United States General Accounting Office

GAO

Report to Congressional Requesters

June 1990

OLDER AMERICANS ACT

Administration on Aging Does Not Approve Intrastate Funding Formulas

141736

GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-237081

June 8, 1990

The Honorable Augustus F. Hawkins
Chairman, Committee on Education and Labor
House of Representatives

The Honorable Dale E. Kildee
Chairman, Subcommittee on Human Resources
Committee on Education and Labor
House of Representatives

In 1987, the U.S. District Court for the Southern District of Florida ruled that Florida's formula for distributing federal grant funds provided under Title III of the Older Americans Act for supportive and nutrition services was invalid. The court found that the formula not only failed to consider the needs of low-income minorities, as required by the act and implementing regulations, but also contained factors that discriminated against minorities. In an October 31, 1988, letter, you expressed concern that other state formulas may not be considering the needs of elderly minorities when distributing Title III funds or may be using the same factors that were found to discriminate in the Florida case.

In response to your letter and later discussions with Subcommittee staff, we agreed to review each state's Title III intrastate funding formula to identify the (1) factors used to distribute funds within the state, (2) number of formulas that contain a specific factor that directs funds to where minorities are located, (3) number of formulas that contain the same factors that were found to be discriminatory in Florida, and (4) recent state revisions to funding formulas and the reasons for them. We also agreed to determine the extent to which the Administration on Aging (AOA), the component of the Department of Health and Human Services that administers the act, is involved in developing and approving intrastate formulas. As further agreed with your staff, we did not attempt to determine whether individual state formulas comply with the decision in the Florida case.

Results in Brief

Forty-five states use intrastate funding formulas to distribute Title III funds. While AOA's regulations state that formulas must target those elderly in greatest economic or social need, with particular attention to low-income minorities, they do not identify the factors to be used for such targeting. States' formulas include as many as nine factors. For example, 44 formulas contain an economic need factor. Thirty-one include a minority factor, five have a low-income minority factor, and two have a minority and a low-income minority factor. Twenty state formulas contain a factor that was found to discriminate against minorities in the Florida case. Since the beginning of 1986, 18 states have revised their formulas to, among other things, give preference to targeted categories of the elderly.

While AOA reviews and comments on states' funding formulas, the agency believes the act does not authorize it to approve or disapprove formulas. Although the act leaves room for different interpretations, we believe it does authorize AOA to disapprove formulas that do not comply with its guidelines. However, given AOA's position on this issue, the Congress should consider clarifying its intent as to whether AOA should disapprove formulas the agency believes do not meet the intent of the act and its regulations.

Background

The Older Americans Act of 1965, as amended (42 U.S.C. 3001), was enacted to ensure the well-being of the elderly (aged 60 or older) by providing services to help them live independently in their own homes and communities. Under Title III of the act, the federal government distributes funds through formula grants to state agencies to develop or expand community-based social service programs. Title III funds are distributed to states based on each state's proportion of the total elderly population in the United States. In fiscal year 1988 about $689 million was available for Title III supportive services[1] and nutrition services.

The act is implemented through a national aging network consisting of AOA, 59 state agencies on aging,[2] over 670 area agencies on aging, and more than 25,000 organizations providing supportive and nutrition services in the community. The state agency must develop a 2- to 4-year plan for providing services. AOA must approve the plan before the state can receive a federal grant. The state agency distributes the grant to an area agency in each planning and service area within the state. The area agencies award subgrants or contract with local providers that deliver the services to the elderly. Most state agencies have several area agencies, but 15 have designated their entire state or territory as a single

[1]Supportive services include (1) access services, such as transportation, outreach, and information and referral; (2) in-home services, such as housekeeping and home health aides; and (3) other community and neighborhood services, such as legal, escort, physical fitness, and second career counseling.

[2]Includes the 50 states, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, Puerto Rico, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands.

service area with the state agency performing the area agency functions.

Title III Targeting Provisions

Specified categories of elderly persons are targeted to receive preference for Title III services. Under the act, all individuals 60 years old and older are eligible for services. However, the act has been amended over the last several years to identify categories of individuals to receive preference for services. The act currently states that "preference will be given to providing services to older individuals with the greatest economic or social needs, with particular attention to low-income minority individuals."[3] The emphasis on serving low-income minorities was added by 1984 amendments to the act. In developing the state plan, each state agency must assure that these preferences will be given and include in the plan the proposed methods for doing so.

How Intrastate Funding Formulas Work

To be eligible for grants, states with more than one service area must develop a Title III intrastate funding formula in addition to the state plan.[4] The formula determines how federal funds will be distributed to service areas within the state. Under the act, state agencies must develop the formula according to AOA guidelines, taking into account the best available statistics on the location of persons 60 years old and older. The state must publish the formula for review and comment and include a statement of the formula's goals and the application of the definitions of greatest economic or social need.

Under AOA's regulations (45 C.F.R. 1321.37), the formula must reflect the proportion among service areas of persons aged 60 years old and older "in greatest economic or social need with particular attention to low-income minority individuals." The formula must be published for review and comment within the state by older persons, appropriate agencies and organizations, and the general public. Although the act and regulations require each state agency to submit its formula to AOA for review and comment, the formula is not part of the state plan and AOA does not approve or disapprove it.

[3]As defined in the act, "greatest economic need" means the need resulting from an income at or below poverty levels established by the Office of Management and Budget. "Greatest social need" means the need caused by noneconomic factors—disabilities, language barriers, and isolation, including that caused by racial or ethnic status—that restrict the ability to perform normal daily tasks or threaten the capacity to live independently.

[4]Though not required, single-service-area states may also use formulas to distribute funds to counties or other identified areas in the state.

State formulas usually distribute funds based on a combination of weighted economic, social, and other factors. The weights determine the emphasis placed on factors in distributing Title III funds. For example, some states place a large weight on "persons 60 years old and older at or below the poverty level," which directs more funds to service areas with larger concentrations of the elderly in greatest economic need. In contrast, other states place a large weight on "persons 60 years old and older," which addresses neither economic nor social need but more evenly distributes Title III funds to the elderly throughout the state. The act and regulations do not provide guidance on specific factors to use or how heavily to weight them; therefore, states make this determination.

States may also provide for a percentage of the total funds to be set aside for administrative purposes. Further, if the state begins the distribution process by providing a fixed amount to each area agency, only the remaining grant funds will be distributed through the formula factors and weights.

Meek v. Martinez

Meek v. Martinez,[5] the case that challenged Florida's Title III formula, marked the first time a federal court interpreted the targeting provisions of the act and regulations. The complaint contended that Florida's formula was illegal because it failed to target funds specifically to low-income minority elderly and that factors in the formula discriminated against elderly minorities.

Florida's formula included three factors—the number of persons in each service area who were (1) 60 years old and older below the poverty level, (2) 65 years old and older living alone, and (3) 75 years old and older. The state intended for these factors to result in the distribution of funds on the basis of economic need, social isolation, and frailty, respectively. In its December 1987 decision, the court found that none of Florida's factors targeted low-income minorities. The court also found that the second and third factors did not correlate with social or economic need and were discriminatory under Title VI of the Civil Rights Act of 1964.

The court held that the Florida formula did not meet the requirements of the Older Americans Act, as amended, and its regulations, that it target the elderly population in the greatest economic or social need and "give particular attention" to low-income minorities. The court ordered

[5]No. 87-1233 slip op. (S.D. Fla., Dec. 11, 1987).

Florida to adopt a new formula incorporating a minority factor that adequately addresses the mandate to give "particular attention" to low-income minorities and eliminating the two factors that were found to discriminate against minorities.

An AOA official said that the agency has not taken the position that the Meek v. Martinez decision applies to other states. However, effective November 21, 1989, AOA issued a program instruction to state agencies in which it discussed an increased commitment to target services, especially to low-income minorities. AOA indicated that because of recent legal developments, states may need to change their formulas, and it initiated a review of all state formulas.

Methodology

To respond to your request, we reviewed the Older Americans Act and its implementing regulations—focusing on Title III program requirements and responsibilities; reports and statistics on services provided through Title III programs; and court documents in the Meek v. Martinez case. We met with the Acting Commissioner (now Commissioner) and other AOA officials to discuss the federal government's role in providing services to the elderly, distributing Title III grant funds to the states, assuring that the needs of minorities are met, and approving funding formulas.

Forty-five states use intrastate funding formulas[6] to distribute Title III funds.[7] We analyzed these formulas to identify the factors used to distribute funds and the number of formulas that contain specific minority factors and factors that were found to be discriminatory in Meek v. Martinez. We developed an interview guide to (1) verify our categorization of the factors, (2) discuss each state's formula and revisions to it, and (3) determine how states without formulas distribute funds. Using this guide, we conducted telephone interviews with officials in the agency on aging in each of the 50 states and the District of Columbia.

Our work was done from January to October 1989 in accordance with generally accepted government auditing standards.

[6]The 45 states include 3 single-service-area states—Alaska, Nevada, and New Hampshire—that use formulas even though they are not required to do so. We did not review distribution methods in the eight territories.

[7]Five single-service-area states—Delaware, North Dakota, Rhode Island, South Dakota, and Wyoming—and the District of Columbia do not use an intrastate funding formula to distribute Title III funds. They use different methods, including directly awarding grants to service providers.

Most Formulas Address Minorities, but Many Contain a Factor Found to Discriminate

The 45 formulas used from one to nine factors to distribute Title III funds.[8] While there are differences in the factors contained in formulas, there are also similarities. For example, 44 formulas have one or more economic need factors, 41 contain a factor to direct funds to where persons 60 years old and older are located, and 38 include one or more minority factors. Seven of the 38 contain a specific factor addressing low-income minorities. Twenty formulas contain one of the factors that was found to discriminate in Meek v. Martinez—persons 75 years old and older. Eight use a factor similar to the other factor found to discriminate—persons 65 years old and older living alone. Since the beginning of 1986, 18 states have revised formulas to, among other things, direct funds to categories of individuals who are to receive preference for services.

Most Formulas Contain Economic and Social Need Factors

Forty-four of 45 state formulas contain one or more economic need factors—which focus primarily on persons 60 years old and older who are at or below the poverty level. Appendix I shows the various economic need factors found in funding formulas. Most state formulas also contain social and other factors to direct funds to categories of elderly individuals. Forty-one of 45 formulas contain at least one factor that allocates funds according to the distribution of the 60 year old and older population, similar to the way AOA distributes federal funds to the states.[9] Populations targeted as being in greatest social need include persons who are 75 years old and older, are living alone, or are minorities. Appendix II shows the various social and other factors found in funding formulas.

Most Formulas Have Minority Factors

Of the 45 state formulas, 38 contain a social need factor to direct Title III funds to minorities.[10] The other seven states had different rationales for not including a minority factor. For example, state officials reasoned that: (1) by directing funds to elderly persons at or below the poverty level, minorities are automatically included; (2) a separate factor is not needed because high minority participation rates already exist in Title III programs; (3) the number of minorities in the state is too small to

[8] Not all Title III funds are distributed through formulas. For example, one state divides half of its Title III allocation equally among five area agencies and distributes the remainder through a formula containing five factors.

[9] In addition, one state's formula addresses persons 60 to 74 years old.

[10] The seven states without a specific minority factor in the formula are Louisiana, Maryland, Mississippi, New Hampshire, Pennsylvania, South Carolina, and Vermont.

warrant a factor; and (4) services are to be targeted to minorities at the local level and area agencies must develop minority targeting objectives.

Under AOA's regulations, states are to pay "particular attention" to low-income minorities when developing formulas. The regulations do not explain how states are to do this. An AOA official said that states can do this with one factor or a combination of factors in the formula. All of the 38 states with a minority factor also have an economic need factor in the formula. Seven of the 38, including Florida (which added the factor because of the Meek v. Martinez case), have specific factors addressing low-income minorities, in addition to a more general economic need factor. As shown in appendix III, 31 formulas target funds to minorities who are 60 or 65 years old and older, 5 target to low-income minorities who are 60 years old and older, and 2 have factors addressing minorities in general as well as low-income minorities.

Twenty States Use a Factor Found to Discriminate by a U.S. District Court

Twenty states use one of the specific factors found to be discriminatory,[11] and eight use a factor that is similar to one the court found to be discriminatory. In Meek v. Martinez, the court found that the factor in Florida's formula directing funds to service areas where persons 75 years old and older were located—the frailty factor—discriminated against minorities. The court pointed out that minority groups have a shorter life expectancy than nonminorities, which means that they make up a smaller percentage of the over 75 elderly population than they do of the elderly over 60 years of age. In addition, experts testified that funds should not be distributed based on frailty because 77 percent of persons who are 75 years old and older are not frail by gerontological standards. They testified that disability was the relevant concept and evidence showed that minorities experience chronic disability at an earlier age. Because of this, the 75 year old and older factor excluded minorities who suffered disabilities before age 75, and included many nonminorities who suffered no disability and, therefore, was found by the court to be discriminatory. Twenty states distribute Title III funds using this factor.[12] In addition, one state (Nevada) directs funds using a factor focusing on persons 80 years old and older.

[11]This is not necessarily an indication that any of these states' formulas would be found invalid even in the district where this district court is located. The validity of a formula depends upon the effect of the formula as a whole. Further, this decision is not binding in other districts.

[12]Arizona, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Utah, Washington, and West Virginia.

The court in Meek v. Martinez also found that persons 65 years old and older living alone were not necessarily socially isolated. Many older persons who live alone have higher incomes than those living with families. Living alone has no independent significance as an indicator of loneliness or social isolation, the court stated, and must be analyzed along with other factors, such as economic status, availability of a support group, whether the decision to live alone was voluntary, and cultural patterns. In addition, the court found that minority elderly lived more frequently with members of their family than nonminorities. The court, therefore, ruled that this factor in Florida's formula discriminated against minorities.

Eight states distribute funds using a factor focusing on persons living alone. Formulas of seven states—Alabama, California, Idaho, Illinois, Massachusetts, Ohio, and Washington—direct funds to persons 60 years old and older living alone, while Wisconsin's formula directs funds to persons 75 years old and older living alone.

States Have Been Active in Revising Funding Formulas

Thirty-six states have revised their original Title III funding formulas. Eighteen of the states with revised formulas made changes that became effective after 1985.[13] The changes in eight of these states became effective in 1989.

States changed the formulas for various reasons, but primarily to attempt to address changes to the act and regulations. Fifteen changed the formulas to give preference to required categories of individuals, while officials in four states said the formulas were revised because of Meek v. Martinez. Although few states changed their funding formulas because of Meek v. Martinez, all but three of the officials we spoke with were aware of the case.

No Federal Approval of Funding Formulas

No federal agency approves funding formulas. Section 305 of the act requires the state agency to submit its formula to the Commissioner of AOA for review and comment. The implementing regulations provide more guidance. The regulations require the state agency to review and update the formula as often as it submits its state plan for approval. Although the regulations require the state agency to submit the formula to AOA for review and comment, they specify that the formula be submitted separately from the plan.

[13]Includes one state that estimates the changes will become effective in July 1990.

Officials in 44 of the 45 states with formulas told us they submit the formulas to AOA for review and comment.[14] The Acting Commissioner (now Commissioner) said that AOA follows a standardized guide in reviewing formulas to determine whether they meet the act's requirements.

Although AOA suggests changes to state funding formulas, the states are not required to make such changes. Fourteen state officials told us that when providing comments, AOA requested or encouraged that they consider changing the formula. For example, one official said AOA suggested that the state review the formula as a result of the Meek v. Martinez case, while another said AOA strongly encouraged the state to change formula factors. Both of these states revised their formulas in 1989 by, among other things, adding a minority factor. However, although AOA has encouraged another state to consider adding a minority factor, a state official told us the state did not plan to do so.

With the issuance of the program instruction in November 1989 (See p. 5.), AOA initiated a review of all state formulas to determine whether funds are targeted for services to low-income minorities. That review will result in comments or suggestions to the states, not the approval or disapproval of their formulas.

Although AOA approves the service plan developed by the state agency, it does not consider the funding formula to be part of the plan and, therefore, does not approve the formula. AOA believes that because the act discusses the formula in section 305 (42 U.S.C. 3025)—which addresses state agency duties—rather than in section 307 (42 U.S.C. 3027)—which deals with the approval by AOA of state plans—the act does not authorize AOA to approve intrastate funding formulas. AOA's position is that the statutory language authorizing it to "review and comment" on formulas prohibits it, by implication, from disapproving formulas.

We believe AOA's authority to "review and comment" on formulas does not preclude it from disapproving formulas that fail to comply with its guidelines. A condition of grant eligibility is that a state must have a funding formula that conforms to AOA's guidelines. An agency has authority to enforce grant conditions. Since a funding formula that complies with the guidelines is a grant condition, it follows that the agency has authority to enforce them.

[14]One state did not provide this information.

We believe the act gives AOA two chances to consider the formula. First, AOA can review and comment on the formula as it is being developed by the state agency. This puts the state on notice of potential problems, although AOA lacks the authority to prevent the state from adopting the formula. Second, once the state has adopted the formula, AOA can determine whether it meets the agency's guidelines and, if it does not, can initiate the procedure to declare the state ineligible to receive funds.

Although we disagree with AOA's position, we recognize that the law leaves room for different interpretations. The act does not clearly state that formulas are to be included as part of the plan or are to be submitted to AOA for approval; it states only that AOA must "review and comment" on them. This language arguably limits, by implication, AOA's authority. Without clearer statutory authority, and in view of its current position that it lacks authority, AOA might be in a vulnerable legal position if it disapproved formulas and withheld funds from the states.

Conclusions

We believe AOA has the authority to disapprove funding formulas that do not comply with its guidelines. Because AOA does not believe it has the authority to approve or disapprove formulas, states distribute Title III funds according to formulas that receive no federal approval. In Meek v. Martinez, a U.S. district court determined that Florida was distributing federal funds through its formula in a manner that discriminated against minorities. We recognize that the Meek v. Martinez decision is not applicable to other states; however, other state formulas that contain the same, similar, or other untested factors may also be distributing funds contrary to the intent of the act and its regulations.

Matter for Consideration

If the Congress wants AOA to (1) approve or disapprove the factors and weights contained in intrastate funding formulas to better ensure that each state's formula meets the intent of the act and AOA regulations and (2) withhold funds for disapproved formulas, it should consider amending Title III of the Older Americans Act to clarify this intent.

As agreed with your offices, we did not request written comments from AOA, but we discussed the matters in this report with AOA officials and incorporated their comments where appropriate. Unless its contents are announced earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to interested parties and will make copies available to others on request.

Please call me on (202) 275-1655 if you or your staffs have any questions about this report. Other major contributors are included in appendix IV.

Linda G. Morra

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Contents

Abbreviation

AOA Administration on Aging

Economic Need Factors Found in Intrastate Funding Formulas

Factor[a]	Number of states
Persons 60 years old and older who are	
At or below the poverty level	14
Below the poverty level	11
Low income	6
In poverty	4
Below 125 percent of poverty	2
At or below 125 percent of poverty	1
At the poverty level	1
Poor	1
Persons 65 years old and older who are	
Receiving Supplemental Security Income/ State Supplementary Payment	1
Poor	1
Persons 60 to 74 years old who are In poverty Persons 75 years old and older who are In poverty	1[b]
Persons 60 to 74 years old who are At or below 125 percent of poverty Persons 75 years old and older who are At or below 125 percent of poverty	1[c]

[a]Seven states also include one or more low-income minority factors in their intrastate funding formulas.

[b]One state has two economic need factors in its formula: (1) persons 60 to 74 years old—in poverty and (2) persons 75 years old and older—in poverty.

[c]One state has two economic need factors in its formula: (1) persons 60 to 74 years old—at or below 125 percent of poverty and (2) persons 75 years old and older—at or below 125 percent of poverty.

Social and Other Factors Found in Intrastate Funding Formulas

Factor	Number of states
Persons 60 years old and older	41
Persons 60 years old and older who are	
Minority	29[a]
Low-income minority	3[a]
Minority at or below poverty level	2
Minority up to 125 percent of poverty level	1
Living in rural areas	11
Living alone	7
Limited in their English-speaking ability	2
Experiencing moderate and severe functional limitations	1
In greatest social need	1[b]
Living in counties lying outside Standard Metropolitan Statistical Areas	1
Residents of Indian reservations	1[c]
Persons 60 to 74 years old	1
Persons 60 to 74 years old who are	
Minority	1[c]
Minority poverty	1[c]
Persons 65 years old and older who are	
Minority	3
Experiencing two or more functional limitations of personal care activities	1[d]
Transportation disadvantaged	1
Living in rural areas	1
Persons 75 years old and older	20
Persons 75 years old and older who are	
Minority	1[c]
Minority poverty	1[c]
Living alone	1
Living alone, at or below 100 percent of poverty level	1
Persons 80 years old and older	1
Square miles in each planning and service area	6
Basic allocation	3
Ruralness at the county level	1
Inverse population density in each planning and service area	1[e]
Rate of unemployment at the county level	1
Indicators of the relative cost of doing business among different areas of the state due to higher prices for goods and services	1

[a]One state includes both a minority and a low-income minority factor in its formula.

[b]Includes individuals requiring assistance with personal care and mobility plus non-English-speaking persons who might have greater difficulty in obtaining services.

[c]One state has five minority factors in its formula: (1) persons 60 years old and older—residents of Indian reservations; (2) persons 60 to 74 years old—minority; (3) persons 60 to 74 years old—minority poverty; (4) persons 75 years old and older—minority; and (5) persons 75 years old and older—minority poverty.

[d]Reflects those in the population with two or more deficits in activities of daily living.

[e]One state uses an inverse population density ranking to provide a relationship of geographic size and population density to the sums needed to provide services equitably to all older individuals residing in the planning and service areas.

Minority Factors Found in Intrastate Funding Formulas

Minority factors	Number of states
Persons 60 years old and older who are	
Minority	28
Persons 65 years old and older who are	
Minority	3
Total	**31**
Low-income minority factors	
Persons 60 years old and older who are	
Low-income minority	2
Minority at or below poverty level	2
Minority up to 125 percent of poverty level	1
Total	**5**
Both minority and low-income minority factors	
Persons 60 years old and older who are Minority Low-income minority	1[a]
Persons 60 years old and older who are Residents of Indian reservations Persons 60 to 74 years old who are Minority Minority poverty Persons 75 years old and older who are Minority Minority poverty	1[b]
Total	**2**

[a]One state includes both a minority and a low-income minority factor in its formula.

[b]One state has five minority factors in its formula: (1) persons 60 years old and older—residents of Indian reservations; (2) persons 60 to 74 years old—minority; (3) persons 60 to 74 years old—minority poverty; (4) persons 75 years old and older—minority; and (5) persons 75 years old and older—minority poverty.

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