

OAA Reauthorization Analysis and Update

To: State Aging and Disability Directors

From: Damon Terzaghi, Adam Mosey, Elaine Sawyer

Re: House Older Americans Act Reauthorization Bill

Date: September 23rd, 2019

Background

On Monday afternoon, the House Committee on Education and Labor [released](#) H.R. 4334, the *Dignity in Aging Act of 2019*, to reauthorize the Older Americans Act (OAA) for an additional five years. The Committee then amended the bill on September 18th before voting to advance the legislation to the full House with a recommendation to pass it. As you know, the last OAA Reauthorization was enacted in 2016 for a three-year period that expires on September 30th, 2019. This memo has been updated to reflect the amendments adopted on the 18th. Things that have changed from our previous memo are indicated in **red**.

Takeaways and Analysis

The bill authorizes significant funding increases across all OAA programs. This includes an immediate increase of seven percent in the first year and six percent for the four years thereafter, which amounts to a 35 percent increase over the reauthorization period. Do bear in mind, however, that the authorized funding levels are a suggestion from the Education and Labor Committee and that final funding amounts will be determined by the Appropriations Committees. In addition to the full section-by-section analysis below, we wanted to highlight a few other significant proposals in the bill:

- Extends the authorization for the RAISE family caregivers act by one-year, until 2022;
- Provides an authorization for the currently funded Falls Prevention and Chronic Disease Self-Management Programs;
- Clarifies that family caregivers include adult family caregivers for individuals of any age with Alzheimer's, and that individuals of any age with Alzheimer's may be served by the State Long-term Care Ombudsman Program;
- Eliminates the cap on Title III-E NFCSP funds that can be allocated toward older relative caregivers (currently at 10 percent);
- Establishes a National Research, Demonstration, and Evaluation Center for the Aging Network in the Office of the Assistant Secretary, which would be funded by an additional \$20,000,000 in new annual discretionary funding;

- Modifies the maintenance of effort requirements for the Long-Term Care Ombudsman program in a way that appears to include all funding sources, which we discuss in more detail in Section 301;
- Increases minimum funding level for state administrative expenses from \$500,000 to \$750,000, which should benefit 24 states.

The Senate draft bill released in June left a placeholder for one of the most contentious issues in the previous reauthorization that led to it being held up for five years, which are the hold harmless provisions. The House bill addresses hold harmless by extending the current compromise of a state receiving no less than 99 percent of their previous years' allotment from 2020 through 2024, and then reverting back to no less than 100 percent of their previous allotment starting in 2025. We discuss this in additional depth in our analysis of Section 503 of the bill.

Specific Highlights from the Legislation

Section 101: Amends the declaration of objectives section to include access to “person-centered, trauma-informed care.”

Section 102: Amends the definition of “disease prevention and health promotion” to include immunization status as one of the areas that may be addressed by routine health screenings, and to include infectious disease and vaccine preventable disease as areas that evidence-based health promotion may address.

Section 103: Sets new requirements for AoA grants. Specifically, it directs AoA to not approve a grant application that was previously funded unless the program is operating effectively to achieve its stated purpose and the applicant complied and will continue to comply with all assurances included in the grant application. **Directs AoA/ACL to provide States and AAAs with technical assistance and share best practices around emergency preparedness, planning for emergencies, and coordination with agencies that have responsibility for disaster relief.**

Section 104: Amends the requirements for the designated officer within ACL who is responsible for administering OAA Title III-C nutrition services. Specifically, it requires that the officer be either a registered dietitian or dietitian nutritionist and removes the option for the individual to be a credentialed nutrition professional or to have education and training that is substantially equivalent to the education and training for a registered dietitian or a credentialed nutrition professional.

Section 105: Amends the Federal Agency Consultation requirements in Section 203 of the OAA to include the section of the Public Health Services Act that focuses on falls prevention for older adults (Sec. 393D of the Public Health Services Act). Amends Section 203(c) of the OAA, which creates and

defines the Interagency Coordinating Committee on Aging, to refocus the committee on Age-friendly communities. Directs the committee to “support the ability of older individuals to age in place, including through the provision of homelessness prevention services, and access preventive health care, promote age friendly communities, and address the ability of older individuals to access long-term care supports, including access to caregivers and home- and community-based services.” Defines “age-friendly community” as a community that is taking steps to include a range of infrastructure, supports, and services that are accessible and available to older adults, that is working to respect and include older adults in various community activities, and that has a plan in place to meet local needs for these issues. **As noted above in the quoted text, the amendments adopted during the hearing add the provision of homelessness prevention services to the types of services the committee is direct to support.**

Section 106: Allows ACL/AoA to provide technical assistance on age-friendly communities (as defined by Sec. 105 of this Act) to states, AAAs, and communities.

Section 107: Adds screening for malnutrition to the allowable nutrition screening activities in the definition of disease prevention and health promotion in Section 102 of the Act. Amends Section 330 of the act to clarify that addressing malnutrition is one of the purposes of OAA Title III-C services (nutrition services).

Section 108: Amends the requirements within the OAA state and area plan provisions to require that states and AAAs collect data regarding service needs of individuals targeted by centers funded under Title IV of the Act & directs that outreach efforts should attempt to reach all eligible individuals with an emphasis on individuals targeted by those centers. **The amendments adopted during the hearing expand this to include information on the effectiveness of programs, policies, and services provided by such area agency on aging in assisting these individuals and clarify that this applies to centers that were in operation as of the effective date of the legislation.**

Section 109: Amends supportive services to include cultural experiences and the arts. Includes this as an activity that ACL/AoA can perform.

Section 110: Includes “social determinants of health” as one of the purposes of Title III of the Act. Of note, this is the only place where the phrase “social determinants of health” is used in the Act, so there may be need for clarification (or regulatory rulemaking) to determine what the services could encompass.

Section 111: Directs ACL/AoA to carry out an initiative to identify and disseminate information about existing Federal resources to address:

- Falls prevention;
- Home assessments; and
- Home Modifications, which might include assistive technology.

Directs ACL/AoA to coordinate the programs identified under this initiative and to publish an inventory of the programs, data on the number of individuals served and demographic information, an analysis of the cost of the program, and information regarding their effectiveness. This report should be published within 1 year of the bill's effective date and then every 3 years thereafter. **The hearing amendments included a provision to clarify that this report should address programs for both older adults and older individuals with disabilities and added a section directing the report to assess the availability of consumer-friendly resources on these topics.**

Section 112: Including falls prevention and chronic disease self-management programs within Title IV grant program authority, which legislatively authorizes existing programs. **The hearing amendments included a provision that clarified the programs were for older individuals with disabilities, not all individuals with disabilities.**

Section 113: Extends the RAISE Family Caregivers Act by one additional year through 2022.

Section 114: Amends the definition of disease prevention and health promotion activities to include screening and coordination of services to address social isolation and loneliness.

Section 115: Amends the functions of ACL/AoA to include development of objectives and a plan to address social isolation at the state and local level.

Section 116: Directs ACL/AoA to convene an advisory council of aging stakeholders that will review and evaluate efforts to address social isolation and loneliness. The council is also tasked with challenges, solutions, and best practices and is directed to submit a report to Congress. There is no specific direction around composition of the council, except that it should ensure geographic diversity of the members. **During the hearing, an amendment was adopted to specify that the aging stakeholders used in the council should include caregivers.**

Section 117: This section includes language authorizing screenings for social isolation and loneliness and the creation of grants for senior centers and other supportive services to address social isolation and loneliness.

Section 118: This section authorizes grants for demonstration projects for states, nonprofits, and other entities to address social isolation and loneliness in older adults. This section repeals section 416, technical assistance and innovation to improve transportation for older adults (this program never received funding).

Section 119: This section includes individuals with younger onset Alzheimer’s Disease under the definition of populations served by adult family caregivers. Additionally, individuals with younger onset Alzheimer’s Disease can be residents served by the State Long-Term Care Ombudsman.

Section 120: This section prioritizes the SCSEP program for individuals who were incarcerated or on probation from a prison or jail in the last 5 years. States will need to include a plan for the inclusion of these individuals in SCSEP programs in their state plan on aging and when applying for competitive grants. The aging secretary must include the justice-involved population in reports about service to minority populations.

Section 121: The shortage of direct care workers has impacted the amount and quality of services provided to older adults and people with disabilities who choose to remain in their communities. This section authorizes the Assistant Secretary on Aging to create grants in coordination with the Secretary of Labor to demonstrate new strategies to improve and expand the direct care workforce. Grants will focus on the recruitment, retention, and advancement of the direct care workforce. Grants and demonstration projects are authorized under Title IV and Title V.

Section 122: Creates and codifies a new resource center that focuses on person-centered, trauma-informed services for older individuals experiencing the long-term and adverse consequences of trauma.

Section 123: Codifies the existing National Resource Center for Women and Retirement, operated by WISER. The Center is directed to focus on financial management, retirement planning, and other educational tools that promote financial wellness and help to identify and prevent fraud and elder exploitation and integrate these with information on health and long-term care.

Section 124: Defines “person-centered, trauma-informed” services as those that use a holistic approach to providing services; promote the dignity, strength and empowerment of victims of trauma; and incorporate research-based practices based on knowledge about the role of trauma in trauma victims’ lives.

Section 125: Includes a provision that requires ACL/AoA to review the research/data mandated by Section 108 of this legislation (see above) on populations targeted by Title IV resource centers and include it in the annual report that ACL/AoA must submit to the President and Congress (this report has been mandated for many years by section 207 of the OAA).

Section 126: Adds a provision that directs AAAs to specifically focus on survivors of the Holocaust at risk of institutional placement when doing outreach to potentially eligible individuals.

Section (123): Includes “chronic pain management” as a component of the disease prevention and health promotion definition within section 102 of the Act. *[please note that several of the adopted amendments define their new legislative text as section 123 of the bill, but section 123 was already established by a prior amendment so the final bill will need to renumber the sections. We indicate this discrepancy by placing the section number in parenthesis for this analysis].*

Section (123): Extends the advisory council established by the Grandparents Raising Grandchildren Act for one additional year.

Section (123): Adds screening for suicide risk to the definition of disease prevention and health promotion services in section 102 of the Act.

Section (123): Adds a definition of traumatic brain injury (TBI) to the OAA, citing the existing definition in the Public Health Service Act. Includes screening for TBI, coordination of treatment, rehabilitation and related services, and referrals to the definition of allowable services under disease prevention and health promotion services in section 102 of the Act. Modifies Title III-B supportive services in section 321 to include traumatic brain injury screening to the allowable health screenings. [Please note that this section appears to overwrite edits made in the earlier Section 117 to include social isolation and loneliness in the III-B services. It is unclear whether this is an accident and if it will be resolved in the final bill drafting.] Adds traumatic brain injury to the public awareness activities that are authorized by title IV grants.

Section (123): Amends the definition of disease prevention and health promotion services to include responses to public health emergencies and emerging health threats.

Section 201: This section removes the cap on the National Family Caregiver Support Program (NFCSP), which is currently capped at 10 percent of total federal and non-federal funding. The NFCSP allows states to provide supportive services for adult family caregivers. The Assistant Secretary on Aging is required to submit a report to Congress on the impact of eliminating the 10 percent cap. States who receive federal funding for the NFCSP for FY 2020 must submit a fiscal year report to the Assistant Secretary with the amounts of federal and non-federal funds to provide supportive services to family caregivers.

Section 202: The minimum funding level for state administrative expenses would increase from \$500,000 to \$750,000. This would provide states more resources for implementation and oversight of statewide programs for the growing aging population. 17 states were at the \$500,000 minimum allotment, and seven states were above \$500,000 but below \$750,000. All 24 of these states would increase to \$750,000.

Section 203: This section allows for Title III-C programs flexibility in the types of meals they serve their populations, based on cultural and medical considerations. **The hearing amendments clarified that cultural considerations include needs based on religious, cultural, or ethnic requirements.**

Section 204: This section includes language allowing the Assistant Secretary for Aging to provide technical assistance to state agencies, AAAs, and community-based service providers to develop business acumen, build capacity, innovate, and use other strategies to build and strengthen the aging network.

Clarity is also provided for AAAs contracting with health care payers, consumer private pay programs, or other entities. The OAA will not restrict AAAs from seeking and obtaining contracts that increase the availability of home and community-based services for older adults in an AAA's service plan area.

Section 205: This section requires states to make policies and guidance regarding consumer contributions available to AAAs that request such information.

Section 206: Includes the definition of a "caregiver assessment". Caregiver assessments gather information about a caregiver's situation, who is a participant in the assessment, and identifies the caregiver's needs, barriers, and existing supports. The assessment process will provide the opportunity for caregivers to participate in the assessment, requires direct contact with the caregiver to identify needed supports, includes a reassessment process. This section also allows for the use of caregiver assessments in informing services and supports a caregiver will receive. Assessments are not mandated, but the language encourages ACL to promote the use of caregiver assessments.

This section authorizes the Assistant Secretary to provide technical assistance to implement the use of caregiver assessments. The Assistant Secretary is also required to submit a report on the use of caregiver assessments, the impact of caregiver assessments on family caregivers and individuals receiving care, the impact of caregiver assessments on the aging network, and how the assessments are used to identify needs and challenges for family caregivers.

Section 207: This section authorizes the Assistant Secretary to establish a National Research, Demonstration, and Evaluation Center for the Aging Network (the Center). The Center will be responsible for the coordination of research, evaluation, demonstration projects, and other activities on OAA programs. Additionally, the Center will have a clearinghouse on evidence-based programs and interventions the aging network can access. The Center will evaluate new and existing OAA programs, assess the impact of OAA programs on health outcomes, social determinants of health, and independence and quality of life of individuals in OAA programs. The Center will also provide technical assistance in evaluating and researching OAA programs.

The director of the center will be required to submit a 5-year plan outlining research priorities, the basis for those priorities, and how the plan will support the needs of underserved populations to the Federal Register no later than October 1, 2020. Additionally, the director will submit a report to Congress on the activities of the center. The Center would be funded with an additional \$20,000,000 of new discretionary appropriations on an annual basis.

Section 208: This section authorizes the Assistant Secretary to award grants to offer opportunities for additional programming around multigenerational activities and civic engagement activities for older adults. Changes in the bill include adding language so that they contribute to the health and wellness of both older adults and younger generations, and that they:

- Build meaningful roles for participants;
- Have reciprocity in relationship building;
- Reduce social isolation;
- Improve economic well-being of older adults;
- Increase lifelong learning; or
- Support family caregivers.

Other projects noted in the bill include multigenerational nutrition programs, promotion of volunteerism and mentorship, and other civic engagement activities. A new provision adding a preference for organizations that are seeking to have multigenerational activities that use shared site programs—for example, a collocated child care and LTC facility.

Section 301: The bill proposes to update the minimum funding and maintenance of effort (MOE) requirements for the State Long Term Care Ombudsman Program from their current levels, which are “not less than funds appropriated under this Act and expended by the agency in fiscal year 2000” to instead be not less than 2019 funding levels. The bill would also make a small, but potentially impactful, change under section 307(a)(9). Currently, the language reads:

The plan shall provide assurances that the State agency will carry out, through the Office of the State Long-Term Care Ombudsman, a State Long-Term Care Ombudsman program in accordance with section 712 and this title, and will expend for such purpose that is not less than an amount expended by the State agency with funds received under this title for fiscal year 2000.

In the House bill, it proposes to add some new language:

The plan shall provide assurances that the State agency will carry out, through the Office of the State Long-Term Care Ombudsman, a State Long-Term Care Ombudsman program in accordance with section 712 and this title, and will expend for such purpose **the total amount** that is not less than an

amount expended by the State agency with funds received **from all sources** including under this title for fiscal year **2019**.

Based on our read of the bill, we believe this means that if a state has historically put non-OAA funds or OAA funds but non-Title VII funds into the ombudsman program, then under the bill then all those funds would fall under the MOE requirements.

Section 302: This section recognizes the use of volunteer ombudsman by most SLTCOPs and clarifies that OAA funds can be used for volunteer transport and other expenses.

Section 303: This section clarifies that board and care facilities are included under the definition of assisted living facilities under the OAA.

Section 401: This section would establish a new demonstration program (Part D) to provide grants to tribal organizations or Native Hawaiians to help provide in-home supportive services to maintain health and independence and avoid LTC facility placement. Part D would receive a five percent set aside from ~~Part C~~ the funds appropriated through **Part A and Part B (equaling an estimated \$1.9 million** in FY2020 and increasing modestly thereafter as authorized levels increase), as well as additional funding authorized by the bill. Priority would be given to tribal organizations that would use grant funds for services that directly support independence such as “in-home assistance, transportation, information and referral, case management, health and wellness programs, legal services, and family caregiver support services.” **Please note that the amendments made a technical correction to this section regarding the source of the funding set-aside, which also would increase the amount of money available for the demonstration if appropriators provide funding at the authorized level.**

Section 402: This section would provide an additional \$500,000 in FY2020 to ACL for training and professional development for Title VI programs. This section also contains recommended funding levels for ACL administration, the National Eldercare Locator, Elder Rights Support Activities, and Aging and Disability Resource Centers. Under the 2016 OAA reauthorization, ACL administration was funded at a flat level of \$40,063,00. However, the House bill authorizes \$44,041,171 for FY2020, \$46,684,701 for FY2021, \$49,485,783 for FY2022, \$52,454,930 for FY2023, and \$55,602,226 for FY2024.

Section 501: This section updates the OAA to reference the Assistive Technology Act of 2004 instead of the Assistive Technology Act of 1998.

Section 502: The bill would also make a number of technical corrections and updates. For example, in section 207(b)(3)(A), it would remove reference to the Administrator of the Health Care Finance Administration (the old name for CMS) and insert the Administrator of the Centers for Medicare and Medicaid Services.

Section 503: This section authorizes appropriations for the programs under the Act, including supportive services, nutrition programs, chronic disease prevention and health promotion, family caregiver support, elder rights, senior community service employment, and the LTC ombudsman program. Specific authorized levels begin on page 46 of the bill text. As noted previously, though, authorized levels do not necessarily result in appropriations so these numbers may not come to be. In the past, appropriators have essentially ignored authorized levels and funded OAA programs under their authorized levels. We have also seen that some OAA programs are currently appropriated over their authorized levels. As noted in the fact sheet the House Education and Labor Committee released along with the bill, the bill would increase all OAA programs funding by seven percent in FY2020 and then by six percent every year thereafter for the remaining four years.

The House bill also addresses the **hold harmless** provisions that were the most contentious aspect of the previous reauthorization in 2016. Under the compromise struck in the 2016 reauthorization, no state would receive less than 99 percent of the amount allotted to the state for the previous fiscal year. This essentially capped the amount of funding a state could lose due to a decrease in population to one percent a year. This provision was included for fiscal years 2017, 2018, and 2019; for fiscal year 2020 and each subsequent year, the policy would return to the pre-2016 arrangement where no state would receive less than the 100 percent of the amount allotted to the state for the prior year.

What the House bill does, is it extends the hold harmless compromise struck in the 2016 bill that dictates no state would receive less than 99 percent of the previous years' allotment for fiscal years 2020 through 2024, and then for fiscal year 2025 and moving forward would revert back to states receiving 100 percent of their previous year allotment. Hold harmless was not addressed in the Senate draft bill and we anticipate that that is where a significant amount of the ongoing negotiations will take place.

Section 504: This section states that the effective date of the bill would be October 1, 2019.