



2016 Older Americans Act Reauthorization Frequently Asked Questions

Note: These questions are a result of ACL's internal review of the Older Americans Act Reauthorization Act of 2016 (P.L. 114-144). As we engage with stakeholders to implement the changes to the Older Americans Act (OAA), we expect to add new questions and answers to this list. If you have further questions, please email us at OAA2016@acl.hhs.gov.

Q. When does the bill become law?

A. President Obama signed the Older Americans Act Reauthorization Act of 2016 into law on April 19, 2016.

Q. When will the changes be implemented?

A. ACL is reviewing the language to determine exactly how implementing it will affect the aging network and other ACL grantees, the programs we support, and the people we collectively serve. Information regarding implementation will be shared through frequently asked questions, webinars, technical assistance briefings, and other mechanisms. As information is available, it will be shared via ACL.gov, ACL social media, and network communications, as well as through ACL Updates, which you can receive [by registering](#).

Q. Will ACL post an updated compilation of the OAA on its website?

A. Yes. The compilation is available on ACL.gov and can be accessed at http://www.aoa.acl.gov/AoA_Programs/OAA/reauthorization/2016/docs/Older-Americans-Act-of-1965-Compilation.pdf.

AGING AND DISABILITY RESOURCE CENTERS (ADRCs)

Q. What changes were made to Aging and Disability Resource Centers (ADRCs) in the reauthorized Act?

A. In general, the ADRC changes in the OAA provide greater clarification of terms, place greater emphasis on home- and community-based services (HCBS), and provide states more flexibility when defining their ADRCs.

The new definition provided for ADRCs gives states more flexibility by changing the term “entity” to “entity, network or consortium.” This change reflects the approach states have taken since the last reauthorization of the OAA.

The reauthorized law now provides more specificity on who ADRCs serve by adding, “for older individuals and individuals with disabilities... and the caregivers of older individuals and individuals with disabilities.”

With the reauthorization, greater emphasis has been placed on providing assistance that includes information about federal and state HCBS, and there were some minor changes on how person-centered counseling is defined. In addition, the “Access” function of ADRCs was modified to change the term “consumer” to “individual” and to add language that emphasized the importance of HCBS as part of the range of publicly-funded LTSS.

Finally, additional language was added to ensure that ADRCs cooperate with area agencies on aging, centers for independent living, and other community-based organizations to support individuals “who are at risk for residing in, or who reside in, institutional settings, so that the individuals have the choice to remain in or to return to the community.”

AREA PLANS

Q. How does the new requirement in Sec. 306 that area agency on aging plans include procedures to increase public awareness regarding elder abuse, neglect, and exploitation differ from/relate to the existing requirement for state plans to address elder abuse?

A. This language is more specific. It explicitly states that that AAAs should include in their plans activities and procedures to increase public awareness and remove barriers to prevention and investigation of, and response to, elder abuse, neglect, and exploitation in coordination with states, Title VII funding and activities, and other appropriate partners.

DISEASE PREVENTION AND HEALTH PROMOTION SERVICES

Q. What effect does adding the term “evidence-based” to Title III-D have?

A. This language affirms the language in ACL’s annual appropriations bills (since 2012) that requires the funds under Title III-D to be spent only on evidence-based health promotion

programs. ACL has developed guidance to help States meet this requirement, available at: http://www.aoa.acl.gov/AoA_Programs/HPW/Title_IIID/index.aspx.

Q. How does the addition of the term “oral health” to the definition of “disease prevention and health promotion services” in section 102 (a)14(B) relate to programs funded under Title IIID?

A. The addition of “oral health” to the OAA Title I definition of disease prevention and health promotion highlights that oral health is a crucial component of the health and wellness of older adults.

With regard to Title III-D, any oral health activities—like all activities funded through Title III-D—would need to be part of an evidence-based program. ACL’s criteria for what can be considered an evidence-based program can be found here: http://www.aoa.acl.gov/AoA_Programs/HPW/Title_IIID/index.aspx.

ELDER ABUSE

Q. What are the implications of the addition of subsections (5) and (12) to Section 721(b), related to elder abuse?

A. When a bill is reauthorized, it is common to include examples of activities that would be appropriate uses of the funding. The 2016 OAA reauthorization includes two new examples of activities that would be allowable uses of a state’s Section 721 funding: the collection and submission of data related to abuse, neglect, and exploitation; and supporting and studying innovative practices to address abuse, neglect, and exploitation. This language change does not mean these activities are required.

FUNDING FORMULA

Q. How will formula grant funding be distributed under the reauthorized OAA?

A. The formula grant distributions for Titles III, Parts B, C1, C2, and D will depend on the amount of funding appropriated for each, compared to the funding appropriated in the previous fiscal year.

- If a fiscal year’s appropriation increases by any amount, stays the same, or decreases by less than 1%, from the previous fiscal year:
 - All “minimum amount states/territories” will receive the new minimum amount.

- During FY 2017 – 2019, all “hold harmless states/territories” will receive 99% of the prior year’s funding amount. Starting in FY 2020 and going forward (until there is a new reauthorization), the hold harmless amount will be the FY 2019 amount.
 - Depending on the amount of the increase, some of these states/territories may no longer be included in the hold harmless category and instead may receive additional allocations based on the new population data.
- All other “population states/territories” will receive allocations based on new population data, after the minimum/hold harmless state/territory amounts are calculated.
- If the new fiscal year’s appropriation decreases by 1% or more compared to the previous fiscal year, each state/territory will receive the prior year’s funding, minus the same percentage as the overall decrease.

Q. Do these changes apply to all the formula grants?

- A. No. The formula language changes in Sec. 304(a)(3)(D) apply to Title III, Parts B,C & D. The formula calculation was not changed for Title III-E or Title VII.

FUNDING LEVELS

Q. Are the new authorization levels the amount of funding that programs will receive?

- A. The authorization levels are intended to provide guidance regarding the appropriate amount of funds to carry out the authorized activities of a program. The amount appropriated by Congress in each fiscal year will determine the funding levels for ACL-funded programs.

HOLOCAUST SURVIVORS

Q: How will ACL implement the new provision in Sec. 10 of the OAA entitled “Guidance on Serving Holocaust Survivors?”

- A: ACL will engage experts and organizations serving Holocaust survivors to solicit comments and input regarding this new provision. The recently initiated clearance process detailed in the “Program Instruction: Guidance for the Development and Submission of State Plans on Aging, State Plan Amendments and the Intrastate Funding Formula” will serve as the mechanism for obtaining input on this provision. All stakeholders, and the public, are welcome to provide input pertaining to the

implementation of this provision. Once the clearance process is complete, ACL will develop a set of guidelines and issue them in conjunction with its annual guidance to states on the development and submission of their State Plan on Aging.

HOME- AND COMMUNITY-BASED SERVICES

Q. What effect does adding the terms “chronic condition self-care management, or falls prevention services” to Title III Part B, section 321(a)(1) have?

A. This language affirms that Title III-B supportive services may include programs and services that relate to chronic condition self-care management and falls prevention. These activities were never excluded from Title III-B services, but now their inclusion is explicit.

LEGAL ASSISTANCE

Q. Was appropriation authority for the Legal Assistance Development Program deleted in the reauthorized Older Americans Act?

A: Statutory language governing the Legal Assistance Development Program was retained and the program is still in effect under Title VII Section 731 and Section 307(a)(13). The Section 702(c) authorization of appropriations specifically for the Legal Assistance Development Program was struck, and a new authorization for appropriations was added, combining Chapters 3 (Elder Abuse Prevention) and 4 (Legal Assistance Development).

Q. Are entities eligible to receive an award under Section 420(a)(1) to provide a legal assistance support system required to be national non-profit organizations?

A. No. Any non-profit organization experienced in providing support and technical assistance on a nation-wide basis to states, area agencies on aging, legal assistance providers, ombudsmen, elder abuse prevention programs, and other organizations interested in the legal rights of older individuals may receive an award under the revised language in Section 420(c).

LONG-TERM CARE OMBUDSMAN

Q. How does ACL plan to implement the language requiring ACL’s Director of the Office of Long-Term Care Ombudsman Programs to collect and analyze data related to elder abuse, neglect, and exploitation in long-term care facilities? Does ACL plan to require additional reporting?

- A. ACL plans to collect and analyze the reports received through its National Ombudsman Reporting System (NORS) related to abuse, neglect, and exploitation in long-term care facilities. These reports include numbers of complaints in these topic areas as well as narratives of case examples and systems-level advocacy work.

ACL is preparing to propose revisions to NORS that would collect additional relevant information (including information on perpetrators in abuse, neglect, or exploitation complaints) and significantly improve ACL’s ability to analyze complaint-related data (through collection of disaggregated data). Other than these previously anticipated updates to NORS, ACL does not anticipate additional reporting burdens on grantees/states.

In order to meet the statutory requirement to publish a report on these practices, ACL plans to incorporate its analysis into the AoA annual report to Congress, and disseminate the analysis to grantees, Long-Term Care Ombudsman programs, and other stakeholders in coordination with its National Ombudsman Resource Center.

Q. What is the effect of the deletion of the word “older” in the definition of “resident”?

- A. This change clarifies that the Long-Term Care (LTC) Ombudsman program has the authority to serve (and utilize OAA appropriations to serve) residents of long-term care facilities, regardless of age. Section 711(6) now reads “The term ‘resident’ means an individual who resides in a long-term care facility.” This definition applies only to Title VII Chapter 2, Ombudsman Programs.

We note that this amendment will not require a change to the LTC Ombudsman Rule (45 CFR 1327), which became effective July 1, 2016. Nowhere in that rule are LTC Ombudsman program functions or duties limited by the age of the resident served (see, e.g., 45 CFR 1327.13(a) regarding Ombudsman functions, 45 CFR 1327.19(a) regarding duties of the representatives of the Office). Additionally, AoA has long held that states are not prohibited from using OAA funds to support Ombudsman services to younger residents of long-term care facilities, even though the OAA is designed to primarily benefit individuals over age 60.

Q. What is the significance of the addition of fiscal management to the responsibilities of the State Long-Term Care Ombudsman?

- A. Section 712(a)(2) requires that the “Office [of the State Long-Term Care Ombudsman] shall be headed by an individual, to be known as the State Long-Term Care Ombudsman...” The 2016 amendments add additional detail to this paragraph, requiring

that “[t]he Ombudsman shall be responsible for the management, including the fiscal management, of the Office.”

Consistent with this requirement, the LTC Ombudsman Rule provides:

“The Ombudsman, as head of the Office, shall have responsibility for the leadership and management of the Office in coordination with the State agency, and, where applicable, any other agency carrying out the Ombudsman program...”

“Fiscal management. The Ombudsman shall determine the use of the fiscal resources appropriated or otherwise available for the operation of the Office. Where local Ombudsman entities are designated, the Ombudsman shall approve the allocations of Federal and State funds provided to such entities, subject to applicable Federal and State laws and policies. The Ombudsman shall determine that program budgets and expenditures of the Office and local Ombudsman entities are consistent with laws, policies and procedures governing the Ombudsman program.”

Q. What is the effect of the provision related to residents transitioning from a long-term care facility to a home care setting?

A. In the 2016 amendments, Congress added a new provision:

712(a)(3) FUNCTIONS.—The Ombudsman... shall, personally or through representatives of the Office...

(I) when feasible, continue to carry out the functions described in this section on behalf of residents transitioning from a long-term care facility to a home care setting; ...

While not requiring that the LTC Ombudsman program perform additional functions, this provision does require that, when feasible, these functions (such as complaint resolution and representing resident interests before governmental agencies) shall extend to an additional population, i.e. individuals who are transitioning from a long-term care facility to a home care setting. Additionally, this provision provides authority for the LTC Ombudsman program to utilize OAA appropriations to serve this expanded service population.

ACL interprets the term “when feasible” to mean that Ombudsman programs shall serve this expanded population when adequate resources exist, without diminishing services to the resident population.

ACL interprets this provision to authorize the use of OAA appropriations by states for LTC Ombudsman program services to individuals living in a home care setting only during a transition period. Therefore, LTC Ombudsman program services to individuals living in a home-care setting should be limited to the time of transition, not indefinitely. States which find it feasible to provide services to this expanded population should develop policies and procedures to implement this provision, including a definition of a period of transition in such policies and procedures. For comparison, we note that the CMS Money Follows the Person demonstration project provides nursing facility residents with eligibility for transition services for up to 365 days.

This provision does not prohibit states from using other funding sources and authorities to provide ombudsman services through the LTC Ombudsman program to individuals who receive long-term supports and services in a home-care setting for periods longer than a transition period or who have not transitioned out of a long-term care facility.

Q. What is the effect of the requirement for the state agency to ensure that representatives of the Office of the State LTC Ombudsman have “private and unimpeded” access to LTC facilities and residents?

- A. ACL interprets this amendment (at section 712(b)(1)(A)) to mean that the state agency must ensure that the state’s LTC Ombudsman program has the legal authority to:
- 1) access LTC facilities without interference
 - 2) access residents of LTC facilities without interference, and
 - 3) communicate with residents privately and to protect the information provided by residents from disclosure.

ACL believes that, by complying with the following relevant provisions of the LTC Ombudsman Rule, state agencies will be in compliance with this statutory requirement as well:

- The state agency shall ensure that the LTC Ombudsman program has sufficient authority and access to facilities, residents and needed information in order to perform required functions, responsibilities, and duties. 45 CFR 1327.15(b)
- The policies and procedures for the LTC Ombudsman program shall include provisions related to access to facilities and residents pursuant to 45 CFR 1327.11(e)(2).
- The state agency shall ensure that it has mechanisms to prohibit, investigate allegations of, and provide sanctions for interference, retaliation or reprisals by a long-term care facility, or other entity or individual against the LTC Ombudsman program. 45 CFR 1327.15(i)

- The LTC Ombudsman program shall offer privacy to the resident for the purpose of confidentially providing information and hearing, investigating and resolving complaints. 45 CFR 1327.19(b)(2)(i).
- The policies and procedures for the LTC Ombudsman program shall include provisions related to the disclosure of resident-identifying information and other Ombudsman program information. 45 CFR 1327.11(e)(3).

ACL recognizes that, in many states, the state agency does not have the authority to make requirements of long-term care facilities, but we expect that it can work with other appropriate state agencies to provide for this authority.

Q. What is the significance of the requirement that the state agency shall ensure Ombudsman participation in training?

- A. Section 712(h)(4) says that the state agency shall ensure that the Ombudsman or a designee participates in training provided by the National Ombudsman Resource Center established in section 202(a)(18). ACL interprets this to mean that the state LTC Ombudsman (or his/her designee) will regularly participate in training provided by the ACL-funded National Ombudsman Resource Center. Currently, such training includes, but is not limited to, orientation training for new state LTC Ombudsmen and an annual training conference designed for state LTC Ombudsmen.

The LTC Ombudsman Rule requires state agencies to provide opportunities for training for the Ombudsman and representatives of the Office in order to maintain expertise to serve as effective advocates for residents. Further, the rule clarifies that state agencies may utilize funds appropriated under Title III and/or Title VII of the Act in order to provide access to such training opportunities. 45 CFR 1327.15(c).

Q: How does the revised language in section 712(f) (regarding LTC Ombudsman programs and conflict of interest) alter the requirements to states regarding conflicts of interest as set forth in 45 CFR 1327.21?

- A. State agencies must follow the requirements of the statute, including, but not limited to, the following provisions which are not incorporated into the Rule:
- Ensuring that the Ombudsman is not employed by or participating in a “related organization” (i.e. related to long-term care facilities) and has not been employed by such organization within 1 year. Sec. 712(f)(1)(C).
 - Identifying, reporting, and remedying conflicts of interest related to long-term care services generally, not only related to facilities. Sec. 712(f)(2)(A)(iii)-(v).

ACL plans to make changes to the National Ombudsman Reporting System consistent with this reporting requirement.

No revision of the conflict of interest provisions of the LTC Ombudsman Program Rule is anticipated at this time, as the provisions of 45 CFR 1327.21 regarding conflicts of interest are sufficiently consistent with the 2016 OAA Reauthorization.

NATIONAL FAMILY CAREGIVER SUPPORT PROGRAM

Q. What changes were made to the National Family Caregiver Support Program (Title III-E)?

- A. Section 372(a) has been updated to include new definitions for “individual with a disability” and “older relative caregiver,” which replaces “grandparents and older individuals who are relative caregivers.” These new definitions allow the National Family Caregiver Support Program to be more inclusive of older-relative caregivers, including people who are 55 or older who are parents of individuals with disabilities. The priority populations outlined in Section 373(c)(2) are updated to make them consistent with the new and updated definitions.

Additionally, Section 373 (g)(2)(C) has been revised to clarify that a state may use not more than 10 percent of the total (both federal and non-federal)dollars available to the state to provide support services to older-relative caregivers.

NUTRITION SERVICES

Q. What changes were made to the use of supplemental foods in home-delivered meals?

- A. The language in Section 336(1) describing home-delivered meals previously read: “...hot, cold, frozen, dried, canned, fresh, or supplemental foods and any additional meals...” and now reads “...hot, cold, frozen, dried, canned, or fresh foods and, as appropriate, supplemental foods, and any additional meals...”

This change from “or supplemental foods” to “and, as appropriate, supplemental foods” clarifies the current practice – if needed, supplemental foods can be part of a home-delivered meal. Supplemental foods are nutrition-related items used to maintain health or nutritional status, but they do not, alone, qualify as a “meal” under the OAA.

Q. How did the use of a dietician in OAA nutrition projects change?

- A. Section 339(1) was changed from “solicit the expertise of a dietician or other individual with equivalent education and training...” to “utilize the expertise of a dietician or other individual with equivalent education and training...” This change means that states must use (“utilize”) the expertise of such an individual, rather than just ask for (“solicit”) that expertise.