

Reauthorization of the Older Americans Act

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Maple Grove Community Center

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Elder Justice

Supporting independence is at the heart of the Older Americans Act. Real independence for those with advanced age or disabilities requires security against maltreatment, namely abuse, neglect, and financial exploitation. For some, especially those most frail, independence is a generous and misleading term for isolation. Furthermore, real independence requires the ability to access help for the daily care and chores that one can no longer manage. This testimony makes recommendations on these two facets of elder justice, protection from maltreatment and consumer protection in home and community services.

Protection from abuse, neglect and financial exploitation

Elder abuse, neglect, and exploitation are more than personal tragedies. They translate to public costs: medical care to treat wounds, broken bones and starvation...housing and healthcare for victims left destitute by the swindles of people they trusted. Reported allegations in MN for Fiscal Year 2009 exceeded 25,000, with 39% alleging caregiver neglect. Reported cases are widely acknowledged to be but a fraction of the reality.

Priority: Address abuse, neglect, and exploitation in home and community settings with increased Title VII funding, while maintaining efforts on behalf of nursing facility residents.

Minnesota receives \$21 million from the Older Americans Act. Only \$79,000 of that is Title VII Elder Abuse money...a fraction of a percent. The narrow dollars and ratio promise short-changed services.

Earlier this year, we celebrated the passage of the Elder Justice Act (EJA). Decisions with respect to the Reauthorization must certainly be made to complement the promises of the EJA. Funds that result from authorized Elder Justice Act provisions are, however, down the road, and that is the best case scenario. Today, the news is not good on appropriations for the Elder Justice Act. Neither the House nor Senate Labor HHS FY 2011 appropriation bills point contain any money for the Elder Justice Act. Passage of the Elder Justice Act was a great milestone. But after the cake and the balloons, it's all about the money. Therefore the Reauthorized Older Americans Act should continue and strengthen its place in protecting vulnerable elders and responding to the needs of victims.

Priority: Make uniform national data collection a condition of receiving federal funding by 2015.

Practitioners, policy makers and lawmakers lack the data they need to address elder abuse, neglect and exploitation effectively and efficiently. We are years behind those developments in the fields of domestic violence and child abuse, but we can learn from their models.

The Assistant Secretary for Planning and Evaluation (ASPE) funded a Congressionally-mandated study addressing the feasibility of collecting such data, and the 2006 OAA amendments contain an unfunded and unimplemented provision requiring data collection. Given the historically microscopic federal commitment to elder abuse services, one can well understand why definitions of abuse, neglect and financial exploitation are state-specific. Nevertheless, the ASPE study illustrates methods that can permit uniform national data collection without disturbing state-specific definitions used, for example, in charging elder abuse crimes.

Priority: Create six coordinating Centers of Excellence on Elder Abuse and Neglect.

The Center of Excellence on Elder Abuse and Neglect at the University of California at Irvine is a beacon and model of medical, forensic and victim services. But its reach cannot be universal nor can it realistically respond to an entire nation's problems. Their recently released study on mistreatment of people with dementia by their caregivers adds to the urgency of our work.

To learn more, visit its website, <http://www.centeronelderabuse.org/> **Center of Excellence on Elder Abuse and Neglect** at the UCI School of Medicine, Program in Geriatrics. From its welcome message: "Locally, the Center of Excellence provides medical, forensic, and victim services to abused and neglected seniors and serves as a "living laboratory" of innovative approaches. Statewide, the Center of Excellence serves as a central source of technical assistance, best practice information, multidisciplinary training, useful research, and relevant policy issues in California."

Consumer Protection in Home and Community Services

We are faced with a barrel of challenges and two barrels of mysteries. We know that the overwhelming percentage of care is provided by family. We do not know how sustainable that is into the future. We know that paid caregivers are in such short supply that even one's ability to pay does not promise enough or good enough care. We are unwilling to give these jobs liveable wages. We know that monitoring the delivery of care for persons inside the walls of private homes makes the challenges of monitoring care in congregate settings seem like small potatoes. And some of the technological possibilities for keeping watch are controversial. Technology may bridge miles and guard against isolation, but I for one do not want to wear a wire or line up with a monitor to use the toilet.

Priority: Include a Bill of Rights for Home and Community Services in the 2011 Older Americans Act.

Minnesota's Home Care Bill of Rights (Minnesota Statutes section 144A.44) is applicable only in licensed home care services. Similar limitations exist in those codified in other states. A federal bill of rights, across services and regulatory jurisdictions, serves both to promote professional standards and public expectations. At minimum, the language should include rights to information, to choices, to privacy, to a routinely updated plan of care, to dignified treatment, to opportunities for resolving problems, and rights to a smooth transition when the provider can or will no longer continue on the job.

Priority: Plan for ongoing public awareness efforts to raise people’s expectations of good care and individual rights.

Individual rights are intrinsically difficult to monitor, especially in private homes. And few of us remember the list of promises we are given when we sign up for services, particularly in crisis situations. Regulatory agencies are best at identifying and responding to shortcomings that are physical and measureable. Clients and their family caregivers have to know their rights to seek redress of violations. Public awareness efforts have to be ongoing to be effective. Episodic bursts in response to media coverage of a horrendous case of maltreatment will not serve the long-term need.

Priority: Expand the mandate and funding of the Ombudsman program to include advocacy for elders in home and community services.

Quality standards and a bill of rights set us on the right path. An ombudsman explains the complexities, intercedes, and uses persuasion to repair situations regardless of whether a specific violation of law has occurred. Even better than knowing your rights is knowing whom you can call when you have a problem. Ombudsmen are safety nets. Sometimes they are life lines.

Priority: Assure that Ombudsman programs have the independence in their settings and mandate to provide advocacy at the policy level as well as in individual cases.

Ombudsmen are in an ideal position to use case data, trends, and experiences to advocate for consumer rights and safety. The Older Americans Act must ensure their freedom to represent their constituencies in state and local government decisions. Early on, federal law prohibited Ombudsman programs from being housed in state departments of health and comparable regulatory agencies, because of the inherent conflict of interest that could arise when advocates for nursing home residents answer to the same commissioner who oversees nursing home regulation. That assurance of independence has to follow a wider span of service to vulnerable adults. In the past year, the Nursing Home Ombudsman in Iowa was pressed to be silent in the public arena. While this example caused a stir and turned out well, the phenomenon should be avoided.

Finally, these ongoing conversations about the Reauthorization provide an opportunity for State Units on Aging, Ombudsman Programs and Adult Protective Services systems to plan strategically for the delivery of elder justice in the future. None of these systems is uniquely able to handle the growing needs for protective services and consumer safety. Regardless of funding levels, cooperative efforts will promote cost efficiency.

Additional notes for the Committee and staff:

Existing provisions of the Older Americans Act, dating from prior Reauthorizations, cannot effectively meet the needs of vulnerable older adults without further effort:

1. Promulgate regulations on concerning conflicts of interest, consistent with the call for regulations pertaining to ombudsmen in Title VII, Subtitle A, Chapter 2, Section 713.

2. Develop and implement measures to ensure the existence and effectiveness of state-level elder abuse prevention in Title VII, Subtitle A, Chapter 3, Section 721(h).
3. Ensure that adequate legal counsel is provided for the ombudsman program as required in Title VII, Subtitle A, Chapter 2, Section 712(g)(1).
4. As mentioned earlier, appropriate adequate funding for the elder abuse programming outlined in Title VII, Subtitle A, Chapter 3 including much-needed data collection, training, and victim outreach.
5. Appropriate the funds necessary to implement the legal assistance and legal services developer program authorized in Title VII, Subtitle A, Chapter 4. Although \$10 million was authorized for this purpose, no funds have been appropriated.
6. Appropriate the funds to implement the elder abuse programming for Native Americans outlined in Title VII, Subtitle B. This portion of Title VII has received zero appropriations since enactment in 1992 despite long-recognized need for such programs.

Federal consumer protection laws are additional means for safeguarding vulnerable adults in their household and healthcare purchases. We applaud U.S. House passage of H.R. 3040, the Senior Financial Empowerment Act. Rep. Tammy Baldwin's (D-Wisconsin) bill would authorize \$100 million over 5 years to establish a Justice Department grant program for organizations to conduct outreach to seniors and help them guard against fraud, particularly internet fraud. Financial exploitation is often viewed as less tragic than visible wounds; yet it has the potential to be the trigger for a downward spiral in an elder's health and housing.

The passage of the Elder Justice Act was recognized above. While momentous, most of the justice-system provisions of the original bill were not part of the Act as passed. Therefore lawmakers need to do more than coordinate the decisions made on the Reauthorization and the EJA. Attention must still be paid to enhancing the justice system's capacity to address the problem, to evaluating the efficacy of existing state criminal elder abuse laws, to developing some model state laws, and to establishing victim services that meet the needs of elderly and disabled victims. Elder abuse remains a shadow among human rights issues, causing wounds, deprivation and suffering that too rarely deterred or redressed by the justice system.

Thank you, Senator Franken and Committee members, for your leadership on the Reauthorization of the Older Americans Act. Throughout Minnesota today, there are older people desperately clinging to their homes, some in frighteningly abject circumstances. Ensuring their basic safety while respecting their individuality and privacy, requires our steady, shared commitment.