

CEJW Policy Brief
Raising Expectations State Scorecard Report
January 19, 2012

The *Raising Expectations State Scorecard* is a comparative analysis of state Long-Term Services and Supports (LTSS) that was produced jointly by AARP, the Commonwealth Fund, and The SCAN Foundation.¹ LTSS (previously referred to as “long-term care”) includes home care, adult day care, assisted living, nursing homes, respite care, and supports for family caregivers. The scorecard, as well as California’s scores, were presented at the SCAN Foundation's Summit on Transforming California's LTSS, which was held in Sacramento on September 27, 2011.

The scorecard evaluates LTSS systems on four criteria: 1) affordability and access, 2) choice of setting and provider; 3) quality of life and quality of care, and 4) support for family caregivers. Each category comprises specific indicators. States were ranked by overall performance and their performance on each category and indicator.

California received an overall ranking of 15 on the scorecard, with extremely high scores in some areas and low scores in others.² The state excelled in Category 1, affordability and access, ranking first among the states and the District of Columbia in the number of people enrolled in programs that are deemed “consumer-directed.” This is inarguably due to the state’s In-Home Supportive Services (IHSS) program, which is the largest consumer-directed program in the country. California ranked second among the states in connecting needy low and moderate-income people with Medi-Cal services.

In sharp contrast was California’s performance in facilitating consumer choice, the treatment of nursing home residents, and supporting caregiving families. The state ranked:

- 45th in providing tools and programs to facilitate consumer choice;
- 42nd in the availability of home health and personal care aides for older Californians;

¹ The Scorecard is available at: <http://www.commonwealthfund.org/sitecore/content/Scorecard-Home.aspx>

² A fact sheet on California’s scores is available at:
<http://www.thescanfoundation.org/sites/default/files/SCAN-FactSheet-22.pdf>

- 49th in the percentage of long-stay nursing home residents who experienced physical restraint;
- 40th in the percentage of high-risk nursing home residents with pressure sores; and
- 46th in the number of family caregivers who feel they usually or always get needed support.

The California Elder Justice Workgroup (CEJW) has identified specific needs in several of these problem areas and offered recommendations for improvement. Foremost among these is ensuring that LTSS consumers have the information, support, and assistance they need to exercise choice in the LTSS market.

Facilitating Choice

Several conditions must be met for older adults and adults with disabilities to effectively exercise choice:

1. They must have the capacity to make informed decisions and exercise consent;
2. They must have an adequate supply of acceptable services and supports from which to choose;
3. They must have information on which to evaluate services and supports; and
4. Consumer protections must be in place to shield consumers from dangerous and predatory providers and unfair practices.

At present, these conditions are not being met in California. Specific barriers and impediments to consumer choice include:

Lack of tools and guidance to assess LTSS consumers' capacity to exercise choice

LTSS consumers have the right to choose, monitor, and terminate their care. To exercise choice, however, they must be capable of understanding their choices, assessing the benefits and risks of available options, evaluating the suitability of services and providers, and appreciating the outcomes and consequences of their choices. Once consumers have selected providers, they must be able to monitor workers, or, at a minimum, seek help when problems arise. Some LTSS consumers, as the result of mental

and physical illnesses or cognitive impairment, lack these abilities. Failure to detect consumers' incapacity to make informed decisions or protect themselves renders them highly vulnerable to abuse, neglect, exploitation, undue influence, or self-neglect.

Currently, there are no agreed upon procedures or standards for determining when LTSS consumers with impairments are incapable of exercising choice, monitoring care, protecting themselves, or seeking help. LTSS providers need guidance in making capacity assessments that are informed by current research and information about cognitive impairment as well as legal and ethical standards of decision-making. Also needed is guidance in how to assist LTSS consumers maximize their decision-making capacity and information about the options that are available for those who are unable to exercise choice including surrogates.

Those consumers who are incapable of exercising choice must have trustworthy surrogates to choose on their behalf. Although some adults with cognitive impairments have selected surrogate decision-makers prior to the onset of disability, the overwhelming majority have not. Currently, the resources for appointing or serving as surrogates in California are extremely limited, and conservatorship may be the option (Quinn & Nerenberg, 2005).

Lack of information and assistance in screening direct care workers

LTSS consumers also need accurate and relevant information on which to base choices. To select direct care workers, they need information about prospective employees' criminal histories, sanctions by oversight bodies, and terminations from past employment for misconduct. Information and assistance to help consumers screen workers is vastly inadequate as evidenced by the following:

- A 2010 investigation by SACRAMENTO KABC-TV revealed that nearly 1,000 convicted felons were identified as either seeking jobs or working in California's In-Home Support Service program during the previous year.
- In 2006, the Legislature passed a law that required the Department of Social Services to maintain a centralized database of workers who are sanctioned for misconduct that

can be accessed by state departments to prevent the workers from moving from one system of care to another. Four years later, the database did not exist (California Senate Office of Oversight and Outcomes, 2010).

- California Welfare and Institutions Code Section 15660 allows private individuals to request criminal background checks from the Department of Justice for prospective in-home caregivers. The law also mandates that if the caregiver commits a new reportable offense, the employer will be notified. According to a 2011 report by the California Senate Office of Oversight and Outcomes, only 22 private individuals took advantage of the service in 2010.
- In 2008, the state legislature authorized Public Authorities, which recruit, screen and train IHSS workers, to help private employers of in-home caregivers check prospective workers' criminal histories. When the Senate Office of Oversight and Outcomes contacted 26 of the 56 IHSS Public Authorities and asked whether they could help consumers check out potential caregivers, all 26 said they could not.

Failure of LTSS providers to recognize and respond to high risk situations

Experts agree that the preferred approach to preventing elder and dependent adult abuse is to identify high-risk situations before problems become acute. Mitigating risks can prevent losses, injury, decline, and suffering. Preventing abuse therefore requires that those who are likely to observe high risk situations recognize risks and know what to do. Specifically, they need intake and assessment tools that reflect current understanding of risk factors and high-risk situations. They also need information about services and techniques to reduce risk, including mediation for family caregivers, money management, interventions to enhance decision-making capacity, assistance with estate planning and health care advance directives that offer maximum protections, negotiating agreements with and clarifying expectations for direct care workers, and managing high risk behaviors.

Family caregivers lack support, assistance, and training to prevent abuse and neglect

Recent studies suggest that an exceedingly high percentage of caregivers have engaged in physical and psychological elder abuse and neglect (Wiglesworth, et al., 2010). Studies also suggest that a high number of family caregivers worry that they will engage in

abusive or negligent conduct (Pillemer & Suitor, 1992). Few resources, however, exist to assist family caregivers or those who serve them evaluate and respond to these risks. Specific needs include information about legal issues, including families' legal obligation to provide care; assistance in crafting advance directives; guidance in screening and hiring workers; and assistance in mediating legal, social, economic, and psychosocial problems.

Inadequate discharge plans

It has frequently been noted that older adult patients who are discharged from hospitals or long-term care facilities with inadequate plans for care are at heightened risk for abuse, neglect, or self-neglect.

Lack of coordination between the protective service and LTSS networks

Ensuring the safety, security, and rights of LTSS consumers requires coordination between providers of LTSS and providers of Adult Protective Services (APS), public guardians, providers of legal assistance, advocates, courts, forensics centers, elder abuse multidisciplinary teams, and many others. Achieving coordination requires that:

- LTSS providers receive training to help them understand their duties to report abuse, neglect, exploitation, and self-neglect;
- LTSS providers are aware of community resources such as multidisciplinary teams, forensics centers, financial abuse specialist teams, court investigators, and providers of legal services; and
- LTSS providers and elder justice advocates need opportunities to learn about each other's goals, outlooks, and resources; explore common needs; and explore areas for potential collaboration and coordination.

CEJW Recommendations

The *Raising Expectations State Scorecard* provides an excellent opportunity to build critical safeguards into California's LTSS system. CEJW's Steering Committee has called for the following:

1. Include "safety net" indicators in future versions of the Scorecard. These include
 - A. The presence of adequate APS, Long Term Care Ombudsmen, nursing home

- advocates, Public Guardians, legal assistance providers, mental health providers, court, elder abuse prevention teams and training programs, and other services;
- B. State and local protocols and procedures for handling allegations of abuse, neglect, exploitation by LTSS providers (both organizations and direct care workers), family caregivers, and others; and
 - C. Interagency and interdepartmental coordination among LTSS and elder justice entities, etc.
2. Develop procedures or standards for determining when LTSS consumers are capable of exercising choice that reflect current understanding of legal and ethical standards of decision-making capacity, consent, and undue influence;
 3. Develop uniform assessment tools (or incorporate risk assessment measures into existing tools) that reflect current understanding of vulnerability to elder abuse, neglect, and exploitation;
 4. Implement safeguards to prevent dangerous caregivers from gaining access to vulnerable consumers, including;
 - A. Provide for coordination and information sharing among state departments with oversight responsibilities for care systems and programs;
 - B. Develop information systems to “red flag” abusers (those whose abusive actions have been substantiated by protective service, oversight, or law enforcement entities) and prevent them from gaining employment that endangers others;
 - C. Provide information and training to LTSS consumers, family members, and providers on best practices for screening direct care providers.
 5. Explore ways to improve discharges and transitions between acute care facilities, long-term care facilities, and community-based services. Discharge planning should focus on the needs of both patients and family caregivers;
 6. Develop protocols and procedures for on-going exchange between the elder justice and LTSS provider networks to explore common needs, potential collaboration, and concerns for balancing long-term care consumers’ rights with society’s obligation to protect the vulnerable. Promising approaches include:

- A. Appoint elder justice and adult protective services representatives to LTSS planning bodies including the California Collaborative, the Olmstead Advisory Committee, and the Duals Demonstration Project planning bodies;
 - B. Encourage LTSS providers to participate on local elder justice forums, including multidisciplinary elder abuse teams, forensics centers, etc:
7. Promote exchange among Long-Term Care Ombudsmen, advocates for nursing home reform, forensics centers, research and professional institutions, and others to address California's scores pertaining to restraints and pressure sores in long term care facilities and develop a plan for reducing prevalence rates.

References

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