



March 17, 2020

The Honorable Tom Wolf
Governor, Commonwealth of Pennsylvania
508 Main Capitol Building
Harrisburg, PA 17120



Re: Emergency Relief Requested on Federal Background Check Requirements

Dear Governor Wolf:

The undersigned represent home and community based providers, nursing homes, personal care homes, assisted living residences, retirement, and housing communities across the Commonwealth. We are seeking a solution for a problem that older adult service providers are having relating to background checks.



It is important to note that this request does not relate to state background checks, which are required for all applicants providing care to seniors and other protected individuals. Providers are continuing to follow state background check requirements for all of these applicants, as required by law.



We have heard from members that they are unable to obtain federal/FBI background checks because of Identogo location closures. As you know, if an applicant cannot establish continuous residency in Pennsylvania for the past two years, they are required to obtain both state and federal/FBI background checks prior to hire. Although provisional hiring is permitted under some circumstances, the maximum time period for provisional hiring is 90 days under the Older Adult Protective Services Act (OAPSA). In addition, if there is a child residing in a home-based care setting, the Community Health Choices/1115(c) waiver appears to prohibit provisional hiring.



Workforce shortages in home and facility-based care for seniors and individuals with disabilities are well documented, and the need for qualified, available DCWs and other home and facility-based health professionals is only increasing. With schools closed, significantly more children are in the home where care is being provided.

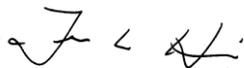
With respect to OAPSA, we are requesting a temporary, emergency waiver of the federal background check requirements, through Executive Order or otherwise. Alternatively, we request an extension of the provisional hiring period beyond 90 days, until such time as results are available and the Department of Aging has made any necessary determination.

With respect to the CHC Waiver, we are requesting an emergency waiver amendment to allow for similar relief, i.e., a temporary waiver of the federal background check requirement or an extended provisional hiring period in home-based care where a child is receiving care or is residing in the home.

We understand that recent changes to the Child Protective Services Law (CPSL) prohibit provisional hiring in many settings where children receive care, e.g., foster care and congregate care. We also understand that DHS made these changes to retain IV-E funding under the Family First Prevention Services Act. Because this IV-E funding is not relevant to homecare and home health services provided to older adults, and because the CPSL does not explicitly apply to the large majority of these care settings, we believe that an amendment to the CHC/1115(c) waiver can provide for provisional hiring for services provided under that waiver.

We are happy to provide more information relating to our analysis of the provisional hiring issue, but we believe it would be similar to the analysis that DHS and the legislature used in determining that certain daycare centers could continue provisional hiring. Likewise, we would welcome any opportunity to discuss the applicability/non-applicability of the CPSL to home-based services provided to older adults.

Sincerely,



Teri Henning, Esq.
Chief Executive Officer
Pennsylvania Homecare Association
thenning@pahomecare.org



Adam Marles, Esq.
President & CEO
LeadingAge PA
amarles@leadingagepa.org



Tina Seidel
President, Pennsylvania Providers
Coalition Association
Compliance and Policy Director, United
Disabilities Services Foundation
christines@udsfoundation.org



Zachary Shamberg
President & CEO
Pennsylvania Health Care Association
zshamberg@phca.org



Margie Zelenak
Executive Director
Pennsylvania Assisted Living Association
mzelenak@pala.org

cc: The Honorable Teresa D. Miller, Secretary, Department of Human Services
The Honorable Robert Torres, Secretary, Department of Aging