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Report of the

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# Task Force

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for the

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# Protection

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of

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# Pennsylvanians

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- telemarketing fraud
- long term care insurance
- durable medical goods
- home improvement scams
- hearing aids
- pre need funerals and burials
- abuse in long-term care facilities and boarding homes



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MPI

Senior citizens make up only **12 %** of the population,  
yet they comprise **35 %** of all fraud victims !!!!!

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Pennsylvania Office of Attorney General  
Ernest D. Preate, Jr.  
Attorney General



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AUG 8 1993

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A Message from Pennsylvania Attorney General Ernest D. Preate, Jr.

My Fellow Pennsylvanians:

This report of the Task Force for the Protection of Older Pennsylvanians is the result of a commitment I made to the people of Pennsylvania in the inaugural address which began my second term as Attorney General.

I made this subject a high priority because our state ranks second in the nation in the percentage of its citizens over age 65 and the number of scams and consumer abuses directed at older citizens in Pennsylvania has been rapidly increasing.

Our statewide Task Force was divided into six regional Task Forces which, for more than a year, held hearings in Philadelphia, Scranton, Pittsburgh, Harrisburg, Altoona and Erie identifying consumer problems facing older Pennsylvanians and suggesting meaningful solutions. Except for the members from my Office, every Task Force member was a volunteer who served without compensation.

The participants in these hearings included academic, business and professional people and others who have had firsthand experience with problems like telemarketing, long term care insurance, home improvement scams and neglect of older citizens which may lead to abuse.

I extend my special thanks to all of the members of the Task Force for the important work they have done, sometimes despite extremely difficult circumstances.

I pledge to continue to work with the members of our Task Force, members of the General Assembly and local, state and federal agencies to bring to fruition the recommendations made by this Task Force.

Sincerely,

A handwritten signature in cursive script, reading "Ernest D. Preate Jr".

Ernest D. Preate, Jr.  
Attorney General



## Introduction

Our older population makes up a substantial proportion of consumers in Pennsylvania. Pennsylvania has the second highest percentage of citizens over 65 in the nation (15%) - and that number is rising.<sup>1</sup> Perhaps more important, the number of consumers over 75 is increasing at an even faster rate.<sup>2</sup> By the year 2000, close to a million Pennsylvanians will age into this category.<sup>3</sup>

While the older consumer is like any other consumer, several important features of older consumers have led health care professionals, legislators, law enforcement, con artists and others to recognize that special problems exist for older citizens which must be addressed. As a result, the Task Force for the Protection of Older Pennsylvanians was empaneled by Attorney General Preate in 1993 to investigate the need for special solutions to the issues that confront older consumers in Pennsylvania.

The Task Force was divided into six regional groups which identified, discussed and debated consumer issues of paramount concern to older citizens.

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<sup>1</sup>Sources: Pennsylvania State Data Center Population Projections and the U.S. Bureau of the Census, 1980 and 1990.

<sup>2</sup>Id.

<sup>3</sup>Id.

The Task Force was provided with statistics and information compiled by the Attorney General's Bureau of Consumer Protection ("Bureau") and held hearings and discussions in which they shared their own experiences and examined the experiences of others. Testimony was collected on topics as diverse as home improvements, telemarketing, health insurance and abuse in long term care facilities and boarding homes. The personal experience of consumers and experts put a human face on the issues. The Task Force has compiled this Report to provide others with information they examined in an effort to assist in identifying significant problems and fashioning reasonable solutions.

The community of older citizens is diverse. Variations in age, physical and mental health, and social skills make it difficult to fashion single solutions to some of the most important problems. The Task Force was frequently reminded that a recommendation that might work for an active, alert, technologically capable 67-year-old consumer who lives with her family might not work for an 88-year-old, inactive consumer who lives alone. Accordingly, the Task Force recognized that some traditional recommendations such as researching a business before handing over money might not easily be accomplished by some older consumers.

"Creativity" in crafting "practical solutions" was a primary objective of this Task Force. Where appropriate, the Task Force has recommended solutions which may require legislative initiatives, educational initiatives or action by law enforcement agencies. An important part of the equation for solutions was that they had to be realistic.

In addition, the Task Force has recommended greater publication and use of public service announcements, brochures and other materials to decrease the vulnerability of older consumers. "Prevention" is a recurrent theme in this Report.

This Report is designed as a resource guide for consumers, legislators, law enforcement, public or private professionals and others interested in understanding some of the most common consumer problems which plague older citizens.

While it is impossible to recount the entire experience or list of subjects examined by the Task Force in this Report, the following sections present a detailed examination of issues in the areas of Home Improvements, Telemarketing Fraud, Pre-need Funeral and Burial Services, Long-Term Care Insurance, Durable Medical Goods, Hearing Aids and Abuse in Long-Term Care Facilities and Boarding Homes. While the specific recommendations of the Task



Force in each of these areas are offered at the end of each substantive discussion, a Summary of Task Force Recommendations is included as Appendix A. Further, Appendix B of this Report provides a list of Task Force members organized by region and Appendix C offers a Pennsylvania Resource Directory of support services and organizations which assist older consumers.

## HOME IMPROVEMENTS

### BACKGROUND

In almost every regional hearing of the Task Force, serious concerns were raised by older consumers about problems with home improvement contractors. Home improvements generally include modifications or repairs to the home, such as roof repairs, driveway repairs and other improvements which are conducted after a house is initially built. As with other significant home construction, home improvements are generally performed by contractors. While there are many competent, reputable and professional home improvement contractors doing business in Pennsylvania, currently this industry is not licensed in our state and there is no statewide building code to seek compliance with.<sup>4</sup> The Office of Attorney General's Bureau of Consumer Protection receives an average of 2,100 complaints concerning home improvements each year.

The testimony of one consumer reflects the dilemma which faces many older consumers. This older female consumer complained that a home heating contractor misled her into believing that her furnace was in dangerous need of repair, when it was not. She testified that the man "fast-talked" her into

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<sup>4</sup>Erie Task Force Hearing, March 8, 1994.

accepting a new furnace, which ultimately did not work properly. She described her experience with the contractor this way:

The first thing he wanted to know was 'where is my husband.' And I immediately said, 'I have no husband, you have to deal with me.' Well, I think it was all downhill from then on. . . .

I have to say that I'm typical prey for scam artists. I'm a senior citizen. I live alone. So, I can talk to you women who live alone, and you might have the same experience that I have.

This all happened just as winter set in, and the man was never able to get the furnace working properly, so I had to sleep wearing a coat, boots and hat. I spent thousands of dollars and still had an inoperable furnace during the winter of 1992.

What made me really angry was when the contractor called me back on New Year's Eve. This man calls me back laughing. He's down in Florida watching a ballgame, and he says to me, 'how are you?' I said, 'I'm in Altoona, and I'm freezing.'

For many years I was married, I lived with blinders on. My husband took care of everything. I didn't do anything. I didn't handle anyone or anything. I didn't even know how. I've lived a kind of sheltered life. I have two children who live out of state and two

grandchildren. I'm sort of ashamed to say this, but I hate to complain too much to them because I'm afraid they'll take my independence from me. They'll say 'mother can't manage on her own.'<sup>5</sup>

Problems with home improvement contractors regularly rank in the top five of all complaints received by the Bureau. Since 1989 home improvements have been the number one subject of complaints filed with the Bureau by persons over the age of 60. The most frequently cited complaints in this area include unnecessary work, cost overruns, missed deadlines and shoddy workmanship. Additionally, seniors are frequently victimized by "traveling" or "gypsy" contractors who take deposits or payments for home improvements and disappear before finishing or starting work, or don't complete the work as contracted. Again, while we acknowledge that there are many responsible and professional home improvement contractors doing business in Pennsylvania, some of the most serious problems presented to the Task Force are discussed below.

#### Problems with Home Improvement Contractors

Many of the problems experienced by older consumers in this area seem to result from door-to-door solicitations by "Travelers." Travelers are contractors

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<sup>5</sup>Altoona Task Force Hearing, May 5, 1994.

who solicit work door-to-door and who are not from the consumer's home community, or in many cases, even from Pennsylvania. Many of these traveling contractors specifically intend to defraud consumers from the beginning of their contact.

Usually, traveling contractors quote what appears to be a bargain or reasonable price. They then request an up-front deposit (often they accept only cash) prior to beginning the work. In some cases, work of extremely low quality is done. In other cases, no work is even started. After surrendering his money, the consumer is left without their deposit and with little recourse against the contractor, who has left the locality. While criminal prosecution may be possible, the contractor has usually disappeared well before authorities are notified.

Another series of common problems involves local contractors who engage in home improvements with little business or contracting experience. While these individuals usually intend to complete the projects they begin, they often overextend themselves and fail to complete the job for lack of money or materials. In these situations, the work may also be inadequate.

Again, the consumer is left with limited recourse against the contractor. Even if they file suit against the contractor and win, they may be left with an

unenforceable paper judgment. Should the consumer file a complaint with the Bureau, mediation efforts are often difficult. The consumer often wants his money back and no further contact with the contractor. The contractor has often spent the money, and can only offer work as a remedy. In these circumstances, criminal prosecutions are highly unlikely because there is great difficulty proving that the contractor had the required "intent" to defraud the consumer at the time the contract was signed.

Formal legal action by the Pennsylvania Attorney General's Office in these cases has generally been based on the Unfair Trade Practices and Consumer Protection Law.<sup>6</sup> Under this civil law, the Attorney General's Office has sought to enjoin contractors from engaging in unfair and deceptive acts as defined by the law. The Attorney General's Office has also sought restitution for the consumer and civil penalties of up to \$1,000 for each violation of the law.<sup>7</sup>

One of the best protections for older consumers who sign contracts in their homes is a provision in the existing law which requires that businesses provide them with a three-day notice of cancellation. Many home improvement contractors do not comply with this requirement. Further, under Section 201-7

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<sup>6</sup>73 P.S. §201-4 et seq.

<sup>7</sup>73 P.S. §201-8(b).

of the Consumer Protection Law, the consumer can cancel the contract unless the proper three-day notice is given.<sup>8</sup> Thus, as a practical matter, consumers may be able to cancel a contract for good worth \$25.00 or more much later than three days after signing if no cancellation notice is received.

Unfortunately, cancellation may not be an adequate remedy in circumstances where work has already begun and/or the contractor may not have the money to return to the consumer. Thus, other remedies should be considered to reduce the number and types of problems experienced by older consumers who engage home improvement contractors.

### RECOMMENDATIONS

Education Initiatives: Consumers need information about how to select a home improvement contractor. Older consumers must be specifically informed of the notice and right to cancellation requirements in the Consumer Protection Law for contracts signed in their homes. They must also be encouraged to deal with established entities, those with a permanent presence in their community. Further, consumers should be encouraged to get additional bids and obtain references prior to signing contracts. Consumers should become trained to avoid any business that engages in high pressure sales tactics. Finally, consumers

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<sup>8</sup>73 P.S. §201-7.

should be made aware of the severe consequences that may occur if they fail to be diligent before they sign a home improvement contract.

Accordingly, the Task Force recommends that the Office of Attorney General, AARP, Area Offices on Aging and other organizations who routinely provide services to older consumers create and distribute brochures, public service announcements and other materials which discuss ways to prevent fraud when selecting a home improvement contractor, in terms which are easy to understand.

Legislative Initiatives: Because a common theme at all task force hearings was the need for increased standards and accountability for home improvement contractors, the Task Force recommends that legislation requiring licensing of contractors, creation of a building code and criminal and civil sanctions for fraudulent business practices be considered by the Pennsylvania General Assembly. Two House Bills introduced in 1993 provide examples of the type of legislation proposed at regional hearings.

House Bill 961 of 1993 criminalized home repair fraud as defined in the Bill. Depending on the type of fraud committed and the amount of the contract, violators could be charged with a felony or a misdemeanor. Importantly, there were also enhanced penalties and protections for citizens aged 60 and over. This



Bill suggests that there is a need for enhanced sanctions against fraudulent home improvement contractors who victimize older consumers and provides a broad definition of fraud.<sup>9</sup>

House Bill 1414 of 1993 provided for a comprehensive licensing program of building contractors by the Bureau of Professional and Occupational Affairs. The Bill created a Contractor Licensing Board to establish minimum qualifications for specified classes of contractors. The Board was also authorized to create examinations for the licensing of contractors. Those individuals acting as a contractor, but not having a valid license, would be subject to a cease and desist order by the Board requiring that they immediately cease work in Pennsylvania. Contractors in violation of this law would further be subject to penalties of between \$200 and \$1,000. The Board would also be able to enjoin illegal activity and revoke or suspend licenses.<sup>10</sup>

While neither of the above laws would stop "travelers" or other unlicensed entities from engaging in the home improvement business, these proposals set standards for home improvements and provide for criminal and civil sanctions. They would also permit consumers to find out if persons they are considering

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<sup>9</sup>1993 Pa. H.B. 961

<sup>10</sup>1993 Pa. H.B. 1414

have met a minimum requirement to conduct such work. Further, should problems arise with a licensed entity, the consumer can complain to the licensing authority and the contractor should have an incentive to resolve such problems.

## TELEMARKETING FRAUD

### BACKGROUND

"Telemarketing" is defined as the planned professional use of the telephone to advertise, market, or provide service to consumers and businesses.<sup>11</sup> This method of sales has been an accepted means of conducting business since the advent of the telephone. This industry employs over 3.4 million people and accounts for over \$500 billion in spending annually.<sup>12</sup>

Unfortunately, every Task Force hearing confirmed that a portion of this industry is run by unscrupulous telemarketers who utilize the telephone to exploit older and other consumers. "Telemarketing fraud" is the fraudulent use of the telephone to advertise, market or provide service to consumers or businesses. It is estimated that illegal telemarketers steal up to \$40 billion per year.<sup>13</sup> By operating in boiler rooms (temporary locations with several telephones), fraudulent telemarketers eliminate geographic and physical limitations, but more

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<sup>11</sup>"Telemarketing Fraud: Operation Disconnect", U.S. Department of Justice, Federal Bureau of Investigation, White Collar Section (1993).

<sup>12</sup>Id.

<sup>13</sup>"The Scourge of Telemarketing Fraud", U.S. House Committee of Government Operations (1991).

importantly, they make it impossible for victims and law enforcement agencies to act on the crimes they commit.

While the comments of many persons who testified before the Task Force demonstrate the problems facing older consumers who respond to telemarketing fraud, the testimony of one consumer in Scranton was particularly instructive. In this hearing, the son of an older telemarketing fraud victim testified as follows:

It started in late September. I got a phone call on a Thursday evening, and my mother said she had a chance to get a camcorder in a prize promotion and wanted to know if I had a camcorder. She started saying she was in this prize contest and this was going to be one of the awards she would be winning.

And I said, 'well, have you won any other things?'. And she said, 'Oh yea, I've got a lot of things.' I said, 'Oh really, what have you got?'. She said, 'Well, I've got three TV's here, and I've got a bunch of other things that have been coming in.' I said, 'Oh really, how did you get that?'. She said, 'Well, I've been in these prize contests.'

In going through her check analysis over a three-month period, I discovered she had written over 450 checks. Now, this is an 85-year-old lady with arthritis

in her hands. That's 150 checks a month. Could you imagine yourself, with good hands, trying to write that number of checks? It had become a full-time business with her. And she showed me these checks. There was \$5.98 to one of these direct mail, other checks were for \$3,000 or \$4,000, cashier's checks. So I said, 'Oh my gosh, this is becoming mind-boggling.' But here was the bottom line. This is the real killer. When I saw that she had gone through, documented, in 1993 and six months of 1992, over \$125,000.

And being 800 miles away in Chicago, it's not like I call her every day or check on her checking accounts and her activities. The balance between what is right and what is wrong, civilly and legally is a very delicate situation. You have to respect a person's privacy, which we always have. But they live alone, and these things go on. So living alone is critical. The family is out of the area. That's another critical one. You may have children or relatives that are close by. Your closest relative is two hours away in Jersey. So if you have no family right there, there's nobody that's going to come into your house on a regular basis and see what's happening.<sup>14</sup>

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<sup>14</sup>Scranton Task Force Hearing, February 17, 1994.

## Factors in the Victimization of Older Persons

It is the belief of many who are familiar with older consumer behavior that telemarketing fraud specifically targets older persons. This belief is supported by interviews conducted by the Federal Bureau of Investigation in connection with its "Operation Disconnect" in which fraudulent telemarketers admitted that they deliberately target older Americans with their scams.<sup>15</sup> Various methods are utilized by fraudulent telemarketers, although, like other types of consumer fraud, they all maintain a common element: a deal, and/or offer, or award that is just too good to pass up.

There are many factors that make older consumers more vulnerable than other segments of the population. When the con artist calls, older consumers are more likely to be home. They may have both the time to listen and a willingness to let the illegal telemarketer talk. Listening to the "pitch" of a telemarketer is a key factor because it is the equivalent of allowing a door-to-door salesman to get his foot in the door. Some have suggested that single men and women, without others in their home, are also vulnerable because they are isolated and interested in maintaining their independence. They may have retirement funds available and are less likely to report a loss out of

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<sup>15</sup>"Telemarketing Fraud: Operation Disconnect", U.S. Department of Justice, Federal Bureau of Investigation, White Collar Crimes Section (1993).

embarrassment or due to thinking it may be interpreted as proof that they can no longer control their own finances.

Additionally, one researcher identified medical and psychological factors in the victimization, advising the Task Force that approximately fifteen percent (15%) of all people over seventy-five (75) years of age suffer from some form of dementia, no matter how slight.<sup>16</sup> Regardless of which factors apply in particular situations, these factors give the fraudulent telemarketer the ability to turn the telephone into a deadly weapon aimed at older citizens.

#### The Mechanics of the Scam

The typical scenario in an illegal telemarketing scam features an excited voice on the other end of the phone line explaining to the 80-year-old widow that she has already won a "guaranteed" prize. The prize may be a cash award, vehicle or trip she has dreamed of. To claim the prize the promotion requires the purchase of certain merchandise, a gift to a special charity or perhaps a tax that must be paid in advance. Utilizing a well known courier service with a sound reputation to come directly to the victim's home often lends credence to the offer in the mind of the victim. Checks can often be picked up through a courier service within hours of a call, preventing the individual from discussing

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<sup>16</sup>Altoona Task Force Hearing, May 20, 1994.

or even reflecting on the transaction. Once a victim has provided funds, she has opened herself up to any number of highly skilled liars referred to as "reloaders," who are paid a large amount of money for their ability to talk people out of their money.

The skill of the "reloaders" was painfully recounted to the Task Force by the man whose mother lost \$125,000 to telemarketers who, once they sensed that they had a good catch, sweet-talked the woman and even sent her flowers and a cheesecake.<sup>17</sup>

Even though she was in the process of losing so much money, the woman seemed to appreciate the frequent calls, once telling the caller, "Oh, you're being so nice, I haven't had anyone talk to me all day."<sup>18</sup>

After listening in on some of the calls, the son described the telemarketers as "highly trained, very professional, extremely effective." He said, "they really have zeroed in on the needs of the elderly."<sup>19</sup>

Another result of having provided funds is that the victim's name and address is placed on a marketing list (sometimes referred to as a "mooch" list)

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<sup>17</sup>Scranton Task Force Hearing, February 17, 1994.

<sup>18</sup>Id.

<sup>19</sup>Id.



and then sold to other unscrupulous individuals in the telemarketing industry, so that before long the victim will be inundated with offers and awards from all over the country. Finally, to add insult to injury, "recovery operations" begin to call. These fraud operators convince the victim that, "for a fee," they will be able to recover monies which were lost to the telemarketing companies.<sup>20</sup>

Admittedly, the above scenario is an oversimplification of the process by which fraud operators work their "confidence game" in what has become a very technical business. However, these techniques are employed every day on thousands of unsuspecting older citizens.<sup>21</sup>

One method used by illegal telemarketers to avoid detection and prosecution has been to change locations within a jurisdiction on a periodic basis. Some even do so monthly. Currently, these "Rip and Tear" operations still proliferate. However, just as common are those which choose to set up boiler-room operations with the intent of only marketing to consumers located outside of the state in which they base their operations. By refraining from marketing within the state in which they reside, the operations often avoid, or at least delay, coming under the scrutiny of local law enforcement authorities.

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<sup>20</sup>Altoona Task Force Hearing, May 20, 1994.

<sup>21</sup>Id.

Once reports of fraudulent telemarketing activity reach the home state authorities, it can be difficult for law enforcement to appreciate the magnitude of the operation because companies may use several fictitious business names, mail drops, multiple telephone numbers and employ salesmen who use multiple aliases. Investigations are also hampered by the fact that key witnesses and evidence may be located out of state. For all of these reasons, investigations and prosecutions of such cases have become quite expensive. These are just a few of the factors that make telemarketing fraud one of the most difficult crimes for law enforcement to investigate and prosecute.

#### Scope of Telemarketing Fraud Activity

Results of a 1992 Louis Harris survey regarding "telemarketing fraud" indicate that 92 percent of Americans have received a postcard or letter indicating they have won a prize or award and 29 percent have responded to these mailings.<sup>22</sup> This figure represents over 53.6 million people. Of that group, 5.5 million individuals indicated that they believe they had been swindled by fraudulent telemarketers. Perhaps more astonishing than the overall scope of

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<sup>22</sup>"Telephone-Based Fraud: A Survey of the American Public", Louis Harris and Associates Inc. ( April/May, 1992).

this type of fraud is the study's finding that only one-third of those who had been cheated actually reported a loss to authorities.<sup>23</sup>

### RECOMMENDATIONS

Like many other types of crime that plague our society, telemarketing fraud cannot be eliminated solely by law enforcement efforts. Nor can this goal be achieved through education alone. Rather, success in preventing greater victimization of older persons by telemarketing fraud can best be achieved by a concerted effort which includes coordinated law enforcement, legislation and consumer education.

Legislative Initiatives: The Pennsylvania Attorney General relies primarily on the 1976 Unfair Trade Practices and Consumer Protection Law as its basis for prosecuting fraudulent telemarketers. However, in 1994 the Federal Telemarketing and Consumer Fraud and Abuse Act was enacted and provides state Attorney Generals with authority to prosecute telemarketing fraud cases in federal court.<sup>24</sup> Before state Attorney Generals can proceed under this new law, the Federal Trade Commission must promulgate rules for enforcement

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<sup>23</sup>Id.

<sup>24</sup>Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. 6101; 16 C.F.R. §310 (1994).

actions.<sup>25</sup> This new Act recognizes that despite their best intentions, federal authorities do not have sufficient resources to address the entire problem.

Several states have begun to adopt statutes which range from merely requiring telemarketers to register prior to soliciting business within their states to legislation which expands their criminal theft statutes to include theft by deception through communications conducted primarily by telephone.<sup>26</sup>

Pennsylvania should enact a law to require the registration of all companies who telemarket to Pennsylvanians. Currently, fourteen other states have enacted such legislation. Some of these states place an additional requirement on such companies that conduct sweepstakes or award promotions in connection with their telemarketing activities. Telemarketing registration statements typically provide information on the company's actual physical location and telemarketing offices as well as information on the officers, principals and salespeople. As with other registration requirements, the appropriate agency within Pennsylvania for handling such registrations may be the Department of State, Bureau of Corporations.

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<sup>25</sup>16 C.F.R. Part 310.7

<sup>26</sup>"Telemarketers Guide to State Laws", Direct Marketing Association.

Pennsylvania consumers would also be better served if telemarketing companies were required to use their "real name" in soliciting business. That is, the company should be required to disclose the identity of the salesperson and the business when making contact with prospective buyers. A brief preamble in connection with all telemarketing contacts with consumers in which funds are solicited or products or services are being sold would assist older consumers in understanding and appreciating the nature of the contact. Such a preamble could require disclosure of the individual solicitor's name, the company name, the address of both the company and solicitor and the telephone number for each. In addition, the telemarketer should be required to disclose in the initial portion of the call that the purpose of the call is to sell a product or service or solicit funds if such is the case.

Thirty years ago there was great concern about marketing of a different nature, door-to-door sales. Legislatures and law enforcement agencies recognized that once a salesman got his "foot-in-the-door," high pressure could be exerted in order to sell products and services, without sufficient time for the consumers to reflect upon the purchase. In response, the Federal Trade Commission enacted a trade regulation rule known as the "Cooling-Off Period

For Door-To-Door Sales."<sup>27</sup> Following suit, most states, including Pennsylvania, enacted similar laws in the form of state statutes which provide consumers a three-day right to cancel contracts signed in their home.<sup>28</sup>

Based upon the testimony presented in Task Force hearings, the high pressure sales tactics used in connection with fraudulent telemarketing may be greater than in door-to-door sales and the harm that results from such illegal telemarketing appears to be far greater than the harm caused by door-to-door solicitors. This conclusion is supported by the \$40 billion annual cost of fraudulent telemarketing and the 5.5 million reported victims of telemarketing fraud. Further, in this electronic age where no contract is signed to complete the transaction and where the salesman's presence in the home is accomplished through the telephone, a similar safeguard as door-to-door salesman may be warranted in those situations which are initiated by telemarketers.

**Accordingly, the Task Force recommends that the General Assembly consider granting a three-day right to cancel any purchases arising out of telemarketing activity.** Certain types of purchases could be exempted based upon either a minimum dollar amount or whether the consumer initiates the

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<sup>27</sup>16 C.F.R. §429, 37 Fed. Reg. 22,934.

<sup>28</sup>73 P.S. §201-7

contacts in the ordinary course of a business (i.e. catalog orders, etc.). This right to cancel could commence upon receipt of any product, award or premium or upon receipt of written confirmation of any agreements to purchase services.

**The Task Force recommends that the General Assembly consider enacting legislation which would prohibit fraudulent and deceptive telemarketing practices, require all telemarketers soliciting Pennsylvanians to register, and criminalize certain types of telemarketing fraud.**

Education Initiatives: When we consider that fewer than one-third of those individuals who had been scammed by fraudulent telemarketers actually reported the incident, we recognize the need to establish better lines of communication with those who are victimized by telemarketing fraud. Public education has traditionally been broadcast through contacts with traditional community groups, churches and public service announcements. Based upon testimony presented by law enforcement service organizations, victims and relatives of victims, the Task Force has recognized a need to more directly focus educational efforts to those who are victimized and to those in close relationships with victims. Identifying potential victims and providing them support and assistance is critical. However, educating those closest to such victims, such as relatives,

friends and care givers may be equally critical for older consumers who may be unable to recognize the signs of telemarketing fraud themselves.

In addition to refocusing educational initiatives, agencies and organizations which serve the needs of older Pennsylvanians must work in conjunction with one another to train those who have contact with potential victims so that they are able to promptly identify telemarketing fraud and prevent further victimization. Some of the indications of telemarketing fraud include: inordinate amounts of junk mail; the receipt of quantities of trinkets such as pens, cosmetics, air and water filters; frequent telephone conversations that seem out of place; increased significant credit card or checking account activity; and residential pick-ups of single envelopes (containing personal checks) by overnight courier services.<sup>29</sup> Clearly, the development of a "fraud victim profile" accompanied by a discussion of some of the indicators of telemarketing fraud does much to help cause an early intervention and response by those in the older victim's community.

**Accordingly, the Task Force recommends that existing state, federal and private agencies which serve older citizens work more cooperatively and**

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<sup>29</sup>Altoona Task Force Hearing, May 20, 1994.



refocus their education efforts in this area to include relatives, friends and care givers of telemarketing fraud victims.

Further, the Task Force supports, encourages and recommends the formation of "TRIADS," throughout Pennsylvania. The "TRIAD" referred to in this context is not the eastern crime organization that some are familiar with. A TRIAD is a county collaboration of AARP, Chiefs of Police and County Sheriffs dedicated to developing education and law enforcement initiatives to protect and prevent the victimization of older persons. While TRIADS have already been formed in Warren, Chester and Clarion Counties, similar collaborations should be developed in all 67 counties in Pennsylvania.

Enforcement Initiatives: Because of the scope and effect of illegal telemarketing it is critical for federal, state, county and local agencies to work together in order to ensure adequate consumer protection from such fraud. Testimony presented to the Task Force established that no one component of government has sufficient resources to combat telemarketing fraud alone. In Pennsylvania, the Office of Attorney General has actively been pursuing telemarketing fraud investigations and prosecutions. The Pennsylvania Office of Attorney General is currently working with the Federal Bureau of Investigation and other agencies to compile a data base of known fraudulent

telemarketing companies, their sales persons and others who facilitate telemarketing fraud. Pennsylvania Attorney General Ernest D. Preate, Jr., has committed his Office to serve as a statewide focal resource to collect and assess information on illegal telemarketing activity. This commitment includes the collection of information received by the National Fraud Information Center, the Federal Trade Commission, other states and consumers directly. This initiative should result in federal and/or state prosecution of fraudulent telemarketers soliciting in Pennsylvania.

The passage of the Telemarketing and Consumer Fraud and Abuse Prevention Act in August of 1994 will give the Pennsylvania Attorney General and other state attorneys general access to federal courts to prosecute telemarketing cases.<sup>30</sup> Once the Federal Trade Commission promulgates rules pursuant to this Act, state attorneys general will be in a position to obtain greater civil relief for consumers by seeking to obtain nationwide injunctions and remedies.<sup>31</sup>

**In light of testimony presented in hearings and the initiatives of the Pennsylvania Attorney General, the Task Force recommends that an**

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<sup>30</sup>Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. §6101; 16 C.F.R. §310.7.

<sup>31</sup>16 C.F.R. §310.7.

ongoing collaboration be established between federal, state, county and city agencies for the purpose of obtaining information and coordinating strategy for combatting telemarketing fraud.

Further, in light of the multi-billion-dollar effect of telemarketing fraud, the Task Force recommends that these law enforcement agencies allocate sufficient time and resources to the prosecution of such illegal activity to curb the victimization of older consumers.

## DURABLE MEDICAL GOODS

### BACKGROUND

Many families do not have a need for durable medical goods nor do they think about such things until a loved one with a disease or a terminal illness develops the need for these products. Durable medical goods include things such as communication devices, walkers, canes, wheelchairs, hospital beds, oxygen equipment, suction equipment, bedside commodes and other items used in the care of homebound patients.<sup>32</sup> Items such as these may be used to lessen the burden associated with caring for a loved one at home and may become essential goods for older consumers.

### Medical Equipment Fraud

Testimony presented to the Task Force revealed that after paying for hospital costs, prescription medicines and medical supplies, many consumers are all too often unable to afford the medical equipment that is necessary for the care of their loved one at home.<sup>33</sup> Further, many consumers cannot obtain this needed equipment from their insurance carrier because many insurers classify the equipment as a luxury item and therefore will not authorize payment for such

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<sup>32</sup>Pittsburgh Task Force Hearing, June 28, 1994.

<sup>33</sup>Id.

equipment.<sup>34</sup> In addition, testimony revealed that medical equipment fraud may occur in connection with the sale of such items.<sup>35</sup> One witness explained how such fraud was attempted in connection with the sale of a medical communication device. She stated:

Several months ago, a gentleman and his sister began to search for a communication system. In the course of searching for a device, they were contacted by a person who claimed he represented a company out of Milwaukee.

The salesman came to their house to demonstrate the system. At the time, they were shown the system, which consisted of a lap top computer, a speech synthesizer, a voice synthesizer and the needed software. The consumers were told that the system would cost \$7,000 and the software would cost an additional \$2,000. When the consumer began to ask questions about the system and the costs, the salesman became very nervous and would not come back in the house when they asked him to. Because the consumer was computer literate, he was able to recognize that the offer was not good. Thereafter, he contacted the developer of the equipment and learned that the

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<sup>34</sup>Id.

<sup>35</sup>Id.

software cost only \$199, the synthesizer cost was \$700 and the complete package only totaled \$2,200.<sup>36</sup>

The consumer later discovered that the salesman never received permission from the company to sell any portion of the communications program.<sup>37</sup>

Organizations such as the Amyotrophic Lateral Sclerosis Association (ALS)<sup>38</sup> and programs such as the joint program between ALS and Three Rivers Center of Independent Living<sup>39</sup> can ease the burden that families are already facing when dealing with an ill loved one. The Task Force learned that ALS has a reserve of durable medical goods which they donate to families with the stipulation that the items will be returned when the family no longer needs them.<sup>40</sup> Ms. Rita Patchan, President of the Western Pennsylvania Chapter of ALS explained to the Task Force in her testimony that an even larger reserve of these durable medical goods is being developed through the Pre-Owned Equipment Coalition. This organization consists of 17 nonprofit equipment

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<sup>36</sup>Id.

<sup>37</sup>Id.

<sup>38</sup>Amyotrophic Lateral Aclerosis Association, 1323 Forbes Avenue, Suite 2001, Pittsburgh, PA 15219.

<sup>39</sup>Three Rivers Center for Independent Living, 7110 Penn Avenue, Pittsburgh, PA 15208.

<sup>40</sup>Pittsburgh Task Force Hearing, June 28, 1994.

suppliers and Ms. Patchan explained that an organization such as this is needed in other parts of Pennsylvania to serve the needs of older Pennsylvanians.<sup>41</sup>

Ms. Patchan explained that another program of the ALS Association is the communication device loan program. Lap top computers that are equipped with voice synthesizers and special switches are available for patients who have lost the ability to communicate through written or spoken form.<sup>42</sup>

Many consumers can protect themselves from medical equipment fraud that may be associated with the sale of these goods by utilizing programs such as the ones sponsored by ALS for the leasing of durable medical goods. With such a program there is no risk that the consumer will be a victim of fraud related to the purchase of durable medical goods where there is no charge, or a minimal charge. The consumer is simply borrowing the needed medical equipment from one of the reserves for the time period that it is needed. Through such a loan program the consumer may be saved the hassle and costs associated with the purchase of such equipment.

Ms. Patchan explained that consumers throughout Pennsylvania may utilize this program which is centered in Western Pennsylvania. If there is a need for

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<sup>41</sup>Id.

<sup>42</sup>Id.

durable medical equipment anywhere in the state, the programs will try to accommodate the needs of those consumers.<sup>43</sup>

In addition, Ms. Patchan explained that health care professionals refer consumers to ALS for the durable medical goods loan program; however, most of their referrals come from other non-profit agencies. The ALS agency is trying to increase its inventory of durable medical goods and its availability to consumers. This can only happen through greater publication and education directed toward consumers.

#### RECOMMENDATION

Education Initiatives: The Task Force has determined from the testimony concerning the difficulty of assuring insurance coverage and the testimony concerning potential for deceptive sales practices in this area that loan programs for durable medical goods are an initiative worthy of supporting. **Accordingly, the Task Force recommends that public and private organizations which serve older consumers be encouraged to promote the formation of, donations to, and the use of durable medical goods loan programs established in accordance with charities laws and distribute information concerning such**

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<sup>43</sup>Id.



**programs to hospitals, rehabilitation centers, doctors offices and other organizations which service older citizens.**

**Also, the Task Force recommends that improved communication between states regarding fraudulent activities and perpetrators be encouraged to help prevent fraud associated with durable medical goods and other necessary purchases for older consumers. Because modern technology permits the sharing of information between agencies, this technology can also be used to prevent people from moving around the country repeating the same scam.**

## LONG TERM CARE INSURANCE

### BACKGROUND

Older Pennsylvanians, like older citizens across the nation, are being pinched by the pressures of the rising cost of medical care. These pressures have been reflected in recent state and federal health care debates and discussions concerning Medicare spending and private long term care insurance. Many insurance companies, seeing an emerging market, have begun to aggressively market private long term care insurance as a supplement to Medicare.

While the Task Force commends the insurance industry for responding to a genuine need of older consumers by providing insurance that covers the cost for extra medical care, testimony presented to the Task Force suggests that aggressive marketing and sales of such policies has created a particularly dangerous situation for many older consumers. Testimony reveals that consumers often require assistance in determining which policies, if any, affordably meet their needs, both for health care coverage and for costs.

### Limitations of Long Term Care Insurance

Testimony presented to the Task Force indicates that long term care insurance, as it is today, simply isn't for everybody.<sup>44</sup> One witness suggested that it is for those who can afford to pay the premiums for many years and who have substantial assets to protect.

Tim Coughlin, Executive Director of the Erie County Community Health Care Services, testified that there are poorly trained and sometimes unscrupulous agents who are seriously misleading buyers about the terms, benefits and limitations of their coverage. He stated:

One insurance company we have knowledge of has taught its agents, as part of its uniform sales plan, that there is a policy for every senior, and the agency's job is simply to match the policies they have available to the particular economic circumstances of that senior. That just simply isn't true.

Even some well-meaning companies, which are honorably trying to respond to the market, are still learning and are issuing policies with significant shortcomings. There are tricky provisions in the ways some of the policies are written, such as: the potential for unaffordable large rate increases; uncertainty about

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<sup>44</sup>Erie Task Force Hearing, March 8, 1994.

whether claims will be paid; policies which provide nursing home coverage but which can disqualify benefits to a senior because he or she is not in an eligible facility; and, waivers of premiums are offered but only after waiting periods and, in many cases, not provided at all when receiving home care benefits.<sup>45</sup>

According to Coughlin, forty-three percent of all Americans who turned sixty-five last year will eventually end up in a long term care facility for either a short or extended stay and twenty-five percent of that group will stay at least one year in a long term care facility, which will cost \$30,000 to \$40,000.<sup>46</sup>

For older Pennsylvanians to make their way through the maze of long term health care insurance options, their policies must be presented in a clear and concise manner and include a clear explanation of the terms, benefits and limitations of the coverages.

## RECOMMENDATIONS

Education Initiatives: Responding to this need of assisting older Pennsylvanians in understanding long term care options, the Pennsylvania Department of Aging has already established a program called "Apprise," which utilizes some 600 volunteers who serve as counsellors for older Pennsylvanians

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<sup>45</sup>Id.

<sup>46</sup>Id.

on matters of long term health care insurance. These counsellors have gone through extensive training and explain programs such as Medicare, Medigap and private insurance policies to older consumers.

**The Task Force applauds the actions of the state Department of Aging in developing the "Apprise" program and recommends its continued support and expansion as a viable method of assisting older consumers in making the difficult choices concerning long term care insurance policies. Further, the Task Force recommends that this program be promoted and encouraged by insurance companies and agencies serving older citizens as a necessary "second opinion." This program should be publicized by all available means throughout Pennsylvania.**

Regulatory Initiative: **Recognizing the complexity of long term care insurance policies and the emergence of such options as an increasingly necessary and expensive necessity for some older consumers, the Task Force recommends that the Legislature and state Department of Insurance consider standardizing policies for long term care insurance.**

## PRE-NEED FUNERALS AND BURIALS

### BACKGROUND

Pre-need funeral and burial purchases are purchases for such services before they are required. At least seven million Americans have already paid for their funerals and burials, compared with about 22,000 in 1960.<sup>47</sup> The tremendous growth in this industry has also attracted some persons who use deceptive sales and telemarketing practices. These practices threaten to leave older Pennsylvanians and their families without the complete burial and funeral packages they thought would be there, fully paid, at a critical and emotional time in their lives.

The Task Force is particularly interested in the growing pre-need industry because it primarily involves older consumers. Based upon a survey of some of the largest pre-need providers, the American Association of Retired Persons found the average purchaser's age is more than 70 years.<sup>48</sup>

The Task Force was informed that the Bureau of Consumer Protection receives approximately 100 complaints a year about funeral and burial services.

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<sup>47</sup>Statement of Renardo L. Hicks, Director of the Public Protection Division of the Office of Attorney General, before the House Consumer Affairs Committee, February 15, 1994.

<sup>48</sup>Statement of Barton A. Fields, AARP State Legislative Committee before the House Consumer Affairs Committee, February 15, 1994.

Renardo L. Hicks, Director of the Public Protection Division of the Office of Attorney General, discussed complaints regarding pre-need funeral and burial services filed by older consumers:

An 83-year-old woman who is legally blind complained that she was solicited at home by a sales person who stayed in her home for about five hours until finally getting her to sign a contract and surrender a \$100 deposit.

She said later that before that visit she had given no thought about pre-planning a funeral.

Although she signed a form, the woman complained that the form was not read to her and that she had no idea precisely what it was. Several days later, when her son came to visit, it was discovered that she had committed herself to a casket, vault and funeral services totalling \$1,958.

The woman complained that despite several hours spent with the salesperson and the fact that she provided lunch, she was never informed of the total cost of what she had purchased.

In another case, a man complained that he had purchased a pre-need plan for himself and his wife back in 1977, and in the ensuing years had made complete payments totalling nearly \$3,000.

Nearly 16 years later, when the man sought to bury his wife, he was told by a representative of a memorial park that he would be required to pay additional "opening and closing" fees in order to bury his wife.

The man complained to the Bureau of Consumer Protection two days before the scheduled burial of his wife. The critical feature in this case was that since there were no additional fees included in the contract, there should have been no additional payments.<sup>49</sup>

In addition to the individual consumer problems presented in complaints, the Task Force was also provided with testimony concerning questionable practices in the industry. Barton Fields, State Legislative Director of AARP, told the Task Force that one of the biggest pre-need scandals in the nation occurred in Erie, Pennsylvania. In Erie, nearly 2,000 Pennsylvania consumers almost lost their pre-need funeral funds in a case involving Mechem Financial Services, Inc. In that case, 97 Pennsylvania funeral directors ignored the law requiring that pre-need funeral funds be deposited in a bank. Instead, \$4.5 million in pre-need funds were invested with Mechem.

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<sup>49</sup>Statement of Renardo L. Hicks, Director of the Public Protection Division of the Office of Attorney General, before the House Consumer Affairs Committee, February 15, 1994.



Subsequently, Mechem filed bankruptcy, and the Office of Attorney General intervened in those proceedings and discovered that Mechem had squandered the funds on things like gold coins. The funeral directors had been enticed by promises of large returns on their investments.<sup>50</sup>

In response to the "Mechem mess," the State Funeral Board negotiated decrees with each of the funeral directors to insure that consumers will eventually receive the services they contracted for.<sup>51</sup>

### RECOMMENDATION

Legislative Initiative: Last year, the Pennsylvania Legislative Budget and Finance Committee found current regulation of the pre-need business to be inadequate. "No state agency has comprehensive information on the total number, dollar value and status of pre-need contracts currently in effect in Pennsylvania," the Committee said.<sup>52</sup>

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<sup>50</sup>Statement of Barton A. Fields, AARP State Legislative Committee, before the House Consumer Affairs Committee, February 15, 1994.

<sup>51</sup>Id.

<sup>52</sup>Performance Audit, State Board of Funeral Directors, (Volume II), "An Evaluation of Pre-Need Funeral Regulation in Pennsylvania", Legislative Budget and Finance Committee (January, 1994).

At the present time, there is no single set of rules or no single governmental body which regulates pre-need funeral and burial contracts in Pennsylvania.

Accordingly, the Task Force recommends the adoption of comprehensive legislation which provides a single set of rules for all providers of pre-need services and establishes clear standards for enforcement of deceptive marketing practices.

## HEARING AIDS

### BACKGROUND

More than 21 million Americans suffer from some type of hearing impairment.<sup>53</sup> The Federal Trade Commission cautions that hearing aids cannot work for everyone; in fact, only 22 percent of those with a hearing loss should wear a hearing aid.<sup>54</sup>

A hearing aid is an electronic device that picks up sound waves with a tiny microphone. The microphone makes weak sounds louder and sends them to the ear with a tiny speaker. Because a hearing aid is an amplification device, a person must have at least some hearing to benefit from its use. In addition, because hearing loss has a variety of patterns and degrees of severity and affects people in various ways, no single hearing aid is right for everyone.<sup>55</sup>

### Deceptive Marketing and Business Practices

The Task Force was provided with information which suggests that the marketing and business practices of some hearing aid companies make it difficult for many older consumers to decide whether they need a hearing aid and which

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<sup>53</sup>"Facts For Consumers", Federal Trade Commission (May, 1991).

<sup>54</sup>Id.

<sup>55</sup>Id.

type of hearing aid to purchase. In one complaint filed with the Bureau of Consumer Protection, an older consumer complained that she was pressured into accepting a hearing aid that she did not request, did not need for hearing and was unable to return.<sup>56</sup> The consumer was originally approached in a mall and offered a free hearing test which allegedly showed hearing loss. She explains what happened next, as follows:

An apprentice fitter came to my home to sell me hearing aids. One of the first things he did was have me sign a waiver concerning a physical examination that was required before I purchased a hearing aid. I was a little concerned about this but I did it anyway. I was honest with him and told him I couldn't afford them. He helped me apply for a loan with Household Finance to pay for them. Later, I received a letter telling me I was turned down for the loan.

I then called the gentleman and told him I could not buy the aids because I could not afford them. He told me not to worry about that and asked for my social security number. It turned out that the owner of the company cosigned the loan application so that they

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<sup>56</sup>Office of Attorney General, Bureau of Consumer Protection, consumer complaint files.

could make the sale. I gave them no approval, verbal or otherwise, to cosign the loan application.

Now, I have these things and I can't wear them because they make my ears sore and they also whistle. I am also required to pay \$80 per month that I cannot afford. I am especially upset because I can't wear the hearing aids and I cannot afford to continue to pay for them. When I tried to take them back, the owner of the company got very nasty and insisted that I take them back home with me.

When I spoke with him last, he said he can't help me because he is bankrupt. I still owe \$1,996.64 on these hearing aids.<sup>57</sup>

In another complaint presented to the Task Force by the Bureau of Consumer Protection, a woman complained that after more than a year and twenty-three hundred dollars (\$2,300), her husband could not get a satisfactory set of hearing aids. She stated:

We paid \$2,300 for the latest up-to-date brand hearing aid, but when we received them, my husband could not wear them. Although we requested a refund, the dealer kept us running back and forth for 'adjustments.'

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<sup>57</sup>Id.

Much to our surprise, we learned that somewhere along that time, off-brand hearing aids were substituted for our name brands. We also found out that these hearing aids were actually someone else's rejects. The owner had sent them back to the factory under the former owner's name to be recast for my husband. No wonder they weren't right. Isn't that illegal?

What are a couple of retired people to do when they are given such a runaround?<sup>58</sup>

The Office of Attorney General's Bureau of Consumer Protection is currently working to resolve the complaints of both of the above-mentioned consumers. While there are many reputable and conscientious hearing aid dealers doing business in Pennsylvania, the Task Force is concerned that older consumers are unfairly subjected to high pressure sales tactics when they may not actually need a hearing aid device. Further, the complaints reported by older consumers to the Bureau of Consumer Protection cover a broad range of topics including (a) the failure of the hearing aid to perform as promised or advertised; (b) the failure of the hearing aid seller to promptly issue refunds; and (c) a practice of continually having older consumers waive the pre-purchase requirement to obtain a medical examination.

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<sup>58</sup>Id.

The Food and Drug Administration ("FDA") initially dealt with this problem in the 1970's. In an effort to curtail these on-the-spot sales tactics, the FDA promulgated a rule in 1977 requiring that persons first receive an independent medical evaluation before buying a hearing aid, and that the device itself contain specific information on its label.<sup>59</sup> However, the buyer could waive the medical evaluation. The use of this waiver was intended to be rare, and not the norm. The preamble to the 1977 regulation states, "Although the Commissioner strongly recommends that all prospective hearing aid users obtain a medical evaluation of hearing loss before purchasing a hearing aid, he recognizes that a waiver should be allowed for those who have religious or personal beliefs against a medical evaluation and for the rare circumstances where the individual would have great difficulty in obtaining a medical evaluation due to the lack of a physician in the area."<sup>60</sup>

Instead of its intended use, it appears the waiver is now the norm in the industry. In fact, an FDA study in Vermont in 1991 indicated that more than

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<sup>59</sup>21 C.F.R. §§801.420 - 801.421.

<sup>60</sup>42 Fed. Reg. 9293 (emphasis added).

seventy percent of hearing aid purchasers did not have a medical examination prior to purchasing a hearing aid.<sup>61</sup>

In 1976, Pennsylvania adopted the Hearing Aid Sales Registration Act.<sup>62</sup> Sections of this Pennsylvania law are specifically exempted from federal law<sup>63</sup>.

Sections of the Pennsylvania law that are exempt from pre-emption include a specific medical waiver that, in Pennsylvania, must be included in every contract used in a hearing aid sale.<sup>64</sup> Another section of the Pennsylvania law mandates a specific advisory that is to be quoted on a receipt issued to a purchaser.<sup>65</sup> The waiver and advisory required under the Pennsylvania statute are different from that mandated by the FDA.

Since most hearing aid sales companies operating in Pennsylvania receive their contracts from a national franchiser, chances are the warnings placed on the standard contracts used in Pennsylvania provide the FDA warning and not the specific Pennsylvania warnings. Since the Pennsylvania Legislature has

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<sup>61</sup>FDA Advance Notice of Rulemaking, 59 Fed. Reg. 5965, (November 10, 1993).

<sup>62</sup>35 P.S. §§6700-101-6700-802.

<sup>63</sup>16 C.F.R. §808.88.

<sup>64</sup>35 P.S. § 6700-403.

<sup>65</sup>35 P.S. §6700-504(8).



specifically determined to provide additional information to hearing aid purchasers in the advisory and medical examination waivers, persons engaged in hearing aid sales in Pennsylvania are required to provide such information.

### RECOMMENDATIONS

Regulatory Initiative: In an effort to better protect hearing aid purchasers from deceptive marketing practices and curb abuse of waivers, the Task Force supports and encourages the current efforts of the FDA to examine and consider creating rules which promise a new framework for hearing aid sales.

Enforcement Initiatives: In light of the specific requirements for waivers and advisory notices in the Pennsylvania law, the Task Force recommends that the Pennsylvania Attorney General take appropriate action to ensure that older Pennsylvanians who purchase hearing aids are receiving all the information mandated by the Legislature in the Pennsylvania Hearing Aid Sales Registration Act.

## **ABUSE IN LONG-TERM CARE FACILITIES AND BOARDING HOMES**

### **BACKGROUND**

Physical abuse of older citizens is not usually considered a consumer matter. However, because it impacts the lives of older consumers, many members of the Task Force insisted upon reviewing this matter during the hearings. As a result, the Task Force obtained invaluable information from a diverse group of experts and advocates of older citizens. The testimony presented an emotionally wrenching insight into the lonely lives of abuse victims who reside in licensed and unlicensed long-term care facilities and in their own homes.

While the concept of "abuse" may generally conjure up images of physical and emotional abuse directed toward older individuals, this section of the Report does not address those issues. What follows is a discussion of abuse which results from neglect, inadequate care, or in some cases no care, being provided to older persons in long-term care facilities and boarding Homes.

#### **Long-Term Care Facilities**

The Task Force heard startling testimony about a precedent setting criminal prosecution brought by the Pennsylvania Attorney General in which a long-term care facility pleaded guilty to two counts of involuntary manslaughter.

Deputy Attorney General Ronald Costen, who prosecuted the case, described what an undercover agent working in the facility discovered:

We discovered that there was inadequate staffing, that residents were insufficiently cared for, that many skilled-care residents who were bedfed and unable to care for themselves did not receive adequate food or water and that inadequate nursing services were provided to prevent the development of bed sores.

The undercover agent discovered numerous persons with serious large bed sores. At least 10 patients were found to have massive ulcerations on their bodies.

Quite frequently, residents in these facilities have no one to advocate for them. Quite frequently, their families are disabled or ill or not available to assist them. These elderly and frail persons are left on their own. If the facility does not assume the responsibility to adequately care for them, there's no one, quite frequently, to advocate for them.<sup>66</sup>

While the Task Force recognizes that the vast majority of long term care facilities do an excellent job and obey the law, those who violate the law can literally destroy or take the lives of helpless and dependent people in their care.

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<sup>66</sup>Philadelphia Task Force Hearing, January 12, 1994.

While the above case is only one severe example of the type of abuse and neglect occurring in some long-term care facilities which was presented to the Task Force, it underscores the importance of establishing concrete proposals to prevent this conduct from happening again.

As part of a plea agreement, the facility in the above case paid a fine and \$100,000 in costs which was used to establish an interagency task force to investigate cases of patient abuse and neglect in nursing homes in southeastern Pennsylvania. The interagency task force has provided money to the Pennsylvania Department of Health to conduct unannounced inspections of the nursing home during odd hours, pay for an ombudsman to work full-time on problems relating to care in nursing homes in southeastern Pennsylvania and exchange information to better identify problems and coordinate investigations.<sup>67</sup>

In part because of the precedent established by the above case, under existing Pennsylvania cases, corporations and individuals can be criminally prosecuted if they enter into a contract to provide care for someone, then allow that person to suffer from neglect.<sup>68</sup> Any initiative which is intended to assist

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<sup>67</sup>Id.

<sup>68</sup>Id.

in the prevention of this serious problem must recognize that many older persons who are neglected or abused in long-term care facilities are alone or without family and friends. Arguably, the fact that no one is visiting or calling to monitor the status of the older person contributes to the likelihood that they may become a victim of neglect or abuse. Conversely, testimony before the Task Force indicates that a friendly visitor to a nursing home can do more than spread cheer, they can prevent abuse by their presence.<sup>69</sup>

### Boarding Homes

Testimony presented at the Philadelphia hearing by advocates of boarding home residents described an industry in crisis. Greg Tisdale, representing the Philadelphia Coalition for Boarding Home Residents, testified concerning the exploitation of residents for money, property and sometimes both, as follows:

We have witnessed homes without plumbing or heat, where residents were left to fend for themselves while the operator lived out of state.

We have witnessed situations where sanitary conditions can best be described as inhumane.

In one case, pending prosecution by the U.S. Attorney's Office, it is alleged that one operator has

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<sup>69</sup>Id.

been able to exploit his residents for over a million dollars in cash and property.<sup>70</sup>

Boarding homes in Pennsylvania are licensed and unlicensed private homes and small institutions. While the boarding home is usually thought of as a low-cost alternative to the conventional nursing home facility, boarding homes are generally not authorized to provide personal care services.<sup>71</sup> A principal concern of the Task Force is that although boarding homes are generally not authorized to provide personal care, many residents may need the same level of care as those in a nursing home setting. As a result, while some of the boarding home residents may receive some level of care, there are no clear standards and it is completely unregulated.<sup>72</sup> This results in no agency taking responsibility for reviewing or evaluating the quality of care provided to older citizens who are residents of boarding homes.

### RECOMMENDATIONS

Legislative Initiatives: In order to establish a clear statewide precedent and to expand the protection of the care-dependent consumer from abuse, the Task Force recommends and supports legislation which would

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<sup>70</sup>Id.

<sup>71</sup>Id.

<sup>72</sup>Id.

**criminalize the failure to provide adequate care to individuals who are care-dependent.**

**Further, the Task Force recommends that the Pennsylvania General Assembly consider adopting comprehensive legislation which provides clear standards for the care of boarding home residents.**

## **APPENDIX A**

### **SUMMARY OF TASK FORCE RECOMMENDATIONS**

#### **HOME IMPROVEMENTS**

A common theme at all Task Force hearings was the need for increased standards and accountability for home improvement contractors. The Task Force recommends that legislation requiring licensing of home improvement contractors, building codes for home improvements and criminal and civil sanctions for fraudulent business practices conducted by home improvement contractors be considered by the Pennsylvania General Assembly.

The Task Force also recommends that the Office of Attorney General, AARP, Area Offices on Aging, statewide associations and other organizations who routinely provide services to older consumers create and distribute brochures, public service announcements and other materials which discuss ways to prevent fraud when selecting a home improvement contractor, in terms which are easy to understand.

#### **TELEMARKETING FRAUD**

The Task Force recommends that the General Assembly consider enacting legislation which would prohibit fraudulent and deceptive telemarketing practices, requiring all telemarketers soliciting Pennsylvanians to register and criminalize certain types of telemarketing fraud.



The Task Force also recommends that the General Assembly consider granting a three-day right to cancel any purchases arising out of telemarketing activity.

Additionally, the Task Force recommends that existing state, federal and private agencies which serve older citizens work more closely and refocus their education efforts in this area to include relatives, friends and care givers of telemarketing fraud victims.

Further, the Task Force recommends and encourages the formation of "TRIADS" in all 67 counties throughout Pennsylvania. A TRIAD is a collaboration of AARP, Chiefs of Police and County Sheriffs dedicated to developing education and law enforcement initiatives to prevent the victimization of older persons.

#### **DURABLE MEDICAL GOODS**

The Task Force recommends that public and private organizations which serve older consumers begin to promote the formation of, donations to and the use of durable medical goods loan programs and distribute information concerning such programs to hospitals, doctors offices, and organizations which service older citizens, in accordance with state charity laws.

#### **LONG TERM CARE INSURANCE**

Recognizing the complexity of long term care insurance policies and the emergence of such options as an increasingly necessary and expensive necessity for

some older consumers, the Task Force recommends that the state Department of Insurance consider standardizing policies for long term care insurance.

Responding to a need to assist older Pennsylvanians in understanding long term care options, the state Department of Aging has already established a program called "Apprise," which utilizes some 600 volunteers who serve as counsellors for older Pennsylvanians on matters of long term health care insurance. These counsellors have gone through extensive training and explain programs such as Medicare, Medigap and private insurance policies to older consumers.

The Task Force applauds the actions of the state Department of Aging in developing the "Apprise" program and recommends its continued support and expansion as a viable method of assisting older consumers in making the difficult choices concerning long term care insurance policies. Further, the Task Force recommends that this program be promoted and encouraged by insurance companies and agencies serving older citizens as a necessary "second opinion."

#### **PRE-NEED FUNERALS AND BURIALS**

The Task Force recommends the adoption of comprehensive legislation which provides a single set of rules for all providers of pre-need services and establishes clear standards for enforcement of deceptive marketing practices.

## **HEARING AIDS**

In light of the specific requirements for waivers of medical examinations and the provision of advisory notices in Pennsylvania law, the Task Force recommends that the Pennsylvania Attorney General take appropriate action to ensure that hearing aid purchasers receive all of the information mandated by the Legislature in the Pennsylvania Hearing Aid Sales Registration Act.

## **ABUSE IN LONG-TERM CARE FACILITIES AND BOARDING HOMES**

In order to establish a clear statewide precedent and to expand the protection of the care-dependent consumer from abuse, the Task Force recommends and supports legislation which would criminalize the failure to provide adequate care to individuals who are care-dependent.

Further, the Task Force recommends that the Pennsylvania General Assembly consider adopting comprehensive legislation which provides clear standards for the care of boarding home residents.

## **Appendix B**

### **Office of Attorney General Task Force for the Protection of Older Pennsylvanians**

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## **Appendix C**

### **Resource Guide**

<b>Aging, Pennsylvania Department of</b> 400 Market Street Harrisburg, PA 17101-2301	<b>717-783-3126</b>
<b>Airline Service Complaints</b> US Department of Transportation	<b>202-366-2220</b>
<b>American Association of Retired Persons</b> 225 Market Street Suite 502 Harrisburg, PA 17101	<b>717-238-2277</b>
<b>Auto Safety -- Recalls</b> National Highway Safety Admini.	<b>800-424-9393</b>
<b>Banking, Pennsylvania Department of</b> Consumer Complaint Hotline 333 Market Street Harrisburg, PA 17101-2290	<b>800-722-2657</b>
<b>Bankruptcy Court (Federal):</b>	
Pittsburgh	412-644-4558
Harrisburg	717-782-2260
Wilkesbarre	717-826-6450
Reading	610-320-5903
Philadelphia	215-597-1640

**Better Business Bureaus:**

Allentown	610-866-8780
Lancaster	717-291-1151
Philadelphia	215-448-6114
Pittsburgh	412-456-2700
Scranton	717-342-9129

**Cable:**

Federal Information Line	202-632-0004
Pennsylvania Cable TV Association	717-234-2190

**Charitable Organizations**

PA Department of State	800-732-0999
PA Office of Attorney General	717-783-2853
14th Floor Strawberry Square	
Harrisburg, PA 17120	

**Consumer Advocate****717-783-5048**

Utility Consumer Problems  
PA Office of Attorney General  
14th Floor Strawberry Square  
Harrisburg, PA 17120

**Consumer Credit Counseling Service****800-388-2227****Consumer Product Safety Commission****800-638-2772****Corporation Bureau****717-787-1057**

Pa. Department of State  
308 North Office Building  
Harrisburg, PA 17120-0029

**Employment:**

Green Thumb  
Elizabeth Fry, Director  
P.O. Box 3553  
Shiremanstown, PA 17011

**717-731-8350**

**Environmental Protection Agency**  
(Federal)

**800-438-2474**

**Federal Communications Commission**  
(General Information)  
1919 M. Street, N.W. Room 254  
Washington, D.C. 20554

**202-632-7000**

**Federal Government Information**

**800-347-1997**

**Federal Trade Commission**

National Advertising Scams

**800-347-1997**

**Governor's Action Center**

**800-932-0784**

**Housing:**

Tenants Action Group of Philadelphia  
Williams-Barlowlynn  
21 S. 12th Street, 12th Floor  
Philadelphia, PA 19107

PA Association of Non-Profit  
Homes for the Aging  
Ronald Barth, Director  
Executive Park West, Suite 409  
4720 Old Gettysburg Road  
Mechanicsburg, PA 17055

**717-763-5724**



**Human Relations Commission****717-787-4410**

General Information  
Suite 300, 101 South Second Street  
Harrisburg, PA 17101

**Information & Referral:**

National Council of Senior Citizens  
Regional Development Corp.  
18 South Centre Street  
Pottsville, PA 17901

**717-628-5215**

PA Association of RSVP Directors  
Margaret Mattocks, Director  
956 S. Main Street  
Meadville, PA 16335

Action Alliance for Senior Citizens  
Robert Wendelgass  
1211 Chestnut Street, Room 810  
Philadelphia, PA 19107

Coalition of Advocates of the Rights  
of the Infirm Elderly  
1315 Walnut Street  
Philadelphia, PA 19107

**Insurance, Pa. Department of****717-787-2317**

Complaints and Information  
13th Floor Strawberry Square  
Harrisburg, PA 17120

**Insurance Consumer Hotline****800-942-4242**

**Mail Fraud and Postal Crimes** 800-654-8896  
US Postal Service  
\*\* first contact your local Post Office  
for help in the same manner

**Medicare** 800-382-1274

**Motor Vehicies, Bureau of** 800-932-4600  
Registration and Title Information  
PA Department of Transportation

**National Credit Union Administration** 703-518-6300  
1775 Duke Street  
Alexandria, VA 22314-3428

**Pennsylvania Securities Commission** 717-787-8061  
2nd Floor, Eastgate  
1010 North 7th Street  
Harrisburg, PA 17102-1410

**Public Utility Commission** 800-782-1110  
Consumer Complaints  
North Office Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Revenue, Pennsylvania Department of** 717-787-8201  
General Tax Information  
Strawberry Square  
Harrisburg, PA 17128

**Senior Citizens Legal Hotline (60+)** 800-262-5297

**Small Business Administration** 717-782-3840  
100 Chestnut Street, Suite 309  
Harrisburg, PA 17101

**US Attorney's Office**

Eastern Region	215-597-2556
Middle Region	717-782-2260
Western Region	412-644-3500

<b>Welfare, Pennsylvania Department of</b>	
Income Maintenance Hotline	800-692-7462
Welfare Fraud Tip Line	800-932-0582

### **Pennsylvania's Area Agencies on Aging**

Adams County Office for Aging, Inc. 220 Baltimore Street Gettysburg, PA 17325	<b>717-334-9296</b>
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Dept. of Aging Co. of Allegheny 441 Smithfield Street Building Suite 300 Pittsburgh, PA 15222-2219	<b>412-350-4234</b>
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Armstrong County AAA 125 Queen Street Kittanning, PA 16201	<b>412-548-3290 800-368-1066</b>
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Beaver County Office on Aging Stone Point Landing, Suite 202 500 Market Street, W. Bridgewater Beaver, PA 15009	<b>412-728-7707</b>
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Berks County AAA County Services Center 633 Court Street Reading, PA 19601-4303	<b>610-478-6500</b>
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Blair Senior Services, Inc. 1320 12th Avenue	
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Altoona, PA 16601-3308

**814-946-1235**

Bucks County AAA  
30 E. Oakland Avenue  
Doylestown, PA 18901

**215-348-0510**

Butler County AAA  
111 Sunnyview Circle, Suite 101  
Butler, PA 16001-3547

**412-282-3008**

Cambria County AAA  
P.O. Box 88  
Ebensburg, PA 15931

**814-472-5580**

Office of Human Services, Inc.  
Cameron/Elk/McKean  
P.O. Box A  
Ridgway, PA 15853

**814-776-2191**  
**800-672-7145**

Carbon County AAA  
1121 North Street, P.O. Box 251  
Jim Thorpe, PA 18229-1488

**717-325-2726**  
**800-441-1315**

Centre County Office of Aging  
Willowbank Office Building  
420 Holmes Street  
Bellefonte, PA 16823-1488

**814-355-6716**

Department of Aging Services  
Gov't Services Center (Chester)  
601 Westtown Rd., Suite 320  
West Chester, PA 19382-4525

**610-344-6350**

Clarion County AAA  
12 Grant Street  
Clarion, PA 16214

**814-226-4640**

Clearfield County AAA 1013 N. Front Street P.O. Box 550 Clearfield, PA 16830	<b>814-765-2696</b>
Columbia/Mountour AAA 15 Perry Avenue Bloomsburg, PA 17815	<b>717-784-9272</b>
Active Aging, Inc. Crawford County 1034 Park Avenue Meadville, PA 16335	<b>814-336-1792</b>
Cumberland County Office of Aging Human Services Building 16 W. High Street Carlisle, PA 17013-2922	<b>717-240-6110</b>
Dauphin County AAA 25 S. Front Street Harrisburg, PA 17101-2025	<b>717-255-2790</b>
County of Delaware Services of the Aging 20 S. 69th St., 4th Flr. Upper Darby, PA 19082	<b>610-713-2100</b> <b>610-713-2121</b>
Greater Erie Community Action Com. Erie County AAA 18 W. Ninth Street Erie, PA 16501	<b>814-459-4581</b>
Southwestern PA AAA, Inc. Fayette/Greene/Washington Eastgate 8 Monessen, PA 15062	<b>412-684-9000</b> <b>800-342-8990</b>

Franklin County AAA  
425 Franklin Farm Lane  
Chambersburg, PA 17201-3098

**717-263-2153**

Huntingdon/Bedford/Fulton AAA  
240 Wood Street, P.O. Box 46  
Bedford, PA 15522

**814-623-8148**

Aging Services, Inc.  
Indiana County  
1005 Oak Street, P.O. Box 519  
Indiana, PA 15701-0519

**412-349-4500**

Jefferson County AAA  
Jefferson County Service Center  
R.D. #5  
Brookville, PA 15825

**814-849-3096**

Lackawanna County AAA  
Lackawanna County Office Bldg.  
200 Adams Avenue  
Scranton, PA 18503

**717-963-6707**

Lancaster County Office of Aging  
50 N. Duke Street, P.O. Box 83480  
Lancaster, PA 17608-3480

**717-299-7979**

Lawrence County AAA  
Suite 201, Olde P.O. Complex  
15 W. Washington Street  
New Castle, PA 16101-3907 **412-658-5661**

Lebanon County AAA  
710 Maple Street  
Rm 209 - Senior Centers  
Lebanon, PA 17046 **717-273-9262**

Lehigh County AAA  
930 Hamilton Street  
P.O. Box 1548  
Allentown, PA 18105-1548 **610-820-3034**  
**610-820-3247**

Luzerne/Wyoming Counties Bureau  
for Aging  
111 N. Pennsylvania Blvd.  
Wilkes-Barre, PA 18701 **717-822-1158**

Lycoming/Clinton Bi-County  
Office of Aging  
P.O. Box 770, 352 E. Water Street  
Lock Haven, PA 17745 **717-748-2906**  
**800-222-2019**

Mercer County AAA, Inc.  
404 Mercer County Courthouse  
Mercer, PA 16137 **412-662-6222**

Mifflin/Juniata AAA, Inc.  
1 Buena Vista Circle  
P.O. Box 750  
Lewistown, PA 17044-0750 **717-242-0315**

Monroe County AAA  
62 Analomink Street

P.O. Box 384  
East Stroudsburg, PA 18301

**717-420-3735**

Montgomery County Aging and  
Adult Service  
Montgomery County Courthouse  
Swede & Airy Streets  
Norristown, PA 19404-0311

**610-278-3601**

Northampton County AAA  
Governor Wolf Building  
45 N. Second Street  
Easton, PA 18042-3637

**610-559-3245  
800-322-9269**

Northumberland County AAA  
RD #1, Box 943  
Coal Township, PA 17866

**717-644-4545  
800-479-2626**

Perry County AAA  
Center Square  
P.O. Box 725  
New Bloomfield, PA 17068

**717-582-2131**

Philadelphia Corp. for Aging  
642 N. Broad Street  
Philadelphia, PA 19130-3409

**215-765-9000**

Pike County AAA  
10 Buist Road, Suite 404  
Milford, PA 18337

**717-296-7813**



Potter County AAA  
227 N. Main Street  
P.O. Box 71  
Coudersport, PA 16915-0071 **814-274-7193**

Schuylkill County AAA  
112 S. Claude A. Lord Blvd.  
Pottsville, PA 17901-3696 **717-622-3103**

AAA of Somerset County  
1338 S. Edgewood Avenue  
P.O. Box 1267  
Somerset, PA 15501 **814-443-2681**  
**800-452-0825**

AAA for Tioga/Bradford/Susquehanna/  
Sullivan Counties  
220 Main Street  
Towanda, PA 18848 **717-265-6121**

Union/Snyder County AAA  
116 N. Second Street  
Lewisburg, PA 17837 **717-524-2100**

Venango County AAA  
1283 Liberty Street  
P.O. Box 1130  
Franklin, PA 16323 **814-432-9711**

Experience Inc. - AAA  
Warren/Forest  
905 4th Avenue, P.O. Box 886  
Warren, PA 16365 **814-726-1700**  
**800-281-6545**

Wayne County AAA  
32 Tenth Street  
Honesdale, PA 18431

**717-253-4262**

AAA of Westmoreland County  
2482 S. Grande Blvd.  
Greensburg, PA 15601-8904

**412-830-4444**

York County AAA  
141 W. Market Street  
York, PA 17401

**717-771-9610**  
**800-632-9073**



Office of Attorney General  
Bureau of Consumer Protection  
REGIONAL OFFICES

**ALLENTOWN OFFICE**

1251 South Cedar Crest Blvd.  
Suite 309  
Allentown, PA 18103  
610-821-6690

**EBENSBURG OFFICE**

171 Lovell Avenue  
Suite 202  
Ebensburg, PA 15931  
814-949-7900

**ERIE OFFICE**

919 State Street, Room 203  
Erie, PA 16501  
814-871-4371

**HARRISBURG OFFICE**

132 Kline Village  
Harrisburg, Pa 17104  
717-787-7109

**PHILADELPHIA OFFICE**

21 S. 12th Street, 2nd Floor  
Philadelphia, PA 19107  
215-560-2414

**PITTSBURGH OFFICE**

Manor Building, 5th Floor  
564 Forbes Avenue  
Pittsburgh, PA 15219  
412-565-5135

**SCRANTON OFFICE**

214 Samter Building  
101 Penn Avenue  
Scranton, PA 18503  
717-963-4913

**Attorney General's Toll Free  
CONSUMER PROTECTION HOTLINE  
1-800-441-2555**