

Testimony Submitted by:

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Older Americans Act Reauthorization Listening Forum

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Thank you for this opportunity to testify on the Older Americans Act (OAA) and key issues affecting older adults. My testimony addresses how the OAA is working and how it could be changed to improve long-term care ombudsman services.

How the OAA is Working for Residents in Nursing Homes

In Texas, 90,000 individuals call a nursing home their home. A long-term care ombudsman, authorized by the OAA, knows the value of home—all kinds of homes—for the people we serve.

No one wants to live in a nursing home, but being evicted from one is a scary thing when you need it. Last fall, one individual received a letter telling her she must leave her nursing home of six years. This resident needs ventilator care, so only a few nursing homes in Texas can meet her needs. The other facilities are between two and six hours away from her only living relative.

When she got the discharge letter, this resident knew her rights in part because she knew her ombudsman. The ombudsman informed the resident how to file a discharge appeal and worked with the resident to develop her case for staying in the nursing home. Preparation for the appeal hearing required contact with doctors and therapists, direct care staff, the facility administrator, and corporate management. The ombudsman spoke with the resident's mother and consulted with an attorney about the resident's appeal case. Throughout, the resident directed the ombudsman's work.

The resident wanted two things: to direct her own care and to maintain her physical abilities with therapy. The facility said they "couldn't meet her needs," though for six years they had. The ombudsman suspected the facility was retaliating against the resident for previous complaints.

After two care plan meetings, several hours in a fair hearing, and countless hours of research over six months, the hearing officer ruled in favor of the resident and ordered the facility to let the resident stay.

In order to work on the resident's behalf, the ombudsman needed authority granted by the OAA. We could act in this resident's discharge because the OAA directs us to "represent the interests of residents" and "resolve complaints." The OAA requires ombudsman access to residents and their records, which is essential to our direct work with clients and to identify concerns in long-term care facilities. It describes our responsibility to empower residents through councils and facilitation of public comment. The OAA also grants us authority as problem-solvers to seek creative resolutions, including systems advocacy to influence policy and law.

These are the strengths of the OAA and of the Long-Term Care Ombudsman Program.

Needed Changes for Residents Living in Assisted Living Facilities

But as long-term services and supports have grown in scope and complexity, the Long-Term Care Ombudsman Program has not always grown with them. In short, we cannot serve people who live in assisted living facilities without additional staff. In Texas, ombudsman

staff are stretched thin as they advocate for people living in our 1,100 nursing homes, so it is impossible for them to adequately serve the residents in our 1,600 assisted living facilities.

The OAA requires us to, “ensure that residents have regular, timely access to representatives of the program.” This provision is critical to making our program stand out as a responsive service that can investigate a complaint while evidence exists and often before the problem becomes widespread. This requirement—coupled with our goal of resolving complaints—sets us apart from a regulatory agency. In fact, most of our work, including the discharge example I provided, occurs without the need for regulatory intervention.

Ombudsman services offer significant consumer protections. To effectively advocate, we need the Older Americans Act to address the growth in demand for our services in assisted living facilities so that we can advocate for all residents.

Preparing for the Aging Boom

Changes to Section 702 of the OAA are necessary to ensure the Long-Term Care Ombudsman Program is prepared for the aging boom. To be effective, we need the OAA to acknowledge the growing demand for our services in settings outside of nursing homes. This must start with assisted living facilities before long-term care ombudsman programs can serve in other community-based settings.

A needed change to Section 712 is additional clarification regarding conflicts of interest. As many ombudsman programs are located in agencies with responsibilities including regulation of long-term services and supports and adult protective services, conflicts of interest need to be resolved and communication channels must be clearly defined so that the interests of residents remain at the center of an ombudsman’s work.

Ombudsmen report more and more individuals who cannot speak for themselves and have no legally authorized representative to speak on their behalf. This leaves facility operators in a precarious position, trying to make decisions on behalf of the individual while also putting the individual at substantial risk of exploitation, neglect, and abuse. Title VII of the OAA has an opportunity—and an obligation—to address the needs of individuals without a legal guardian.

Thank you.