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STATE OFFICES ON AGING: HISTORY
AND STATUTORY AUTHORITY

AN INFORMATION PAPER

PREPARED FOR USE BY THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE



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(II)

LETTER OF SUBMITTAL

LEGAL RESEARCH AND SERVICES FOR THE ELDERLY,
NATIONAL COUNCIL OF SENIOR CITIZENS,
Washington, D.C., August 6, 1980.

HON. LAWTON CHILES,
*Chairman, Special Committee on Aging,
U.S. Senate, Washington, D.C.*

DEAR SENATOR CHILES: One undebatable proposition is that in order for a program funded by the Federal Government and administered by State and local governments to be effective, both sets of agencies must have the authority as well as the capacity to perform their missions.

The Older Americans Act of 1965 describes such a program. It operates on the Federal level through the Administration on Aging (AoA), a component of the U.S. Department of Health and Human Services. The act authorizes a broad range of programs, social services, and facilities for the benefit of older persons to be provided by State and local agencies. Money is appropriated by Congress to flow through AoA to the non-Federal entities.

The structure and authority of AoA is detailed in the Older Americans Act, the regulations promulgated to interpret it, and by the requirements of DHHS. But the structure and authority of the State and local agencies, as this report relates, is largely undefined. The statutory obligations are clear but not the organization needed to perform those mandates.

The purpose of this report is to suggest a statutory scheme that empowers State and local agencies to discharge their duties most expeditiously and creatively. That statute must be enacted by State legislatures. To that end, we include a model act for consideration.

It has been our good fortune to have participated in counseling a number of State officials who recognized their government agencies lacked the authority, capacity, prestige, or leverage to effectively accomplish their responsibilities.

Our experience began when the National Council of Senior Citizens was selected by AoA at the beginning of 1974 to provide technical assistance to State agencies in HEW region III concerning legal problems of those States' residents. An early assignment in Pennsylvania, from its State director of aging, was to draft an Older Pennsylvanians Act. Most of the concepts discussed in this report were produced by that experiment and subsequently enacted. The experiment also underscored how the ability and strength of State and local aging agencies is enhanced by progressive legislation.

More than form is involved. When democratically elected State representatives are obliged to study a Federal program and devise a vigorous, competent, and efficient plan to manage it, government is improved and the shared purposes are more likely achieved.

A final note: We acknowledge frequently in the report that administrative failures and successes are more related to human talents and commitments than legislative powers. But thoughtful and appropriate statutory authority has inspired and provoked many officials to fulfill their obligations more quickly and completely.

Many staff members of Legal Research and Services for the Elderly, sponsored by the National Council of Senior Citizens, have contributed to this report. Georgia Springer, Russell Balch, Harriette Fox, Kathleen Mullen, Candy Fowler, and Erica Wood deserve credit.

We hope the model statute will be utilized, perfected, and adapted by many State governments.

We are grateful to the members and staff of the U.S. Senate Special Committee on Aging for encouraging and supporting our efforts.

DAVID H. MARLIN, *Director.*

PREFACE

One of the most significant developments in the field of aging in the past 15 years has been the establishment and strengthening of a national network on aging. A cornerstone to that network is the Nation's 57 State and Territorial units on aging. Since the passage of the Older Americans Act in 1965, each State has developed a focal point for aging within State government. Over the years, the Congress, Governors, and State legislatures have expanded the roles and responsibilities of those State units on aging in advocacy and service system development for the elderly.

This publication presents a model State statute for State units on aging developed by Legal Research and Services for the Elderly. The ideas presented here should assist policymakers and advocates at the State and local levels in the ongoing task of developing a public network responsive to the changing needs of the aged.

Today, State units on aging vary widely in organizational structure and size. One of the fundamental strengths of these aging programs is that variance which is based on State and local need, not Federal mandates. The model State statute, presented and analyzed in this document, is not an attempt to dictate structure or form, but to provide ideas which can be altered to meet those State and local needs.

The committee hopes that the information contained in this document will result in the enhancement of State aging programs. We believe that the interests of older Americans will then be better served.

LAWTON CHILES,

Chairman.

PETE V. DOMENICI,

Ranking Minority Member.

CONTENTS

	Page
Letter of submittal.....	III
Preface.....	v
Chapter 1. Introduction.....	1
A. History and purposes of State agencies on aging.....	1
B. Purpose of this report.....	2
Chapter 2. State agencies on aging.....	4
A. Agency location within State government.....	4
B. Powers and duties.....	6
1. Administrative powers of State agencies.....	8
2. The duty to serve as an advocate for the elderly.....	8
3. The power to initiate and promote legislative proposals.....	9
4. Responsibility to coordinate all State programs affecting the elderly and to obtain cooperation from other State agencies.....	9
5. Power to hold hearings and issue reports.....	14
6. Responsibility to administer, monitor, and evaluate non-Older Americans Act programs.....	14
Chapter 3. Advisory commissions.....	17
A. Roles and purposes of advisory commissions.....	17
B. Independent staff and budget.....	18
C. Commission powers and duties.....	18
1. To serve as an advocate.....	18
2. To hold public hearings and issue reports.....	19
3. To make recommendations.....	20
Chapter 4. Conclusions.....	21
APPENDIX	
Model State statute.....	23

STATE OFFICES ON AGING: HISTORY AND STATUTORY AUTHORITY

Chapter 1

INTRODUCTION

A. HISTORY AND PURPOSES OF STATE AGENCIES ON AGING

In 1965, Congress enacted the Older Americans Act in recognition of the grave problems confronting older persons trying to live satisfactorily and independently in this country. The act established the Administration on Aging within the U.S. Department of Health, Education, and Welfare to serve as a national focal point for planning and implementing programs for persons 60 years of age and over. The act also provided funds for State and local programs and activities to improve the quality of life for older persons. One precondition to the receipt by States of Federal funds was the designation of a "single State agency" for the conduct of activities under the act.

In 1973, Congress amended the Older Americans Act to enlarge the role of State and local aging agencies. The amendments required each State agency to divide the State into planning and service areas and, within these areas, to designate area agencies on aging to plan and coordinate services.¹ These provisions reflected the newly formulated congressional purpose to "foster the development of comprehensive and coordinated service systems to serve older persons"² to enable them to continue to live at home and as independently as possible.

Today, Older Americans Act funds flow to 57 State and Territorial units on aging.³ These agencies play a crucial role in planning for the provisions of basic services which will permit older persons to live in the greatest possible comfort and dignity despite the problems of advancing age. Also, State agencies are the institutional voice of the elderly within State government, advocating the interests of older persons in the formulation of State policies and in the allocation of State and Federal resources.

To perform these functions effectively, State agencies on aging must have power and status within the State government hierarchy. Because the service needs of older persons cut across traditional bureaucratic bailiwicks—health, transportation, welfare, and employment, for example—a State aging agency must be able to obtain the cooperation of many State and local agencies if it is actually to provide for a comprehensive social service system. To be a strong advocate for the interests of the elderly, a State agency must have a

¹ While the act does not require State agencies to designate area agencies in all planning and service areas (PSA's), it provides a strong incentive. Federal funds may be used to defray up to 90 percent of the cost of social service programs in PSA's with area agencies.

² 42 U.S.C. § 3021.

³ Throughout this report the term "State" will refer to the U.S. Territories and the District of Columbia as well as the 50 States.

voice that will be heard by the Governor, the legislature, and the heads of agencies contemplating actions which will affect older persons. Additionally, an agency that can exert influence over the allocation of State and Federal funds not earmarked for aging programs will be in a far better position to insure that older persons actually receive comprehensive services than one which is strictly limited to the use of funding from the Older Americans Act.

While the statutory scheme of the Older Americans Act envisions a strong State agency which can make the most effective possible use of the Federal resources pumped into aging programs, it does not mandate, in particulars, the location, power, and responsibilities of each State unit. These decisions have been left to the States.

Currently, approximately two-thirds of the State aging units receive express mention in State law.⁴ In many cases, however, these laws simply mention that a bureau or office for aging programs shall be established within a larger agency.

Unfortunately, most State agencies on aging originally were not given influential positions in State government or given extensive powers. Most States simply designated (or in some cases created) offices or bureaus on aging within the existing State bureaucracy, with little thought to the nature or extent of authority they should exercise. The nascent aging agencies found themselves struggling for influence within a governmental structure dominated by preexisting vested interests and power dynamics.

State aging agencies have now been in existence more than 10 years. They administer increased (though still modest) amounts of Federal funding with which to expand their influence. Several have been strengthened and upgraded within the State bureaucracy. Nevertheless, many still lack the requisite prestige, power, and influence to achieve the aims of the Older Americans Act.

One remedy for this problem is to provide the State agency with a strong statutory basis of authority. Since 1969, when Connecticut passed a statute creating the first cabinet-level aging department in the Nation, many States have used the legislative process to set the parameters of their aging agencies' authority. Because enabling legislation has been used traditionally to establish and define the powers of only the most important or special State agencies and programs, this approach has symbolic as well as practical value.

B. PURPOSE OF THIS REPORT

The purpose of this report is twofold: To present for consideration by the States a model act creating a State agency on aging and advisory commission, and to advocate its adoption through the presentation of examples from several States describing their experiences in the implementation and use of statutory provisions incorporated in our model act. In addition, analysis is provided which justifies the inclusion of these provisions in any State legislation.

Over the past several years, LRSE has collaborated with many State governments on the design and drafting of State agency en-

⁴ Three State units have been expressly created and their powers delineated in detail by formal executive order. Nine agencies derive their powers and existence from the statutory (or in two cases—North and South Dakota—executive) authorization of a larger administrative unit (e.g., the director of the Department of Social Services in Missouri is empowered to delegate his duties and structure the department as required). The Alaska agency relies solely upon the legal authority derived from the annual submission of a State aging plan and the receipt of Federal funds pursuant to the Older Americans Act.

abling legislation. The model State agency statute presented in this report is based on this experience and on a survey and analysis of the existing statutory schemes of the 57 State units on aging.⁵ It provides for the establishment of a strong State agency on aging with explicitly designated powers and responsibilities and defines the relationship between the State agency and the area agencies on aging.

The model statute also provides for the establishment of an effective citizens advisory commission. Defining the role of the advisory commission in legislation can insure that it has clear authority to monitor and evaluate the agency on aging. The strongest State agency will not help older persons if it does not remain responsive to their needs. An advisory commission which does no more than rubberstamp a State agency's decision cannot keep the agency on the right track. A strong commission can also draw public attention to the problem of older persons and add its own weight to that of the State agency in fighting for their interests. The LRSE statute suggests a commission structure that can achieve these goals.

The model statute contained in this report is not meant to be the definitive scheme for State aging units. Rather, it is intended to serve as a springboard for serious thought and creative statutory design on the part of State executives, legislators, aging network staff, and leaders of the elderly community.

Clearly, the environmental factors present in each State, such as the fiscal situation, the extent of activism in the aging community, political realities, and the degree of existing bureaucracy, will affect the final form of any statute. Nevertheless, LRSE's model act will provide a starting point for further deliberations.

It should also be noted that a strong State statute will not guarantee the success of a State agency in its mission. A kaleidoscope of other factors will also be determinative of agency effectiveness, including, among others, the leadership quality of the agency staff, the level of support from the Governor, the agency's appropriations level, and local political pressures or machinations. But a strong enabling statute can provide the tools to combat other obstacles to effective aging programs. A properly constructed statute can insure that an agency on aging is visible, has direct access to the Governor and legislature, and has the wherewithal to advance the cause of older persons throughout State government.

The next chapter of this report will deal with the structure of the State agency on aging. Chapter 3 discusses the advisory commission. Chapter 4 sets forth our conclusions, and the appendix consists of the model act.

⁵ LRSE's model statute with commentary complements other studies of State agencies. In 1974 and 1975, the Senate Special Committee on Aging surveyed State agencies to determine how they were meeting their growing responsibilities. Bechill, William, "Developments and Trends in State Programs and Services for the Elderly: A Survey of Activities at the State Governmental Level in the Field of Aging," U.S. Senate, 93d Congress, 2d session, November 1974, and "Developments in Aging: 1975 and January-May 1976," U.S. Senate, 94th Congress, 2d session, June 1976, pp. 207-226. Bechill's study focuses on the impact of Federal law on changes in State activity while the 1975-76 report provides an update on changes in organizational status and funding levels experienced by State aging units between 1974 and 1976. A third study, Binstock Cherington, and Wall, "Federalism and Leadership Planning," *The Gerontologist*, 114, April 1974, statistically correlates State unit on aging characteristics and activities in an effort to determine how to improve State agency leadership, planning, and service delivery on behalf of the elderly. Finally, the California Commission on Aging published in 1975 a study of selected State agency units entitled "Developments and Trends in Aging: A Survey of Programs, Legislation, and Information Systems in a Sample of States," by Estes, Shaw, and Stunkel. This study focuses on the information systems and legislative and program innovations of 15 States.

Chapter 2

STATE AGENCIES ON AGING

Legislation establishing a State agency on aging can be seen as having two major components. The first component is the creation of the agency in a certain form and at a certain level of State government. The second component lists the powers, duties, and responsibilities of the agency. Both components are treated in this section.

A. AGENCY LOCATION WITHIN STATE GOVERNMENT

An agency's location can directly affect its access to the Governor, legislature, and other key decisionmakers in the State, its visibility and prestige, its access to funds and resources, and its ability to develop and coordinate service delivery.

Many advocates in the field of aging have long recommended the establishment of State aging units located at a high level within State administration. The 1971 White House Conference on Aging, for example, recommended that at all levels of government "a central office on aging should be established in the office of the chief executive."¹

This view was further supported by the former director of the Connecticut Department on Aging and the former deputy director of the California Department of Aging when they stated that the creation of an independent high-level agency was the strongest and most important provision of the legislation.

The experience of the existing agencies on aging demonstrates that no single location or approach is absolutely essential to assure a strong aging unit with power to affect State budget, programs, and policy related to older persons. In practice, cabinet-level departments, separate commissions and offices, and units located within larger agencies have all proven to be effective advocates for the elderly.

For example, California's Department of Aging and Michigan's Office of Services to the Aging both operate within an umbrella cabinet-level agency and have enjoyed a significant amount of success.

In Pennsylvania, placement of the Office of Aging within the larger Welfare Department² may have helped it to gain access to large amounts of funding available under title XX of the Social Security Act, which is administered by the department. But location in the title XX agency is not the only way to acquire title XX funds. In States such as West Virginia, aging agencies have successfully obtained access to title XX funds through working agreements with the State agencies which administer them.

¹ 1971 White House Conference on Aging, "Section Recommendations on Government and Non-Government Organization," Recommendation II, p. 3.

² In 1979, Pennsylvania's State agency became a cabinet-level Department of Aging.

The experiences of the other agencies illustrate that upgrading an aging agency's location can have a beneficial impact especially in the budget area. For example, after the Massachusetts Department of Elder Affairs was accorded cabinet-level status, funding levels increased steadily.³ The director of the Illinois Department of Aging also reports that cabinet status has increased funding for aging programs in Illinois. Further, independent status has given the agency sufficient influence to obtain funds from new sources.

Cabinet-level status also resulted in increased State funding for aging programs in New York. Since elevation of the State agency in Kansas to a cabinet-level Department of Aging, State general funds have been allocated for the first time to area agencies on aging for nutrition and other programs for the elderly. In Ohio, while the Commission on Aging is not of departmental status,⁴ its executive director sits as a member of the cabinet, by executive decree. This may have assisted the Commission in obtaining a steady flow of State funding. The director of the Idaho Office of Aging, on the other hand, attributes significant increases in State funding since its move to the Governor's office, to the lobbying efforts of senior citizen's groups and not the office's location.

Finally, elevation from a third-level program or a bureau status to division status within a larger umbrella agency can also mean increased funding and advocacy ability. For instance, in 1976, the Arkansas State agency became a full-fledged division within the Department of Social and Rehabilitative Services, equal in status to the State's other human service agencies. Thereafter, it obtained over \$5 million in title XX funds. A high location in the State administrative structure can, in addition, be expected to increase an agency's capacity for legislative and administrative reform benefiting older persons.

As a cabinet secretary, the department head will have regular access to the Governor and to the directors of other State agencies. The director's prestige as a cabinet officer will increase his/her clout with the legislature. The Kansas Department of Aging reports important legislative initiatives since obtaining cabinet-level status. Moreover, in Kansas, legislative advocacy by senior citizens has increased markedly since the department was formed. A collection of elderly groups which came together informally to push for creation of the department has become the highly effective Kansas Coalition on Aging. The director believes the formation of the department signaled to the elderly that the executive and legislative branch see aging issues as significant, and that their participation can affect the outcome of these issues.

A high degree of access to the Governor can also be achieved when the agency is located within an umbrella agency. That is the case in California where the director reports good access to the Governor. Particularly in the case of an agency operating under an umbrella department, the statute itself can open avenues of access to policymakers. For example, in Maine, the Bureau of Maine's Elderly, while under the day-to-day supervision of the commissioner of the Department of

³ For a detail analysis of the Massachusetts experience, see appendix C, "The Massachusetts Department of Elder Affairs: Can Cabinet Level Status Make a Fiscal Difference?" prepared by James Bergman, February 1979.

⁴ Legislation is in process to create a Department of Aging in Ohio.

Health and Welfare, is authorized by statute to report directly to the Governor and the legislature on its activities, and to advise the Governor on issues affecting the elderly. The statutory scheme also provides for another link between the Governor and the bureau—while the bureau's director is appointed by the commissioner of Health and Welfare, the appointment must be with the advice and consent of the Governor and the legislature.

In Michigan, the head of the Office of Services to the Aging is appointed directly by the Governor, with the advice and consent of the State senate, even though the office is located within the Department of Management and Budget. The Michigan situation is unique (the Michigan office is granted complete autonomy by statute, except for budget, housekeeping, and procurement functions, and has been placed in the larger department primarily for administrative convenience and due to State constitutional restrictions on the number of cabinet-level agencies).

While perhaps not as prestigious, creation of the aging agency as an executive office located directly in the Governor's office should provide the greatest access to the chief executive. The Governor may be closely publicly identified with the program and will have the opportunity to take a great interest in it. The staff of the office will be, effectively, the Governor's staff and may in fact formulate policy on the Governor's behalf.

The Idaho Office of Aging, for example, reports that its 1975 move from an umbrella agency to the Governor's office not only increased its influence on the Governor's policy priorities, but improved its access to the legislature.

However, this is not always true. For example, in the District of Columbia, the director of the Office on Aging, which is an executive office, reports that he had very low levels of access to and influence on the mayor. He attributes this more to the level of support from the mayor's office rather than to any statutory structure, and he anticipates increased support will be forthcoming from the new mayor's administration.

Thus, while the agency's location will not guarantee access to policy-makers, the higher the location the harder it is to deny this access.

A high location for the aging agency in State government is an important factor with respect to achieving the goals of intragovernmental prestige and power, high status within the aging community, increased budget levels, and the ability to influence the Governor, legislature, and other department heads in a meaningful way.

In the next part, other, more specific statutory authorizations will be discussed also in relation to these same goals.

B. POWERS AND DUTIES

A major premise underlying the model statute is that, wherever located and however organized, State aging agencies benefit from express statutory powers and responsibilities. Such express powers will enable the agencies to have a major impact on services, programs, and expenditures for the elderly.

Why list specific powers in a statute? In part, for many of the same reasons a State aging agency should have statutory authorization in

the first place. Powers granted in a statute have a measure of permanence, while a power delegated by an agency head or Governor, even if expressly delegated, can easily be withdrawn. And the process of drafting the legislation, seeking support for it, and getting it passed, promotes public participation in shaping the role and powers of the agency.

There are additional reasons why the agency's powers and duties should be enumerated in a statute:

- Listing an agency's powers and duties defines its role publicly and explicitly. No one can rationally argue that the agency does not have authority to take a particular type of action if that authority is set forth in print. This becomes particularly important when the aging agency's interests overlap those of other State agencies or departments, or when the agency is within a larger department. A well-drafted statute can provide a map of each agency's turf. It can mark the points of intersection and describe the procedures to be followed in reaching decisions and taking action at those points. The statute gives other agencies clear notice of the aging agency's powers so that they cannot easily ignore or countermand a rightful exercise of the agency's authority.
- A statute which sets forth explicit powers and duties also gives notice to the public of what they should expect from the aging agency. A straightforward description of what the agency can do will help citizens to better evaluate its performance.
- Finally, express statutory authorization is the only way an aging agency can realistically hope to obtain some of the most useful and potentially effective powers. For example, none of the States which rely solely on informal delegation of powers from an umbrella agency or the Governor have ever been delegated the power to require reports from other State agencies impacting the elderly.⁵

Having determined that the State agency on aging should be granted powers by statute, one is then faced with two questions: How many powers, and which ones? Of course, the more extensive the authority granted the agency, the more tools it will have to use in exerting power on behalf of the elderly. At a minimum, an aging agency should have clearly defined powers with respect to: (1) Development of overall aging policy within the State; (2) allocation of funds and administration of programs pursuant to the Older Americans Act; (3) coordination and evaluation of all State programs and services affecting older persons; and (4) formulation or review of all State legislation, programs, or budget allocations which would significantly impact older persons.

Beyond these basics, there is an almost limitless range of possible powers which can be assigned to a State agency on aging. We will examine some of the more important of the powers—those which have been incorporated into the model act—in the following sections.

⁵ Before it became part of the Governor's office, the Louisiana Bureau of Aging Services held this power, but it was explicitly granted to the bureau in writing through executive order, not informally delegated by the Governor or the bureau's umbrella agency.

1. ADMINISTRATIVE POWERS OF STATE AGENCIES

Administrative powers granted to State agencies by statute vary widely in type and degree. But the majority of State aging agencies possess a common core of statutory authority. These functions relate primarily to the agencies' role as administrators of Older Americans Act programs and as the focal point of State activities concerning the aging.

Contained in the model State statute are a broad range of such administrative powers and duties. Some—including the powers to plan and coordinate services for the elderly, assess the needs of older persons and determine what services are available to meet them, develop a 5-year-program plan, receive and disburse funds, and establish demonstration projects—are delegated to the agency as an entity. Others—such as the responsibility for supervising the expenditures of funds, employing personnel, reviewing proposals, and promulgating regulations—are granted specifically to the agency director.

These powers and duties are typical of those delegated many State agencies, with the exception of the 5-year plan provision. Their importance in authorizing the agency to conduct activities in furtherance of its responsibilities under the Older Americans Act is obvious.

Next we will discuss the more innovative provision of the model act.

2. THE DUTY TO SERVE AS AN ADVOCATE FOR THE ELDERLY

The advocacy function mandated by the model statute reflects the role of the office as the central agency in State government concerned with the problems and needs of the elderly. The advocacy function reminds State agencies that they should vigorously pursue the best interests of older persons at all times and within all contexts. Most agencies, in fact, need no reminder; they are eager to act as advocates but meet with opposition to that role from State administrations or others. The advocacy provision of the statute gives them the explicit mandate they need.

For example, the Connecticut Department on Aging, which is directed by statute to advocate for the elderly, worked effectively to secure legislation creating a congregate housing program for the elderly. The legislation provided that the programs would be administered by another State agency. Yet the department assumed an advocacy role by aggressively promoting the housing interests of older persons both within State government and before the legislature while the legislation was under consideration.

The advocacy mandate has also brought important benefits to older persons in Massachusetts. The Massachusetts Department of Elder Affairs used its advocacy power to implement effectively the state-wide home-care program mandated by its statute. But perhaps the most beneficial use of this power was made in the successful effort to have all social services programs directed to the elderly transferred to the Department of Elder Affairs from the Department of Welfare. This transfer allows the services to be tailored to the specific needs of the elderly, and has resulted in the Department of Elder Affairs having one of the highest budgets among State agencies on aging.

3. THE POWER TO INITIATE AND PROMOTE LEGISLATIVE PROPOSALS

The power to make legislative recommendations is a logical extension of the State agency's mandate to serve as an advocate for the elderly. The contribution of agency on aging can assure both that the concerns of administrative and program coordination and that the interests of older persons are represented in the legislative forum. An express authorization to recommend and comment upon legislation is especially important to assure against situations in which the State agency is formally or informally prohibited from presenting its views directly to the legislature.

A few of the States which are authorized to make legislative recommendations are Connecticut, Michigan, Maryland, and Florida (although in Florida, the recommendations must go through the umbrella agency, the Department of Health and Rehabilitative Services, in which the program office of aging and adult services is located). In Connecticut, the agency on aging took an active part in the successful drive to reform the State's nursing home licensure law. The Michigan State agency worked on nursing home reform legislative as well, and also participated in the development of legislation establishing special transportation services for the elderly. And in Maryland, the aging agency promoted legislation to establish a public guardianship program, grant property tax relief, and permit generic drug substitution.

4. RESPONSIBILITY TO COORDINATE ALL STATE PROGRAMS AFFECTING THE ELDERLY AND TO OBTAIN COOPERATION FROM OTHER STATE AGENCIES

Regulations promulgated under the Older Americans Act establish the duty of the State agency on aging to "assure the effective coordination of State planning and service activities and programs related to the purposes of the act." Further, the vast majority of State agencies have general statutory authority to coordinate the services of public and private agencies affecting older persons.

However, the actual ability of State aging agencies to "coordinate" activities outside their own jurisdiction is severely limited. Even establishing good voluntary working relationships among State agencies involves politically sensitive questions of jurisdiction and possible bruised egos. In many instances, it would be pointless for a State agency on aging to attempt to direct or control the activities of such agencies as large State welfare or transportation departments which often have greater status and a far higher budget than the aging agency. Effective mechanisms to foster coordination are needed.

a. Interagency Linkages

There is a wide range of such mechanisms in use with the goal of promoting coordination and cooperation among all State agencies with respect to programs or services directed to the elderly. Some of these devices are more effective than others, and the model act incorporates what we feel to be the most effective. However, in order to illustrate the relative merits of our approach all mechanisms will be discussed.

Several States have chosen to establish interagency committees or

designate liaison officers to promote joint activity and regular exchange of information and expertise among State agencies. Many States have established such interagency relationships informally rather than by statute. For example, in Wisconsin, representatives of the Bureau of Aging sit on the advisory boards of other State agencies whose programs affect the elderly. Massachusetts Secretary of Elder Affairs is a member of the State Health Policy Group and the State's nursing home ombudsman has a close working relationship with the Department of Public Health and Public Welfare.

In Ohio, five department heads are ex officio members of the Commission on Aging. In addition, the director of the commission, by executive order of the Governor, sits as a member of the cabinet even though the commission does not formally have department status. In New Jersey, the Division on Aging, within the Department of Community Affairs, works closely with the Department of Human Services on a pharmaceutical assistance program, and the division director is on the review panel for the foster grandparent program. Such informal linkages appear to be quite common.

However, a few States have chosen to institutionalize these mechanisms of coordination by incorporating them into State law. In some cases, statutes provide for direct linkages between particular State agencies and the agency on aging. Under Massachusetts law, for example, the State nursing home ombudsman serves on the Board of Nursing Homes. The Bureau of Maine's Elderly is required by law to collaborate with the Department of Community Affairs in the location, design, and construction of housing for the elderly and the Wisconsin Division on Aging serves as a consultant on housing for the aged in the State.

Three States have established by statute an interagency or technical advisory committee on aging. These committees, composed of the directors of State agencies whose activities affect the elderly (or their designees), have been created in Illinois, Michigan, and Ohio. In addition, the Maryland Legislature has established an interagency committee, staffed and chaired by the Office on Aging, and which focuses on all long-term care programs other than institutionalization.

The advantages of establishing such a committee can include encouragement of regular contact among State agencies, increased awareness on the part of other agencies of the special needs and problems of the elderly, and avoidance of last minute confrontation over particular issues and programs by promoting cooperation among agencies at the earliest stages of program planning.

In Michigan, several interagency task forces have been created as a means of complying with the intent of State law which mandates an Interagency Council on Aging. Each task force deals with a specific issue, such as transportation, alternatives to institutional care, energy, and reporting systems for grant programs. The task forces include outside experts in addition to representatives of State agencies. The director of the Michigan Office of Services to the Aging feels that these task forces are much more effective than the larger Interagency Council could be. Committees focused on single issues, she feels, can accomplish more than the all-encompassing council because they generate more enthusiasms from their members, take advantage of particular

types of expertise, and make more efficient use of the limited time participants have available to devote to aging issues.

In Illinois, a single Technical Advisory Committee on Aging has been established. Composed of the directors of relevant State departments and the Lieutenant Governor (who serves as chair), the committee receives input, through the Lieutenant Governor, from the Senior Advisory Committee, a group composed of representatives of senior citizens' organizations which was recently established by executive order. According to a representative of the Lieutenant Governor's office, the committee has been effective, particularly in preparing legislative proposals for the Governor's review.

The model statute includes an optional section creating a Technical Advisory Committee on Aging. Effective and creative use can be made of such a committee, or of small committees as in Michigan, if a State is sincerely interested in doing so.

b. Budgetary Mechanisms

Another tool to assure cooperation is the State agency budget. Many State agency directors skillfully use their discretionary funds to attract other State and Federal dollars for programs to serve the elderly. For example, the director of the D.C. Office on Aging reports that by offering a small title III grant, he was able to interest the city's transportation department in working cooperatively with the office to design and implement a consolidated transportation service system for the elderly and handicapped. He notes that any inter-agency coordination to meet the needs of the District's elderly has been dependent upon the ability of the Office on Aging to provide a portion of the necessary funds.

In several States, the legislature itself has used the State aging agency budget to promote coordination. In Maine, the State match for that portion of the title XX funds allocated for the elderly poor is included in the State agency budget. The agency passes through these funds to the area agencies which then contract with their respective local social services departments for programs to serve the elderly. This fiscal arrangement permits joint monitoring of the title XX aging services by the AAA's and the local social service departments.

In Maryland, title XX funds are also used as a mechanism of coordination. That portion of the State title XX match which goes toward aging services is passed through the Office on Aging before being expended by the Department of Human Resources. The department is accountable to the Office on Aging with respect to the program and services established with these funds and the Federal funds obtained thereby.

c. Mandate for Cooperation From Other State Agencies

While almost all State agencies are mandated to *coordinate* activities of other agencies, only 15 State statutes require other agencies to *cooperate* with the agency on aging. The level of cooperation required varies widely among these States. Louisiana, Wisconsin, and Florida, for example, have statutes which provide only that

other agencies shall cooperate with the aging agency in providing requested reports or data. At the other end of the spectrum, Maine law provides that State agencies shall cooperate fully with the Bureau of Maine's Elderly in carrying out its activities. The statute specifies that the bureau may request personnel, financial assistance, and facilities, as well as data.

d. Power To Review and Make Recommendations

Another—somewhat stronger—approach to coordination of State agencies' activities affecting the elderly is to give the agency on aging some form of explicit review authority over the actions and policies of other agencies. While the cooperative mechanisms discussed above encourage regular communication and coordination of planning and activities among State agencies, review authority casts the aging agency more directly in the role of advocate for the elderly within State government. More exchange of information among agencies will not insure that the needs of older persons are fully considered in the adoption of programs in such areas as health, transportation, or employment. An agency with some form of authority to review proposed actions of other agencies, on the other hand, can at least insure that those agencies consider the possible impact of their policies on older persons before adopting them.

Authority to review specific proposals of other agencies will also enhance an aging agency's power to coordinate the activities of those agencies. The aging agency which receives copies of all proposed State actions impacting the elderly will be in an ideal position to see where those actions may duplicate or contradict each other, and to suggest appropriate changes.

Finally, the power to review the particular activities of other State agencies can act as a prod in favor of greater cooperation at an earlier stage of the policymaking process. Other agencies will realize that they can save some time and trouble if they consult with the aging agency while developing policy in the first instance.

While generalized types of review authority can help a State agency to advocate on behalf of the elderly, they do not necessarily permit the agency to have direct, meaningful impact on specific proposals affecting older persons. In Minnesota, the State agency's broad review authority has been little used. The deputy director of the council reports that efforts are now underway to develop a more formal system of review and comment on the proposals of other State agencies.

A few States have gone further and imposed an affirmative obligation on other State agencies to inform the aging agencies of any proposals which would affect the elderly. In Hawaii, State departments and county programs providing programs or services to older persons are required to clear their final program plans with the Executive Office on Aging before implementation. Similarly, Michigan law requires that proposed State programs providing services to the elderly must be submitted to the Office of Services to the Aging and that allocation of funds for such programs must be reviewed and approved by the office. Under Massachusetts law, regulations of the Department of Public Welfare pertaining to home care service stand-

ards and certain financial assistance programs cannot become effective unless they have first been submitted to the Secretary of Elder Affairs for review and comment.

The Bureau of Maine's Elderly has more extensive review authority. The bureau is mandated to review "all proposed legislation, fiscal activities, plans, policies, and other administrative functions relating to older people made by or requested of all State agencies." The bureau is authorized to submit advisory comments and recommendations to the agencies in question. To be sure that the bureau will be aware of all relevant policies, other State agencies are required to advise the bureau of proposed activities. Further, agencies planning program activities for older persons are directed to consult with the bureau.

e. Required Impact Statements

Three States have adopted a fairly formal review and comment process requiring the submission of proposed policies and rules to the aging agency and the issuance by the agency of statements evaluating the impact on the elderly of the proposals.

In New York, for example, the State Office for the Aging is empowered by a 1976 executive order "to review and report upon proposed legislation, regulations, orders, and plans involved in the implementation and development of programs which have a significant impact upon the health or well-being of the aging of the State and which the Governor determines to be appropriate for such review." Items are to be submitted to the office at least 30 days before they are to take effect, and the office is to reply within 15 days, commenting on the following: (1) The impact of the proposal on older persons; (2) its relationship to and impact on existing programs; (3) recommendations and suggested changes. The other State agency is to notify the office of any action taken as a result of the comments.

The procedure has been somewhat successful. The executive order has given the Office for the Aging more exposure in the State government and more agencies are, in fact, consulting with the office, both formally and informally. The formal comment power has been used, and successfully. Recently, for example, in response to comments from the Office for the Aging, the State Department of Health decided not to adopt a proposed regulation requiring home health aide agencies to have a capacity to perform physical therapy. The office noted that many home health aide agencies, now providing valuable services, would be unable to afford to continue in business under the new regulation.

f. The Model Statute Approach

The model statute adopts a review and comment procedure in which the aging agency receives copies of relevant proposals and issues elderly impact statements evaluating them. The elderly impact statement approach has advantages over the less precise, if equally extensive, approach of the Maine statute: It imposes particular, concrete obligations on other agencies to submit policies to the aging agency. Further, the formal procedure makes it easier to determine whether the required review is actually taking place.

The model statute's version of the elderly impact statement review procedure attempts to solve some of the problems presented by ex-

isting laws. First, a delicate balance of authority is struck so that each agency retains its own independence but the other agencies are not free simply to reject the aging agency's suggestions out of hand. If the aging agency and the other State agency cannot agree on an ultimate policy, the conflict is to be resolved by the Governor.

The Governor is also mandated to adopt regulations defining "substantial impact" so that disputes over definition of this term can be avoided. Finally, the model statute provisions expand the actions to be reviewed to include, inter alia, budgetary decisions as well as programs and policies. As structured in the model statute, the elderly impact review mechanism can be a truly powerful technique for advocacy, and can put teeth in the agency's mandate to coordinate all State programs affecting the elderly.

5. POWER TO HOLD HEARINGS AND ISSUE REPORTS

Extensive authority to conduct research, hold hearings, and perform other information-gathering functions can strengthen an agency in a variety of important ways. Thorough research studies and fact-finding hearings provide a solid base of information for overall policy formulation and social service planning. Hearings and release of study results can also attract needed public attention to particular problems and support for advocacy efforts on behalf of the elderly. Finally, effective research and investigation can contribute significantly to the state of the art in the field of aging generally.

While the vast majority of State agencies on aging have some authority to gather information or conduct studies on the problems of the elderly, few have been granted either a clearly defined responsibility in this area or the tools with which to exercise that responsibility effectively. Most agencies have not been granted specific authority to use tools such as hearings, conferences, and appointment of experts, which might permit them to explore particular problems or issues in depth.

Although State agencies may be able to conduct investigatory hearings without express statutory to do so, it is preferable to have this power drafted into law, as is the case, for instance, in New Jersey. Otherwise, an agency which begins to investigate especially controversial issues or which examines the actions of powerful political or economic interests may find its authority in this area successfully challenged. For this reason, we have included a provision establishing the power to conduct hearings in the model act.

As for hiring consultants and holding conferences, many State agencies exercise these powers without express authority. Obviously they are less controversial than the power to hold investigatory hearings. Nevertheless, it may be desirable to include them in an enabling statute so that an agency's authority to conduct thorough research and investigation as needed will be absolutely clear.

6. RESPONSIBILITY TO ADMINISTER, MONITOR, AND EVALUATE NON-OLDER AMERICANS ACT PROGRAMS

Some statutes give to the State agency the power to oversee and administer programs in addition to those authorized by the Older Americans Act. These powers charge a State agency with a duty to take an interest in some particular program or subject matter area. In

some cases the agencies are given responsibility for administering programs that provide services or benefits, such as employment or nutrition programs. Other agencies are granted the power to monitor, evaluate, and report on a particular program, or to participate in the program's policy development. Since these powers usually reflect the special interests or concerns of a particular State, no such powers are included in the model statute. A few are described here, however, to provide examples of the variety of special statutory mandates that exist and the possibility for creative legislation.

Several State agencies are empowered to encourage or administer employment programs for the elderly. The Texas, Connecticut, Massachusetts, and Michigan agencies on aging operate specific programs utilizing older workers. A foster grandparents program operates out of the Minnesota Council on Aging office. General responsibility for encouraging or establishing older persons' employment programs is lodged in the Rhode Island, North Carolina, Georgia, and New Mexico agencies. Interestingly, these employment responsibilities constitute almost all of the statutory powers of the New Mexico Commission on Aging, indicating that employment is a major State priority in the area of aging.

Other State concerns reflected in specific statutory mandates to the State agency include: The development of consumer protection and preretirement counseling programs in Hawaii; the establishment of a transportation pilot project in California; the implementation of a public guardianship program in Maryland; and, the development of sheltered housing programs, also in Maryland.

Statutory responsibility for administering programs in addition to those required by the Older Americans Act can greatly enhance the State agency's stature—provided that sufficient administrative funds are appropriated. According to the director of the Maryland Office on Aging, the legislative provisions which give his office administrative authority for the sheltered housing and public guardianship programs are the strongest in the Maryland statute. He would, in fact, like to see the agency granted additional authority to oversee and administer long-term care services, which he believes are the services most crucial to the elderly population.

Some State agencies have been given authority in the oversight of nursing and residential care facilities. The Massachusetts Department of Elder Affairs is responsible for developing nursing home regulations in cooperation with the Commission of Public Health, and is authorized to intervene in any proceeding of the Public Health Council (which governs licensure, bed capacity, and level of care authorizations for homes) on behalf of nursing home facilities or residents. The Maryland Office of Aging is authorized to act as a nursing home ombudsman, receiving and referring complaints of nursing home residents. The Connecticut Department on Aging has been assigned more extensive responsibility for a nursing home ombudsman/advocate program which includes a more general elderly abuse reporting system.⁶ Further the department is mandated to cooperate in the development of performance standards for licensing of residential and medical facilities.

⁶ The 1978 amendments to the Older Americans Act required all States to develop ombudsman programs. Strategies to implement the programs may vary from State to State.

Massachusetts, Maine, and Rhode Island statutes place special emphasis on home care. The Rhode Island Department of Elderly Affairs is simply assigned the duty to encourage the establishment of home-care programs. In Maine, the aging agency is responsible for evaluating and screening home-care providers, while Massachusetts law provides for the State Department of Public Welfare to purchase home-care services for the elderly from the Department of Elder Affairs.

Chapter 3

ADVISORY COMMISSIONS

A. ROLES AND PURPOSES OF ADVISORY COMMISSIONS

To insure that the State agency on aging truly represents the interests of older persons, Federal regulations¹ require the State plan for aging to provide for establishment of an advisory commission to the State agency. At least one-half of the commission's members must be elderly, with low-income and minority older persons represented in proportion to their number in the State's total elderly population. The remaining members are to be chosen from among major public and private agencies which have demonstrated experience or particular interest in the special needs of the elderly.

Beyond this general mandate, however, it is left to the individual States to define through statute, executive order, or practice the structure, role, and powers of their advisory commission. The State may choose to relegate its advisory commission on aging to a narrow, perfunctory role, or it may design a creative, active commission with an important role in aging activities in the State.

Why is it important to have a strong, effective advisory commission? The foremost reason, of course, is to assure that the State agency is accountable to its constituency. The special planner-advocate role envisioned for State aging agencies cannot be discharged effectively if agency personnel begin to think of themselves simply as administrators or technicians acting as the patrons of some amorphous, helpless "them" whose views or feelings are considered irrelevant. Through its oversight of agency activities, an active advisory commission can see to it that State aging programs respond to the desires and reflect the priorities of the aging themselves. On the other side of the coin, the existence of an active, involved advisory commission can make it much easier for the aging agency to obtain citizen input on a regular basis. For example, in Michigan, the advisory commission provides a convenient contact point for statewide aging interests as opposed to local interests which are expressed to area agencies on aging. The commission then funnels this input to the director of the Office on Services to the Aging. Additionally, the support of a commission which includes among its members persons with prestige or political clout in the State and recognized spokespersons for the elderly can give added authority to the decisions and actions of the aging agency. In Maine, for example, the chairperson is a strong State legislator who has guided the commission into an active advocacy role. In Kansas, 4 of the 19 advisory commission members are State legislators. This provides an effective vehicle for legislative understanding of aging concerns.

¹ CFR § 903.50 (e) (1977).

This type of strong advisory commission can assume advocacy roles that an understaffed or politically stymied agency of State government may not be in a position to exercise effectively.

In this section of the report the need to authorize, by statute, an independent staff and budget for the commission will be discussed. In addition, specific statutory powers and responsibilities will be dealt with in terms of how they have been implemented in several States.

B. INDEPENDENT STAFF AND BUDGET

The ability of an advisory commission to function autonomously rather than as a rubber stamp and to adopt positions or opinions which may not always agree with those of the aging agency depends to a great extent on its relationship with that agency. One factor which contributes to the independence of the commission, and thus to its effective functioning, is the ability to hire an independent staff rather than make use of the staff of the aging agency.

Unfortunately, most commissions are specifically authorized to use the resources and staff of the State agency on aging. Only four (California, Maine, Kentucky, and the District of Columbia) have expressed power to appoint independent staffs. The Maryland, Pennsylvania, and Wisconsin commissions, which are not linked exclusively to the State agency on aging, also have some degree of independent staff control.

The model statute provides the authority to hire independent staff which will permit the advisory commission to develop its own policies and to evaluate objectively the aging agency's performance. Importantly, the statute also provides for separate appropriations for the advisory commission, which it may use to support paid staff. In Maine, the commission's paid staff authority has significantly contributed to making the commission an effective advocate in several areas, and to allowing it to do the required factfinding preparatory to drafting reports on various issues affecting the elderly. In California, an independent staff and budget has been used to increase the commission's input into the legislative process by allowing the commission to provide written analyses of proposed legislation.

C. COMMISSION POWERS AND DUTIES

An advisory commission will have a better chance of being strong and effective if it has been granted explicit responsibilities and powers by statute or executive order (and, of course, if it has access to some independent funding to support its activities). Because of its very character as an *advisory* body rather than an operating agency, a commission with no express powers will probably be assumed to have none, other than its basic function of advising on Older Americans Act programs.

There are several of these responsibilities and powers which we feel are essential to an active and effective advisory commission.

1. TO SERVE AS AN ADVOCATE

The mandate to serve as an advocate for the elderly is indeed broad, and can open the door to a wide range of activities by the commission. An advisory commission can follow this mandate in two important

forums—the State legislature and the community at large. An example of the former occurred in Michigan where the advisory commission initiated and lobbied heavily for a proposal creating a property tax credit for the elderly which ultimately became law. In Maine, the commission advocated successfully for property tax relief, the abolishment of mandatory retirement, and the establishment of the nursing home ombudsman program. This advocacy power was also used in Connecticut to support the legislature's creation of an independent State aging agency.

The power to serve as an advocate for the elderly can be a vital tool in coordinating public support for proposals that would benefit the elderly. The commission can thus serve as the focus for organizing older persons organizations into an effective legislative advocacy coalition.

As can be seen, the authority to act as an advocate can be used in a myriad of ways, and is complemented directly by two further statutory authorizations. Indeed, to be a fully effective advocate, the power to hold public hearings and issue reports, and to make recommendations to the Governor and the legislature must also be vested in the advisory commission.

2. TO HOLD PUBLIC HEARINGS AND ISSUE REPORTS

The power to hold independent public hearings will greatly enhance a commission's factfinding, oversight, and public mobilization functions. Hearings provide a forum for discussion of State aging programs, permit development of evidence concerning special issues or problems affecting the elderly, and permit the advisory commission to obtain regularly the views of ordinary citizens. Accordingly, the model statute extends the power to hold hearings to the advisory commission.

At present, advisory commissions in only five States (California, Colorado, Maine, Michigan, and the District of Columbia) are expressly authorized to hold independent public hearings. Not surprisingly, these States all have relatively strong offices on aging.

In Maine, the advisory commission used this power to cosponsor special hearings on a home fuel program to assist the elderly in meeting energy costs.

In order to make the most effective use of input gained in public hearings, the advisory commission must also have the authority to issue reports containing their findings or conclusions. Such reports, though, can also serve other purposes, as in Maine, where the commission used this power to publish the results of a comprehensive needs assessment. In Connecticut, the commission published a report on the problems affecting older citizens before they reach traditional retirement age.

The issuance of commission reports can also perform several other functions besides increasing the visibility of a particular issue in the public's eyes or cataloging public viewpoints, such as defining the essential decision points of the issue, providing a central position for senior citizen organizations to rally around, and to kick off a legislative advocacy campaign.

3. TO MAKE RECOMMENDATIONS

To be truly effective, advisory commissions should have the authority to report their recommendations to the Governor and the legislature. This authority assures that the expertise and knowledge of the commission will have an input into the policymaking process within the State.

Some 15 advisory commissions are authorized to make recommendations directly to the Governor and/or legislature. Eight commissions issue reports to both, and two to the Governor only. Less formally, but probably with the same general effect, four advisory commissions make recommendations to the Governor and legislature. The South Dakota commission makes recommendations to the Governor only.

Ten commissions are specifically empowered to make legislative recommendations.

The power to make recommendations is most frequently used to issue legislative analyses of proposed laws. However, it is also used in other ways. For example, in Connecticut, the commission works with a coalition of aging groups to develop and recommend an annual legislative agenda. In addition, the Connecticut commission uses this authority to testify on State budget proposals.

While the power to make recommendations does not insure action on the recommendations, it does allow the commission to make known to the State executive and legislature, on a regular basis, its positions on various issues affecting the elderly.

Chapter 4

CONCLUSIONS

Many factors in addition to the design of its enabling legislation may shape the role and impact of an aging agency: The skill, influence, and dedication of its director and staff; the level of support from the Governor and legislature for aging programs; the presence of a vocal constituency of older persons; and the responsiveness and efficiency of the State government bureaucracy. Some agencies on aging working from a very weak base of express authority have been able to accomplish a great deal on behalf of older persons; other agencies, strong on paper, have not lived up to their abstract possibilities.

However, it is the finding of this report that a strong statutory basis of authority, establishing the agency in a highly visible location, and granting it a broad range of express powers, is always an asset to an aging agency. While it cannot guarantee an effective agency, a strong statutory mandate is an important tool which an agency director can use to increase the agency's power and influence within State government, even when other favorable conditions are absent.

A State aging agency authorized by statute enjoys a degree of permanence and security which it could not derive from any other source of authority. The stature and powers an agency receives through statute are institutionalized and cannot be withdrawn or changed at the whim of an executive or department head. This permanence also provides a visible indication of State commitment to aging programs which will increase the prestige of the agency and give credibility to innovative and long-range planning efforts. Increased prestige and room for creativity, in turn, will attract talented, creative personnel.

A statutorily created and empowered State agency also has the advantage of providing a certain amount of legal leverage to the beneficiaries of program services and to the agency itself. A statutory mandate can be enforced in the courts so as to require the agency to provide services or take other actions as prescribed by the statute. The agency itself can also use this legal leverage to gain the cooperation of other State offices in carrying out its mission.

Creating a statutory basis of authority for a State aging unit can be beneficial in process as well as in result. Both the original authorization and any changes to it must be publicly debated, giving citizens an opportunity to participate in designing the structure, powers, and responsibilities of the agency. Further, legislators and State executive officers will be forced to go on record in support of, or in opposition to, a strong aging agency.

Both a powerful aging agency *and* a strong citizens' advisory commission are necessary to provide the visibility and impact necessary to insure that the voice of the elderly will be heard at all levels of govern-

ment within a State. The model statute presented here provides excellent mechanisms for establishing effective bodies in both of these capacities.

But, as noted earlier, the model statute (or a State's adaptation of it) is not a solution to the problems of the aging or even the problems of the aging agency. It is one of many tools which can be used effectively to reach solutions to the underlying problems. Combined with financial support, innovative program planning, dynamic leadership, strong support from the older community, and support from the Governor, the authority provided in LRSE's model statute can give an agency on aging maximum flexibility and maximum capability to meet the needs of a State's older persons. Also, the stature an agency gains through passage of a strong statute can itself attract the additional financial support needed to make dynamic, effective programs for older persons a reality.

Thus, while passage of the model act, or similar legislation, will not guarantee an effective State agency on aging, there will be immediate symbolic benefits and a structure will be provided within which the translation of these benefits into real, practical improvement in the lives of older Americans can take place when the other necessary factors, i.e., quality agency staff, executive support, and an adequate budget, are present.

Appendix

MODEL STATE STATUTE

OLDER [] ACT

AN ACT to establish the [] Office on Aging and to prescribe its powers and responsibilities; to establish the [] Advisory Council on Aging and to prescribe its powers and duties; to authorize the establishment of and allocation of funds to area agencies on aging; and to mandate a comprehensive and coordinated system of social services for older persons throughout the State of [].

ARTICLE I. SHORT TITLE; DECLARATION OF PURPOSES; DEFINITIONS

SHORT TITLE

SEC. 1.1. This Act may be cited as the “Older [] Act.”

DECLARATION OF PURPOSE

SEC. 1.2. The Legislature of the State of [] finds that the objectives of the Older Americans Act of 1965—to entitle older persons to the opportunity for adequate retirement income, the best possible physical and mental health, suitable housing, restorative services for the institutionalized, freedom from age discrimination in employment, retirement in dignity, a coordinated and readily available system of community services, and the maximum possible independence in planning and managing their own lives—should be achieved for all older citizens of []. It is the purpose of this Act, in support of these objectives, to establish a State office on aging and area agencies on aging and to use both State funds and available Federal funds to advance the welfare of older persons. It is the intent of this Act that the planning and operation of programs for older persons shall be undertaken by older citizens, families, community leaders, private organizations and agencies, and all levels of government acting in partnership.

Comment: The 1973 Act of Maine’s Elderly (T22 M.R.S.A. § 5102) includes an interesting “Declaration of a People.” Written in the form of a credo, the declaration provides a very detailed statement of purpose and philosophy. Much can be said in favor of a State’s formulating its own statement of purpose. This gives a State the opportunity to consider whether particular issues or problems should have the highest priority within the State and demonstrates the commitment of the legislature and the citizenry. A detailed statement of purpose can also provide useful guidance in interpreting the operative provisions of the statute.

DEFINITIONS

SEC. 1.3. (a) The term "office" means the office on aging created by article II of this Act.

(b) The term "planning and service area" means a geographic unit within the State established in accordance with the requirements of the Older Americans Act for the purpose of allocation of funds for the delivery of social services to older persons.

(c) The term "area agency" means the single local agency or organization designated within each planning and service area to plan for and administer the delivery of a comprehensive and coordinated system of social services to older persons.

(d) Except as otherwise provided by State or Federal law or by Federal regulation, the term "older persons" means these persons residing within the State of [] who are 60 years of age or over.

Comment: The age of 60 has been chosen for consistency with title III of the Older Americans Act. In the case of some programs, such as employment programs, it may be desirable or appropriate to use a lower age, such as 55 (for example, title V of the Older Americans Act use the age of 55). The definition as drafted allows for such specific exceptions.

(e) The term "allocation of resources" means that portion of the funds available to the office which is allotted to a particular area agency for the purpose of carrying out its duties under this Act.

(f) The term "area plan" means the plan submitted to the State office on aging by an area agency which sets forth the area agency's goals, objectives, and proposed activities to foster the development of a comprehensive and coordinated system of social services for older persons within its planning and service area.

(g) The term "Council" means the [] Advisory Council on Aging.

(h) The term "director" means the director of the [] Office on Aging.

(i) The term "social services" means any services necessary to the general welfare of older persons, including but not limited to nutritional services, transportation services, health services, homemaker services, employment programs, housing programs, legal services, recreational programs, and information, referral, and counseling services, except that, where necessary to comply with Federal laws or regulations governing the availability of Federal funds, the term "social services" shall be deemed to include only such services as are permitted by such Federal laws or regulations.

ARTICLE II. [] OFFICE ON AGING

ESTABLISHMENT OF OFFICE ON AGING

SEC. 2.1.

Comment: The office may be located within a department of public welfare or human resources, or it may be independent, reporting directly to the Governor. Some of the factors favoring each location have been discussed in the report which accompanies this statute. The model statute includes alternative provisions for each location, so that the location chosen in any particular State may reflect the political climate and existing conditions in that State.

Alternative A

(a) There is established within the department of [] an office on aging (hereinafter referred to as the office). The office shall be headed by a director, who shall be directly responsible to the Secretary of [] (hereinafter referred to as the Secretary).

(b) The director shall be appointed by the Governor, by and with the advice and consent of the legislature, and shall serve at the Governor's pleasure. The director shall have appropriate training, experience, and demonstrated ability in the field of aging.

Comment: The model statute here follows the pattern of the Older Americans Act, wherein the Commissioner on Aging is appointed directly by the President and not by the Secretary of Health and Human Services. Such an approach should give an office located within a larger department an extra measure of power by providing a direct link with the Governor. Where local tradition or bureaucratic structure makes this impossible, the statute can provide for appointment of the director, by the Secretary. A State taking this approach may want to provide for appointment by the Secretary with the approval of the Governor or the State advisory council so as to provide a measure of independent input into the selection process.

(c) The Secretary shall not delegate to any other person or agency any of the authority given the director or the office by this Act without the prior approval of the legislature.

Alternative B

(a) There is hereby created a cabinet level office on aging (hereinafter referred to as the office), which shall be under the direction of the Governor. The office shall be headed by a director, who shall be directly responsible to the Governor.

Comment: In most States, a cabinet level agency on aging would be referred to as a department and headed by a secretary. The model statute retains the terms "office" and "director" for convenience, so as to avoid using alternatives throughout the statute.

(b) The director shall be appointed by the Governor, by and with the advice and consent of the legislature, and shall serve at the Governor's pleasure. The director shall be paid such compensation as the Governor may fix. The director shall have appropriate training, experience, and demonstrated ability in the field of aging.

AUTHORITY OF THE DIRECTOR

SEC. 2.2. (a) The director (or, in the director's absence, his or her designee) shall:

(1) Be responsible for the administration of this Act and for the supervision and administration of all of the activities of the office.

(2) Have exclusive responsibility to supervise the office's expenditure of funds and be responsible for the office's compliance with all applicable provisions of State and Federal law in the receipt and disbursement of funds and in the conduct of its activities generally.

(3) Within the limits of appropriated funds, employ such personnel as may be required to carry out the purposes of this Act. The director shall appoint and may remove all such personnel

in accordance with the merit or State civil service system. In making appointments, the director shall give preference to job applicants who are 55 years of age or older.

(4) Review all State department and agency proposals that have major impact on older persons, in accordance with the provisions of article IV of this Act.

(5) Advise the Governor (and the Secretary) on all matters affecting the interests of older persons.

(6) Promulgate, amend, revise, and rescind regulations as necessary and appropriate to carry out the purposes of this Act.

(7) Prepare for each fiscal year a budget for the office, itemizing anticipated revenues and expenditures, (which he or she shall submit to the Secretary for review and transmittal to the Governor) (which he or she shall submit to the Governor). (The Secretary shall keep separate accounts for all Federal, State, and other funds allocated or appropriated to the office, and for all expenditures made by or on behalf of the office, so that responsibility for the fiscal administration of the office may be delegated to the director.)

(b) As necessary or appropriate to carry out the purposes of this Act, and within the limits of appropriated funds, the director is authorized to:

(1) Utilize the services and facilities of any agency of the State government or of any other public or private nonprofit agency or organization, in accordance with any agreement between the director and the head thereof, and is authorized to pay for the services and facilities used, in advance or by reimbursement, as may be provided in the agreement.

(2) Employ or contract for the services of experts and technical consultants as may be necessary to carry out the purposes of this Act.

POWERS AND DUTIES OF THE OFFICE

SEC. 2.3. The office shall:

(a) Serve as the central State agency with primary responsibility for the planning, coordination, development, and evaluation of policy, programs, and services for older persons in [] and serve as the single State agency to administer programs under this Act and under the Older Americans Act of 1965, as amended (hereafter Older Americans Act).

(b) Conduct research and other appropriate activities to determine the needs of older persons in the State, including particularly, but not limited to, their needs for social services, and to determine the existing services and facilities, private and public, available to older persons to meet those needs. In carrying out this subsection, the office shall place special emphasis on the needs of: (1) Low-income and minority older persons; (2) persons with serious physical and mental disabilities; (3) persons over 75 years of age; (4) persons living alone; and (5) persons living in rural or isolated areas.

(c) Develop, with the advice of the council, a multiyear plan for State programs, services, and activities for older persons, to be updated and extended annually.

(d) Stimulate more effective use of existing resources and services for older persons and develop programs, opportunities, and services which are not otherwise provided for older persons, with the aim of developing a comprehensive and coordinated system for the delivery of social services to the elderly.

(e) Receive and disburse all Federal and State funds allocated to the office; solicit, accept, and administer grants (including Federal Government grants), gifts, devises, and bequests of money or property, real or personal, made to the office or to the State of [] for the benefit of older persons in []. The office shall have power to comply with such conditions and enter into such agreements as may be necessary in carrying out its authority under this subsection.

(f) Serve as an advocate within government and in the community for older persons in [].

(g) Establish and/or designate planning and service areas and area agencies in accordance with the provisions of article III of this Act.

(h) Enter into such contracts and make such grants within the limits of appropriated funds, as are necessary or appropriate to the performance of its duties or the execution of its powers under this Act.

(i) Maintain a clearinghouse of information related to the needs and interests of older persons.

(j) Provide technical assistance and consultation to agencies and organizations, both public and private, with respect to programs and services for older persons.

(k) Develop and conduct, alone or in coordination with other agencies, research and demonstration projects and programs that provide training, education, and services to advance the interests of older persons.

(l) Hold such hearings and conduct such studies or investigations concerning all matters affecting the health, safety, and welfare of older persons as are necessary or desirable to carry out the purposes of this Act. Pursuant to these investigatory and hearing powers, the director shall be authorized to issue subpoenas requiring the attendance of witnesses and the production of pertinent materials, and to apply to any court having jurisdiction for an order finding in contempt of court any person who does not comply with a subpoena.

(m) Provide information and technical assistance to the council and keep the council continually informed of the activities of the office.

(n) Make recommendations for legislative action to the Governor and to the legislature.

(o) Conduct evaluations and prepare reports in accordance with the terms of section 2.4 of this Act.

EVALUATIONS AND REPORTS

SEC. 2.4. (a) The office shall regularly review and evaluate the activities of area agencies and the impact and effectiveness of all programs, including research and demonstration projects, under this Act. A complete evaluation of all activities and programs of each area agency, including an onsite evaluation, shall be made at least annually, and a written report of the findings submitted to the area agency. All other agencies and departments of the State shall make available to the office, on request, such information as it deems necessary for evaluations, provided that the office shall be bound by the terms of any State law or binding private agreement providing for confidentiality of information to the same extent as the agency or department from which the information is obtained.

(b) In developing appropriate criteria for evaluation of programs, the office shall seek the views of the council and the advisory boards of area agencies.

(c) Whenever possible in evaluations, the office shall obtain the views of program beneficiaries as to the strengths and weaknesses of the program.

(d) The office shall publish each year summaries of all research and evaluations conducted by or on behalf of the office during the preceding fiscal year. All studies, evaluations, proposals, and data produced or developed by the agency shall become the property of the State and be available to the public.

(e) The office shall spend such sums as necessary, not to exceed an authorized percent of the funds appropriated each fiscal year to the office for administration of this Act, to monitor and evaluate programs as required by this section.

(f) The director shall submit annually to [the Secretary], the Governor, and the legislature a full written report, which shall be made public, on the activities of the office and of the area agencies and on the current status and welfare of older persons in []. Such reports shall include statistical data reflecting the services and activities provided older persons during the previous year, the number of persons served, and the cost of services.

EDUCATION PROGRAMS FOR OLDER PERSONS

SEC. 2.5. The office shall develop and provide education and training programs intended to increase the well-being of older persons and to increase their opportunities for employment and community service. The office shall seek the advice and participation of older persons in formulating and executing all such programs. Programs developed under this section shall cover areas including, but not limited to, the following:

- (a) Preretirement counseling.
- (b) Legal rights and responsibilities.
- (c) Federal and State benefit programs for older persons.
- (d) Economic, social, health, and other problems of older persons.
- (e) Methods of stimulating local governments and organizations to involve older persons in community life.
- (f) Employment and community service training for older persons.

GERONTOLOGY STUDY

SEC. 2.6. The office shall encourage the recruitment and training of qualified persons for the field of aging by:

(a) Publicizing present and anticipated job opportunities within the State.

(b) Promoting the development of training and study programs in the field of gerontology and encouraging universities and community colleges within the State to participate in preparing students for careers in gerontology.

ARTICLE III. PLANNING AND SERVICE AREAS; AREA AGENCIES

Comment: This article codifies the major outlines of the area agency structure mandated by the 1973 amendments to the Older Americans Act, while simply requiring compliance with the Act and its regulations as to more specific details of organization and structure. The aim of this approach is to set forth explicitly in the statute the role and functions of area agencies, while avoiding the need to amend the statute every time an Older Americans Act regulation is revised.

DESIGNATION OF PLANNING AND SERVICE AREAS

SEC. 3.1. The office shall divide the State into district planning and service areas in accordance with the requirements of the Older Americans Act and Federal regulations promulgated thereunder. The office shall review the boundaries of planning and service areas from time to time and shall change them as necessary to comply with Federal law or to reflect changes in governmental boundaries or major changes in population distribution.

DESIGNATION OR ESTABLISHMENT OF AREA AGENCIES

SEC. 3.2. (a) The office shall designate or establish within each planning and service area an area agency on aging (hereafter area agency) which has the authority and capacity to develop and carry out a plan for the development of a comprehensive and coordinated system for the delivery of social services within the planning and service area.

(b)(1) Before designating or establishing an area agency in a planning and service area, the director shall solicit and consider the recommendations of the executive officers or governing boards of all counties and all major cities within the planning and service area.

(2) If the officers or boards whose recommendations have been solicited pursuant to paragraph (1) of this subsection have not responded within 90 days after request by the office, the office shall establish or designate an area agency within the planning and service area without benefit of their recommendations.

Comment: In an individual State, it may be appropriate to select particular local government representatives (e.g., county commissioners) and name them in the statute as the persons whose views are to be solicited. However, the municipal governments of large cities should also be entitled to have some input into the selection of an area agency. "Major cities" can be defined in a State statute in a manner appropriate to the population characteristics of the State.

(c) In designating an area agency, the office shall give preference to established units on aging, unless no such unit exists within the planning and service area which has the capacity to develop and carry out an area plan in accordance with the terms of sections 3.3 and 3.4 of this article.

(d) In designating or establishing an agency as an area agency the office shall comply with all requirements of the Older Americans Act and Federal regulations promulgated thereunder.

POWERS AND DUTIES OF AREA AGENCIES

SEC. 3.3. (a) Each area agency shall undertake to develop within its planning and service area a comprehensive and coordinated system for the delivery of social services to older persons. To achieve this goal, the area agency shall:

(1) Assess the needs of older persons within the planning and service area for social services, and determine what resources are currently available to meet those needs;

(2) Endeavor to coordinate and expand such existing resources; and

(3) Make grants to or enter into contracts with any agency, corporation, or organization, public or private, for the provision of needed social services not otherwise sufficiently available to older persons within the planning and service area.

The area agency shall develop and submit to the office for approval an area plan on aging meeting the requirements of section 3.4 of this Act which sets forth its planned activities under this subsection.

(b) Each area agency shall serve as an advocate within government and within the community at large for the interests of older persons within its planning and service area.

(c) Each area agency shall continually monitor and periodically evaluate the activities of its service providers to insure that the services being provided comport with the terms of the grant or contract in type, quantity, and quality. Where a provider is found to be in breach of the terms of its grant or contract, the area agency shall exercise its full rights under the law to obtain such relief, restitution, improvement in services or discharge from its obligations under the grant or contract as is necessary or appropriate under the circumstances.

(d) Each area agency is authorized to use, with their consent, the services, equipment, facilities, and personnel of Federal, State, and municipal departments and agencies, and to pay therefor, within the limits of its resources, as agreed between the agencies, and to cooperate with other public and private agencies as to the use of services, equipment, and facilities.

(e) In hiring staff, area agencies shall give preference, subject to the terms of any applicable merit employment systems of local government, to job applicants 55 years of age or over.

(f) To the extent its resources permit, each area agency may conduct such other activities as are appropriate to the achievement of its goal of improving the quality of life for older persons within its planning and service area and as comport with the requirements of the Older Americans Act.

AREA PLANS

Sec. 3.4. (a) An area plan on aging developed by an area agency shall provide for the development of a comprehensive and coordinated system for the delivery of social services which is designed particularly to achieve the following goals for older persons:

- (1) Maximum self-maintenance.
- (2) Avoidance of unnecessary institutionalization.
- (3) Provision of the broadest possible range of living and service options reflecting differing levels of ability to live independently.
- (4) Minimization of moves or changes in living arrangements.
- (5) Assistance in making informed choices of appropriate living arrangements and levels of care.

(b) Each area plan shall provide that as many as possible of the following services are available to older persons, whether through other sources or through contracts or grants made by the area agency:

- (1) Information and referral.
- (2) Social service casework, including protective placement and services.
- (3) Transportation services, particularly those necessary to obtain access to the other services provided for in the area plan.
- (4) Congregate and home-delivered meals.
- (5) Home services, including without limit, homemaker, home health, and home chore services.
- (6) Legal counseling and representation.
- (7) Retirement and employment counseling.
- (8) Volunteer services development.
- (9) Residential repair and renovation services.
- (10) Late start center programing.
- (11) Continuing education.
- (12) Friendly visiting and telephone reassurance services.
- (13) Such other services as are necessary or appropriate in assuring the welfare and independence of older persons.

(c) Where insufficient resources exist to allow for provision of all of the above listed services, the area agency shall select those services to be included in the area plan in accordance with the following principles:

(1) Priority shall be given those services required by the Older Americans Act to be provided, or designated in the Older Americans Act as priority services.

(2) Priority shall be given to provision of services to those older persons with the greatest needs and the fewest resources. Such persons include: (A) Low-income and minority older persons, (B) persons with serious physical or mental disabilities, (C) persons over 75 years of age, and (D) persons living alone.

(3) Priority shall be given those services for which needs assessment activities conducted by the area agency show the greatest need.

Comment: A State legislature which is strongly convinced that certain services are entitled to priority on a statewide basis may revise subsections (b) and (c) to provide such priorities explicitly. Where

the State legislature favors maximum local flexibility, on the other hand, it may be desirable to eliminate these subsections altogether and leave area agencies to plan as they will, subject to review by the State office and subject to the requirements of the Older Americans Act. The alternative provided here is a midpoint; it mandates an overall policy that as many of the listed services as possible shall be provided, but provides only guidelines for selecting among services to be provided where provision of all is not feasible.

(d) Each area agency shall seek the advice of its area agency advisory board in developing its area plan.

SUBMISSION OF REPORTS AND PLANS OF AREA AGENCIES

SEC. 3.5. (a) [] days prior to the start of a 3-year period specified by the State office, such area agency shall submit to the office for approval an area plan prepared in accordance with the requirements of section 3.4 of this article. If the office approves the area plan, or fails to act within 60 days, the area plan shall go into effect at the beginning of the fiscal or program year. If the office disapproves the area plan, it shall forward a statement of the reasons for disapproval to the area agency, which shall have [] days to revise and resubmit the area plan. If the office approves the resubmitted area plan, it shall go into effect at the beginning of the fiscal year or other specified date. If the resubmitted area plan is disapproved, the office shall develop and forward to the area agency before the beginning of the agency's next fiscal or program year a revised area plan for implementation by the area agency.

(b) Within [] days after the close of each fiscal year, each area agency shall submit to the office an annual report, which shall be made public, describing and evaluating its programs and activities during the previous fiscal year.

AREA AGENCY ADVISORY BOARDS

SEC. 3.6. (a) There shall be established for each area agency an advisory board of 15 members, to include:

(1) At least eight older persons, including low income and minority older persons represented in proportion to their presence in the total older population.

(2) Representatives of public and private agencies and organizations serving older persons.

(3) Members of the general public who are concerned with the needs and interests of older persons.

(b) The members of each advisory board shall be appointed by the chief executive officers of each county within the planning and service area. Where the planning and service area is composed of more than one county, each county executive officer shall be entitled to appoint a number of members to the advisory board which bears the same ratio to the total membership of the advisory board as the number of older persons in the county bears to the number of older persons in the planning and service area.

Comment: Appointment of the advisory board by county officials provides for continuing local involvement in the activities of the area agency. Further, where the designated area agency is a private agency,

this provision mandates a continuing participatory role for local government.

(c) Of the initial 15 members of each advisory board, 5 shall be appointed for 3-year terms; another 5 shall be appointed for 2-year terms; the remaining 5 shall be appointed for 1-year terms. All subsequent appointments shall be for terms of 3 years.

(d) Each area agency advisory board shall:

(1) Establish basic policy guidelines for the administration of the area agency's activities on behalf of older persons, and advise the area agency on questions of policy which may arise.

(2) Advise the area agency with respect to development of the area plan and budget, and review and comment on the completed area plan and budget before its transmittal to the director.

(3) Review and evaluate the effectiveness of the area agency in meeting the needs of older persons in the planning and service area.

(e) Each area agency advisory board shall meet at least quarterly. The meetings shall be open to the public, and reasonable advance public notice of meetings shall be given.

ALLOCATION OF RESOURCES TO AREA AGENCIES

SEC. 3.7. Each area agency shall be entitled to receive through the office an allocation of resources for the conduct of its activities pursuant to this Act. The amount of each area agency's allocation of resources shall be determined by the director in accordance with the requirements of the Older American's Act and the Federal regulations promulgated thereunder.

ARTICLE IV. REVIEW AUTHORITY OF THE DIRECTOR; COOPERATION AMONG AGENCIES

Comment: As noted in the introductory commentary, it is desirable for the office to have authority to review the programs and policies of the many State agencies whose actions affect the elderly so that State programs may be fully coordinated and efficiently organized, and so that the office may serve as a central spokesman for the elderly within State government. The form of review authority created here is the strongest and most direct, requiring all other State agencies to notify the office on aging of proposed programs and regulations that will affect older persons. The director of the office may issue an elderly impact statement if he finds the proposal objectionable, and the Governor is granted authority to resolve irreconcilable differences among departments. The 60-day period within which review is to take place is sufficient to permit careful consideration of impact on the elderly yet short enough to prevent governmental paralysis.

REVIEW AUTHORITY

SEC. 4.1. (a) The director shall review all proposed policies, programs, budgets, and regulations of any State department or agency which have major impact on older persons. Such policies, programs, budgets, and regulations include without limitation those related to

income, mental and physical health, housing, transportation, and nutrition.

(b) The Governor shall issue guidelines for use by State agencies and departments in determining which programs, policies, budgets, and regulations have major impact on older persons.

Comment: Placing authority to determine which actions will trigger the review authority with the Governor preserves the balance of power between State agencies and decreases the likelihood of destructive interagency conflict over the proper limits of the review authority.

(c) The chief executive officer of any State department or agency proposing action which will have major impact on older persons shall forward the proposed policy, program, budget, or regulation to the director at least 60 days prior to the date the proposal is to become effective.

(d) Immediately upon receipt of the proposal, the director shall submit it to the council for its advice and recommendations. The director shall consider the views of the council before preparing his or her comments.

(e) The director shall review and prepare comments on the proposal within 30 days after receipt, forwarding the comments to the Governor [and Secretary] and to the chief executive officer of the initiating department or agency. The director's comments shall include:

- (1) An explanation of the impact of the proposal upon older persons.
- (2) Any detrimental effects of the proposal on older persons.
- (3) Suggested changes to the proposal.
- (4) A description of any policies of the office that are related to the proposal.
- (5) Approval, disapproval, or approval subject to suggested revision of the proposal.

(f) If the director approves the proposal, with or without suggested revision, the proposal may become effective. If the director disapproves the proposal, he or she shall specify revisions that would make the policy or program acceptable. The initiating department or agency shall consider the director's comments and recommended revisions and make every reasonable effort to incorporate all feasible recommendations. Should the chief executive officer of the initiating department or agency decline to make changes in the proposal consistent with the recommendations of the director, he or she shall so notify the director. The director and the chief executive officer shall then forward the proposal and their comments thereon to the Governor for review and decision. The proposal shall not be implemented without the approval of the Governor.

ARTICLE V. TECHNICAL ADVISORY COMMITTEE

Comment: While the technical advisory committee is another method of coordinating State activities and policies affecting the elderly, it is rather different in scope and focus than the review authority treated above, and should not necessarily be treated as an alternative. The technical advisory committee can be an important means of promoting joint policymaking and cooperation among agencies in

general, while the review authority permits the director of the office on aging to deal with specific policies and issues in the role of an advocate for older persons. As noted in the introductory commentary, the technical advisory committee mechanism is best if tailored specifically to mesh with a particular State's decisionmaking process. In particular, a State legislature which does not intend to extend review authority to the director of the office on aging may want to be far more specific than the provision below as to the role and duties of the technical advisory committee so as to strengthen the statutory mandate for coordination and cooperation.

TECHNICAL ADVISORY COMMITTEE ON AGING

SEC. 5.1. (a) There is hereby created the technical advisory committee on aging (hereafter the technical advisory committee).

(b) The technical advisory committee shall consist of [the Lieutenant Governor, as chair, the director, and the directors of the following departments and agencies: Education, Natural Resources, Recreation, Labor, Mental Health, Public Health, Public Aid, Highway Safety, Mass Transit, Housing, Child and Family Services, Local Government Affairs, Vocational Rehabilitation, Insurance, Revenue, Licensing, Human Resources, Management and Budget, Indian Affairs, Civil Rights, and such other agencies as are designated by the Governor.]

Comment: Alternatively, as in Michigan, the department head may designate a high-level department officer to serve as liaison officer and member of the committee.

(c) The technical advisory committee shall serve as liaison among the several State agencies and departments, to facilitate planning and effective delivery of all programs and services for the elderly in the State.

(d) The technical advisory committee shall meet as often as the chair of the committee deems necessary, but not less often than quarterly.

ARTICLE VI. [] ADVISORY COUNCIL ON AGING

CREATION OF COUNCIL; MEMBERSHIP; APPOINTMENT

SEC. 6.1. (a) There is created the [] Advisory Council on Aging (hereafter the Council), which shall advise the Governor, the office, and the legislature concerning the views and needs of older persons in [].

(b) The Council shall be composed of [19] members, including 4 legislative members and 15 citizen members appointed by the Governor, a majority of whom shall be older persons. The legislative members shall include two members of the [State senate], one appointed by the [majority leader] and one appointed by the [minority leader]; and two members of the [State house of representatives], one appointed by the [majority leader] and one appointed by the [minority leader]. Legislative members may serve on the Council only so long as they remain members of the State legislature. The Governor shall appoint citizen members of the Council in such a manner that all geographic areas of the State are fairly represented. Citizen members shall include representatives of organizations of older persons and

representatives of the general public. Low income and minority groups shall be represented on the Council at least in proportion to their representation in the State's elderly population. No more than eight citizen members may be members of the same political party.

Comment: A membership between 15 and 20 provides a Council with sufficient room for representation of all significant groups without rendering the Council too large to be effective. Roughly 30 of the 40 established Councils have 20 members or less.

Including legislators on the Council will increase legislative awareness and knowledge of problems of the elderly while keeping the Council informed of legislative attitudes. However, States with legislative committees on aging may prefer to preserve the independence of the Council from both the legislative and executive branches.

In general, the broader the representation of groups of older persons and organizations whose activities impact older persons, the stronger should be the impact of decisions on which a consensus is reached.

(c) Within 60 days after the enactment of this Act, the Governor shall appoint the first 15 citizen members. Five of these shall serve terms of 3 years, five shall serve terms of 2 years, and the remaining five shall serve 1-year terms. Except in the case of vacancies, subsequent appointments shall be for terms of 3 years. Within 90 days after any vacancy occurs, the Governor shall appoint a person to serve for the duration of the unexpired term.

(d) Council members shall receive no compensation for their services but shall be reimbursed by the State treasurer for any ordinary and necessary expenses incurred in the performance of their duties.

(e) The Governor shall appoint a Council chairman from among the 15 citizen members.

MEETINGS; RECORDS

SEC. 6.2. (a) The Council shall meet at least quarterly. Additional meetings may be held at the call of the chairman or upon the written request of six members.

(b) The Council shall retain a written record of proceedings at its meetings, which shall be available for inspection by the public.

Comment: The Council is the primary means by which the elderly may influence the activities of the office on aging. Thus they should have ready access to information about the Council's activities.

EMPLOYEES

SEC. 6.3. The Council may employ an executive director and such other officers, agents, and employees, permanent or temporary, as it may require, within the limits of its appropriated funds, and it may determine the qualifications to be required of applicants for such positions. The Council may delegate to one or more of its agents or employees such of its powers as it deems necessary to carry out the purposes of this article, subject always to the supervision and control of the Council.

Comment: Most statutes recognize the need for staff assistance, but provides for staff support "as necessary" from the State agency. At least five States (California, Maine, Maryland, Pennsylvania, and Wisconsin) provide for staff independently controlled by the Council. As noted in the accompanying text, independent staff is necessary if

the Council is to effectively exercise oversight responsibility, conduct public hearings, issue an annual report, and make legislative recommendations.

EXPENDITURES

SEC. 6.4. Within the limits of its appropriated funds, the Council may make such expenditures, including expenditures for rent and personal services, as are necessary to its functions.

AUTHORITY AND RESPONSIBILITIES OF THE COUNCIL

SEC. 6.5.

Comment: To be more than a rubber stamp, the Council needs a strong mandate of express powers and duties. However, it must remain an advisory body in order to comply with the Older Americans Act requirement that only *one* State agency have responsibility for Older Americans Act programs. Further, if the Council has legislative members, extension of ultimate authority (e.g., a veto power) over some or all actions of the executive aging agency could raise serious constitutional questions. This section of the model statute attempts to give the Council real power without going too far by extending it the information-gathering powers and reporting responsibilities necessary to conduct meaningful oversight activities without controlling the activities of the office.

The Council shall have the following authority and responsibilities:

(a) To advise and consult with the director, the Governor, and the legislature respecting the policy and programs of the office.

(b) To review and comment on the policy, administration, programs, and reports of the office, the State plan prepared by the office, and grants proposed to be made by the office.

(c) To review and comment on proposed legislation, regulations, policies, and programs affecting older persons and to make policy recommendations on issues affecting the health, safety, and welfare of older persons.

(d) To conduct public hearings to determine the views of older persons and the public on all matters affecting the health, safety, and welfare of older persons.

(e) To issue subpoenas requiring the attendance of witnesses and the production of pertinent materials before any hearing of the Council; to apply to any court having jurisdiction to have punished for contempt any person who does not comply with a subpoena; and to authorize any member or members of the Council to conduct hearings, administer oaths, and issue subpoenas.

(f) To assist the director by conducting at his or her request factual investigations of the needs and views of older persons.

(g) To bring to the attention of the Governor, the director, and the public cases of neglect and abuse of one or more older persons and incidents of bias against older persons in the administration of the laws of [] and its political subdivisions.

(h) To prepare and submit to the Governor, the legislature, and the director an annual report evaluating the performance of the office and the quality of all programs, services, and facilities for older persons provided in the State by all public and private agencies.