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Older Americans Act Reauthorization Listening Session
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Good afternoon. It is a privilege and honor to represent the National Association of State Long-Term Care Ombudsman Programs (NASOP) and to speak with you this afternoon about the Long-Term Care Ombudsman Program (LTCOP). Thank you for this opportunity to speak about the reauthorization of the Older Americans Act (OAA) and to make some recommendations to improve this important Program that serves many older and disabled adults living in nursing and assisted living facilities.

Since 1978, the LTCOP has been a core program of the OAA. It is the only program in the OAA that specifically serves residents of nursing home and assisted living facilities. We all appreciate and value the importance of living in one's own home. The OAA provides critically needed home and community based services that delay institutionalization. However, some elders can no longer live safely in their own homes and must move at some point in their lives to either an assisted living facility or a nursing home. These residents rely on the advocacy services of the LTCOP.

Each year, the LTCOP resolves hundreds of thousands of complaints made by or on behalf of residents. According to Fiscal Year 2010 data from the National Ombudsman Reporting System, 76 percent of these complaints are resolved or partially resolved to the satisfaction of residents. In order to improve our advocacy and services available to residents of long-term care facilities, NASOP recommends several amendments to the OAA. These recommendations focus on resources available to the Program, private and unimpeded access to residents, organizational and individual conflicts of interest, and advocating on behalf of unbefriended residents who lack capacity.

LTCOPs need adequate resources to provide adequate services to residents of LTC facilities. NASOP recommends the restoration of provisions that clearly extended the maintenance of effort to both federal and state funds expended for the LTCOP. Without this protection, state funds dedicated to the program are vulnerable. In challenging economic times, when legislators and governors make difficult decisions about funding, it is critical that LTCOPs have this protection in the law. Because this provision is not in current law, my SLTCOP lost its entire state general fund allocation to local LTCOPs; more than \$3.8 million in state funds, or approximately 50 percent of the funding to local

LTCOPs in my State. As you can imagine, this has made it extremely difficult to provide adequate services to residents.

As long-term care services and supports have grown in scope and complexity, the LTCOP has not always grown with them. While the mandate to serve residents in assisted living was added to our mission by the 1981 amendments to the OAA, there was no new authorization for this function. Nationally, while ombudsmen visited 79 percent of all nursing homes on a quarterly basis, only 46 percent of all board and care, assisted living and similar homes received a quarterly visit.

As Dr. Arthur Flemming (U.S. Commissioner on Aging under President Nixon) once commented about residents of long-term care facilities, "These are real people, with real problems." In board and care and assisted living facilities, the five most frequent complaints nationally made to the LTCOP were about the quality, quantity, variation and choice of food; medications and their administration and organization; inadequate or no discharge/eviction notice or planning; equipment or building hazards; and lack of respect for residents and poor staff attitudes. But please keep in mind that we face thousands of cases of real neglect and abuse each year and in many cases I believe we have prevented serious injury or death.

Throughout the country, it becomes increasingly difficult for LTCOPs to serve residents in assisted living. A lack of federal oversight of assisted living facilities means that we do not have clear definitions for the services delivered by these facilities and there is inconsistency in how these homes are regulated. Please keep in mind that the assisted living population now looks very much like the nursing home population in terms of frailty and need for services. Diminished resources and funding from states coupled with the tremendous growth in the number of assisted living facilities present challenges to LTCOPs, which need to ensure that residents have regular and timely access to representatives of the program. In my own state of California, I have seen the number of assisted living and board and care facilities grow from 6,000 in 2002 to almost 8,000 today. At the same time, we have lost more than 40 percent of paid Ombudsman staff and approximately 30 percent of volunteer cadre. To effectively advocate for these residents, we need the OAA to address the growth in demand for our services in assisted living facilities.

When ombudsman representatives are present in facilities, they sometimes find that residents lack access to communicate with the ombudsman privately and without interference. NASOP recommends strengthening the language in the OAA to require that the Ombudsman and representatives ensure private and unimpeded access, thus creating an expectation that states assure such access.

Our Association seeks additional clarification in the OAA regarding organizational conflicts of interest. As many State LTCOPs 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.

The OAA establishes that the Ombudsman designates representatives of the Office. Where this relationship is not clearly understood, and communications between the Office and its representatives are limited, it can inhibit the effectiveness of the LTCOP. NASOP recommends strengthening the language of the OAA to make clearer that the LTCOP shall be a unified program under the Office of the State Long-Term Care Ombudsman. Representatives and designated entities shall report to the Ombudsman on all ombudsman functions, duties, and programmatic issues. Case and other programmatic records maintained by representatives are the property of the Ombudsman.

In the course of their work resolving problems for residents, Ombudsman representatives maintain thorough and detailed records. NASOP recommends that not only the identity of residents, but also the information given by residents to the Ombudsman or representatives should remain confidential. It is essential that residents be protected from possible retaliation from the facility.

Individual conflicts of interest can threaten the credibility and effectiveness of the Office of the Ombudsman in serving long-term care facility residents and fulfilling OAA mandates. NASOP recommends strengthening the conflict of interest provisions in the OAA to make them consistent with the recommendations of the Institute of Medicine. The OAA should ensure that the Ombudsman is: 1) not employed by, or participating in the management of, a long-term care facility or related organization, nor has been employed by such entity within the last two years; 2) does not have management responsibility for, nor operates under the supervision of, adult protective services; and 3) does not serve as guardian or in another fiduciary capacity for residents of long-term care facilities in an official capacity.

The LTCOP offers significant consumer protections to residents. The complexity and diversity, especially in age, of nursing home residents is growing. LTC Ombudsman representatives want to be leaders in bringing culture change to these facilities so that care is resident centered, resident directed and based upon meaningful relationships with caregivers.

Ombudsman representatives act at the direction of and with the consent of the resident. Ombudsman representatives throughout the country report having contact with more and more individuals who cannot speak for themselves and have no legally authorized representative to speak on their behalf. We ask that provisions in Title VII of the OAA be made to address the needs of individuals without a legal representative or surrogate decision maker so that the Ombudsman and representatives can advocate on their behalf.

Finally, NASOP wants to acknowledge the importance and value of the National Ombudsman Resource Center. The Center provides valuable and reliable technical

assistance and support to state and local Ombudsman Programs. The caliber and quality of their trainings for ombudsmen are unrivaled. State Ombudsmen turn to the Center for their research and training needs. We hope that the OAA continues to strengthen the role and availability of resources through the Center.

On behalf of NASOP, thank you for this opportunity to share our perspectives on the reauthorization of the OAA.