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June 14, 2019

Chairman Lamar Alexander
455 Dirksen Office Building,
Washington, DC 20510

Ranking Member Patty Murray
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Alexander and Ranking Member Murray:

On behalf of the National Association of States United for Aging and Disabilities (NASUAD), I am submitting comments on the Health, Education, Labor, and Pensions (HELP) Committee's draft bill that would reauthorize the Older Americans Act (OAA) reauthorization bill titled "Modernization of the Older Americans Act Amendments" (MOAA). NASUAD represents the 56 officially designated state and territorial agencies on aging and disabilities. Each of our members oversees the implementation of the OAA at the state level, and many also serve as the operating agency in their state for Medicaid waivers and managed long-term services and supports (LTSS) programs that serve older adults and individuals with disabilities. Together with our members, we work to design, improve, and sustain state systems delivering LTSS for people who are older or have a disability and for their caregivers.

We first want to express our appreciation to the Committee Members for your leadership in making the OAA a priority and to the Committee staff for their work developing this draft. We also encourage you to continue the process with urgency so that we can ensure a timely reauthorization of the program. As we all know, the current authorization expires in September of this year and the previous process resulted in a five-year delay between when the authorization expired when and the 2016 reauthorization was passed. We know that challenging issues around the distribution of funding remain a point of discussion, but we believe that there is a path to compromise. We implore Congress to seek ways to resolve these issues in a manner that does not lead to a similar delay in this reauthorization.

Upon review of the draft, we and our members have a number of comments, questions, and suggestions for specific sections of the proposed legislation.

Duane Mayes
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Kari Benson
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Sec. 102: Aging and Disability Resource Centers

We appreciate the clarification and recognition of the importance of Centers for Independent Living, Area Agencies on Aging, and other aging and disability network partners in successful ADRC programs.

Sec. 104: National Resource Center for Women and Retirement

NASUAD appreciates that the Committee is seeking to provide statutory structure for some of the pre-existing resource centers that the Administration for Community Living (ACL) funds and oversees. We suggest also adding authorizing statutory language for the National Information & Referral Center and the National HCBS Business Acumen Center.

Sec. 105: Evidence-based Program Adaptation

Although we acknowledge and appreciate that the Committee is looking at ways to make it easier for adoption of evidence-based programming (EBPs) through services funded by Title III-D of the OAA, we do not feel as though this provision would ultimately be helpful. We agree that there is a benefit to providing states, AAAs, and providers with information on ways to improve EBP adoption; however, one of the fundamental concerns we have with the III-D EBP requirement is the rigid standard placed upon programs. This standard limits the ability to try new things; creates extremely high overhead costs due to the research, evaluation, and subsequent licensing fees that are associated with EBPs; and does not allow for targeted innovations that address the unique needs of rural, frontier, and underserved populations.

Instead of the current language, we recommend that the Committee reframe the discussion around health promotion and disease prevention to one that recognizes health equity and focuses on allowing flexibility and innovations that target services based upon the unique needs of populations and communities.

Sec. 109: Business Partnerships

Our understanding is that this section is intended to provide greater clarity and guidance to states and AAAs as they engage with the broader healthcare system to provide valuable health and social supports. We are unsure if the proposed language accomplishes this and instead recommend that the committee include clearer language that allows AAAs and other aging providers to contract with outside funders for a variety of services. We note that the language in Sec. 212 of the Act focuses on “profitmaking organizations” yet many hospitals and health plans operate as not-for-profit entities. We believe that this language could be clarified to ensure that those organizations are not unnecessarily excluded from the contracting. We also recommend clarification that aging network entities who contract with private providers and companies to deliver services are not precluded from providing Medicaid-funded case management services, as long as they are not providing Medicaid services to the same individuals.

Sec. 112: Innovation, Demonstration, and Evaluation within Aging Programs

NASUAD believes that there is the need to reframe data collection and reporting in the OAA away from historic models of counting units delivered, individuals served, and dollars spent. We agree with the Committee draft that there is a need to focus on the outcomes of services, including their impact on quality of life, health of individuals, and overall healthcare costs. However, we are concerned that this draft simply adds additional responsibilities, requirements, and restrictions on existing parts of ACL and demonstration programs without creating new demonstration authority or providing additional infrastructure or resources to support the requirements.

We are also concerned about the proposed language that would require all demonstration projects under either Title IV or Section 411 of the OAA to meet certain criteria. We feel as though this language limits the ability of ACL and states to collaborate on innovative demonstration projects and places additional restrictions on an already limited authority. We appreciate the emphasis and acknowledgement that OAA supports can have positive outcomes on broader determinants of health and reduce healthcare expenditures; however, we recommend changing the language to prioritize such interventions as opposed to require that all demonstrations meet these requirements.

Sec. 204: Senior Legal Hotlines

We agree with the committee that senior legal hotlines can be a valuable part of the continuum of legal services that are available through the OAA. We suggest minor technical changes that emphasize the continuum of supports in order to clarify that hotlines are one allowable option of many. Similarly, we are concerned that the ACL report required by this section could create the impression that the implementation of hotlines is the preferred option. We recommend either striking this report or, if Congress wishes to retain it, expanding the topic to identify various ways that legal services are provided.

Sec. 205: Increase in Limit on Use of Allotted Funds for State Administration

We want to thank the committee for including this important update, given that routine inflation has led to substantial increases in state expenses over the 27-year period since the last time the formula was updated. NASUAD and our members believe that this will greatly help with the ability of states to manage the programs and to perform important oversight, quality control, and evaluation of the programs. We note, however, that the current \$500,000 administration costs is a floor, not a cap, for the amount of funds that states may pay on administrative costs. The current description discussing a "limit" has caused some confusion amongst our members and partners. We therefore recommend modifying the section title to say, "Increase in Minimum Allotment for State Administration" to clarify what this provision accomplishes.

Sec. 206: Improvements to Nutrition Programs

We are extremely concerned about this section and we do not feel as though the proposed policy represents improvements in the administration or delivery of nutrition programs. In fact, we feel as though much of this language will be detrimental to the aging network if enacted as currently written. We agree with the Committee that there are opportunities to improve the administration, flexibility, and person-centered nature of these programs; however, we do not believe that the language included here would accomplish these goals.

Specifically, Section 206(a) directs states to work with AAAs in order to streamline transfer authority and simplify processes to deliver nutrition services. However, the language does nothing to limit or minimize the statutory, regulatory, or administrative barriers at the Federal level. We disagree with the presumption that state policy is the impetus for inflexibility in OAA Title III C1 and III-C2 service delivery. In fact, our members have been arguing for years to streamline the federal grant restrictions and to lessen the administrative barriers for funding transfers at the state and local level. We recommend that Sec. 206(a) be reframed to focus on ensuring that the Administration on Aging work with states and AAAs to develop streamlined transfer procedures that lessen the rigid distinction between congregate and home-delivered meals and that recognize the person-centered nature of the supports.

We also recommend removal of Section 206(b), which would define nutrition service provider for purposes of the OAA. The proposed definition would greatly hinder the ability of states to ensure that there is adequate provider capacity to serve older adults. Specifically, the emphasis on providers “having a demonstrated record of serving vulnerable and older adult populations” would drastically limit the available provider pool and stifle innovation in service delivery. For example, a number of states have experimented with ways to address the declining participation in congregate meal programs by implementing nutrition voucher programs that allow older adults to use OAA funds at commercial restaurants and integrated meal settings. These types of nontraditional providers are extremely desirable to many OAA participants, promote socialization, and enhance the dignity of older adults by allowing them to participate in their communities instead of requiring them to attend a specific older-adult oriented program. It is unclear whether the proposed definition would allow these types of programs to continue given that commercial restaurants may not have “a demonstrated record of serving vulnerable and older adult populations.”

Similarly, many states are struggling with capacity-related issues as recent trends suggest that aging network entities are struggling to recruit volunteers and as demographic shifts increase demand for services. This policy would severely restrict the ability of states and AAAs to recruit new nutrition providers in order to address the service shortfalls. Lastly, in the event that an existing provider is no longer able to operate in a given service area, this would make it very challenging to quickly and effectively develop alternative solutions. We therefore believe that the text of 206(b) would do much more harm than good in the context of service delivery.

Sec. 208: Cost Sharing and Other Practices

Sec. 208(b)(1)(A) includes a reference to studying state waiver policies. Our interpretation is that this refers to the authority in Sec. 315(a)(6) of the Act; however, there is a bit of uncertainty about whether this evaluation focuses solely on waivers of cost-sharing policy or broader OAA waiver authority. We believe this should be clarified.

Sec. 209: Nutrition Services Study

We appreciate the Committee's interest in broadening the understanding of how supply and demand for OAA services is handled at the state and local level. We agree that there is a need for additional information on how waiting lists or other policies are implemented to address issues where demand for services exceeds the available funding. We note, however, that these issues occur beyond OAA nutrition services. We recommend that the study also look at Title III-B supportive services in addition to nutrition services.

Title IV: Enhancing Grants for Native Americans

We recognize that the Committee is soliciting feedback on ways to improve OAA Title VI Native American programs. We would recommend statutory language to align Title III and Title VI services. In the enacting regulations at [45 CFR 1322.3](#), state that, "Older Indians, means those individuals who have attained the minimum age determined by the tribe for services." This allows tribes to establish age limits that differ from the 60-year eligibility threshold for Title III services. From a policy and health equity perspective, the ability for tribes to establish lower age limits make sense given the health and income disparities that continue to exist in tribal populations. These lead to shorter longevity and earlier onset of age-related chronic conditions. However, some states have reported challenges when those tribal members attempt to access Title III services since individuals eligible for tribal services may not meet the Title III age limit. We recommend enshrining the policy contained within the regulations into statute and clarifying that the age limit established by the tribe applies to services funded by both Title VI and Title III of the OAA.

Additional Comments: ACL Reports and Administrative Capacity

We are concerned about the number of instances in this proposed legislation that place additional requirements on ACL for technical assistance, reports, and administrative activities. Given that ACL is already operating with relatively few staff, coupled with the large reorganization recently announced, we are unsure of whether the agency will have the capacity to meet all of these new requirements without limiting or reducing the current technical assistance, guidance, and oversight that they currently provide. We recommend that the committee either authorize additional capacity and funding for staff and/or contracts with private entities to perform these functions or reduce the total number of required reports, technical assistance, and other administrative requirements placed on ACL in the legislation.

Additional Comments: Other Issues not Addressed

NASUAD is concerned that the legislation does not address two major issues that were included in our OAA Reauthorization priorities. These priorities include establishing a Federal framework for Adult Protective Services (APS) with authorized funding to support this crucial program and removing the prohibition on implementing optional cost-sharing policies for nutrition services. We strongly recommend that the committee revise the draft to include policies that address each of these issues. In each of the past three NASUAD State of the States publications, our members have reported ongoing increases in instances of abuse, neglect, and exploitation among the individuals they serve. We cannot overstate how important it is to continue developing national policies and establishing Federal resources that help address this ongoing issue.

Establishment of cost-sharing not only allows the funds to be reinvested in order to serve more people, it also provides a sense of dignity for individuals who do not want to feel as though they are a drain on public programs. Many older adults have the resources to pay nominal cost-sharing associated with meals programs and often feel that these payments make them feel as though they are customers rather than “receiving a handout.” The OAA contains protections to ensure that such cost-sharing policies do not limit access to services. We believe that these protections should be extended to nutrition services as well.

Thank you very much for your ongoing engagement with us during the development of this reauthorization. We look forward to working with you to refine this draft language and to collaborate on a timely passage of the reauthorization. If you have any question about these comments, please feel free to reach out to Damon Terzaghi of my staff at (202) 898-2578 or dterzaghi@nasuad.org.

Sincerely,

A handwritten signature in blue ink that reads "Martha A. Roherty". The signature is written in a cursive, flowing style.

Martha A. Roherty
Executive Director
NASUAD