

Briefing

Joint Oversight Hearing

Aging and Long-Term Care – *and* -- Public Safety

“From Financial Scams to Surveillance Cams: A Spotlight on Elder Abuse”

Purpose of the hearing

The Assembly Committee on Aging and Long-Term Care and the Assembly Committee on Public Safety are meeting jointly to receive testimony, collect information, and to oversee programs related to abuse and exploitation of older and dependent adults. Outcomes of the hearing will include a report and may include legislative initiatives, budget related proposals, or additional informational forums.

Definition of Elder Abuse and dependent adult abuse

The California welfare and institutions codes defines abuse of an elder or dependent adult as “physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering,” and “the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.”

California Evidence Code Section 1109 provides this slight variation of the definition: “Abuse of an elder or dependent person” means physical or sexual abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment that results in physical harm, pain, or mental suffering, the deprivation of care by a caregiver, or other deprivation by a custodian or provider of goods or services that are necessary to avoid physical harm or mental suffering.”

Extent of the problem

According to the National Center on Elder Abuse, “no one knows precisely how many older Americans are being abused, neglected, or exploited. Although there is evidence to suggest that many thousands have been harmed, there are simply no accurate national statistics...” Most studies indicate that under reporting is a significant factor in any estimates. Abuse tends to take place where the abused lives: most often in the home where abusers are apt to be adult children; other family members; or spouses/partners of elders. Institutional settings such long-term care facilities are also the place adult or elder abuse occurs.

Congress’s Select Committee on Aging held hearings and investigated the extent of elder abuse in the early eighties and concluded that at least 4% of all those aged 65 and over are abused or neglected (although other studies have estimated the incidence of elder abuse anywhere from 2% to 10%). Using the Select Committee on Aging’s figure with California Department of Finance demographic data, roughly 184,000 older Californians are abused or neglected. *Not included* in that figure are the thousands of disabled and other Californians overcoming functional limitations that are under the age of 65, nor those who are developmentally disabled.

The Aging population in California is expanding as are the number of people with disabilities. The California Department of Finance’s Demographic Research Unit estimates that California’s 65+ population will grow by 43% from 4.4 million, a year ago, in 2010 to 6.35 million by 2020. Then, another 39% increase by 2030 to 8.83 million; and then another 21% growth to an astounding 10.5 million Californians over the age of 65 by 2040. The ratio of older Californians in the population will climb accordingly. In 2010, the Department of Finance estimated that 11.25% of California’s population was aged 65+. By 2040, 19.4% of the population will be 65+. Disabilities will increase, as will the dependent relations that stem from them. Besides the predictable disabilities that will come with age, is adequate attention given to the impact of special populations, such as persons living with Autism, or AIDS, or Alzheimers? These three "special" populations alone are projected to grow, notwithstanding "normal" demographic aging issues. *How can policy makers respond to the measurable demographic changes California is currently experiencing? What strategies can be deployed to change attitudes toward dependent adult abuse? How do we staff, fund, and protect the exploding ‘special needs’ groups (Autism, AIDS and Alzheimers)?*

Role of Media

Californians are confronted with an almost ceaseless flow of media imagery of older or dependent adults being victimized by unscrupulous predators. Hardly a week goes by that a major media outlet has not reported a horrific incident or brutal assault upon a defenseless, dependent victim. With today's "Youtube" culture, these images have a particularly enduring quality. *What are the implications to policy makers as the general population's confidence in their government's ability to secure places where dependent people are vulnerable to abuse, exploitation and injury, continues to erode?*

The following is a sampling of reports drawn from one California paper:

Brutal abuse at Calabasas retirement home described in testimony

March 30, 2010 | By Robert Faturechi, Los Angeles Times

As she made her rounds at an upscale Calabasas retirement home one morning, Adelina Campos said she walked into a room and caught a fellow caregiver in the act of abusing an elderly man suffering from dementia. The worker was in midair, hurtling from atop a dresser toward the bed, landing both knees onto the man's belly. "I was just in shock," Campos said. The horrible tale and other accounts of abuse are unfolding this week in the trial of Cesar Ulloa, a low-level employee accused of severely mistreating residents, some of whom would have been too dementia-ridden to alert anyone to the alleged abuse.

Resident's Death Leads To Elderly Care Home Closure, State Investigates Fair Oaks Facility

January 13, 2011 | David Bienick, KCRA, Sacramento

FAIR OAKS, Calif. -- State officials confirm Thursday afternoon that an elderly care home in Fair Oaks has been ordered to shut down by the end of the day, following the death of a resident last June. A lawyer for the family of the deceased resident identified her as 73-year-old Kyong Hui Duncan. Video provided by attorney Wendy York showed staff tilting Duncan back in her wheelchair and violently shaking her. Autopsy results show Duncan died with dangerous levels of prescription drugs in her body, including at least one drug that she had not been prescribed. The California Department of Social Services said following the death, it opened an investigation of the Fair Oaks Residential Elderly Care facility on Orange Avenue. State investigators determined that Duncan and several other patients had been abused, including some who had been allegedly tied to chairs and beds.

Second Disabled Woman is Identified in Abuse Video

January 14, 2011 | Andrew Blankenstein, Los Angeles Times

Authorities said they have located a second victim shown on a gruesome video showing disabled women being sexually abused by men. Los Angeles County Sheriff's Department officials said Friday that they served search warrants at three residences as part of the ongoing investigation. The video, given to sheriff's deputies by an anonymous source, shows men having sex with women, many of whom appear to be disabled, with some in wheelchairs and wearing diapers. But prosecutors said the tapes alone are not sufficient evidence, telling Sheriff's Department detectives that they need to provide more facts about the women's medical histories, level of disabilities and other information. "In order to effect a filing, we would either have to prove that the victim did not consent to the sexual acts or she was unable to consent to the sexual acts," the district attorney's office wrote in a memo. "There is insufficient evidence to prove either of these theories beyond a reasonable doubt." The Sheriff's Department did not directly comment on the district attorney's decision. But in a statement issued after prosecutors had turned back the case, sheriff's officials said they had gathered large amounts of evidence, including an intensive interview with an alleged victim, who told them she was sexually assaulted at a residential care facility in Los Angeles. The department said the woman specifically named Lloyd and a second suspect, Bert Hicks, as being among those who assaulted her, according to the statement. Hicks is serving a state prison sentence.

Issues to address

Reporting system: Under California's elder and dependent adult abuse reporting laws found in the Welfare and institutions Code (15630-15632), certain individuals are mandated to report elder abuse and neglect. A variety of agencies can be involved, though primarily Adult Protective Services, Long-Term Care Ombudsmen, the state's two main licensing agencies, (Community Care Licensing at the Department of Social Services, and Licensing and Certification at the Department of Public Health), and law enforcement. Reporting guidance is complicated and confusing. New or changing mandates contribute to the confusion. There is little consistency statewide with regard to the roles and responsibilities of mandated reporters. Challenges to the system include:

- Widespread variations in how cases are addressed.
- A lack of coordination among responding agencies.
- Lack of guidance to counties.
- Inconsistent interpretation of policies.

Criminal Justice: Older and dependent adult abuse is a crime. To what extent has the state supported a comprehensive and coordinated commitment to the resolution of justice and the mitigation of elder and dependent adult abuse, just as the state has

supported a comprehensive commitment to the mitigation of child abuse and domestic violence? What does the lack of statewide coordination and the lack of consistent interpretations of duties and responsibilities within the mandated reporting system say about California's commitment to reducing and eliminating elder and dependent adult abuse?

Today's Hearing

Biographies of presenters are enclosed in the briefing packets.

Part One: Overview of elder and dependent adult protection laws:

Patricia McGinnis, Executive Director of the California Advocates for Nursing Home Reform and a well-known champion of rights for older and dependent residents in long-term care facilities will provide the members of the committees with a historical sketch of the Elder and Dependent Adult Abuse and Civil Protections Act. Paul Greenwood, a District Attorney from San Diego County and a recognized authority on the issue of justice and elder abuse, having been involved in the prosecution of over 400 cases of elder and dependent adult abuse, will discuss the historical trends of laws designed to protect elders and dependent adults from criminal acts.

Part Two: The reporting system.

The following is a description of the primary components of California's mandated report system. Generally, these descriptions are available at each entity's website.

CCL: The Community Care Licensing Division (CCLD) of the Department of Social Services is built on a strong foundation of licensing laws and regulations that provide the authority to: Protect the health and safety of children, adults and seniors in need of out-of home care. Prevent harm by performing such tasks as screening out unqualified applicants for a license. Ensure compliance with licensing requirements through unannounced facility visits, among other things. Enforce licensing requirements by taking corrective action when needed. Provide technical assistance to help providers comply with licensing requirements and provide the best care possible. These important roles are carried out in partnership with communities, counties, parents, licensees, providers, consumers and local authorities. The most effective method for fulfilling our mission to protect the health and safety of clients in care is through frequent compliance monitoring. Currently, CCLD's Frequency of Inspection Protocol is to conduct compliance inspections of all facilities at least once every five years, with an annual

random sample of 30 percent of facilities receiving inspections as well. The inspection includes a comprehensive review of a facility's compliance with licensing laws and regulations.

L&C: Licensing and Certification, within the Department of Health Care Services, is responsible for ensuring health care facilities comply with state laws and regulations. Health care facilities in California are licensed, regulated, inspected, and/or certified by a number of public and private agencies at the state and federal levels, including the California Department of Public Health (CDPH) Licensing and Certification Program (L&C) and the U.S. Department of Health and Human Services' Centers for Medicare and Medicaid Services (CMS). These agencies have separate -- yet sometimes overlapping -- jurisdictions. In addition, L&C cooperates with CMS to ensure that facilities accepting Medicare and Medi-Cal (in California, Medicaid is referred to as Medi-Cal) payments meet federal requirements. L&C also oversees the certification of nurse assistants, home health aides, hemodialysis technicians, and the licensing of nursing home administrators.

Ombudsman: The goal of the State Long-Term Care Ombudsman Program within the California Department of Aging is to advocate for the rights of all residents of long-term care facilities. The California State Long-Term Care Ombudsman Program is authorized by the federal Older Americans Act and its State companion, the Older Californians Act. The primary responsibility of the program is to investigate and endeavor to resolve complaints made by, or on behalf of, individual residents in long-term care facilities. These facilities include nursing homes, residential care facilities for the elderly, and assisted living facilities. The Long-Term Care Ombudsman Program investigates elder abuse complaints in long-term care facilities and in residential care facilities for the elderly. The Office of the State Long-Term Care Ombudsman (OSLTCO) develops policy and provides oversight to the local Long-Term Care Ombudsman Programs. OSLTCO staffs confer with State licensing agencies regarding difficult cases, meet with the California Department of Aging Staff Counsels to clarify laws and develop plans for implementing them, define program roles, and provide ongoing statewide Ombudsman training.

APS: Adult Protective Services (APS) is administered locally by each county. According to the National Association of Adult Protective Service Agencies, "Adult Protective Services" are those services provided to older people and people with disabilities who are in danger of being mistreated or neglected, are unable to protect themselves, and have no one to assist them. In most states, APS programs are the first responders to reports of abuse, neglect, and exploitation of vulnerable adults. A

vulnerable adult is defined as a person who is either being mistreated or in danger of mistreatment and who, due to age and/or disability, is unable to protect him/herself. Though most APS programs serve vulnerable adults regardless of age, some serve only older persons (based either on their age or incapacity). A few programs serve only adults ages 18-59 who have disabilities that keep them from protecting themselves. Interventions provided by APS include, but are not limited to, the following: receiving reports of adult abuse, neglect, or exploitation; investigating these reports; assessing risk; developing and implementing case plans, service monitoring, and evaluation. Further, APS may provide or arrange for a wide selection of medical, social, economic, legal, housing, law enforcement, or other protective emergency or supportive services.

Part Three: Innovation and Creativity: Criminal justice for victims of elder and dependent adult abuse.

- **Mark Zahner, Bureau of Medi-Cal Fraud**
- **Tristan D. Svare**, Deputy District Attorney Family Violence Unit, Elder & Dependent Adult Abuse Prosecution, Office of the San Bernardino County District Attorney.
- **Anne Brewer, Peace Officers Standards and Training (POST)**

Conclusions: Proposals for next steps for California.

Lisa Nerenberg, MSW, MPH, Chairs the California Elder Justice Workgroup sponsored by the Archstone Foundation, which was formed in 2009 to develop a blueprint for improving California's response to elder abuse. She was the founding director of the San Francisco Consortium for Elder Abuse Prevention. She is an instructor at City College of San Francisco and consultant to local, state and national organizations. Her book, ***Elder Abuse Prevention: Emerging Trends and Promising Strategies*** (Springer, 2008) describes what agencies, communities, tribes, states, and national organizations can do to prevent abuse, treat its effects, and ensure justice.