

**Testimony Before  
The Pennsylvania Senate  
Finance Committee  
Regarding Act 55 of 1997  
“The Institutions of Purely Public Charities Act”**

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**Ronald L. Barth, President & CEO**

**PANPHA**  
*An Association of Pennsylvania Non-Profit Senior Services*

Good morning Chairman Browne, Minority Chairman Wozniak, and distinguished members of the Senate Finance Committee. Thank you for granting me this opportunity to provide testimony on Act 55 of 1997, more commonly referred to as “The Institutions of Purely Public Charities Act”, and the impact this legislation has had on the non-profit sector since its passage nearly 10 years ago.

My name is Ron Barth, and I am President and CEO of PANPHA. PANPHA is a statewide association of more than 360 senior service providers, all of them nonprofit. PANPHA members are proud of their long history of service to Pennsylvania’s elderly across the full continuum of senior care settings, including: skilled nursing facilities, nursing homes, Continuing Care Retirement Communities, personal care homes—also known as assisted living facilities—senior housing units sponsored by the HUD section 202 program, as well as adult day care and home health services. Our members are driven by a mission: to deliver the highest quality of care to our residents, in the most nurturing and homelike environment possible.

The facilities and providers that we represent are wholly devoted to their respective callings. These organizations are not encumbered with the need to procure a profit for shareholders or to deliver dividend payments to investors. Every last dollar that our organizations realize above the cost of operation is reallocated in some way to advancing their charitable missions. .

It is due to this non-profit philosophy that the Commonwealth of Pennsylvania, as well as the federal government, have for generations allowed non-profit organizations to function outside of the typical taxing structure. Those entities that qualify as public charities are allowed to forego paying income and corporate taxes, are permitted to apply for sales and use tax exemptions, and to own property without the demand of real estate taxes. The justification is that whatever was lost in tax revenue would be realized to the government in the alleviation of its burden in other areas.

Ten years ago, this legislature recognized that courts were struggling to apply a consistent definition of what it meant to be a charitable organization. While a statewide public policy that non-profit organizations were entitled to tax relief existed, it was not always consistently applied. Accordingly the legislature took action, deciding that tax exemptions for non-profit organizations was a matter in which statewide standards were a necessity, and that all organizations should know exactly what is expected of them in exchange. The result was Act 55.

The stated legislative intent was to eliminate inconsistent application of eligibility standards for charitable tax exemptions; to reduce confusion and confrontation among traditionally tax-exempt institutions and political subdivisions; and to ensure that charitable and public funds are not unnecessarily diverted from the public good to litigate eligibility for tax-exempt status. Act 55 was to accomplish this goal by providing standards to be applied uniformly in ALL proceedings throughout this Commonwealth for determining eligibility for exemptions: whether in county administrative hearings, applications with state agencies, or in judicial reviews. The non-profit sector was

supportive of the drafted legislation, and even more impressed with the overwhelming majority by which the measure passed both houses. The Legislature had made a strong and decisive move that we all thought would achieve its stated purpose. Unfortunately, the reality is its effectiveness has been...shall we say, underwhelming.

Ten years later we find ourselves in much the same position we were in prior to Act 55. Inconsistency in the application of qualifications and standards for eligibility for exemptions still runs rampant in all levels of proceedings—courts, administrative reviews with state agencies, as well as at the county level.

I would like to focus on applications for sales and use tax exemptions filed with the Department of Revenue, as I believe this to be the most illustrative of my point. Our members are, with surprisingly increasing frequency, seeing their applications for sales and use tax exemptions denied by the Department of Revenue. What had become almost routine renewal has evolved into an expensive administrative burden and nightmare for non-profit care providers. Of course reappraisal and review is necessary and appropriate, but now it is almost as if denial of the initial application is the Department's default position. These organizations have no choice but to invest money and resources to pursue an appeal.

The appeal of the initial denial is heard by the Board of Appeals within the Department of Revenue. This level of review looks and feels like a legal proceeding. Attorneys draft briefs and make arguments. Opinions are published citing case law and examining statutes. Unfortunately, the mere appearance of a legal proceeding does not always lead to the correct application of law.

By way of example, one of our members was denied a sales and use tax exemption by the Board of Appeals at the Department of Revenue. The Board denied the appeal because it had determined that the facility had failed to “donate or render gratuitously” a significant portion of its services. Act 55 clearly outlined specific, quantifiable standards to be applied in these matters. To meet the test established in Act 55, an entity must provide uncompensated care equal to at least 5% of the institution's costs of providing care. This facility actually rendered uncompensated care equal to 6.85% of the cost of providing those services. It clearly met the mathematical standards delineated in the Act. However, the Board of Appeals either grossly misread the statute, or simply ignored the directives laid out by the legislature.

The denial was eventually overturned by the Board of Finance and Revenue, on the second appeal. While the facility emerged with its exemption restored, it was forced to spend thousands of dollars in attorneys' fees over the course of 15 months to finally arrive at the correct outcome. Additionally, the facility was required to pay sales and use taxes for the duration of the appeal--funds which the facility has yet to recover. Further adding to the frustration is the fact that these decisions do not seem to carry the weight of precedence within the administrative process. Applications are handled on a facility by facility basis, and each application seems to be treated as if it is the first of its kind.

This story is becoming all too common. Non-profit organizations which felt confident aligning their operations according to the guidelines laid out in Act 55 are now being forced to divert money away from pursuing their mission, and instead are required to focus on legal defenses of their tax exempt status. Our members moved forward and aspired in good faith to meet Act 55 guidelines, only to have the old system revisited upon them.

The apparent lack of regard for Act 55 extends beyond the executive branch, however, and is self-evident in the litany of court opinions that have been published since 1997. Most notable among these decisions is the Supreme Court's 2002 opinion in Community Options, Inc. v. Board of Property Assessment. This opinion creates the principle that any entity seeking property tax exemption must first meet the judicially created "HUP" test, so named from the 1985 case in which it was created (Hospital Utilization Project v. Commonwealth), before Act 55 is even addressed. This has effectively rendered Act 55 moot. Act 55 was intended to be a quantification and further explanation of the HUP test, not ancillary to it.

Prior to the passage of the Purely Public Charities Act, criteria for definitions of what constituted a purely public charity varied from county to county, municipality to municipality, and school district to school district. Act 55 was to bring uniformity. Community Options, and its progeny of case law, have ensured that uniformity cannot exist. The best opportunity to reverse this line of precedent is the Supreme Court's pending decision in Alliance Home of Carlisle t/a Chapel Pointe v. Board of Assessment Appeals, more commonly referred to as the Chapel Pointe case. The Supreme Court heard oral arguments in May of 2005, and we are all waiting for a decision to be rendered. Hopefully the decision will address with clarity whether Act 55 is anything more than window-dressing.

The vitality of the non-profit sector depends on the preservation of these tax exemptions. These organizations are trusted fixtures in the communities in which they are located, not to mention economic drivers. Roughly 13% of all private sector employees in Pennsylvania, 634,098 employees in 2003, work for non-profit organizations. Fully 60% of that number work for non-profit health care providers. Nursing homes represent a growing share of that number, with a 43% increase in employment share from 1995-2003. However, we are not just adding jobs, we are adding good-paying jobs. The average weekly salary for non-profit nursing home employees was \$17 higher than their for-profit counterparts. Part of our ability provide for higher staffing ratios, and provide highly competitive wages for our employees stems from the fact that we reinvest the dollars we save in taxes back into our organizations.

This is not to say that we are expecting, or even asking for a free ride. In fact, many of our facilities already have entered into agreements with local taxing authorities providing for Payments In Lieu of Taxes, or PILOTS. PANPHA members are committed to being a part of their respective communities, and PILOTS demonstrate this connection. Furthermore, our buildings, the grounds, the capital improvements, the renovations to our

facilities all go toward improving our neighborhoods. These assets and their values will run with the land on which they lie, and the benefit will inure to our neighbors.

Looking beyond the economic benefit non-profits provide, there is a certain level of comfort communities have with a strong non-profit presence. This is especially true of non-profit healthcare providers. Studies have shown that non-profit nursing homes have lower incidents of malpractice suits being filed, lower incidents of improper use of restraints, fewer regulatory violations, fewer adverse outcomes, and a higher satisfaction with treatment.

Despite shortfalls in Medicaid funding, these facilities continue to remain true to their mission—refusing to cut to the quick in staffing and services offered. Perhaps most importantly, families of our residents also take comfort in knowing that should they exhaust their life savings paying for their care, PANPHA member facilities will not discharge them when they can no longer pay for their own care.

There is a non-profit difference; and that difference ought to be protected. The legislature in 1997 came to that conclusion, and the result was a good piece of legislation that, unfortunately, has not had the positive impact for which we all had originally hoped. I am uncertain as to whether a legislative fix will be required, and if so, what that fix would look like. However, I am certain that non-profits find themselves in no less a precarious standing as they did prior to the existence of Act 55. We are still left to fight each tax exemption with an ever-changing scale of requirements and mandates.

Again, Mr. Chairman, members of the committee, thank you for allowing me the opportunity to testify before you this morning. At this point I would welcome any questions that you may have.