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Harrisburg, PA  
President and CEO

March 18, 2003

The Honorable Thomas A. Tangretti  
327 S Main St  
Greensburg, PA 15601

**Re: Provider Assessments for Nursing Homes**

Dear Representative Tangretti:

We are writing to clarify key details concerning the provider assessment proposed by Governor Rendell, which the Pennsylvania Health Care Association supports conceptually as a responsible, if unfortunate, alternative to substantial reductions in payments on behalf of Medical Assistance beneficiaries. In recent weeks, various inaccurate and misleading information has been circulating in the media and in political circles, and it is very important that you and your colleagues have real facts with which to respond to constituent inquires and upon which to make effective decisions.

First, the assessment is NOT a tax on privately paying nursing home residents, or on any nursing homes residents, despite inaccurate information to the contrary, including the inflammatory and misleading "granny tax" characterization, that has been circulating. Rather, it is an assessment imposed on providers, or at least certain classes of providers, which generate additional revenues for the state's portion of Medicaid, thereby qualifying for additional federal matching funds. In this sense, it is precisely like the IGT that has bolstered both nursing home rates and expansion of home-and-community-based-services for a number of years. The most significant difference, however, is that individual providers that pay assessments may not be "held harmless" for those contributions. In the aggregate, of course, the total amount of assessments paid may be returned to contributing providers. In fact, the aggregate return may be larger than the aggregate assessment amount, and doing so may make an assessment far more palatable politically, because fewer provider organizations would be "losers" financially.

Second, given the financial realities of PA's budget and revenue situation, as well as the precipitous drop in matching funds for IGTs in state FY 2003-04, we believe that there is little choice but to pursue a creative short-term measure like provider assessments or face significant rate cuts. One need only look to the proposed cuts to hospital MA rates to confirm this conclusion. Essentially, therefore, the choice is between stable rates with an assessment or substantial rate reductions without one. Given the financial crisis already affecting nursing homes -- dramatic Medicare cuts, skyrocketing insurance costs and work force expenses, and a historic gap between reasonable costs and MA rates -- providers simply cannot afford another cut. If a cut were to occur, we would see the trend of closures, with attendant access to care problems, accelerate dramatically.

Third, an important element of the provider assessment is that facilities that care for a higher percentage of MA recipients, i.e., that care for more poor people, recoup at least the amount of any assessment they pay and also benefit by avoiding rate cuts, thereby benefiting poor seniors substantially. As you may know, of course, on average non-profit nursing homes in PA care for fewer poor people than do proprietary facilities. This seems counter-intuitive, given that we expect non-profits to care for needy populations, but it nonetheless is true. As a result, on average, more non-profits would be "losers," and hence more likely to oppose assessments. Such facilities contend that their only choice, in the face of an assessment, will be to increase rates for privately paying residents, which they equate to a "granny tax." In fact, many of these organizations also have substantial endowments that could be used to subsidize assessments for the good of PA's poor seniors, without necessarily passing the cost on to private payers.

Having said this, of course, many non-profits do care for a high percentage of poor people and a number of these organizations are expressing support for the assessment concept. Some, in fact, are members of PHCA.

Fourth, there are a variety of methods for calculating the assessment, including per licensed bed, as a percentage of gross revenues or as a percentage of adjusted gross revenues (e.g., excluding Medicare or Medicaid revenues). In addition, the assessment may be applied to all providers in a given type, or may exclude government owned providers. Since PA already maximizes federal matching funds from governmental facilities through the IGT, it makes little sense to include county facilities in any assessment program, because we cannot generate any additional federal dollars.

Fifth, the \$145 million contained in the Governor's proposed budget simply is a placeholder, selected because it is a reasonable estimate of the reduction in federal matching funds for the next IGT transaction. DPW has made it clear to all concerned that this number is far from final and that there are a substantial number of points to be negotiated between the Administration, the General Assembly and provider groups before the concept in the proposed budget becomes a reality.

The Honorable Thomas A. Tangretti

March 18, 2003

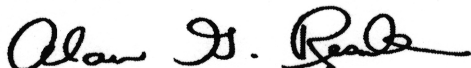
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As a result, allegations that the Administration seeks to impose a \$5 per bed per day assessment are inaccurate and likely irresponsible. Despite DPW's explanation, some simply have divided \$145 million by the number of licensed beds to establish the \$5 figure. Given the substantial number of open negotiating points, as well as the fact that alternatives exist to a "per bed" assessment, the \$5 figure has no factual basis. Were we to engage in similar speculation, however, we easily could conclude that, absent the assessment, MA rates would drop \$7 per beneficiary per day, or about 5% overall. (\$145 million divided by the number of MA days is roughly \$7 per day.) While we do not endorse such "quick and dirty" calculations, we nonetheless hope that a similar approach underscores that the alternative to an assessment is substantial rate reductions.

We trust this information is helpful. In addition, you will receive under separate cover a paper that David Feinberg and I recently presented to the American Health Lawyers Association concerning the use of "Medicaid maximization strategies" around the county. The discussion addresses IGTs, provider assessments and other ideas, and emphasizes the fact that many states already have adopted provider assessments as an alternative to draconian budget and service cuts.

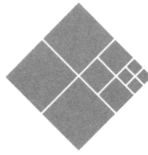
Naturally, we would be pleased to discuss this issue in greater detail, and also to address the intermediate-to-long-term solutions Pennsylvania must develop if it is to afford our rapidly aging population the high quality long term care and senior service options they need and deserve.

Sincerely,



Alan G. Rosenbloom  
President and CEO

AGR/tmk



◆ SOUTHWESTERN PENNSYLVANIA ◆  
**PARTNERSHIP FOR AGING**

pk 4/4/03

on calendar already?

February 10, 2003

The Honorable Thomas A. Tangretti  
105 Station Place  
101 Ehalt Street  
Greensburg, PA 15601

Dear Representative Tangretti:

On behalf of the Board of Directors of the Southwestern Pennsylvania Partnership for Aging (SWPPA), the Westmoreland County Area Agency on Aging, the Laurel Area Partnership on Aging (LAPA), and the Health and Welfare Council of Westmoreland County, we would like to invite you to participate in a legislative panel discussion on Friday, April 4, 2003 focusing on your perspective of critical aging and long term care issues for 2003. This panel discussion will take place during a half day educational forum which is open to both older adults and professionals working in the field of aging.

The day will begin with a one-hour presentation on effective advocacy followed by the panel discussion. All Westmoreland County Senators and Representatives have been invited to participate. The amount of time you will have to speak will depend on the number of legislators who participate; we would estimate this panel session to run up to 90 minutes.

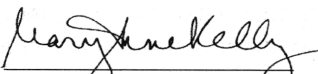
The panel discussion is tentatively scheduled for 10:00 AM. We would also like to leave some time at the end of the panel for questions from the audience.

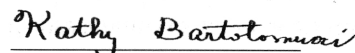
If you are able to join us on April 4<sup>th</sup>, we would appreciate receiving a response by Friday, February 21<sup>st</sup> in order to allow us ample time to print and mail the event registration brochures. You may respond to Mary Lou Harju, SWPPA Associate Director, at (724) 779-3200 or by e-mail at [swppamlh@nb.net](mailto:swppamlh@nb.net).

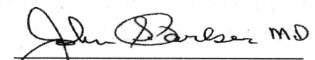
The April 4<sup>th</sup> meeting will be held at St. Joseph Center which is off of Route 30 near Mountain View Inn. We would welcome your attendance at the entire half day event (which begins with breakfast at 8:00 AM and concludes at 12:30 PM) if your schedule allows.

Please feel free to call SWPPA at (724) 779-3200 if there are any questions on this correspondence. Thank you in advance for your willingness to consider addressing our organizations on aging and long term care issues.

Sincerely,

  
Mary Anne Kelly  
SWPPA

  
Kathy Bartolomucci  
Area Agency on Aging

  
Dr. John Parker M.D.  
LAPA



# Memo

**To:** Representative Tom Tangretti  
328 Irvis Office Building

**From:** Nikki Lopez, Research Analyst  
Legislative Research Office  
615 Main Capitol Building  
787-9516, [Nlopez@pahouse.net](mailto:Nlopez@pahouse.net)

**CC:** Denise Milus

**Date:** 4/1/2003

**Re:** Talking points on senior issues

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Per your request, I have prepared talking points for the senior event you are attending on April 4, 2003.

(\* Denotes your co-sponsorship on legislation)

- **Prescription drugs-PACE and PACENET**

**House Resolution 46 (Walko)**- requests the Department of Aging to file an application with the Centers for Medicare and Medicaid Services to secure an acceptable Medicare Demonstration Project to provide additional moneys through Medicare savings to the pharmaceutical assistance programs to expand and enhance pharmaceutical coverage for low-income seniors while protecting the viability of the PACE and PACENET programs.

HR 46 is currently in the House Rules Committee

**House Bill 909 (Eachus)\***- Amends the State Lottery Law to set maximum allowable reimbursements for other Medicaid services, requires drug suppliers to give Pennsylvania the same discounts they give Medicaid and allows the state Department of Aging to substitute cheaper drugs for PACE and PACENET enrollees if they have the same therapeutic effect as the original prescription.

HB 909 is currently in the House Aging and Older Adult Services Committee

According to your 3/20/03 press release, this bill would save the state \$48 million the first year and as much as \$72 million the third year. Also, the additional funding generated by this bill and HR 46 would enable an increase of PACE income eligibility limits from \$14,000 to \$15,000 for singles and from \$17,200 to \$18,200 for couples. It would also incrementally increase over five years PACENET income eligibility limits to \$23,000 for singles and \$31,000 for married couples.

**House Bill 269 (Waters)\***—Amends the State Lottery Law to increase PACE income eligibility limits from \$17,200 to \$28,000 for couples. This bill would also increase PACENET eligibility limits for couples. Currently, the limits are \$17,200 to \$19,200. This bill would increase the limits from \$28,000 to \$30,000.

House Bill 269 is currently in the House Finance Committee

**House Bill 393 (Rohrer)\***-Amends the State Lottery Law to further define "income". The bill excludes from the definition of income Medicare benefits, gifts of cash or property transferred between members of a household, gifts of coupons, vouchers or certificates or surplus food or other relief in kind supplied by a government agency or property tax rebate.

House Bill 393 is currently in the House Finance Committee

**Senate Bill 64 (Wagner)**- Amends the State Lottery Law to provide for an annual cost-of-living increase for a persons maximum annual income.

Senate Bill 64 is currently in the Senate Aging and Youth Committee

- **Personal Care Home Regulations- New Chapter 2600**

Due to the tremendous growth in the personal care home population and the changing nature and complexity of needs and services required by these residents, the Departments of Health and Aging developed new personal care home regulations. Significant provisions of Chapter 2600 include but not are limited to the following:

*Reportable Incidents (2600.16)*- Enhancement of the reporting of incidents to serve and to protect the health, safety and rights of residents in the home.

*Waivers (2600.19)*- Is intended to ensure that waivers of regulatory standards do not have a negative impact on residents.

*Resident-home contract (2600.26)*- This provision is expanded to provide full disclosure of the contract to be signed and the residents rights. This requirement will promote good business practices, and protect the resident, the resident's family and the facility. The additional regulatory protections include a 72-hour right of rescission of the contract, a requirement that resident's service needs are to be addressed 365 days a year, and a mandate to list the actual amount of allowable resident charges for each service item.

*Resident rights (2600.42)* – Offer additional regulatory protections for the resident, listing 28 specific resident rights. An appeal procedure is established to allow the resident or the resident's family to file a complaint if they believe a resident's right has been violated.

*Staffing (2600.56)*- This provision maintains the current level of personal care service hours per resident, based on the resident's mobility or immobility needs. This section also proposes that if a resident's personal care needs exceed the current minimum level of personal care hours, the home shall provide a sufficient number of direct care staff to provide the necessary level of care required by the resident.

*Staff Training and Orientation (2600.58)*- Mandates greater training and competency requirements for direct care staff. The Department proposes that annual training for all staff is 24 hours and must be related to their job duties. The health and safety of residents will be enhanced by ensuring that staff gain knowledge and competency through training.

*Bedrooms (2600.101)* Requires that residents with physical disabilities will have larger bedrooms to allow for easy passage and comfortable use of assistive devices.

- **Long term care/nursing homes**

**House Bill 52 (Sather)\***--creates the Long-Term Care Partnership Program Act to require the Departments of Public Welfare, Insurance and Aging to provide incentives for individuals to insure against the costs of providing for their long-term care needs, provide a mechanism for individuals to qualify for coverage of the cost of their long-term care needs under Medical Assistance without first being required to substantially exhaust their resources, provide counseling services to individuals' planning for their long-term care needs and alleviates the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives.

House Bill 52 is currently in the House Aging and Older Adult Services Committee

**House Bill 68 (E.Z. Taylor)\***-- Amends the Health Care Facilities Act to require the Department of Health to make inspections of long-term nursing facilities on an unannounced basis.

House Bill 68 is currently in the House Health and Human Services Committee

**House Bill 491 (Wojnaroski)\***--Creates the Cognitive Impairment Support Services Certification Act to provide for a certification program in certain facilities which offer cognitive support services to persons with cognitive impairments.

House Bill 491 is currently in the House Aging and Older Adult Services Committee

**House Bill 663 (Bishop)\***--Amends the Nursing Home Administrators License Act to extend the duties of the State Board of Examiners and Nursing Home Administrators to make rules and regulations that address the treatment of nursing home occupants,

including paying attention to their complaints, protecting occupants possessions, administering proper exercise and paying proper attention to bed-ridden occupants.

House Bill 663 is currently in the House Professional Licensure Committee

**House Bill 421 (Vance)\***--Creates the Nursing Home Consumer Protection Act to require public notices relating to certain matters affecting long term care nursing facilities and requiring nursing homes to submit information for each resident. The bill also requires the Department of Aging to produce a nursing home information site on the Internet.

House Bill 421 is currently in the Aging and Older Adult Services Committee

- **Protective Services for Seniors**

**House Bill 361 (Yudichak)\***--Amends the Older Adult Protective Services Act to further enumerate offenses which would restrict hiring and employment of persons in facilities serving older adults. Under the bill, a facility would be prohibited from hiring an applicant or retaining an employee who had been convicted of the following offenses: neglect of a care-dependent person, retaliation against a witness, prosecutor or judicial officer.

House Bill 361 is currently in the House Judiciary Committee.

**House Bill 803 (J. Williams)\***—Amends the Older Adult Protective Services Act to require hospital personnel to notify a hospital administrator when they have reasonable cause to suspect that an older adult is a victim of abuse.

House Bill 803 is currently in the House Aging and Older Adult Services Committee

**House Bill 859 (Blaum)\***--Amends the Older Adult Protective Services Act to expand the definition of “exploitation” and to include those persons who act as power of attorney for an older adult.

House Bill 859 is currently in the House Aging and Older Adult Services Committee

- **Other Issues regarding Seniors**

**House Bill 490 (Wojnaroski)\***—Creates the Senior Center Grant Program Fund Act for the approval of a referendum on the ballot regarding the question of incurring indebtedness of \$20,000,000 to provide additional funding for the rehabilitation and renovation of senior center facilities.

House Bill 490 is currently in the House Appropriations Committee.

**House Bill 941 (Pistella)**—Creates the Enhanced Senior Services Demonstration Program Act to require the Departments of Public Welfare and Aging, in consultation with the Executive Director of the Pennsylvania Housing Finance Agency, to collaborate in obtaining approval from the Centers for Medicare and Medicaid

Services for a home-based and community based services waiver designed to fund an Enhanced Senior Services Demonstration Program for up to 1,800 individuals residing in certified facilities.

House Bill 941 is currently in the House Aging and Older Adult Services Committee.

▪ **Budget allocations for the Department of Aging and Senior Programs**

In the finalized version of Governor Rendell's budget (HB 648-Act 1a), numerous cuts were made to funding for the Department of Aging and senior programs. The following is a list of line items in the final budget. **Please note: the number in parentheses shows the percentage decrease from last year's budget.**

General Government Operations-Lottery Programs- \$16 million (-22.3%)

Programs for the Aging-Title III-Administration-\$1.8 million

Programs for the Aging-Title V-Administration-\$173,000

Medical Assistance-Administration-\$824,000 (-24.3%)

Family Caregiver-\$11.4 million

Programs for the Aging-Title III-Family Caregiver \$10 million

Pre-Admission Assessment-\$5.8 million (-0.3%)

Pre-Admission Assessment-\$9.6 million (3.5%)

Memory Loss Screening-\$350,000

Legal Advocacy for Older Pennsylvania \$0 (-100%)

Alzheimer's Outreach-\$145,000 (-42%)

I hope this information proves useful. If you require any further research, please contact me.