



FROM BLUEPRINT TO BENCHMARKS:

Building a Framework for Elder Justice



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California Elder Justice Coalition

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For more information on CEJC, visit CEJC's website at **ElderJusticeCal.org**

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Great minds don't always think alike. Many people have contributed to this document. The ideas and opinions expressed reflect the contributions of CEJC's Steering Committee, members, and subcommittees as well as from participants in CEJC hosted events, including the From Practice to Policy Summit (see appendices for participants) and webinars. They are presented in hopes of fostering exchange, problem solving, policy development, heightened awareness, planning, and consensus building. They do not necessarily reflect the positions of the institutions with which contributors are associated or of the Archstone Foundation, whose generous support made this document possible.

We hope that you will keep CEJC informed of how you use *From Blueprint to Benchmarks: Building a Framework for Elder Justice* and let us know how we can be of help.

Table of Contents

<i>From Blueprint to Benchmarks: Executive Summary</i>	5
Introduction	
Milestones Since <i>Blueprint 1</i>	7
Creation of the California Elder Justice Coalition (CEJC)	
Partnerships	
From Practice to Policy Elder Justice Summit	
Key Developments in the Field of Elder Justice	8
I: Modernizing Adult Protective Services (APS)	9
II: Elder Abuse in Institutional Settings	15
III: Preventing Caregiver Abuse	23
IV: The Legal System’s Role	29
V: Fair Access to Services and Resources	39
VI: Long-Term Services and Supports (LTSS)	45
VII: Financial Abuse and Exploitation	51
VIII: Victims Rights and Service Needs	57
IX: The Federal Role.	63
APPENDICES	
References	73
About The California Elder Justice Coalition (CEJC)	75
Services Needed by Older Victims	76
Resolution to Establish a Special Joint Committee, Task Force, or Blue-Ribbon Panel on Elder Justice	77
Plan for a Forensics Center for Abuse in Long-Term Care Facilities	79
Plan for a Forensics Center for Financial Abuse and Exploitation	81
From Practice to Policy Elder Justice Summit (2013) Registrants.	83

Executive Summary

Five years have passed since the release of *Improving California's Response to Elder Abuse, Neglect, and Exploitation: A Blueprint* (California Elder Justice Workgroup, 2011). Since then, dramatic changes have reshaped the elder justice landscape. Against the backdrop of the deepest recession in modern memory, developments at the state level have included the "realignment" of key programs and services, the unveiling of a new scheme for providing long-term services and supports (LTSS), and new responsibilities for key entities in the elder and dependent adult abuse reporting and response system. On the national front, the passage of the Elder Justice Act (EJA) resulted in the forging of new relationships among federal agencies and the beginnings of a national framework for elder justice policy and programs.

Improving California's Response to Elder Abuse, Neglect, and Exploitation: A Blueprint (Blueprint 1) drew from California's first elder justice summit in 2010 and called for the formation of an ongoing organization dedicated to implementing the plan. Toward that end, the California Elder Justice Coalition (CEJC) was formally launched in 2012 (for more on CEJC, see Appendices).

From Blueprint to Benchmarks: Building a Framework for Elder Justice describes progress toward implementing *Blueprint 1* and new challenges and opportunities. It is divided into nine topic areas, each of which includes background information, state and national developments, challenges and needs, progress, resources, and promising practices:

TOPIC I: **Modernizing Adult Protective Services (APS)**

TOPIC II: **Elder Abuse in Institutional Settings**

TOPIC III: **Preventing Caregiver Abuse**

TOPIC IV: **The Legal System's Role**

TOPIC V: **Fair Access to Services and Resources**

TOPIC VI: **Long-Term Services and Supports (LTSS)**

TOPIC VII: **Financial Abuse and Exploitation**

TOPIC VIII: **Victims Rights and Service Needs**

TOPIC IX: **The Federal Role**

Priority Recommendations

From Blueprint to Benchmarks: Building a Framework for Elder Justice further proposes new directions and priorities for improving California's response to elder abuse, neglect, and exploitation, and ensuring justice for older adults in California. Overarching priority recommendations include:

1. Create a California Elder Justice Coordinating Council to provide direction to state elder justice policy and programs and to liaison with federal elder justice entities. The following additional bodies will work in concert with the Council:
 - Blue Ribbon Panel of experts, policy makers, and stakeholders to craft a cohesive and comprehensive elder justice policy framework (see Appendices).
 - Conservatorship Stakeholders Network to review options for protecting the rights of adults with cognitive impairments.
 - Elder Justice Access and Parity Work Group to explore the impact of social and economic disparities on justice and access to services.
 - Statewide team of advocates, policy analysts, experts, and stakeholders to explore systemic barriers to elder justice on an ongoing basis and craft solutions.
2. Spearhead an elder abuse awareness campaign to educate the public, professionals, and policy makers about elder abuse and elder justice, generate support for policy reform, and strengthen partnerships among advocacy groups.
3. Call for a review of California's Adult Protective Services program and the impact of realignment on APS.
4. Promote the use of caregiver assessments to identify caregivers' needs and vulnerabilities, evaluate the risk for mistreatment in caregiving relationships, and provide pathways to services.
5. Enlist long-term services and supports (LTSS) providers in preventing and reporting elder abuse and protecting the rights of LTSS consumers.
6. Improve victims' access to the civil and criminal justice systems and call for justice system professionals to prioritize elder abuse cases that offer maximum benefit to society.
7. Ensure that victims of elder abuse, including victims of financial abuse and exploitation, have access to services that offer protection, aid recovery, and ensure their rights.
8. Enhance elder justice advocates' effectiveness in promoting policy that is informed by research and practice.
9. Call for federal policy makers to establish high standards of excellence for elder justice programs and provide states with resources, support, guidance, incentives, tools, and authority to develop comprehensive elder justice networks.

Introduction

Improving California's Response to Elder Abuse, Neglect, and Exploitation: A Blueprint (Blueprint 1) (California Elder Justice Workgroup, 2011) was a first step toward achieving comprehensive and cohesive elder justice policy in California. It drew from the findings of California's first elder justice summit, which was convened in 2010 by participants in the Archstone Foundation's Elder Abuse and Neglect Initiative. *From Blueprint to Benchmarks: Building a Framework for Elder Justice (B2B)* picks up where *Blueprint 1* left off by describing achievements that have been realized since the first summit as well as new developments and needs in nine focus areas. Several overarching and far-reaching milestones and developments deserve special note:

MILESTONES SINCE *BLUEPRINT 1*

► **Creation of the California Elder Justice Coalition (CEJC)**

Among the primary needs identified at California's first elder justice summit in 2010 was a state-wide organization to promote elder abuse prevention and improve the state's systemic response to the problem. CEJC was launched in 2012 with the mission of "Promoting policy and practice that improves the lives of vulnerable and abused adults in California." Its objectives are to:

- Elevate elder justice into public consciousness.
- Provide a voice from the field in policy development.
- Provide streamlined, nonpartisan, and interdisciplinary information.
- Explore systemic barriers to elder justice and craft comprehensive solutions.

For more on CEJC's activities and accomplishments, see Appendices.

► **Partnerships**

CEJC has forged dynamic partnerships aimed at diversifying the elder justice network, broadening its focus, mobilizing new expertise and resources, raising awareness, and achieving comprehensive and far-reaching reform. In particular, CEJC has worked closely with the California Commission on Aging (CCoA). In September 2013, the two organizations co-hosted the *From Practice to Policy Elder Justice Summit* (see below) in collaboration with the County Welfare Directors Association of California (CWDA), the California Long-Term Care Ombudsman Association (CLTCOA), and the California Association of Area Agencies on Aging (C4A). CEJC has continued to collaborate with these and other partners in addressing systemic barriers to elder justice.

► From Practice to Policy Elder Justice Summit

The goal of *From Practice to Policy Elder Justice Summit* was to review progress since the first summit and identify new needs. Multiple pre-summit activities gathered input from experts and advocates, including:

- The Protective Services Operations Committee of CWDA surveyed Adult Protective Services (APS) programs across the state about staffing, caseloads, training, and infrastructure. Fifty-six of California's 58 counties provided input.
- A group of legal professionals surveyed courts to identify innovative practices and compiled background materials on laws and court decisions.
- A literature review was conducted in preparation for a session on access and parity.

During the summit, small groups explored five areas of need followed by a general session in which delegates made personal and collective commitments and adopted a resolution to establish a Blue Ribbon Panel on Elder Justice (see Appendices). Post-summit events included the formation of two committees to explore 1) the interface of caregiving and elder abuse and 2) the elder justice implications of new developments in long-term services and supports (LTSS). The latter group oversaw a webinar and the development of *Educating Elder Justice Professionals About Long-Term Services and Supports (LTSS): An Action Plan*, which was supported by The SCAN Foundation.

KEY DEVELOPMENTS IN THE FIELD OF ELDER JUSTICE

Developments at the state and national levels created new challenges and opportunities, which are described throughout this document. Those with broad, cross-cutting implications include:

- **“The Great Recession.”** Drastic cuts to APS, Long-Term Care Ombudsman Programs (LTC Ombudsmen), public guardians (PGs), courts, law enforcement, and supportive services eroded California's safety net. The lasting impacts of these retrenchments are still being realized.
- **“Realignment.”** In 2011, in an effort to close budget gaps, the State turned fiscal and programmatic oversight of APS, corrections, mental health, and other programs to local control, creating new challenges to achieving a uniform and cohesive response to elder mistreatment and elder justice.
- **Coordinated Care Initiative (CCI).** In 2012, the Legislature approved a pilot program to provide integrated medical and social services to beneficiaries of Medicare and Medi-Cal through managed care organizations (MCOs). The initiative has placed new demands on service delivery systems, community agencies, family caregivers, and the elder justice network.
- **LTSS Plan for California.** In 2014, the California Senate appointed the Select Committee on Aging and Long-Term Care to review the state's LTSS system. The resulting *A Shattered System: Reforming Long-Term Care in California: Envisioning and Implementing an IDEAL Long-Term Care System in California* proposes a new framework for LTSS that acknowledges the need for elder justice protections and measures to protect the rights of cognitively impaired adults.
- **Elder Justice Act (EJA).** In 2010, Congress passed the EJA as part of the Patient Protection and Affordable Care Act (ACA). It calls for the creation of a national structure and agenda for elder justice (see **TOPIC IX: The Federal Role**).

TOPIC I: Modernizing Adult Protective Services (APS)

BACKGROUND

California's APS program is a statewide, county-based program that investigates abuse, neglect, and self-neglect of people over the age of 65 and adults with disabilities under the state's mandatory elder and dependent adult abuse reporting law (Welfare and Institutions Code §15610.07). APS programs cross report allegations of abuse, neglect, and exploitation to Long-Term Care Ombudsman Programs (LTC Ombudsmen), which investigate abuse in long-term care facilities, and local law enforcement agencies, which investigate allegations of criminal conduct in all settings. The program provides 24-hour emergency services, assesses risk, and connects clients to support services. APS services are voluntary (clients must consent to interventions) and are provided at no cost to clients. Involuntary interventions such as conservatorships may be pursued by APS workers under certain circumstances. Statewide, APS receives as many as 10,000 reports of abuse a month and reports are increasing.¹ The role of the California Department of Social Service (CDSS) has undergone changes in recent years, which are described in New Developments below.

APS was created under Title XX of the Social Security Act. Although APS receives no designated federal funding, some states (including California) use a portion of Social Services Block Grant funds to support APS. Until recently (see New Developments), no federal agency had responsibility for overseeing or supporting state APS programs, and there was no national infrastructure to support data collection, training, or standards (U.S. GAO, 2011). The National Adult Protective Services Association (NAPSA) provides resources and guidance for APS programs, including recommended program standards and training competencies (NAPSA, 2013).

NEW DEVELOPMENTS

At the State Level

California's APS program was "realigned" as part of the 2011-2012 state budget agreement, transferring fiscal management for programs to local governments. The state retained responsibility for ensuring that APS mandates are met and overseeing a statewide APS training program. Such key oversight functions as informing APS personnel about changes in state and federal policy, however, fell to counties. In 2015, CDSS received state funds for a full-time executive-level civil service position in the director's office to oversee APS.

¹ Based on information reported in SOC 242 reports from the counties available at <http://www.cdss.ca.gov/research/PG345.htm>

“Statewide, APS receives as many as 10,000 reports of abuse a month and reports are increasing.”



“Until recently, no federal agency had responsibility for overseeing or supporting state APS programs, and there was no national infrastructure to support data collection, training, or standards.”



At the National Level

Passage of the EJA led to key administrative changes at the national level. The Administration for Community Living (ACL), Department of Health and Human Services (HHS), which has responsibility for implementing the EJA, has undertaken the following:

- In 2013, in partnership with the HSS Office of the Assistant Secretary for Planning and Evaluation (ASPE), ACL began a two-year effort to design and pilot a national APS reporting system. The National Adult Maltreatment Reporting System (NAMRS) will collect information about states’ APS programs and data on investigations, clients, and perpetrators. NAMRS, which is currently being piloted in nine states, will be voluntary.
- In 2014, ACL renamed the Office of Elder Rights to become the Office of Elder Justice and Adult Protective Services, creating the first federal “home” for APS. The office is charged to address APS coordination, data collection, and training standards.
- In 2015, ACL released and began soliciting comments on *Voluntary Consensus Guidelines for State Adult Protective Services*. The guidelines address program administration, time frames for receiving reports of maltreatment, conducting investigations, service planning and intervention, training, and evaluation.

CHALLENGES & NEEDS

- Lack of data on APS funding and management. Little is known about local funding for APS, including how Social Services Block Grants are apportioned, other sources of funds, and how funds are used.
- Insufficient funding and increasing reports have forced APS programs to focus on mandated emergency and short term services and to triage cases. As a consequence, workers are often unable to intervene until crises occur when earlier interventions could have potentially prevented harm or the need for more costly services. Programs also lack resources to address the needs of underserved groups, including rural seniors, elders of color, and LGBT elders.
- Lack of mandatory requirements for APS to ensure the quality and consistency of services and justify expenditures to policy makers. *The Voluntary Consensus Guidelines for State Adult Protective Services*, “will not constitute any standard or regulation, and will not create any new legal obligations, nor impose any mandates or requirements.” Funding for both child and adult protective services programs is co-mingled at the local level and counties have discretion in how these dollars are spent. As a result, APS programs are disadvantaged because the program lacks the administrative guidelines and caseload standards that are found in child protective services.
- Shortage of referral resources. Recession-related retrenchments further reduced public guardian (PG), health and mental health, legal, and other key services that APS clients rely on. Cuts to case management programs have further reduced frail individuals’ ability to live independently.

- Lack of descriptive data on victims and abusers that could contribute to understanding risk factors and service needs. Data that is currently collected provides only a snapshot of the volume and types of cases that are investigated by APS programs. Although CDSS collects aggregate information from counties on a monthly basis, the state lacks a statewide system for APS to collect data and track abusers who are committing elder abuse in different counties. The aggregate data lacks validity and reliability because each county tracks data differently and CDSS does not carry out quality assurance activities. Although NAMRS holds promise for improving data collection, it is uncertain if California will be prepared to participate.
- State and federal information on suspects and perpetrators is needed by investigators to collaborate across county and state lines in locating suspects and building cases. Information on criminal and abusive conduct is also needed by potential employers to prevent dangerous individuals from harming others.
- Lack of clarity about what client information can be shared among APS, police, district attorneys, and referring agencies.
- Barriers to investigating financial abuse. APS workers and their partners are often unable to secure evidence needed to substantiate and prevent financial abuse. In particular, financial institutions often refuse to report abuse or provide information about alleged victims' accounts when victims are frail, bed-bound, or suffering from advanced dementias that prevent them from advocating for themselves.
- Although California has nearly 15% of all APS clients nationwide, it has had a limited voice in national APS policy, research, and program development.
- Lack of state APS leadership and resources has prevented California from applying for public or private grants for training, technical assistance, or pilot projects.
- Lack of public and professional awareness about APS and abuse reporting is believed to account for significant underreporting. Misconceptions about APS may further discourage some from reporting. Lack of resources for victims also reduces the incentive to report.
- Lack of comprehensive statewide training for APS workers. New APS workers do not systematically receive training, and ongoing training is not required by state or federal government. The budget for statewide APS training has not increased in recent years, remaining static at \$176,000 dollars (compared to the \$22 million annual training budget for child welfare workers). Although the State retained responsibility for APS training under realignment, training funds are disbursed to regional training academies at academic institutions, which decide on content; there is no state oversight to ensure that training is consistent across regions or reflects state and national priorities. A standardized APS core curriculum has been developed but funds are not available to put them to use.
- APS salaries are not commensurate with those of professionals who work with other populations, which may discourage people from pursuing careers in the field.
- Agencies and individuals that report abuse are often dissatisfied with the lack of feedback they receive, which prevents them from developing safety plans with clients.
- Lack of information on APS innovations, technical assistance in replicating promising practices, and tools for measuring outcomes and demonstrating effectiveness.

“The budget for statewide APS training has not increased in recent years, remaining static at \$176,000 dollars (compared to the \$22 million annual training budget for child welfare workers).”



RECOMMENDATION 

“Reduce disparities among county APS programs in terms of services, staffing, training, and communication through the development of statewide casework practices.”

RECOMMENDATIONS



At the State Level

- Call for a Legislative Analyst’s Office report on APS to provide information on APS funding, management, clients, resource needs, and impact and to assess the effect of realignment on APS.
- Ensure adequate resources for APS in all counties through the following:
 - Develop staffing guidelines based on the elder and dependent adult population, APS mandates, and caseload standards for effective delivery service.
 - Encourage CDSS to seek federal funding for technical assistance and pilot projects.
 - Advocate for funding for collateral services needed by APS clients, including legal assistance, mental health services, PGs, victim assistance and compensation, and case management.
- Develop a state mandated and funded APS training program that:
 - Ensures comprehensive training for new APS workers and on-going training that reflects new and emerging trends for all APS workers.
 - Includes content on cultural factors impacting APS casework and cultural competence in working with APS clients.
- Strategies for and approaches to training include:
 - Emphasize the role of APS vis-à-vis the broader aging network.
 - Employ a family focus.
 - Assess and respond to regional needs.
- Reduce disparities among county APS programs in terms of services, staffing, training, and communication through the development of statewide casework practices.
- Promote the development, evaluation, and dissemination of promising practices.
- Explore strategies to improve communication and coordination among agencies that interface with APS. Specific areas to address include:
 - Confidentiality concerns.
 - Collaboration around cross-reporting between APS, LTC Ombudsmen, law enforcement, and financial institutions (e.g. disseminate protocols for information sharing).
- Modernize California’s APS data collection practices to:
 - Provide data that can guide policy and practice and substantiate resource needs.
 - Reflect current state laws and regulations.
 - Collect perpetrator data on a statewide level for better tracking.
 - Enable California to participate in NAMRS.
 - Build on existing systems that have proven to be effective.

- Improve timely reporting by mandated reporters and the public:
 - Provide outreach and education urging frontline responders and the public to report earlier.
 - Help the public understand the nature, scope, and consequences of abuse, and dispel misperceptions about APS.
 - Explore how abuse is perceived and addressed within various cultural communities with the goal of developing culturally specific outreach campaigns.
- Ensure a highly trained APS and allied professional workforce by creating incentives to pursue careers in APS and allied fields. Approaches may include subsidized education and loan forgiveness programs, higher salaries, career advancement opportunities, and increased gerontology training in MSW and related programs.
- Provide county APS programs with information about promising practices and technical assistance to help implement them.



At the National Level

- Call for federal leaders and advocacy organizations to assert the critical importance of APS, establish high standards of excellence for APS programs, create benchmarks toward meeting standards, and incentivize states to achieve benchmarks.
- Call for federal agencies to provide policy focused information, resources, and technical assistance to help states enhance their APS programs. Specific areas of need include model statutes and promising models for reporting systems, abuser registries, and data systems.
- Mandate standards for APS training and service delivery.
- Mandate federal employees (e.g., postal workers, Social Security Administration employees, and federal investigators and prosecutors) to report abuse in order to reach more victims, generate more accurate estimates of the scope of elder mistreatment, facilitate collaboration among state and federal agencies, and provide a more cohesive response.



PROGRESS TOWARD IMPLEMENTING *BLUEPRINT 1* RECOMMENDATIONS

- In 2014, CEJC, CCoA and CWDA partnered with Assembly Member Mariko Yamada to secure on-going funding for a full-time executive-level civil service position in the director's office at CDSS to update policies and procedures, ensure consistency of casework practices statewide, respond to county needs, coordinate efforts with other state agencies, provide liaison with the federal government, and participate in opportunities offered through the EJA. The position was filled in 2015.
- CEJC, CCoA, and CWDA formed a coalition to seek resources for a comprehensive APS training program. Although unsuccessful in 2014 and 2015, these efforts are ongoing.
- Following the first elder justice summit in 2010, the APS/Ombudsman Jurisdiction Committee was formed to develop a protocol for cross-reporting abuse reports to ensure that cases are handled by the most appropriate agency, prevent duplication of effort, facilitate information-sharing and evidence collection, and protect victims. The protocol has been implemented in multiple counties.
- CEJC and CCoA worked with the Assembly Committee on Aging and Long-Term Care to request a Legislative Analyst's Office (LAO) report on the impact of realignment on APS.

RESOURCES

- National APS Resource Center (NAPSRC) provides information and technical assistance (<http://www.napsa-now.org/resource-center/main/>), including *Doing More with Less: Replicable, Innovative and Cost-saving Measures in Adult Protective Services*. Available at: <http://www.napsa-now.org/resource-center/main>
- Project MASTER at San Diego State University developed training modules that reflect 23 core APS competencies, including initial investigation, sexual and physical abuse, neglect, self-neglect, financial exploitation, and case planning.
- National Guidelines to Implement *Federal Guidance on Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults (2015)*. Produced by The Philadelphia Corporation for Aging and NAPSA to facilitate the sharing of information between financial institutions and abuse investigators. Available at: <http://www.napsa-now.org/wp-content/uploads/2015/07/Guidelines.pdf>

PROMISING PRACTICES

- APS-TRIO (Tool for Risk, Interventions and Outcomes). Created by the Ventura County Human Services Agency, the tool provides an approach to assessing risk, planning interventions, and measuring outcomes in health, safety and harm reduction (Henderson, 2012). Available at: <http://vcportal.ventura.org/HSA/docs/brochures/pdf/AoA%20Final%20Performance%20Report%20RRET.pdf>
- Adult Protective Services Acutely Vulnerable Adult Protocol. Developed by San Diego County Aging & Independence Services, the protocol provides guidance in intervening in cases in which clients are at increased risk of abuse due to living circumstances, isolation, history of injuries and/or behavioral health issues.

TOPIC II: Elder Abuse in Institutional Settings

BACKGROUND

California elders and dependent adults who are abused or neglected in long-term care (LTC) facilities, including skilled nursing facilities (SNFs)² and residential care facilities for the elderly (RCFEs)³, face overwhelming barriers to justice as a result of frailty and isolation. Government reports and the media have exposed systematic failings in California’s oversight of facilities and called for greater enforcement of laws, regulations, and penalties. Advocates attribute high levels of neglect in facilities to staff overload, lack of enforcement of laws and regulation owing to pressures from the industry, and unrealistic regulations for nurse-patient ratios.

Abuse in facilities may be committed by staff, guests, and other residents. When abuse reflects systemic problems like inadequate patient care, fraud, poor supervision or management, or negligence, offenders may include management or corporate owners. California’s response to abuse in facilities is evolving, with recent changes to state and federal law posing new opportunities and challenges for improving the state’s ailing system (see New Developments).

The investigation of reports of abuse and neglect in facilities under the state’s mandatory elder and dependent adult reporting law are shared by LTC Ombudsmen, regulatory agencies, local law enforcement, and the Bureau of Medi-Cal Fraud and Elder Abuse, Department of Justice (BMFEA):

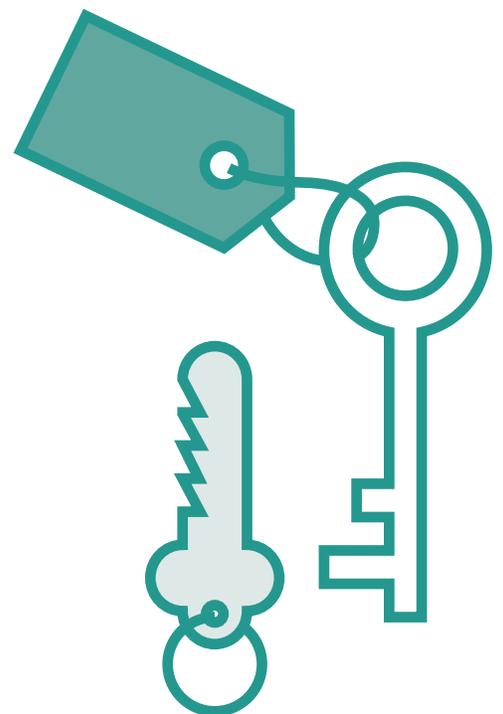
- LTC Ombudsmen in California operate under both federal and state mandates:
 - Under the Older Americans Act (OAA)⁴, LTC Ombudsmen are charged to protect the health, safety, welfare, and rights of older individuals in facilities. They make routine visits to identify and resolve complaints to residents’ satisfaction; provide information and consultation on residents’ rights to staff, residents, and their families; and maintain information about facilities. A key strategy for abuse prevention and early intervention is unannounced monitoring visits.

² Skilled nursing facilities (“nursing homes”) provide skilled care under the supervision of medical professionals.

³ Residential care facilities for the elderly (RCFEs), (also called “assisted living facilities” and “board and care homes”) provide housing, meals, and personal care to those who need help with daily activities but do not require medical care.

⁴ Older Americans Act, Title I, §102; Title III, §307; Title VII, §721

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- Under the state’s mandatory elder and dependent adult abuse reporting laws, LTC Ombudsmen conduct preliminary investigations of abuse or neglect in facilities. When abuse is verified, they:
 - Work with facilities to improve care, which may include firing, suspending, or disciplining abusive employees; providing training; changing residents’ rooms to prevent abuse between residents; and increasing staff supervision.
 - Find alternative placements for residents when facilities cannot meet their needs.
 - Advise residents and their families about recourse, including reports to regulatory agencies and civil and criminal remedies.
 - Report allegations of abuse and neglect to state licensing agencies and follow up to determine if facilities comply:
- The Community Care Licensing Division of CDSS (CCL) inspects and licenses RCFEs, investigates reports of problems, and works with facilities to correct substantiated claims. CCL can fine facilities for failure to comply, terminate their licenses, and prevent staff from working in community care facilities in California.
- The Department of Public Health’s Licensing and Certification Division (CDPH) conducts annual surveys of SNFs that provide care to Medicare and Medi-Cal beneficiaries to ensure that they meet minimum quality and performance standards. CDPH is also required to conduct complaint investigations and can cite deficiencies, require plans of correction, and impose monetary penalties.
- The Centers for Medicare & Medicaid Services (CMS) can deny payment for failure to correct problems, terminate agreements, decertify facilities so they can no longer serve beneficiaries, and install temporary managers. CDPH maintains citation penalty accounts.
- Attorney General’s Bureau of Medi-Cal Fraud and Elder Abuse (BMFEA) investigates and prosecutes cases of abuse and neglect against patients in Medicaid-funded residential health care facilities, and investigates fraud in Medicaid program administration. Operation Guardian, a BMFEA program, focuses on abuse SNFs.

NEW DEVELOPMENTS



At the State Level

- AB 40 (2012) requires mandated reporters to report to *both* local LTC Ombudsmen and law enforcement when reporting facility-based physical and sexual abuse (previously, they could report to one *or* the other). The bill incorporates key elements of the EJA such as extending federal reporting requirements beyond federally financed SNFs to include all SNFs, intermediate care, and assisted living facilities. It further provided for a guaranteed law enforcement review of criminal events and a more aggressive timeline for response. It also enables LTC Ombudsmen and law enforcement to coordinate their responses.

- In August 2012, CMS and CDPH, along with a diverse group of stakeholders, launched the California Partnership to Improve Dementia Care and Reduce Unnecessary Antipsychotic Medication Drug Use in Nursing Homes (2012). The group developed a plan for improving dementia care and reducing the inappropriate use of antipsychotic medications.
- Assembly Bill 2623 (2014) required the Police Officers Standards and Training (POST) to expand elder abuse training requirements for law enforcement. BMFEA solicited input from stakeholders, which were incorporated into a training video.
- Civil litigators in private practice are increasingly addressing medical neglect and deficient staffing ratios in long-term care facilities through personal injury and class action lawsuits.



At the National Level

- The EJA created enhancements to the LTC Ombudsman Program and provided authority to establish a system to report crimes in SNFs and assist states implement criminal background check programs for employees.
- In 2015, ACL issued a federal rule to implement provisions of the OAA regarding states' implementation of Ombudsman programs to eliminate variations. Key provisions, effective July 1, 2016, address responsibilities of key figures in the system, responsibilities of the entities in which programs are housed (e.g., state units on aging or others), criteria for establishing consistent, person-centered approaches to resolving complaints on behalf of residents, the appropriate role of LTC Ombudsman programs in resolving abuse complaints, and conflicts of interest. These changes served to ameliorate several of the problems identified in *Blueprint 1*.

CHALLENGES & NEEDS

- California may be out of compliance with provisions of the OAA regarding Ombudsman programs as delineated in the new rule (see above). Although the new rule affirms LTC Ombudsmen's role in investigating residents' complaints and resolving problems to complainants' satisfaction, it prohibits them from serving as "first finders of fact" in investigations under state mandatory reporting laws. These developments may require changes to the state's response.
- Severe recession-driven cuts to LTC Ombudsmen resulted in sharp declines in the number of monitoring visits and complaints identified. In some counties, volunteers with little training are conducting elder abuse investigations.

“Civil litigators in private practice are increasingly addressing medical neglect and deficient staffing ratios in long-term care facilities through personal injury and class action lawsuits.”



“25 for-profit nursing-home chains control about half of the state’s 120,000 licensed beds...of these, 10 performed below statewide averages in quality-of-care categories.”

- Lack of response to abuse in facilities by law enforcement. Financial abuse and medical neglect in particular are rarely investigated. Potential reasons that have been noted by advocates include:
 - Law enforcement officers are uncomfortable in facilities, feel they are not welcome, or believe that residents all have dementias or mental illnesses and are not reliable witnesses.
 - Lack of training in how to investigate and build cases. In some instances officers reportedly take the word of facility staff over that of residents and fail to freeze potential crime scenes.
 - Medically neglected residents are often admitted to hospitals where they subsequently die. Because these deaths are “attended” by medical professionals (the patients are considered to be under medical supervision), coroners are not contacted to perform investigations or autopsies that could reveal abuse (coroner investigations are typically only requested for “unattended” deaths). Coroners may also be unwilling to investigate.
 - Deaths in facilities that are assigned to homicide detectives are often dismissed.
- Few cases of abuse in facilities are prosecuted. Advocates report that medical neglect, in particular, is rarely prosecuted, and of those cases that are, most involve line staff rather than operators. Although the Attorney General’s office, in 2012, announced the formation of three specialized teams to pursue criminal charges against nursing home administrators and employees when serious systemic problems are suspected, little impact has been observed. BMFEA has in fact decreased prosecutions and Operation Guardian, which had previously demonstrated success, has quietly disappeared.
- Lax oversight by regulators and licensing agencies. A series of reports by the Inspector General of HHS, which oversees Medicare and Medicaid, detailed California’s failures to meet CMS requirements, revealing that CDPH did not conduct required licensing inspections for half of the nursing homes it sampled, and concluded that inspections could not be counted on to identify violations of state nursing home standards in the state (U.S. Dept. of Health and Human Services, Office of Inspector General, 2011, 2012, 2014). A review by The California State Auditor (2014) noted, “As of April 2014, CDPH had more than 11,000 open complaints and entity-reported incidents, many of which had relatively high priorities and had remained open for an average of nearly a year.” Medi-Cal and Medicare continue to pay providers for services rendered even when the facilities are responsible for serious harm to residents. Facilities that have received citations for causing the death of residents in SNFs have reportedly still been paid for care provided.



- Poor care by large nursing home chains. A 2014 series in the *Sacramento Bee* revealed that 25 for-profit nursing-home chains control about half of the state’s 120,000 licensed beds and that, of these, 10 performed below statewide averages in quality-of-care categories, which include the incidence of pressure sores, infections, and falls. Twenty of the top 25 chains fell below state averages in at least three out of five staffing measures (Lundstrom & Reese, 2014).
- Rapid growth of RCFEs and lack of regulation. The federal government does not regulate or provide oversight of RCFEs, and the following violations of state law are common:
 - Facilities that are required to be licensed are not, and restrictions against referring elders to unlicensed facilities are not enforced.
 - Facilities admit residents who require higher levels of care than they are licensed to provide.
 - Licensed operators may also operate unlicensed facilities, which CCL does not have the authority to stop.
- Growing numbers of unregulated “placement agencies” have emerged to assist LTC consumers, including families and agencies, locate LTC facilities. Although California law makes it a misdemeanor to place people in unlicensed facilities and requires them to report violations, many agencies are unaware of the provisions and the law is rarely enforced. Advocates further fear that “placement agencies” are placing LTC consumers in facilities with the highest per-bed commissions instead of facilities that are the most suitable.
- Fire department personnel and other emergency responders who are likely to observe neglect are not trained to identify and report abuse in facilities.
- Doctors are not held accountable for failure to provide required medical treatment by the criminal justice system or the California Medical Board.
- Lack of protections to ensure the rights of cognitively impaired residents. Decisions about their treatment are frequently made by facility staff with no one advocating on residents’ behalf, raising serious concerns about conflicts of interest.
- Inappropriate use of potentially harmful psychotropic medications for the convenience of staff in lieu of adequate staffing and as a form of punishment.
- Problems assuring continuity of care when patients are transitioned between acute medical care facilities and LTC facilities participating in LTSS managed care plans.
- California lacks an effective system for tracking LTC facilities that perform poorly or have abused, mistreated, or violated residents’ rights.
- Challenging and unsafe working conditions and inadequate training for facility employees. LTC facility employees face unrealistic workloads, low pay, dangerous working conditions, and high rates of violence and aggression by residents with dementias. Few facilities offer adequate training to assist workers and little is known about the impact of training programs on improving residents’ care.
- Facilities are increasingly admitting younger mentally ill residents and allowing them to interact with residents with dementias without adequate supervision.

“As of April 2014, CDPH had more than 11,000 open complaints and entity-reported incidents, many of which had relatively high priorities and had remained open for an average of nearly a year.”

RECOMMENDATION 

“Ensure that all reports of abuse in facilities are reviewed for criminal conduct, regulatory violations, and infractions of residents’ rights.”

RECOMMENDATIONS



At the State Level

- Review California’s mandatory reporting laws and response system with respect to abuse in facilities to ensure maximum protection for residents, that residents’ rights are acknowledged, and that California is in compliance with federal law. This includes:
 - Ensure that all reports of abuse in facilities are reviewed for criminal conduct, regulatory violations, and infractions of residents’ rights.
 - Ensure that all agencies involved in investigations and advocating on behalf of victims have adequate funding and training.
 - Ensure that LTC Ombudsmen are notified of all abuse investigations and provided with the access and information they need to advocate on behalf of alleged victims as well as other residents who may be victims or impacted.
 - Clearly define the role of LTC Ombudsmen in investigations and ensure that they have the authority, resources, and access they need to:
 - Meet their OAA duties to investigate complaints and ensure residents’ rights.
 - Determine whether other residents within facilities are affected.
 - Ensure the rights of crime victims in facilities (e.g., the right to information about their cases, to be heard by courts, and to receive compensation, restitution, shelter, and counseling).
 - Ensure that LTC Ombudsmen have the access, resources, and authority they need to advocate for stronger state and federal laws and regulations to protect residents.
- Improve enforcement of state and federal laws and regulations that protect LTC residents.
 - Ensure that crimes against residents are reported and investigated, regardless of whether victims are able or willing to give consent.
 - Review Penal Code §368 and jury instructions with respect to the definition of neglect as it applies to LTC facilities.
 - Deny Medi-Cal payments to facilities that cause avoidable harm or death to residents.
 - Impose and enforce penalties on doctors who are paid by Medicare and Medi-Cal and who provide inadequate care to LTC residents.
- Promote the development of forensics expertise specific to facilities:
 - Create a forensics center for LTC facilities (see Appendices).
 - Call for BMFEA investigators to participate in Forensic Center team meetings.

- Provide training to all entities involved with investigating abuse in LTC facilities, advocating on behalf of residents, and those likely to observe abuse, including law enforcement, LTC facility medical directors, fire and emergency first responders, LTSS providers, CCI Ombudsmen, CCI administrators, allied health professionals, civil litigators, medical examiners, regulatory agencies, and facilities' personnel. Training must be customized to meet the needs of specific groups but may include:
 - Residents' rights and victims' rights.
 - The role of LTC Ombudsmen.
 - Evaluating residents' medical and cognitive status and identifying markers of abuse.
 - Establishing rapport with residents.
 - Assessing quality of care and medical neglect, including:
 - Evaluating aggregate data on facilities' performance and rates of accidents, injuries, deaths, and pressure ulcers.
 - Auditing financial records to establish patterns of fraud (e.g., falsifying patient charts).
 - Assessing management practices.
 - Understanding facilities' administration, including the roles and responsibilities of employees, and chains of command.
 - New LTSS financing and management arrangements with respect to facilities and how it affects patient care.
 - Determining culpability for abuse and neglect (e.g., individual workers, managers, directors, boards).
 - Recognizing when abuse is a crime (as opposed to exclusively being a civil matter).
- Enlist civil litigators in private practice to pursue medical neglect cases for individuals and class action lawsuits.
- Provide higher reimbursement rates to doctors who provide care to nursing home patients on Medi-Cal to attract qualified physicians.



At the National Level

- Enforce EJA provisions for failure to report abuse and protections from retaliation for nursing home staff.
- Regulate RCFEs.
- Support the development of forensics expertise specific to abuse in facilities.
- Mandate federal employees to report elder abuse in LTC facilities.

RECOMMENDATION

“Support the development of forensics expertise specific to abuse in facilities.”



PROGRESS TOWARD IMPLEMENTING *BLUEPRINT 1* RECOMMENDATIONS

- As described in **TOPIC I: Modernizing Adult Protective Services**, the APS/Ombudsman Jurisdiction Committee was formed following the first elder justice summit to develop a protocol for cross-reporting abuse among entities involved in reporting and responding to abuse.
- CEJC and its partners highlighted abuse in facilities and residents' rights during sessions with legislative staff and in workshops at the annual conference of C4A.
- Challenges to LTC Ombudsmen related to the CCI are addressed in CEJC's *Educating Elder Justice Professionals About Long-Term Services and Supports (LTSS) An Action Plan*. See **TOPIC VI: Long-Term Services and Supports**.

RESOURCES

California Department of Public Health – Department of Health Care Services Antipsychotic Collaborative Executive Report. <http://www.cdph.ca.gov/programs/LnC/Documents/AntipsychoticCollaborativeExecutiveReportFinalMay2012.pdf>

PROMISING PRACTICES

- The San Diego District Attorney's Office launched a pilot program to examine CDPH and CDSS citations for criminal acts of abuse and neglect against RCFE facility residents. Citations are selected for aggressive investigation for potential prosecution. Program features include a special investigator, prosecutor, paralegal, and victim advocate; a special telephone line to receive reports; and a public awareness campaign to encourage family members, neighbors, and facility staff to report.
- In 2011, Georgia's Department of Human Services, Division of Aging Services created the *Forensic Special Investigations Unit (FSIU)* to address abuses against at-risk older adults by unlicensed care home operators. The initiative was prompted by reports that facilities were recruiting adults with mental illnesses and cognitive impairments from homeless shelters, hospitals, jails, churches, and social media to admit to their facilities. The group advocates for training for key players and for making operating unlicensed homes a felony offense and mistreatment of at-risk adults predicate acts for Racketeer Influenced and Corrupt Organizations (RICO) indictments.
- California Advocates for Nursing Home Reform (CANHR) provides training to APS workers in when to use civil litigation as an intervention for financial exploitation. CANHR also operates the Lawyer Referral Service (LRS), a panel of attorneys who specialize in elder abuse in facility settings and financial abuse in any setting. LRS is certified by the California state bar, and uses rigorous screening requirements to select elder law attorneys. <http://www.canhr.org/LRS/faq.html>

TOPIC III: Preventing Caregiver Abuse

BACKGROUND

According to an AARP Public Policy Institute report, family caregivers in California provided four billion hours of care, worth an estimated \$57 billion, to their parents, spouses, partners, and other adult loved ones in 2013, surpassing total Medi-Cal spending for the period (Reinhard, Feinberg, Choula, & Houser, 2015). The same study revealed the significant toll that caregiving can take on caregivers, particularly those who are struggling financially and those providing care to people with Alzheimer's disease.

California has been a leader in responding to the needs of caregivers. Recession-driven reductions in support services for persons with chronic diseases and disabilities, however, in combination with increased numbers of extremely frail older adults living in the community, have heightened demands on caregivers and required them to assume responsibility for people with increasingly complex needs, often under pressure from health care providers and with inadequate training (Reinhard, Levine, & Samis, 2012).

In response, caregiver advocates are calling for aging and long-term services and support (LTSS) programs to assess caregivers' needs as part of routine client assessments so that support, instruction, and resources can be offered. The assessments must further be "universal" (used in diverse settings).

At the same time, elder justice researchers and advocates have increasingly turned their attention to caregivers. Revelations about high rates of elder abuse by caregivers for dementia patients (Wiglesworth, 2010) suggest the need for assessments that go further to evaluate the risk of mistreatment as well.

This shared interest in providing support to caregivers and identifying high risk situations would seem to suggest the need for collaboration between the elder justice and caregiving advocacy networks. Collaboration, however, has been limited in the past, arguably due to skepticism or distrust between the networks. Some caregiver advocates fear that reporting high risk situations to protective service agencies will compromise their relationships with clients or lead to unjustified punitive action, while some elder justice advocates fear that framing abuse as a "caregiving issue" will prompt perpetrators to claim caregiver stress as a defense for criminal or illegal acts.

“ Caregiver advocates are calling for aging and LTSS programs to assess caregivers' needs as part of routine client assessments so that support, instruction, and resources can be offered.”



NEW DEVELOPMENTS



At the State Level

- Senate Bill 1036 (Chapter 45, Statutes of 2012) requires the California Department of Social Services (CDSS), the Department of Health Care Services (DHCS) and the California Department of Aging (CDA) to develop and test a Universal Assessment process for In-Home Supportive Services (IHSS), Multipurpose Senior Services, and Community Based Adults Services programs. A workgroup was formed to develop the tool.
- Over the last 10 years, state funding for Older Californians Act programs, including Alzheimer’s Day Care Resource Centers (ADCRCs), Senior Companion, Senior Brown Bag, Linkages, Respite Care, Caregiver Resource Centers, and the LTC Ombudsman program, have been eliminated or reduced. Although California’s 2015-16 budget restored \$4.9 million in general funds for caregiver resource centers, bringing the funding to pre-recession levels, it is not clear how these developments have impacted service delivery.
- In 2015, California adopted California Assembly Concurrent Resolution (ACR) 38, the California Task Force on Family Caregiving, to examine challenges faced by family caregivers, services currently being provided, and the need for new policy.



At the National Level

- The Older Americans Act, which contains services for caregivers aimed at enabling older adults to remain in the community through the National Family Caregiver Support Program, has not yet been reauthorized.

CHALLENGES & NEEDS

- Inconsistent administration and oversight of the National Family Caregiver Support Program has led to discrepancies in the number of caregivers served and services offered. The program requires states to offer information to family caregivers about available services, assistance in accessing them, individual counseling, support groups, training, and respite.
- APS programs, which historically addressed the needs of families, are increasingly directing resources toward case investigation and substantiation and emergency services. This has come at the expense of services to strengthen families.
- Lack of tools and training to distinguish mistreatment by well-meaning and/or overburdened caregivers from conduct that is criminal, predatory, or exploitative.
- Elder justice advocates are unfamiliar with services and resources for caregivers, including financial support, resources, training, and support groups. Courts, which are increasingly reviewing cases involving abusive caregivers, lack information about community resources and the potential impact of rulings for caregiving families. Similarly, caregiver advocates lack information on protective service and legal interventions.
- Little is known about the effectiveness of legal interventions in preventing caregiver abuse, including court ordered and monitored training, counseling, and mediation; restraining orders; powers of attorney; and conservatorship.
- Lack of aggregate national data on caregivers’ needs and approaches to meeting them.

RECOMMENDATIONS



At the State Level

- Promote the use of universal assessments that address both caregivers' needs and the risk for mistreatment. Assessments should be designed to:
 - Provide pathways to services.
 - Identify needs on an ongoing basis and monitor the implementation of care plans.
 - Identify abuse and neglect markers, including caregiver “readiness,” the potential for caregiver failure, and tipping points (new demands or changes that destabilize caregiving systems).
 - Be used in diverse settings, including home and community based services (HCBS), Title III-E (Older Americans Act) Family Caregiver Support Programs, In Home Support Services (IHSS), LTSS managed care plans, APS, mental health, criminal justice, family justice programs, and others.
 - Promising approaches to the development of caregiver assessment tools include:
 - Review caregiver tools and the use of Medicare codes for respite and care planning developed in Rhode Island, Texas, and Minnesota.
 - Convene stakeholders from various disciplines to solicit input.
 - Explore the use of electronic and telecommunication technologies to reach caregivers and assess their needs.
 - Include caregiver assessment in “meaningful use” electronic health records (standards defined by CMS that govern the use of electronic health records and allow eligible providers and hospitals to earn incentive payments by meeting specific criteria).
- Ensure that elder justice concerns are addressed by the California Task Force on Family Caregiving by providing materials, consultation, or representation.
- Increase access to and coordination of services to support caregivers:
 - Conduct community capacity needs assessments to determine the availability of:
 - Caregiver resource centers (CRCs).
 - Alzheimer’s Day Care Resource Centers (ADCRCs).
 - Case Management.
 - Mediation for caregiving families.
 - “Safe” estate planning and financial management resources that offer adequate safeguards and oversight.
 - Family centered services and interventions, including family unification approaches.
 - Monitoring of high-risk situations.
 - Education on abuse by caregivers and risk reduction techniques.

“APS programs, which historically addressed the needs of families, are increasingly directing resources toward case investigation and substantiation and emergency services. This has come at the expense of services to strengthen families.”



RECOMMENDATION 

“Explore courts’ role in addressing caregivers’ needs and holding abusive caregivers accountable, including...the effectiveness of court ordered training for abusive caregivers through court ordered probation or diversion programs.”

- Identify inconsistencies in the administration and oversight of family caregiver support programs statewide and determine how service delivery can be improved.
- Explore courts’ role in addressing caregivers’ needs and holding abusive caregivers accountable, including:
 - The effectiveness of court ordered training for abusive caregivers through court ordered probation or diversion programs.
 - The extent to which defendants claim stress as a defense (justifiable and bogus) and case outcomes.
 - The need for expert witnesses to explain to prosecutors, judges, court personnel, and juries the dynamics in caregiving relationships and differentiate them from dynamics in domestic violence.
 - The need for and effectiveness of court ordered training for abusive caregivers through court ordered probation or diversion programs.
- Explore the experiences, resources, and readiness of APS, legal service providers, forensics centers, and family justice centers in meeting caregivers’ needs and the training they receive in caregiving issues.
- Improve coordination between APS and LTSS providers in responding to caregiver needs.
- Develop data collection and electronic record systems.
- Design training on caregiving, the needs of caregivers, the dynamics in caregiving relationships, and how to assess the risk for caregiver mistreatment. Promising training approaches include:
 - Develop educational competencies on caregiving and integrate them in new and existing education and certification programs for medical practitioners, social workers, elder justice service providers, health plans, and front-line LTSS workers.
 - Partner with training institutions, including the California Social Work Education Center (CALSWEC) and regional APS training programs.
 - Integrate caregiver education and tools into community education curricula.
 - Encourage community colleges to provide caregiver education.
 - Explore opportunities to educate health plans about caregiver screening.
 - Use real life caregiver case scenarios in trainings to highlight the complexities of cases, gaps in services and education, and resources.



At the National Level

Promote research on preventing caregiver abuse to:

- Identify markers to distinguish neglect or abuse by well-meaning and/or overburdened caregivers from conduct that is malevolent, predatory, or exploitive.
- Evaluate the impact of court ordered training, counseling, and mediation for caregivers.
- Identify risk factors for abuse by caregivers and mitigating factors.
- Explore cultural variations in attitudes and expectations about caregiving.



PROGRESS TOWARD IMPLEMENTING *BLUEPRINT 1* RECOMMENDATIONS

Following *From Practice to Policy Elder Justice Summit*, participants in the breakout session on caregiving continued to meet to further explore and respond to challenges and recommendations. The group's accomplishments include:

- *CEJC Policy Brief: Preventing Abuse by Family Caregivers*. http://elderjusticecal.org/docs/Policy_Brief.pdf
- *Caregiving and Abuse; Seeking to Prevent the Preventable* session for legislative staff as part of The Elder Justice Brownbag series.
- Presentations on the interface of caregiving and elder justice at professional forums, including the 2015 annual conference of C4A.

RESOURCES

- The Caregiver Companion. Bet Tzedek Legal Services of Los Angeles County. Provides detailed information on legal and practical aspects of caregiving. <http://www.bettzedek.org/wp-content/uploads/BTCaregiverCompanionBook.pdf>
- Employed Family Caregivers Providing Complex Chronic Care. AARP Public Policy Institute and the United Hospital Fund. Identifies training needs of working caregivers. <http://www.uhfnyc.org/publications/880949>
- Training Courses for Caregivers:
 - Powerful Tools. Evidence-based national training developed at Stanford University that is provided in collaboration with community-based organizations. <http://www.powerfultoolsforcaregivers.org/about>
 - Savvy Caregiver Plus. Seven-week (12 hours) evidence-based training for family caregivers of adults in the early to moderate stages of Alzheimer's disease and related disorders. http://www.alz.org/oc/in_my_communit_57331.asp
 - Stress-Busting Program (SBP) for Family Caregivers. Nine-week program for family caregivers. <http://www.caregiverstressbusters.org>

PROMISING PRACTICES

- CastleKeep (Fresno). Conducts 3-hour training that integrates family caregiver stress burden triggers for providers and formal caregivers. <http://www.castle-keep.org>
- Bet Tzedek Caregiver Program (Los Angeles). Conducts "holistic assessments" of older adults that includes assessing caregivers; educating caregivers on the risks and benefits of powers of attorney, conservatorships, and restraining orders; and conducting self-help clinics to help caregivers petition for conservatorship. <http://www.bettzedek.org>
- Chronic Disease Self-Management Program (CDSMP). Six-week program of small-group, interactive workshops to empower people with chronic conditions and caregivers to manage their own health. http://centerforpositiveaging.org/living_well.html#sthash.zApOmRRI.dpuf
- Ventura County's Elder Court orders abusive caregivers (including spouses, children, grandchildren, and occasionally, paid caregivers) into caregiver training programs as a condition of probation and provides ongoing monitoring. The court may also require caregivers to undergo substance abuse treatment. In cases involving abuse by unrelated paid caregivers, they court may issue orders prohibiting offenders from having contact with victims and working as caregivers for others.

TOPIC IV: The Legal System's Role

BACKGROUND

California has been a leader in crafting statutory and procedural innovations addressing elder abuse. Its criminal elder abuse statute (Penal Code §368) acknowledges that older crime victims deserve special protection and consideration and carries penalty enhancements. Civil codes provide for abuse reporting, assistance to victims to recover assets and damages, consumer protections, and protective interventions such as restraining orders and conservatorships. California is also home to some of the nation's first elder courts, forensics centers, and multidisciplinary teams.

Civil and criminal cases pose a wide range of challenges for justice system professionals, many of which are discussed in other sections of this document (e.g. challenges to the investigation and prosecution of abuse in long-term care facilities are described in **TOPIC II: Elder Abuse in Institutional Settings**; and the complexities of legal interventions in financial abuse are described in **TOPIC VII: Financial Abuse and Exploitation**). This section focuses on broad legal system developments and overarching needs.

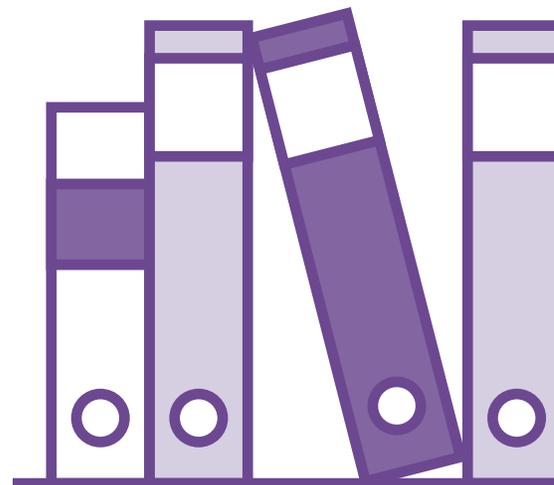
“California has been a leader in crafting statutory and procedural innovations addressing elder abuse.”

NEW DEVELOPMENTS



At the State Level

- AB 109 (2011) “realigned” California’s prison system, resulting in felony offenders who do not have prior convictions for “serious, violent, or sex offenses” being housed in locally run county custody facilities rather than state prisons.
- AB 40 (2012) increased the criminal justice system’s role in responding to abuse in long-term care facilities by requiring mandated reporters to report to *both* local LTC Ombudsmen and law enforcement (previously, they could report to one *or* the other).
- AB 2623 (2014) requires law enforcement to receive additional elder abuse training.



“A 2010 GAO report revealed insufficient oversight of court appointed guardians and called for closer monitoring, stronger protections for wards, alternatives to guardianship, and closer coordination between the aging services network and the court system.”



- The California Senate Select Committee on Aging and Long-Term Care report *A Shattered System: Reforming Long-Term Care in California. Envisioning and Implementing an IDEAL Long-Term Care System in California (2015)* acknowledges the need to protect the rights of cognitively impaired adults, including 1) guidance to enhance decision-making capacity for impaired individuals; 2) options for supported and surrogate decision-making that are appropriate for various levels of impairment and risk; 3) education about “safe” advance directives⁵, limited conservatorships, and affordable access to conservators, and 4) increased funding for public guardians to meet current demands.
- SB 940 (2014) established conditions for the reciprocity of conservatorships between California and other states.
- California’s Model Approaches: California received a federal grant to increase low-cost legal assistance to California seniors through improved coordination among the Senior Legal Hotline, senior legal services providers, the California Department of Aging, and others. Elder abuse, neglect, and financial exploitation were designated among the top priorities for the project, which is raising awareness of legal services and providing multidisciplinary training.
- The California Bar Association (CBA) considered revisions to the Ethical Standards on Diminished Capacity contained in the American Bar Association’s Model Rules of Professional Conduct (ABA MR 1.14) regarding the circumstances in which attorneys can disclose confidential information about incapacitated clients who are at risk for physical, financial, or other harm. Although CBA adopted a version of the rule, California’s Supreme Court, which must adopt the rule, appointed a new Rules Revision Commission, which has not yet addressed the subject. A formal public comment period for the new draft rules is planned in 2016.



At the National Level

- A 2010 GAO report revealed insufficient oversight of court appointed guardians and called for closer monitoring, stronger protections for wards, alternatives to guardianship, and closer coordination between the aging services network and the court system (Kutz, 2010).
- In 2015, the ACL provided funds for a National Resource Center for Supported Decision Making⁶ to explore and develop supported decision-making as an alternative to guardianship.

⁵ Advance directives that are crafted to reduce the likelihood that they will be abused. For example, powers of attorney for finances should clearly specify the scope of authority being granted (e.g. to pay bills as opposed to broad authority that can be used to sign a deed or make large gifts).

⁶ Supported decision-making is a process for helping older adults with cognitive impairment retain choice and control over the decisions in their lives by working with them to identify where help is needed and devising an approach for providing that help. It assumes that different people need help with different types of decisions.

CHALLENGES & NEEDS

► General (apply to both the civil and criminal justice systems)

- Recession related budget cuts limited courts to “core functions.” Only some of the cuts have been restored.
- California does not routinely collect information that could help courts, criminal justice agencies, and legal professionals track trends, progress, and needs, including:
 - Police reports involving elder abuse.
 - Civil cases and court rulings.
 - Outcomes from fatality review teams, FASTs, and forensics centers.
 - Restitution that is ordered and recovered.
 - How courts are using technology.
 - Information on financial abuse that can be used by federal law enforcement and regulatory agencies to build cases against scammers, predators, crime rings, and others.
 - The impact of budget cuts on elder abuse cases.
- Justice system professionals and their partners do not receive information about developments that directly affect their work, including statutory changes and duties, in a timely manner.
- Many existing materials on legal remedies for elder abuse are outdated.
- Lack of coordination between courts and LTSS and aging services.
- Lack of clarity and consensus related to how cognitive deficits impair legal decision-making.
- Barriers to court access resulting from:
 - Lack of accessible courtrooms and assistive devices.
 - Victims may have multiple, intersecting problems that are handled by different courts.
 - Many court personnel and allied professionals, including clerks, judges, court investigators, and victim advocates, do not understand older victims’ special needs.
 - Lack of surrogates for people who are unable to advocate for themselves.

► Criminal Challenges

- Lack of resources/prioritization of resources. Recession-related budget cuts have reduced resources for district attorneys, investigators, expert consultants, community policing programs, and specialized assignments. Police agencies are particularly reluctant to respond to abuse in LTC facilities. See **TOPIC II: Elder Abuse in Institutional Settings**.

“California does not routinely collect information that could help courts, criminal justice agencies, and legal professionals track trends, progress, and needs.”

“Police agencies are particularly reluctant to respond to abuse in LTC facilities.”

“High monetary thresholds for felony elder financial abuse prevents victims with small losses from receiving justice.”

“Despite efforts to encourage private attorneys to bring cases of elder abuse, few take cases involving victims with modest estates or on a pro bono basis.”

- Some prosecutors focus on prosecutions that offer minimal benefit to society, including offenders with mental illnesses.
- Barriers to the investigation and prosecution of cases include:
 - Difficulties establishing the credibility of victims with diminished mental capacity and their ability to understand financial transactions, give gifts, withstand coercion, etc.
 - Tendency of law enforcement officials to treat crimes as civil matters.
 - Limitations on the use of video conferencing or videotaped testimony.
 - Lack of criminal statutes addressing undue influence.⁷
- High monetary thresholds for felony elder financial abuse prevents victims with small losses from receiving justice.
- Although the impact of realignment of the state’s prison system is not yet fully understood, some advocates fear that the emphasis on violent offenders may reduce attention to criminal neglect and financial crimes, and that perpetrators of these crimes will receive lighter sentences and be less likely to pay restitution.
- Lack of crime victim advocates for older crime victims (see **TOPIC VIII: Victims Rights and Service Needs**).

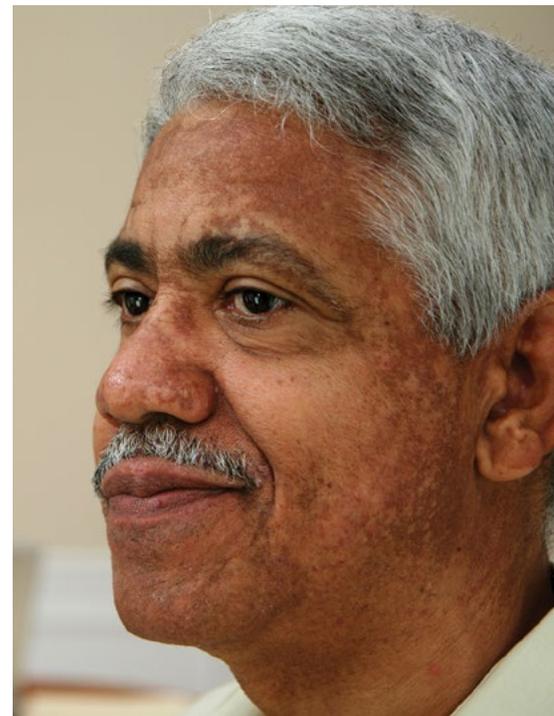
► Civil Challenges

- Ensuring protection for non-affluent elders: Despite efforts to encourage private attorneys to bring cases of elder abuse, few take cases involving victims with modest estates or on a pro bono basis. Free, affordable, and accessible legal aid is also in short supply. Low-income elders are further often prevented from seeking relief in small claims court. Elders who are believed to have financial resources but lack access to them as the result of abuse may be denied help from public legal programs until their funds are depleted.
- Challenges related to conservatorship include:
 - Shortage of conservators for elders with limited assets. Conservatorships are expensive and options for those who lack assets, including non-profit organizations and private conservators willing to accept pro-bono cases, are limited. PGs in many counties have long waiting lists. This shortage has been exacerbated by cuts to other community agencies that could potentially resolve problems through less restrictive means.
 - Inadequate resources for courts, including probate court investigators, examiners, and courtrooms, have resulted in backlogs and delays.
 - Lack of adequate oversight to ensure the rights of conservatees. Advocates report such abuses as the inappropriate granting of temporary conservatorships on ex parte petitions, lack of proper oversight of accountings, and misconduct by private professional conservators (e.g., improper billings) (de Sá, 2012).

⁷ People v. Brock (2006) 143 Cal. App. 4th 1266 established that undue influence is not a crime under Penal Code §368. Although the appellate court noted that “amending Penal Code §368 to include financial exploitation and criminal undue influence as legally supportable theories that vitiate the consent of an elder or dependent adult would support the Legislature’s previously stated intent to provide special consideration and protection to elders and dependent adults because of their increased vulnerability,” an attempt to do so (SB 1259, 2008) failed.

- Family and friends of incapacitated elders lack information to help them decide when conservatorship is needed and where to go for help. Those willing to serve may be discouraged by the complex system or the erroneous belief that they will bear the costs.
- Common misperceptions about what conservatorship is, what it does, who can petition, and who can serve (e.g., some believe that courts initiate conservatorships). There is a lack of transparency by some PGs about their criteria for accepting cases.
- Many APS programs are not permitted to refer clients with assets to private conservators due to liability concerns, increasing the demand for PGs by those who can afford to pay.
- Lack of forums to address conservatorship concerns. Advocates who are calling for conservatorship reform lack avenues for expressing grievances and obtaining information.
- Capacity declarations. The conservatorship process requires petitioners to demonstrate that proposed conservatees are incapable of acting in their own interests as a result of cognitive impairment or susceptibility to undue influence. In some cases, “capacity declarations” by physicians, psychologists, and religious healing practitioners are required. Critics have noted that the form is cumbersome, confusing, and fails to reflect current understanding of capacity (e.g. research on subtle, often undetected deficits that may impair financial decision-making capacity).
- Lack of alternative options for decision-making, including authority that is limited in scope or duration (Quinn & Nerenberg, 2005). Situations in which less restrictive alternatives may be warranted include:
 - When consent is needed for single medical or legal decisions (e.g., to sign “do not resuscitate” orders, authorize psychotropic medications, serve as responsible parties for people needing placements in long-term care facilities).
 - To protect assets that are in jeopardy.
 - To give consent for services, including APS, health plans, and hospice care.
- Limitations of existing alternatives include:
 - Some engender greater risk and less monitoring (e.g., trusts may be used to exploit).
 - Concerns about liability if less restrictive alternatives fail to protect.
 - Advance directives, often cited as alternatives, must be executed prior to the onset of impairments.
 - Alternatives may not be seen as cost effective because follow-up may be needed if capacity changes.
 - Stakeholders do not know about available options.

“There is a lack of transparency by some PGs about their criteria for accepting cases.”



- Concerns about court-appointed counsel for proposed conservatees. Courts may require prospective conservatees to be represented by independent counsel. Concerns include:
 - Variations in how courts provide counsel for those who cannot afford attorneys (e.g., some pay private attorneys at reduced rates and others appoint public defenders, county counsel, or other public employees).
 - Lack of standards and training for court appointed counsel. In some cases, counties have appointed attorneys with little training in elder abuse, dementia, or probate law.
 - The role of court-appointed attorneys is poorly defined. Some reportedly offer opinions regarding the necessity of conservatorships while others are committed to solely representing proposed conservatees' wishes. The latter may pose ethical challenges when cognitively impaired proposed conservatees contest conservatorships, and those representing them do not believe that they understand their risks.
- Problems with the three civil restraining orders used to protect older victims: 1) elder and dependent adult abuse, 2) domestic violence, and 3) civil harassment restraining orders, including:
 - Lack of information and training for litigants, self-help attorneys, judicial officers, and advocates about the scope and benefits of the three orders and processes for securing them.
 - Lack of consistency statewide in which courts handle elder and dependent adult abuse orders (family courts, probate courts, and elder law courts).
 - When older adults go to court to request orders, they must report whether they have called the police in the past. Some may have tried but encountered unwillingness by police to take complaints. Even when complaints are accepted, they may not be filed, resulting in victims' credibility being questioned.
 - Gaps in service. OAA legal services providers who help older adults with restraining orders serve adults who are 60+ years old. Eligibility for elder and dependent adult abuse restraining orders is age 65+.



RECOMMENDATIONS



At the State Level

- Develop a state legal data collection system to identify trends, remedies, outcomes, and needs. This should include abuse reported to law enforcement (including complaints that are not pursued), prosecutions, civil suits, conservatorships, restraining orders, and restitution.
- Ask California’s Chief Justice to convene a body of stakeholders, using the WINGS model described below, to explore the legal needs of adults with cognitive impairments, including conservatorship, alternative options, supported decision-making, and decision-making for “unrepresented” long-term care facility residents. Areas to explore include:
 - The supply of conservators, including resources for PGs.
 - The need for a state ombudsman to investigate conservatorship complaints.
 - The current and potential roles of senior legal service providers in providing individual and systems advocacy in conservatorships.
 - Performance standards for defining and measuring courts’ handling of conservatorships.
 - Alternative decision-making options, including supported decision-making, temporary or limited powers that can be used when consent is needed for single or limited decisions.
- Improve access to courts for victims through the following:
 - Ensure that victims have advocates to provide support, information, and assistance.
 - Explore the use of “conditional examinations” and remote testimony.
 - Explore the potential role of small claims courts in restoring misappropriated funds.
 - Provide information to courts about promising practices, including technological innovations to improve court access.
 - Fund volunteer senior peer advocate and advocacy programs.
- Extend access to legal assistance. Promising approaches include:
 - Explore ways that communities that lack resources to implement programs can benefit from those of other communities (e.g., provide forensics center consultants with resources to serve as expert witnesses or consultants to other communities).
 - Develop legal resources for non-affluent older adults. Promising approaches include:
 - Recruit pro bono lawyers from law offices to handle lower-loss cases.
 - Recruit large law firms to provide co-counsel on impact litigation cases handled by senior legal services providers.

RECOMMENDATION

“Ask California’s Chief Justice to convene a body of stakeholders...to explore the legal needs of adults with cognitive impairments, including conservatorship, alternative options, supported decision-making, and decision-making for ‘unrepresented’ long-term care facility residents.”

RECOMMENDATION 

“Explore the potential role of small claims courts in restoring misappropriated funds.”

- Develop a statewide training program for court staff, judges, attorneys, victim advocates, and those who interface with the legal system (e.g., APS, LTC Ombudsmen). Critical topics include:
 - The benefits and limitations of various restraining orders.
 - Legal decision-making capacity for specific decisions.
 - Elder courts, forensics centers, and fatality review teams.
 - Recognizing when elder abuse is a crime and not only a civil matter.
 - Abuse in LTC facilities and working with residents.
 - The importance of making/accepting all elder abuse reports, including the benefits for victims (e.g., access to victim assistance) and tracking alleged perpetrators.
- Promising approaches to training include:
 - Identify, update, and disseminate existing training resources.
 - Engage California’s Attorney General and the U.S. Attorney.
 - Include information on elder abuse in the Standards of Judicial Administration.
 - Provide ongoing support to professional forums and case review teams, including fatality review teams, fiduciary abuse special teams (FASTs), and forensics centers.
 - Develop short roll call videos for law enforcement (created by law enforcement).
- Maximize the impact of California’s law enforcement response and achieve more equitable results. Examples include:
 - Direct prosecutors to prioritize high impact cases that offer maximum benefits to society.
 - Broaden the range of conduct covered in PC 368 (e.g., undue influence and exploitation).
 - Explore the need for greater clarity and consistency in statutory definitions, particularly those relating to financial abuse.
 - Extend the use of small claims in elder financial abuse cases by:
 - Lowering the threshold for small claims by older victims of financial abuse.
 - Allowing for expedited handling of small-dollar cases.
 - Enabling older adult plaintiffs with mobility limitations to submit declarations to substantiate claims or allowing others to appear for them.





At the National Level

- Provide support to pilot projects to track the costs and benefits of “white collar crime centers,” forensic accounting services, family justice centers, legal self-help clinics, elder courts, and specialized forensics centers for financial abuse and abuse in facilities (see Appendices).
- Expand the use of successful models through replication guides and technical assistance.
- Support the development of model laws for states (see **TOPIC IX: The Federal Role**).

PROGRESS TOWARD IMPLEMENTING *BLUEPRINT 1* RECOMMENDATIONS

- CEJC and CCoA, in partnership with the California Assembly’s Aging and Long-Term Care Committee, hosted briefing sessions for legislative staff on multiple legal issues, including conservatorship, elder courts, and victims rights.
- The following resources were developed by participants in the 2010 elder justice summit in response to needs identified during the event:
 - Summit delegates Steve Riess and Helen Karr developed *Civil Elder Financial Abuse for Prosecutors/Criminal Elder Financial Abuse for Civil Lawyers* (see Resources below).
 - The San Francisco Elder Financial Abuse Collaboration, a collaboration between UCSF/UC Hastings Consortium on Law, Science and Health Policy and the San Francisco Elder Abuse Forensic Center produced *Blueprint to Guide San Francisco’s Implementation of a Comprehensive Coordinated Civil Response to Elder Financial Abuse* (see Resources).
 - In 2015, CEJC received a grant from The Borchard Foundation Center on Law and Aging to develop the California Undue Influence Screening tool for APS.

RESOURCES

- Guidelines for States Wishing to Implement Uniform Statewide Reporting on Title III B Legal Services. Initiative of The Center for Social Gerontology and the National Association of States United for Aging and Disabilities to gather state reporting data on OAA Title III B legal services and create guidelines for States in developing reporting systems. <http://www.nasuad.org/newsroom/nasuad-news/nasuad-creates-guidelines-states-wishing-implement-uniform-statewide-reporting>
- Civil Elder Financial Abuse for Prosecutors/Criminal Elder Financial Abuse for Civil Lawyers (Steve Riess and Helen Karr). One half of the document, created for criminal justice professionals, describes civil statutes and remedies. The other half describes criminal statutes and remedies. http://www.ioaging.org/wp-content/uploads/2015/03/CivilCriminalResourceGuide_0512.pdf
- Legal Aid Association of California Model Approaches Grant. Resources developed under the project, which are available at www.calegaladvocates.org, include *Insight into the Legal Needs of California’s Seniors: Results of Survey of Area Agencies on Aging* (2010) and *Assessing the Capacity of California’s Legal Services System to Meet the Needs of Older Californians* (2010).
- 368+ Elder and Dependent Adult Abuse Guide for CA Law Enforcement. App developed by San Francisco’s Institute on Aging in partnership with UC Irvine’s Center of Excellence on Elder Abuse and Neglect that provides advice and assistance for those in the fields of law enforcement, civil law, and medicine.

PROMISING PRACTICES

- WINGS (Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS)). A court-community project administered through the American Bar Association's Commission on Law and Aging (ABA-COLA) in collaboration with the National Guardianship Network (NGN) to engage stakeholders in improving judicial processes, protecting individual rights, addressing insufficient funding, and ensuring guardian accountability and fiduciary standards. Examples of short-term WINGS projects, activities, and goals, include:
 - Distribute information on nursing home residents' rights to new guardians.
 - Facilitate coordination between court administrative offices and regional Social Security offices responsible for representative payees.
 - Promote family guardian participation in state guardianship associations.
 - Convene meetings or presentations on "supported decision-making."
- Elder Courts. California has piloted the nation's first elder protection courts (Judicial Council of California, 2008), which are characterized by:
 - A single judge handles each case throughout the process.
 - Court staff receive special training (e.g., bailiffs are trained about seniors' needs).
 - Focus on early resolution and restitution (e.g., in Alameda County, the Probation Department reports to the court and a judge reviews restitution orders. In some cases, they stay jail time in order to get restitution).
 - Operate at slower pace and offer accommodations (e.g., scheduling cases in late morning).
 - Use of "conditional" examinations.
 - Videotaped testimony is used in some cases.
 - Private rooms near courtrooms where victims can observe without being seen.
 - Assistive devices and wheelchair seating.
 - Provide for community involvement. For example, a pool of experts in Alameda County consults on capacity issues, and private attorneys and law school interns assist in cases. The Contra Costa County court arranges for senior peer counselors from a county mental health services program to walk older adults through the court process and make referrals for services. In Ventura County, a public health nurse is available to the court to make home visits.
- National Center for State Courts. Produces resources on elder abuse for courts, including *Identifying and Responding to Elder Abuse: A Benchcard for Judges, Court Guide to Effective Collaboration on Elder Abuse*, and performance measures. <http://www.eldersandcourts.org/Elder-Abuse>

TOPIC V: Fair Access to Services and Resources

BACKGROUND

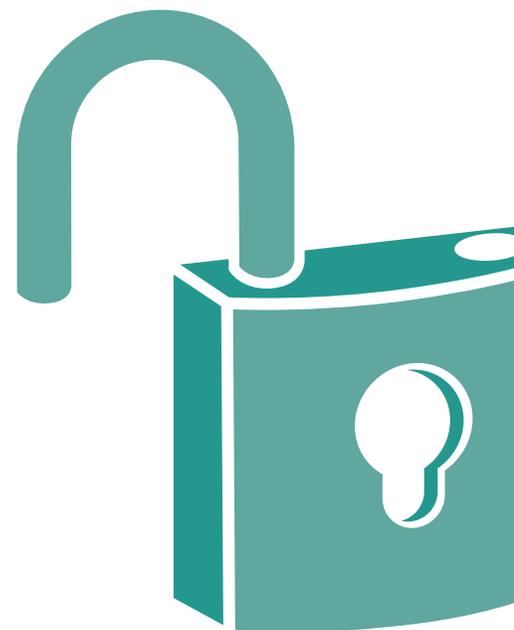
Fair access to resources and services is a fundamental component of elder justice. Experts agree that social determinants like poverty, low literacy and education, and social isolation negatively affect health and independence, and dictate the need for services. These factors are also known to intensify with age. The combined forces of ageism, racism, sexism, homophobia, and other forms of discrimination have created barriers to resources and services for those in greatest need.

Elder abuse researchers are also increasingly exploring how social and economic factors contribute to vulnerability and victimization (Hernandez-Tejada, Amstadter, Muzzy, & Acierno, 2013). Social isolation and lack of access to services have been found to be the strongest predictors of all forms of elder abuse (Acierno et al., 2010), and economic downturns, which disproportionately impact the poor, further increase the risk for elder abuse (Maxwell & Stone, 2010). Social determinants are also known to impact caregivers, with the financial burden of providing care for elders of color significantly higher than for other older adults (Kelly, McGarry, Gorges, & Skinner, 2015).

The rates of abuse and neglect are higher for socially and economically disadvantaged groups. African American older adults, for example, are three times more likely than whites to experience financial abuse and twice as likely to experience psychological abuse (Beach, Schulz, Castle, & Rosen, 2010). Those living in poverty and in large households without spouses are also disproportionately victimized (Peterson et al, 2014). Low income older Latinos are also at significantly heightened risk for mistreatment (DeLiema, Gassoumis, Homeier, & Wilber, 2012). Anecdotal evidence suggests that older adults who are incarcerated or formerly incarcerated, mentally ill, homeless, and LGBT are also at heightened risk.

Some disadvantaged groups are specifically targeted. Older immigrants and cultural communities are frequent targets for “affinity fraud.” For example, in 2012, over 50 elderly victims lost \$1.5 million in jewelry and life savings to swindlers in a ‘ghost scam’ targeting older Chinese women in San Francisco. Elders of color and the poor are also frequent targets of illegal evictions, predatory lending, and scams.

“The combined forces of ageism, racism, sexism, homophobia, and other forms of discrimination have created barriers to resources and services for those in greatest need.”



“Non affluent older adults are less likely to receive justice through the criminal and civil justice systems.”

Social determinants also create barriers to services that prevent abuse, promote independence, and protect rights. Older adults who are poor, homeless, isolated, cognitively impaired, disabled, and with limited literacy are significantly less likely to seek out or receive help. Abuse prevention services are not universally available across the state, with rural residing older adults having fewer resources. There is no universal mandatory abuse reporting and response system for Indian tribes in California, resulting in inadequate protection for some (Manataka American Indian Council, 2000). Some older Californians have reported discrimination in housing, including nursing homes and assisted living facilities (Smith, Feng, Fennell, Zinn, & Mor, 2007). As described in **TOPIC IV: The Legal System’s Role**, non affluent older adults are less likely to receive justice through the criminal and civil justice systems.

Older adults as a group are also disadvantaged and underrepresented with respect to resources and services, with programs funded through the Victims of Crime Act (VOCA), the Violence Against Women Act (VAWA), and Social Services Block Grants, for example, failing to reflect the burgeoning elderly population. Glaring disparities are also evident between protective services and victim services available to older adults when compared to those available to their younger counterparts. Salaries for professionals who work with older adults are significantly lower than for those providing comparable services to younger populations, compromising the availability and quality of care.

NEW DEVELOPMENTS



At the State Level

- In 2015, the California Office of Emergency Services’ Victim Services Division (VSC) assembled a 16-member Steering Committee to provide guidance to VSC in directing new funding to underserved victim groups. Older adults, persons with disabilities, and LGBT victims are included among the groups described as underserved.
- AB 663 (2013) requires LGBT cultural training for Administrators of Adult Residential Facilities (ARFs), Residential Care Facilities for the Elderly (RCFE), and Long-Term Care Ombudsman programs.



At the National Level

- The annual *National Healthcare Disparities Report*, mandated by Congress, describes access and quality inequities by race and ethnicity. The most recent edition shows that African Americans and Latinos receive lower quality healthcare in 40 percent of the indicators measured, American Indians/Alaska Natives in one-third of the indicators, and Asian Americans in one-quarter. (Agency for Healthcare Research and Quality, 2015).

CHALLENGES & NEEDS

- Lack of research on the impact of social and economic factors on the risk of elder abuse, neglect, and exploitation; patterns of abuse among socially and economically disadvantaged elders; unmet service needs; and barriers to access.
- Lack of services that are financially, geographically, linguistically, and culturally accessible.
- Distrust of institutions. Owing to historical and ongoing injustices and abuses, many older adults lack trust in public and commercial institutions (e.g., Southeast Asian immigrant seniors who are distrustful of the U.S. banking system often keep cash at home or in safe deposit boxes or carry their savings with them at all times, heightening the risk of exploitation and crimes). Distrust may also result in failure to seek out or accept help.



“Societal stigma, shame or embarrassment, social isolation, and lack of support and resources are among the reasons cited for underreporting by disadvantaged groups.”

- Underreporting. Societal stigma, shame or embarrassment, social isolation, and lack of support and resources are among the reasons cited for underreporting by disadvantaged groups. Specific reasons for not reporting include:
 - Negative experiences and perceptions about law enforcement.
 - Families’ economic and physical survival may depend on offenders.
 - Cultural concerns, including:
 - Belief that reporting will contribute to negative or racist stereotypes, ostracism, or dishonor to individuals or communities.
 - Cultural communities may have their own systems for handling problems, including tribal, community, or religious councils.
 - Faith-based acceptance of abuse as fate, which can or should not be altered.
 - Abuse may be seen as a community, rather than an individual, problem that calls for a different response.
 - Shame: In cultures that expect elders to be wise, revealing that one has been victimized can be particularly embarrassing.
 - Attitudes about “filial piety” (belief that adult children are responsible for the care and support of elders) may prevent families from turning to outsiders for help.
 - Violence and punishment against family members may not be illegal in immigrants’ countries of origin.
 - Victim fear, including fear of:
 - Deportation (themselves or their abusers),
 - Being “outed” (by LGBT seniors), which, in the past, could have led to jail, loss of employment, “shock treatment,” and humiliation.
 - Retaliation by perpetrators against victims and/or their families or communities.
 - Loss of independence or nursing home placement (by appearing incapable of managing on their own).
 - Having done something wrong.



RECOMMENDATIONS



At the State Level

- Establish a work group to explore the impact of historical injustices, disadvantage, disparities and social determinants on elder justice and explore remedies (including those listed below).
- Assess whether funding for protective services, victim assistance and compensation, legal assistance, and other programs, reflect California’s elderly population, underserved groups, rates of victimization, and specific needs.
- Advocate for public policy that increases parity and access (e.g., lowering thresholds for felony financial elder abuse, providing low cost or pro bono legal aid).
- Raise awareness about disparities by policy makers, professionals, and the public.
- Ensure that services, community education, professional training, public policy, data collection, and research reflects underrepresented and underserved populations.
- Build alliances and partnerships between “experts” and grassroots advocacy organizations and service agencies dedicated to addressing barriers to parity and access.
- Promote the use of community health workers, health navigators, cultural brokers, “promotores,” and others to provide information and advocacy to underserved groups.
- Conduct outreach to increase familiarity and trust, including materials that reflect the language, values, and beliefs of underserved groups. Messaging should be culturally specific in terms of language, setting, and media.
- Develop training and education on parity and access, and the impact of social determinants on social justice.



At the National Level

- Promote research on the role of social determinants, including poverty, racism, and ageism, on elder abuse and the prevalence of abuse against marginalized and underserved groups, including incarcerated and formerly incarcerated, mentally ill, homeless, and LGBT seniors.
- Provide guidance or directives to states on the use of federal funds for underserved groups.

RECOMMENDATION

“Assess whether funding for protective services, victim assistance and compensation, legal assistance, and other programs, reflect California’s elderly population, underserved groups, rates of victimization, and specific needs.”

RECOMMENDATION

“Promote the use of community health workers, health navigators, cultural brokers, “promotores,” and others to provide information and advocacy to underserved groups.”

PROGRESS TOWARD IMPLEMENTING *BLUEPRINT 1* RECOMMENDATIONS

CCoA and CEJC are actively advocating to increase access to victim compensation, victim assistance, and protective services by older adults (see **TOPIC VIII: Victims Rights and Service Needs** and **TOPIC I: Modernizing Adult Protective Services**).

RESOURCES

- National Indigenous Elder Justice Initiative. Addresses the lack of culturally appropriate information and community education materials on elder abuse, neglect, and exploitation in Indian Country. <https://www.nieji.org>
- Justice in Aging. Works for affordable health care and economic security for older adults with limited resources, with a focus on women, people of color, LGBT individuals, and people with limited English proficiency. <http://www.justiceinaging.org/about-us>
- Addressing the Needs of LGBT Older Adults in San Francisco. Report by the LGBT Aging Policy Task Force, San Francisco, and the Institute for Multigenerational Health at the University of Washington, Seattle. <http://depts.washington.edu/agepride/wordpress/wp-content/uploads/2013/07/SF-LGBTOlderAdultsFINAL7-10-13.pdf>
- National Resource Center on LGBT Aging (NRC). <http://www.lgbtagingcenter.org>
Resources include:
 - Building Respect for LGBT Older Adults. Website with local and national resources
 - Practical Guide to Creating Welcome Agencies

PROMISING PRACTICES

San Francisco's Department of Aging and Adult Services Bill of Rights for LGBT Seniors Living in LTC Facilities. <https://proud2bhere.wordpress.com/2015/04/10/bill-of-rights-ordinance-passed-for-lgbt-seniors-in-san-francisco>

TOPIC VI: Long-Term Services and Supports (LTSS)

BACKGROUND

Long-term services and supports (LTSS), which includes paid and unpaid medical and personal care assistance for those having difficulty completing self-care tasks as a result of aging, chronic illness, or disability, are essential to ensuring older adults' independence, reducing vulnerability, and identifying abuse and high-risk situations. In recent years, California's LTSS system has been strained by devastating cuts to services for elders and caregivers, pressures to serve increasingly frail elders in the community, a critical shortage of workers, and lack of systems to prevent abusive workers from gaining employment. In addition, the state has embarked on major transformations of its LTSS network, in which older adults and adults with disabilities are increasingly being provided medical care and LTSS under a managed care model. Although this approach holds promise for creating a more inclusive and seamless system of care, concerns have arisen with respect to bringing new for-profit providers into the LTSS system, potential conflicts of interest created by new financing arrangements, building partnerships among entities that have not previously worked together, and ensuring that LTSS consumers have the assistance and support they need to exercise choice in the increasingly complex LTSS marketplace. Other challenges include protecting the rights of consumers with diminished mental capacity, ensuring accountability by LTSS providers, ensuring an adequate LTSS workforce, and creating safeguards against fraudulent, unqualified, or predatory providers.

“In recent years, California's LTSS system has been strained by devastating cuts to services for elders and caregivers, pressures to serve increasingly frail elders in the community, a critical shortage of workers, and lack of systems to prevent abusive workers from gaining employment.”

NEW DEVELOPMENTS

As part of the 2012-13 California budget, the Governor announced the Coordinated Care Initiative, which includes:

- **Managed Medi-Cal LTSS.** Participants are enrolled in managed care organizations (MCOs) that contract with doctors, hospitals, pharmacies, nursing homes, and others to provide in-home attendants, nursing home care, case management, adult day health care, and other services.
- **Cal MediConnect.** Serves California's 456,000 “dual eligibles” (those who are eligible for both Medicare and Medi-Cal). The majority of dual eligibles are women, living on \$10,000 a year or less, with multiple chronic health conditions.
- The state has expanded Medi-Cal in 28 rural counties.



“The introduction of MCOs has created new roles, responsibilities and relationships for elder justice advocates (e.g., LTC Ombudsmen are being called upon to advocate with MCOs on behalf of LTC facility residents who are facing illegal discharges).”



- The California Collaborative for LTSS, a coalition of statewide organizations serving LTSS consumers, was formed to facilitate information exchange and advise the state legislature and administration.
- The *Cal MediConnect* Ombudsman program was created to resolve beneficiaries' complaints.

CHALLENGES & NEEDS

- Concerns relating to LTSS managed care organizations (MCOs)
 - The introduction of MCOs has created new roles, responsibilities and relationships for elder justice advocates (e.g., LTC Ombudsmen are being called upon to advocate with MCOs on behalf of LTC facility residents who are facing illegal discharges). The implications of these new roles have not been fully explored.
 - MCOs have financial incentives to maintain consumers in the lowest level of care possible (e.g., community based care as opposed to skilled nursing facilities). Nursing homes have incentives to keep their beds filled with the “right mix” of residents on Medicare and those on Medi-Cal. These incentives have raised concerns among advocates that beneficiaries will not receive the level of care they need.
 - Lack of familiarity by some MCOs and other LTSS providers with elder justice safety net services, including APS, PGs, courts, multidisciplinary teams, LTC Ombudsmen, forensics centers, legal aid programs, and consumer and patients' rights advocacy groups.
 - Some MCOs and other LTSS providers have not implemented policies and procedures for identifying and reporting elder abuse or collaborating with elder justice service providers.
 - Some MCOs are unfamiliar with Medi-Cal benefits and protections, which has led to negative consequences in some instances. For example, under federal Medicaid laws, nursing homes must hold beneficiaries' beds for seven days when beneficiaries are hospitalized. Instances have been reported of MCOs failing to pay facilities during members' hospitalizations, resulting in residents' being denied readmission. In addition, once long-term care placements are deemed necessary for Medi-Cal beneficiaries, transitions from MCOs may take one to two months. Some MCOs have failed to pay facilities during these periods, resulting in residents being discharged (in some cases, into homeless shelters). Cases like these are likely to be reported to APS, LTC Ombudsmen, and legal assistance programs, some of which have not received guidance in how to respond.
 - The introduction of new LTSS providers has created new opportunities for fraud, with some consumers being contacted by fraudulent plans or told that they would be penalized for failing to buy plans even if they already had adequate coverage.

- Ensuring consumer choice in the LTSS market. Consumer choice requires that consumers 1) are capable of exercising choice or consent, 2) have qualified providers to choose among, 3) have information about choices, and 4) are protected against unlawful practices. These requirements may be compromised with respect to the LTSS market by:
 - Mental and physical illness, diminished mental capacity, and undue influence may prevent LTSS consumers from evaluating services and protecting themselves against abuses. Currently, there are no agreed upon standards or guidance for determining when LTSS consumers “have capacity” to carry out these functions. There is also a shortage of resources for consumers with diminished capacity, including advocates and surrogates.
 - Lack of qualified, trained, and supervised service providers. California lacks an adequate supply of certain LTSS services, including home health and personal care aides. The *Raising Expectations State Scorecard Report* (Reinhard et al, 2014) ranked California #42 among states on the availability of these services.
 - Lack of information about LTSS providers. Information about personal care providers is particularly important in light of the vulnerability of those they serve, the extensive unsupervised time spent together, revelations that a significant number of workers have criminal records, and the fact that information about providers is not readily available.
- Providers of LTSS have inadvertently exposed clients to fraud by permitting fraudulent “financial advisors” to make presentations at senior centers or other agencies.

“Consumer choice requires that consumers 1) are capable of exercising choice or consent, 2) have qualified providers to choose among, 3) have information about choices, and 4) are protected against unlawful practices.”



RECOMMENDATIONS

- Promote exchange between LTSS and elder justice professionals and advocates.
 - Actions that can be taken by elder justice agencies/advocates:
 - Educate themselves, co-workers, and clients about LTSS.
 - Meet with MCOs to ensure coordination by sharing information about services, eligibility requirements, roles, and resources; offering training; developing protocols for collaborative interventions with high-risk and difficult clients; creating opportunities to work together in care planning (e.g., multidisciplinary teams); and informing clients and caregivers about new LTSS services.
 - Actions that can be taken by LTSS agencies/advocates:
 - When discharging beneficiaries from acute care facilities or transitioning them into lower levels of care, make sure that situations are ‘neglect proof.’
 - Identify enrollees who are residing in unlicensed long-term care facilities and assist them move out of dangerous living situations.
 - Advocate on behalf of enrollees with nursing homes to maintain high quality, person-centered care.
 - Offer home modifications, home delivered meals, and other services, that promote client safety and reduce vulnerability.
 - Encourage allied partners to implement service coordination and anti-fraud plans.
 - Provide training for personnel and partners in elder abuse and their duty to report abuse, “resident centered care,” and residents’ rights.
 - Establish protocols for reporting elder and dependent adult abuse and neglect that include provisions for data sharing and care coordination.
 - Develop partnerships and linkages with elder justice agencies and maintain inventories of local elder justice resources.
 - Address consumer protections and rights in policies and standards.
 - Ensure the rights, safety, and property of incapacitated older adults by:
 - Promoting the use of advance directives.
 - Establishing processes for determining enrollees’ decision-making capacity.
 - Providing supported decision-making.
 - Providing capacity declarations when petitions for conservatorship have been filed for members.
- Urge state entities that oversee LTSS to take steps to ensure consumers’ economic and physical security and rights, including:
 - Develop protocols for *Cal MediConnect* Ombudsman programs to work with LTC Ombudsmen and other elder justice programs.
 - Measure and evaluate MCO performance.
 - Adopt uniform risk assessment tools for members that reflect current understanding of vulnerability to elder abuse, neglect, exploitation, and legal standards of decision-making capacity and consent. Assessments should also address caregivers’ needs.

- Provide information and referrals to reduce vulnerability (e.g., legal help to draft “safe” advance directives, counseling or mediation to address conflicts related to caregiving, etc.)
- Direct LTSS providers to develop processes for vetting presenters (e.g., people claiming to be objective financial advisors).
- Strengthen measures for ensuring accountability by LTSS providers, including IHSS workers.
- Clarify steps that APS, LTC Ombudsman, law enforcement, and others can take to discharge abusive IHSS workers when clients are incapable of doing so and prevent them from securing employment with others.
- Develop criteria, procedures, and due process protections for overriding consumers’ choices when failure to do so poses unacceptable risks to the person, others, or the integrity of the LTSS system.
- Develop information systems to “red flag” abusers when abuse has been substantiated by protective service, oversight, or law enforcement entities to prevent them from gaining employment that endangers others.
- Disseminate resources on how to screen direct care providers.
- Promote the development of the LTSS workforce through fair compensation, workers’ rights, career ladders, and certification programs.
- Provide customized, interdisciplinary training to elder justice advocates and LTSS providers, including:
 - Information to help them understand each other’s programs, including benefits and limitations, eligibility criteria, chains of command, grievance procedures, patient assessment procedures, and resources and mechanisms for staff training.
 - Ongoing, timely, and streamlined information about developments in LTSS.
 - Training in confidentiality protections.
 - Guidance for evaluating consumers’ capacity to give (or withhold) consent to join MCOs; accept care, treatment, or placement in LTC facilities; hire or supervise workers, etc.
 - Information about consumer fraud in the LTSS marketplace and recourse.
 - Special training is needed for:
 - Elder justice advocates and service providers on who is responsible for overseeing care in the managed care environment and the *Cal MediConnect* Ombudsman.
 - LTSS consumers and their advocates and surrogates need assistance in screening, hiring, and supervising IHSS workers. This includes helping them understand what information contained in backgrounds checks is relevant and how to evaluate the risks involved in hiring.

“LTSS consumers and their advocates and surrogates need assistance in screening, hiring, and supervising IHSS workers.”



PROGRESS TOWARD IMPLEMENTING *BLUEPRINT 1* RECOMMENDATIONS

- In December 2013, CEJC conducted the *Elder Justice in the Age of Managed Care* webinar to explore challenges and opportunities engendered by changes to LTSS. Drawing from the session as well as deliberations among leading experts, CEJC produced *Educating Elder Justice Professionals About Long-Term Services and Supports (LTSS) An Action Plan*, with support from The SCAN Foundation (see Resources).
- Representatives from the elder justice network have collaborated with Justice in Aging to provide training to LTSS providers, CCI Ombudsman, and the California Collaborative.

RESOURCES

- Website for *Cal MediConnect*. www.calduals.org
- “Long-Term Services and Supports: Beneficiary Protections in a Managed Care Environment.” Toolkit, developed by Justice in Aging in partnership with the Disability Rights Education and Defense Fund (DREDF), that provides ideas for LTSS beneficiary protections. <http://www.dualsdemoadvocacy.org/demonstrationdesign/ltss>
- *Educating Elder Justice Professionals About Long-Term Services and Supports (LTSS) An Action Plan*. www.ElderJusticeCal.org

PROMISING PRACTICES

As part of its Community of Constituents initiative, The SCAN Foundation provides support to 18 regional networks of providers, advocates, professional associations, and consumer groups to advocate for effective systems of care. <http://www.ccltss.org/about/regional-coalitions>

TOPIC VII: Financial Abuse and Exploitation

BACKGROUND

Abuse and exploitation range from the misuse of powers of attorneys and other documents that transfer access and authority, to identity thefts and frauds targeting older adults. Explanations for the increase have ranged from the recession (Maxwell & Stone, 2010) to an uptick in reports from financial institutions, whose employees are now required to report abuse under the state's mandatory reporting law. Another contributing factor may be the emergence of newly recognized forms of abuse and exploitation, including undue influence by professionals, financially motivated evictions of elderly tenants, and exploitation by assisted living referral agencies.

National studies also suggest that the extent of elder financial abuse and exploitation is greater than previously believed. One recent study found that 1 in 20 older adults may be financially abused or exploited and that, of these, 80% had money and/or property misused in the past year (Peterson, et al., 2014). Another suggests that 37% of seniors are affected by financial abuse in any five-year period (True Link, 2015).

Elder financial abuse and exploitation have serious consequences for both victims and society. The average loss in money and assets to victims has been estimated at \$87,967 (Jackson & Hafmeister, 2010), and one study suggests that one in ten financial abuse victims turns to Medicaid as a direct result of exploitation (Gunther, 2011).

NEW DEVELOPMENTS

At the State Level

- The recession led to retrenchments in key programs and services that address elder financial abuse, including APS, PGs, court investigators, and law enforcement. Several Financial Abuse Specialist Teams (FASTs) were also eliminated or forced to reduce meetings as participating agencies experienced reductions in staff or heightened demands on their time.

“One recent study found that 1 in 20 older adults may be financially abused or exploited and that, of these, 80% had money and/or property misused in the past year.”



“One study suggests that one in ten financial abuse victims turns to Medicaid as a direct result of exploitation.”

- Multiple new laws and amendments to existing laws have been enacted that provide new protections and remedies for financial abuse victims. Changes to California’s civil codes to strengthen remedies for elder financial abuse victims include:
 - AB 140 (2013) establishes undue influence as a basis for financial abuse (allowing for the recovery of damages, attorney’s fees, and costs) and establishes criteria for defining it. It further requires financial abuse perpetrators to return property taken from elders who lack capacity; and expands the definition of “wrongful use” so that those who contract with elders may be liable for damages and attorney fees when they knew or should have known that transactions were likely to cause harm.
 - AB 381 (2013) requires that property unlawfully appropriated from older adults with limited capacity be returned and that perpetrators face double damages.
- Advocates report greater compliance with state mandated reporting laws by financial institutions.



At the National Level

The federal government has taken the following steps to understand and combat financial abuse:

- In 2012, GAO issued *National Strategy Needed to Effectively Combat Elder Financial Exploitation*. Among the barriers to responding to financial abuse cited were: 1) gaining expertise, 2) sustaining collaboration between law enforcement and APS, and 3) obtaining data. Another GAO report issued the following year called for the federal government to do more to address the problem (GAO, 2013). (See Recommendations).
- The Consumer Financial Protection Bureau (CFPB), created in 2011 under the Dodd-Frank Act, has focused attention on elder financial abuse through its Office for Older Americans. Examples include collaborating with other federal agencies to produce *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults*, which clarifies that financial institutions may report suspicions of elder financial abuse and release client records to APS and law enforcement to further investigations. The CFPB has also produced publications for older consumers and advocates (see Resources).
- In 2014, the National Center for Victims of Crime hosted the Elder Financial Exploitation Roundtable. National experts and stakeholders developed priorities for meeting the needs of victims of financial abuse. These include the development of a model civil statute aimed at increasing the likelihood that victims will recover losses and damages (see Promising Practices).



CHALLENGES & NEEDS

- Specific barriers to legal interventions in financial abuse, including unclear statutory definitions, high civil standards of proof, difficulties establishing states of mind (e.g., intent to defraud, ability to withstand undue influence), and victims' apparent consent to participate in financial schemes that are later found to be fraudulent, are described in **TOPIC IV: The Legal System's Role**.
- New revelations about subtle cognitive impairments that affect judgment, risk tolerance, and financial decision-making suggest that need for more precise measures for identifying risk.
- Lack of resources for financial abuse interventions, prevention, and services to victims.
- Lack of resources, political will, and coordination to mount effective international interventions against criminal enterprises operating out of other countries.
- Predatory business practices are having devastating consequences for many older Californians. For example, "Ellis Act,"⁸ evictions, which often target long-term elderly tenants, have displaced thousands and, in some cases, resulted in homelessness.
- Victims of financial abuse lack services and resources to help them recover. Despite growing attention to elder financial abuse and exploitation, the needs of victims and promising approaches to meeting them have been largely ignored (see **TOPIC VIII: Victims Rights and Service Needs**). Particularly underserved groups include:
 - Residents of LTC facilities.
 - Older adults in rural settings and isolated small towns (including tribal).
 - Victims of cyber fraud crimes.
- Lax oversight of legal instruments that transfer authority or access (e.g. powers of attorney, trusts, conservatorship) and professional conduct.
- New forms of financial abuse are continually coming to light. By the time remedies are created to address them, perpetrators are likely to have adopted new strategies.
- Lack of collaboration and coordination by financial institutions, including:
 - Financial institutions, which are likely to observe financial abuse, often fail to provide critical evidence to investigators claiming privacy requirements.
 - Efforts by financial institutions to detect and investigate financial abuse, prevent losses, and help law enforcement bring perpetrators to justice have been inadequate.
 - Lack of clarity with respect to how financial institutions can meet community reinvestment act (CRA) requirements through abuse prevention efforts.
 - Inconsistencies among financial institutions related to freezing accounts and sharing account information with APS and law enforcement.
 - Some banks refuse to accept powers of attorney for finances from others, requiring their own.

“Despite growing attention to elder financial abuse and exploitation, the needs of victims and promising approaches to meeting them have been largely ignored.”

“New forms of financial abuse are continually coming to light. By the time remedies are created to address them, perpetrators are likely to have adopted new strategies.”

⁸ State law which says that landlords have the right to evict tenants in order to “go out of business.” Many claim that the evictions are intended to drive out long-term elderly tenants in order to convert the units to more profitable condominiums.

“Lack of affordable financial services and products. Many older adults engage in risky financial transactions such as high risk loans because they lack safe alternatives for meeting critical needs such as medical care or home repairs.”

- Lack of affordable financial services and products. Many older adults engage in risky financial transactions such as high risk loans because they lack safe alternatives for meeting critical needs for medical care, home repairs, etc.

RECOMMENDATIONS

At the State Level

- Promote collaboration and coordination between financial institutions, abuse investigators, and other elder justice service providers. State level relationships and leadership may be needed to accomplish this.
- Require financial institutions to indicate the frequency of training they provide to employees during the state bank examination audit process.
- Disseminate *Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults* (see Resources).
- Promote policy that provides broad protections as opposed to focusing on specific abusive actions (e.g., fiduciary standards for financial advisors, brokers, realtors; or “suitability standards” that require venders to consider customers’ financial profiles and objectives).
- Require financial institutions to accept legally valid general powers of attorney.



At the National Level

- Implement the GAO’s recommendations to: 1) assist states handle interstate or international mass marketing fraud, 2) make available, through the Securities and Exchange Commission and Consumer Financial Protection Bureau, information about the qualifications of financial services providers, and 3) provide, through the Centers for Medicare and Medicaid Services, grants that fund background checks of in-home caregivers.
- Create a national repository of contact information for Corporate Security and/or Fraud Departments for major financial institutions.
- Provide incentives for financial institutions to take a more active role in abuse prevention (e.g., clarify how financial institutions can fulfill CRA requirements for abuse prevention).
- Provide support for services to victims (see Appendices) and for the evaluation and promulgation of promising practices.

PROGRESS TOWARD IMPLEMENTING *BLUEPRINT 1* RECOMMENDATIONS

- Seven CEJC members participated in the Roundtable on Elder Financial Exploitation convened by the National Center for Victims of Crime in 2014, during which participants identified specific areas of need and offered recommendations for meeting them. See **TOPIC VIII: Victims Rights and Service Needs**.
- WISE and Healthy Aging in Los Angeles piloted a therapeutic case management program for victims of elder financial abuse.
- CEJC and the CCoA are actively working with state policy makers to extend Victim Compensation and Victim Assistance to victims of financial crimes. See **TOPIC VIII: Victims Rights and Service Needs**.



RESOURCES

- *National Guidelines to Implement the 2013 Federal Interagency Guidance On Privacy Laws and Reporting Financial Abuse of Older Adults*. Produced by the Philadelphia Corporation for Aging and the National Adult Protective Services Association with support from the the The Huguetta Clark Family Fund for Protection of Elders. <http://www.napsa-now.org/wp-content/uploads/2015/07/Guidelines.pdf>
- *Improving the Response to Financial Elder Abuse: A Blueprint For Action*. Developed under *San Francisco's Implementation of a Comprehensive Coordinated Civil Response to Elder Financial Abuse* project (Hooper & Falk, 2012). <http://www.ioaging.org/wp-content/uploads/2015/03/Blueprint-and-Resource-Map-2-.pdf>
- Consumer Financial Protection Bureau Resources:
 - Ask CFPB, an online tool to answer consumers' questions about financial products and services. <http://www.consumerfinance.gov/askcfpb>
 - Guides For Managing Someone Else's Money. <http://www.consumerfinance.gov/managing-someone-elses-money>
 - Protecting Residents from Financial Exploitation: A Manual for Assisted Living and Nursing Facilities. http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf
- California Department of Business Oversight. Provides publications alerting older Californians to financial and investment fraud, common scams, and unscrupulous sales practices. <http://www.dbo.ca.gov/Consumers/brochures/default.asp>

Promising Practices

- The California Reinvestment Coalition (CRC) has taken actions to discourage financial institutions from financing "displacement mortgages" (mortgages sold to investors to purchase properties and evict tenants).
- Elder Financial Protection Network (EFPN) works with financial institutions to conduct awareness raising events for older adults in furtherance of Community Reinvestment Act credit requirements. <http://www.elderfinancialprotection.org>
- Elder Financial Safety Center: "One-stop shop" for financial abuse victims operated by Dallas, Texas' Senior Source, probate court, and DA that provides financial counseling, benefits assistance, money management, employment services, budgeting, insurance counseling, fraud and scams advocacy, debt management, and income tax assistance: http://www.dallascounty.org/department/courts/probate/elder_financial/why.php
- National Institute on Elder Financial Exploitation (NIEFE). In 2015, the National Adult Protective Services Association (NAPSA) launched NIEFE to serve as the first national think tank on elder financial abuse. <http://www.napsa-now.org>
- Financial Abuse Specialist Teams (FASTs) have had a positive impact on improving communities' ability to resolve cases.

TOPIC VIII: Victims Rights and Service Needs

BACKGROUND

Federal and state laws establish the rights of crime victims, including the right to receive restitution from offenders, compensation for crime related expenses, and services. The federal Victims of Crime Act (VOCA) provides help through the Crime Victims Fund, which comes from criminal fines, forfeitures, special assessments, and donations. The fund provides support for services to address the following needs: (1) immediate health and safety, (2) mental health assistance and support groups, (3) respite care and services for victims with disabilities, (4) credit counseling and advocacy or other special services, (5) restitution advocacy, (6) public presentations, and (7) the use of advanced technologies. Funds can also be used for training programs and publications.

VOCA supports two primary programs: Victim Compensation and Victim Assistance. Victim Compensation is provided to (or for) individual victims for counseling, medical bills, and other crime-related expenses. Victim Assistance funds provide grants to community-based programs. States determine how VOCA funds are allocated and establish their own eligibility requirements but must follow federal regulations to receive federal funds.

California's Victim Compensation Program (CalVCP) is administered by the Victim Compensation and Government Claims Board (VCGCB), which is located within the Government Operations Agency. In addition to VOCA, VCGCB receives state restitution funds; state funds are used as a match to draw down federal funds with CalVCP receiving 60 cents from VOCA for each state dollar spent. CalVCP only provides Victim Compensation to victims of violent crimes.

California's Victim Compensation Program (CalVCP) is administered by the Governor's Office of Emergency Services (CAL OES, 2014). CAL OES provides grants to counties for Victim/Witness Assistance Centers, which are typically based in DA's offices. The Centers provide such services as accompanying victims to court and assisting them to apply for compensation. Every five years, CAL OES oversees a competitive Request for Proposal (RFP) process to fund the Centers as well as non-profit, community based and/or Tribal organizations that provide direct services and outreach. Both public and private, non-profit agencies can apply. Under VOCA requirements, 10% of funds must be allocated to unserved/underserved victims. In FY 14/15, CAL OES awarded just under \$5 million in VOCA funds to 40 projects serving unserved/underserved. Of these, just 14 reported that they had served elders.

“Federal and state laws establish the rights of crime victims, including the right to receive restitution from offenders, compensation for crime related expenses, and services.”



“A 2015 Legislative Analyst’ Office (LAO) report on victim services in California acknowledged shortcomings in services to victims in the state and called for the development of a comprehensive strategic plan.”

NEW DEVELOPMENTS



At the State Level

- In 2014, CalVCP initiated the Statute Modernization Project to update California’s statutes and regulations for compensation and ensure alignment with federal guidelines. Although victims of elder financial abuse were among the groups identified as underserved, CalVCP guidelines continue to only provide compensation to victims of violent crimes.
- A 2015 Legislative Analyst’ Office (LAO) report on victim services in California acknowledged shortcomings in services to victims in the state and called for the development of a comprehensive strategic plan (LAO, 2015).
- In July 2015, CAL OES created a VOCA Steering Committee to develop a strategic plan for meeting underserved victims’ needs and set priorities for the development of new underserved victim assistance grant programs. The Committee includes an Elder Victim Services Representative.
- CAL OES’ Victim’s Services Branch worked with VOCA Steering Committee members to develop new and expanded grant programs to meet the needs of unserved and underserved victim groups. The resulting new grant programs, including programs designed specifically for elder abuse services and other programs that can benefit elder abuse victims, were announced in December 2015. As authorized under VOCA guidelines, and at the recommendation of the National Association of Victim Assistance Administrators and the VOCA Steering Committee, elder and dependent adult victims of financial abuse may also be served, and a wide range of victim service providers will be eligible to apply for funds.



At the National Level

- In 2015-16, Congress raised the amount of VOCA funds released for FY 2015-16 to an unprecedented \$2.36 billion (up from about \$700-\$800 million in recent years).
- Under the FY 2016 Omnibus Appropriations Bill, the VOCA cap for FY 2016 will increase to \$3.042 billion. Although \$379 million will be transferred to other programs, this still leaves an effective increase of \$302 million or 15.5% for state VOCA assistance programs.
- In a memo released by the White House during the 2015 White House Conference on Aging, the administration announced that additions will be made to VOCA Victim Assistance Guidelines to clarify that VOCA Victim Assistance funds may be used to support legal services for crime victims, and to emphasize the need to use VOCA funds to support social and legal services to underserved victims, including elder victims of abuse, financial exploitation, fraud, and neglect by the end of the year.

- In 2013, VOCA released *Vision 21: Transforming Victim Services Final Report*, which established new goals for the victim field (Office for Victims of Crime, 2013). The report further acknowledges that services for victims with disabilities, older victims, and victims in congregate housing such as nursing homes and mental health facilities, may be unavailable, inadequate, or difficult to access.

“A 2011 national VOCA survey found that fewer than 1% of victim services program clients were victims of elder abuse.”

CHALLENGES & NEEDS

- Advocates report that the supply of victim services for older victims of abuse, victims with disabilities, and victims of financial crimes and exploitation is vastly inadequate. Services needed range from shelters that can accommodate older victims and those with disabilities to mental health counseling, to assistance collecting restitution that is owed (see Appendices for a list of service needs). The scope of services that are currently available, the cost and impact of existing services, and unmet needs are not known.
- Little information is available on how Victim Assistance funds have been used for older adults. Information is also lacking about the extent to which older adults claim and receive Victim Compensation and how the funds are used.
- Many elder justice advocates are unfamiliar with VOCA programs, including eligibility requirements, the difference between Victim Assistance and Victim Compensation programs, and how to apply.
- Despite the fact that VOCA funds can be used for older victims of crime and victims of economic exploitation, these victims have not benefited significantly. A 2011 national VOCA survey found that fewer than 1% of victim services program clients were victims of elder abuse (Jackson, 2015).
- Although VOCA also permits victims to receive Compensation and Assistance regardless of whether police reports have been filed or prosecution is pursued, up until now it has been extremely unlikely that victims of non-reported/non-prosecuted cases would benefit.
- Little data exists on the service needs of older crime victims (particularly those affected by financial exploitation and fraud), patterns of utilization, and outcomes.
- Older victims in California are not likely to receive restitution for the following reasons:
 - Restitution orders are optional in criminal financial crime cases.
 - Many prosecutors fail to ask for restitution and many judges fail to order it.
 - Recovering restitution is a complex process that is typically left to victims to pursue with little support or instruction.

RECOMMENDATIONS



At the State Level

- Work with CAL OES, the VOCA Steering Committee, and VCGCB to ensure that the needs of older victims, victims with disabilities, victims of financial crimes, and victims in institutional settings are addressed. Promising approaches include:
 - Expand the range of community programs that are eligible for victim assistance grants and that can assist victims apply for compensation.
 - Conduct outreach to inform community agencies about state and federal funding opportunities and provide assistance to apply.
 - Permit others, beside victims’ advocates in district attorneys’ offices, to assist victims apply for compensation (e.g., providers of legal assistance or other direct service providers).
 - Work with state and national leaders to promote the development of data on the service needs of older victims, patterns of help-seeking, and service utilization.
 - Emphasis should be placed on preventing revictimization.
- Develop pilot projects to:
 - Determine the cost of services for victims who are elderly or disabled, including those who have been financially abused or exploited. Calculations should be based on the number of victims detected per year (normally and optimally), how much care is provided, total cost per person helped, completion rates, and number of sessions needed to demonstrate meaningful improvement.
 - Improve restitution recovery through the following:
 - Explore promising strategies used in other states (see Promising Practices below).
 - Encourage judges to require perpetrators to pay restitution.
 - Explore promising techniques for working with repeat or “chronic” victims” (those who are exploited repeatedly by the same or different persons yet fail to take steps to end their victimization).



At the National Level

- Urge Federal VOCA officials to:
 - Assist states and local communities develop strategic plans for victim services.
 - Direct states to extend Victim Compensation and Assistance to victims who are elderly or disabled, including those have been financially abused or exploited and provide guidance in doing so.
- Urge Congress to maintain VOCA funds at the FY 2016-17 level or higher and direct OVC to prioritize underserved groups.
- Urge ACL to coordinate with VOCA and other federal programs to ensure that older victims’ service needs are met.
- Provide grants, technical assistance, and information to promote service development.

PROGRESS TOWARD IMPLEMENTING *BLUEPRINT 1* RECOMMENDATIONS

- CEJC and CCoA provided information, materials, and training to CAL OES on elder abuse, financial abuse, the service needs of victims, and the elder justice network.
- CEJC and CCoA have actively advocated for extending access to Victim Assistance and Compensation to older victims at both the national and state levels:
 - CCoA sponsored SB 60 (2013) and SB 847 (2014) to make Compensation available to victims of financial abuse for health and mental health services and financial counseling. Both bills were ultimately deemed too costly. CCoA offered to amend SB 847 to create a pilot project to determine the costs of extending eligibility, but the changes were rejected. Plans are currently in progress to introduce a new bill solely to authorize a Victims Compensation pilot project in San Diego.
 - CEJC collaborated with the National Center for Victims of Crime (NCVC) to host a roundtable of 30 experts to develop strategies for addressing financial exploitation. Key recommendations that emerged are contained in the *White Paper: Roundtable on Serving Victims of Elder Financial Exploitation* (see resources).
 - In 2014, CEJC collaborated with NCVC, the Elder Justice Coalition (EJC), and CCoA to provide federal policy makers with information on the service needs of elderly victims and their costs.



RESOURCES

- *Federal Register* Provisions on VOCA Assistance and Compensation:
 - VOCA Assistance: Provisions allowing funding for financial crime victim assistance: <http://www.ovc.gov/voca/vaguide.htm>
 - VOCA Compensation: Provisions allowing funding for financial crime victim programs (if approved at the state level), designating financial crime victims as an underserved victim group, and defining financial counseling: http://www.ovc.gov/voca/pdf/voca_guidelines2001.pdf. Several states now allow this funding.
- Making VOCA Assistance for Elderly and Dependent Adult Victims of Financial Abuse – California’s Experience. Power point presentation by Carol Sewell, CCoA and CEJC: <http://www.napsa-now.org/wp-content/uploads/2014/11/604-Building-Bridges-between-Elder-Justice-and-Victims-of-Crime-Act-VOCA-Professionals.pdf>
- Office for Victims of Crime Resources:
 - How Victims of Crime Act (VOCA) Funds May Be Used to Assist Victims of Financial Fraud: https://www.ncjrs.gov/ovc_archives/reports/fraud/psvf/appenda.htm
 - Crime Victims Fund Fact Sheet: <http://www.ovc.gov/pubs/crimevictimsfundfs/index.html>
 - Report to the Nation. Rising to the Challenge: A New Era in Victim Services (2011): <http://www.ovc.gov/pubs/crimevictimsfundfs/index.html>
- National Center for Victims of Crime Resources:
 - Taking Action: An Advocate’s Guide to Assisting Victims of Financial Fraud. <http://www.victimsofcrime.org/our-programs/financial-crime-resource-center/taking-action>
 - White Paper on Financial Abuse. <https://www.victimsofcrime.org/our-programs/financial-crime-resource-center/advocacy/elder-financial-exploitation-advocacy>
- American Bar Association, Commission on Law and Aging. Thinking Outside the Box: Obtaining VOCA Funding to Serve Victims of Elder Abuse. http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011_aging_arta2253_thinkoutbox_tb.authcheckdam.pdf

PROMISING PRACTICES

- New York’s Executive Law §§631(8), 621(22) allows for elderly or disabled victims of fraud to seek compensation to cover out-of-pocket expenses relating to the cost of financial counseling. Compensation may cover the analysis of a victim’s financial situation such as income producing capacity, budget and debt management, settling estates, public assistance and other benefits and accessing insurance.
- Vermont Center for Crime Victims Services. Non-profit agency that pays crime victims restitution “up front” from a fund generated by a 15% surcharge on criminal and traffic court fines. The Center assumes the debt and hires professional collections investigators to collect from offenders. <http://www.ccvs.state.vt.us/content/vermont-model-victim-centered-approach-restitution>
- SPRiNG Alliance. Network of elder abuse shelters that share resources and technical assistance, adhere to common standards of excellence, and provide mutual support. <http://www.spring-alliance.org>

TOPIC IX: The Federal Role

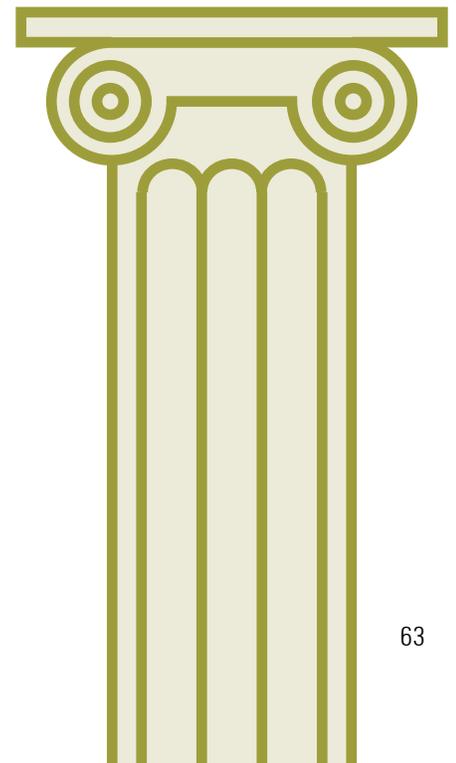
BACKGROUND

The federal government has played a leadership role in elder abuse prevention through Congressional hearings, government reports, professional forums, and research. It wasn't until 2010, however, with the passage of the Elder Justice Act (EJA) (see below), that the government moved to create a national framework and agenda for elder justice policy and services.

As home to 15% of the nation's older adults, California is a key stakeholder in federal elder justice policy and programs. Its ability to play a meaningful role in the design and implementation of federal policy and programs has been impeded, however, by the state's county-focused approach to administering key elder justice programs and the lack of a state level liaison. This lack of state leadership has further prevented the state from accessing federal resources and providing critical input to national initiatives. For example, wide variations in local data collection has been a barrier to participating in collective data collection and systems development.

California and other states need federal guidance to ensure that they are aligned with national goals and structures and in compliance with federal elder justice policy. They also potentially need authority to build state elder justice infrastructures, opportunities to communicate their needs and recommendations to federal policy makers, and avenues for sharing experiences and promising practices. They can further benefit from model statutes, data with which to demonstrate needs and solutions, federal standards of excellence, and incentives for achieving them. Specific recommendations for federal action and resources are described throughout this document in relation to specific areas of need. This section summarizes key points and provides a broader perspective.

“As home to 15% of the nation's older adults, California is a key stakeholder in federal elder justice policy and programs.”



“Although the appointment of a top APS leader for California was a significant first step in providing liaison between California and federal elder justice entities, greater coordination is needed among all federal, state, and local elder justice programs, policy makers, and administrative entities.”

NEW DEVELOPMENTS

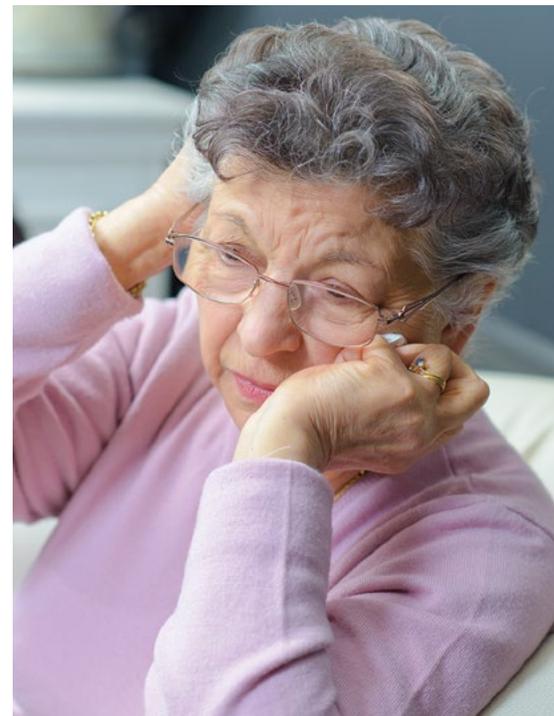
- **Elder Justice Act (EJA).** In 2010, Congress passed the EJA as part of the Patient Protection and Affordable Care Act (ACA). Although the EJA did not appropriate funds for services, it paved the way for a national structure for elder justice and established an Elder Justice Coordinating Council to oversee EJA implementation and develop recommendations for the Department of Health and Human Services (HHS) and Congress. The Council includes representatives from HHS, the Department of Justice (DOJ), the Consumer Financial Protection Bureau (CFPB), the Social Security Administration, and others. Among its first initiatives was overseeing the development of the *Elder Justice Roadmap*, which draws from a survey of subject matter experts and stakeholders to establish elder justice goals (Connolly, Brandl, & Breckman, 2014).
- **Creation of the Administration for Community Living (ACL).** In 2012, HHS established the Administration for Community Living (ACL) to develop policies and improve support for both seniors and people with disabilities. HHS further consolidated the Administration on Aging with the Administration on Intellectual and Developmental Disabilities, and brought APS under its purview, creating the first national “home” for APS. Other steps toward creating a national structure for APS include the National Adult Mistreatment Reporting System (NAMRS), grants to explore APS innovations, and the Voluntary Consensus Guidelines for State Adult Protective Services (see **TOPIC I: Modernizing Adult Protective Services**). Other efforts to achieve greater consistency among states include the 2015 release of a federal rule for LTC Ombudsmen, which eliminates variations in how the programs operate (see **TOPIC II: Elder Abuse in Institutional Settings**).

CHALLENGES & NEEDS

- Although the appointment of a top APS leader for California was a significant first step in providing liaison between California and federal elder justice entities, greater coordination is needed among all federal, state, and local elder justice programs, policy makers, and administrative entities.
- Achieving comprehensive elder justice policy and practice requires new federal partnerships, resources, and guidance that reflect new developments and areas of need as well as an expanded view of elder justice.
- New developments in LTSS delivery and financing have created new challenges to protecting the rights and security of highly vulnerable long-term care consumers (see **TOPIC VI: Long-Term Services and Supports**).
- The expansion of the concept of elder justice to address infringements of human rights, barriers to services, and disparities in resource allocation requires an expanded focus by federal entities (e.g., the consideration of federal fair housing, labor, and consumer protection policies as they pertain for older adults).

- Federal policy and programs fail to adequately address the needs of people with cognitive impairments that limit their capacity to live independently, protect themselves against abuse and neglect, and exercise informed choice. Guidance is needed in supported decision-making, advance directives, guardianship (and alternatives), protective placements and interventions, and oversight of surrogates. Also lacking are tools to assess capacity for common tasks like money management, choosing and supervising care providers, and consenting to services.
- The creation of the ACL acknowledges commonalities in the needs of older adults and adults with disabilities and suggests that policy and practice can address both. The extent to which approaches and strategies can be applied or adapted (e.g., using “supported decision-making” with cognitively impaired older adults) warrants exploration.
- Voluntary requirements and standards for APS fail to convey a strong federal commitment to program excellence or an inducement to states to allocate resources and implement quality control measures.
- Heightened national attention to elder justice has not led to increased federal resources.
- Lack of information on the extent to which federal resources (including social services block grants, VOCA, and OAA funds) benefit older victims, or the criteria used in apportioning them (e.g., do they reflect the country’s changing demographic profile and trends?).
- National elder justice entities, including the Elder Justice Coordinating Council, lack representation or input by state governments and advocacy organizations that can speak to barriers states face in implementing elder justice policy and programs and steps that federal policy makers could take to assist them.
- States’ policies with respect to abuse reporting laws, criminal laws, civil remedies, victims rights, and consumer protections vary widely.
- Federal employees who are likely to observe mistreatment are not required to report to entities that can conduct investigations or offer help (e.g., federal investigators and regulators and Postal Service, Social Service Administration, and regulatory agency personnel). As a result, victims are not offered services and the mistreatment is not counted in incidence reports.
- National leadership is needed to oversee and regulate the rapidly emerging residential care facilities for the elderly (RCFE) industry.
- Lack of research to guide policy development, including studies to compare the impact of states’ approaches to policy and programs.

“Voluntary requirements and standards for APS fail to convey a strong federal commitment to program excellence or an inducement to states to allocate resources and implement quality control measures.”



“Provide opportunities...for states to inform federal policy makers about the challenges they face in implementing elder justice policies and programs.”



RECOMMENDATIONS

At the State Level

- Establish a California Elder Justice Coordinating Council to provide liaison with federal policy makers, monitor implementation of federal elder justice policy, and respond to state needs. Members to include are: APS, the LTC Ombudsman, disability rights advocates, health and mental health services providers, court administrators, entities involved in guardianship, providers of LTSS, financial institutions, advocates for family caregivers, entities devoted to protecting the rights of older consumers, homeowners, tenants, and workers, victims rights advocates, legal assistance programs, and law enforcement,

At the National Level

- Establish high standards of excellence for state elder justice programs and incentives to achieve them.
- Provide states with support, guidance, incentives, tools, and (if needed) authority to:
 - Form state interagency coordinating councils and multi-departmental partnerships to oversee elder justice policy and programs and provide leadership and resources.
 - Develop interstate compacts to address abuse across state lines.
 - Conduct internal evaluations of their elder justice infrastructures and policies (e.g., provide state planning and advocacy groups with toolkits, technical assistance, and strategic planning grants).
- Provide opportunities (e.g., through representation on the Elder Justice Coordinating Council) for states to inform federal policy makers about the challenges they face in implementing elder justice policies and programs, and suggest steps the federal government can take to achieve compliance, consistency, and cohesion.
- Increase federal resources for elder justice protections and services, including:
 - Fund the direct services described in the EJA.
 - Maintain or increase the FY 2016 level of funding for the Crime Victims Fund and increase access by older victims.
 - Increase funding for legal assistance programs for the elderly so that they can provide critical services to victims, including restraining orders, restitution advocacy, etc.
- Assess federal resource allocations (including SSBG, VOCA, VAWA, DOJ, and OAA funds) to determine if they accurately and equitably reflect current needs (including underserved groups) and demographic patterns; and recommend changes in funding formulas as needed.
- Authorize federal regulation and oversight of residential care facilities for the elderly (RCFEs).
- Require federal employees (including federal investigators and employees of regulatory agencies, the Postal Service, and the Social Security Administration), to report suspected elder abuse and provide information and training to them.

- Conduct surveys to identify and promulgate model laws and promising practices, including abuse reporting laws, criminal laws, civil remedies, victims rights, and consumer protections.
- Support the development of model state statutes, including laws to:
 - Incentivize and assist lawyers pursue lawsuits on behalf of non-affluent older adults.
 - Grant authority to act on behalf of incapacitated victims of abuse, neglect, or exploitation who lack surrogates when authority is needed for emergency medical care, placements in safe settings, or to freeze assets that are in jeopardy.
 - Define undue influence in both civil and criminal law.
 - Enhance reporting, investigation, and response to abuse, including:
 - Penalties for failure to report and whistleblower protections for reporters.
 - Confidentiality provisions for multidisciplinary teams, forensics centers, FASTs, etc.
 - Guidance in assessing clients' capacity to consent to investigations and services.
 - Guidance on how federal privacy laws pertain to abuse reporting and information sharing (including the Health Insurance Portability and Accountability Act and Gramm-Leach-Bliley Act).
 - Ensure victims rights through statutes and programs that provide for:
 - Victim advocates with expertise in older adults and elder abuse.
 - Compensation and assistance for victims with cognitive and physical disabilities, victims of financial exploitation and fraud, and residents of long-term care institutions.
 - Enhanced restitution recovery.
 - Access to legal services and courts.
- Fund pilot projects to explore the costs and effectiveness of interventions, including:
 - Age and disability-appropriate shelters for elders and dependent adults.
 - Mediation and restorative justice approaches to elder justice.
 - Restitution recovery.
 - Mental health services for victims of all types of abuse including financial exploitation.
 - Techniques for working with victims of polyvictimization or those victimized repeatedly (Ramsey-Klawnsnik & Heisler, 2014).
 - Approaches to enhancing the capacity of witnesses to testify, including courtroom accommodations and the use of advanced technologies.
 - Alternatives to guardianship.
 - Forensics centers that focus on critical areas of need, including a long-term care facility forensics center and a financial abuse and exploitation forensics center (see Appendices).

RECOMMENDATION 

“Conduct surveys to identify and promulgate model laws and promising practices, including abuse reporting laws, criminal laws, civil remedies, victims rights, and consumer protections.”

“*Studies are needed to explore patterns of recidivism by potential workers with past criminal histories.*”

- Facilitate collaboration between the elder justice and LTSS networks through the following:
 - Include elder abuse, neglect, exploitation, and self-neglect risk factors in universal assessment tools for federally funded LTSS programs.
 - Explore the impact of LTSS policy and financing on elder justice programs and resources, including increased demand for APS, LTC Ombudsman, PG services, courts, etc.
 - Provide guidance in selecting and screening LTSS providers, including direct care workers (e.g., studies are needed to explore patterns of recidivism by potential workers with past criminal histories).
- Support policy and practice focused research to:
 - Analyze the costs and benefits of abuse prevention services (e.g., demonstrate whether preventive interventions reduce the need for emergency or long-term care).
 - Identify services that are most effective with specific populations (e.g., young-old versus old-old, disabled versus non-disabled).
 - Explore how diminished cognitive capacity impacts the ability to give informed consent for specific services and interventions (e.g., safety planning).
 - Explore the impact of interventions with cognitively impaired older adults, including supported decision-making, advance directives, guardianship, alternatives to guardianship, protective placements and interventions, and surrogate monitoring.
 - Assess the impact of elder abuse restraining orders, emergency protective orders, and domestic violence restraining orders.
 - Determine how definitions used in public policy affect the demand for services (e.g., “vulnerable” versus “dependent” adults).
 - Assess the impact of cuts in LTSS on rates of institutionalization and elder abuse by family caregivers.
 - Determine the incidence, prevalence, and impact of specific forms of abuse, including:
 - Fraud and mass marketing crimes.
 - Abuse, neglect, and exploitation in communities of color.
 - The impact of abuse on victims’ health and mental health.
 - The impact of social determinants (e.g., poverty, education, immigration status, gender and gender identity, and ethnicity) on risk.

- Promising research strategies include:
 - Provide opportunities for researchers, service providers, program developers, and policy makers from diverse disciplines to develop hypotheses, share observations, and identify trends, research needs, and data sources.
 - Provide a clearinghouse for research ideas and promising approaches.
 - Alert researchers and other stakeholders about funding opportunities for policy and practice-focused research, opportunities to inform research institutions about needs, and the progress and findings of research projects.
 - Develop simple measures and tools that can be used by service programs nationally to demonstrate service needs and impact.
- Provide multidisciplinary training and training resources. Specific areas of need include:
 - Financial abuse, including specialized training for complex financial scam cases (mass marketing fraud and predatory lending), reporting financial crimes to federal authorities and databases, securing assets during investigations, and capacity and undue influence.
 - Abuse in long-term care facilities, including investigating medical neglect in facilities, statutes pertaining to unlicensed long-term care facilities, whistleblower protections for reporting institutional abuse, and approaches to creating a culture of change in facilities.
 - Capacity and undue influence, including techniques for enhancing capacity and decision making, surrogate decision making, and mild cognitive impairment and its impact on decision-making.
 - Victims' rights and services.



“When outreach efforts generate increased reports of abuse that are not responded to effectively, it can endanger victims and create negative perceptions of the service system.”

OUTREACH & COMMUNITY AWARENESS

The need to raise public awareness about elder abuse and available services is commonly cited. However, when outreach efforts generate increased reports of abuse that are not responded to effectively, it can endanger victims and create negative perceptions of the service system. Responsible outreach requires that systems be in place to respond to reports. Only if this criteria is met, should outreach campaigns:

- Instruct abuse victims and witnesses in how to report and what will happen.
- Describe confidentiality and whistleblower protections.
- Specify the level of certainty required to make reports.

Other goals for outreach may include:

- Countering ageist attitudes and misconceptions (e.g., victims of financial abuse are gullible, greedy, or complicit in their victimization).
- Alerting the public to high-risk situations and what to do to lower risk.
- Publicizing resources for caregivers, including:
 - How to hire helpers.
 - Choosing trustworthy surrogates.
 - When guardianship, powers of attorney, advance directives for health care, and other legal instruments may be needed and who provides legal advice and assistance.
 - Assistance in developing “safe” estate plans that offer maximum protection against abuse and reduce the likelihood of future conflicts.
 - Techniques to avoid pressure ulcers.

RESOURCES

- White Paper on Financial Abuse. In November, 2014, The National Center for Victims of Crime (NCVC) hosted the Roundtable on Elder Financial Exploitation, supported by a grant from the Huguette Clark Family Fund for Protection of Elders. During the event, experts identified the following needs: 1) direct services for victims, 2) public policy, and 3) justice system reform. Delegates further offered recommendations for addressing these needs, which are contained in the White Paper. <https://www.victimsofcrime.org/our-programs/financial-crime-resource-center/advocacy/elder-financial-exploitation-advocacy>
- The Elder Justice Act: Background and Issues for Congress. Congressional Research Service (CRS). Provides a history of the EJA and summarizes provisions, the status of implementation, and reauthorization. <http://fas.org/sgp/crs/misc/R43707.pdf>
- Elder Justice Roadmap Report. Washington, DC: U.S. Department of Justice (2014). Available at http://www.ncea.aoa.gov/Library/Gov_Report/docs/EJRP_Roadmap.pdf

PROMISING PRACTICES

NCVC is developing a template of civil statutory provisions for elder financial exploitation in consultation with the American Bar Association Commission on Law and Aging. The initiative is in response to recommendations emerging from the NCVC’s 2014 Roundtable on Elder Financial Abuse described above.



Appendices

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ABOUT THE CALIFORNIA ELDER JUSTICE COALITION (CEJC)

“Promoting policy and practice that improves the lives of vulnerable and abused adults in California.”



CEJC is the only multidisciplinary statewide network devoted to elder justice. Its goals are to:

- Elevate elder justice into public consciousness.
- Provide a voice from the field in policy development.
- Provide streamlined, nonpartisan, and interdisciplinary information.
- Explore systemic barriers to elder justice and craft comprehensive solutions.

CEJC began in 2008 when a small group of service providers began meeting to address shortcomings in the state’s response to elder abuse, neglect, and exploitation. The group soon recognized that change would only come through sustained grassroots efforts by front line service providers to inform policy makers about the needs of those they served. CEJC was created to provide that voice.

CEJC members include state advocacy organizations, administrators, prosecutors, departments of aging and adult services, disability rights organizations, public and private agencies, and researchers. It has forged dynamic partnerships with state and national organizations to diversify the elder justice network, broaden its focus, mobilize new expertise and resources, raise awareness, and achieve comprehensive and far-reaching reform.

Since its inception, CEJC:

- Hosted California’s first elder justice summit in 2010, and *From Policy to Practice Elder Justice Summit* in 2013.
- Produced *Improving California’s Response to Elder Abuse, Neglect, and Exploitation: A Blueprint*.
- Explored leading edge issues through special projects and events, including the development of *Educating Elder Justice Professionals About Long-Term Services and Supports (LTSS) Action Plan*; hosting Elder Justice in the Age of Managed Care webinar, and producing a policy brief on the interface of elder justice and caregiving.
- Apprised elder justice advocates of new developments and needs through the bimonthly electronic newsletter *News & Updates*; policy briefs, and fact sheets.
- Represented California’s elder justice network and stakeholders at state and national policy forums and hearings.

CEJC’s recent activities and accomplishments include:

- Established a state Adult Protective Services leadership position.
- Established June as Elder Abuse Awareness month in California.
- Hosts, in partnership with the Assembly Committee on Aging and Long-Term Care, a series briefings with legislative staff and legislative workshops.
- Co-sponsoring bill to develop a pilot project in San Diego to extend eligibility for victim compensation to victims of financial crimes and exploitation for the first time.
- Provided consultation and training to the Office of Emergency Services to extend Victim Assistance to older victims and victims of financial abuse.

CEJC is a sponsored project of Community Partners, a professional fiscal agent.

SERVICES NEEDED BY OLDER VICTIMS

- Victim advocacy to ensure that victims' rights and needs are addressed, including:
 - Help victims make police reports and ensure that reports are filed and investigated.
 - Explain court processes, arrange for transportation, help victims with victim compensation claims and victim impact statements, and notify victims about the status of their cases.
- Facilitate referrals for counseling, shelter, and legal assistance.
- Emergency and temporary shelter, including:
 - Facilities that provide help with daily activities, personal care, or supervision.
 - Short-term home care and short-term stays in residential care facilities.
- Mental health counseling (individual, peer, and group) to address trauma, anxiety, and depression and develop safety plans. Counseling should be trauma informed and focus on preventing re-victimization (e.g., helping victims break ties to perpetrators).
- Specialized case management to address short and long-term victim needs.
- Funds for abuse related expenses:
 - To replace locks, repair damage, and eliminate health and safety hazards in victims' homes.
 - Payment for utilities that are shut off due to non-payment related to exploitation.
 - Filing fees for legal documents.
 - Medical costs related to abuse.
- Special services for victims of financial abuse, fraud, and exploitation, including:
 - Financial counseling and advocacy to advocate with creditors and debt collectors, landlords, and the IRS (to address tax implications resulting from losses or identity theft); assist victims restructure budgets and debt; access insurance and public assistance; settle bankruptcy and banking issues; and prevent foreclosure, garnishment, and evictions.
 - Legal assistance to protect assets, recover losses, secure protective orders, stop evictions.
 - Daily money management to prevent future exploitation.
 - Instruct cyber fraud scam victims in how to use computers safely and clean infected computers.
 - Assist trustworthy family members offer support and protection.



RESOLUTION TO ESTABLISH A SPECIAL JOINT COMMITTEE, TASK FORCE, OR BLUE-RIBBON PANEL ON ELDER JUSTICE

California Elder Justice Policy Summit, September 26, 2013

Whereas – Elder and dependent adult abuse and exploitation is a complex problem that ranges from neglect by family caregivers to sophisticated fraud operations involving cyber-predators; and

Whereas – Reports to Adult Protective Services in California increased by 65% between 2001 and 2013;

and

Whereas – A 2009 National Institute of Justice study found that 31% of adults over 60 had reported some form of physical mistreatment to police; and

Whereas – The growing rate of vulnerable adult abuse exacts a heavy toll on public resources, with victims four times more likely to be admitted to nursing homes, approximately one in ten elder financial abuse victims turning to Medi-Cal and other social services, and victims 300% more likely to die a premature death; and

Whereas – Despite California’s leadership in innovative policies and practices to combat elder and dependent adult abuse, the state’s response to abuse and exploitation is vastly inadequate as a result of fragmentation, underfunding, and a lack of centralized oversight, leadership and coordination; and

Whereas – California currently lacks mechanisms to take advantage of critical funding opportunities created by the federal Elder Justice Act, thereby limiting the state’s role in shaping federal elder abuse policy and programs; and

Whereas – Advocates and policy makers have taken a piecemeal approach to addressing existing and emerging needs. Bills are presented that have competing and/or conflicting goals and therefore the majority do not pass or present only partial solutions to complex issues; and

Whereas – A bipartisan joint, select or special committee on vulnerable adult abuse and exploitation could address these issues by convening officials from the Administration, the Department of Justice, the Administrative Office of the Courts and the Legislature, together with advocates, experts, researchers, opinion leaders, and policy analysts to identify and respond to inconsistencies, ambiguities, omissions, and gaps in California’s current statutes and craft comprehensive policy options; and

Whereas – The Legislature’s understanding and implementation of needed changes to California’s statutory framework for elder abuse and exploitation would be enhanced by examination of national research on promising models, practices and recommendations; and

Whereas – Designating such a body to oversee elder justice resource and service development, respond to opportunities for federal funding and provide guidance to counties and the Legislature will place California ahead of the demographic curve; and

Whereas – The convening of the Elder Justice Policy Summit on Sept 26, 2013 in Sacramento demonstrated the commitment of professionals working in all disciplines related to elder justice to identify policy changes that will improve outcomes for victims; and

Therefore, be it resolved, that:

The California Elder Justice Coalition and the California Commission on Aging urge the Speaker of the Assembly, the President Pro Tempore of the Senate, the Minority Leader of the Assembly and the Minority Leader of the State Senate to establish a special joint committee, task force, or blue-ribbon panel and commit necessary resources for its operations for a two-year period to examine the state’s laws and regulatory framework for addressing and mitigating elder and dependent adult abuse and exploitation in collaboration with the California Elder Justice Coalition and the California Commission on Aging; and

Be it further resolved that this body work to issue a report identifying statutory, regulatory and programmatic changes necessary enhance statewide, community, and family efforts to prevent abuse and exploitation of older and disabled Californians.

PLAN FOR A FORENSIC CENTER FOR ABUSE IN LONG-TERM CARE FACILITIES

► Goal

To develop forensic expertise that can be used by investigators, advocates, criminal and civil justice professionals, courts, policy makers, geriatric health care professionals, educators, and others to build legal cases; design best practice models and standards; design training programs for long-term care employees, regulators, and investigators; provide therapeutic interventions to victims; and shape public policy.

► Members

Potential participants and partners in a forensics center for long-term care facilities may include representatives from the following organizations, disciplines, and entities:

- Long-Term Care Ombudsmen;
- Local police and sheriffs;
- Bureau of Medi-Cal Fraud and Abuse;
- Department of Public Health;
- Department of Social Services;
- APS workers;
- Researchers in long-term care;
- Advocates for nursing home reform and long-term care consumers;
- Medical professionals, including geriatric physicians, neuro-psychiatrists, forensics nurses, etc;
- Forensics examiners who specialize in fraud by long-term care facilities;
- Public Guardians;
- Probate investigators;
- Advocates for long-term care employees;
- Quality assurance officers;
- Long-term care industry experts who can help determine whether professionals have operated at reasonable levels of competency;
- Human resource professionals; and
- City attorneys.

► Tasks

- Review cases of elder abuse and neglect referred by agencies that investigate and prosecute cases.
- Train investigators and forensics experts.
- Promote coordination among medical, long-term care, and legal service providers.

- Establish partnerships and collaborations with law enforcement, the long-term care industry, advocates, and other stakeholders.
- Explore and respond to the need for new and improved state and federal laws, regulations, policies, and actions. Examples of areas that warrant consideration include:
 - The need for changes to civil and criminal statutes that address neglect; and
 - The needs of “unbefriended” and “unrepresented” residents.
- Report on forensic work to federal and state governmental entities.
- Develop and implement policies and procedures for screening, hiring, and monitoring personnel.
- Collect, review, and disseminate information on promising practices.
- Identify the need for forensics research.
- Promote and assist in the development of training for long-term care facility personnel.
- Develop and provide training on the detection of abuse in facilities.
- Promote and assist academic institutions develop competencies related to the provision of long-term care.



PLAN FOR A FORENSIC CENTER FOR FINANCIAL ABUSE AND EXPLOITATION

► Goal

To develop forensic expertise that can be used by investigators, advocates, criminal and civil justice professionals, courts, policy makers, geriatric health care professionals, educators, and others to build legal cases, recover assets and property, develop service plans, design training and prevention programs, and shape public policy.

► Members

Potential participants and partners in a forensics center for financial abuse and exploitation may include:

- Local police and sheriffs;
- Prosecutors;
- Representatives from federal law enforcement and regulatory agencies that have jurisdiction in financial abuse and exploitation cases, including the Federal Bureau of Investigation, the Federal Trade Commission, U.S. Attorneys, and others;
- Representatives from financial institutions;
- Forensic auditors and document examiners;
- APS workers;
- Long-Term Care Ombudsmen;
- Geriatric physicians;
- Public Guardians;
- Probate investigators;
- City attorneys;
- Experts in mental capacity and undue influence, including neuro-psychiatrists and psychologists;
- Financial industry experts who can help determine whether professionals have operated at reasonable levels of competency; and
- Accountants to review transactions, assess spending patterns and transactions, trace financial trails, establish net worth, and uncover hidden assets.

► Tasks

- Review cases of elder financial abuse and exploitation referred by APS, law enforcement, LTC Ombudsmen, Public Guardians, and others;
- Develop protocols that establish roles and relationships among state and federal law enforcement agencies and provide for cross-reporting;
- Promote coordination among legal service providers;
- Train investigators, including APS, police, sheriffs, District Attorney investigators, etc.;
- Train expert witnesses;
- Develop policies and procedures related to financial forensic practices;
- Collect, review, and disseminate information on promising practices;

- Provide technical assistance to APS, law enforcement, and others regarding financial forensic accounting techniques, financial capacity assessment, etc.;
- Develop and provide training on the detection of financial exploitation;
- Establish collaborations with law enforcement, the banking industry, and others in positions to recognize and report exploitation of vulnerable adults;
- Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, policies, and actions related to financial abuse;
- Explore and respond to the need for new definitions, remedies, statutory authority, and causes of action with respect to financial abuse and exploitation; and
- Report on forensic work to federal and state governmental entities.



FROM PRACTICE TO POLICY ELDER JUSTICE SUMMIT (2013) REGISTRANTS

Please note that the organizational affiliations listed below may have changed since the 2013 Elder Justice Summit.

CEJC Steering Committee Members (see page 1)

Suzette Abend, SCAN Health Plan

Iris Aguilar, USC Roybal Institute

Patrick Arbore, Institute on Aging

Eric Astacaan, Assembly Speaker John A. Perez's Office

Michaela Beals, Financial Fraud Research Center, Stanford University

Lin Benjamin, Benjamin Gero-Psych Consulting

Donna Benton, California Commission on Aging

Cynthia Benzler, Castle Keep Elder Abuse Prevention

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