

AN ORCHARD OF LOW HANGING FRUIT: Weaving Elder Justice Measures into Existing Federal Activities

A White Paper for the Elder Justice Coordinating Council

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October 31, 2012

Thank you for the opportunity to submit testimony and a white paper to this exciting and historic inaugural meeting of the Elder Justice Coordinating Council and for all the effort that has gone into its planning. I was asked to identify elder justice efforts that could be integrated into ongoing federal activities.

As noted by the General Accountability Office (GAO) in its March 22, 2011 report and in other documents, federal programs and agencies often give short shrift to the growing problems attending abused, neglected and exploited older people, even though modest attention and coordination could make a huge difference, reducing suffering and saving billions of dollars.

Assistant Secretary Kathy Greenlee, who has been such a great champion for this issue, often challenges audiences to “*do one thing*” to promote elder justice. Taking a page from her playbook, I’m encouraging each member of this Council to do the same, to *Do One Thing*, as outlined in this paper. The recommendations in this paper are illustrative.

Organization of this white paper: In this document, I have suggested one or two options per entity. The Department of Health and Human Services (HHS) and the Department of Justice (DOJ) are listed first and second (with their component entities listed alphabetically), because they have the broadest roles in federal elder justice efforts. Other federal agencies and entities are listed alphabetically after HHS and DOJ. This paper offers illustrative examples but does not of course represent the entire universe of federal entities or potential projects.

A few examples of interagency coordination are briefly addressed at the end of this document.

I. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging (AoA/ACL)

- ***Problem:*** Research shows that most older people are abused, neglected or exploited by their caregivers and aging network programs are often the only contact isolated elders have with the outside world. Although there has been progress, there is still much work to be done to integrate elder abuse awareness, training, prevention, detection, and amelioration measures into AoA’s caregiving, aging network programs, ombudsman and other Older Americans Act programs consistent with a person-centered approach.
- ***Proposal:*** AoA should assure that elder abuse awareness, prevention, detection and response measures are fully integrated into the existing caregiving, aging network, and Older Americans Act programs it funds and administers in an integrated, person-centered manner.

Administration for Children and Families (ACF). Family Violence Prevention and Services Office

- *Problem:* Some of elder abuse is domestic violence in old age, or fall out from other types of family violence. Programs and shelters designed to address such violence among younger people often fail to serve older victims.
- *Proposal:* The Family Violence Prevention and Services office should provide training and technical assistance to coalitions and direct service providers to urge and equip them to better meet the needs of older victims.

Administration for Children and Families (ACF), Children's Bureau

- *Problem:* The Children's Bureau has a long history of leadership in collecting data about child abuse and funding a resource center to address it. Expertise relating to both data collection and resource center could help to inform similar efforts relating to elder abuse.
- *Proposal:* Children's Bureau data collection and resource center experts should share relevant expertise to enhance elder justice data collection efforts and resource centers.

Assistant Secretary for Planning and Evaluation (ASPE)

- *Problem:* The elder abuse field is decades behind child abuse in data collection. Child protection experts (including those at ASPE) have worked collaboratively with outside experts and states for decades to identify common data points and collect data accordingly.
- *Proposal:* To convene a working group that can begin to identify core data elements and states willing to pilot initial data collection. State grantees awarded HHS elder abuse prevention grants provide an initial potential group of state entities to engage in the effort. ASPE, as the agency working with the national evaluator for those prevention grants and given its expertise in data collection and evaluation, is in a unique position to lay a foundation for elder abuse data collection, in consultation with AoA, BJS and other components. Other experts to engage in the conversation include: (1) data collection and information technology experts with relevant expertise; (2) representatives from states in addition to Alaska, California, New York, and Texas (the four receiving prevention grants); and (3) experts in a range of state systems and programs issues relevant to elder abuse and EA data. The working group could identify common data points, structure a pilot project, and make recommendations for how to proceed.

Centers for Disease Control and Prevention (CDC)

- *Problem:* Elder abuse is a significant public health issue that has received a fraction of the recognition and CDC resources allocated to child abuse, intimate partner violence, quality of care, and healthy aging initiatives.
- *Proposal:* CDC should integrate elder abuse, neglect and exploitation issues into its surveillance, violence and injury prevention, aging, and health quality programs, for example by (1) supporting cross-unit and cross-Center collaborations addressing or with the potential to address elder abuse, and (2) creating and supporting the extension of existing surveillance programs to capture elder abuse-related data, for example surveys relating to aging, disability, mental health, substance abuse, long term care, and injury.

Centers for Medicare and Medicaid Services (CMS)

- *Problem:* Medicaid & Medicare reimbursement policy inhibits elder abuse prevention.

- *Proposal*: Convene a group of experts to identify suggested modifications to Medicare and Medicaid reimbursement policy to promote prevention, such as house calls for high risk elders or for time geriatric health professionals spend with patients and families on prevention.
- *Problem*: Due to personal preference and trends in policy (such as waiver programs), older Americans increasingly will receive publicly-funded care in at home. But we have not figured out how to prevent, detect and address elder abuse at home in ways that respect beneficiaries' autonomy and privacy, while assuring their safety, and assuring that public dollars are not squandered on worthless or nonexistent care.
- *Proposal*: CMS should develop demonstration projects designed to promote quality and prevent, detect, and ameliorate abuse, neglect and exploitation at home, particularly by caregivers paid with public dollars.

Health Resources and Services Administration (HRSA)

- *Problem*: Vulnerable populations, such as those served by the types of health centers funded by HRSA's Health Centers Program, are at heightened risk for elder abuse, but rarely receive the help they need to prevent or address the problem.
- *Proposal*: HRSA should begin to integrate elder abuse detection, intervention and prevention into select health centers in its Health Centers Program, and collect data regarding the process.

National Institutes of Health (NIH)

National Institute on Aging (NIA)

- *Problem*: As reported by the GAO, NIA spent 1/1000th of its budget on elder abuse research in 2009, a number consistent with its scant expenditures on the issue in other years. We urgently need rigorous elder abuse research especially regarding prevention, intervention, and to better understand how the target population defines success.
- *Proposal*: NIA should specify in a statement of interest that EA is a priority funding area. In addition, NIA should issue a funding opportunity announcement that specifies elder mistreatment as its topic. This announcement could (and ideally would) be joined by other institutes listed in this white paper. In addition, it should annually fund at least one elder abuse research Request For Proposals and assure the review panel includes people who understand the issue's complexities.

National Institute on Mental Health (NIMH)

- *Problem*: Preliminary research indicates that mental health problems lead to increased rates of elder abuse and that elder abuse leads to increased rates of mental health problems (both among victims and those pressed into service because of the toll of that victimization). (One study concludes that verbal abuse has even worse consequences for the mental health than physical abuse for women aged 50 – 79.) Despite its epidemic rates, elder abuse rarely is included in discussions, research, or programs relating to mental health.

- *Proposal:* NIMH should fund research that examines the relationship between mental health and elder abuse, and how addressing mental health issues among both potential perpetrators and victims more effectively can prevent or reduce elder abuse.

NIMH and/or the National Institute on Drug Abuse (NIDA) and the National Institute on Alcohol Abuse and Alcoholism (NIAAA)

- *Problem:* Anecdotal reports indicate that those who abuse, neglect or exploit older people most often are adult children, grandchildren and others with developmental disabilities, behavioral health and/or substance abuse issues, and that substance abuse and mental health issues often also are present among victims of elder abuse. Initial research indicates that interventions with (potential) perpetrators often are more successful in preventing elder abuse than interventions with (potential) victims.
- *Proposal:* NIMH, NIDA, and/or NIAAA should begin to recognize and fund research to illuminate what types of interventions targeting behavioral and mental health, and substance abuse issues are most effective in addressing and preventing elder abuse.

National Institute on Nursing Research (NINR)

- *Problem:* Nurses are on the front lines of elder abuse response, as care providers in hospitals, long term care facilities, hospice, palliative care, and home care settings, as health researchers, administrators, and care managers, and as trainers (such as the International Association of Forensic Nurses who developed a training program on elder abuse).
- *Proposal:* Nurses were in the vanguard of conducting forensic evaluations and supporting victims of sexual assault with the Sexual Assault Nurse Examiner programs. NINR should examine potential corollary roles for nurses relating to elder abuse. In addition, NINR could pilot test various types of training to determine what tools nurses need to most effectively prevent, detect and respond to elder abuse, and participate in multidisciplinary teams that address the problem.

National Institute on Minority Health and Health Disparities (NIMHD)

- *Problem:* Research indicates that African Americans disproportionately live in worse nursing homes than whites, are victims of financial exploitation about twice as often as whites, and that Latinos are victimized by all sorts of elder abuse at roughly four times the rate of whites. In addition, cultural norms and immigration status has been shown to have a relationship to elder abuse in the Asian American community.
- *Proposal:* NIMHD should integrate elder abuse considerations into ongoing research on health disparities and aging to identify the role of elder abuse, its nature and prevalence in various populations, what constitute protective factors, and how to provide those on the front lines with better guidance about how to identify, prevent and address elder abuse in minority communities.

Office of Civil Rights (HHS-OCR)

- *Problem:* Same as for NIMHD.

Proposal: OCR in collaboration with DOJ's Civil Rights Division, should investigate (possibly including by testing) potentially discriminatory practices, and consider the disparate health consequences of elder abuse in promulgating regulations and policy to address it.

- **Problem:** Fears or threats of HIPAA violations often are an impediment to the prevention, detection and response to elder abuse. Though HIPAA concerns may be well-intended, many experts believe that they actually may exacerbate elder abuse. (See testimony and white paper of Mark Lachs, MD submitted to the EJCC.)
- *Proposal:* OCR should work with DOJ to promulgate guidance and raise awareness about how individuals, entities and multidisciplinary teams should navigate HIPAA issues in the prevention, detection, treatment and amelioration of elder abuse so that HIPAA compliance enhances not undermines elder justice.

Office of the Inspector General (HHS OIG)

- *Problem:* Most elder justice related laws are not adequately funded or implemented. Sometimes this is because of inadequate congressional appropriations. Often, however, more could be done by the administration with existing resources, as pointed in GAO's March 22, 2011 report.
- *Proposal:* OIG should begin to assess implementation of federal elder justice laws by HHS components, including implementation of the Elder Justice Act, the Older Americans Act, the Family Violence Prevention and Services Act, and other laws as they pertain to elder abuse. In addition, OIG should promote measures designed to prevent and redress Medicare and Medicaid fraud and abuse and neglect of the individual beneficiaries of those programs, whether in cases pursued by DOJ, HHS or OIG, in industry guidance OIG promulgates, or in its oversight of Medicaid Fraud Control Units.

Substance Abuse and Mental Health Administration

- *Problem:* Although practitioners report a strong correlation between mental illness and substance abuse on one hand, and elder abuse on the other, SAMHSA's programs rarely address elder abuse.
- *Proposal:* SAMHSA should incorporate elder abuse considerations in its existing screening programs for substance abuse and depression (SBIRT). For example, it should consider, in addition to screening for depression and substance abuse, also screening older people for dementia, and both older people and their caregivers for the risk of abuse, neglect or exploitation that has occurred or is ongoing.

II. DEPARTMENT OF JUSTICE (DOJ)

Office of Justice Programs

National Institute of Justice

- *Problem:* There is a dearth of research to assist in the detection of elder abuse, illuminate forensic aspects of the problem, to assist law enforcement and prosecutors in bringing elder abuse cases, or to guide those who create multidisciplinary centers to address elder abuse in what practices are most successful.

- *Proposal*: NIJ should continue to fund research to identify forensic markers, develop forensic knowledge, provide practical tools to those on the front lines in the detection and redress of elder abuse, facilitate the coordination of the many systems involved in elder abuse, evaluate multidisciplinary (forensic) centers about process and outcomes (beyond just prosecution), and encourage the dissemination knowledge that has been generated (such as the bruising studies). In addition, NIJ should work with HHS research entities to develop some consensus about what tools those on the front lines should use and how they should use them to screen for elder abuse, an issue about which there is considerable confusion and diversity of practice.

Office for Victims of Crime (OVC)

- *Problem*: There are few victim services designed or available to meet the needs of older victims, who often have complex medical, mental health, legal, financial, and/or housing needs. In addition, little is known about how best to meet their needs or about the efficacy of those programs that do exist. And assistance to older victims accounts for a small fraction of victim assistance funds.
- *Proposal*: OVC should encourage states to use some of the formula grant funds on elder justice measures and do so itself with the discretionary funds that it controls, to begin developing a better knowledge base about what programs and types of advocacy best serve older victims of various types of abuse, neglect and exploitation.

Bureau of Justice Statistics (BJS)

- *Problem*: BJS has devoted scarce resources to collect, analyze, publish, or disseminate information about elder abuse, who commits it, who's victimized by it, or to otherwise illuminate who is victimized by and perpetrating elder abuse, and how the justice system responds to the problem. (Recent BJS reports about prison rape have done much to illuminate and target the response to another difficult issue.)
- *Proposal*: To date, BJS has begun one small pilot program to gather data from one local prosecutor's office about its elder abuse cases. BJS should expand that project to include additional prosecutors offices. It also should develop a validated data collection instrument to collect justice system data about elder abuse, and consult with HHS, and experts in other fields about how best to go about doing so across different systems and levels of government.

Office on Violence Against Women (OVW)

- *Problem*: Some percentage of elder abuse is domestic violence, sexual assault and stalking in old age, but OVW programs often fail to recognize or address the needs of older victims.
- *Proposal*: OVW should continue to support the VAWA's abuse in later life program as a stand alone program, and integrate the needs and concerns of older victims into all VAWA programs except those relating specifically to teen dating violence

Litigating Components (Civil, Criminal, & Civil Rights Divisions, and US Attorneys Offices)

- *Problem*: Relatively few cases that can be pursued under federal law involving abuse, neglect or financial exploitation of older people are prosecuted by DOJ.
- *Proposal*: DOJ should assign additional priority to civil and criminal prosecutions of those who defraud Medicare and Medicaid by seeking reimbursement for worthless and non-existent services, thereby not providing beneficiaries care they urgently need and on which they depend. In addition, DOJ should step up efforts to pursue financial exploitation of older people, in particular fraud and exploitation schemes targeting older people that cross state or international boundaries.

Civil Rights Division

- *Problem*: Research indicates that African Americans disproportionately live in worse nursing homes than whites, are victims of financial exploitation about twice as often as whites, and that Latinos are victimized by all sorts of elder abuse at roughly four times the rate of whites. In addition, cultural norms and immigration status has been shown to have a relationship to elder abuse in the Asian American community.
- *Proposal*: The Civil Rights Division should investigate, if necessary use testers, to determine to what extent racial and ethnic disparities, violate any laws, and if so, redress those violations. In addition, it should investigate alleged violations of the constitutional rights of institutional persons and pursue such cases.

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

- *Problem*: We don't know the economic cost of elder financial exploitation.
- *Proposal*: CFPB economists should work with its Office of Older Americans, in consultation with outside experts, to design a methodologically rigorous study to measure the cost of elder financial exploitation on older people, their families, on Medicare, Medicaid, and other health care programs, on employers and businesses, on public housing programs and other social programs, and on the wages and health care of caregivers.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (CNCS)

- *Problem*: Elder abuse is a problem that can be addressed in part with the efforts of well-trained, well-deployed volunteers to address gaps, for example insufficient numbers of financial experts to provide counseling and assistance in cases of financial exploitation.
- *Proposal*: The CNCS should explore with experts in the field how best to train volunteers to effectively provide education regarding financial literacy and capacity, and assist in pursuing cases of financial exploitation, potentially as a Special Initiative or through its Senior Corps, Social Innovation Fund, and/or Volunteer Generation Fund. There are many ways such programs could contribute to reducing elder abuse, neglect and exploitation, and assist those on the front lines to address it more effectively.

FEDERAL TRADE COMMISSION (FTC)

- *Problem*: Research reveals that millions of older people lack the capacity to make fully informed financial choices and to protect themselves from deceptive and unfair practices.

- *Proposal:* FTC should develop and implement consumer protection programs designed for people with diminishing capacity including those whose diminished capacity to make financial decisions goes undetected and unaddressed.
- *Problem:* Long term and congregate care providers that don't receive Medicare and Medicaid, or that are subject to uneven oversight or regulation, often evade review and action when they abuse, neglect or exploit those for whom they provide care.
- *Proposal:* The FTC should develop a consumer protection-based enforcement initiative to protect consumers of long term care from providers not bound by Medicare and Medicaid rules and oversight, and other protections.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- Elder abuse victims often require emergency shelter, transitional housing, or public housing because they have lost their homes by exploitation or are in danger of abuse or neglect where they live.
- The Department of Housing and Urban Development (HUD) should assure that people victimized or at risk for elder abuse have priority access to affordable housing and shelter.

DEPARTMENT OF LABOR

- As a growing number of older people require care, and increasing numbers wish to receive that care at home, we will need a well-trained workforce to provide decent care. Yet we will experience growing workforce shortages and insufficient training and compensation of caregivers.
- The Department of Labor should promote fair labor standards for in-home caregivers and develop and make available training to prevent and address elder abuse.

UNITED STATES POSTAL SERVICE

- *Problem:* Millions of older people are financially exploited in ways that use the United States mail.
- *Proposal:* The Postal Service should designate a point person in countries where financial exploitation schemes originate, who can assist in the coordination of cross-boarder efforts to address and prevent financial exploitation. In addition, the Postal Service should identify all relevant repositories of data from any source that might be useful in pursuing financial exploitation cases.

SOCIAL SECURITY ADMINISTRATION (SSA)

- *Problem:* We have not measured Rep Payee fraud or developed measures to prevent it.
- *Proposal:* SSA should work with its Office of Inspector General to measure the extent and cost of Rep Payee fraud and begin to develop programs to prevent it.

DEPARTMENT OF THE TREASURY

- *Problem:* Elder abuse is a serious and widespread if usually unrecognized financial problem to which there is no real coordinated response despite its significant economic impact. *Proposal:* The Department of the Treasury should modify the FinCEN form so that it includes a box to check for elder abuse, and elder abuse should be included among the issues considered by the 21-agency brain trust it heads.

VETERAN'S ADMINISTRATION (VA)

- *Problem:* Given high elder abuse prevalence numbers in the general population, it's likely that aging veterans, particularly those with cognitive and physical disabilities, also are subject to high rates of elder abuse.
- *Proposal I:* The Veterans' Administration should become more involved in elder abuse research, policy and practice, and integrate research and demonstration projects relating to elder abuse into programs relating to Veteran's health.
- *Proposal II:* In the child abuse field, home visits by health care workers have proven to be an effective prevention measure. The VA has done research showing the house calls are a cost effective way to deliver geriatric care. One potential project would be for the VA's Geriatric Research, Education and Clinical Centers (GRECCs) to pilot a demonstration project in its house call program to study whether house calls have any preventive (or other) impact on elder abuse, neglect or exploitation. A related question to examine is whether the reason house call programs are cost effective because house calls help to reduce elder abuse that often results in costly nursing home or hospital admissions.

DISCLAIMER:

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