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ACT FOR ELDER JUSTICE

OCTOBER 7, 2004.—Ordered to be printed

Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, submitted the following

REPORT

[To accompany S. 2940]

The Committee on Health, Education, Labor, and Pensions, reported an original bill (S. 2940) to amend the Older Americans Act of 1965 to assist States in preventing, detecting, treating, intervening in, and responding to elder abuse, neglect, and exploitation, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY OF THE BILL

The Act for Elder Justice amends the Older Americans Act of 1965 (OAA) by authorizing the creation of an Office on Elder Abuse Prevention and Services and by creating a new Subtitle B—Elder Justice Programs under which a new grant is established to assist States in preventing, detecting, treating, intervening in, and responding to elder abuse, neglect, and exploitation.

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In order to accomplish this, the bill focuses on five areas: (1) assistance to States and communities in their efforts to protect elders in developing a comprehensive, multi-disciplinary approach to elder justice; (2) promoting research and data collection that fill knowledge gaps about elder abuse, neglect and exploitation; (3) supporting innovative and effective activities of service providers designed to address elder abuse issues; (4) assistance to States, Indian Tribes and local service providers in the development of short- and long-term strategic plans for the development and coordination of elder justice research, programs, studies, and training; and (5) promoting collaborative efforts to diminish overlap and gaps in developing the field of elder justice.

II. Background and Need for Legislation

The proportion of the United States population age 60 years or older will drastically increase in the next 30 years as 77,000,000 baby boomers approach retirement and old age. Each year, anywhere between 500,000 and 5,000,000 elders in the United States are abused, neglected, or exploited. This variance reflects the unfortunate fact that there is a general lack of comprehensive data on such abuse, with 500,000 reflecting the number being reported and a significantly higher number of cases that goes unreported.

Elder abuse, neglect, and exploitation have no boundaries, and cross all racial, social class, gender, and geographic lines. Victims of elder abuse, neglect, and exploitation are not only subject to injury from mistreatment and neglect, they are also 3.1 times more likely to die at an earlier age than expected than elders who were not victims of such maltreatment.

The primary Federal statute addressing the issue of elder advocacy and elder justice is the Older Americans Act. First enacted in 1965, the Older Americans Act remains the main vehicle for the organization and delivery of social and nutrition services to senior citizens. The Act established the Administration on Aging (AoA) and also a state grant program for community planning and services programs, as well as authority for research, demonstration, and training programs in the field of aging.

The act sets out a range of social policy objectives that aim to improve the lives of all older Americans, including sufficient income in retirement, the best possible physical and mental health, employment opportunity, and ample long-term care services, to name a few.

Today the Administration on Aging remains the chief Federal agency advocate for elder Americans as it operates the National Center on Elder Abuse, the National Eldercare Locator Service, the National Long-Term Care Ombudsman Resource Center, the National Aging Information Center, and the Pension Counseling and Information Program.

Grants to State and area agencies on aging enable local advocates to act on behalf of and to coordinate programs for older Americans. Such grants account for 69% of total Older Americans Act funds in FY2004 ($1.243 billion out of $1.798 billion). This grant program supports 56 State agencies on aging, 655 area agencies on aging, and more than 29,000 service providers.

The act has been amended 14 times in 35 years. The 1992 amendments restructured some of the act's programs and created

a new Title VII to combine and develop the programs that address elder rights protection which were previously authorized under Title III, including the long-term care ombudsman program and programs to prevent elder abuse, neglect and exploitation. The Act for Elder Justice aims to fill gaps in existing authorities and strengthen the Administration on Aging so that elder abuse, neglect and exploitation may be better prevented, addressed, and treated.

Programs addressing other difficult issues such as domestic violence and child abuse and neglect have demonstrated the need for a multi-faceted law, combining public health, social service, and law enforcement approaches. For over 20 years, Congress has been presented with facts and testimony calling for a coordinated Federal effort to combat elder abuse, neglect, and exploitation. The Federal Government has been slow to respond to the needs of the victims or to undertake prevention efforts. No Federal law has been enacted that comprehensively addresses the issues of elder abuse, neglect, and exploitation and there are limited resources available to those in the field directly dealing with these issues.

The Act for Elder Justice builds on the important role played by the Federal Government in promoting research, training, public safety, data collection, the identification, development, and dissemination of promising health care, social, and protective services, and law enforcement practices, relating to child abuse and neglect, domestic violence, and violence against women. It is our view that the Federal Government should promote similar efforts and protections relating to elder abuse, neglect, and exploitation.

To this end, the Act for Elder Justice seeks to (1) promote coordinated planning among all levels of government; (2) promote the generating and sharing of knowledge relevant to protecting elders; (3) provide leadership to combat the abuse, neglect, and exploitation of the Nation's elders; and (4) provide resources to States and communities to promote elder justice.

III. Legislative History and Committee Action

On September 22, 2004 the Senate Committee on Health, Education, Labor, and Pensions considered and passed the Act for Elder Justice by voice vote.

HEARINGS AND TESTIMONY—SUMMARY OF WITNESSES

The Subcommittee on Aging of the Committee on Health, Education, Labor, and Pensions held three hearings on elder abuse, neglect and exploitation in the 108th Congress.

The following witnesses testified at a Tuesday, August 19, 2003, Aging Subcommittee field hearing in Kansas City, Missouri entitled "Elder Justice and Protection: Stopping the Abuse."

Tom Klammer from Kansas City, Missouri, is the son of Walter Leonard Klammer who was a victim of poor care and abuse in nursing homes in Missouri.

Tony DeWitt is an attorney with Bartimus, Frickleton, Robertson & Obetz, PC in Jefferson City, Missouri. He discussed the problem of elder abuse and the lack of adequate remedies for seniors. He identified insufficient staffing levels and low wages as a part of the root of abuse in nursing homes.

Todd Graves, United States Attorney for the Western District of Missouri, discussed successful cases handled by the Western District of Missouri that involved egregious instances of painful injuries and unhealthy conditions suffered by elderly residents as a result of gross neglect on the part of nursing home operators. His office took an innovative approach by filing civil actions against the nursing home operators under the Federal False Claims Act. His office used the Federal False Claims Act to prosecute a civil fraud against the government, rather than an actual elder abuse because there is no actual elder abuse law at the Federal level. One lawsuit alleged that these instances of patient harm and abuse were attributed, in large part, to the nursing home's failure to provide adequate staff to meeting the needs of nursing home residents. This particular nursing home was so severely understaffed that it could not possibly have provided the level of patient care it was obligated to provide for reimbursement under the Medicare and Medicaid programs. Aware of these staff shortages and still billing Medicare and Medicaid for services it clearly had not adequately provided, this nursing home was knowingly submitting false and fraudulent claims to the Medicare and Medicaid programs and thus violating the Federal False Claim Act.

Paul Vescovo, Sheriff, Clay County Sheriffs Department, discussed that the majority of elder abuse and neglect occurs in the home at the hands of family members or paid care givers. He described the unique challenges investigating elder abuse poses for law enforcement and the need for social services agencies to assist law enforcement in adequately responding in cases of elder abuse and assisting victims. He also discussed the need for more education of the public on elder abuse and neglect. He cited that public education and media coverage concerning domestic violence and child abuse had made the public more knowledgeable and proactive in the reporting of such abuse and had garnered support for funding for programs to combat such abuse.

Norma Collins, Associate State Director for Advocacy, AARP, discussed the need for more public awareness and prevention activities to combat elder abuse and neglect. She also raised the need to improve the quality of investigation, enforcement and prosecution in cases of abuse and neglect as well as the need to improve the early detection of warning signs through encouragement of wider reporting of abuse.

The following witnesses testified at a Wednesday, August 20, 2003, Aging Subcommittee Field Hearing in St. Louis, Missouri, entitled "Elder Justice and Protection: Stopping the Abuse."

Martha Ballanot from St. Louis, Missouri, is the daughter of Burton Reese who was a victim of abuse in a nursing home in Missouri.

Francis (Steve) Stevich from St. Louis, Missouri, is the husband of Patricia Stevich who was the victim of neglect in a nursing home in Missouri that led to death.

Ray Gruender, United States Attorney for the Eastern District of Missouri, outlined the difficulties and complexities of prosecuting abuse and neglect cases from the U.S. Attorney's office.

Jim Gregory, First Assistant Prosecuting Attorney in St. Charles County, discussed the prosecution of elder abuse that occurred at Claywest House Healthcare in St. Charles, Missouri. During his in-

vestigations of nursing home practices he discovered that facilities utilize various corporate entities to limit their individual liability and that nursing home operators take advantage of every possible loophole to avoid reporting suspected abuse. He discussed that those charged with licensing and inspection of facilities are not trained in criminal investigations and therefore, many suspected abuses are simply not reported. He called for a requirement that suspected abuse be reported to law enforcement authorities, in addition to the state licensing authority.

JoAnne Polowy, Missouri Representative of the Association for the Protection of the Elderly, raised concerns about the effectiveness of Missouri's abuse reporting system and the lack of response and proper investigation of reported cases of abuse.

The following witnesses testified at a Thursday, October 30, 2003, Aging Subcommittee Hearing entitled "Elder Justice and Protection: Stopping the Financial Abuse."

Richmond Chambers from Chevy Chase, Maryland was a victim of financial exploitation and he shared his personal experience with the committee.

J. Joseph Curran, Jr., Attorney General from the State of Maryland Attorney, discussed the role of law enforcement and the difficulties that exist in identifying and prosecuting financial abuse and exploitation.

Carol Scott, Missouri Long Term Care Ombudsman and President of the National Association of Long Term Care Ombudsman, shared Missouri specific cases of financial abuse and exploitation that have occurred in a long term care setting or residential setting as well the Ombudsman's role as an advocate within the state on behalf of victims of financial abuse.

Robert Blancato, President of the National Committee for the Prevention of Elder Abuse, defined the magnitude of the problem of financial abuse. In addition, because he serves as coordinator of the Elder Justice Coalition, a coalition of over 190 organizational members that advocate on behalf of the Elder Justice Act, he provided background on the Coalition and expressed their support of legislative action on Elder Justice legislation.

W. Lee Hammond, Board Member of the AARP, discussed the consumer protection as well as outreach and education activities that AARP offers to their membership.

IV. Explanation of Bill and Committee Views

1. Purpose of the Bill

The committee is aware that the Senate Finance Committee has passed a comprehensive bill, S. 333, addressing elder justice issues. The HELP Committee bill was designed to address two issues within our committee's jurisdiction, the creation of an Office on Elder Abuse Prevention and Services and the creation of a competitive State grant. Both of these issues had been included in S. 333 but were removed and referred to the HELP Committee on jurisdictional grounds. The HELP Committee bill was designed to complement rather than be a substitute to S. 333. The committee looks forward to working with the Finance Committee to secure passage of both bills.

2. OFFICE OF ELDER ABUSE PREVENTION AND SERVICES

The Administration on Aging remains the chief Federal agency advocate for elder Americans, operating the National Center on Elder Abuse, the National Eldercare Locator Service, the National Long-Term Care Ombudsman Resource Center, the National Aging Information Center, and the Pension Counseling and Information Program. The committee supports the establishment of an office on Elder Abuse, Prevention and Services to facilitate better coordination of these services to more effectively address issues around elder justice. Therefore, the committee has given the Secretary of HHS the statutory authority to establish an office on Elder Abuse Prevention and Services.

3. ELIGIBLE GRANTEES

The committee intends that entities eligible to compete for funding for the new competitive grant program contained in the Act for Elder Justice include public and private organizations (including community-based and faith-based organizations) that are engaged in and have expertise in issues relating to elder justice.

V. STATEMENT OF ADMINISTRATION POLICY

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, September 21, 2004.

Hon. JUDD GREGG,
Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter conveys the views of the Department of Health and Human Services on the committee's draft bill, the "Act for Elder Justice". The bill authorizes grants to States and Indian tribes for a comprehensive range of services, including elder shelters, multidisciplinary teams, and training. We support the objectives of this legislation. It enhances the existing authority of this Department's Administration on Aging (AoA) to raise awareness about elder abuse, promote coordination, and support intervention efforts.

Current authority under the Older Americans Act of 1965 (OAA) permits States to develop and carry out programs for the prevention and treatment of elder abuse, including providing public education and outreach, conducting training, and ensuring the coordination of elder rights programs. The AoA also provides funding under the OAA for the National Center on Elder Abuse, which provides information to the public and offers training and technical assistance to State units on aging and protective services programs for the elderly.

The bill calls for AoA to develop priorities and a long-term plan for supporting State and local protective services programs, including providing them with training, technical assistance, and information on best practices. This provision reinforces the role AoA plays in providing these and other elder rights programs with support and guidance.

The bill authorizes grants to States and Indian tribes for specific abuse prevention efforts, such as support for cross-training activities and volunteer programs that focus on the issue of elder abuse.

We do not object to clarifying and expanding the types of activities that States and Indian tribes may undertake.

While we support the committee's desire to amend the OAA to further strengthen this Department's efforts to prevent and address elder abuse through this draft legislation, we believe it would be more appropriate to make these and other enhancements to the Act in the broader context of the reauthorization next year. However, we do not object to enactment of this legislation.

The Office of Management and Budget advises that there is no objection to the transmittal of this report.

Sincerely,

TOMMY G. THOMPSON,
Secretary.

VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 2004.

Hon. JUDD GREGG,
Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Act for Elder Justice.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Sadoti.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

Act for Elder Justice

Summary: This legislation would authorize an Office on Elder Abuse Prevention and Services within the Administration on Aging in the Department of Health and Human Services (HHS). In addition, the bill would authorize grants to states for the purpose of strengthening long-term care and providing assistance for elder justice programs. CBO estimates that the bill would authorize appropriations of $210 million for fiscal year 2005 and $877 million over the 2005–2009 period, including adjustments for inflation. Assuming appropriation of the estimated amounts, CBO estimates that implementing the bill would cost $27 million in fiscal year 2005 and $768 million over the 2005–2009 period. Enacting the bill would not affect direct spending or receipts.

The bill contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). State, local, and tribal governments would be eligible for grants authorized by the bill, and the costs of any requirements tied to those grants would be incurred voluntarily.

Estimated cost to the Federal Government: The estimated budgetary impact of the Act for Elder Justice is summarized in the following table. The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Office of Elder Abuse Prevention and Services:					
Estimated Authorization Level	10	10	11	11	11
Estimated Outlays	7	10	11	11	11
State Grants:					
Estimated Authorization Level	200	204	208	212	0
Estimated Outlays	20	120	182	206	189
Total Changes:					
Estimated Authorization Level	210	214	219	223	11
Estimated Outlays	27	130	193	217	200

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2005 and that the necessary amounts will be appropriated for each year. The estimated outlays are based on the spending patterns of activities similar in nature to those authorized under this bill.

Office of Elder Abuse Prevention and Services

The bill would establish a federal Office of Elder Abuse Prevention and Services within HHS' Administration on Aging. The office would carry out elder justice programs and activities; collect data relating to the abuse, exploitation, and neglect of elderly people; and conduct research, develop best practices, and provide technical assistance to states and other entities. This office would be added to the existing Administration on Aging, for which there is a permanent authorization of appropriations of such sums as may be necessary. Based on recent appropriations for similar activities dealing with the administration of child abuse and neglect programs. CBO estimates that authorizations for these activities would total $10 million for fiscal year 2005 and $54 million for the 2005–2009 period.

State Grants

The bill would authorize the appropriation of such sums as may be necessary for fiscal years 2005 through 2008 for grants to states and Indian tribes for strengthening long-term care and assisting with elder justice programs—including the prevention, detection, assessment, treatment of, intervention in, and investigation of elder abuse, neglect, and exploitation. Based on recent appropriations for similar activities dealing with child abuse and neglect and the number of elderly persons relative to the number of children, CBO estimates that authorizations for these activities would total $200 million for fiscal year 2005 and $823 million for the 2005–2008 period.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would authorize grants to state, local, and tribal governments for prevention and intervention programs, elder shelters, volunteer programs, training, and multidisciplinary and collaborative programs tied to elder abuse, neglect, and exploitation. The costs of any requirements tied to these grants would be incurred voluntarily.

Previous CBO estimate: On September 27, 2004, CBO provided an estimate for S. 333, the Elder Justice Act of 2004, as ordered

reported by the Senate Committee on Finance on September 20, 2004. S. 333 differs in scope from this bill, and contains specific (rather than "such sums") authorizations for fiscal years 2006 through 2009. CBO estimated that S. 333 would cost $763 million over the 2006–2009 period.

Estimate prepared by: Federal Costs: Christina Hawley Sadoti. Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: Meena Fernandes.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VII. Application of Law to the Legislative Branch

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act (CAA) requires a description of the application of this bill to the legislative branch. This bill does not amend any act that applies to the legislative branch.

VIII. Regulatory Impact Statement

The Committee has determined that there will be de minimus changes in the regulatory burden imposed by this bill.

IX. Section-by-Section Analysis

SECTION 1. SHORT TITLE

This Act may be cited as the "Act for Elder Justice."

SECTION 2. STATEMENT OF PURPOSE

The purposes of this Act are as follows: (1) To assist States, Indian Tribes and communities in their efforts to protect elders by developing a comprehensive, multi-disciplinary approach to elder justice; (2) To promote research and data collection to fill gaps in knowledge about elder abuse, neglect and exploitation; (3) To support innovative and effective activities of service providers designed to address elder abuse issues; (4) To assist States, Indian Tribes and local service providers in the development of short- and long-term strategic plans for the development and coordination of elder justice research, programs, studies, and training; and (5) To promote collaborative efforts and diminish overlap and gaps in developing the field of elder justice.

SECTION 3. AUTHORIZES THE ESTABLISHMENT OF AN OFFICE OF ELDER ABUSE PREVENTION AND SERVICES

Amends Sec. 201 of OAA to authorize the establishment of an Office of Elder Abuse Prevention and Services within the Administration on Aging. Directs the Assistant Secretary to, through the Director of the office, develop objectives, priorities, policy and a long-term plan for: (1) Carrying out elder justice programs related to abuse prevention, detection, treatment, evaluation, intervention and response; training; and overall improvement of the elder justice system; (2) Collecting and disseminating data annually on abuse, exploitation and neglect of elders (and, at the discretion of the Secretary other vulnerable adults) in coordination with DOJ's Bureau of Justice Statistics; (3) Disseminating information about best practices and providing training to carry out activities related

to the abuse, neglect and exploitation of elders (and, in the discretion of the Secretary, vulnerable adults); (4) In conjunction with experts in the field, conducting research related to elder abuse, neglect and exploitation; and (5) Providing technical assistance to States and eligible entities which provide or fund such elder justice services.

SECTION 4. ESTABLISHES A NEW COMPETITIVE GRANT WITHIN THE OLDER AMERICANS ACT TO STATES TO STRENGTHEN LONG-TERM CARE AND OTHER ELDER JUSTICE PROGRAMS

Sec. 751 sets forth definitions for: caregiver, direct care, elder, elder justice, eligible entity, fiduciary, grant, law enforcement, long term care, loss of capacity for self-care, long-term care facility, nursing facility, state legal assistance developer, and state long-term care ombudsman.

Sec. 752 grants authority to the Assistant Secretary to award grants to States and Indian tribes to strengthen long-term care and assist other elder justice programs.

States and Indian tribes may apply for such grants and use those funds to award grants to eligible entities: (1) For the prevention, detection, assessment and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation; (2) To examine various types of elder shelters ('safe havens') and to test various shelter models for establishing safe havens that recognize autonomy, self-determination, and fully protect the due process rights of elders; (3) To establish or continue volunteer programs that focus on issues of elder abuse, neglect and exploitation or to provide related services; (4) To support multi-disciplinary elder justice activities including supporting and studying team approaches for bringing a coordinated multi-disciplinary or interdisciplinary response to elder abuse, neglect and exploitation or establishing a State coordinating council; (5) To provide training and cross-training for individuals to ensure coordination and collaboration with respect to issues of elder abuse, neglect, and exploitation; (6) To address underserved populations of elders; (7) To provide individuals with incentives to train for, seek and maintain employment in direct care work in long-term care facilities; (8) To encourage the establishment of partnerships to develop collaborative and innovative approaches to improve the quality of long-term care and abuse prevention; (9) To establish multi-disciplinary panels to address and develop best practices concerning methods of improving long-term care quality and addressing abuse in long-term care facilities;

Administrative cap: States or tribes who receive a grant under this section may not use more than 5% of the funds to pay for administrative expenses.

Non-supplantation: Funds made available under this section may only be used to supplement, not supplant other Federal, State and local, including tribal, public funds expended to provide such protective services described in this section.

Maintenance of Effort: Using grants under this section, States and Indian Tribes are required to maintain expenditures for elder justice activities at a level at least equal to expenditures maintained the preceding fiscal year.

Evaluation: Directs the Assistant Secretary to evaluate activities funded under this section to determine activities for which such

funds may be used. The Assistant Secretary shall also develop accountability measures to ensure that all funded activities are effective and that activities funded under section 752(c)(7) in addition to being effective, benefit eligible employees and increase stability of the long-term care workforce.

Compliance with Applicable Laws: All entities receiving funds under this section shall comply with all applicable laws, regulations and guidelines.

Eligible partnerships: As used in this section eligible partnerships means a multidisciplinary community partnership consisting of eligible entities or appropriate individuals. This may include representatives from nursing facilities, State legal assistance developers, State Long Term Care Ombudsmen, advocates for residents of long term care facilities, the State agency with responsibility for adult protective services as well as other interested parties and individuals.

Authorization: Authorizes such sums as may be necessary for each of fiscal years 2005 through 2008.

X. CHANGES IN EXISTING LAW

In compliance with rule XXVI of paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

OLDER AMERICANS ACT OF 1965

* * * * * * *

DEFINITIONS

SEC. 102. For the purposes of this Act—

(1) * * *

* * * * * * *

[(24) The term "exploitation" means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain."]

(24) The term "exploitation" means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary (as such terms are defined in section 751), that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.

* * * * * * *

[(34) The term "neglect" means—

(A) the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or

(B) the failure of a caregiver to provide the goods or services.]

(34) The term "neglect" means—

(A) the intentional, deliberate, or knowing failure of a caregiver or fiduciary (as such terms are defined in section 751) to provide the goods or services that are necessary to maintain the health or safety of an older individual; or

(B) an adult's inability, due to physical, mental, or cognitive impairment or diminished capacity, to perform essential self-care tasks including—

(i) obtaining essential food, clothing, shelter, and medical care;

(ii) obtaining gods and services necessary to maintain physical health, mental health, or general safety; or

(iii) managing one's own financial affairs.

* * * * * * *

TITLE II—ADMINISTRATION ON AGING

ESTABLISHMENT OF ADMINISTRATION ON AGING

SEC. 201. (a) * * *

* * * * * * *

(e)(1) In this subsection, the terms defined in section 751 shall have the meanings given those terms in that section.

(2) The Secretary is authorized to establish or designate within the Administration (as defined in section 102) an Office of Elder Abuse Prevention and Services.

(3) It shall be the duty of the Assistant Secretary, acting through the head of the Office of Elder Abuse Prevention and Services to—

(A) develop objectives, priorities, policy, and a long-term plan for—

(i) carrying out elder justice programs and activities relating to—

(I) elder abuse prevention, detection, treatment, and intervention, and response;

(II) training of individuals regarding the matters described in subclause (I); and

(III) the improvement of the elder justice system in the United States;

(ii) collecting and disseminating data annually relating to the abuse, neglect, and exploitation of elders (and, in the discretion of the Secretary, vulnerable adults) in coordination with the efforts of the Bureau of Justice Statistics of the Office of Justice Programs of the Department of Justice to collect national data;

(iii) disseminating information concerning best practices regarding, and providing training on, carrying out activities related to abuse, neglect, and exploitation of elders (and, in the discretion of the Secretary, vulnerable adults);

(iv) in conjunction with the necessary experts, conducting research related to abuse, neglect, and exploitation of elders (and, in the discretion of the Secretary, vulnerable adults); and

(v) providing technical assistance to States and other eligible entities that provide or fund the provision of the services described in subtitle B of title VII;

(B) implement the overall policy and a strategy to carry out the plan described in subparagraph (A); and

(C) provide advice to the Secretary on elder justice issues and administer such programs relating to elder abuse, neglect, and exploitation as the Secretary determines to be appropriate.

(4) The Secretary, acting through the Assistant Secretary, may issue such regulations as may be necessary to carry out this subsection and subtitle B of title VII.

TITLE VII—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Subtitle A—State Provisions

CHAPTER 1—GENERAL STATE PROVISIONS

SEC. 701. ESTABLISHMENT.

* * * * * * *

Subtitle B—Elder Justice Programs

SEC. 751. DEFINITIONS.

In this subtitle:

(1) CAREGIVER.—The term "caregiver" means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an elder.

(2) DIRECT CARE.—The term "direct care" means care by an employee or contractor who provides assistance or long-term care services to a recipient.

(3) ELDER.—The term "elder" means an older individual, as defined in section 102.

(4) ELDER JUSTICE.—The term "elder justice" means—

(A) efforts to prevent, detect, treat, intervene in, and respond to elder abuse, neglect, and exploitation and to protect elders with diminished capacity while maximizing their autonomy; and

(B) from an individual perspective, the recognition of an elder's rights, including the right to be free of abuse, neglect, and exploitation.

(5) ELIGIBLE ENTITY.—The term "eligible entity" means a State or local government agency, Indian tribe, or any other public or private entity, that is engaged in and has expertise in issues relating to elder justice.

(6) FIDUCIARY.—The term "fiduciary"—

(A) means a person or entity with the legal responsibility—

(i) to make decisions on behalf of and for the benefit of another person; and

(ii) to act in good faith and with fairness; and

(B) includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.

(7) GRANT.—The term "grant" includes a contract, cooperative agreement, or other mechanism for providing financial assistance.

(8) LAW ENFORCEMENT.—The term "law enforcement" means the full range of potential responders to elder abuse, neglect, and exploitation including—

(A) police, sheriffs, detectives, public safety officers, and corrections personnel;

(B) prosecutors;

(C) medical examiners;

(D) investigators; and

(E) coroners.

(9) LONG-TERM CARE.—

(A) IN GENERAL.—The term "long-term care" means supportive and health services specified by the Secretary for individuals who need assistance because the individuals have a loss of capacity for self-care due to illness, disability, or vulnerability.

(B) LOSS OF CAPACITY FOR SELF-CARE.—For purposes of subparagraph (A), the term "loss of capacity for self-care means an inability to engage effectively in activities of daily living, including eating, dressing, bathing, and management of one's financial affairs.

(10) LONG-TERM CARE FACILITY.—The term "long-term care facility" means a residential care provider that arranges for, or directly provides, long-term care.

(11) NURSING FACILITY.—The term "nursing facility" has the meaning given such term under section 1919(a) of the Social Security Act (42 U.S.C. 1396r(a)).

(12) STATE LEGAL ASSISTANCE DEVELOPER.—The term "State legal assistance developer" means an individual described in section 731.

(13) STATE LONG-TERM CARE OMBUDSMAN.—The term "State Long-term Care Ombudsman" means the State Long-Term Care Ombudsman described in section 712(a)(2).

SEC. 752. STATE GRANTS TO STRENGTHEN LONG-TERM CARE AND PROVIDE ASSISTANCE FOR ELDER JUSTICE PROGRAMS.

(a) GRANTS.—The Assistant Secretary may award grants to States and Indian tribes to enable the States and tribes to strengthen long-term care and provide assistance for elder justice programs.

(b) APPLICATION.—To be eligible to receive a grant under this subtitle, a State or Indian tribe shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require.

(c) USE OF FUNDS.—A State or Indian tribe that receives a grant under this subtitle may use the funds made available through the grant to award grants—

(1) to eligible entities for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation;

(2) to eligible entities to examine various types of elder shelters (in this paragraph referred to as "safe haven"), and to test various safe haven models for establishing safe havens (at home or elsewhere), that—

(A) recognize autonomy and self-determination, and fully protect the due process rights of elders; and

(B)(i) provide a comprehensive, culturally sensitive, and multidisciplinary team response to allegations of elder abuse, neglect, or exploitation;

(ii) provide a dedicated, elder-friendly setting;

(iii) have the capacity to meet the needs of elders for care; and

(iv) provide various services including—

(I) nursing and forensic evaluation;

(II) therapeutic intervention;

(III) victim support and advocacy; and

(IV) case review and assistance to make the elders safer at home or to find appropriate placement in safer environments, including shelters, and, in some circumstances long-term care facilities, other residential care facilities, and hospitals;

(3) to eligible entities to establish or continue volunteer programs that focus on the issues of elder abuse, neglect, and exploitation, or to provide related services;

(4) to eligible entities to support multidisciplinary elder justice activities, such as—

(A) supporting and studying team approaches for bringing a coordinated multidisciplinary or interdisciplinary response to elder abuse, neglect, and exploitation, including a response from individuals in social service, health care, public safety, and legal disciplines;

(B) establishing a State or tribal coordinating council, which shall identify the individual State's or Indian tribe's needs and provide the Secretary with information and recommendations relating to efforts by the State or Indian tribe to combat elder abuse, neglect, and exploitation;

(C) providing training, technical assistance, and other methods of support to groups carrying out multidisciplinary efforts at the State or Indian tribe level (referred to in some States as "State Working Group");

(D) broadening and studying various models for elder fatality and serious injury review teams, to make recommendations about their composition, protocols, functions, timing, roles, and responsibilities, with a goal of producing models and information that will allow for replication based on the needs of other States, Indian tribes, and communities; or

(E) carrying out such other interdisciplinary or multidisciplinary efforts as the Assistant Secretary determines to be appropriate;

(5) to eligible entities to provide training for individuals with respect to issues of elder abuse, neglect, and exploitation, consisting of—

(A) training within a discipline; or

(B) cross-training activities that permit individuals in multiple disciplines to train together, fostering communication, coordinating efforts, and ensuring collaboration;

(6) to eligible entities to address underserved populations of elders, such as—

(A) elders living in rural locations;

(B) elders in minority populations; or

(C) low-income elders;

(7) to eligible entities to provide incentives for individuals to train for, seek, and maintain employment providing direct care in a long-term care facility, such as—

(A) to eligible entities to provide incentives to participants in programs carried out under part A of title IV, and section 403(a)(5), of the Social Security Act (42 U.S.C. 601 et seq., 603(a)(5)) to train for and seek employment providing direct care in a long-term care facility;

(B) to long-term care facilities to carry out programs through which the facilities—

(i) offer, to employees who provide direct care to residents of a long-term care facility, continuing training and varying levels of professional certification, based on observed clinical care practices and the amount of time the employees spend providing direct care; and

(ii) provide or make arrangements with employers to provide, bonuses or other increased compensation or benefits to employees who achieve professional certification under such a program; or

(C) to long-term care facilities to enable the facilities to provide training and technical assistance to eligible employees regarding management practices using methods that are demonstrated to promote retention of employees of the facilities, such as—

(i) the establishment of basic human resource policies that reward high performance, including policies that provide for improved wages and benefits on the basis of job reviews; or

(ii) the establishment of other programs that promote the provision of high quality care, such as a continuing education program that provides additional hours of training, including on-the-job training, for employees who are certified nurse aides;

(8) to encourage the establishment of eligible partnerships to develop collaborative and innovative approaches to improve the quality of, including preventing abuse, neglect, and exploitation in, long-term care; or

(9) to eligible entities to establish multidisciplinary panels to address and develop best practices concerning methods of—

(A) improving the quality of long-term care; and

(B) addressing abuse, including resident-to-resident abuse, in long-term care.

(d) ADMINISTRATIVE EXPENSES.—A State or Indian tribe that receives a grant under this section shall not use more than 5 percent of the funds made available through the grant to pay for administrative expenses.

(e) SUPPLEMENT NOT SUPPLANT.—Funds made available pursuant to this section shall be used to supplement and not supplant other Federal, State, and local (including tribal) funds expended to provide activities described in subsection (c).

(f) MAINTENANCE OF EFFORT.—The State or Indian tribe, in using the proceeds of a grant received under this section, shall maintain the expenditures of the State or tribe for activities described in subsection (c) at a level equal to not less than the level of such expenditures maintained by the State or tribe for the fiscal year preceding the fiscal year for which the grant is received.

(g) ACCOUNTABILITY MEASURES.—The Assistant Secretary shall develop accountability measures to ensure the effectiveness of the activities conducted using funds made available under this section, including accountability measures to ensure that the activities described in subsection (c)(7) benefit eligible employees and increase the stability of the long-term care workforce.

(h) EVALUATING PROGRAMS.—The Assistant Secretary shall evaluate the activities conducted using funds made available under this section and shall use the results of such evaluation to determine the activities for which funds made available under this section may be used.

(i) COMPLIANCE WITH APPLICABLE LAWS.—In order to receive funds under this section, an entity shall comply with all applicable laws, regulations, and guidelines.

(j) ELIGIBLE PARTNERSHIPS.—In subsection (c)(8), the term "eligible partnership" means a multidisciplinary community partnership consisting of eligible entities or appropriate individuals, such as a partnership consisting of representatives in a community of nursing facility providers, State legal assistance developers, advocates for residents of long-term care facilities, State Long-Term Care Ombudsmen, surveyors, the State agency with responsibility for adult protective services, the State agency with responsibility for licensing long-term care facilities, law enforcement agencies, courts, family councils, residents, certified nurse aides, registered nurses, physicians, and other eligible entities and appropriate individuals.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2005 through 2008.

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Subtitle [B] *C*—Native American Organization Provisions

SEC. [751] *761.* NATIVE AMERICAN PROGRAM.

[(a)] ESTABLISHMENT.—* * *

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Subtitle [C] *D*—General Provisions

SEC. [761] *771.* DEFINITIONS.

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SEC. [762] *772.* ADMINISTRATION.

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SEC. [763] *773.* TECHNICAL ASSISTANCE.

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SEC. [764] *774.* AUDITS.

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