

Shirley Krohn
California Senior Legislature – Senior Assembly Member
Testimony for AoA OAA Reauthorization
March 3, 2010
San Francisco, CA

You chose “Nursing Homes” as a topic area. Please describe specific recommendations regarding this topic. Please limit your description to 3000 characters:

Section 1321.51(a) states that “no information about an older person, or obtained from an older person...is disclosed by the provider or agency in a form that identifies the person without the **informed consent** of the person or of his or her legal representative.” Every year thousands of elderly persons are abused and/or neglected in long term care facilities. In very rare instances, these cases are investigated, and in some cases fines levied against the facility. But the instances of these crimes continue to escalate without **any** investigation or prosecution.

Please explain your rationale for the suggested change(s).
Please limit your description to 3000 characters:

Individuals who must be placed in a long term care facility deserve to be treated with dignity and respect. They are, in large part, frail and unable to make decisions on their own behalf. They are often in fear of retaliation by facility staff, family members, caregivers and/or others if they do give consent. It is not uncommon for a family member who is the abuser to physiologically blackmail the elder by threatening to keep the grandchildren/great-grandchildren from seeing them. Additionally, they may not have the cognitive ability to make these decisions and have to depend on others who may, in fact, be the perpetrators of these crimes. Section 1321.41(a) of the OAA should be amended to give the Ombudsman more flexibility in investigating and reporting suspected abuse without having to obtain informed consent of the person being abused. The Act states “...unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies...” There should be an additional statement that adds something like “...or in cases of immediate danger to the older persons physical, mental, or financial well being.” In most states, the Ombudsman is a mandated reporter and yet they are unable to report because they were not able to get consent from the victim. All other mandated reporters need only suspect abuse is occurring and can report to law enforcement and/or Adult Protective Services to investigate the suspicion. This enables the circumstance to be evaluated and a judgment made that could, in most cases save the life of the victim and convict the abuser who under current law, may be getting away with murder.

If you have any additional comments or concerns, please provide it here:

In April 2009 I placed a message on the National Center on Elder Abuse listserve seeking to find out if there are others who find the Older Americans Act Section

1321.51(a) an outrage. The response was overwhelming from all over the country. Ombudsmen are sickened by the brutal "snake pit" situations they witness and can't do anything about for many reasons. Let's stop this insane practice and give the Ombudsman the power to report without consent in order to protect the person who is being abused. There is no money associated with this change....just language.