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Elder Rights Advocacy: Focus of the 1992 Amendments to the Older Americans Act

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In recognition of the unique role of the aging network in advocating on behalf of the nation's elderly, particularly those whose rights are at risk or have been violated, the bill will consolidate and expand a number of the advocacy functions . . . into a new Title VII . . . /1/

I. Introduction

The 1992 Amendments to the Older Americans Act (OAA) brought about one of the most significant developments since the act's original passage in 1965 -- Title VII, the Vulnerable Elder Rights Protection Title. /2/ In crafting the 1992 amendments, in particular Title VII, Congress recognized the critical importance of strong and effective advocacy to protect and enhance older Americans' essential rights and benefits. It therefore refocused the OAA on its original advocacy mission and directed state agencies on aging to "provide firm leadership . . . to assure that the rights of older individuals . . . [are] protected." /3/ At the same time, given that the profile of the older population has improved markedly since 1965, Congress recognized that advocacy initiatives need to be specifically targeted to those older persons who continue to suffer serious deprivation, who are denied basic rights and benefits, and who are among those least able to advocate on their own behalf. Congress therefore instructed state agencies to ensure that advocacy efforts are directed toward issues affecting the most socially and economically vulnerable.

Title VII has a dual purpose. First, it brings together, strengthens, and calls for coordination of four existing advocacy programs in the OAA -- ombudsman services, abuse prevention, elder rights/legal assistance development, and insurance/benefits counseling. Second, and perhaps more important, it calls on state agencies to look beyond individual programs and to take a holistic approach to advocacy, not by simply coordinating the four Title VII programs but by integrating the agencies' efforts and marshaling their combined force along with the force of other advocates across the state on behalf of the most vulnerable elders.

Perhaps most important to the holistic approach is the elder rights plan. Title VII specifically instructs state agencies to develop and carry out, in consultation with area agencies on aging, an elder rights plan that will "identify and prioritize statewide activities aimed at ensuring that older individuals have access to, and assistance in, securing and maintaining benefits and rights." /4/ This means that each state must determine what its most important advocacy issues are, develop an agenda, devise strategies, and orchestrate initiatives to carry out those strategies. In choosing the "statewide activities" language, Congress seems to be signaling the need to go beyond individual

programs serving individual client needs and to develop statewide systems that will benefit large numbers of vulnerable older persons.

The strength of Title VII lies in its recognition that, in order to be most powerful, elder rights must be both broadly based and very focused. Through the state elder rights planning process, Title VII seeks to stimulate the growth of powerful statewide initiatives to achieve systemic change and to concentrate those initiatives on issues of the highest priority for the most vulnerable elders. At the same time, through the four individual programs, Title VII seeks to build focused advocacy in specific areas such as nursing home resident rights and prevention of elder abuse.

II. Structure of Title VII

Title VII is divided into three subtitles:

- Subtitle A -- State provisions /5/;
- Subtitle B -- Native American organization provisions /6/; and
- Subtitle C -- General provisions /7/

This article addresses Subtitle A. Subtitles B and C are very short. Subtitle B authorizes elder rights protection activities for eligible Indian tribes or entities serving Native Americans, although no funds have been appropriated for its implementation. Subtitle C sets forth several definitions; calls on the Assistant Secretary for Aging to provide technical assistance and training on Title VII programs; and allows access to records for audits by the Assistant Secretary, Comptroller General, or their representative, while prohibiting state and area agencies from asking providers for information that is not pertinent to services furnished or payments made. /8/

III. Subtitle A -- State Provisions

Subtitle A is divided into five chapters -- one general chapter and four program chapters.

- Chapter 1 -- General state provisions; /9/
- Chapter 2 -- Ombudsman programs; /10/
- Chapter 3 -- Programs for prevention of elder abuse, neglect, and exploitation; /11/
- Chapter 4 -- State elder rights and legal assistance development; /12/ and
- Chapter 5 -- Outreach, counseling, and assistance program (for insurance and public benefits). /13/

A. Chapter 1 -- General State Provisions

Chapter 1 describes (1) funds authorized for each of the four program chapters; /14/ (2) how those funds are to be allotted among states, including minimums for the ombudsman and abuse prevention programs; /15/ (3) reallocation to other states or redistribution within a state to an entity other than the state agency on aging if funds are not planned for and used appropriately; /16/ and (4) the requirement for an elder rights plan. /17/ In order to be eligible to receive funds for any of the four Title VII programs, each state must include this elder rights plan as part of its state plan.

As indicated above, the most significant chapter 1 provision is section 705, which directs every state to develop an elder rights plan, /18/ although it does not label it as such. This is the key to the comprehensive elder rights advocacy systems envisioned by Congress and to ensuring that the advocacy initiatives will address issues of importance to the most socially and economically vulnerable. The challenge for state agencies on aging is to develop and implement strategic, meaningful action plans that will have real impact.

The elder rights plan must include seven assurances and must describe an action plan/advocacy agenda for carrying out Title VII and the seven assurances. Two of these seven assurances are critical to ensuring that a state's elder rights plan is an effective strategic action plan. First, the state, in consultation with area agencies on aging, is required to identify and set priorities for statewide activities aimed at securing and maintaining benefits and rights. /19/ This assurance speaks not to any one of the four Title VII programs but broadly to all of them. It requires states to plan holistically for elder rights advocacy. Rather than encouraging states to develop a laundry list of issues that states want to address with the likely result that none will be addressed adequately, it requires them to rank in order of importance the most critical issues and to plan specific activities to address those issues. Second, states are required to obtain the views of older persons, area agencies on aging, and others on Title VII programs and activities. /20/ This activity needs to be closely linked to priority setting and should be used by the states to obtain not only the views of others but also their "buy-in" and commitment to pursuing the action plan.

The four program chapters are described below. Chapter 4 provides for legal advocacy, the essential core around which any effective elder rights protection system must revolve, and requires the development of a statewide elder rights advocacy system.

B. Chapter 4 -- State Elder Rights and Legal Assistance Development Programs

Chapter 4 is the most important of the program chapters in terms of creating a holistic approach to elder rights advocacy. Indeed, it is the only chapter other than chapter 1 that uses the term elder rights. It alone delineates the responsibility for "ensuring a comprehensive elder rights system." /21/ However, while chapter 4 gives new emphasis to the importance of legal assistance and new responsibilities to the states, it has no effect on the way legal assistance services are contracted for and funded at the local level. Legal assistance continues to be a priority service in Title III-B, /22/ and area agencies must continue to contract for it as such.

Chapter 4 recognizes legal and advocacy assistance as the core of an elder rights system and contains some very important new provisions to that end. It begins by setting forth what is, in essence, a mission statement -- specifying that state agencies are to help area agencies, legal providers, and others help older persons in:

- understanding their rights;
- exercising choice;
- benefiting from services and opportunities authorized by law;
- maintaining rights, in particular, rights of older persons with reduced capacity; and
- solving disputes. /23/

Chapter 4 goes on to delineate specific activities states are to undertake. Examples include:

- establishing a focal point for elder rights policy review, analysis, and advocacy at the state level, including such issues as guardianship, age discrimination, pension and health benefits, insurance, consumer protection, surrogate decision making, protective services, public benefits, and dispute resolution; /24/
- providing a legal assistance developer, and other personnel, sufficient to ensure (1) state leadership in securing and maintaining legal rights; (2) state capacity for coordinating the provision of legal assistance; (3) state capacity to provide technical assistance, training, and other support to area agencies, legal providers, ombudsmen, and others as appropriate; and (4) state capacity to promote financial management services for older persons at risk of conservatorship; /25/
- developing with area agencies on aging and legal providers statewide standards for the delivery of legal assistance and providing technical assistance to enhance and monitor the quality and quantity of legal assistance, including plans for targeting services to reach those with greatest economic and social need, with particular attention to low-income minority individuals; /26/
- providing consultation and ensuring coordination of Title III-B legal services with services of Legal Services Corporation grantees and services provided under Chapters 2, 3, and 5, as well as other state or federal programs that address legal assistance needs of older persons; /27/ and
- providing periodic assessments of the status of elder rights in the state, including analysis of unmet need for assistance in resolving legal problems, methods for expanding advocacy services, status of substitute decision-making systems and services, access to courts and the justice system, and implementation of civil rights and age discrimination laws in the state. /28/

C. Chapter 2 -- Ombudsman Programs

Chapter 2 of subtitle A describes the state long-term care ombudsman program and duties and responsibilities of the state office in developing, operating, supporting, and maintaining the program's quality and integrity. /29/ It incorporates a number of provisions previously in Title III-B of the Act. It strengthens and expands provisions regarding such subjects as conflict of interest, confidentiality, access to records, and training of ombudsmen. It also calls for coordination of the ombudsman program with other advocacy programs, including legal assistance.

D. Chapter 3 -- Programs for Prevention of Abuse, Neglect, and Exploitation

Chapter 3 on abuse prevention incorporates some provisions previously in Title III-G of the OAA and places responsibility on the state agencies to develop and enhance programs for the prevention of abuse, neglect, and exploitation. /30/

E. Chapter 5 -- Outreach, Counseling, and Assistance Program

Chapter 5 calls for states, in coordination with area agencies, to establish outreach counseling and assistance programs on (1) public and private health, long-term care, and life insurance, and (2) public benefits and entitlements, specifically supplemental security income, food stamps, and Medicaid. /31/ These programs are to identify and assist individuals in filing claims and applying for benefits and to establish a system of referrals to legal assistance and others to assist in resolving problems and denials.

VI. Conclusion

Although Title VII provides some guidance with respect to elder rights planning, it does not clearly describe a plan. In addition, the Administration on Aging has not yet issued final regulations implementing the plan requirement. Thus, it falls to the "laboratory" of the states to devise their own processes and plans. This provides an opportunity and also a challenge to the states to devise action plans to which the entire aging network is committed and that protect and enhance the essential rights and benefits of our most vulnerable older persons.

Footnotes

/1/ Senate Comm. on Labor & Human Resources, Older Americans Act Reauthorization Amendments of 1991, S. Rep. No. 151, 102d Cong., 1st Sess. 103 -- 04 (1991) [hereinafter Amendments] (emphasis added).

/2/ Older Americans Act, 42 U.S.C. Secs. 3001 -- 3058ee (1988 & Supp. IV 1992).

/3/ Amendments, supra note 1, at 103.

/4/ 42 U.S.C. Sec. 3058d(a)(3) (Supp. IV 1992).

/5/ Id. Secs. 3058 -- 3058k.

/6/ Id. Sec. 3058aa.

/7/ Id. Secs. 3058bb -- 3058ee.

/8/ Id.

/9/ Id. Secs. 3058a -- 3058e.

/10/ Id. Secs. 3058f -- 3058h.

/11/ Id. Sec. 3058i.

/12/ Id. Sec. 3058j.

/13/ Id. Sec. 3058k.

/14/ Id. Sec. 3058a.

/15/ Id. Sec. 3058b(a).

/16/ Id. Secs. 3058b(b) -- (c).

/17/ Id. Sec. 3058d.

/18/ Id. Sec. 3058d(a)(1) -- (8).

/19/ Id. Sec. 3058d(a)(3).

/20/ Id. Sec. 3058d(a)(2).

/21/ Id. Sec. 3058j(a)(1).

/22/ Id. Sec. 3026(a)(2)(C).

/23/ Id. Sec. 3058j(a)(2).

/24/ Id. Sec. 3058j(b)(1).

/25/ Id. Sec. 3058j(b)(2).

/26/ Id. Sec. 3058j(b)(3).

/27/ Id. Sec. 3058j(b)(4).

/28/ Id. Sec. 3058j(b)(8).

/29/ Id. Secs. 3058f -- 3058h.

/30/ Id. Sec. 3058i.

/31/ Id. Sec. 3058k.