

California Elder Abuse Statewide Summit
Financial Abuse and Exploitation
Minutes from April 29-30, 2010 Meeting

Delegates:

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Facilitators: Erika Falk, Shawna Reeves, Adria Navarro

Presentation: Assessing Financial Decision Making Capacity

Presenter: Dr. Daniel Marson, Professor, University of Alabama, Birmingham

Dr. Marson described his research leading up to the Financial Capacity Instrument (FCI-9), an instrument that measures financial tasks within nine domains of financial activity including: basic monetary skills, financial conceptual knowledge, cash transactions, checkbook management, bank statement management, and financial judgment. The tool provides guidance to families and courts.

Key Points:

- “Premorbid” financial abilities are a person’s abilities prior to the onset of dementia or cognitive decline, which become a critical benchmark for evaluating capacity. They provide a context for evaluating current conditions and needs.
- There are pros and cons associated with each component of the assessment. For example:
 1. Patient and collateral reports:
 - Pros: Patient and collateral reports are ecologically valid, easily obtained, and inexpensive; address a wide range of financial activities; and are commonly used for functional assessment.
 - Cons: Patient and collateral reports include the subjectivity of reporting. This includes patient bias (referred to as “anosognosia” or insight issues) and denial by informants (e.g., caregivers). Bias includes denial, exaggeration, emotional responses, ignorance, self-interest, racial/cultural factors.
 2. Psychometric assessment:
 - Pros: The standardized administration in a controlled setting provides objectivity, norm referenced scoring, and precise measurement of skills.
 - Cons: The laboratory setting has diminished ecological validity, may not be culturally sensitive, takes time to administer, and requires training.
 3. Clinical interview using the FCI-9 was described:
 - Administration time is 60 minutes or more.
 - The short form FCI-SF prototype is being tested with good application in clinical settings.
 4. Video modules show administration of the FCI-9:
 - Viewed excerpts of video including tasks from simple currency identification

exercises to more complex checkbook statement questions.

Discussion of Issues/Problems:

The group was divided into five sub-groups:

1. Legal gaps and concerns;
2. Cross-cutting societal values;
3. Forensic capabilities;
4. Victim support; and
5. Other issues.

1. Legal gaps and concerns

There are gaps in the legal system for victims of financial exploitation. These gaps exist across the civil and criminal systems due to: a lack of coordination, lack of tracking abuse cases and their perpetrators, and decreased funding for legal services.

- Enhanced communication and coordination are needed among district attorneys, legal services programs, and private attorneys to foster good resolutions for victims, including prosecution. Once a model is established in several jurisdictions, the overarching goal is to expand it statewide.
- There is value in tracking criminal and civil elder abuse cases, and people who prey on older and dependent adults.
- Seniors need access to legal services, yet services like the legal services hotline are slated to be eliminated. Current or increased levels of funding are needed so that services remain accessible to seniors.

2. Cross-cutting societal values

It is difficult to make progress in the prevention of elder abuse in a society fraught with ageism, shrinking resources, and an overall lack of knowledge on how best to protect vulnerable adults:

- Financial exploitation is constantly evolving so that advocates are likely to be “three steps behind.” Proactive strategies are needed.
- Different perspectives and approaches are needed to enhance success. The long-range question is how to get society to value elders and recognize that doing so serves the common good.
- Education at a mass level is needed to “change the social contract.” Campaigns need to focus at the grassroots level, be geared to specific populations, build empathy, and re-frame the value of elders in society. This may best be communicated by starting with one’s personal vision of being an older adult.

3. Forensic capabilities

One area where science can be applied to law is the psychological determination of one’s ability to make decisions, which is often critical to resolving suspected cases of exploitation. Recommendations include:

- Better assessment of decision-making capacity;
- As the first responder in many abuse cases, Adult Protective Services (APS) in particular needs a tool for screening to see if an assessment of capacity is needed;
- The tool must be extremely brief, and easy to use and explain in trainings; and

- The tool should strive to tap some executive functioning skills and possibly financial decision-making.

4. Victim support

One resource for victims is the Victims of Crime Act (VOCA) fund, which is composed of federal and state funds. These have not historically been accessed by victims of financial exploitation and abuse:

- Identify strategies for increasing services to victims of financial abuse and exploitation.
- In response to comments from VOCA victim assistance and victim compensation program administrators, victim service providers, representatives of national victim organizations, elder services agencies, and other victim advocates, the revised Guidelines, published in April 1997, encourage states to fund new or expanded services for victims of fraud and economic exploitation. The amended language of the Guidelines does the following:
 - Expands the definition of "victim" to include victims of financial crimes. In Section I, Background, the definition of "crime victim" has been modified to "a person who has suffered physical, sexual, financial, or emotional harm as a result of the commission of a crime." Although VOCA-funded programs cannot be used to restore the financial losses suffered by victims of fraud, victims are eligible for the counseling, criminal justice advocacy, and other support services offered by VOCA-funded victim assistance programs.
 - Expands the definition of "elder abuse" to include economic exploitation and fraud. In the Program Requirements section of the Final Guidelines (IV.A.4.) describing grantee eligibility requirements, the definition of "abuse of vulnerable adults" now includes the mistreatment of older persons through economic exploitation and fraud.
 - Expands the definition of "previously underserved" priority areas to include victims of fraud crimes. The Program Requirements section (IV.A.4.) also states that an additional 10 percent of each VOCA grant will be allocated to crime victims who were "previously underserved." These underserved victims may include victims of economic exploitation and fraud.
- California has not included victims of financial crimes among its priorities for VOCA service funds. Doing so would make more funds available to assist these victims.
- Although VOCA victim compensation guidelines allow for the funds to be used for services to victims of financial crimes (including counseling), this is not widely known. Advocates need education about VOCA.
- A "promising practice" that has used VOCA funding is Clergy Against Senior Exploitation (CASE), a faith-based financial crime prevention program operated by the Denver District Attorney's office. CASE works with faith-based partners to develop training programs on elder financial exploitation for clergy and older congregational members. More information is available at: <http://case.denverda.org/case/default.htm>.

5. Other issues

- Mass marketing fraud and exploitation

- Long-Term Care facilities in California have been closed for trafficking workers.
- Abusive annuity sales
- There is a need for post-foreclosure representation, resulting from predatory lending.
- Promising approaches identified:
 - FAST statewide integration efforts;
 - Protecting Our Elders' project with faith communities;
 - "Train-the trainers" type of materials, with possible topics to include: personal aging experiences, caregiving, mental health issues, elder awareness, personal responsibility, pastoral care;
 - Legal service integration efforts;
 - Certification of conservators and advocates; and
 - Creation of an elder abuse postage stamp.

Recommendations:

1. Research and create a legal guide on civil and criminal cases affecting seniors, to be distributed to District Attorney Offices.
2. Improve communication between civil and criminal legal providers:
 - California Department of Aging (CDA) will contact the President of the Legal Aid Association of California (LAAC) and all Older Americans Act (OAA) legal services providers in San Francisco to encourage support and commitment towards this goal;
 - Advocates will contact the San Francisco District Attorney to request a meeting with legal service providers and private attorneys;
 - Aging network providers will approach Santa Clara County's Deputy District Attorney for Elder Fraud about both enhanced communication with legal providers and the proposed legal guide;
 - Research development of a website to track and share information about the names/identity of persons that prey on seniors; and
 - Senior Legal Hotline to explore providing a workshop at the next California District Attorneys Association (CDAA) conference, possibly in December 2010.
3. Strive to fund existing legal services threatened with funding cuts and elimination:
 - Explore private funding opportunities to maintain a senior hotline; and
 - Consult with California Department of Aging director about funding opportunities.
4. Explore launching an elder abuse awareness project with faith-based organizations in San Francisco:
 - Model after the successful interfaith project in Santa Clara county;
 - California Advocates for Nursing Home Reform (CANHR) commits to provide a financial abuse training session, starting with faith-based organizations, to include "walk in my shoes at age 85."
5. Compile a community toolkit with information focused on empathy and understanding of aging issues, as well as an understanding of financial and legal documents needed at the end of life:
 - San Francisco Elder Abuse Forensic Center to research the work related to the Gross National Product (GNP) project, and the United Nations (UN) efforts to

- have a Council on Elder Rights, using International Network for the Prevention of Elder Abuse and other available contacts; and
- Kick off the presentation of the toolkit for financial abuse trainings by piloting at the conference entitled, Protecting Our Elders: A Faith-Based Project on 9/21/2010.
6. Develop a professional APS decision-making screening tool:
 - Develop a “white paper” to document what is known and develop the rationale for the screening tool;
 - Establish a working group to develop the decision-making tool, with members from Protective Services Oversight Committee (PSOC) and others clinicians to be determined (e.g., Shillerstrom, Marson); and
 - Coordinate a pilot of the tool and work with PSOC around dissemination.
 7. Julia Wysong, chair of the statewide coalition of Financial Abuse Specialist Team (FAST) coordinators, will explore the coalition’s interest in taking a leadership role in advocating for increasing the use of VOCA funds to victims of financial crimes in California.