

Background

- The Older Adult Protective Services Act (OAPSA) requires all home care employers to complete criminal background checks prior to hiring an employee.
- A 2015 decision by the Commonwealth Court (*Peake v. Commonwealth*), found lifetime bans on employment unconstitutional and struck down those sections of the law.
- Although background checks are still required after *Peake*, for the last six years, providers have performed an individualized assessment if they choose to hire an individual with a prior criminal conviction.

PHA Supports OAPSA Revisions that Protect Seniors AND Access to Quality Care

- PHA has long-supported tiered employment restrictions for home care workers, with the length of an “employment ban” dependent on the criminal conviction at issue. The list of crimes subject to employment bans must be narrowly tailored to protect those receiving care.
- PHA strongly supports protections for seniors that will provide additional, beneficial protections for them, including an overhaul of the financial protection provisions of OAPSA.
- PHA also supports a requirement that employees disclose new convictions immediately and complete annual attestations regarding any convictions that occurred during the previous 12-month period.
- With the caregiver shortage at an all-time high, however, any new background checks or restrictions on hiring must be based on evidence that they will result in increased protections for those in care. Placing unnecessary obstacles in the way of quality care will harm consumers more than it helps them, and a balance must be struck between hiring requirements that are meant to protect vulnerable persons and restrictions that would make it impossible for those most in need to access quality care.
- Employers must retain some discretion to screen and consider individual applicants, and provisional hiring must remain when there are delays in the background check process, as occurred during COVID-19.
- If protection and quality care are the goals, there can be no distinction between the agency and consumer-directed models. Agencies already incur costs not borne by the consumer-directed employer, including background checks, training, overtime, and transportation.
- Any “waiver” process implemented by the Department of Aging must be efficient, transparent, and take into account circumstances involving family caregivers and the desires of the individual receiving care.