

Preventing Elder Abuse, Neglect, and Exploitation
Enhancing the Role of the Older American's Act
August 4, 2010

Recommendations from the California Elder Justice Workgroup (CEJW) ¹

The Administration on Aging has pioneered the field of elder abuse prevention for over 30 years through its support of research, demonstration projects, coalition development, professional education, public awareness campaigns, and legal and advocacy services. Now more than ever, AoA's leadership and guidance are needed to help communities and states respond to the myriad new opportunities and challenges they face in preventing abuse, neglect, and exploitation. These include:

- **The passage of the Elder Justice Act (EJA).** As the first comprehensive federal law to address elder abuse, the EJA provides unprecedented opportunities to improve research, practice, and policy. States and local communities, however, need technical assistance, model policies, support, and coordination among key stakeholders at the national level to effectively implement the act.
- **Devastating cuts in long-term care and protective services** pose a critical threat to the "safety net" and heighten vulnerability to elder abuse, neglect, and exploitation. These cuts come at a time when increasingly frail elders, including many with debilitating dementias are living at home. Particularly vulnerable are those who lack responsible parties and advocates. Public agencies charged with serving the most vulnerable, including public guardians, adult protective services (APS), senior legal aid programs, and long-term care ombudsmen, are particularly strained.
- **The recent emphasis on "consumer choice" in long-term care** has created new opportunities for seniors to exercise control over their own care. However, severe shortages in the supply of trained direct care workers, assistance with the supervision of care, impediments to screening, and the rapid proliferation of under regulated residential care facilities are among the many perils elders face in the "long-term care marketplace."
- **An epidemic of financial abuse and exploitation** that includes the misuse of legal documents such as powers of attorneys and trusts, predatory lending, mass marketing fraud, annuity and investment scams, and identity theft, threaten the financial security, housing, and independence of countless seniors.
- **Heightened involvement by the civil and criminal justice systems** has created new avenues for stopping abuse, holding abusers accountable, recovering assets, and making victims whole. Ensuring justice for elders, however, requires new approaches and knowledge, including "elder-friendly" courts, forensic research and expertise, model statutes and remedies, legal services, and advocacy.

¹ The California Elder Justice Workgroup was launched in October 2009 with support from the Archstone Foundation to protect the rights, independence, security, and well-being of vulnerable elders in California. Descriptions of the Workgroup and the Archstone project are attached.

Recommendations

CEJW has identified the following ways in which AoA can ensure greater protection to abused and vulnerable elders:

- 1) Strengthen the Long-Term Care Ombudsman Program;
- 2) Expand the role of all OAA programs in prevention and intervention;
- 3) Provide leadership in improving coordination among the multiple entities involved in abuse prevention at the federal, state, and local levels;
- 4) Direct the National Center on Elder Abuse to help states develop elder justice programs and policies;
- 5) Expand the supply and range of services to prevent, combat, and treat abuse with an emphasis on legal and mental health services.

1. Strengthen the Long-Term Care Ombudsman Program

Abuse and neglect in long-term care facilities is widespread and may have devastating consequences for society's most vulnerable members. It ranges from subtle forms of degradation to conduct that rises to the level of criminal conduct, including assault, fraud, and homicide. Long-term care ombudsmen (Ombudsmen) play a critical role in investigating abuse in facilities and advocating on residents' behalf. Their ability to do so, however, is impeded by a multitude of barriers: 1) lack of clarity with respect to Ombudsmen's mandates and role vis-à-vis other entities involved in abuse reporting and investigation, including APS, law enforcement, and regulatory agencies; 2) barriers to reporting abuse against "unrepresented" and "unbefriended" elders (those who lack the capacity to give consent as a result of cognitive deficits and who lack surrogates) or to advocate on their behalf, 3) lack of guidance to Ombudsmen with respect to reporting criminal conduct in facilities, and 4) lack of guidance to Ombudsmen in how to balance their multiple and, in some cases, conflicting roles and duties (e.g. state and federal responsibilities; the roles of advocate and investigator). The rapid and under-regulated growth of assisted living facilities and the trafficking of long-term care workers provide additional challenges.

CEJW recommends that AoA, through the Older Americans Act, adopt the following priorities:

- Educate professionals and the public about the roles, resources, and mandates of Ombudsmen.
- Clarify the role of Ombudsmen vis-à-vis local, state, and federal law enforcement and regulatory entities to ensure that crimes in LTC facilities are not tolerated.
- Develop clear policy for handling resident consent that does not conflict with society's responsibility to hold perpetrators accountable. Crimes against residents must be reported and investigated, regardless of whether the victim is able or willing to give consent. Failure to do so endangers all residents.
- Training for Ombudsmen is needed in the following areas:
 - Responding to resident-on-resident abuse involving perpetrators who suffer from dementias.
 - Handling situations in which residents with dementias are induced to sign documents they do not understand for the benefit of others.

- How to work with other entities involved in the investigation of abuse in facilities, including APS and law enforcement, and how to recognize and report cases involving criminal conduct and civil liability.
- Provide guidance to Ombudsmen in effective strategies for bringing culture change to long-term care facilities;
- Address organizational conflicts of interest with respect to state Ombudsman Programs. Many state Ombudsman Programs are located in agencies that have responsibility for regulating facilities and/or providing adult protective services, raising potential conflicts of interest. These conflicts need to be resolved and communication channels must be clearly defined.
- Strengthen the role of Ombudsmen in advocating on behalf of “unbefriended” or “unrepresented” residents. Ombudsmen’s expertise and access to critical information, as well as the trusting relationships they are likely to have with residents, give them unparalleled access and opportunities to safeguard residents. However, their ability to do so is impeded by statutory restrictions. For example, the OAA allows Ombudsmen to access the medical records of unrepresented residents who lack capacity; however disclosure requirements in the Act prevent them from disclosing this information without consent to agencies that can respond or provide relief, including regulatory or law enforcement agencies, public guardians, court investigators, or social service providers.

2. Expand the role of OAA programs in abuse prevention. Preventative approaches to elder abuse, including risk reduction strategies and screening, can prevent suffering, injury, and losses. They can presumably also reduce the need for more costly acute interventions. OAA programs, including family caregiver programs, transportation programs, nutrition programs, and legal assistance programs can identify high-risk situations and provide critical information and referrals. Specifically, they can:

- Screen program participants for risk factors associated with elder abuse, neglect, exploitation, and self neglect. This can be done by incorporating “red flags” into existing assessment tools and program operation manuals. Risk indicators should reflect the types of cases that specific programs are most likely to encounter.
 - Risk factors for elders include:
 - Problems with short-term memory
 - Psychiatric diagnoses
 - Alcohol abuse
 - Difficulty interacting with others
 - Self-reported conflict with family members or friends
 - Feelings of loneliness
 - Inadequate or unreliable support systems
 - Risk factors and indicators associated with financial abuse and exploitation include diminished capacity for financial decision-making, excessive calls by telemarketers, credit problems, and foreclosure notices
 - Risk factors for self-neglect, including low health literacy, mental health problems, substance abuse, etc.
- Caregivers at risk include those:

- With histories of interpersonal conflict with care receivers (including domestic violence) prior to the onset of disabling conditions.
- Who fear they will abuse. Research shows that as many as one in five caregivers is fearful that they will abuse, which may lead to prematurely seeking placement options. Among those who provide care to persons with dementias, the rate is nearly 50%.
- Are experiencing life stresses, mental health problems, and/or substance abuse issues.
- Provide instruction to OAA program personnel on steps to take if screening determines that clients are at risk of elder abuse or neglect, including how to talk to elders about abuse and neglect, workers' reporting duties, and available resources.
- Include abuse, neglect, or imminent risk among the criteria for eligibility for transportation, meal programs, caregiver services, legal assistance, and other OAA programs and prioritize those at greatest risk.
- Enhance the capacity of senior legal service providers to address elder abuse, neglect, and exploitation. Specific areas of need include:
 - Housing issues, including predatory lending, foreclosure prevention;
 - Preventing financial abuse and exploitation by family members, personal care providers, "new friends," telemarketers, con artists, and others; and
 - Domestic violence.
- Direct OAA supported senior centers to develop policy to screen presenters and restrict access to fraudulent, unscrupulous, persons posing as "objective financial advisors."

3. Provide leadership in the implementation of the Elder Justice Act. AoA will undoubtedly play a pivotal role in the implementation of the EJA. This will provide unprecedented opportunities for designing a comprehensive and coordinated federal response; improving coordination among the multiple entities involved in abuse prevention at the federal, state, and local levels; and ensuring greater consistency among states in their response. CEJW encourages AoA to adopt or advocate for the following measures.

- Require states to develop elder justice oversight advisory groups that include (at a minimum) representatives from:
 - Adult Protective Services;
 - Older Americans Act Programs, including Ombudsmen, legal service developers, caregiver support programs, and programs administering Title VII funds for outreach and training;
 - Providers of mental health and substance abuse prevention services;
 - Offices of the Attorney General, including representatives from Bureaus of Medicaid Fraud, and Victim Witness Assistance Programs;
 - Medicaid waiver programs;
 - Olmstead Advisory Committees;
 - Courts (e.g. Administrative Offices of the Courts);
 - Advocacy groups (e.g. AARP, the Alzheimer's Association); and
 - Domestic violence prevention programs (Violence Against Women Act)

programs.

- Include on the federal Elder Justice Coordinating Council (required under the Act) representatives from federal agencies that oversee policy and services related to financial abuse and exploitation, including the Federal Bureau of Investigation, the Federal Trade Commission, United States Attorneys, the Social Security Administration, the Postal Service, and Immigration and Customs Enforcement. Coordination at the national level will have a “ripple effect” of enhancing coordination at the state and local levels.
- Allow states flexibility in designing and implementing elder justice programs. States vary widely with respect to how elder justice services, including Adult Protective Services, public guardians, Ombudsmen, law enforcement, courts, etc. are organized and administered, reflecting their unique needs, leadership, resources, and existing response systems. Effective programs should be allowed to continue.
- Develop best practice standards for conducting abuse and neglect investigations, interventions, registries of abusers, risk assessment, data collection and analysis, and other key functions of responding agencies;
- Develop a national plan for elder abuse research and service development in consultation with other federal agencies that support research and program development, including the Department of Justice (Office for Victims of Crime, Office on Violence Against Women, Bureau of Justice Statistics), National Institute on Aging, Centers for Medicare & Medicaid Services, Centers for Disease Control and Prevention, and Title XX Social Services Block Grant. Plan development should include reviewing progress to date, identifying unmet needs, and setting priorities that reflect current understanding of the problem and promising approaches.
- Prohibit states from using monies intended for new programs or services to be used to supplant existing services and programs.

4. The Role of the National Center on Elder Abuse (NCEA)

Since its inception, NCEA has been a leader in training, technical assistance, and coalition building. The passage of the Elder Justice Act and other developments require new approaches, including:

- Technical assistance and support for state and national coalitions. In the past, NCEA has focused on local coalition development. With the passage of the EJA, state and federal programs also need support and guidance to foster collaboration, coordination, and policy development.
- Provide support for research, technical assistance, model project development, training, etc. in the following areas:
 - Best practices with respect to screening and monitoring of long-term care workers. The AARP report *Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers* provides guidance.
 - Explore the impact of various definitions of “elder abuse” on caseload size and service need. Wide variations exist between and even within states with respect to definitions of abuse and who is eligible for protective services. For example, some APS programs only serve elders with impairments, while others serve all victims over a specified age. These variations have led to disparities in access to services and hampered efforts to assess national needs.

- Develop model definitions and guidelines.
- Explore various models for administering and/or coordinating APS, mental health, and OAA services at the state level.
- Explore the benefits, costs, and various approaches to risk assessment, background checks, and registries of abusers.

5. Expand the supply and range of services to prevent, combat, and treat abuse with an emphasis on legal and mental health services.

Services that are believed to reduce the risk of abuse, stop abuse that is occurring, and treat its effects are in critically short supply. Little is known about their costs, benefits, and effectiveness. Preventative services include daily money management for those at risk of financial abuse; instruction to caregivers in how to manage difficult behaviors; motivational counseling and health literacy enhancement for those at risk of self-neglect; estate planning that offers maximum protection to seniors; and safety planning for those at risk of family violence. Mental health services are needed to address trauma, depression, grief, and the risk of suicide; overcome shame and ambivalence; and resolve interpersonal conflicts. Legal service needs include assistance to secure restraining orders, reclaim misappropriated assets and property, and draft advance directives that offer maximum security. Advocates are needed to help victims address problems with creditors that result from financial abuse, access benefits, and secure restitution. Pilot projects are needed to explore new approaches to serving victims, those at risk, and families, including mediation, support groups, restitution recovery, and shelters. Special attention is needed to develop strategies for responding to the needs of victims of investment fraud, identity theft, telemarketing fraud, predatory lending, and other forms of financial abuse and exploitation. Promising approaches include legal hotlines, elder courts, volunteer guardianship monitoring programs, partnerships with private attorneys and Bar Associations, and coordination with district attorneys and courts.

Special Areas of Need

- Federal employees should be required to report elder abuse. This requirement would extend coverage to professionals who are highly likely to encounter elder abuse including postal workers, Social Security employees, federal regulatory and law enforcement officials and victim advocates, employees of federally funded housing, employees of Veterans Administration Programs, etc.
- Federal regulation of residential care facilities, comparable to that which applies to skilled nursing facilities, is needed to ensure that all residents receive adequate care and have recourse when standards are not met, regardless of the setting.

For questions, contact Lisa Nerenberg, CEJW chair, at Lisa.Nerenberg@sbcglobal.net or the California Elder Justice Workgroup at caejworkgroup@gmail.com. For more on CEJW, see <http://cejw.pbworks.com/>