



Elder Abuse: A Maturing Public Health Issue

Introduction

Congress first defined “elder abuse” succinctly as “abuse of an older individual” in its 1987 amendments to the Older Americans Act.¹ More broadly defined, elder abuse encompasses myriad forms of mistreatment in both domestic and institutional settings, including physical, emotional, and sexual abuse, exploitation, neglect, and abandonment.² States define elder abuse in various ways³ – probably in response to the comparative prevalence of different kinds of elder abuse among the states.⁴

In 1998, the Administration on Aging, a division of the Department of Health and Human Services, issued a report stating that most elder abuse goes unreported.⁵ The study calculated that in 1996, approximately 450,000 elders suffered domestic abuse or neglect, though only 16% of those cases were actually reported.⁶ The National Academies stated in 2003 that among Americans aged sixty-five and older, one to two million have been abused by caregivers.⁷ Others estimate that these numbers may be even higher. The American Psychological Association, for example, reports that four million American elders are abused annually, and that accounting for unreported incidents could produce an estimate up to twenty-three times higher.⁸

Maryland is no stranger to elder abuse, and reports are handled by various state executive and administrative offices.⁹ In fiscal year 2014, these offices received approximately 7,400 reports of abuse of vulnerable adults, a category encompassing elders as well as other adults incapable of independent living.¹⁰

¹ 42 USC § 3002 (1987).

² National Center on Elder Abuse, *Frequently Asked Questions*, <https://ncea.acl.gov/faq/> (last visited January 11, 2017).

³ *Id.*

⁴ Maryland, for example, usually addresses elder abuse issues under the general rubric of “vulnerable adults,” but it does directly refer to elders with respect to financial exploitation. See *infra* Part II.

⁵ The Administration on Aging, *The National Elder Abuse Incidence Study at 5-1* (September 1998), available at http://aoa.gov/AoA_Programs/Elder_Rights/Elder_Abuse/docs/ABuseReport_Full.pdf.

⁶ *Id.*

⁷ The National Academies Press, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* at 1, 9 (2003), available at http://www.nap.edu/openbook.php?record_id=10406&page=1.

⁸ American Psychological Association, *Elder Abuse and Neglect: In Search of Solutions*, available at <http://www.apa.org/pi/aging/resources/guides/elder-abuse.aspx>.

⁹ Including the Maryland Office of the Attorney General’s Medicaid Fraud Control Unit, the Maryland Department of Aging’s Long Term Care Ombudsman Program, the Maryland Department of Health and Mental Hygiene’s Office of Health Care Quality, the Maryland Department of Human Resources’ Office of Adult Services’ Adult Protective Services Program, the Governor’s Office of Crime Control and Prevention, and the Maryland Network Against Domestic Violence.

As of 2010, individuals over age eighty-five comprised the most rapidly growing age group in the US, and the number of people over sixty-five is projected to increase significantly through 2050.¹¹ Since the elderly are uniquely vulnerable to abuse for social, economic, and psychological reasons,¹² these population trends warrant heightened scrutiny of the issue of elder abuse.

Maryland's Patchwork Approach to Elder Protection

Maryland has many laws and policies addressing elder abuse, forming a multifaceted approach to protecting elders. Relevant Maryland laws, for example, span the criminal code, family law, and law governing financial institutions. Criminal laws aim to prevent abuse, neglect,¹³ and exploitation of "vulnerable adults"¹⁴ by imposing criminal sanctions on such conduct.¹⁵ Maryland family law imposes reporting requirements on individuals who suspect, through their professional contact with vulnerable adults,¹⁶ the presence of "abuse, neglect, self-neglect, or exploitation."¹⁷ Finally, Maryland requires financial institutions to report suspected financial abuse or exploitation of elder adults¹⁸ to the relevant state authorities.¹⁹

The Office of the Attorney General of Maryland (OAG) collaborates with state agencies, local nonprofits, and the private financial industry to operate Project SAFE (Stop Adult Financial Exploitation).²⁰ This public/private effort, designed to facilitate financial workers' compliance with elder exploitation reporting requirements, entails providing educational materials to employees on how to recognize the warning signs of exploitation and assist at-risk customers. Recognizing that financial institutions represent only one side of the equation, the OAG also provides educational materials to seniors regarding how to recognize and avoid exploitation.²¹ The OAG's Medicaid Fraud Control Unit works with other mandated reporters, including law enforcement officers and employees of residential facilities and nursing homes, to ensure that they are aware of Maryland's vulnerable adult abuse reporting requirements and are able to comply with them.²²

¹⁰ Maryland Department of Aging, *Elder/Vulnerable Adult Abuse Prevention Public Awareness Fact Sheet* (2015), available at <http://aging.maryland.gov/Documents/WEAADFactsheet2015.pdf>.

¹¹ National Center on Elder Abuse, *Statistics/Data*, <https://ncea.acl.gov/whatwedo/research/statistics.html> (last visited January 11, 2017); Administration on Aging & Administration for Community Living, *A Profile of Older Americans: 2013* at 3 (2013), available at http://www.aoa.acl.gov/Aging_Statistics/Profile/2013/docs/2013_Profile.pdf.

¹² For example, social isolation, economic dependence, and cognitive decline all contribute to elders' vulnerability. National Center on Elder Abuse, *Frequently Asked Questions*, <https://ncea.acl.gov/faq/> (last visited January 11, 2017).

¹³ Abuse and neglect are criminalized under MD Code Crim. Law § 3-605.

¹⁴ "Vulnerable adult" means an adult who lacks the physical or mental capacity to provide for the adult's daily needs." The term "vulnerable adult" includes, but is not limited to, elders. MD Code Crim. Law § 3-604.

¹⁵ Exploitation, meaning the deprivation of property by "deception, intimidation, or undue influence," is criminalized under MD Code Crim. Law § 8-801.

¹⁶ The legislature adopted the same definition of "vulnerable adult" for the purposes of family law as criminal law. MD Code Fam. Law § 14-101.

¹⁷ Professional contact includes care from health practitioners, human service workers, and police officers. MD Code Fam. Law § 14-302.

¹⁸ Instead of the "vulnerable adult" language used in criminal and family law, financial institution law directly refers to elder adults, defined as Maryland state residents aged sixty-five and older. MD Code Fin. Inst. § 1-306(a)(3).

¹⁹ MD Code Financial institutions § 1-306. Additionally, the law imposes civil penalties for failure to report suspected elder abuse or exploitation. MD Code Fin. Inst. § 1-305(c)(2).

²⁰ Maryland Office of the Attorney General, *Maryland's Project SAFE: Model Reference Manual for Financial Institution Employees* (2d Edition, September 2012), available at <http://www.oag.state.md.us/Consumer/ModelEmployeeReferenceManual.pdf>.

²¹ Maryland Office of the Attorney General, *Consumer Guide for Seniors*, available at <http://www.oag.state.md.us/Consumer/seniors.pdf>.

²² Stephen Roscher, Maryland Office of the Attorney General, Medicaid Fraud Control Unit, personal communication, April 11, 2014.

Additionally, many Maryland agencies accept, review, and respond to reports of elder and vulnerable adult abuse. These offices receive reports of suspected abuse in many settings, with some overlap, including assisted living²³ and long term care facilities,²⁴ “licensed and/or federally certified facilities,”²⁵ community settings,²⁶ and domestic settings.²⁷

All States Combat Elder Abuse; the Federal Government Helps, Too

Other states have enacted elder abuse laws in myriad categories,²⁸ but the most common kinds of laws prohibit elder abuse (including its permutations, such as physical and financial abuse) and institute abuse reporting requirements. Most states also offer immunity provisions for good faith reporters²⁹ and criminalize both false reports and failures to report.³⁰

While pursuing similar goals, states differ in their definitions and approaches to elder abuse, at times targeting different kinds of misconduct. Even in Maryland, the criminal code defines abuse³¹ slightly differently from the family law code;³² and from state to state, the variations are more substantial. For example, Alabama elder abuse laws aim to protect elders from abuse, exploitation, and neglect.³³ In order to specifically address particular kinds of abuse, the law distinguishes “abuse” from “emotional abuse” and “sexual abuse.”³⁴ A number of states also distinguish “abandonment” from “neglect.”³⁵ Still other states differentiate “neglect” from “self-

²³ Reports of abuse in assisted living facilities as well as other facilities that accept Medicaid are investigated by the Medicaid Fraud Control Unit. Maryland Office of the Attorney General, Medicaid Fraud Control Unit, *available at* <http://www.oag.state.md.us/MFCU/index.htm>.

²⁴ The Long Term Care Ombudsman Program of the Maryland Department of Health and Mental Hygiene investigates these reports. Maryland Department of Aging, *Welcome to the Ombudsman Program Program*, <http://aging.maryland.gov/Pages/Ombudsman.aspx> (last visited January 11, 2017).

²⁵ The Office of Health Care Quality of the Maryland Department of Health and Mental Hygiene investigates these reports. Department of Health and Mental Hygiene, Office of Health Care Quality, <http://dhmh.maryland.gov/ohcq/Pages/Home.aspx> (last visited January 11, 2017).

²⁶ The Maryland Department of Human Resources’ Office of Adult Services’ Adult Protective Services Program investigates these reports. Maryland Department of Human Resources, Adult Protective Services, <http://dhr.maryland.gov/office-of-adult-services/adult-protective-services/> (last visited January 11, 2017).

²⁷ The Governor’s Office of Crime Control & Prevention investigates domestic violence reports, including elder abuse. Maryland Governor’s Office of Crime Control & Prevention, <http://www.goccp.maryland.gov/> (last visited January 11, 2017). Additionally, the Maryland Network Against Domestic Violence works to mitigate domestic violence via collaboration among various professionals and citizens. Maryland Network Against Domestic Violence, <http://mnadv.org/> (last visited January 11, 2017).

²⁸ For example, the American Bar Association’s Commission on Law and Aging categorizes state laws as pertaining to Adult Protective Services, Abuse Registries, Access to Victims, APS as Guardian, Capacity to Consent, Caregiver, Confidentiality of Information and Records, Criminal Background Checks, Emergency or Involuntary Services to Victims, Immunity for Good Faith Reporting, Mandatory Reporting to Adult Protective Services, Mandatory Training, Multidisciplinary Teams, Penalties for Failing to Report or Making False Reports of Elder Abuse, Prohibitions of Retaliation Against Reporters of suspected Elder Abuse, Reporting and Referrals to Law Enforcement, Threshold Eligibility Criteria, Types of Abuse, and Undue Influence. *Laws Related to Elder Abuse*, http://www.americanbar.org/groups/law_aging/resources/elder_abuse.html (last visited January 11, 2017).

²⁹ American Bar Association Commission on Law and Aging, *Immunity for Good Faith Reporting: Provisions and Citations in Adult Protective Services Laws, By State* (2007), *available at* http://www.americanbar.org/content/dam/aba/administrative/law_aging/Immunity_for_Good_Faith_Reporting_Provisions_and_Citations_Chart.authcheckdam.pdf.

³⁰ American Bar Association Commission on Law and Aging, *Penalties for Failing to Report Elder Abuse: Comparison Chart with Provisions from Adult Protective Services Laws, By State* (2009), *available at* http://www.americanbar.org/content/dam/aba/administrative/law_aging/2011/2011_aging_ea_failure.authcheckdam.pdf.

³¹ MD Code Crim. Law § 3-604(a)(2)(i) defines abuse as “the sustaining of physical pain or injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the vulnerable adult’s health or welfare is harmed or threatened.”

³² MD Code Fam. Law § 14-101 defines abuse as “the sustaining of any physical injury by a vulnerable adult as a result of cruel or inhumane treatment or as a result of a malicious act by any person.” Note that this definition does not explicitly require that the abuse threaten or harm the vulnerable adult’s health or welfare.

³³ Ala Code § 38-9-7.

³⁴ Ala Code § 38-9-2. For example, “emotional abuse” specifically includes “the use of physical or chemical restraint, medication or isolation as punishment.”

neglect.³⁶ With respect to the policies that implement these laws, most states have ombudsman programs for responding to reports of abuse.³⁷ As intermediaries between government agencies and the public, ombudsmen advocate for the needs of long-term care residents, help individuals find appropriate care, and handle complaints.³⁸

The Long-Term Care Ombudsman Program and State Variation

Long-Term Care Ombudsmen are advocates for residents of long-term care facilities who work to resolve problems and complaints to improve the care and quality of life of each resident.³⁹ The federal Long-Term Care Ombudsman Program began in 1972 under the authorization of the Older Americans Act as a demonstration project to bring about changes at the local, state and national levels.⁴⁰ The 1987 amendments to the Act later authorized state funding for long-term care ombudsman services to strengthen the states' responsibility to investigate complaints concerning long-term care.⁴¹ Today, the Long-Term Care Ombudsman Program exists in all states.⁴²

In the absence of regulation since its creation in 1972, there has been significant variation in the interpretation and implementation of these provisions among the states.⁴³ Recently, however, the Administration on Aging (AOA) issued the first set of regulations specifically designed to focus on states' implementations of the Long-Term Care Ombudsman program: those regulations go into effect on July 1, 2016.⁴⁴ The Department of Health and Human Services expects that a number of states may need to update their statutes, regulations, policies, procedures and practices in order to operate the Ombudsman program consisted with these regulations.⁴⁵

Some states have developed unique programs to address elder abuse. In Illinois, for example, the Thirteenth Judicial Circuit Family Violence Prevention Council provides educational materials on elder abuse to law enforcement and legal professionals.⁴⁶ Washington's King County Elder Abuse Council established a medical-legal partnership for coordinating responses to elder abuse and collaborating on policy change.⁴⁷

³⁵ See, e.g., Alaska Stat. § 47.24.900. Abandonment means "desertion of a vulnerable adult by a caregiver," whereas neglect means "the intentional failure by a caregiver to provide essential care or services necessary to maintain the physical and mental health of the vulnerable adult."

³⁶ See, e.g., Okla. Stat. tit. 43A § 10-103.

³⁷ American Bar Association Commission on Law and Aging, *Protective Services, Institutional Abuse, and Long Care Ombudsman Program Laws: Citations, By State* (2007), available at http://www.americanbar.org/content/dam/aba/administrative/law_aging/APS_IA_LTCOP_Citations_Chart_authcheckdam.pdf.

³⁸ See, e.g., The National Long-Term Care Ombudsman Resource Center, <http://www.ltombudsman.org/> (last visited January 11, 2017).

³⁹ Administration on Aging, *Long-Term Care Ombudsman Program* (OAA, Title VII, Chapter 2, Sections 711/712), U.S. Department of Health and Human Services, http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/index.aspx (last visited January 11, 2017).

⁴⁰ 42 U.S.C.A. § 3058g

⁴¹ 42 U.S.C.A. § 3027

⁴² Administration on Aging, *Long-Term Care Ombudsman Program* (OAA, Title VII, Chapter 2, Sections 711/712), U.S. Department of Health and Human Services, http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/Ombudsman/index.aspx (last visited January 11, 2017).

⁴³ 80 FR 7703 available at <http://www.gpo.gov/fdsys/pkg/FR-2015-02-11/pdf/2015-01914.pdf>

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ IFVCC Councils, Illinois | Family Violence Coordinating Councils, <http://www.icjia.state.il.us/ifvcc/ifvcc-councils> (last visited January 11, 2017)

⁴⁷ Elder and Vulnerable Adult Abuse, King County Victim and Community Service, <http://www.kingcounty.gov/depts/prosecutor/victim-community-support/elder-abuse.aspx> (last visited January 11, 2017).

At the federal level, laws generally support and fund state efforts to curb elder abuse. For example, the Older Americans Act created national centers to support state ombudsman programs,⁴⁸ conduct and make available research on elder abuse,⁴⁹ and award grants to state elder abuse programs.⁵⁰ The Affordable Care Act mandates that the federal government fund improvements in the reporting and investigation of elder abuse in certain facilities⁵¹ as well as establishes a national background check program for long term care facility employees.⁵² Additionally, the Social Security Act created various provisions for reporting crimes against long term care residents,⁵³ ensuring quality care in nursing homes,⁵⁴ providing grants and support to state adult protective services,⁵⁵ and creating national policy-guiding bodies such as the Elder Justice Coordinating Council⁵⁶ and the Advisory Board on Elder Abuse, Neglect, and Exploitation.⁵⁷

Maryland has Room to Grow

Maryland's systems for criminalizing various forms of elder abuse, mandating and facilitating reporting, and providing educational materials to institutions, elders, and the public seem to satisfy the minimum national standard. Some states, however, have more robust statutory provisions than Maryland, such as laws streamlining protective services' access to victims and strong protections for reporters against retaliation.⁵⁸ Moreover, in 2014 and 2015 the Maryland General Assembly turned down many chances to strengthen its system.⁵⁹ For example, the legislature twice failed to enact a law that would have created an abuser registry,⁶⁰ cancelled the hearing to consider reconvening the health department's Abuser Registry Workgroup of the Office of Health Care Quality,⁶¹ unfavorably reported on attempts to double the sentences and fines imposed on those who abuse vulnerable adults,⁶² and rejected restrictions on the pretrial release of individuals charged with crimes against vulnerable adults.⁶³ On the other hand, an amendment

⁴⁸ 42 USC § 3012 (2010).

⁴⁹ *Id.*

⁵⁰ 42 USC §§ 3030d, 3032b, 3032g, 3032i, 3032j, 3058g, 3058i, 3058j, 3058aa, 3058aa-l (2009).

⁵¹ 42 USC § 1395i-3a (2011).

⁵² 42 USC § 1320a-7l (2010).

⁵³ 42 USC § 1320b-25 (2011).

⁵⁴ 42 USC §§ 1395i-3, 1396r (2008).

⁵⁵ 42 USC § 1397 (2010).

⁵⁶ 42 USC § 1397k (2010).

⁵⁷ 42 USC § 1397k-1 (2010).

⁵⁸ Maryland does provide some forms of legal immunity for good faith reporters, but it does not specifically prohibit retaliation by third parties as some states do.

⁵⁹ General Assembly of Maryland, Legislation by Session, *available at*

<http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=elderan&stab=01&pid=narrowsubpage&tab=subject3&ys=2014rs> and <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=elderan&stab=01&pid=narrowsubpage&tab=subject3&ys=2015rs> (last visited January 11, 2017).

⁶⁰ HB 0379 (2014), *available at* <http://mgaleg.maryland.gov/2014RS/bills/hb/hb0379F.pdf>; HB0023 (2015), *available at* <http://mgaleg.maryland.gov/pubs-current/current-house-status-report.pdf>.

⁶¹ The workgroup was tasked with a variety of activities to protect elders from abuse in the health care context, such as running federal background checks and educating employees. HB 1377 (2014), *available at* <http://mgaleg.maryland.gov/2014RS/bills/hb/hb1377F.pdf>.

⁶² These bills sought to increase maximum sentences from ten to twenty years and maximum penalties from \$10,000 to \$20,000 for felony convictions, and they would have increased maximum sentences from five to ten years and maximum penalties from \$5,000 to \$10,000 for misdemeanor convictions. See HB0375 (2014), *available at* <http://mgaleg.maryland.gov/2014RS/bills/hb/hb0375F.pdf>; SB0177 (2014), *available at* <http://mgaleg.maryland.gov/2014RS/bills/sb/sb0177F.pdf>; HB0020 (2015), *available at* <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0020F.pdf>; and SB0411 (2015), *available at* <http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&tab=subject3&id=sb0411&stab=01&ys=2015RS>.

⁶³ HB0382 (2014), *available at* <http://mgaleg.maryland.gov/2014RS/bills/hb/hb0382F.pdf>; SB0182 (2014), *available at* <http://mgaleg.maryland.gov/2014RS/bills/sb/sb0182F.pdf>; HB0031 (2015), *available at*

expanding requirements for elder exploitation recognition training at financial institutions passed in both the House and the Senate and became law in 2014,⁶⁴ and a bill authorizing a State's Attorney to file a petition to freeze assets of a defendant charged with a financial crime involving a vulnerable or elder adult passed both chambers in 2015 and was approved by the Governor.⁶⁵

To embody a higher standard for combating elder abuse, Maryland could:

- Conduct interdisciplinary research into the best practices for preventing and responding to elder abuse.
- Establish a system of review to ensure that Maryland's decentralized efforts combine to provide the best protection for elders.
- Create a public registry for convicted elder abusers.⁶⁶
- Provide rehabilitative support to individuals convicted of elder abuse.
- Reconcile the criminal penalties for assault and abuse.⁶⁷

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<http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&tab=subject3&id=hb0031&stab=01&ys=2015RS>; and SB0412 (2015), available at <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=sb0412&stab=01&pid=billpage&tab=subject3&ys=2015RS>.

⁶⁴ HB0723 (2014), available at <http://mgaleg.maryland.gov/2014RS/bills/hb/hb0723T.pdf>.

⁶⁵ HB0737 (2015), available at <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0737T.pdf>; and SB0288 (2015), available at <http://mgaleg.maryland.gov/2015RS/bills/sb/sb0288T.pdf>.

⁶⁶ Note that convictions of elder abuse in Maryland are uploaded to a federal exclusion list, but updates to the federal list can lag by several months, and a state registry could provide more up-to-date information. See U.S. Department of Health and Human Services, Office of Inspector General, *Exclusions Database*, <http://exclusions.oig.hhs.gov/> (last visited October 12, 2015).

⁶⁷ Assault and abuse include substantially similar elements, but the penalties are inconsistent. Conviction of second degree assault, for example, entails a prison sentence up to 10 years and a fine of up to \$2,500, MD Code Crim. Law § 3-203(b). Conviction of second degree abuse of a vulnerable adult, by contrast, carries a maximum sentence of 5 years and a maximum fine of \$5,000.