

1 EXECUTIVE COMMITTEE MEETING TO CONSIDER S. 2010, THE
2 ELDER JUSTICE ACT
3 THURSDAY, AUGUST 3, 2006
4 U.S. Senate,
5 Committee on Finance,
6 Washington, DC.

7 The meeting was convened, pursuant to recess, at
8 9:42 a.m., in Room 106, Dirksen Senate Office Building,
9 Charles E. Grassley (chairman of the committee)
10 presiding.

11 Present: Senators Hatch, Thomas, Smith,
12 Rockefeller, Conrad, and Lincoln.

13 Also present: Kolan Davis, Republican Staff Director
14 and Chief Counsel; Russ Sullivan, Democratic Staff
15 Director; Dean Zerbe, Tax Counsel and Senior Counsel to
16 the Chairman; Becky Shipp, Policy Advisory, Majority;
17 David Schwartz, Policy Advisor, Minority; Patty
18 DeLoatche, Health Policy Advisor for Senator Hatch;
19 Elizabeth McDonald-Barnett, Health Policy Advisor for
20 Senator Lincoln; Carla Martin, Chief Clerk; and Mark
21 Blair, Deputy Clerk.

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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.
2 SENATOR FROM THE STATE OF IOWA, CHAIRMAN, COMMITTEE ON
3 FINANCE

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5 The Chairman. We are here as the Finance Committee
6 to consider the Elder Justice Act. This Act is sponsored
7 by Senators Hatch and Lincoln.

8 Success has many fathers. I am very hopeful that we
9 will enact the Elder Justice Act this Congress, so I want
10 to establish my lineage with this bill early on.

11 I am proud that several provisions in this bill are
12 the result of work I did when I was Chairman before the
13 year 2001 of the Senate Aging Committee for a period of
14 four years. While I was Chairman of that committee, we
15 did very important work on nursing home abuse and nursing
16 home standards.

17 A number of reforms included in the Elder Justice Act
18 were developed as a byproduct of those oversight
19 activities. We are also very fortunate to have the
20 cooperation, last Congress, when he was a member of the
21 Congress, of Senator John Breaux. He was an original
22 sponsor of that Elder Justice Act.

23 I thought Senator Breaux was going to be here this
24 morning, but I guess he is not here. But if he was, I
25 wanted to recognize his contribution to that, because he

1 was Ranking Member of the Aging Committee at the time I
2 did some work on this.

3 So, of course we need commendation for the two
4 current sponsors, Senators Hatch and Lincoln. It is a
5 direct result of their commitment to ensuring that every
6 older person is free from abuse, neglect, and
7 exploitation that we are here today to consider this
8 important piece of legislation.

9 Of course, they have shown great tenacity in
10 advocating the advancement of this legislation. I am
11 pleased to have worked with the sponsors of this
12 legislation.

13 In the process, we incorporated some modifications to
14 their bill. Of course, we would not be here without
15 their willingness to accommodate other members' concerns
16 in developing their amendment to the bill that they
17 introduced earlier in the session.

18 The committee has a full agenda today, so in the
19 interest of time I would suggest that we allow sponsors
20 of the legislation a sufficient amount of time for their
21 remarks.

22 However, I would like to comment, briefly, on the
23 provisions that the sponsors worked with me on to
24 incorporate in the bill.

25 Placing a loved one in a nursing home is one of the

1 most wrenching and emotional decisions a family must
2 face; children must assume the role of parents; seniors
3 are faced with relinquishing some of their freedoms and
4 the comfort and security of their homes.

5 Families need the best and most accurate information
6 available to guide them through this difficult and
7 draining decision-making process.

8 Unfortunately, there is not a great deal of consumer-
9 friendly, accessible information available to consumers.
10 A family wrestling with the decision may not know all
11 their rights in the type of information available to
12 them.

13 That is why I am pleased that the legislation the
14 committee will consider today includes several
15 improvements which will help consumers to understand the
16 resources available and provide critical information
17 about the quality of care at various nursing homes.

18 I am hopeful that these improvements will contribute
19 to better information being available about nursing homes
20 and that this information will be very helpful during the
21 process of selecting a nursing home.

22 At this point, normally we would recognize the
23 Ranking Member of the committee. But Senator Baucus is
24 out because there has been a death in Iraq of a nephew,
25 and of course his family is very distraught at this

1 particular time.

2 But I want him to know, and I am sure the members of
3 the committee want him to know, that our thoughts and our
4 prayers remain with the Baucus family at this very
5 difficult time.

6 Senator Rockefeller is the next Ranking Member of the
7 committee, and I would recognize him for his statement.
8 Then we will go to Senator Hatch and to Senator Lincoln.

9 Senator Rockefeller. I am going to put my statement
10 in the record, in the interest of a time conflict that I
11 have, Mr. Chairman.

12 But I wanted to strongly agree with you on what you
13 said about Max Baucus and his family. He loves this
14 committee and he is very, very good at it, and I want to
15 ask unanimous consent to put his statement in the record.

16 The Chairman. Both your statement and his
17 statement, and anybody else's statements that do not want
18 to speak, will be included in the record.

19 Senator Rockefeller. Well, it is not that I do not
20 want to speak, Mr. Chairman. It is just, I am not going
21 to in the interest of time. All right?

22 The Chairman. Well, you proceed.

23 Senator Rockefeller. No, no. I am not going to,
24 really.

25 The Chairman. Oh, you are not going to speak?

1 Senator Rockefeller. No. It is a devastatingly
2 wonderful statement.

3 The Chairman. All right. Well, it always is, with
4 a lot of emotion, too.

5 Senator Rockefeller. That is right.

6 The Chairman. You bet.

7 [The prepared statements of Senators Baucus and
8 Rockefeller appear in the appendix.]

9 The Chairman. Senator Hatch?

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1 STATEMENT OF ORRIN G. HATCH, A U.S. SENATOR FROM THE
2 STATE OF UTAH

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4 Senator Hatch. Thank you, Mr. Chairman, Senator
5 Rockefeller, and of course, Senator Lincoln. I want to
6 express my gratitude to you, Mr. Chairman, and Senator
7 Baucus for bringing S. 2010 before the committee today.

8 I am especially grateful that the Finance Committee
9 is holding this mark-up prior to the August recess
10 because it took a lot of work and dedication from both
11 you and your tremendous staff. You have been extremely
12 supportive of this bill, and I just want you to know I am
13 very appreciative.

14 I am very sorry that Senator Baucus is not here
15 today. All of our thoughts, prayers, and faith are with
16 him. We know it is a very difficult time. The Hatch
17 family really realizes this, having lost a number of
18 members of our family to various wars. But we wish him
19 and his family the best.

20 Senator Baucus has been a strong supporter of S. 2010
21 and is not able to be with us today. Senator
22 Rockefeller, I want to thank you so much for your
23 willingness to fill in for Senator Baucus this morning so
24 that this mark-up may move forward.

25 I also want to recognize the other lead sponsor of

1 the Elder Justice Act, Senator Blanche Lincoln. Senator
2 Lincoln and I firmly believe that part of the reason that
3 we are here today is because of you and your staff's hard
4 work and dedication.

5 You have been a tremendous asset in getting this bill
6 before the Finance Committee. I want to thank you
7 personally for your willingness to work with us, and with
8 me. It made a big difference.

9 Another very important ally of the Elder Justice Act
10 has been the Elder Justice Coalition, which is dedicated
11 to eliminating elder abuse, neglect, and exploitation in
12 our country. This coalition is headed by Bob Blancado,
13 who has been a strong advocate and supporter of the Elder
14 Justice Act for many years.

15 Currently, the coalition has 500 organizational and
16 individual members. I want to thank every member of the
17 coalition for your support of this bill. Of course, I
18 also would like to mention Senator Breaux, who was the
19 original co-sponsor with me in the last Congress. He is
20 to be commended for his continuing support of the Elder
21 Justice Act.

22 Even though Senator Breaux left the Congress last
23 year, or left last Congress, he has still been fighting
24 for the passage of this bill. In fact, he serves as the
25 honorary chairman of the Elder Justice Coalition.

1 Last Congress, Senator Breaux and I worked with
2 Senators Grassley and Baucus to get this bill reported by
3 the Senate Finance Committee. While it was unanimously
4 reported by the committee, it was not approved by the
5 Senate before the 108th Congress adjourned.

6 So we are back again this Congress, fighting even
7 harder. I am happy to acknowledge Senator Breaux, who is
8 in the audience here today, for his hard work and his
9 continual work on this.

10 Let me make one point perfectly clear. One of my top
11 priorities is to get this bill signed into law once and
12 for all. Our seniors deserve no less. S. 2010 is
13 designed to create a national focus on elder abuse to
14 increased detection, prevention, and prosecution.

15 It ensures that States, communities, consumers and
16 families will have access to the information and
17 resources they need to confront this difficult issue. By
18 addressing law enforcement, social service, and public
19 health concerns, our bill uses the proven approach
20 Congress has adopted to combat child abuse and violence
21 against women.

22 Ironically, while we have data collection at the
23 national level on child abuse and battered women, we
24 currently do not have similar data collection for elder
25 abuse.

1 This bill will correct that significant omission and
2 will make this needed information available. The Elder
3 Justice Act dedicates valuable funding resources to
4 support Federal, State, and community efforts to combat
5 elder abuse.

6 We were very careful not to create unnecessary
7 bureaucracy. S. 2010 does not federalize State and local
8 roles. Rather, it provides Federal leadership and
9 resources to those on the front lines in these battles.

10 The Elder Justice Act is also responsible
11 legislation. It contains provisions for accountability
12 that will evaluate its programs and determine what works,
13 and assure that funds are properly spent.

14 Finally, I want to acknowledge the hard work of the
15 staff on this bill: Elizabeth Barnett and Steve Siccoli
16 of Senator Lincoln's office; Becky Shipp, Ted Totman, and
17 Mark Hayes of Senator Grassley's office; David Schwartz
18 and Michelle Easton of Senator Baucus's office; Lauren
19 Fuller of the Senate Health Committee staff and former
20 Aging Committee Chief Investigative Counsel for Senator
21 Breaux; Kelly Malone, of the Senate Legislative Counsel's
22 Office; Dr. Roger Johns of my office. All of these
23 staffers did an excellent job on this bill, and I am very
24 proud of all of them.

25 Mr. Chairman, senior citizens cannot wait any longer

1 for this legislation to pass. More and more of us are
2 going to enjoy longer life in relative health. But with
3 this gift comes the responsibility to prevent the
4 needless suffering too often borne by our frailest
5 seniors.

6 I am committed to getting this legislation passed
7 into law this Congress so that elder justice will become
8 a reality for those Americans who need it most, our
9 senior citizens. So, I urge all of my colleagues to
10 support the passage of this legislation.

11 Mr. Chairman, I request unanimous consent that the
12 statement of the Elder Justice Coalition be included as
13 part of the record. I would ask unanimous consent to
14 also include my full statement as part of the record.

15 The Chairman. Both requests are granted, without
16 objection.

17 Senator Hatch. Thank you, Mr. Chairman.

18 [The prepared statements of the Elder Justice
19 Coalition and Senator Hatch appear in the appendix.]

20 The Chairman. Senator Lincoln?
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1 OPENING STATEMENT OF HON. BLANCHE LINCOLN, A U.S. SENATOR
2 FROM THE STATE OF ARKANSAS

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4 Senator Lincoln. Thank you, Mr. Chairman. I also
5 would like to ask that my entire statement be included in
6 the record.

7 [The prepared statement of Senator Lincoln appears in
8 the appendix.]

9 Senator Lincoln. Mr. Chairman, I want to thank you
10 and Senator Baucus for really moving this forward and
11 making this day possible. I want to thank Senator
12 Rockefeller for his work, and a special thanks to my
13 colleague, Senator Hatch, for his strong leadership on
14 this extremely important issue.

15 I think everyone has come together on this issue,
16 which we all know is an important issue and one that is
17 near and dear to our hearts in terms of being able to
18 provide hope for those who may be frightened of getting
19 old and not understanding what may be there for them.

20 So I just want to thank all of you all for the
21 patience and the indulgence, the willingness to really
22 thoroughly go through something and come up with a bill
23 that I feel like is something we can get signed into law,
24 Senator Hatch. I just, again, want to thank each and
25 every one of you for your leadership.

1 I am so pleased that we are here today to mark up the
2 Elder Justice Act, which will go such a long way in
3 protecting our Nation's elderly from abuse, neglect, and
4 exploitation.

5 I also want to extend my thanks to Senator Smith and
6 to Senator Kohl. Both of these gentlemen have worked
7 tirelessly as well as original co-sponsors of this
8 legislation and I thank them for their support of the
9 process and their leadership on aging issues.

10 I, too, want to recognize Senator Breaux, who is out
11 there in the audience today. He was an original
12 architect of the Elder Justice Act and has fought
13 tirelessly, both in Congress and out of Congress, to make
14 today's reality a possibility. I know he will not stop
15 here. I know he will continue to work with us.

16 Last, I also want to thank the staff--all of our
17 staffs--who have worked so hard, especially my staff,
18 Elizabeth Barnett and Steve Siccoli, in their hard work
19 and what they have done.

20 But to all of the staff, who have not only worked
21 hard, but they have been thorough, they have been
22 responsible in putting together a bill that everyone here
23 can be proud of, one that we feel like we have done the
24 best in terms of research and outreach to all of the
25 different individuals in this country that could be

1 affected by what we are doing.

2 Mr. Chairman, this bill that we mark up today
3 represents the culmination of 27 years of congressional
4 hearings on the distressing effects of elder abuse. The
5 first hearing on elder abuse was held in 1979 by the
6 House Select Committee on Aging.

7 Senator Breaux's former staff actually put together a
8 time line, which was amazing, if you look at how far we
9 go back, the things we have done in the interim and where
10 we find ourselves today.

11 Passage of the Elder Justice Act is long overdue. I
12 have been a co-sponsor of the Elder Justice Act since
13 2002, when I think Senator Breaux and Senator Hatch
14 originally introduced it. I am proud to have re-
15 introduced this legislation with Senator Hatch last year.
16 Every older person in this country has the right to be
17 free of elder abuse, neglect, and exploitation.

18 The Elder Justice Act confirms elder abuse in the
19 same ways we combat child abuse and domestic violence.
20 Through law enforcement, public health programs, and
21 social services at all levels of government, it makes
22 combatting elder abuse a national priority, and I think
23 that is really critical.

24 But I think from every one of us here today, many of
25 us are parents and we understand the importance of

1 teaching our children how important our elderly are in
2 our community. What tremendous things they have to learn
3 from those elderly adults and elderly relatives that may
4 exist there! But without a doubt, we are all children.
5 We all have parents and we understand how important those
6 parents are to us.

7 In our research and in our outreach from our office,
8 we spoke with a woman that particularly hit home with me.
9 Her 89-year-old mother in a nursing home had been raped
10 by a 20-year-old orderly.

11 She was so frustrated and confused about what she
12 could do about what had already happened. She realized
13 what she could do, was to pour her heart into an advocacy
14 group of pushing efforts like this so that that
15 experience would never, ever have to happen again,
16 hopefully, not only to an elderly citizen of this
17 country, but a child of a person like that, which every
18 one of us represents.

19 I think that is so important, Mr. Chairman, because
20 no matter how old we are, we are all a child of a parent
21 and we want so badly to be able to do everything in
22 return to those parents for the incredible gifts, and
23 love, and dedication that they have given to us.

24 So I think for each one of us as well, this is
25 obviously an opportunity to be able to look to the

1 parents of this Nation and say, we want you to finish the
2 years of your life in dignity, in comfort, and in
3 security, and we are going to do everything we can to
4 make that happen.

5 So, Mr. Chairman, again, in the effort of saving
6 time, I will submit any longer statement I may rattle on
7 with. But I do want to say a very special thanks to all
8 of you all that have made this possible today. I hope
9 that we will continue our fight to make sure that it does
10 become signed into law.

11 Thank you, Mr. Chairman.

12 The Chairman. Senator Hatch?

13 Senator Hatch. Mr. Chairman, I also want to thank,
14 especially, Senators Smith and Kohl for the work they
15 have done on this, and others as well. They have both
16 put yeoman hours into this, and yeoman effort. Frankly,
17 I think this committee is a marvelous committee, and this
18 is one of the things all of us can feel very good about,
19 it seems to me.

20 Thank you, Mr. Chairman.

21 The Chairman. Do any other members seek
22 recognition? All right. Senator Thomas?

23 Senator Thomas. Mr. Chairman, I just wanted to
24 thank you for having this hearing. I appreciate what is
25 being done here. I understand it is an issue. I have to

1 tell you that I am sometimes a little concerned that we
2 start a new program as if no one else in the world cared
3 about this.

4 The fact is, we do have locals, we do have States, we
5 do have people that are just as concerned as we are. So,
6 I hope that every time we have a problem we do not create
7 a new agency. This takes, over four years, about a
8 billion dollars. I am for what you are seeking to do,
9 but I hope we also take a look at, we have a lot of
10 agencies out there now.

11 Putting money into these things, with oversight into
12 these things, so that instead of always creating a new
13 operation, I hope that we could also use the facilities
14 that are already there and enforce some of these things
15 without creating more government, more expenses, and
16 still accomplish the same thing. But I do admire what
17 you are doing and I certainly do not object. Thank you.

18 The Chairman. Thank you.

19 At this point, then, I would place the Chairman's
20 mark before the committee for consideration. We have at
21 the staff table Becky Shipp, Policy Advisor for the
22 Majority Staff of the committee, and David Schwartz,
23 Policy Advisor for the Minority Staff.

24 They are joined at the table with staff of the
25 sponsors of the bill, Patty Deloatche for Senator Hatch,

1 and Elizabeth McDonald-Barnett for Senator Lincoln.
2 These are both Health Policy Advisors for these Senators.

3 Now, normally at this point we would proceed with a
4 walk-through. I would like to ask the committee if they
5 would dispense with that process because the staff of all
6 committee members were given the opportunity to walk
7 through the mark on Tuesday afternoon.

8 Does anybody desire a walk-through?

9 [No response]

10 The Chairman. Since I hear no desire, we will move
11 forward then.

12 Do any members have any questions that they want to
13 ask of our distinguished panel of staff people?

14 [No response]

15 The Chairman. All right.

16 Now, what I was hoping, is that at this time, exactly
17 10:00, we would have 11 members here, because that is
18 what we advised people, about 11:00 we would have an
19 opportunity to vote on this.

20 Since they have not shown and we do not have a
21 quorum, I would recess the committee for a vote on this
22 legislation off the floor of the Senate at, I guess, the
23 first roll call we have yet this very day.

24 So I thank all the members for working with us to get
25 what was not an easy bill originally two years ago, some

1 people feeling it was not strong enough, other people
2 felt it was too strong, to get this compromise worked out
3 where there does not seem to be any opposition.

4 There were not any amendments filed for us to
5 consider, so that is another indication. So, thanks,
6 everybody, for their cooperation. See you off the Senate
7 floor at that time.

8 [Whereupon, at 10:03 a.m. the meeting was recessed.]

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1 AFTER RECESS

2 [Whereupon, at 3:12 p.m. the meeting was reconvened in
3 The President's Room, The Capitol.]

4 The Chairman. We will now proceed with a rolling
5 quorum to vote on S. 2010, the Elder Justice Act.

6 The Clerk will call the roll.

7 The Clerk. Mr. Hatch?

8 Senator Hatch. Aye.

9 The Clerk. Mr. Lott?

10 Senator Lott. Aye.

11 The Clerk. Ms. Snowe?

12 Senator Snowe. Aye.

13 The Clerk. Mr. Kyl?

14 Senator Kyl. Aye.

15 The Clerk. Mr. Thomas?

16 Senator Thomas. Aye.

17 The Clerk. Mr. Santorum?

18 Senator Santorum. Aye.

19 The Clerk. Mr. Frist?

20 Senator Frist. Aye.

21 The Clerk. Mr. Smith?

22 Senator Smith. Aye.

23 The Clerk. Mr. Bunning?

24 Senator Bunning. Aye.

25 The Clerk. Mr. Crapo?

1 Senator Crapo. Aye.
2 The Clerk. Mr. Baucus?
3 Senator Rockefeller. Aye by proxy.
4 The Clerk. Mr. Rockefeller?
5 Senator Rockefeller. Aye.
6 The Clerk. Mr. Conrad?
7 Senator Conrad. Aye.
8 The Clerk. Mr. Jeffords?
9 Senator Jeffords. Aye.
10 The Clerk. Mr. Bingaman?
11 Senator Bingaman. Aye.
12 The Clerk. Mr. Kerry?
13 Senator Kerry. Aye.
14 The Clerk. Mrs. Lincoln?
15 Senator Lincoln. Aye.
16 The Clerk. Mr. Wyden?
17 Senator Wyden. Aye.
18 The Clerk. Mr. Schumer?
19 Senator Schumer. Aye.
20 The Clerk. Mr. Chairman?
21 The Chairman. Aye.
22 The Clerk. Mr. Chairman, the tally is 20 yeas, zero
23 nays.
24 The Chairman. The Elder Justice Act is favorably
25 reported.

1 Finally, I ask unanimous consent that the staff have
2 the authority to draft any necessary and technical and
3 conforming changes to the Chairman's mark of the bill
4 considered today. Without objection, so ordered.

5 The meeting is adjourned.

6 [Whereupon, at 4:27 p.m., the meeting was concluded.]

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**UNITED STATES SENATE
COMMITTEE ON FINANCE**

Charles E. Grassley, Chairman

Thursday, August 3, 2006

215 Dirksen Senate Office Building

Agenda for Business Meeting

S. 2010, the Elder Justice Act

Amendment to S. 2010, The Elder Justice Act

Chairman's Mark

Short Title; Table of Contents; Definitions (Section 1 of the Chairman's Mark)

Present Law

No provision.

Chairman's Mark

The mark sets forth the title of the Act as the Elder Justice Act and outlines the table of contents. It also specifies that any term defined in new amendment to Title XX of the Social Security Act has the meaning set forth by the Chairman's Mark.

Findings (Section 2 of the Chairman's Mark)

Present Law

No provision.

Chairman's Mark

The Chairman's Mark describes the following findings of Congress:

1. The proportion of the United States population age 60 years or older will drastically increase in the next 30 years as more than 76,000,000 baby boomers approach retirement and old age.
2. Each year, anywhere between 500,000 and 5,000,000 elders in the United States are abused, neglected, or exploited.
3. Elder abuse, neglect and exploitation have no boundaries, and cross all racial, social class, gender and geographic lines.
4. 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 than elders who were not victims of elder abuse, neglect, and exploitation to die at an earlier age than expected.
5. There is a general dearth of data as to the nature and scope of elder abuse, neglect, and exploitation.
6. Despite the dearth of data in the field, experts agree that most cases of elder abuse, neglect, and exploitation are never reported and that abuse, neglect, and exploitation shorten a victim's life, often triggering a downward spiral of an otherwise productive, self-sufficient elder's life. 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.

7. 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.
8. The federal government has been slow to respond to the needs of victims of elder abuse, neglect, and exploitation or to undertake prevention efforts.
9. No federal law has been enacted that adequately and comprehensively addresses the issues of abuse, neglect, and exploitation and there are very limited resources available to those in the field that directly deal with the issues.
10. Differences in State laws and practices in the areas of elder abuse, neglect, and exploitation lead to significant disparities in prevention, protective and social services, treatment systems, and law enforcement and lead to other inequities.
11. The Federal Government has played an important role 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. The Federal Government should promote similar efforts and protections relating to elder abuse, neglect, and exploitation.
12. The Federal Government should provide leadership and assist States and communities in their efforts to protect elders in the United States by-
 - (A) promoting coordinated planning among all levels of government;
 - (B) generating and sharing knowledge relevant to protecting elders;
 - (C) providing leadership to combat the abuse, neglect, and exploitation of the Nation's elders; and
 - (D) providing resources to States and communities to promote elder justice.
13. The problem of elder abuse, neglect, and exploitation requires a comprehensive approach that -
 - (A) integrates the work of health, legal, and social services agencies and organizations;
 - (B) emphasizes the need for prevention, reporting, investigation, assessment, treatment, and prosecution of elder abuse, neglect, and exploitation at all levels of government;
 - (C) ensures that sufficient numbers of properly trained personnel with specialized knowledge are in place to-
 - (i) treat, assess, and provide services relating to elder abuse, neglect, and exploitation; and
 - (ii) carry out elder protection duties;
 - (D) is sensitive to ethnic and cultural diversity;
 - (E) recognizes the role of mental health, disability, dementia, substance abuse, medication mismanagement, and family dysfunction problems in increasing and exacerbating elder abuse, neglect, and exploitation; and
 - (F) balances elders' right to self-determination with society's responsibility to protect elders.
14. The human, social, and economic cost of abuse, neglect and exploitation is high and includes unnecessary expenditures of funds from many public programs.

15. The failure to coordinate activities relating to, and comprehensively prevent and treat, elder abuse, neglect, and exploitation threatens the future and well-being of millions of elders in the United States.
16. All elements of society in the United States have a shared responsibility in responding to a national problem of elder abuse, neglect, and exploitation.

Purposes (Section 3 of the Chairman's Mark)

Present Law

No provision.

Chairman's Mark

The Chairman's Mark defines the purposes of the Elder Justice Act, as follows:

1. To enhance the social security of the Nation by ensuring adequate public-private infrastructure and resolve to prevent, detect, treat, understand, and intervene in, and where appropriate, aid in the prosecution of, elder abuse, neglect, and exploitation.
2. To bring a comprehensive approach to preventing and combating elder abuse, neglect and exploitation, a long invisible problem that afflicts the most vulnerable among the aging population of the United States.
3. To raise the issue of elder abuse, neglect and exploitation to national attention to national attention, and to create the infrastructure at the Federal, State and local levels to ensure that individuals and organizations on the front lines, who are fighting elder abuse, neglect, and exploitation with scarce resources and fragmented systems, have the resources and information needed to carry out their fight.
4. To bring a comprehensive multidisciplinary approach to elder justice.
5. To set in motion research and data collection to fill gaps in knowledge about elder abuse, neglect, and exploitation.
6. To supplement activities of service providers and programs, to enhance training, and to leverage scarce resources efficiently, in order to ensure that elder justice receives the attention it deserves as the Nation's population ages.
7. To recognize and address the role of mental health, disability, dementia, substance abuse, medication mismanagement, and family dysfunction problems in increasing and exacerbating elder abuse, neglect, and exploitation.
8. To create short- and long-term strategic plans for the development and coordination of elder justice research, programs, studies, training, and other efforts nationwide.
9. To promote collaborative efforts and diminish overlap and gaps in efforts in developing the important field of elder justice.
10. To honor and respect the right of all persons with diminished capacity to decision making, autonomy, self-determination, and dignity of choice.

11. To respect the wishes of individuals with diminished capacity and their family members in providing supportive services and care plans intended to protect elders from abuse, neglect (including self-neglect), exploitation.

Definitions (Section 4 of the Chairman's Mark)

Present Law

No provision

Chairman's Mark

Section 4 adopts the meaning of any term used in Section 2011 of the Social Security Act, unless specifically provided otherwise in the Chairman's Mark.

Elder Justice (Section 5 of the Chairman's Mark)

Amendments to the Social Security Act Title XX- Block Grants to States for Social Services and Elder Justice

Present Law

No provision.

Chairman's Mark

Section 5 of the Chairman's Mark would amend the Social Security Act by adding "Elder Justice" to an amended Title XX, entitled "Block Grants to States for Social Services and Elder Justice" and adding a new Subtitle 2 - Elder Justice.

Definitions (Section 2011 of the Social Security Act)

Definitions

Present Law

Under current law, "abuse," "exploitation," "long term care facility," and "neglect" are defined in the "Older American's Act."

Chairman's Mark

For data collection and other purposes of the mark, the Chairman's Mark defines the following terms: adult protective services, caregiver, direct care, elder, elder justice, eligible entity, exploitation, fiduciary, grant, guardianship, Indian tribe, law enforcement, long-term care, long-term care facility, neglect, self-neglect, serious bodily injury, criminal sexual abuse, social, state, state legal assistance developer, and state long-term care ombudsman.

Definitions related to some of the purposes of the amended Title XX are defined in other related statutes. Related statutes are as follows:

Present Law and Chairman's Mark: Definitions

Term	Present law	Chairman's Mark
Abuse	<i>Section 102(13) of the Older Americans Act:</i> "Abuse" of an older person is defined as the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish, or deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish or mental illness.	"Abuse" is defined as the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.
Exploitation	<i>Section 102(24) of the Older Americans Act:</i> "Exploitation" of an older person is defined as 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.	"Exploitation" is defined as the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an elder for monetary or personal benefit, profit, or gain, or that results in depriving an elder of rightful access to, or use of, benefits, resources, belongings, or assets.
Long-term care facility	<i>Section 102 (32) of the Older Americans Act:</i> "Long term care facility" is defined as a skilled nursing facility as defined in Section 1819(a) of the Social Security Act; any nursing facility as defined in Section 1919(a) of the Social Security Act; and for purposes of the Title III and Title VII provisions for elder abuse prevention, a board and care facility.	"Long-term care facility" is defined as a residential care provider that arranges for, or directly provides, long-term care.
Neglect	<i>Section 102 (34) of the Older Americans Act:</i> "Neglect" is defined as the failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide the goods or services.	"Neglect" is defined as the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an elder, or self-neglect.
Criminal sexual abuse	<i>Title XVII of the Violent Crime Control and Enforcement Act:</i> a "sexually violent offence" is defined as any criminal offense that consists of aggravated sexual abuse or sexual abuse (as defined by 18 U.S.C. Section 2241 and 2242 or as defined	"Criminal sexual abuse" is defined as serious bodily injury that shall be considered to have occurred if the conduct causing the injury is conduct constituting aggravated sexual abuse

Term	Present law	Chairman's Mark
	by state law) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse.	under Section 2241, or sexual abuse under 18 U.S.C. or any similar offense under state law.

General Provisions (Section 2012 of the Social Security Act)

a) Protection of Privacy

Present Law

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Section 264 governs the protection of individual health privacy.

Chairman's Mark

The activities that would be carried out under this Part must ensure the protection of individual health privacy consistent with the regulations under Section 264 (c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any state and local privacy regulations.

(b) Rule of Construction

Present Law

No provision.

Chairman's Mark

Includes a provision to accommodate religious beliefs in health care when determining whether there is abuse for data collection purposes.

Part A – National Coordination of Elder Justice Activities and Research

Elder Justice Coordinating Council (Section 2021 of the Social Security Act)

Present law

No provision.

Chairman's Mark

The mark would establish an *Elder Justice Coordinating Council* in the Office of the Secretary of HHS.

Membership. The Council would be composed of the following members: the Secretary of HHS (or designee) who will chair the Council and the Attorney General (or designee). Membership would also include the head of each federal department or agency having administrative responsibility for administering programs related to elder abuse, neglect or exploitation. Members must be officers or employees of the federal government.

Meetings. The Council is to meet at least twice a year.

Duties and Reports. The Council would be required to make recommendations to the Secretary for the coordination of activities of the Department of Health and Human Services, the Department of Justice, and other relevant Federal, State, local, and private agencies and entities, relating to elder abuse, neglect, and exploitation and other crimes against elders. The Council would be required to submit a report to Congress that describes its activities and challenges; and make recommendations for legislation, model laws and other actions deemed appropriate. The report is to be submitted to Congress within two years of enactment of the Elder Justice Act and every two years thereafter.

Other Requirements. The Chairman's Mark also sets forth requirements for powers of the Council, vacancies in membership, travel expenses, and detail of federal government employees to the Council.

Advisory Board on Elder Abuse, Neglect and Exploitation (Section 2022 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

The mark would establish the *Advisory Board on Elder Abuse, Neglect and Exploitation*.

Solicitation of Nominations, Membership, and Terms. The Secretary of HHS would be required to publish a notice in the *Federal Register* soliciting nominations for Advisory Board membership. The Board would be composed of 27 members appointed by the Secretary, and must have experience and expertise in prevention of elder abuse, neglect and exploitation. Each member would be appointed for a three year term, except for the first members of the Board whose terms would be staggered.

Duties and Reports. The Board would be required to create a short and long-term multidisciplinary plan for development of the field of elder justice.

Within 18 months of the Chairman's Mark's enactment and annually thereafter, the Advisory Board would be required to prepare and submit to the Elder Justice Coordinating Council and the appropriate committees of Congress, a report

containing information on federal, state, and local public and private elder justice activities. The report is also to contain recommendations on programs, research, services, practice, enforcement and coordination among entities that carry out elder justice and other related activities; modifications needed in federal and state laws, research, training, and national data collection; and on a multidisciplinary strategic plan to guide the field of elder justice.

Other Requirements. The Chairman's Mark sets forth requirements relating to powers of the Board, vacancies, expired terms, election of officers, travel expenses, and detail of government employees to the Board.

Research Protections (Section 2023 of the Social Security Act)

Present Law

Definition of Legally Authorized Representative. Subpart A of Part 46 of Title 45, Code of Federal Regulations, known as the Common Rule, that governs most federally-funded human subjects research, currently defines the term "legally authorized representative" as "an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research."

Researcher Guidelines. No guidelines are currently in place to assist researchers who work in the areas of elder abuse, neglect, and exploitation, with issues relating to human subjects research.

Chairman's Mark

The Mark would define "legally authorized representative," for purposes of research under the proposed Title XX, to mean, unless otherwise provided by law, the individual, or judicial or other body authorized under the applicable law to consent to medical treatment on behalf of another person."

It would also require the Secretary, acting through the Director of the National Institute on Aging (NIA), to promulgate guidelines to assist researchers working in the areas of elder abuse, neglect, and exploitation, with issues relating to human subjects research.

Authorization of Appropriations (Section 2024 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

To carry out the functions under Subtitle A (the Federal Elder Justice System), the Chairman's Mark authorizes \$6.5 million for FY2007, and \$7 million for each of FYs 2008-2010.

Subpart 2 – Elder Abuse, Neglect, and Exploitation Forensic Centers

Establishment and Support of Elder Abuse, Neglect, and Exploitation Forensic Centers (Section 2031 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

The Mark would require the Secretary, in consultation with the Attorney General, to award grants to eligible entities to establish and operate both stationary and mobile forensic centers and to develop forensic expertise pertaining to elder abuse, neglect, and exploitation. With respect to the stationary forensic centers, the Chairman's Mark would require the Secretary to make four grants to higher education institutions with demonstrated expertise in forensics or commitment to preventing or treating elder abuse, neglect, or exploitation; and with respect to mobile forensic centers, the Chairman's Mark would require the to make six grants to appropriate entities.

Funding would be authorized for the centers to: (1) develop forensic markers that would determine whether abuse or neglect occurred and whether a crime was committed, and determine methodologies for how and when intervention should occur; (2) develop forensic expertise with respect to elder abuse, neglect, and exploitation in order to provide relevant evaluation, intervention, support and advocacy, case review and tracking; and (3) in coordination with the Attorney General, use data made available by grant recipients under this section to develop the capacity of geriatric health care professionals and law enforcement to collect forensic evidence, including forensic evidence relating to a potential determination of elder abuse, neglect, or exploitation. The Chairman's Mark would also require the Secretary, in consultation with the Attorney General, to use data to develop the capacity to collect forensic evidence.

The Chairman's Mark would authorize \$4 million in funding for FY2007, \$6 million for FY2008 and \$8 million for each of FYs 2009-2010.

PART B - PROGRAMS TO PROMOTE ELDER JUSTICE

Enhancement of Long-Term Care (Section 2041 of the Social Security Act)

Present Law

Nursing homes that receive federal funds are required to meet certain federal laws and standards to receive funding. These laws require nursing aides, who work on a full-time basis for more than four months, to complete a training and/or competency evaluation program and be competent to provide care. Nursing homes must also provide regular performance reviews and in-service education (including training for individuals providing nursing and nursing-related services to residents with cognitive impairments) to assure that nurse aides are competent to perform services. Regulations also require nurse aides to complete a training program lasting no less than 75 clock hours of training, at least 16 of which must be supervised practical training, in order to be certified.

A number of states have also used enhanced Medicaid funding to improve recruitment and retention of nurse aides working in nursing homes. For these states, some portion of an increase in state Medicaid payments (and other public funding sources) to long-term care providers must be (or intended to be) used to increase wages and or benefits for nursing aides. Typically, this "wage pass-through" legislation has either designated some specified dollar amount (e.g., \$.50 or \$1.00) or a certain percentage of increased state payments to be used for wages and or benefits.

Nursing Home Compare is a website hosted by the Department of Health and Human Services that allows consumers to search for data on certain quality indicators for nursing homes certified to participate in Medicare and/or Medicaid across the country. The information reported on this site includes selected findings of the Survey and Certification surveys conducted by state Survey agencies during the three most recent inspections and complaint investigations. Specifically, the website contains data on the federal regulatory requirements that the nursing home failed to meet as reported on form HCFA-2567. There is currently no requirement that information about the adjudication of criminal violations be reported on this website.

Chairman's Mark

The Mark would require the Secretary of HHS to carry out activities that provide incentives for individuals to train for, seek, and maintain employment providing direct care in long-term care facilities.

Coordination of Federal Agencies to Train Long-Term Care Staff. The Secretary of HHS would be required to coordinate activities with the Secretary of Labor and the Assistant Secretary of ACF to provide incentives to welfare-to-work and TANF recipients to train for and seek employment as direct care providers in long-term care facilities.

Career Ladders, Wage and Benefit Grants. The Secretary of HHS would be required to award grants to long-term care facilities to conduct programs that offer direct care employees continuing training and varying levels of certification. Grants would also be used to provide for or make arrangements with employers to pay bonuses, or other increased compensation or benefits, to employees who obtain

certification. To receive grant funds, long-term care facilities would submit applications directly to the Secretary.

Management Improvement. The Secretary of HHS would be required to award grants to long-term care facilities for training and technical assistance. Eligible recipients could include administrators, directors of nursing, staff developers, charge nurses, and others who establish or implement management practices for direct care employees. Training and technical assistance would be intended to promote retention and could include: (1) the establishment of human resource policies rewarding high performance, including policies that provide for improved wages and benefits on the basis of job reviews; (2) the establishment of motivational organizational practices; (3) the creation of a workplace culture that respects and values caregivers and their needs; (4) the promotion of a workplace culture that respects the rights of residents and results in improvements in their care; and (5) the establishment of other programs that promote high quality care, such as continuing education for certified nurse aide employees. Long-term care facilities would submit applications to the Administrator to qualify for grant funds. The Secretary would be required to develop accountability measures to ensure that funded activities under this title benefit eligible employees and increase the stability of the long-term care workforce.

Informatics Systems Grant Program. The Secretary is authorized to make grants to long-term care facilities for the purpose of assisting such entities in offsetting the costs related to purchasing, leasing, developing, and implementing standardized clinical health care informatics systems designed to improve patient safety and reduce adverse events and health care complications resulting from medication errors.

Inclusion of Certain Crimes on Nursing Home Compare Website. The Secretary is required to ensure that information relating to the number of criminal convictions by nursing facilities or by an employee of a nursing facility are part of the information provided for comparison of nursing facilities on the official Internet website of the Federal Government for medicare beneficiaries.

Consumer Rights Information Page on Nursing Home Compare Website. The Secretary shall ensure that the Nursing Home Compare Medicare website develops and includes a consumer rights information page that includes documentation on available nursing facilities; consumer rights; the survey process; and services available through the State long-term care ombudsman.

Standards Involving Clinical Data by Long-Term Care Facilities. The Secretary shall develop and adopt uniform open electronic standards for transactions involving clinical data by long-term care facilities.

The Chairman's Mark would authorize \$20 million for FY 07; \$17.5 million for FY 08 and \$15 million for FY 09 and FY 2010.

Adult Protective Services Functions and Grant Programs (Section 2042 of the Social Security Act)

Adult Protective Services - Functions

Present Law

Provisions related to some functions of adult protective services are found in Title XX of the Social Security Act (Social Services Block Grant) (administered by the Administration on Children and Families (ACF)) and the Older Americans Act (administered by AoA), both in DHHS, as follows.

Title XX of the Social Security Act. Title XX provides funds to states to carry out a wide range of social services on behalf of various groups. The statute sets out a number of goals for the use of these funds, including the goal of "preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests"

Funds are generally administered by state social services or human services agencies (for this purpose, sometimes referred to as adult protective services offices), and/or state agencies on aging.

No match is required for federal Title XX funds, and federal law does not specify a sub-state allocation formula. In other words, states have complete discretion for the distribution of funds within their borders. Based on the 2002 Annual Report for the Social Services Block Grant, 34 states used some portion of Title XX funds for adult protective services, and approximately 425,000 adults received adult protective services that were funded in whole or in part with Title XX funds. Of all state expenditures under Title XX for 2002, 5.8% were for protective services for adults.¹

Older Americans Act. Title II of the Older Americans Act requires the Assistant Secretary on Aging in DHHS to establish a National Center on Elder Abuse. The Center is required to, among other things, compile, publish and disseminate research and training materials on prevention of elder abuse, neglect, and exploitation; maintain a clearinghouse on programs showing promise in preventing elder abuse, neglect, and exploitation; conduct research and demonstrations projects that identify causes and prevention, and treatment; and provide technical assistance to state agencies and other organizations in planning and improving prevention programs. AoA awards funds to six organizations that share the funds: the National Association of State Units on Aging, which administers the Center, in cooperation with the National Protective Services Association, the National Committee for the Prevention of Elder Abuse, the American Bar Association, and the Clearinghouse on Abuse, Neglect and Exploitation.

Funding history for the Center is as follows: FY1998, \$250,000; FY1999, \$200,000; FY2000, \$815,250; FY2001, \$815,000; FY2002, \$815,000, and FY2003, \$815,000. The 2000 amendments to the Act required that the Center receive at least the same amount of funds as it received in FY2000.

¹ A percentage of *expenditures* differs from a percentage of the Title XX *appropriation*. Title XX expenditures include spending from funds transferred from the Temporary Assistance for Needy Families (TANF) program to Title XX.

Title III of the Older Americans Act authorizes, but does not require, state agencies on aging to conduct various activities related to prevention of elder abuse, neglect and exploitation. No federal funds are separately allotted for this purpose under Title III, and states decide how much of their Title III allotments are to be used for prevention activities. In many states, state agencies on aging administer funds for adult protective services funded under Title XX of the Social Security Act (described below).

Title VII of the Older Americans Act authorizes a program of grants to states to carry out activities related to prevention of elder abuse, neglect, and exploitation. Funds are administered by state agencies on aging. In FY2006, the appropriation level for this program under Title VII is \$5.2 million.

Section 1128E of the Social Security Act requires the Secretary to maintain a national health care fraud and abuse data collection program for the reporting of final adverse actions (not including settlements in which no findings of liability have been made), including health care related civil judgments and criminal convictions of health care practitioners, providers and suppliers. The database is directed by HHS, acting through the office of the Attorney General, and is named the Healthcare Integrity and Protection Data Bank (HIPDB).

For the purposes of this database, Medicaid regulation 42 CFR §455.12 requires that state agencies report the number of complaints of fraud and abuse made to the agency that warrant preliminary investigation. For each case, reports should include the provider's name and number; the source of the complaint; the type of provider; the nature of the complaint; the approximate range of dollars involved; and the legal and administrative disposition of the case, including actions taken by law enforcement officials to whom the case has been referred. Section 1128E requires the Secretary to include procedures assuring that the privacy of individuals receiving health care services is appropriately protected.

The Secretary makes available the information in the database to government agencies and health plans and, upon request, to health care providers, suppliers and practitioners who wish to self-query. The Secretary may establish or approve fees sufficient to recover the full costs of the databases' operation.

According to Section 1128E(g)(1)(A) of the Social Security Act, a final adverse action includes: (1) civil judgments related to the delivery of a health care item or service that are against a health care provider or practitioner in federal or state court; (2) federal or state criminal convictions related to the delivery of health care; (3) certain actions by federal or state agencies responsible for the licensing and certification of providers and licensed practitioners; (4) prohibition against participating in federal or state health care programs; or (5) any other adjudicated actions or decisions established by the Secretary under regulation.

Medicaid regulation 42 CFR §483.374 also requires facilities to report each serious occurrence to both the state Medicaid agency and, unless prohibited by state law, the state-designated protection and advocacy system.

Chairman's Mark

The Mark would establish certain functions with respect to *Adult Protective Services (APS)* to be administered by the Secretary.

Adult Protective Services - Functions. Functions include providing funding and support to state and local adult protective services offices that investigate reports of abuse, neglect and exploitation of elders and vulnerable adults; collecting and disseminating information on abuse in coordination with the Department of Justice; developing and disseminating information on best practices; conducting research and providing technical assistance to states that provide or fund protective services; and reports crimes on the Nursing Home Compare website.

To carry out these functions, the Chairman's Mark authorizes \$3 million for FY 2007 and \$4 million for each of FYs 2008-2010.

Adult Protective Service Grant Program (State Formula Grants)

Present Law

No provision in current law for state formula grants that are *solely and specifically* targeted at providing adult protective services and carrying out projects to employ workers having caseloads of elders alone.

Some other legislation is related to adult protective services, as follows.

Title XX of the Social Security Act. Title XX provides funds to states to carry out a wide range of social services on behalf of various groups. The statute sets out a number of goals for the use of these funds, including the goal of "preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests ..." Funds are generally administered by state social services or human services agencies (for this purpose, sometimes referred to as adult protective services offices), and/or state agencies on aging.

Title III of the Older Americans Act authorizes, but does not require, state agencies on aging to conduct various activities related to prevention of elder abuse, neglect and exploitation, which may include adult protective services. No federal funds are separately appropriated for this purpose under Title III, and states decide how much of their Title III allotments are to be used for these activities. In many states, state agencies on aging administer funds for adult protective services funded under Title XX of the Social Security Act (described below).

Title VII of the Older Americans Act authorizes a program of grants to states to carry out activities related to prevention of elder abuse, neglect, and exploitation. Funds are administered by state agencies on aging. In FY2006, the appropriation level for this program under Title VII is \$5.2 million.

Chairman's Mark

The Mark provides for grants to improve Adult Protective Services.

Grants to Improve Worker Caseloads for Adult Protective Services. The Secretary would be required to award annual grants to enhance adult protective

service programs provided by states and local governments.

Formula for Distribution of Funds. Distribution of funds to states would be based on a formula that takes into account the number of elders (people age 60 or older) residing in a state relative to the total U.S. population of elders. States would receive no less than 0.75% of the grant program's annual appropriation. The District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa would receive no less than 0.1% of the annual appropriation. In order to comply with these minimum amount requirements, the Secretary is required to make pro rata reductions in amounts to be allotted.

Use of Funds. Funds may be used only by states and local governments to provide adult protective services. State receiving funds would be required to provide these funds to the agency or unit of state government having legal responsibility for providing adult protective services in the state. Each state would be required to use these funds to supplement and not supplant other federal, state, and local public funds expended to provide adult protective services.

Reports. Each state would be required to submit a report to the Secretary on the number of elders served by the grants. The Secretary would be required to submit to the appropriate congressional committees a report compiling, summarizing, and analyzing the state reports.

The Chairman's Mark would authorize \$100 million for each of FYs 2007-2010.

State Adult Protective Service Grants (Demonstration Program)

Present Law

No provision in current law specifically authorizes a dedicated amount of funds for state adult protective service demonstration programs. However, the Older American Act authorizes a related demonstration program (as follows), but no specific authorization is specified by law.

Section 413 of the Older Americans Act, *Older Individuals' Protection from Violence Projects*, requires the Assistant Secretary to award funds to states, area agencies on aging, and nonprofit organizations, or tribal organizations to carry out a wide range of projects related to protection of older persons from violence. Funds are to be used to: support local communities to coordinate activities regarding intervention in and prevention of abuse, neglect, and exploitation; develop outreach to assist victims; expand access to family violence and sexual assault programs (including shelters, rape crisis centers, and support groups) as well as mental health services, safety planning and other services; and promote research on legal organization and training impediments to providing services through shelters and other programs.

Chairman's Mark

The Mark would require the Secretary to establish grants to states for adult protective service demonstration programs. Funds may be used by state and local units of government to conduct demonstration programs that test: training

modules developed for the purpose of detecting or preventing elder abuse; methods to detect or prevent financial exploitation and elder abuse; whether training on elder abuse forensics enhances the detection of abuse by employees of state or local government; and other related matters. States would be required to submit applications to the Secretary.

Each state receiving funds would be required to submit a report on the demonstration to the Secretary. The Secretary would be required to submit to the appropriate congressional committees a report compiling, summarizing, and analyzing the state reports, as well making recommendations for appropriate legislative or administrative action.

The Chairman's Mark would authorize \$25 million for each of FY2007-2010.

Long-Term Care Ombudsman Program Grants and Training (Section 2043 of the Social Security Act)

Present Law

Title II of the Older Americans Act requires the Assistant Secretary on Aging to establish the National Ombudsman Resource Center under the Director of the Long-Term Care Ombudsman program. The Center is required to, through grants and contracts, conduct research and provide training, technical assistance, and information to state long-term care ombudsmen; and to assist state long-term care ombudsmen in the implementation of the state long-term care ombudsman program. Funds awarded to the Center are not separately authorized, but are not to be less than the amount made available to the Center for FY2000. Funds for the Center are awarded through Title IV of the Older Americans Act (Research, Training and Demonstration Projects and Programs). The state long-term care ombudsman program is authorized by Title VII of the Act (Allotments for Vulnerable Elder Rights Protection Activities).

Chairman's Mark

The Chairman's Mark requires the Secretary to provide grants to improve the capacity of ombudsman programs to respond to and resolve complaints about abuse and neglect; conduct pilot programs; provide support for the resource center; and improve training. This provision is authorized at \$5 million for FY 07; \$7.5 million for FY 08 and \$10 million for FY 09 and FY 2010.

The Secretary shall establish programs to provide and improve ombudsman training with respect to elder abuse, neglect and exploitation for national organizations and State long-term care ombudsman programs. These programs are authorized at \$10 million for each of the fiscal years FY 07 through FY 2010.

PART C – Collection of Data, Dissemination of Information and Studies

Collection of Uniform National Data on Elder Abuse, Neglect and

Exploitation (Section 2051 of the Social Security Act)

Present Law

No provision that establishes an ongoing, uniform national data collection process or provides grants to states to assist with data collection.

A related law, the *Family Violence Prevention and Services Act of 1992* (P.L. 102-295), required HHS to conduct a study of the national incidence of abuse, neglect, and exploitation of elderly persons. This study, referred to as "the National Elder Abuse Incidence Study," used a nationally-representative sample of 20 counties in 15 states and combined local Adult Protective Services (APS) reports with reports from other community service agencies to estimate the number of new elder abuse and neglect cases over a given period. The final report for this study was released by HHS in 1998.

In addition to the study described above, the federal government has periodically surveyed state APS units over the last 20 years on the prevalence of elder abuse, neglect and exploitation. In these surveys, there was significant variation among the states in the definitions used and the comprehensiveness of data collected. This variation has created challenges in establishing a national data set and identifying trends in abuse, neglect and exploitation.

Chairman's Mark

The Mark would establish as the purpose of the section the improvement, streamlining, and promotion of uniform collection, maintenance and dissemination of national data regarding elder abuse, neglect and exploitation. The activities of the Secretary would be carried out in three phases.

The Secretary would be required to develop, under Phase I, a method for collecting national data regarding elder abuse, neglect and exploitation and uniform national data reporting forms adapted to each relevant entity or discipline (e.g., health, public safety, social and protective services and law enforcement). The Secretary would be required to consult with the Attorney General to develop this method for national data collection. The national data reporting forms must include the definitions of Title XX for determining whether an event will be reportable. Finally, the activities that would be carried out under this section must ensure the protection of individual health privacy consistent with the regulations under Section 264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any state and local privacy regulations. Phase I must occur no later than one year after the date of enactment.

Phase II would require the Secretary to ensure that the national data reporting forms and data collection methods (developed under Phase I) would be pilot tested in six states selected by the Secretary. After pilot testing the data collection efforts, the Secretary must review the findings, consult with the Attorney General and other relevant experts, and adjust the national data reporting forms and data collection methods as necessary. Phase II must occur no later than one year following the completion of activities under Phase I.

Phase III would require the Secretary to submit the national data reporting

forms and instructions to (1) the heads of the relevant Federal entities as may be appropriate and (2) the Governor's office of each state for collection from all relevant state entities of data including health care, social services, and law enforcement data.

In Phase III, the Secretary would be authorized to award grants to states to improve data collection activities relating to elder abuse, neglect and exploitation. Each state that wants to apply for a grant, must submit an application to the Administrator following the prescribed requirements. Each state receiving a grant in a fiscal year would be required to submit data for the calendar year that begins during that year using the national data forms.

The amount of each grant to a state must be distributed using the following method: For the first fiscal year in which a state receives grant funds, the Secretary would be required to initially distribute 50% of those funds. The remaining funds are to be distributed at the end of the calendar year that begins during that fiscal year if the Secretary determines that the state has properly reported data required under this section for the calendar year. For subsequent years, the Secretary would be required to distribute grant funds to a state for a fiscal year if the state properly reported required data for the calendar year that ends during that fiscal year. The reports submitted by states must indicate the state and year in which the event occurred and identify the total number of events that occurred in each state during the year and the type of event.

The Secretary would be required to submit a report no later than one year after the enactment date regarding the activities required by this section to Congress including the Senate Committee on Finance and the House Committee on Ways and Means and the House Committee on Energy and Commerce.

To carry out the activities of this section, the Chairman's Mark would authorize \$10 million for FY2007; \$30 million for FY2008; and \$100 million for each of FYs 2009 and 2010.

Long-Term Care Consumer Clearinghouse (Section 2052 of the Social Security Act)

Present Law

No provision requiring establishment of a long-term care consumer clearinghouse.

In related activities, DHHS has funded some states to establish state-based consumer-friendly access to information about long-term care services. In FY2003 through FY2006, the Centers for Medicare and Medicaid (CMS) and AoA awarded approximately \$18 million in grants to states for the purpose of assisting states in their efforts to create a single, coordinated system of information and access for all persons seeking long term care to minimize confusion, enhance individual choice, and support informed decision-making. A total of 24 states have received grants for this purpose. Some of the common activities under this grant program include information and referral, outreach, counseling about public benefits and long-term care options, and case management. States' methods for implementing the grant may vary; some states have established an actual

physical location, and other states have established a statewide clearinghouse through a toll-free number or a web-based information site.

In addition, CMS has made available to the public, via its website, a comparison of Medicare and Medicaid-certified nursing homes and home health agencies. The information provides detailed facility and agency information and characteristics, and contains several measures of quality (e.g., improvement in mobility). This website does not cover assisted living facilities, group homes and other residential facilities that are not nursing facilities; nor does it cover non-medical, non-certified, home and community-based long-term care services.

Chairman's Mark

The Mark would require the Secretary to establish a long-term care consumer clearinghouse which must provide comprehensive detailed information, in a consumer-friendly form, to consumers about choices relating to long-term care providers.

The clearinghouse is to include information about obtaining the services of, and employing, caregivers; options for residential long-term care (e.g., the type of care provided by nursing facilities, and the type of care provided by group homes and other residential facilities); benefits available through the federal health care programs; and links to federal and state websites that describe the care available through specific long-term care facilities including information about the satisfaction of those residents and their families with the care provided. The clearinghouse must also provide information (from states and other sources) on long-term care providers including assisted living facilities, board and care facilities, congregate care facilities, home health care providers, and other long-term care providers.

To carry out the activities of this section, the Chairman's Mark would authorize \$2 million for FY2007; \$3 million for FY2008; and \$4 million for each of FYs 2009 and 2010.

Consumer Information about the Continuum of Residential Long-Term Care Facilities (Section 2053 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

The Mark would require the Secretary, in consultation with the Attorney General, to conduct a study on consumer concerns relating to residential long-term care facilities other than nursing facilities. The study may be carried out either directly or through a grant. The organization conducting the study must develop definitions for classes of residential long-term care facilities and collect information on the following features of these facilities: prices, level of services, oversight and enforcement provisions, and admission and discharge criteria.

The Secretary would be required to prepare a report containing the results

of the study and submit the report to the appropriate committees.

To carry out the study, the Chairman's Mark would authorize \$3 million for each of FYs 2007-2010.

Evaluations of Elder Justice Programs (New Section 2054 of the Social Security Act)

Present Law

No provision.

Chairman's Mark

The Mark would require the Secretary of HHS to reserve a portion of the funds appropriated in each program under Title XX to be used to provide assistance to eligible entities to conduct validated evaluations of the effectiveness of the activities funded under each program under Title XX. To be eligible to receive these funds, an eligible entity must submit an application to the Secretary following the timing and requirements prescribed by the Secretary including a proposal for the evaluation.

Entities would be required to submit to the Secretary and appropriate congressional committees a report containing the results of the evaluation together with any recommendations deemed appropriate. The report would be due by the date specified by the Secretary.

Report (New Section 2055 of the Social Security Act)

Present Law

Currently, no provision exists concerning federal agency coordination to encourage the employment of welfare recipients or recipients of Temporary Assistance to Needy Families (TANF) in long-term care facilities.

Chairman's Mark

The Chairman's Mark requires, not later than October 1, 2011, a report from the Secretary to the Elder Justice Coordinating Council and appropriate committees, summarizing (1) State reports submitted under section 2042; (2) results of the study under section 2053; (3) recommendations for legislative or administrative action; and (4) a requirement for state plans under the program for Temporary Assistance for needy Families.

Amendments to the Part A, Title XI of the Social Security Act — Long-Term Care Facilities (Section 5(b) of the Chairman's Mark)

Present Law

No federal provisions for mandatory reporting of crimes in federally funded

long-term care facilities. There are some federal laws and regulations under Medicare and Medicaid in the event that a facility participating in either of those programs closes.

Reporting. Based on a 2000 survey of state Adult Protective Services systems, all states had elder/adult abuse reporting laws. State laws varied in who was a mandated reporter and who was encouraged to report incidents of elder/adult abuse. Many states and territories named health care professionals, such as nurses, physicians and nurse aides, as mandated reporters of elder/adult abuse. Five states did not list anyone as a mandated reporter.

Eleven states reported that there were no statutory consequences for failure of mandated reporters to report abuse; the remaining states and the District of Columbia and Guam had a specified consequence. The most common consequence for failing to report was a misdemeanor with a possible fine and/or jail sentence. State law also varied with regard to specifying a time frame within which reporters were required to report suspicion of abuse. Nineteen states had no time frame. Of those that specified a time frame, the requirements varied from immediately to more than four days.

Notification of Facility Closure. If a long-term care facility that receives federal funds through participation in Medicare or Medicaid closes, current federal laws and regulations provide some guidance on the parties that need to be notified and the process for relocating residents. If a facility wants to terminate its status as a Medicare provider (for example, due to facility closure), the facility must notify both CMS and the public no later than 15 days in advance of the proposed termination date. If a facility wants to terminate its status as a Medicaid provider, federal regulations do not specify a timeframe for notifying federal or state agencies; however, the facility is required to notify Medicaid residents at least 30 days before transferring or discharging him or her. Facility closure is one circumstance in which a resident would need to be transferred.

The state Medicaid agency has the primary responsibility for relocating Medicaid patients and for ensuring their safe and orderly transfer from a facility that no longer participates in Medicaid to a participating facility that meets acceptable standards. CMS has provided guidance to states concerning relocating patients. Each state is expected to have a plan that describes the relocation of patients. Additionally, the notice to residents is to include information as to how to contact the ombudsman established by the Older Americans Act.

Chairman's Mark

Reporting of Crimes in Federally-funded Facilities. The Chairman's Mark would require reporting to law enforcement of crimes occurring in federally funded long-term care facilities that receive at least \$10,000 in federal funds during the preceding year. The owner or operator of these facilities would be required to annually notify each individual who is an owner, operator, employee, manager, agent, or contractor of a long-term care facility that they are required to report any reasonable suspicion of a crime against any person who is a resident of or receiving care from the facility. These individuals are referred to in this section as "covered individuals." Suspected crimes must be reported to the

Secretary and one or more law enforcement entities for the political subdivision in which the facility is located.

Timing of Reporting. If the events that cause the suspicion of a crime result in serious bodily injury, the covered individual must report the suspicion immediately, but not later than two hours after forming the suspicion. If the events that cause the suspicion do not result in serious bodily injury, the individual must report the suspicion not later than 24 hours after forming the suspicion.

Penalties for Non-Reporting. If a covered individual does not report suspicion of a crime within the timeframe described above, the individual will be subject to a civil money penalty of up to \$200,000, or the Secretary shall classify the individual as an 'excluded individual' (i.e., any employer of the individual is unable to receive federal funds) for a period of not more than three years. If a covered individual does not report suspicion of a crime within the timeframe described above and this violation exacerbates the harm to the victim, or results in harm to another person, the individual will be subject to a civil money penalty of up to \$300,000, and the Secretary shall classify the individual as an 'excluded individual' (i.e., any employer of the individual is unable to receive federal funds) for a period of not more than three years.

If an individual is classified as an "excluded individual," any entity that employs that individual will not be eligible to receive federal funds. The Secretary may take into account the financial burden on providers with underserved populations in determining any penalty to be imposed under this section. Underserved populations are defined as the population of an area designated by the Secretary as an area or population group with a shortage of elder justice programs. These may include those that are geographically isolated, racial and ethnic minority populations, and populations underserved because of special needs (such as language barriers, disabilities, alien status, or age).

Additional Penalties for Retaliation. A long-term care facility may not retaliate against an employee for making a report, causing a report to be made, or for taking steps to make a report. Retaliation includes discharge, demotion, suspension, threats, harassment, denial of a promotion or other employment-related benefit, or any other manner of discrimination against an employee in the terms and conditions of employment because of lawful acts done by the employee. Long-term care facilities may also not retaliate against a nurse by filing a complaint or report with the appropriate state professional disciplinary agency because of lawful acts done by the nurse.

If a long-term care facility does retaliate, it shall be subject to a civil money penalty of up to \$200,000 or the Secretary may exclude it from participation in any federal health care program for a period of two years.

Notice to Employees. Each long-term care facility must post conspicuously, in an appropriate location, a sign specifying rights of employees under this section. The sign shall include a statement that an employee may file a complaint against a long-term care facility that violates the provisions of this section with the Secretary. The notice must also contain information as to how to file a complaint.

Notification of Public Agencies and Safety of Residents in the Event of Facility Closure. In addition, if a long-term care facility (that receives at least \$10,000 in federal funds during the previous year) is going to close, the owner or operator of the facility must submit to the Secretary and the appropriate state regulatory agency written notification of an impending closure within 60 days prior to the closure date. In the notice, the owner or operator must include a plan for transfer and adequate relocation of residents, including assurances that residents will not be moved to the most appropriate facility in terms of quality, services, and location. Within 10 days after the facility closes, the owner or operator of the facility must submit to the Secretary, and the appropriate state agency, information on where the residents were transferred to and when.

Anyone who owns a skilled nursing facility that fails to comply with the notification of closure and reporting requirements shall be subject to a civil monetary penalty of up to \$1,000,000, exclusion from participation in the programs under the Social Security Act, and any other civil monetary penalties and assessments.

A civil monetary penalty or assessment will be imposed in the same manner as a civil monetary penalty, assessment or exclusion under Section 1128A of the Social Security Act.

Amendments to Part A, Title XI of the Social Security Act — National Nurse Aide Registry Study and Report (Section 5 (c) of the Chairman's Mark)

Present Law

Section 1819(b)(5)(F) (Medicare law) and 1919(b)(5)(F) (Medicaid law) of the Social Security Act define nurse aides as individuals providing nursing or nursing-related services to residents in nursing facilities as well as registered dietitians or persons who volunteer to provide such services without monetary compensation. Nurse aides do not include physicians; physician assistants; nurse practitioners; physical, speech, or occupational therapists; physical or occupational therapy assistants; registered professional nurses; licensed practical nurses or licensed certified social workers. For Medicare-certified facilities, nurse aides also exclude registered respiratory therapists or certified respiratory therapy technicians.

No present law exists concerning a nurse aide registry study.

Chairman's Mark

The Secretary shall conduct a study on establishing a national nurse aide registry that shall include an evaluation of who should be included in the registry; how the registry would comply with Federal and State privacy laws and regulations; how data would be collected for the registry; what entities and individuals would have access to the data collected; how the registry would provide appropriate information regarding violations of Federal and State law by

individuals included in the registry; how the functions of the registry would be coordinated with the pilot program for national and State background checks on direct care patient access employees of long-term care facilities and how the information in State nurse aide registries would be maintained in a national registry.

After receiving the report submitted to Secretary, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate shall, as they deem appropriate, take action based on the recommendations contained in the report.

Not later than 18 months after the date of enactment of this Act, the Secretary shall submit a report to the Elder Justice Coordinating Council, the Committee on Ways and Means and the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate containing the findings and recommendations of the study. Funding for the study shall not exceed \$500,000.

**Statement of Senator Orrin G. Hatch
Finance Committee Mark-up on
S. 2010, the Elder Justice Act of 2006
August 3, 2006**

Mr. Chairman, I want to express my gratitude to both you and Senator Baucus for bringing S. 2010 before the Committee today. I am especially grateful that the Finance Committee is holding this mark-up prior to the August recess – it took a lot of work and dedication from both of you and your tremendous staff. You have been extremely supportive of this bill and I just want you to know that I am very appreciative. I am so sorry that Senator Baucus, who has been a strong supporter of S. 2010 is not able to be with us today. Senator Rockefeller, thank you so much for your willingness to fill in for Senator Baucus this morning so this mark-up may move forward.

I also want to recognize the other lead sponsor of the Elder Justice Act, Senator Blanche Lincoln. Senator Lincoln, I firmly believe that part of the reason that we are here today is because of you and your staff's hard work and dedication. You have been a tremendous asset in getting this bill before the Finance Committee and I want to thank you for your willingness to work with me. It has made a big difference.

Another very important ally of the Elder Justice Act has been the Elder Justice Coalition, which is dedicated to eliminating elder abuse, neglect, and exploitation in our country. This coalition, headed up by Bob Blancato (BLAN COT TO), has been a strong advocate and supporter of the Elder Justice Act for many years. Currently, the Coalition has 500 organization and individual members. I want to thank every member of the Coalition for your support of our bill.

Finally, I would be remiss if I didn't acknowledge Senator John Breaux, the original sponsor of the Elder Justice Act and a former member of this Committee. Senator Breaux and I first introduced this legislation in the 107th Congress. Senator Breaux—you are to be commended for your continuing support of Elder Justice Act. (Senator Breaux is in the audience.) Even though Senator Breaux left the Senate last Congress, he has still been fighting for passage of this bill. In fact, he serves as the Honorary Chairman of the Elder Justice Coalition. Last Congress, Senator Breaux and I worked with Senators Grassley and Baucus to get this bill reported by the Senate Finance Committee. And while it was unanimously reported by the Committee, it was not approved by the Senate before the 108th Congress adjourned. So we are back again this Congress, fighting even harder!

Let me make one point perfectly clear -- this Congress, one of my top priorities is to get this bill signed into law, once and for all. Our seniors deserve no less.

S. 2010 is designed to create a national focus on elder abuse to increase detection, prevention, and prosecution. It ensures that states, communities, consumers and families will have access to the information and resources they need to confront this difficult issue. By addressing law enforcement, social service and public health concerns, our bill

uses the proven approach Congress has adopted to combat child abuse and violence against women. Ironically, while we have data collection at the national level on child abuse and battered women, we currently do not have similar data collection for elder abuse. This bill will correct this significant omission and will make this needed information available.

The Elder Justice Act dedicates valuable funding resources to support federal, state and community efforts to combat elder abuse. We were very careful not to create unnecessary bureaucracy. S. 2010 does not federalize state and local roles; rather it provides federal leadership and resources to those on the front lines.

The Elder Justice Act is also responsible legislation. It contains provisions for accountability that will evaluate its programs and determine *what works* and assure that funds are properly spent.

Elder mistreatment is a recognized social problem of increasing magnitude. Between 1 and 2 million Americans age 65 or older are estimated to have been injured, exploited, or otherwise mistreated by someone on whom they depended for care or protection. The frequency of elder abuse will undoubtedly increase over the next several decades as the population ages. Yet little is known about its characteristics, causes or consequences or about effective means of prevention.

The numbers are likely much greater than estimated as a great deal of elder abuse goes unreported. The problem of elder abuse, neglect and exploitation has long been invisible and is probably one of the most serious issues facing our seniors and their families. Research in the field is scarce, but, by some estimates, up to five million cases of elder abuse, neglect and exploitation occur each year. Without more attention and more resources, far too many of these cases of abuse, neglect and exploitation will go unaddressed and far too many older Americans will suffer.

What is elder justice? From a social perspective, Elder Justice means assuring adequate public-private infrastructure and resources to prevent, detect, treat, understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation. From an individual perspective, Elder Justice is the right of every older person to be free of abuse, neglect and exploitation.

Few pressing social issues have been as systematically ignored as elder abuse. Consider these facts:

- 25 years of congressional hearings on the devastating effects of elder abuse, called elder abuse a “disgrace” and a “burgeoning national scandal.”
- To date, no federal legislation has been enacted to address elder abuse in a comprehensive manner.

- Congress passed comprehensive bills to address child abuse and crimes against women, yet there is not one full-time federal employee working on elder abuse in the entire federal government.
- The cost of elder abuse is high, including needless human suffering, inflated health care costs, limited federal resources and the loss of one of our greatest national treasures – the wisdom and experience of our older citizens.

To address these horrible abuses, a comprehensive solution is required that integrates health, legal and social services agencies and organizations and focuses on the need for prevention, reporting, investigation, assessment, treatment and prosecution.

This is not a partisan concern! Both Republicans and Democrats support the bill. We are all concerned about the care and treatment of our elderly, our parents, our grandparents.

Just what will the Elder Justice Act do?

- The EJA brings national attention to the issue by: Creating (1) Creating an office of Elder Justice at the Departments of Health and Human to serve programmatic, grant-making, policy and technical assistance functions relating to elder justice, (2) a public-private Coordinating Council to coordinate the activities of all relevant federal agencies, States, communities and private and not-for-profit entities, and (3) a consistent funding stream and national coordination for Adult Protective Services (APS).
- The bill also improves the quality, quantity and accessibility of information related to elder abuse. A national data repository will be developed to increase the knowledge base and collect data about elder abuse, neglect and exploitation.
- This measure will increase knowledge by supporting promising projects. The Elder Justice Act will enhance research, clinical practice, training and dissemination of information relating to elder justice. Priorities include a national incidence and prevalence study, jump-starting intervention research, developing community strategies to make elders safer, and enhancing multi-disciplinary efforts.
- Creating new forensic expertise in elder abuse (similar to that in child abuse) will promote detection and increase our capacity to prosecute offenders. New programs will train health professionals in *both* forensic pathology and geriatrics.
- An important element of the legislation is its focus on increasing prosecution. New penalties for failure to promptly report crimes in facilities and to provide notice of nursing home closings will enhance prosecutions.
- Training is key to the success of these programs and is supported both within individual disciplines and in multi-disciplinary settings such as public health-social service-law enforcement.

- The bill also funds special programs to support underserved populations including rural, minority and Indian seniors.
- This legislation addresses the need for increasing security, collaboration, and consumer information in long-term care. It aims to:
 - Improve prompt reporting of crimes in long-term care settings
 - Enhance long-term care staffing
 - Provide information about long-term care for consumers through a Long-Term Care Consumer Clearinghouse, and
 - To implement new reporting of crimes in nursing homes on the official federal website.

The Elder Justice Act will provide federal resources to support State and community efforts on the front lines dedicated to fighting elder abuse but currently with scarce resources and fragmented systems.

The authors of this bipartisan bill have been very careful not to create unnecessary bureaucracy. The bill does not federalize state and local roles; rather it provides federal leadership and resources to those on the front lines.

The Elder Justice Act is also responsible legislation. It contains provisions for accountability that will evaluate its programs and determine “what works” and assure that funds are properly spent.

These are some of the provisions of the bill, but it is a comprehensive approach to elder justice and there is much I have not mentioned today.

Finally, I want to acknowledge the hard work of the staff on this bill – Elizabeth Barnett and Steve Ceccoli (SEE-COAL-EE) of Senator Lincoln’s office; Becky Shipp, Ted Totman and Mark Hayes of Senator Grassley’s office; David Schwartz and Michelle Easton of Senator Baucus’ office; Lauren Fuller of the Senate HELP Committee staff and former Aging Committee Chief Investigative Counsel for Senator Breaux; Kelly Malone of the Senate Legislative Counsel’s Office and Dr. Roger Johns of my office. All of these staffers did an excellent job on this bill.

Mr. Chairman, senior citizens cannot wait any longer for this legislation to pass. More and more of us will enjoy longer life in relative health, but with this gift comes the responsibility to prevent the needless suffering too often borne by our frailest seniors. I am committed to getting this legislation passed into law this Congress so that elder justice will become a reality for those Americans who need it most – our senior citizens.

I urge my colleagues to support the passage of this legislation.

Statement of Senator Max Baucus
Finance Committee Markup of the Chairman's Revision to the
Elder Justice Act, S. 2010
August 3, 2006

Thank you, Mr. Chairman, for holding this markup. I am glad to see this legislation, the Elder Justice Act, come before the Committee again. We marked up almost identical legislation in the last Congress. And the Committee unanimously agreed to report it out. Unfortunately, it did not make it through the Senate.

The problems that this bill addresses have not gone away. Elder abuse, neglect and exploitation are, in fact, getting worse. And no one is exempt. Just last week, it was alleged that Brooke Astor, one of America's great philanthropists, is the victim of elder abuse.

The allegations involving Mrs. Astor, who is 104 years old, led the *New York Times* on July 28th to exhort Congress to pass the Elder Justice Act. And the *Times* mentioned this Committee in particular. And I quote, "The Senate Finance Committee should take the time to mark up this bill before the August recess so that the House can address it before the end of this year."

We have been aware of the problems of elder abuse, neglect and exploitation for years. We know that many of our nation's seniors are suffering. Mistreatment of elders is among the most heart-wrenching of circumstances. And as baby boomers age, elder mistreatment is likely to become an even bigger problem.

We must act now. The Elder Justice Act would help us in our fight against elder mistreatment. It would help us to identify, prevent, and intervene in elder mistreatment.

Elder abuse has not gotten the same kind of attention as child abuse or domestic violence. Part of the reason for that is that there is very little information available about the scope and magnitude of the elder abuse problem. This bill would eliminate require data collection on a national level.

This bill would also create an Elder Justice Coordinating Council with its own Advisory Board. A group of federal officials, with their own experts, would be dedicated to working on elder mistreatment. The federal government has not done enough about elder abuse, neglect, and exploitation. I am glad that this bill would focus attention on these problems.

Let me also recognize my friend and our former Colleague, Senator John Breaux. Senator Breaux was a champion for elder justice. I would like Senator Breaux to know that we all remember his commitment to this issue. And we are proud to consider this legislation that we associate so closely with him.

I urge my Colleagues to support this important legislation. Elder abuse, neglect, and exploitation are problems that cut across party and regional lines. Working together, we can take the first step towards solving them.

**U.S. Senator Blanche Lincoln
Statement for the Record**

**Finance Committee Executive Session
to consider a committee substitute to S. 2010, the Elder Justice Act**

August 3, 2006

Mr. Chairman, thank you for scheduling this markup session today so that we may report out the Elder Justice Act. I am pleased to join my distinguished colleague, Senator Hatch, as the lead cosponsor of this important, bipartisan legislation. This markup represents an important step toward enacting the first comprehensive federal law to protect our nation's seniors from elder abuse, neglect, and exploitation.

I want to take a moment to thank our staffs for their hard work and dedication to this issue: Ted Totman, Mark Hayes, and Becky Shipp of Senator Grassley's staff; Michelle Easton and David Schwartz of Senator Baucus' staff; Pattie DeLoatche of Senator Hatch's staff; Lauren Fuller of Senator Enzi's staff; and Elizabeth Barnett and Steve Ceccoli of my staff.

I have been a cosponsor of the Elder Justice Act since Senator John Breaux and Senator Hatch introduced the original bill in 2002. I joined them again as a cosponsor in 2003 and helped pass a version of the legislation out of the Senate Finance Committee in late 2004.

Unfortunately and regrettably, the Elder Justice Act failed to become law in 2004. We simply cannot afford to wait any longer. Now is the time for Congress to bring national attention to the problem of elder abuse.

This year, the first of America's more than 77 million Baby Boomers will reach the age of 60. In addition, Americans age 65 and older, which numbered 35 million in 2000, will more than double to about 70 million over the next 25 years. By then, one out of every five Americans will be 65 and older.

As America grows older, it is imperative that we have the proper infrastructure in place to protect our elders from the terrible acts of abuse, neglect, and exploitation. The Elder Justice Act confronts elder abuse in the same ways we combat child abuse and domestic violence. While we have made great strides in these areas, it is unfortunate that we have not had the same success in fighting elder abuse. Of all federal dollars spent on abuse and neglect last year, only 2% went to combating elder abuse.

Abuse of our senior citizens can be physical, sexual, psychological, or financial. The perpetrator may be a stranger, an acquaintance, a paid caregiver, a corporation, and sadly, even a spouse or another family member. Elder abuse happens everywhere, at all levels of income and in all geographic areas. No matter how rich you are, and no matter where you live, no one is immune. And, regrettably, most abuse goes unreported.

An essential step in preventing such terrible acts is having accurate information about the nature of the problem. Unfortunately, we do not have adequate data collection mechanisms in place to fully grasp the extent of elder abuse in our country. The Elder Justice Act develops pilot tests and incentive grants that will enable us to collect and disseminate uniform, national data about elder abuse. As a result, the Elder Justice Act will enable us to better understand where and when such acts of abuse are likely to occur.

The Elder Justice Act also establishes an infrastructure to coordinate public and private efforts to combat elder abuse. The relevant federal officials responsible for administering programs related to elder abuse will work together and make recommendations for coordinating federal, state, and local activities. In addition, the act creates programs to further develop forensic expertise in geriatrics and to ensure that nursing homes and other long-term care facilities are adequately staffed.

The Elder Justice Act will take steps to make older Americans safer in their homes, nursing home facilities, and neighborhoods. It enhances detection of elder abuse and helps seniors recover from abuse after it starts. It increases collaboration between federal agencies and between federal, state, local, and private entities, law enforcement, long-term care facilities, consumer advocates, and families to prevent and treat elder abuse.

Every one of us will grow older, and if we're lucky, we will live for a very long time. A baby girl born today has a 50% chance of living until she is 100 years old. What will we gain if we fail to ensure that baby girl ages with dignity, free of abuse, neglect, and exploitation?

As Hubert Humphrey said, "The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy, and the handicapped."

The Elder Justice Act is long overdue. Every older person has the right to be free of abuse, neglect, and exploitation. The Elder Justice Act will not only enhance our knowledge about abuse of our seniors in all its terrible forms but also elevate elder abuse to the national stage.

After the Finance Committee successfully reports this bill today, I hope that we will continue to work together to pass this important bill into law in 2006. I know that Chairman Grassley, Ranking Member Baucus, Senator Hatch, and many others in the Senate agree and will help me in this endeavor. I firmly believe that it is the duty of this Congress to ensure that those in the twilight of life are protected from abuse that threatens their safety, independence, and productivity.

U.S. Senator Rick Santorum
Statement
Senate Finance Committee Markup of the Elder Justice Act (S. 2010)
August 3, 2006

I would like to thank the Chairman for holding today's markup on the Elder Justice Act, and I commend Senators Hatch and Lincoln for their bipartisan leadership on this critical legislation.

One of the greatest responsibilities I fulfill as a United States Senator is representing the interests of older Americans, one of our nation's most vulnerable populations. One issue of great concern to me is the sad and all-too-frequent crimes of elder abuse, neglect, and exploitation. After a lifetime of working and raising a family, our seniors deserve to age with respect and dignity. Yet, far too often, seniors become victims of physical, psychological, or financial abuse because they are viewed as "easy targets," or because they lack the means of communicating the abuse to those in a position to help. Elder abuse can occur in any setting, and the perpetrator can be a complete stranger, an acquaintance, a healthcare worker, even a member of the victim's own family. Sadly, despite the prevalence of elder abuse, neglect, and exploitation, the federal government invests virtually no resources toward detecting and preventing such crimes, when compared to other important priorities such as domestic abuse and crimes against children.

I am proud to be a cosponsor of the Elder Justice Act, which represents an important first step in combating elder abuse in our communities. This bill will institute a broad range of programs and cooperative initiatives aimed at improving federal, state, and local governments' ability to prevent and prosecute these crimes. First, this

legislation would better coordinate elder justice activities through the Health and Human Services and Justice Departments to assure high level attention and agency-wide coordination of elder justice initiatives and resources. Under this measure, these offices would develop programs for elder abuse detection and prevention, provide technical assistance, and issue grants to support state and local initiatives. The Elder Justice Coordinating Council would also be established, serving to coordinate these Departments' efforts and those of other relevant agencies to ensure that elder justice resources are maximized.

For far too long, elder abuse has been under-reported, and efforts to eliminate it have been under-researched and under-funded. The Elder Justice Act would create a national data repository for elder justice to increase the knowledge and data collection of elder abuse, neglect, and exploitation, which is a critical step toward fully grasping the prevalence of these abuses. Additionally, this legislation would assist law enforcement agencies in recognizing and prosecuting elder abuse, neglect, and exploitation.

One of the greatest challenges we currently face as a nation is helping families prepare for their own and loved-ones' long-term care needs. During the 109th Congress, I held listening sessions across Pennsylvania to hear first hand my constituents' concerns about long-term care, such as what barriers exist for purchasing and financing care, and what challenges caregivers face providing quality care for a loved one. These listening sessions culminated in my introduction of the Aging with Respect and Dignity Act. Choosing the most appropriate long-term care setting and services an individual will receive is often one of the most difficult decisions individuals and their families face.

These decisions are hard enough without having to worry about whether or not a loved one will be treated with the respect and dignity they deserve.

I am pleased that the Elder Justice Act would take important steps to increase security, collaboration, and consumer information in long-term care. Recognizing that qualified staffing is important in preventing elder abuse in nursing homes, this legislation would bolster recruitment in the long-term care field, and provide bonuses to help retain workers. Lastly, this bill would support continued training and development of career ladders for long-term care employees, with corresponding wage increases and benefit packages. These provisions would go a long way toward giving families the peace of mind of knowing that their loved ones will receive the care they deserve.

As the Baby Boomers enter their golden years, it is absolutely critical that our nation has the infrastructure in place to ensure that today's and tomorrow's seniors can age with the respect and dignity they deserve—free of abuse, neglect, and exploitation. To that end, I hope that the full Senate will soon pass the Elder Justice Act.

THE ELDER JUSTICE COALITION

A NATIONAL ADVOCACY VOICE FOR ELDER JUSTICE IN AMERICA
JOHN B. BREAU, HONORARY CHAIR ♦ ROBERT B. BLANCATO, NATIONAL COORDINATOR

Coalition Statement

The bi-partisan 500 member Elder Justice Coalition is pleased to offer our support for S. 2010, the Elder Justice Act, scheduled to be marked up by the Finance Committee.

We commend Chairman Grassley and Ranking Member Baucus for your leadership on behalf of this legislation and this cause. Each of you held important hearings to raise awareness and develop legislative solutions to the vexing and growing problem of elder abuse, neglect and exploitation. Your work on S. 2010 has increased awareness of the issue and support for the bill.

We particularly thank Senator Hatch as the author of S. 2010 and Senator Lincoln as co-author. Starting with the Elder Justice Act of the 108th Congress by Senators Breaux and Hatch and now with the Hatch-Lincoln bill, we have witnessed continuous bi-partisanship that has enabled us to get to this point. The consistent goal has been to produce a stronger and more coordinated federal response to promote elder justice in our nation that better supports our states and communities.

From the outset, one of the primary goals of this Coalition was to construct first-time legislation to provide a dedicated funding stream for adult protective services (APS) in this nation. This is accomplished through the addition of Subtitle 2 to an amended Title XX, currently "Block Grants to States for Social Services and Elder Justice." APS is the only public service authorized and empowered by state laws to respond to and investigate allegations of abuse, neglect and exploitation of the elderly and vulnerable adults. The Elder Justice Act would be to states' APS what federal law is to states' Child Protective Services programs by providing funding, technical assistance and a federal focus on APS. APS is critical for responding to domestic cases of elder and other vulnerable adult abuse. Moreover, these dedicated resources would provide funding for demonstration efforts to improve APS services. The EJA would also ensure that the HHS Secretary identifies an office within HHS to provide federal coordination, technical assistance and support for states' APS programs.

The Elder Justice Coalition also salutes the establishment of both the Elder Justice Coordinating Council and the Advisory Board on Elder Abuse, Neglect and Exploitation. A key element in improving the federal response to elder abuse must be a complete assessment and evaluation of what is currently happening in the field. A tandem government and external entity approach to the process will help us achieve the goal of a more coordinated and transparent response.

The pending bill is a comprehensive and well-developed piece of legislation that reflects vital input from experts and advocates in the field. The bill addresses a number of issues spotlighted at prior hearings. In particular, we support the new federal grant program that establishes both stationary and mobile forensic centers in order to develop forensic expertise on elder abuse. Such programs would go a long way towards improved diagnosis of elder abuse by those in the health care, law enforcement or social services sectors.

We are pleased that the bill contains incentives for individuals to train for, seek, and maintain employment in long term care facilities. This is vitally important as the dramatic aging of our population continues particularly among the oldest old, those most likely to need the services of a long term care facility. Our facilities must be fully staffed with qualified workers for the safety and

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well-being of the vulnerable persons they serve. We also note that sufficient and culturally competent outreach must be done to ensure these are equal opportunity incentives.

The Coalition especially notes the provision added by Chairman Grassley that will require the posting on Nursing Home Compare, a website of the Centers for Medicare and Medicaid Services, of all criminal convictions occurring within nursing home facilities by nursing home employees. Chairman Grassley's provision integrates greater access to consumer rights information in the choice of a long term care facility. Specifically, the creation of a consumer rights and information page on Nursing Home Compare will serve to educate consumers on the survey and certification process and on where to go for more information about nursing home quality including the state and local long term care ombudsman. This is one of several provisions in this bill which give new and positive attention to the critical work of our State Long Term Care Ombudsman and local ombudsman programs. Further, this bill will help give those employees better tools to do their work through improved training.

We strongly support the long term care consumer clearinghouse to aid consumers in the difficult choice of helping to select the right long term care facility for a loved one or perhaps themselves, as well as to understand what benefits are provided through Medicare and Medicaid. This bill also provides for a study on consumer concerns of residential long term care facilities other than nursing homes.

One of the fastest growing and most insidious forms of elder abuse in our nation today is financial abuse and exploitation. This Committee along with the Special Committee on Aging under the leadership of Senator Smith has heard heart wrenching stories involving victims of financial abuse. This bill includes an essential new program providing targeted demonstration grants that test training modules, detection and prevention of financial exploitation.

A critically important aspect of this bill is Section 2051 which focuses needed federal attention on data collection and dissemination of information. This Section by first developing and testing forms and screening tools, pilot testing them and then providing grants to states to complete enhanced data collection will move us in a better direction toward improving this process.

We regret the lack of federal resources presently directed to elder abuse. One estimate from the Senate Special Committee on Aging indicates that less than 2 percent of all federal funds spent on abuse prevention go to elder abuse. Partially, this can be attributed to our failure to invest in decent and thorough data collection. As long as data drives dollars we must commit to better data collection. S. 2010 does that.

We do express our disappointment in a couple of changes to this bill. The first relates to a national nurse aide registry. Our Coalition preferred the original approach in this legislation which would have first authorized a study on the registry and then moved immediately to establishing the registry at the national level. The bill before the Committee simply authorizes the study. Our Coalition hopes that Congress will act quickly in response to the study results, conduct necessary hearings and use those outcomes as the basis of legislation to create the national registry.

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Finally on the issue of criminal background checks of those working with seniors in long term care facilities, we call for the swift completion of the ten state pilot studies and consequently for Congress to act quickly to analyze the results and develop an immediate and comprehensive federal response. The Coalition also wishes to especially commend Senator Kohl for his steadfast leadership on this issue.

The elder abuse crisis is upon us, the solutions have evaded us, in part because of a disturbing degree of denial on the part of past legislators that elder abuse deserves this level of attention. Let us pass this bill today in the Finance Committee and then be distinct from past Congresses by completing the job and making the Elder Justice Act the law of the land.

The Finance Committee does not convene today to address a hypothetical problem. Elder abuse, neglect and exploitation has been a problem for years and will become only more acute as our population ages.

Founding Members:

National Committee for the Prevention of Elder Abuse
National Academy of Elder Law Attorneys
National Association of State Units on Aging
National Adult Protective Services Association
National Association of State Long-Term Care Ombudsman Programs

Coordinating Committee:

AARP
American Association of Homes and Services for the Aging
American Health Care Association
National Citizens' Coalition for Nursing Home Reform
National Council on Aging