

**California Elder Abuse Statewide Summit
Background Paper¹**

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¹ The issues and best practices described in this paper were identified by members of the CEJW Steering Committee and members of the California Elder Abuse Statewide Summit planning groups. For a complete list of contributors, see Appendix 1.

1. INTRODUCTION

In preparation for the California Elder Abuse Statewide Summit, the California Elder Justice Workgroup has conducted a series of meetings and listening sessions to gather ideas, discuss promising practices, and suggest possible solutions and opportunities for future collaboration. Summit delegates will participate in one of four small groups to discuss critical areas of need within the State of California:

- California's Reporting and Response System;
- Improving the Legal System's Response to Elder Abuse and Neglect;
- Safeguarding the Safety Net; and
- Financial Abuse and Exploitation.

The issues and promising practices identified in this report are not exhaustive. Rather, they were chosen to highlight key areas of concern and are provided as a starting point for discussion. During the small group sessions at the Summit, delegates will identify additional needs for services, policy, training, and research. Additionally, because the Summit has been designated as an Older Americans Act (OAA) Reauthorization event, and in light of the recent passage of the federal Elder Justice Act (EJA), groups will further recommend ways that the federal government can improve its response to elder mistreatment and identify opportunities for affecting change at the national level.

Each small group will be equipped with two facilitators and a note taker. Group members will also have opportunities to share their findings with the larger group to solicit additional input. Recommendations made by the small groups will be incorporated into a State Blueprint that will propose promising strategies for improving California's response to abuse. The Blueprint will be disseminated to service providers, program developers, and policy makers within and beyond California.

2. CALIFORNIA'S REPORTING AND RESPONSE SYSTEM

Under California's elder and dependent adult abuse reporting laws, certain individuals are legally mandated to report known or suspected instances of elder abuse and neglect.

Individuals who are mandated to report known or suspected instances of elder abuse include physicians and medical professionals; clergy; regulatory agency staff; and all employees of health care facilities, such as hospitals, skilled nursing facilities, adult day care centers and residential care facilities; and individual who assumes responsibility for the care or custody of an older adult. Agencies that are charged with investigating and responding to reports include Adult Protective Services (APS), local law enforcement, and local long-term care ombudsman programs (Ombudsmen). In addition, the State licensing agencies – the California Department of Public Health and the Department of Social Services (CDSS) – respectively investigate alleged abuse complaints in skilled nursing facilities and residential care facilities for the elderly to determine if there are regulatory violations. The Department of Justice's Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) also conducts investigations of abuse in long-term care (LTC) facilities.

The limitations and problems associated with California's elder abuse reporting laws have been the topic of frequent discussion and debate. They include widespread confusion over reporting mandates, regulations, and jurisdiction that have in turn led to disparities in how cases are handled across the state.

A report by the California Senate Office of Oversight and Outcomes, *California's Elder Abuse Investigators: Ombudsmen Shackled by Conflicting Laws and Duties* (Hill, 2009) reveals troubling problems in the state's response to abuse in long-term care facilities and recommends changes to the state's reporting system. The report, as well as the recent passage of the federal Elder Justice Act (EJA), provides an opportunity to review California's reporting laws.

Issues and Needs

- Statutory definitions in the reporting codes have been interpreted differently across the state leading to disparities in how reports are evaluated and responded to. For example,

there is a lack of clarity about what constitutes self-neglect (e.g. are hoarding and homelessness considered self-neglect?) or what level of disability qualifies an individual as a dependent adult under the reporting law (W&IC 15610.23).

- Those agencies that respond need clear guidelines and standards to ensure a uniform response, achieve parity, and make certain that Adult Protective Service (APS) programs are not exposing themselves to undue liability, particularly in light of recent retrenchments that have resulted in reduced services. Specifically, they need:
 - Interpretation of reporting laws, definitions, rules and regulations, jurisdiction, and protection for reporters and whistleblowers; and
 - Criteria on which to base decisions about whether potential clients lack capacity to provide self-care, manage their finances, or consent to (or refuse) services.
- There is a lack of clarity and, in some cases, conflicting language in the law with respect to what entity is charged with investigating allegations of abuse in some situations. Examples include uncertainty about who has jurisdiction when outsiders (family members, professionals) financially exploit residents in long-term care facilities.
- California's definitions of elder abuse and its response to reporting differ from most other states in several ways. Whereas most other states' reporting laws only offer special protection to those who are deemed vulnerable as a result of physical, mental, psychological, or cognitive impairments, California's law covers all Californians over the age of 65 who suffer mistreatment. In addition, anyone, regardless of age, who resides, even temporarily, in a long-term care facility is covered. California's definition has led to allegations of ageism or paternalism. With the passage of the EJA, there may be a need to re-evaluate California's definitions to comply with federal guidelines.
- Ombudsmen, who are in key positions to observe abuse, are prohibited by federal mandate from reporting unless they have the consent of the residents involved or their legal representatives.
- Failure of entities involved in reporting and response to coordinate their efforts, including:
 - Limited ability of APS, police, Ombudsmen, and mental health workers to exchange information on clients and case disposition;
 - Lack of coordination among public and private agencies involved in handling

- financial exploitation cases;
- The lack of clarity about the type of information about case outcomes that can be shared by APS with referents. Mandated reporters are often dissatisfied with the feedback they receive after making reports and believe that the lack of feedback interferes with safety planning for victims; and
 - Better coordination is needed with medical examiners and coroners. Autopsies, which may reveal individual incidents and patterns of abuse and neglect, are rarely performed.
- Some mandated reporters are not reporting.
 - Although any mandated reporter who fails to report elder abuse may be guilty of a crime, the reporting law is rarely enforced.
 - Certain groups that could potentially play a lead role in preventing abuse are not covered under the law. They include Federal employees (postal workers, personnel from federal law enforcement and regulatory agencies, Social Security Administration employees, and providers of federally subsidized housing). Other groups that have been proposed for inclusion are notaries and insurance agents.
 - Many communities have created multidisciplinary teams and other forums to coordinate their response. Professionals in some communities serve on multiple teams including Financial Abuse Specialist Teams (FASTs), death review teams, and forensics teams. New models are needed to conserve workers' time. Riverside County's "Care" Program," which reviews multiple forms of abuse, may serve as an example. Other models that have been proposed include regional teams that serve multiple communities.
 - Training is needed for multiple groups. Training programs should:
 - Focus on what happens when reports are made;
 - Require continuing education units and apply toward licensing requirements (LCSWs, MFT, paramedics, etc.); and
 - Infuse elder abuse content into existing courses for professionals and paraprofessionals.
 - Specific groups need customized training:
 - Victim advocates. One approach that has been recommended is to arrange for advocates to talk to law enforcement about elder abuse during ride-alongs; and

- Judges, court personnel, and other gatekeepers need training in mandatory reporting.
- Currently, there is no standardized training for elder abuse workers within the state. The National APS Training Partnership (a collaboration of the National APS Association, the Academy for Professional Excellence, The Bay Area Training Academy, and the Center of Excellence in Elder Abuse) is developing curricula in 23 “core competency” areas that have been identified by national APS leaders. Additional standardized curricula for both new and advanced APS workers, supervisors, and managers are needed. APS Training Academies, housed within Regional Training Academies, may serve as a model. This approach is used to provide training to child protection workers (Child Welfare Training Academies).
- Cross-disciplinary training is needed that includes content on aging, gerontology, mental health, and protective services.

Older adults require a multidisciplinary/interdisciplinary approach to assessment and treatment and the involvement of multiple systems and care providers (including family/informal caregivers) to promote health and wellness. Therefore, service models need to be developed and the workforce needs to be trained to address these issues across systems.

From Mental Health & Aging Workforce Education/Training: Recommendations to Promote Planning, Funding and Implementation, by the Workforce Education/Training Work Group of the California Mental Health Directors Association (CMHDA, 2009)

- Clearinghouses and libraries are needed to make training resources widely available across the state. Both general information on elder abuse and information targeting specific mandated reporters (doctors, paramedics, caregivers, etc) are needed to enable trainers to customize presentations. Specific materials that are needed are Power Point slides, exercises, quizzes, handouts, and reading material. Currently, some repositories of resources exist or are being planned. For example, the UCI Center of Excellence plans to develop a library of research to inform practice and curriculum development). Those resources that are currently available are not well coordinated.
- Improved data collection is needed. In particular, cases reported to law enforcement are under-counted because elder abuse may be charged as various crimes. A check-off for elder abuse on police reporting forms, similar to that used to identify domestic violence, has been suggested.

- Mental health services are needed to support victims after abuse has occurred. There are currently no services available for victims who do not meet criteria defined by the Diagnostic and Statistical Manual. A mental health component should also be part of a multidisciplinary team response (e.g. individual and group therapy).
- Multidisciplinary teams need guidelines on confidentiality and the participation of private sector professionals on teams, including private elder law attorneys, bank personnel, and mediators.
- Research is needed to:
 - Identify model laws and promising practices with respect to reporting and response.
 - Assess the impact of various definitions of elder abuse on caseload size and composition, service needs, and costs;
 - Provide guidance to APS programs in such areas as risk assessment.

Promising Practices

- **Structured Decision Making[®] (SDM) system.** Under a grant from the National Institute of Justice, the National Council on Crime and Delinquency (NCCD) has developed an “actuarial risk assessment” tool to assist APS workers perform intakes, investigations, and case planning. NCCD is currently working with APS in Riverside County and has been in discussions with the Protective Services Operations Committee (PSOC) of the County Welfare Directors Association (CWDA) about a state tool for California. The goal of this research-based approach is increased consistency and accuracy when assessing vulnerable adults at critical decision points during APS involvement. The tool covers risk assessments in long-term care facilities as well as community settings (NCCD, 2010).
- **Vacaville’s FIRST Team.** A collaboration between local law enforcement and social services, in which a police officer and social worker respond together to calls concerning elders.

Questions for Discussion

- **AGENCY/COUNTY LEVEL:**
 - What can be done to address this issue within my agency or region?
 - What resources do we currently have at our disposal in order to affect change?
 - How can we better coordinate and disseminate what we are already doing?
- **STATEWIDE LEVEL:**
 - What can we do on a statewide level to address this issue?
 - What resources do we currently have at our disposal in order to affect change?
 - How can we better coordinate and disseminate what we are already doing?
- **FEDERAL RECOMMENDATIONS:**
 - What recommendations can be made to the federal level to address this issue?
 - What resources do we currently have at our disposal in order to affect change?
 - How can we better coordinate and disseminate what we are already doing?
- What additional **RESEARCH** is needed to guide reporting and responding to elder abuse?
- What additional **PUBLIC POLICY** is needed to guide reporting and responding to elder abuse?

3. IMPROVING THE JUSTICE SYSTEM’S RESPONSE TO ELDER ABUSE AND NEGLECT

Elder abuse cases may be heard in multiple courts, including criminal, probate, and family law. Increasingly, those working within the justice system have called for greater coordination and communication among these courts in the handling of cases involving elders, as evidenced by widespread interest in “elder courts.”

Issues and Needs

Issues that have been raised regarding the various branches of the justice system, as well as the need for coordination, are described below.

The Criminal Justice System’s Response

Significant progress has been made in improving the criminal justice system’s response to elder abuse in California. Statutory and procedural innovations include specialized elder abuse units within police departments and prosecutors’ offices; elder courts; a family justice center that facilitates coordination between the civil and criminal justice systems; coordinating councils and multidisciplinary teams that promote exchange between law enforcement professionals and other networks; and the use of vertical prosecution (a single attorney handles a case from the beginning to the end of a prosecution). Law enforcement agencies and prosecutors are gaining expertise in working with victims who have disabilities and those who are reluctant or ambivalent about participating in the criminal justice process. They are recognizing that the misuse of civil instruments may also be criminal and are achieving a greater understanding of the psychological dynamics between victims and perpetrators and how they can be addressed.

Despite this progress, problems persist. The following issues related to the criminal justice system’s response have been identified:

- **Under-reporting.** Many cases of abuse are not being reported to law enforcement. This is particularly true of certain crimes including financial crimes and crimes occurring in long-term care facilities.
- **Police, prosecutors, and judges lack training.** Although headway has been made, critical gaps continue to exist. This is particularly true with respect to training about

financial crimes, criminal neglect, and crimes in institutional settings. Owing to the continual emergence of new information about abuse, as well as high turnover within departments, the need for training is ongoing.

- **Lack of forensics expertise and sufficient resources for developing cases.** There is a critical need for forensics expertise and information, and funding to provide the expert support that is essential to successful prosecution. Specific areas of need include geriatric psychologists and psychiatrists to assess capacity and vulnerability to undue influence; differentiating accidental from intentional injuries, document examiners to assess questioned documents; accountants who can assist in establishing spending patterns, transactions, financial trails, and net worth; medical experts to review and interpret medical records; and experts who can help determine whether professionals have operated at reasonable levels of competency.
- **Failure of local law enforcement agencies to accept and/or investigate reports.** Despite progress, many cases of abuse that are reported to law enforcement agencies are not investigated. Reasons that have been cited include lack of resources and training. Some cases of financial abuse may also be perceived as civil matters.
- **Local law enforcement personnel need training in how to make reports of financial abuse and exploitation to federal authorities and databases.**
- **Elders who are violent as a result of dementia-related symptoms are increasingly getting entangled with the criminal justice system.** When police are summoned to domestic disturbances, they may not realize that violent partners have dementias, or they may make arrests anyway to comply with domestic violence laws. As a result, perpetrators with dementias may be jailed for hours or even days. In addition, mental diseases are often progressive, and determining when people are no longer culpable for their actions may be difficult. People with early-stage or mild dementias may still understand the nature of their actions and be capable of cooperating with their attorneys in preparing their defenses. The point at which they can no longer do so, however, may be difficult to determine.

The Probate Courts' Response

Probate courts play a critical role in protecting elders who are deemed incapable of protecting their own interests. In recent years, the system has been under sharp criticism by the media, consumer groups, and other advocates. In response to a media expose on abuses in the system, Chief Justice Ronald George in 2006 appointed a statewide panel, the Judicial Council's Probate Conservatorship Task Force, to recommend reform (Judicial Council Probate Conservatorship Task Force, 2006). The group made 85 recommendations, some of which were implemented as part of the Omnibus Conservatorship and Guardianship Reform Act of 2006. Changes included training requirements for private professionals, Public Guardians, and court investigators; mandating investigations in temporary conservatorships; and requiring 6-month accountings. However, the \$17 million that was allocated to implement the act has not been forthcoming. Due to the funding situation, no other legislation has been introduced in regards to the Task Force Report.

The following issues related to probate courts' response have been identified:

- Key provisions contained in Omnibus Conservatorship Act of 2006 and other statutes related to conservatorship and alternatives to conservatorship have not been implemented as a result of lack of funding.
- Improved coordination and communication is needed among the multiple groups that are involved in conservatorship reform to ensure that all perspectives are heard.
- Improved coordination and communication among the Probate, LPS (LPS stands for Lanterman, Petris & Short, the three senators who passed California 's mental health conservatorship laws), and criminal justice systems.
- More conservators are needed, particularly for elders with limited assets. Many Public Guardians have long waiting lists.
- More alternatives to conservatorship are needed when less restrictive options would suffice to stop or prevent abuse. (e.g. limited or temporary conservatorship).
- Existing alternatives are not being used extensively or uniformly across the state (e.g. Probate Code §2952 is only being used in some counties).

- Perceived drawbacks of less restrictive alternatives:
 - Less restrictive alternatives may not offer adequate protection (e.g. powers of attorney).
 - Less restrictive alternatives are perceived as requiring more resources. Some Public Guardians routinely request general (as opposed to temporary) conservatorships to avoid having to file again if problems arise or if conservatees' situations change.
 - Less restrictive alternatives may engender greater risk and require more coordination and monitoring. The “safety net” needs to be more secure.
 - Concerns about liability if less restrictive alternatives fail to offer adequate protection.
 - There is a need to find a balance between granting conservatorship “early enough” to avoid problems without imposing unnecessary restrictions on conservatees' freedom and autonomy.
- Problems related to Public Guardians (PGs):
 - Limited capacity of Public Guardians to take all clients in need;
 - Lack of clarity about the Public Guardian's criteria for taking cases. In some counties, Public Guardians only accept cases when conservatees have a specified level of assets; and
 - Tensions between Public Guardians and APS about when conservatorship is warranted.
- Conservatorship forms are too complicated for families to fill out and need help in doing so.
- Problems in coordination among the LPS, Probate, and criminal justice systems, including:
 - Gaps and misunderstanding about the probate and LPS systems.
 - Problems when mentally ill adults become involved in the criminal justice systems (e.g. when mentally ill or substance abusing adults commit crimes and are unable to participate in plea negotiations, they may end up in locked psychiatric facilities for months, which public defenders see as worse than the short jail sentences they would otherwise receive).

- Problems related to capacity declarations include:
 - There is a persistent need for training to physicians in how to fill out capacity declarations; and
 - Some have suggested that capacity declarations need to be updated to reflect new research and heightened understanding of capacity and undue influence.
- In California, a conservator of the estate may be appointed for a person who is “substantially unable to manage his or her own financial resources or resist fraud or undue influence.” Undue influence, however, is not defined in relation to conservatorship.
- Probate Code §21350 prevents professionals and caregivers from inheriting unless they can prove that the assets weren’t obtained through fraud, menace, duress, or undue influence. It further creates a statutory presumption of fraud and undue influence that applies when a “dependent adult” makes a gift to that person’s “care custodian.” The statute has been criticized because it exempts families and raises questions about how “dependent adult” and “care custodian” are and should be defined.
- Research is needed on:
 - The benefits and limitations of less restrictive alternatives to conservatorship; and
 - What alternatives to conservatorships are currently in use and identify various impediments.

Issues related to Restraining Orders

- There has been confusion among advocates about the appropriate use of “elder and dependent adult abuse restraining orders.” These orders, which provide relief against violence, intimidation, and financial abuse are being used to varying degrees by OAA legal service providers across the state.

Promising Practices

- **Elder Courts.** Alameda County’s Elder Protection Court was established in 2002 featuring a separate calendar (in the late morning) for cases involving elders. A victim advocate arranges transportation to court hearings, makes referrals to community agencies, runs criminal background checks; and sets up telephone hearings for housebound or hospitalized elders who are unable to appear in court. Court clerks offer extra help to those filling out petitions for elder abuse protective orders, and those seeking orders do not have to wait the usual 24 hours to obtain a judge’s signature. Instead, clerks personally deliver requests to judges, who review them immediately. Several other courts have formed and the range of cases they handle has increased. Some have developed partnerships with public health, mental health programs, and community agencies.
- **Study of Undue Influence.** The San Francisco Probate Court recently completed a study on undue influence, funded by the Borchard Foundation Center on Law and Aging. The project included a review of undue influence laws in California and other states, a review of the legal and psychological literature on undue influence, and focus groups with APS social workers, Public Guardian staff, and probate attorneys. As part of the study, 25 conservatorship cases were reviewed in which undue influence had already been identified. Project staff found that no state has a definition of undue influence specific to conservatorship in their Probate Codes, but rather, all use definitions contained in other laws and case law. The study notes that there is a need for a definition of undue influence that includes situations in which elders are “subject to undue influence” and “unable to resist undue influence” and describes avenues for developing one. The study also provides recommendations for the creation of an assessment tool for community practitioners.
- **Advocates for Conserved Elders (ACE).** Developed by WISE & Healthy Aging and the Los Angeles Superior Court, Probate Division, ACE trains volunteers (primarily attorneys) to visit elders under conservatorship in long-term care facilities. The lawyers receive MCLE credit for taking the initial training course. Advocates collaborate with the Court’s Probate Investigations Office to help reduce or prevent abuse and neglect.

ACE volunteers report changes in condition to conservators and, in the event that the conservator is not fulfilling their responsibilities, report to the court.

- **Self-Help Conservatorship Clinics.** These clinics were established to assist families file for conservatorship. Bet Tzedek, a non-profit in Los Angeles, conducts multiple clinics, working closely with the Los Angeles Probate Court. Many seeking conservatorships are parents of adults with developmental disabilities who are turning 18. Although most assist with conservatorships of person only, Bet Tzedek handles a small number of conservatorships of estate.

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 - What resources do we currently have at our disposal in order to affect change?
 - How can we better coordinate and disseminate what we are already doing?
- What additional **RESEARCH** is needed to guide the Justice System's Response?
- What additional **PUBLIC POLICY** is needed to assist the Justice System's Response?

4. FINANCIAL ABUSE AND EXPLOITATION

Elder financial abuse includes a broad range of conduct, ranging from simple theft or forgery to the misuse of legal documents and complex scams.

Issues and Needs

New approaches to prevention and remediation are needed to address financial abuse and exploitation, including:

- The misuse of legal documents (e.g., getting an older person to sign a deed, will, or power of attorney through deception, coercion, or undue influence).
- Using elders' property or possessions without permission or promising lifelong care in exchange for money or property and not following through on promises.
- Forging an older person's signature.
- Using deception to gain victims' confidence (confidence crimes, or "cons").
- Using trickery, false pretences, or dishonest acts or statements for financial gain.
- "Sweetheart scams," in which perpetrators use deceptive romantic overtures to gain access to older peoples' assets.
- Investment fraud, identify theft, reverse mortgage and annuity fraud, and predatory lending.
- "Mass marketing" crimes in which perpetrators use technology to target and defraud many people, often from distant locations, including other countries. Included in this category are fraudulent telemarketing and "phishing," which is when perpetrators send e-mails that appear to be from reliable sources and ask people to divulge personal information, which is used for credit card fraud, identity theft, and Nigerian scams.
- Advance fee schemes are when victims are told that they have won sweepstakes or contests but have to pay "advances" on their supposed winnings to cover insurance, taxes, and other "fees." Victims may be convinced to make payments several times, sometimes losing hundreds of thousands of dollars.
- "Affinity frauds" involve con artists who are or claim to be members of the same ethnic, religious, career, professional, or civic group as their victims. Recent immigrants, minority communities, and religious groups have been particularly hard hit by affinity-based investment crimes.

- Tax Prospecting. Insurance agents and mortgage brokers go into business as tax preparers with the aim of selling clients annuities, reverse mortgages, or other financial products (preparing clients' taxes helps them establish trust and gives them access to financial information).
- Stranger Originated Life Insurance (STOLIs). Seniors are talked into applying for life insurance and given cash payments for doing so. Their policies are then sold to third party investors, who pay the premiums and collect the proceeds of the policy when the seniors die.
- Veteran's Aid and Attendance. Insurance agents promise to qualify seniors for a little known benefit called "Aid & Attendance" by selling them annuities to spend down assets. They frequently call themselves "volunteers" and have targeted senior centers and assisted living facilities for seminars and brochures.
- "Junk trusts." Paralegals and notaries offer to prepare living trusts at very low cost and give legal advice that results in poor estate plans.

Although new laws have been created to respond to specific forms of abuse, these piecemeal approaches fail to acknowledge predators' ingenuity and flexibility in adapting to new environments and circumstances. As a result of the collapse of the sub-prime market, for example, predators are seeking new avenues, including imprudent reverse mortgages and worthless or overvalued annuities. Those with expertise need to work together to identify new patterns, craft statutes that provide greater flexibility, and work with the various federal and international law enforcement and regulatory agencies that have jurisdiction.

Financial abuse and exploitations often capitalizes on victims' diminished mental capacity and vulnerability to undue influence. Effectively responding, therefore, requires an understanding of cognitive capacity and undue influence. Recent research suggests that cognitive deficits that heighten risk may be subtle and that vulnerability to financial abuse may begin earlier than previously believed.

Victims' service needs have not been adequately addressed (Deem, Nerenberg, &

Titus, 2007). The consequences of financial abuse and exploitation may be devastating. They include the loss of homes, life savings, pensions, and inheritances. Some victims have gone into debt, declared bankruptcy, had bank accounts frozen or closed so that they can no longer pay bills and conduct business, been pursued by collection agencies, been sued, or even charged criminally for unknowingly depositing and drawing on counterfeit checks. The long-term social effects include divorce, estrangement from families, dependence on others, withdrawal from daily life, isolation, and placement in long-term care facilities. The impact on victims' mental health may include depression, anger, guilt, anxiety, substance abuse, and suicide.

Despite the serious impact of financial abuse and exploitation, few services exist for its victims. Services needed by victims include legal assistance, help with creditors, and mental health services. Some have suggested that this inattention to victims' needs stems from stigma attached to certain crimes like mass marketing fraud in which victims are likely to be viewed as gullible, greedy, or complicit in their victimization.

We received a call from a 70-year-old victim of a Ponzi scheme. In his case, an arrest had been made. The case involved more than 50 victims. He had no idea where to turn. He'd been completely wiped out financially, and saw no way forward for himself or the other victims. They had no hope of recovering their losses. Such victims are in desperate need of financial counseling to help identify their remaining assets and reorganize their finances where they can. Often time is of the essence. But they have nowhere to turn. They also need mental health counseling to overcome the stress and the shame of falling victim to these scams. But it is not available.

From the testimony of Mary Lou Leary, Executive Director, National Center for Victims of Crime Before the Committee on the Judiciary United States Senate, April 28, 2009

Specific issues related to financial abuse and exploitation include the following:

- More precise instruments and experts trained in their use are needed to

measure/evaluate capacity for financial matters from the onset of vulnerability and the loss of executive functioning.

- Better assessments of capacity for financial matters and experts to do assessments.
- The current definition of financial elder abuse is too limited--it needs to include financial exploitation.
- Failure of local law enforcement, district attorneys, and APS in some communities to accept reports of “mass marketing” fraud.
- Confidentiality restrictions prevent APS, police, District Attorneys, referents, and private agencies from exchanging information on case disposition.
- Lack of systems to track perpetrators who commit serial crimes (e.g. fraudulent mortgage lenders).
- Public awareness campaigns that remove the stigma from victims and encourage them to ask for help. Public education is needed about financial scams.
- Stronger enforcement of mandated reporting and training for banking institutions.
- Need for services for victims, including:
 - Advocacy with creditors, help in straightening out financial affairs, and assistance in recovering restitution.
 - Mental health services, including suicide prevention. Special services are needed for “chronic victims.” Counseling for victims modeled after that used by domestic violence programs, which focuses on breaking the cycle of victimization, should be explored.
 - Legal services.
 - Preventative and restorative approaches including daily money management, family conferencing, and mediation.
 - Daily money management programs need guidance in how to manage risk and in knowing what to do when clients lose their capacity to consent to the service.
 - Many victims are not receiving restitution or compensation.
 - Agencies that administer funds for services to victims, including Victim of Crime Act (VOCA) and Mental Health Services Act (MHSA), need information to heighten awareness of the special need of elderly victims of financial crimes.

- A major challenge in developing policy around fraud is that scammers and unscrupulous sellers frequently change practices in response to new laws, regulations, and market forces.
- Policies are needed to prevent financial predators from gaining access to elders and their assets through agencies serving elders through better screening of workers and persons allowed to make presentations.
- Negative stereotypes of victims as gullible, greedy, or complicit in their victimization discourage victims from seeking help and responders from offering appropriate responses.
- Lack of clarity with respect to jurisdiction in some financial exploitation cases. Examples include situations of investment fraud, identity theft, or telemarketing fraud in which multiple state and federal law enforcement or investigatory agencies may have a role.
- Potentially promising practices are used in some communities and not others. For example, under California Probate Code §2952, specially trained peace officers can issue declarations to public guardians when there is cause to believe that crimes are being committed against incapacitated persons and they are in danger of losing their property. The declarations must be co-signed by supervisors of local APS units and presented to public guardians who can take immediate possession or control of the property stated in the declaration. While some counties make frequent use of the remedy to quickly safeguard assets, others do not.
- Training in financial abuse and exploitation is needed for:
 - Banking institutions;
 - Law enforcement (Training must begin with new recruits but updated to reflect new and changing needs). Specific areas of need include:
 - Complex financial scams and mass marketing;
 - Existing statutes (using Probate Code §2952, how and when elder abuse restraining orders can be used to prevent financial abuse, etc.);
 - Training in capacity and undue influence;
 - “Sweetheart scams”; and
 - Forensic research and expertise in financial abuse cases.

- Cost-benefit analyses are needed to demonstrate the value of preventing abuse in saving money and time (e.g. analyzing the cost of daily money management as an alternative to conservatorship). The value of adequate “up-front” expenditures as a way to reduce overall costs in the long run.
- Greater buy-in is needed from the police chiefs, city managers, and others in positions of power to affect change.
- “Firewall” policies are needed that are broad enough to apply to diverse situations. An example is SB 660 (Wolk), which addressed reverse mortgages by requiring sellers to exercise a “fiduciary duty” to put clients’ interest first and requires lenders to make determinations that reverse mortgages are “suitable” products for their customers.
- Research is needed in:
 - Techniques for working with “chronic victims,” those who are exploited repeatedly by the same or different persons yet fail to take steps to end their victimization.

Promising Practices

- **Financial Capacity Assessment Tool.** A team of doctors from the University of Alabama, Birmingham, developed a 25-minute test that physicians can use to determine the capacity of patients with cognitive impairments to handle financial affairs. The test examines eight areas of financial activity: basic monetary skills, conceptual knowledge, cash transactions, checkbook management, bank statement management, judgment, bill payment and knowledge of personal assets and/or estate arrangements. The test is designed to provide guidance to families and courts.
- **Daily Money Management.** A report by the Brookdale Center for Healthy Aging and Longevity of Hunter College in New York City that suggests that daily money management (DMM) may be a deterrent to nursing home placement and comparing the costs of DMM with those of placement (Sacks, 2009).
- **Predatory Lending Screening Tool for Aging Services Providers.** The Fair Lending Project for Seniors at the Council on Aging Silicon Valley has developed screening tools to identify victims of predatory lending that is used by MSSP case managers, Meals on Wheels volunteers, and other service providers. Elderly homeowners who have refinanced their homes in the last 3 years are asked if they have experienced problems,

including 1) payments they cannot afford, 2) the home was in foreclosure when the loan was made, 3) the loan documents were not in their language, 4) their income or assets were falsified, 5) a broker lied or pressured them, or 6) there was anything suspicious about the loan. Seniors who have experienced any of these problems are contacted and asked if they would like to meet with a counselor. The screening tools have been customized for different programs.

- **“Asset Investigator” Pilot Project.** The U.S. Attorney’s Office in San Francisco employed a special “asset investigator” as part of a pilot project to increase the recovery rates of court-ordered restitution and fines. The investigator worked alongside probation officials and U.S. attorneys who were investigating investment and telemarketing fraud to determine perpetrators’ ability to repay court-ordered restitution and fines imposed by the District Court. Similar programs in other states have employed insurance fraud investigators, retired Internal Revenue Service employees and other specialists to track funds.
- **Support Groups for Victims of Financial Abuse and Exploitation.** The San Francisco Institute on Aging conducted a support group for victims of a ponzi scheme.
- **Senior Center Guidelines.** San Francisco Attorney Steve Riess has developed model guidelines for senior centers that discourage predatory enterprises from using senior centers without burdening center administrators with extensive background investigations. The guidelines primarily involve reserving the right of the facility to video tape presentations.

Questions for Discussion

- **AGENCY/COUNTY LEVEL:**
 - What can be done to address this issue within my agency or region?
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 - How can we better coordinate and disseminate what we are already doing?
- **STATEWIDE LEVEL:**
 - What can we do on a statewide level to address this issue?
 - What resources do we currently have at our disposal in order to affect change?
 - How can we better coordinate and disseminate what we are already doing?
- **FEDERAL RECOMMENDATIONS:**
 - What recommendations can be made to the federal level to address this issue?
 - What resources do we currently have at our disposal in order to affect change?
 - How can we better coordinate and disseminate what we are already doing?
- What additional **RESEARCH** is needed to guide our response to financial elder abuse?
- What **PUBLIC POLICY** changes are necessary for addressing financial elder abuse?

5. SAFEGUARDING THE LONG TERM CARE SAFETY NET

The long-term care network, which is designed to preserve the freedom and autonomy of people with disabilities and avoid unnecessary institutionalization, includes such services as senior centers, attendant care, transportation, home delivered meals, services for caregivers, mental health services, adult day care centers, transportation, friendly visitors, and trustworthy long term care workers and facilities.

Professionals in the field of elder abuse prevention are increasingly recognizing the importance of a robust LTC network in reducing vulnerability to abuse and the important role that LTC providers can play in identifying abuse and high risk situations. The largest national prevalence study on abuse conducted to date found that low social support is a major risk factor for almost all types of abuse (Acierno, Hernandez-Tejada, Muzzy, & Steve, 2009).

“If we can keep older adults hooked in on a daily basis with their community they are less likely to be mistreated, less likely to be depressed, and less likely to suffer from the effects of severe stress. I think a lot of the problem boils to transportation.”

Ron Acierno, Ph.D. Principal Investigator, National Elder Mistreatment study

Issues and Needs

According to members of a group convened to plan the summit, long-term care consumers are at heightened risk of abuse and neglect when:

- The supply of long-term care services is inadequate or poorly coordinated;
- Plans for transitioning people from acute or institutional settings are inadequate. This includes moving persons from skilled nursing facilities (e.g. under Olmstead Act programs) and discharging frail patients from acute care facilities;
- Groups lack equal access to long-term care services as a result of language barriers, cultural barriers, and inequalities based on gender, race, sexual orientation;

- The workforce of long-term care workers is inadequate and workers aren't adequately trained and screened;
- Individuals who lack capacity to make informed decision lack trustworthy family members or surrogates to act in their behalf (sometimes referred to as the "unbefriended" [Karp & Wood, 2003] or "unrepresented"); and
- Caregivers lack the support and services they need.

Recent and proposed cutbacks threaten to devastate California's long-term care network. A recently released report by the UCLA Center for Health Policy Research suggests that the cuts in community-based services available to low-income seniors and low-income Californians of all ages with disabilities in the proposed changes to California's 2010-2011 budget "would reduce support for home care in the state to levels not seen for almost 30 years" (Wallace et. al, 2010).

Other developments in the field of long term care have created additional challenges. As a result of the Olmstead Act², increasingly frail elders are being transferred or diverted from long-term care institutions into the community. In the last decade there has also been a shifting emphasis within the field of long-term care to ensure that elders have greater choice in the long-term care "marketplace." One result of the latter is that seniors are increasingly being permitted to use public benefits to hire unlicensed and unsupervised caregivers, including family members. An unintended consequence of this trend is that it makes it difficult if not impossible for advocates to terminate abusive employees when elderly employers are unable or unwilling to do so themselves. The extreme vulnerability of this population, the extended periods of unsupervised time clients typically spend alone with workers, and recent revelations that a significant number of personal workers have been

² A Supreme Court case brought by two Georgia women who were living in state-run institutions even though professionals had determined that they could be appropriately served in community settings. The plaintiffs charged that continued institutionalization was a violation of their rights under the Americans with Disabilities Act (ADA). The court ruled in their favor, affirming that unjustified isolation constitutes discrimination based on disability. In response, the Department of Health and Human Services directed states to increase their efforts to enable people with disabilities to live in the community and provide them with more opportunities to exercise informed choice.

found to have criminal records, suggest the need for greater access to information about potential employees' criminal histories, work experience and past histories of abuse.

Empowering vulnerable people to live in the community carries with it the responsibility for ensuring protection against unscrupulous, opportunistic, predatory, disturbed, and criminal individuals. At present, services and policies that offer protection are vastly inadequate; there are insufficient resources for Adult Protective Services (APS), guardianship, surrogate-decision makers, daily money management, shelters and legal assistance. Policy reform is also needed to ensure greater accountability by attorneys-in-fact; professional, non-professional and public guardians; and providers of community-based long term care.

Specific issues related to abuse and exploitation in the long term care system include the following:

- Existing programs and forums that address California's long term care needs have not typically included representatives from the elder abuse prevention or protective services networks (e.g. the Olmstead Advisory Committee,) As a result, they have not adequately addressed the vulnerabilities or protective service needs of long-term care consumers. For example, dementia care programs and studies have focused on medical and care issues but not on the impact of dementing illnesses on older adults' ability to protect themselves against neglect and exploitation, exercise choice, and access court services. Barriers to coordination and collaboration include:
 - Philosophical differences about the need for safeguards. For example, advocates for persons with disabilities have rejected such safeguards as mandatory background checks on long-term care workers as being paternalistic.
 - Family caregiver programs have been reluctant to make reports to APS for fear that well-meaning but overextended caregivers or patients who are verbally or physically combative as a result of dementias will be treated unfairly or inappropriately.
 - Confidentiality concerns have created barriers between long-term care providers and Forensic Centers, APS, Ombudsmen, and other programs in the elder abuse network. This includes concerns about HIPAA restrictions against sharing information. In addition, the inability of agencies that investigate abuse reports to provide feedback

about case disposition discourages some from reporting. It has been suggested that there are misunderstandings about what information APS agencies can provide.

- Persons who hire long-term care workers need guidance in how to screen workers. In particular, they need help evaluating the risks involved in hiring caregivers with criminal records. Efforts to improve screening of long term care workers have been highly controversial. *Ellis v Wagner* decision which set aside the CDSS policy that all persons convicted of a felony and “specific misdemeanors” at anytime are ineligible to become or remain IHSS providers.

“Our study identified exciting criminology research on redemption —determining when a person with a criminal history no longer poses a greater risk of committing a crime than anyone else. Professionals in the elder abuse and long-term care fields are unlikely to be aware of this, never mind policymakers.”

*Naomi Karp, Policy Advisor for AARP’s Public Policy Institute, referring to the report *Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers* (AARP Public Policy Institute, 2009)*

- Elderly members of groups have been historically deprived of opportunities, or are now faced with the challenges of life in a new culture, face health and economic disparities that heighten risk.
 - Approximately 21 percent of older Californians have limited English proficiency (Wallace, Pourat, Enriquez-Haass, & Sripipatana, 2003).
 - African Americans, Asians and Latinos are more likely to have mental distress than whites and a higher prevalence of serious mental illness. (Sorkin, Pham, & Ngo-Metzger, 2009).
 - Latinos have a longer life expectancy than the general population, but also have very high levels of major chronic illnesses that tend to disable them in old age (Torres-Gil, 2010).
 - LGBT (lesbian, gay, bisexual and transgender people) elders are more likely to live in poverty, face social and community isolation, and lack appropriate health care and long-term care. (SAGE, 2010).

- “Unbefriended” elders in long-term care facilities who need treatment that requires consent may lack objective and “disinterested” surrogates. Under California Health and Safety Code §1418 Ombudsmen may serve on Interdisciplinary Team Reviews (ITRs), which are authorized to make health/medical decisions for “unbefriended elders” in long-term care facilities (other ITR members include personnel from the facilities). The Older American’s Act, however, prohibits Ombudsmen from serving as surrogates.
- Forums that focus on the long-term care system have failed to address:
 - The impact of cutbacks in basic services raise the risk of isolation, abuse, and neglect.
 - The impact that releasing or diverting extremely frail elders from long-term care facilities (under Olmstead programs) will have on the need for protective services including APS, court services, public and private conservators, alternatives to conservatorship, assistance with money managements, etc.
 - The need for techniques and instruments to more accurately evaluate frail elders’ ability to manage in the community, including methods for assessing elders’ capacity for self care; the ability to select, screen, and supervise workers; and when involuntary interventions are appropriate.
- New technologies and innovations for aging in place are needed to lower the risk of abuse by reducing isolation, enhancing independence, and increasing monitoring (e.g. Skype, motion sensors, and life alert signals to the care manager).
- Alternatives like the “Village Model” (community members who share a desire to stay in their neighborhood as they age incorporate as a nonprofit, with all members paying yearly fees to provide support and services) are not available to low income older adults.
- Incentives are needed to attract and retain an adequate supply of long-term care workers, including higher salaries, training, rights, and opportunities for job advancement.
- Long-term care programs that can potentially identify abuse and high-risk situations need direction and assistance for identifying high-risk situations. These may vary depending by setting to reflect variations in risk (e.g. caregiving programs may include question that explore risk factors specific to caregiver abuse such as histories of domestic violence, poor relationships between caregivers and care receivers prior to the onset of disability, aggressive behavior by care receivers.

- A recently released report by the California Senate Office of Oversight and Outcomes, *Dangerous Caregivers: State Failed to Cross-Check Backgrounds*, reveals serious shortcomings in the State’s ability to identify workers (Hill, 2010). Guidance is needed in screening and monitoring of long-term care workers.
- Those who work with persons who have been recently diagnosed with early stage Alzheimer’s disease, including physicians, need guidance in advising to execute advance directives. The *Guideline for Alzheimer’s Disease Management (2008)*, has detailed, step-by-step guidance for addressing the issue.
- Emergency services and legal remedies are needed to respond to situations in which persons who are unable to act in their own behalf are in grave, immediate danger. Services that are needed include emergency attendants, shelters that cater to the special needs of older adults, and “protective custody laws.”
- Research is needed to:
 - Provide guidance to those making hiring decisions about long term care workers with criminal records (actuarial risk assessments and studies on redemption and recidivism).
 - Explore how background checks will affect groups that are overrepresented in criminal justice system.

Promising Practices

- **Assessing Risk among Persons with Alzheimer’s Disease and Dementias.** In its 10-year *Strategy for Excellence in Dementia Care and Alzheimer’s/Dementia* the San Francisco Alzheimer’s/Dementia Expert Panel endorsed guidelines for those working with adults with dementias (San Francisco Department of Aging and Adult Services, 2009). The guidelines call for assessments or investigations of abuse or neglect whenever three of the following seven risk factors are present:
 1. Problems with short-term memory
 2. Psychiatric diagnosis
 3. Alcohol abuse
 4. Difficulty interacting with others
 5. Self-reported conflict with family members or friends

6. Feelings of loneliness

7. Inadequate or unreliable support system

- **Aging/Mental Health Liaison.** The California Department of Aging (CDA) hired Geriatric Mental Health Specialist Lin Benjamin to assist aging service providers participate in Mental Health Services Act (MHSA) programs at the state and local levels.
- **Mental Health Services Fact Sheet.** In 2009, California Elder Justice Workgroup (CEJW) developed a fact sheet of the mental health service needs of abused and vulnerable older adults.
- **Background Checks.** *Safe at Home Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers (AARP, 2009).* This report by AARP raises such complex questions as what crimes should disqualify workers, do we apply the same standards when helpers are family members, how do we ensure fairness, who pays, and how will checks affect an already inadequate supply of workers? The report is based on a state-by-state comparison of state laws on background that was commissioned by AARP and conducted by the National Conference of State Legislatures.
- **Licensure Requirements that include Elder Abuse.** The California Commission on Aging (CCOA), working with the California Welfare Directors Association and the Congress of California Seniors, recently succeeded in getting elder abuse education into the licensure requirements for Marriage and Family Therapists (MFTs) and Licensed Clinical Social Workers (LCSWs).
- **Training for front-line workers.** City College of San Francisco is training front line workers (EMTs, community health workers, and health care interpreters) about aging and elder abuse. UC Los Angeles has developed a training curriculum for dental students.
- **Technical Assistance to Native American Tribes.** Indian tribes in California need model tribal codes and technical assistance in implementing appropriate response systems.

Questions for Discussion

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 - What resources do we currently have at our disposal in order to affect change?
 - How can we better coordinate and disseminate what we are already doing?
- What additional **RESEARCH** is needed to guide safeguarding the Long Term Care Safety Net?
- What additional **PUBLIC POLICY** might be needed to help safeguard the Long Term Care Safety Net?

Appendix 1

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