



**Testimony of Robert B. Blancato, National Coordinator, Elder Justice Coalition
Senate Finance Committee, “Promoting Elder Justice: A Call for Reform”
July 23, 2019**

Chairman Grassley, Ranking Member Wyden:

It is an honor to be invited to testify this morning. We commend Chairman Grassley and Ranking Member Wyden for this hearing and the important topics around elder justice it will address. I know with respect to Chairman Grassley it is just one more example of a commitment to issues related to older adults that spans more than 40 years. Ending elder abuse, neglect, and exploitation is a bipartisan issue and goal.

The Elder Justice Coalition is a non-partisan 3000-member group dedicated to advancing elder justice policy at the federal level, whether through passage and implementation of legislation or through regulatory action. We were established in 2003 at the time the first Elder Justice Act was introduced. Many of our members provide direct services to elder abuse victims, such as the National Adult Protective Services Association and the National Association of State Long-Term Care Ombudsmen, or provide public outreach and advocacy on elder abuse, such as the American Society on Aging’s elder abuse advocacy focus and online elder abuse gerontology course.

Elder Abuse: The Numbers

We all know the sad numbers. Here are just a few. Justice Department figures say one in ten older adults are victims of elder abuse.¹ We also know from reports that victims of financial elder abuse lose at least \$3 billion a year, with other reports suggesting dramatically higher losses.² The FBI reports that in 2017 alone almost 50,000 people over 60 lost a total of \$342.5 million to internet scams.³

According to the Elder Justice Roadmap report published by the Departments of Justice (DOJ) and Health and Human Services (HHS), elder abuse victims are four times more likely to be

¹ <https://www.justice.gov/elderjustice>

² <https://www.sec.gov/files/elder-financial-exploitation.pdf>

³ https://pdf.ic3.gov/2017_IC3Report.pdf

admitted to nursing homes⁴ and three times more likely to be admitted to hospitals.⁵ Residents of understaffed nursing homes are 22 percent more likely to be admitted to hospitals due to neglect.⁶

This same federal report noted that many elder abuse victims have organic conditions such as dementia, brain injuries and other factors that lead to diminished or limited cognitive capacity. They are more susceptible to abuse, neglect and financial exploitation.

Add one other sad reality —research says the average victim of elder abuse is an older woman living alone between 75 and 80.⁷ According to the Census Bureau, today more than 46 percent of all women over 75 now live alone.⁸

Elder abuse is non-discriminatory. It claims nameless victims and big names too like Mickey Rooney, Brooke Astor, Stan Lee and Casey Kasem.

Elder abuse is current—consider these headlines just from the past few days:

- [California] senior facility worker charged with identity theft, elder abuse⁹
- Eight charged since March creation of [Michigan] Elder Abuse Task Force, attorney general says¹⁰
- Powder Springs, [Georgia] man convicted of elder neglect in death of 91-year-old¹¹
- [California] massage therapist suspected of raping a 77-year-old and sexually assaulting clients¹²

The Elder Justice Act

Early next year, we will observe the tenth anniversary of the signing into law of the Elder Justice Act (EJA). Many of the members on this Committee were supporters of this bipartisan bill. It was a landmark law at the time and its benefits can be seen in the following:

⁴ Lachs, M., Williams, C. S., O'Brien, S., & Pillemer, K. (2002). Adult Protective Service use and nursing home placement. *The Gerontologist*, 42(6), 734-739. (pp. 736-737)

² Dong, X. Q., & Simon, M. A. (2013). Elder abuse as a risk factor for hospitalization in older persons. *JAMA Internal Medicine*, 173(10), 911-917.

⁶ Centers for Medicare and Medicaid Services. (2001). *Appropriateness of Minimum Nurse Staff Ratios in Nursing Homes, Phase II Final Report*. Baltimore, MD: Author. (pp. 1-7)

⁷ <http://www.newhopeforwomen.org/elder-abuse>

⁸ <https://www.pewsocialtrends.org/2016/02/18/1-gender-gap-in-share-of-older-adults-living-alone-narrows/>

⁹ <https://sfbay.ca/2019/07/18/senior-facility-worker-charged-with-identity-theft-elder-abuse/>

¹⁰ <https://www.mcknightsseniorliving.com/home/news/eight-charged-since-march-creation-of-elder-abuse-task-force-attorney-general-says/>

¹¹ https://www.mdjonline.com/news/powder-springs-man-convicted-of-elder-neglect-in-death-of/article_62586024-a97c-11e9-9dd3-dbf7423595ef.html

¹² <https://www.latimes.com/california/story/2019-07-18/massage-therapist-suspected-of-rape-elder-sexual-assault>

- It included a first-time definition of elder justice in federal law, unifying statutes with undefined references to “elder abuse” and “elder justice.”
- A total of \$46 million has been appropriated by Congress for activities previously never funded for elder justice, including the National Adult Maltreatment Reporting System, or NAMRS; Elder Justice Innovation Grants; and a first-time federal home for Adult Protective Services.
- The Elder Justice Coordinating Council’s formation and work in developing more coordination and initiatives at the federal level on elder abuse prevention.

Our Coalition calls for five core features of the Elder Justice Act in a new Elder Justice Reform Act:

- Dedicated funding for Adult Protective Services (APS);
- Strengthening the Long-Term Care Ombudsman Program;
- Continuing the important work of the Elder Justice Coordinating Council;
- Authority for an Advisory Board on Elder Abuse, Neglect, and Exploitation;
- Funding for elder abuse forensic centers.

Let me elaborate on each of these.

Adult Protective Services

Dedicated funding for APS was the centerpiece of the original Elder Justice Act. It came about because APS is the only nation-wide civil system authorized under state law to investigate reports of elder abuse, and state and local funding is too limited to support the demands upon APS. While the majority of states use some portion of their Social Services Block Grant allocation to provide funds for adult protective services, it is far too inadequate. Moreover, the EJA provisions for APS provide the foundation for improving consistency in services between states, as we have done with child protective services.

The reality is that less than 5 percent of older adults live in nursing homes. Elder abuse prevention, like so many other services, is a community-based issue. We absolutely need to provide APS with adequate funding to do their work in investigating, treating and preventing elder abuse. We have failed to accomplish this to date.

We have an opportunity to renew this effort. There are two possible solutions. The first is to authorize adequate and dedicated funding for states’ adult protective services offices to enable them to respond to the growing and increasingly complex reports of elder abuse, neglect and exploitation that all APS programs face.

The second opportunity that could provide more APS funding would be for a set-aside of funds distributed from the Victims of Crime Act (VOCA) Crime Victims Fund to go to direct assistance services for victims of elder abuse, neglect and exploitation. APS must be a priority eligible entity for that set-aside for this reason. All forms of elder abuse, apart from self-neglect, are

crimes and its victims are crime victims. APS by its very nature assists victims by investigating the allegations of abuse and providing and referring victims to essential community services to keep victims safe from further abuse and to remain able to live in their homes and communities.

Allowing for these VOCA resources and fully funding the authorization in the bill for APS could be very instrumental in enabling APS to respond effectively to the growth in serious abuse cases. We are hopeful your bill will include not only the set-aside language but an improved definition of victim services and who can provide it.

Long-Term Care Ombudsman Program

Core grants to improve the state long-term care ombudsman program are also critical. Here again, we hope we can build up from the proposed authorization levels in this bill to ensure adequate funding for this important program.

Ombudsmen are the eyes and ears in facilities. According to the National Ombudsman Reporting System, in 2017 ombudsmen made more than 29,000 visits nationwide. These visits give residents a chance to speak up about abuse. In 2017, ombudsman programs investigated more than 5,000 cases of abuse, neglect, or exploitation in assisted living facilities, and over 11,000 cases in nursing homes. In 2016, ombudsmen and their trained volunteers investigated 199,493 complaints made by 129,559 individuals. Ombudsmen were able to resolve or partially resolve 74 percent.

We have an opportunity to remedy a shortcoming from the original EJA which authorized a number of important programs that either supported the ombudsman program directly or strengthened other programs or parts of the long-term care systems with which the ombudsman work.

Unfortunately, the funding was never appropriated for the two grant programs that would have supported ombudsman services and elder abuse related training to better equip ombudsman representatives to address resident complaints about abuse and neglect. Neither was funding provided for the training of the nursing home workforce which would benefit both residents and ombudsmen. We sincerely hope some of this can be remedied through your upcoming bill.

We also respectfully recommend that separate authority be provided to allow funding for ombudsman to be provided through the Medicare Trust Fund, a position supported by the Leadership Council of Aging Organizations.

Elder Justice Coordinating Council and Advisory Board

Another core part of the original EJA is the Elder Justice Coordinating Council (EJCC). We see that as one of the enduring successes of the EJA, accomplished by strong implementation work by both the Obama and Trump Administrations. Today, fourteen federal agencies are communicating and meeting with each other through working groups to learn more about how

to coordinate their resources and activities in the elder abuse prevention space. This constitutes a smart use of federal funds by using what we have and making it more effective through coordination. I am also pleased to note that the EJCC is embarking on a stakeholder listening session process beginning next week at the annual meeting of the National Association of Area Agencies on Aging. At this juncture I would like to salute Kathy Greenlee from the Obama Administration and the current co-chairs of the EJCC Lance Robertson and Toni Bacon for their great work.

We also strongly support the convening of the complementary citizen-based Advisory Board on Elder Abuse, Neglect and Exploitation. Its value can be as an expert panel to advise the federal government, including the EJCC, on stories, best practices, and statistics from the field.

Forensic Elder Abuse Centers

The final core item from the original EJA is its call for grants to establish forensic elder abuse centers. The Elder Abuse Forensic Center model is designed to provide case review by a multidisciplinary team, consultation, assessment, tracking, and help to implement person-centered case plans in the most complex cases of abuse, neglect, exploitation, and self-neglect of older adults. Research published by The Gerontological Society of America states that “elder abuse forensic centers improve victim welfare by increasing necessary prosecutions and conservatorships and reducing the recurrence of protective service referrals. Elder abuse forensic centers provide a process designed to efficiently address client safety, client welfare and protection of assets.”¹³

It is time the field of elder abuse had access to specialized forensic centers to assist in so many aspects of the work around prevention, including and especially in hospital emergency rooms or clinics to discern whether an older adult who comes in with a bruise has had a fall—or possibly, has been physically abused.

Nursing Home Reform Positions

Overall, we also commend your strong interest in promoting meaningful nursing home reform. It is meaningful for residents and their families.

Nursing Home Compare

Regarding reforms to Nursing Home Compare, I was in the audience at your hearing in March 2019 when Patricia Olthoff-Blank testified about her mother dying from dehydration and neglect in a facility that had received a 5-star rating from CMS. That brought the need for reform front and center. We hope HHS after its evaluation will recommend adding consumer satisfaction data to the rating system. We are advised that a good existing model may already

¹³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4944537/>

exist in the HHS Agency for Healthcare Research and Quality (AHRQ). After all, this was to be to the benefit of consumers to begin with.

Oversight and Reporting Provisions

We agree with all efforts to enhance federal oversight into abuse and neglect in nursing homes. One method would provide for development and the offering of training to state and federal surveyors on best practices for identifying and reducing adverse events in LTC facilities. This provision grew out of a recommendation from a 2014 report from the Office of the Inspector General (OIG) of HHS. Hopefully this can be included in the legislation.

The testimony and report provided to the Committee by the United States Government Accountability Office reflects what nursing home resident advocates have been saying for many years. It validates the fact that much of the abuse, neglect, and exploitation that takes place behind the closed doors of long-term care facilities is severely underreported by residents, family, staff, and the state survey agencies. There are various reasons for this including the fear of retaliation, but CMS acknowledges the fact. Unfortunately, the GAO report shows that abuse deficiencies more than doubled over the 5-year period from 2013 to 2017, and we believe that this was likely the case in assisted living facilities as well. These were often cases categorized at the highest levels of severity, “causing actual harm to residents or putting residents in immediate jeopardy.”

This data and the shocking fact that it may be just the tip of the iceberg, make this hearing and the bill that you are developing even more urgent. Better oversight by CMS is needed that includes tools that nursing homes are mandated to use to record and report abuse and perpetrator type. We need to be sure that reports are made in a timely manner for the treatment and safety of the resident.

For us to achieve reform, we must focus on the prompt reporting to the appropriate law enforcement agency or adult protective service offices by both nursing homes themselves and by state and federal surveyors of suspected incidents of potential abuse or neglect at skilled nursing facilities (SNFs) and group homes receiving reimbursement from either Medicare or Medicaid.

In fact, according to the OIG, SNFs failed to report an estimated 6,608 instances of potential abuse or neglect (as identified in high-risk hospital ER Medicare claims) to the Survey Agencies in 2016, and additionally, approximately 27 percent of abuse and neglect claims were not reported to law enforcement by mandatory reporters, even though all states require certain individuals to report suspected abuse, neglect, or exploitation of vulnerable adults.¹⁴

¹⁴ HHS Office of Inspector General, *Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated* (A-01-16-00509), June 2019.

Further, we have not been as aggressive as we should about tying conditions of participation in the Medicare and Medicaid programs to ensuring that nursing homes and long-term care facilities are free from abuse and neglect.

Resident Safety

We strongly support the idea of mandating that HHS work to better promote awareness on nursing home safety and hospital safety efforts by methods such as posting on the HHS website a list of potential nursing home events, including events that are not commonly associated with SNF care, to help nursing home staff better recognize adverse events.

Our nation has heard enough horror stories associated with natural disasters and the special vulnerability of nursing home residents. From New Orleans to Hollywood, Florida, we have seen terrible conditions caused by hurricanes and floods. This needs to be specifically addressed in your bill. The key must be the coordination between state, local and tribal governments and the Federal Emergency Management Agency on developing and implementing emergency response plans.

We commend the recent work of Senators Casey and Toomey on special focus facilities and hope the new bill can build on this work and mandate that HHS release the full list of facilities in this program and update it on a regular basis.

Chairman Grassley, we know of both your pioneering and long-standing commitment to combatting social media abuses in long term care facilities and hope some specific language will be included in the legislation.

Background Checks

Finally, we hope that your proposed bill will include continued authority to promote criminal background checks of employees at long term care facilities.

Our Coalition has been very interested in this issue since it first appeared as a demonstration program in the Medicare Modernization Act of 2003. The limited outcome of that demonstration conducted in seven states showed why it is necessary. Back then, it was estimated that more than 7,000 individuals were turned away from employment because of what was found on their background check.¹⁵

This led to Congress passing and President Obama signing into law in 2010 a part of the Affordable Care Act that provided grants to States to implement background check programs for prospective long-term care employees. The program has met more limited than impactful success. First, only 25 states participated in the program, and within those states, according to an OIG interim report, there were varying degrees of implementation. This ranged from some states not obtaining legislation to enable them to conduct the checks to not having a process to

¹⁵ <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Reports/Downloads/White8-2008.pdf>

collect fingerprints and monitor criminal history information after someone began employment. As a result, only six of the 25 states submitted enough data to CMS to be able to determine the percentage of prospective employees who were disqualified because of their background checks.

Perhaps this is most disturbing. In those same six states, only three percent were disqualified. Some improvements are needed for this program to achieve its critically important goal—to keep criminals from working with older adults in long term care facilities.

We commend Senator Wyden for his leadership on making necessary improvements in the background check program, particularly his support of requirement that SNFs who are participating in Medicare and Medicaid report to the HHS Secretary within six months on the nature of criminal or other background checks used to assess current and prospective personnel who serve as certified nursing assistants. This should be followed by an implementation of improved background checks.

Conclusions

Essentially, this hearing and the legislation which will follow conveys some important messages. The federal commitment to promoting elder justice is continued and expanded. It is our longstanding belief that the best role the federal government can play is to provide adequate resources to allow those programs at the state and local level, like ombudsmen and adult protective services, to do their important work at top effectiveness. It is also about having existing federal funds be used in a more coordinated way; extending the Elder Justice Coordinating Council assists in this.

But the nursing home reforms are really the heart of this hearing. I note that there are plenty of high-quality nursing homes in this nation staffed by dedicated persons. I know this because my mother was a resident in one. They are not the object here, and neither should they be victimized by stigmatizing nursing homes. The focus of this hearing are those nursing homes that fail to adhere to appropriate standards of care and in the process jeopardize the health and safety of residents.

The fault is not only in the facility. Some of the fault rests with lax enforcement of laws enacted to prevent these abuses. All our collective efforts must be directed at achieving full enforcement of any law passed by Congress.

One of the hardest decisions for any individual or family to make in their lifetime is to determine that a loved one requires care in a nursing home or long-term care facility. The decision alone is heart-wrenching. To then compound that with uncertainty about the quality of care their loved one will receive is absolutely wrong. The federal government has the absolute responsibility to not enable abuse and neglect to occur in those facilities by providing financial support without accountability. Further, the federal government has the absolute

responsibility to provide consumers with reliable information on the quality of any nursing home or long-term care facility before even one night is spent there.

Sadly, we suffer from an intergenerational cycle of abuse in our nation, from child abuse to domestic violence to elder abuse. Yet, whereas the federal response to child abuse and domestic violence has been there for more than 45 years, we still lag way behind in addressing the very real problem of elder abuse. Our federal commitment to addressing child abuse and domestic violence is paying off: reports of both are decreasing. This is not the case with elder abuse. Failure to improve the federal response to elder abuse may be one of the worst examples of ageism in public policy.

Going forward on a bipartisan basis, we must be proactive and persistent in our efforts to combat elder abuse and achieve elder justice. Hopefully, this hearing today and the legislation that will be introduced moves us in the right direction. The Elder Justice Coalition looks forward to working closely with this Committee on advancing a potential Elder Justice Reform Act and with your colleagues on the Appropriations Committee to get any provisions properly funded.