and other special circumstances."

States have a variety of formulas:

- Ohio - Each AAA gets a base of \$375,000. The remaining is distributed by a formula that includes 60+ (43%); 60+ poor (11%); 75+ population (8%); Living alone (8%); and 60+ rural (2%)
- Maryland - 60+ (50%) and 60+ poor (50%)
- Michigan – A base determined by the square miles in each PSA, and a weighted formula 60+, 60+ below 150 % of poverty and 60+ minority

Past PA Formulas included the following:

- 1978 to 1992 – 60+ poverty was the only factor
- 1993 - Formula counted only poverty factors: Older people below poverty were given a weight of two; minority and rural older people below poverty were each given an additional weight of one

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- In 2004, in addition to poverty, rural and minority poverty, the number of persons 60+ and 75+ were added: 65+ Poverty = 25%; Rural =25%, Minority = 20%; 75+ = 20% and 60+= 10%.

But through weighting, the following represents what occurred:

Factor	Weight	Weighted Pop	Real Weight
65+ Pov	25%	49,307	7%
Rural	25%	132,197	19%
Minority	20%	47,517	7%
75+	20%	208,638	30%
60+	10%	248,586	36%

In this version 60+ and 75+, non-poverty factors, account for 67% of the allocation formula. The weighting actually changed the intent, from a focus on poverty to a focus on population. It favored growing counties regardless of the economic status of the senior population. While the hold harmless provision eliminated the redistribution of funding, it created an expectation about funding.

In January 2009, discussions ensued between the AAAs and the Department on understanding the available data. Throughout 2009 a work group studied the population data, the service utilization patterns, and possible weighting of factors. Feedback was regularly solicited from the membership on factors to be including in a formula, as well as the relative importance of those factors. The goal was to identify a formula that spoke not only to need, but also to how funding should be distributed. We were charged to not be guided by what would happen at the local level, or by political pressures that may occur, but by “principle”.

On April 6, 2010, the network held a facilitated “Consensus Building” discussion. The consensus was that the formula includes just 60+ poverty and 75+. This seemed to address poverty as well as the population served. The network recognized that recommendations on a formula were only **one step** in remedying the inequity. We also recommended that, as the problem was the cumulative result of

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two decades of hold harmless, any solution should be implemented incrementally. There was no consensus on how to deal with hold harmless.

The following day a dramatically different proposal was presented to the membership which he felt was more realistic.

The AAAs percentage of the state's population aged 60+ in poverty (value of 60%).

The AAAs percentage of the state's minority population aged 60+ (10%).

The AAAs percentage of the state's population aged 60+ with a rural residence (10%).

The AAAs percentage of the state's population aged 75+ (10%).

The AAAs percentage of the state's population aged 85+ (10%).

It was noted, "In running a multitude of different scenarios, we discovered that applying the "minority" and "rural" factors against the census data softened the effect of the changing the allocation formula, helping both the urban areas who were otherwise facing massive reductions in funding, while compensating considerably for the fact that many of PA's rural areas are losing population. And, every time we excluded minority and rural from the formula, it got harder to smooth out the winners and losers, no matter how much additional money you infused."

The proposal called for adding \$21 million in new funding from the Lottery over three years. There was a complex methodology proposed to deal with agencies that would have a "funding reduction" while the new formula was being implemented, with "mitigating allocation payments" for three years.

After completion of the three-year phase-in (*i.e., beginning with Year 4*), the base allocation for each agency was to be determined by the census data factors in the new formula, reflecting that agency's relative share of the total dollars. All future funding increases would also be applied to the base allocation using that same formula.

Going forward, changes in an AAA's demographic composition, as reflected by the most recent census data, would result in revision of the AAA's block grant (either upward or downward), but not more often than three times per decade.¹

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The plan also called for lifting hold harmless *in its current form*, to be replaced by a broad-based, network-wide, or aggregate, hold harmless provision. Concurrent with legislative adoption of the revised hold harmless proposal, was an understanding of a phase-in of the funding formula over three years, so that the first \$8.2 million allocation (\$7m base and \$1.2m mitigation) could occur in Year 1. Ultimately, the plan did not move forward.

While the proposal seemed to offer additional funding over a three year period, the proposal had not been endorsed by the Administration or discussed with the legislature. There was also great uncertainty about what some of the “conditions” around categorical funding could mean. These were difficult economic times and there was uncertainty about who was going to be in power beginning January 2011.

In January 2013, Secretary Brian Duke proposed that additional funding from the Lottery would be distributed to AAA’s using a modified formula that would weight 60+ Poverty (60%), 60+ Minority (10%), 60+ Rural (10%), 75+ (10%), and 85+ (10%). Agencies would receive a minimum increase of 2% and a maximum increase of 22% in a one year period. Funding would be targeted to areas that are currently adversely impacted by the current hold harmless provision.

We learned a number of lessons and have several recommendations to share with you:

- This is a very complex issue with different points of “responsibility”; the Administration and the Legislature.
- The funding formula and the “hold harmless” provision” must be looked at together. Each component is only one part of the solution to the funding equity.
- “Politics” plays a strong roll. It really is about what happens locally - about how much money comes in to each community. The AAAs, the Administration, the Legislature and local communities must all be involved to craft the best solution.
- “Equity” cannot be accomplished, in the near term, without additional funding. No community can afford to lose funding at this time.

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- Changing the current hold harmless language to an aggregate network hold harmless provision may help to mitigate the “raid” of aging funding and still permit redistribution. Couple with a “ceiling” and “floor” for distribution changes would minimize how much an agency may gain or lose at any one time with a funding formula change.
- If some agreement is achieved to modify hold harmless, future funding formula adjustments must be made more frequently. In ten years, there can be significant population shifts. Review and adjustments every three to five years, as more accurate census estimates become available, is appropriate as long as there is a “transition strategy” to deal with increases and decreases in the population. This could include creating a staggered implementation period to permits any losses to be gradual and allow time to minimize any adverse impacts

As a network we strongly believe in “doing no harm”. We understand that under-funded communities are harmed by the current language. However, totally eliminating it, without additional funding and careful long term planning will do irreparable harm to some of our neediest communities. Following my testimony, there will be representatives from those who may gain and those who would likely lose. Their testimony will illustrate that there are positives and negatives to lifting hold harmless and that this is a complex multi-faceted issue.

I want to thank you for allowing me the opportunity to speak on behalf of our entire network. We stand ready to work with the Legislature, the Corbett Administration, and our local communities to address this decades old problem.