

To: State Aging and Disability Directors
From: Damon Terzaghi
Re: Senate Older Americans Act Reauthorization Draft
Date: June 6, 2019

Background

Yesterday, the Senate Health, Education, Labor, and Pensions (HELP) Committee released a bipartisan discussion draft of legislation to reauthorize the Older Americans Act (OAA). As you may recall, the last OAA Reauthorization was enacted in 2016 for a three-year period that expires on September 30th, 2019. Over the past several months, a bipartisan group of staffers on the Committee have worked to develop policies and legislative text for the reauthorization. Yesterday afternoon they publicly released their draft bill text for comment. The Committee requests that interested parties provide feedback to moaa@help.senate.gov no later than Friday, June 14th. NASUAD has been engaged with the Senate throughout this process and will be submitting comments on behalf of our members.

Takeaways and Analysis

Given that the Committee provided stakeholders with a section-by-section summary of the proposal, which we have provided for reference, we will not reiterate items covered in that document. Instead, we will focus on key takeaways and highlights from the document and the meeting that HELP staff held to release the proposal. As you review the legislative text, please note that any text bracketed [like this] indicates an area where policy remains under discussion. This appears in several places in the legislation, most notably related to the years of authorization (though the draft indicates that they are looking at a 5-year reauthorization through 2024), and the authorized funding levels. Please remember, however, that the authorized funding levels within the OAA represent a suggestion from the HELP Committee and do not have final authority over actual funding amounts. The Appropriations Committees in the Senate and House will ultimately determine the amount of money provided to OAA programs; however, the authorization levels are used by the HELP Committee to provide direction and guidance to the Appropriations Committees.

We also note that there are a couple of major issues that were not addressed in this release.

1. The draft includes a placeholder for policy related to Title VI of the OAA, which discusses Tribal Services. At the release meeting yesterday, Committee staff

specifically requested feedback and ideas related to tribal aging services and policy.

2. The draft also does not address the state funding formula and the related hold harmless provision. As you may recall, disagreement regarding *hold harmless* was one of the primary factors that led to a delay in OAA reauthorization after 2011. NASUAD's discussions with Committee staff indicate that this may continue to be an area of intense debate and negotiation throughout the current reauthorization discussion. The discussion draft makes a quick reference to the issue with the following language:

[SEC. 202. HOLD HARMLESS. To be provided.]

Specific Highlights from the Legislation

(Please note that we do not summarize/ provide analysis of every section, given that many of the sections are fully addressed by the Senate HELP Committee Section-by-Section Summary)

Section 102: This section includes a modification that explicitly recognizes Area Agencies on Aging and Centers for Independent Living as key points of collaboration for Aging and Disability Resource Centers. In previous years, there were informal discussions and proposals for CILs to be recognized as equal partners for services and funding; however, this language is a softer version that provides suggested partners but no parameters around funding or authority over policy/ services.

Section 103: This section includes modifications to Section 306 (the area plan), including a new requirement for the AAA to coordinate with the State assistive technology entity, and also includes a modification to section 411 (grant/ demonstration programs) to include a reference to aligning with evidence-based practices.

Section 104: This codifies the existing National Resource Center for Women and Retirement into law. This Center is currently run by the Women's Institute for a Secure Retirement (WISER), [http:// www.wiserwomen.org](http://www.wiserwomen.org).

Section 105: This section directs ACL to provide training and technical assistance on how to deliver evidence-based (EBP) disease prevention and health promotion services in different types of settings. **NASUAD requested limited/targeted exemptions from the EBP requirements for rural/frontier settings, as well as for certain activities such**

as screenings and referrals which may not meet the rigorous ACL EBP requirements. This bill does not provide for any such exemption but instead focuses on ensuring that ACL assist with the implementation of EBPs.

Section 107: Includes new language that directs the Interagency Coordinating Committee on Aging to develop a set of recommendations that focus on aging in place and promoting age-friendly communities. Includes a definition of age-friendly communities that focuses on communities that are taking “measurable steps” towards making available adequate, accessible housing, public spaces, and buildings; transportation; social integration; and supportive services for older adults. Clarifies that such communities do not include assisted living or long-term care facilities.

Section 108: Directs ACL to submit a report to Congress within 2 years of this bill’s passage on whether OAA programs are addressing social isolation.

Section 109: Modifies section 212 of the OAA to clarify that AAAs are included in the grantees who are permitted to contract with for-profit entities to provide services to individuals who are not receiving OAA supports. Directs ACL to provide technical assistance, upon request, to entities regarding how to establish agreements for these types of services.

Section 112: **This is one of the largest and, potentially, most impactful sections of the modifications in this draft.** Committee staff indicated that there was strong stakeholder feedback regarding the need for better evaluation of OAA outcomes. This section attempts to begin addressing this request by modifying the existing OAA evaluation statute included in both Sec. 206 and Sec. 411 of the Act.

1. It expands the role of the Secretary of the U.S. Department of Health and Human Services (not the Assistant Secretary on Aging) related to responsibility for demonstration and evaluation activities with the OAA. Specific Secretarial level functions include:
 - Direct and coordinate data analysis with emphasis on evaluating the ability of OAA services to:
 - Impact determinants of health for program participants (please note that the draft bill does not use the “social determinants of health” language that is currently an emphasis on health and social services policy. Our understanding is that this decision was intentional);

- Impact health care expenditures, including Medicare and Medicaid.
- 2. Provides the Secretary with authority to replicate successful demonstration projects under Title IV of the Act; and
- 3. Directs the Secretary to perform, either within HHS or via grants/ contracts, research, and evaluation of OAA services and demonstrations, which would include an analysis on the impact of these services/ demonstrations on Medicare and Medicaid expenditures.
- 4. Adds a new requirement that all new demonstration projects authorized must:
 - Address the determinants of health for program participants;
 - Be expected to reduce health care expenditures, and preserve or enhance quality of care delivered to participants;
 - Prioritize specific issues, including:
 - Multigenerational engagement;
 - Support for caregivers who care for individuals of any age;
 - Community-based partnerships;
 - Any Secretary-approved activity that is included in Title VI of the Act; and
 - Include Secretary-developed performance measures.
- 5. Directs the Secretary to develop a 5-year plan establishing a framework for evaluating OAA Programs. This plan would be published in the Federal Register for comment no later than December 1, 2020, and every 5 years after that date. It maintains the existing limitation of 0.5% of Title III expenditures for HHS' evaluation activities.
- 6. Title IV of the Act is renamed “Innovation, Demonstration, and Evaluation within Aging Programs” (currently Title IV is called “Activities for Health, Independence, and Longevity”).
- 7. Sec. 401 (the statement of the title’s purpose) is modified to reflect updated purposes, namely:
 - *“gain a better understanding and knowledge base for appraising services and facilities for older individuals”;*
 - *“develop new and more effective and efficient ways of improving the lives of older individuals.”*
 - striking current language saying that one purpose of the title is *“to increase awareness of citizens of all ages of the need to assume personal responsibility for their own longevity.”*
- 8. Amends Section 411(a) to expand the scope of its research grants from evaluating programs under Title IV of the act to evaluating all OAA programs.

There are a couple of important issues that are included in brackets in this section, which indicates that the committee has not yet reached consensus and continues to negotiate on the policy:

- Whether the new requirements on demonstration projects should be applied to all demonstrations within Title IV of the Act, or whether it would be limited to demonstrations authorized by Section 411 of the Act. This is significant because applying the requirements to all Title IV demonstration projects would have a much broader impact on OAA programs than simply applying it to Section 411.
- Whether demonstration projects should be required to reduce health care expenditures while preserving or enhancing quality of care.

Section 203: This section updates the Area Plan and State Plan requirements related to the Maintenance of Effort for the State Long-term Care Ombudsman Program. Specifically, the act changes the reference year for MOE requirements for both AAAs and States from 2000 to 2019. In essence, this means that States and AAAs may not expend less than they did in FY2019 on the LTCO program in the future.

Section 205: This section increases the minimum allotment for State administration costs from \$500,000 to \$750,000. As a reminder, the minimum state allotment is based upon the State's Title III funding. The state may spend either \$500,000 or 5% the state's Title III allotment [as allocated under section 304(a)(1)] on administrative expenses, whichever is greater. Based on NASUAD's analysis of FY2019 data, 17 states were at the \$500,000 minimum allotment, and an additional seven states were above \$500,000 but below \$750,000. **All 24 of these states would increase to \$750,000.¹**

Section 206: This section focuses on OAA nutrition programs and places new requirements on state agencies. It includes a new requirement for States, in consultation with area agencies on aging, to ensure the process used by the State in transferring funds under Section 308 (i.e.: the transfer authority between Title III C1 and C2 nutrition services) is simplified and clarified to reduce administrative barriers and direct limited resources to the greatest nutrition service needs at the community level.

¹ States at the \$500,000 minimum allotment level include: Alaska, Delaware, District of Columbia, Hawaii, Idaho, Maine, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont, West Virginia, and Wyoming.
States between \$500,000 and \$750,000 include: Arkansas, Connecticut, Iowa, Kansas, Mississippi, Nevada, Oklahoma.

When speaking with the Senate, this was their attempt to address the issue that NASUAD raised regarding the changing preference of individuals and the need to better align home-delivered and congregate meals funding with participant demands. Unfortunately, although we had requested language to address the administrative barriers that ACL has erected to manage these programs – in addition to this language – the statute appears to focus on state streamlining instead of looking at broader flexibilities that could be available in the statute.

This section also includes a new definition of “nutrition service provider.” This definition stipulates that a nutrition service provider is: a public or private agency or organization, including a State agency, area agency on aging, local government, institution of higher education, Indian tribe, or service provider or volunteer organization, or a combination of such entities that:

- Has a demonstrated record of serving vulnerable and older adult populations; and
- Supports the health and well-being of, providing nutritious meals for, and promoting socialization of, those populations.

Section 207: adds “of any age” the description of individuals with Alzheimer’s under the definition of whom an OAA family caregiver is supporting. Additionally, this clarifies that “residents” for the purposes of the LTCO program are individuals of any age who reside in a long-term care facility.

Section 208: This section directs GAO to engage in a comprehensive study related to a wide range of policies under the OAA, including information about and a list of contracts with health care organizations, and State-implemented cost-sharing policies by area agencies on aging, waiver use, and waiver use policies, and voluntary contribution policies. It also requests information on potential negative impacts on OAA participants from these policies.

Section 209: This section directs ACL/ AoA to do a study on nutrition services with a specific emphasis on demand for meals vs. the available number of meals under the OAA. The bill text specifically discusses a potential ACL review of state waiting list policies and other methods used to measure when demand exceeds supply.

Section 210: Congress creates a new definition of caregiver assessments and incorporates these assessments into other parts of the National Family Caregiver

Support program. The text does not appear to mandate caregiver assessments but does encourage their use and also direct ACL to provide states with assistance on promising/ best practices for caregiver assessments.

The section also strikes the 10% cap on services for older relative caregivers (note: there was some discussion about whether the cap would be raised or eliminated completely. This language eliminates it). In this section, Congress provides ACL with statutory authority to provide grants for activities of national significance to support caregivers; however, notably, the discussion draft does not address (at this point) who is eligible to receive these funds.

Section 502: Updates the minimum allotment for ombudsman and elder abuse programs from the amount received in 2000 to the amount received in 2019.

While there are some significant changes contained in the legislation, the core of the services and the statutory structure remains largely intact. Notably, during the last reauthorization, Congress enacted substantial changes to Title V-the SCSEP program—but SCSEP policy was untouched in this bill draft. The largest remaining issue continues to be the funding formula and how Congress will (or will not) address the compromise to “hold harmless” states that would have lost funding that was included within the 2016 reauthorization.