STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201
Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Laura Herrera Scott, MD, MPH, Acting Secretary

January 15, 2015

The Honorable Peter A. Hammen
Chair, Health and Government Operations Committee
House Office Building, Room 241
Annapolis, MD 21401

RE: Report on Older and Vulnerable Adult Abuse in Maryland

Dear Chair Hammen:

Pursuant to your attached request dated May 14, 2014, for the Department of Health and Mental Hygiene (DHMH) to report on its progress to address the problem of abuse of vulnerable adults by employees in health care settings, DHMH submits this report on its recommendations entitled *Older and Vulnerable Adult Abuse in Maryland: Recommendations for Next Steps*.

Thank you for your interest in and advocacy for the protection of vulnerable adults in Maryland. If you should have any questions about this report, please do not hesitate to contact Allison Taylor, Director, Office of Governmental Affairs, at (410) 260-3190 (Annapolis) or (410) 767-6480 (Baltimore).

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Acting Secretary

Enclosure

cc: House Health and Government Operations Committee Members
Allison Taylor, J.D., M.P.P.
Tricia Nay, M.D.
The Honorable Catherine Pugh
The Honorable Barbara Robinson
The Honorable Cheryl Glenn

THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

May 14, 2014

Joshua M. Sharfstein, M.D.
Secretary
Department of Health and Mental Hygiene
201 W. Preston St.
Baltimore, MD 21201

Dear Secretary Sharfstein:

Bills introduced in the last few years have focused on the issue of abusive employees of health care programs serving vulnerable adults. While the bills generally have sought to establish a database of such abusive employees, the bills have been withdrawn or amended, and a workgroup convened by the Department of Health and Mental Hygiene has examined ways to address the issue. During the 2014 session, SB 432/HB 532 would have required DHMH to establish a database of direct access employees. SB 432 was amended in the Senate to require DHMH to develop a plan for creation and implementation of a database of direct access employees. HB 532 was withdrawn. DHMH submitted a letter of information on the amended SB 432 describing the work that has been done to address the problem of abuse of vulnerable adults and recommending the following steps:

1. Offer educational programs to the community regarding reporting obligations and elder abuse awareness;
2. Ensure that law enforcement and relevant agencies are utilizing the current system to enforce and implement laws regarding abuse and neglect; and
3. Review and revise statutes and regulations that provide consequences for employers who fail to report abuse and neglect.

I endorse these recommendations and request that DHMH, with the advice of the workgroup, proceed to implement them. Please submit a progress report on your efforts, including recommendations for any needed legislation, by December 1, 2014. Contact Linda Stahr, committee analyst, with any questions at linda.stahr@mlis.state.md.us or 410-946-5477.

Sincerely,

Peter A. Hammen

cc: The Honorable Catherine Pugh
The Honorable Barbara Robinson
Allison Taylor, Director of Governmental Affairs, DHMH
Patricia Tomsko Nay, M.D., Acting Executive Director, OHCQ

DEPARTMENT OF HEALTH & MENTAL HYGIENE

Office of Health Care Quality

Older and Vulnerable Adult Abuse in Maryland: Recommendations for Next Steps

Prepared for:

Chairman Peter Hammen
House Health and Government Operations Committee

January 15, 2015

Introduction

Elder abuse is defined by the Administration on Aging[1] as any knowing, intentional, or negligent act by a caregiver that causes harm or a serious risk of harm to a vulnerable adult. A caregiver is a person who is responsible for the direct care, protection, or supervision of another individual. Caregivers may be paid or unpaid and may include family members, friends, and staff at facilities or programs. Regarding older adults, Maryland-specific prevalence data are difficult to find, but various sources[2] put the nationwide prevalence of abuse at 1 in 10 elders. If we extrapolate those data from the 2013 Maryland census, each year approximately 45,000 Marylanders over age 65 are subject to one or more forms of abuse including physical, sexual, and/or emotional abuse, along with neglect, financial exploitation, and/or abandonment. Since adults who are abused may be abused repeatedly and since the under-reporting of abuse may be as high as only one in 24 occurrences[2] the number of older Marylanders affected is likely much higher than has been reported. When we expand the definition to include vulnerable adults (i.e., those persons over 18 lacking the physical and/or mental capacity to provide for their daily needs), the number of cases is likely much higher.

In the home setting, caregivers may become overwhelmed and may be unable to meet the individual's needs with the current resources. Caregiver stress increases the risk of abuse and neglect. Several studies quoted in the Elder Justice Roadmap[2] have shown that up to one-half of persons with dementia suffer abuse and neglect, two-thirds of those abused are women, and African American, Latino, low-income, and isolated adults are disproportionately victimized. Victims of elder abuse are four times more likely to be admitted to long-term care facilities and three times more likely to be admitted to hospitals. Furthermore, abused older adults have a 300% higher risk of premature death than non-abused seniors.

Older and vulnerable adult abuse represents an incalculable loss of life, independence, resources, and sense of safety and security for its victims. Considering our aging population with those over 65 now occupying the largest demographic group, it is time to take a coordinated and comprehensive approach to prevention coupled with greater support for law enforcement to enable more accurate recognition of abuse and neglect with successful prosecution.

Current Prevention and Investigation Practices

Maryland currently has a number of public and private stakeholders involved with preventing and addressing older and vulnerable adult abuse, including, but not limited to, regulators, law enforcement agencies, licensing boards, academic centers, area agencies on aging, and advocacy groups for both populations and care providers. We also have a patchwork of laws and regulations that address various parts of reporting, surveillance, background checks and other prevention and enforcement strategies. Except for mandatory reporting of suspected cases as required in Health-General Article, §19-347, Annotated Code of Maryland, there is no comprehensive oversight and coordination under the authority or lead of one state agency.

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[1] Administration on Aging, http://www.aoa.gov/AoA_programs/elder_rights/EA_prevention/whatisEA.aspx

[2] National Center on Elder Abuse, http://ncea.acl.gov/Library/Gov_Report/index.aspx

Maryland Attorney General[3]
In 2001, Maryland's Attorney General launched Project SAFE (Stop Adult Financial Exploitation), a public-private partnership which provides training for bank personnel in detecting and reporting possible cases of financial exploitation of older and vulnerable adults. The Medicaid Fraud Control Division of the Office of the Attorney General prosecutes dozens of cases of patient abuse in residential facilities each year, ranging from sexual assaults to cases of neglect resulting in injury and even death. The Office also provides education and training for providers and family members in identifying possible abuse and neglect.

Adult Protective Services[4]
Adult Protective Services (APS) is part of the Department of Human Resources. All suspected abuse and neglect cases are to be reported to APS, which maintains offices in each county. APS maintains a hot-line for reporting abuse and has the capacity to respond 24-hours a day to emergencies. Investigators with APS perform unannounced site visits and investigations and take action, which may include initiating law enforcement action and working with vulnerable adults to devise safety plans. APS workers also do risk and safety assessments, always with the goal of keeping the client safe while protecting his or her right to self-determination.

Maryland Department of Aging (MDoA) Stakeholder Workgroup[5]
MDoA coordinates the Maryland Stakeholder's Work Group on Elder Abuse that includes representatives from the Area Agency on Aging network, APS, OHCQ, academia, the attorney general's office, and law enforcement. The Work Group promotes elder abuse education throughout the year, but particularly on World Elder Abuse Awareness Day – June 15th. The Work Group has encouraged the development of county-based elder abuse coalitions.

MDoA Ombudsman Program[5]
The ombudsman program is authorized by federal and State law to investigate complaints and advocate for residents of nursing homes and assisted living facilities. It is federally and State funded and administered by the Department of Aging. Local ombudsmen work with clients and facilities to resolve individual complaints. Maryland law requires individuals reporting abuse in nursing homes and assisted living facilities to contact OHCQ, the Department of Aging, and/or the police. Ombudsmen work to ensure that abuse is being addressed by the appropriate agency. They also provide education, training, and consultation to improve the lives of facility residents.

DHMH - Office of Health Care Quality[6]
The Office of Health Care Quality (OHCQ), under State and sometimes federal authority, regulates over 15,000 health care providers and residential community programs. The statutes and regulations for each program type define OHCQ's oversight for abuse and neglect. The depth and scope of abuse and neglect investigations differs for each program type, depending on the regulations in force. Programs operating under federal regulations have very prescriptive regulations for everything from prevention activities through internal investigations and referral

[3] http://www.oag.state.md.us/seniors.htm
[4] http://www.dhr.state.md.us/blog/?page_id=4531
[5] http://www.aging.maryland.gov/Ombudsman.html
[6] http://dhmh.maryland.gov/ohcq/SitePages/Home.aspx

requirements. Programs operating under state regulations have defined requirements for abuse and neglect, including staff training and pre-hire background checks. The Office currently has a retired police detective assisting in investigations of abuse and neglect for State programs.

Complaints and self-reports of abuse and neglect of older and vulnerable adults are investigated by health facility surveyors. In addition, prevention activities are surveyed on routine health facility surveys. The OHCQ takes action when its health facility surveyors identify systemic or institutional factors that may lead to a failure to prevent abuse or failure to appropriately act on allegations. For instance, if a facility is not performing criminal background checks as mandated for new employees, or is not promptly investigating and reporting allegations of abuse, OHCQ has several remedies that may apply. The OHCQ coordinates with other agencies, including prosecutors and law enforcement, when individual cases of abuse or neglect are identified.

In addition to regulatory and retrospective investigative activities, The OHCQ is currently involved in the following proactive interventions:

- OHCQ staff have been in discussions with stakeholders to determine a definition of abuse that applies in all care settings. Multiple definitions exist in statute which complicates the ability to recognize and report abuse.
- OHCQ staff have created an informational brochure about recognizing and reacting to abuse and abuse allegations to be released to county and State police academies.
- An OHCQ work group is reviewing existing State and federal laws and regulations pertaining to abuse and neglect. This work group will be revising regulations to standardize the consequences for organizations that fail to report employees suspected of abuse to their respective licensing boards. The work group will consider proposed future legislation to ensure consistent application of the law across all programs under OHCQ's jurisdiction.
- OHCQ leadership has prioritized the consistent implementation and enforcement of current statutes and regulations related to abuse and neglect throughout all program types.
- In 2012, the OHCQ received a grant from the Centers for Medicare and Medicaid Services (CMS) to create a background check program for all direct care employees. The work on this initiative has been postponed, but CMS remains committed to comprehensive state background check programs and may require all states to create a program in the future. The Department will be reviewing the grant and the program to determine how to move forward.

National Efforts

The Elder Justice Coordinating Council[7]

In 2013, the Department of Health and Human Services (HHS), The Department of Justice (Justice), the National Adult Protective Services Association (NAPSA), and other agencies formed the Elder Justice Coordinating Council in response to a Government Accounting Office (GAO) report published in 2011[8] on the state of the national response to older adult abuse. The

[7] http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/EJCC/index.aspx

[8] http://www.gao.gov/products/GAO-11-208

report noted that there were 12 separate programs to fight older adult abuse administered by HHS and Justice, with little overlap and little coordination. The GAO recommended greater oversight by HHS and more coordination among the state APS efforts, which are somewhat subject to individual state mandates and resource allocation. The report also called for more data sharing including creating a reliable data format, and collecting and disseminating APS administrative data on older adult abuse cases from each state.

The first product of the Elder Justice Coordinating Council is the Elder Justice Roadmap,[9] published in July, 2014. The roadmap is divided into four domains; direct services, education, policy, and research. The recommendations are as follows:

> 1. Direct services—The focus is on front-line providers and services, including more training for police and medical first responders and investigators. The report calls for increasing the care-giving workforce, including direct care and community-based case managers, and ensuring those people are well trained. The report also calls for more training for judges, court personnel, and attorneys to better equip them to deal with the elderly and their needs more effectively.
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> 2. Education—Education is needed both at an individual profession level and in multi-disciplinary settings between clinical personnel and law enforcement. In addition to the elderly and their families, non-clinical persons who routinely come in contact with the elderly may be the first to recognize an unsafe home situation and should be trained and supported. Besides training, the roadmap calls for a national awareness campaign, similar to those used with intimate partner violence and child abuse.
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> 3. Policy—The report calls for assessing current laws to identify gaps in regulation and unfunded or underfunded mandates while developing an infrastructure of governmental and non-governmental agencies to promote consistency and efficiency in policy development.
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> 4. Research—Studies looking into the causes and cures for older adult abuse lag far behind those for intimate partner violence and child abuse. The lack of data means that few evidence-based tools have been developed to assist responders in screening and reacting to older adult abuse. The current methods of data collection must be validated and standardized so everyone is using the same language when in discussions of the scope and severity of the problem. Of course, data gathered must be shared with regulators, policymakers, researchers, and funders. A theoretical model of the causes of older adult abuse should be developed and screening tools, including forensic markers, and risk assessments must be validated. The efficacy of programs used currently to intervene and rescue must also be validated, and the costs need to be determined, both to individuals and society, of older adult abuse.

[9] http://ncea.acl.gov/Library/Gov_Report/index.aspx

Examples of Best Practices

Some states have already taken the initiative and begun implementing the recommendations of the Elder Justice Coordinating Council. The following is a description of three examples of centers of inter-disciplinary cooperation which have been formed in order to address the complex issue of older and vulnerable adult abuse;

The Center of Excellence on Elder Abuse and Neglect, UC Irvine[10]
The goal of the University of California's Center of Excellence on Elder Abuse and Neglect (the Center) is to eliminate older adult abuse in California. The Center provides a five-pronged approach to combating older adult abuse, including local projects, research, training, technical assistance, and policy and advocacy. The Center has four interdisciplinary components that provide 1) Direct assistance with medical and forensic evaluations, and interdisciplinary care planning with California's Adult Protective Services (APS); 2) Technical assistance including web resources to inform the public and medico-legal professionals; 3) Research, by helping to connect direct services with academics; and 4) Training and education through the Center's Elder Abuse Training Institute, which works with a variety of state, county, and local government agencies and law enforcement, providing interdisciplinary team training about all aspects of older adult abuse, including how to conduct abuse assessments, and how to investigate complex cases. The Center works with two public/private partnerships to combat financial abuse including investment scams, ID theft, and telemarketing. The Center's Death Review Team reviews all suspicious deaths of elders and uses those case studies as part of educating medical professionals, law enforcement, and legislators. The Center also works with two local county groups. The first is comprised of law enforcement personnel, medical and legal professionals, and social workers who investigate complex cases of abuse in an interdisciplinary and collaborative manner. The second group contains medical and psychiatric professionals who provide (based on referrals from APS and law enforcement) in-home or in-facility assessments of abuse victims along with reviewing their medical records and photographing the injuries. The Center has managed to assemble an impressive collection of volunteers from the medical and legal arenas that do the majority of the consulting.

Stop Elder Abuse and Mistreatment (SEAM), New York
Modeled on a program for combating domestic violence and sponsored by district attorneys and domestic violence courts, SEAM provides a therapeutic and educational 12-week mandatory program for abusers on parole. The program accepts all abusers, regardless of gender, relationship to the victim, or whether the abuse was physical, emotional, neglectful, or financial. SEAM monitors re-offenders as evidence of effectiveness.

King County Elder Abuse Council,[11] *Washington*
The Council is another all-volunteer organization made up of representatives of the medical examiner's office, law enforcement, prosecutor's office, APS, provider services, ombudsman's office, attorney general's office, social workers, social service providers, and nursing professors. These volunteers work collaboratively to prevent older and vulnerable adult abuse and diminish

[10] http://www.centeronelderabuse.org/index.asp
[11] http://www.kingcounty.gov/Prosecutor/elderabuse.aspx

its severity when it occurs, to improve the coordination of systems, increase community awareness, and effect legislative change to further the system's protection of older and vulnerable adults, and to increase accountability for those who abuse, neglect and exploit them.

EVAATF, Montgomery County, Maryland
Within Maryland, Montgomery County's Elder and Vulnerable Adult Abuse Task Force (EVAATF) was developed to ensure a coordinated response to elder and vulnerable adult investigations between the family crimes division of the Montgomery County Police, ombudsman program, adult protective services, licensure and regulatory services, and State's Attorney's Office. The purpose of the team is to protect elderly and vulnerable adults from further maltreatment, abuse, neglect, and or exploitation by providing a multi-disciplinary approach to investigations and services. This model demonstrates that coordinated efforts result in more effective and efficient prevention and management of adult abuse.

Recommendation for Maryland

Based on the complexity and breadth of the work that needs to be accomplished in this field, our research supports a single recommendation – Maryland should establish an agency for the prevention and management of older and vulnerable adult abuse. OHCQ believes it is essential that a new agency be created that is responsible for coordinating all older and vulnerable adult abuse prevention and tracking activities within Maryland. This agency should have cross-jurisdictional oversight to ensure a consistent response to allegations of abuse across counties and across agencies, including identifying interventions that are most effective for victims and abusers. This agency could be independent of the Maryland Departments.

This agency could be modeled on the Center of Excellence on Elder Abuse and Neglect at UC Irvine, which provides the most comprehensive and coordinated approach to combating elder abuse of all models reviewed by OHCQ. This model could be modified, as needed, to meet the needs of Marylanders. In order to provide services for this vulnerable population, this new agency should receive adequate funding. OHCQ does not believe that such a mandate could be undertaken within existing resources.

The National Center on Elder Abuse (NCEA), funded by the Administration on Aging, can be a resource for the development of a Maryland center on abuse. NCEA's mission is to provide technical assistance and training to states and communities to develop effective prevention, intervention and response efforts to address elder abuse.

OHCQ has created a non-prioritized list of actions at a State level to be considered by this center. OHCQ envisions that work on all domains would be on-going, integrated, and in parallel. The center's actions include:

Policy:

1. Perform a gaps analysis on existing law, policy, and regulations to identify overlaps and gaps in coverage.
2. Propose legislation to address the gaps in prevention and prosecution.
3. Evaluate the effectiveness of current laws.

4. Evaluate existing victim services for their applicability to the needs of seniors and vulnerable adults, including emergency housing and medical care.
5. Evaluate for efficacy current and past legislative attempts at remediation and prevention, including criminal background checks, employee databases, and other proposed reporting systems.
6. Identify older and vulnerable adult abuse experts in the law enforcement community that can act as a resource to other law enforcement personnel and prosecutors.
7. Explore methods to track convicted offenders while ensuring due process.
8. Evaluate current regulations for conducting criminal background checks across program types to strengthen and standardize the requirements, as needed.

Research:

1. Current data collection is fragmented and not readily available. Analyzing all available cross-jurisdictional data, identify the scope and severity of the problem.
2. Define terms such as “abuse” and “vulnerable adult.” Once terms are standardized, standardize data collection and act as a single repository and disseminator of data.
3. Partner with academics to determine causes of older and vulnerable adult abuse, identify characteristics of victims and offenders, and identify research priorities and methods.
4. Determine which victim services work best for seniors and identify current gaps in service.
5. Develop and implement evidence-based interventions and test outcomes.
6. Determine what older and vulnerable adult victims identify as successful outcomes.
7. Study societal risk factors for abuse and abusers such as poverty, isolation, substance abuse, and medical dependency.
8. Determine the need for resources to support caregivers, including respite care options.

Tools:

1. Identify or develop a quick, easy-to-use assessment tool that can be used in all settings by professionals such as first responders, medical personnel, case managers, and social workers, similar to the domestic violence screening tool.
2. Evaluate tools currently in use by APS, the ombudsman program, and others to screen reported abuse allegations and conduct investigations.
3. Work with police and medical personnel to identify tools for law enforcement use while investigating allegations of abuse. These tools would include forensic markers as well as methods to improve communication between law enforcement, prosecutors, and older and vulnerable adult victims.
4. Standardize data collection to allow for analysis and forecasting.
5. Identify or develop tools for better, faster cognitive assessments, assessments of decision-making capacity, and other mental health markers.
6. Identify or develop tools to strengthen and build on the innate resources of older and vulnerable adults. For instance, using trained peer counselors for older and vulnerable adults that are reluctant to discuss their experiences.
7. Review and revise, as needed, the investigative tools for health facility surveyors and other regulators.

Education:

1. Evaluate current educational offerings from agencies and advocates for evidence of effectiveness; standardize and disseminate.
2. Create a Statewide awareness campaign, with hot-lines and on-line reporting.
3. Educate care and service providers to more quickly and accurately evaluate older and vulnerable adult risk.
4. Develop an educational strategy for professionals in health care and law enforcement with both profession-specific and interdisciplinary training.
5. Train non-medical service providers in a quick mental status evaluation that might identify potential exploitation. Continue the training for bank and financial employees.
6. Develop a train-the-trainer program for institutional providers with content on how to prevent abuse by employees and other residents/patients, and how to recognize and react when abuse happens.
7. Educate and empower older and vulnerable adults to recognize when they may be in an unsafe situation and to whom abuse should be reported. There is currently a fair amount of work being done on the consumer protection front about identity theft, telemarketing, and other consumer scams. Add physical abuse and neglect to this education.
8. Educate and empower caregivers and family members to recognize potential abuse and neglect and advocate for other individuals.
9. Educate individuals, caregivers, legal professionals, and health care professionals about advance care planning for medical and financial decisions.

Summary

Every day throughout the State, ombudsman, APS workers, OHCQ surveyors, law enforcement officers, attorneys, advocates, providers, and many others work to promote the safety, independence, and quality of life for older and vulnerable adults. While much has been accomplished, there is still more work to be done. While lacking specific data for the costs associated with older and vulnerable adult abuse in Maryland, the costs are significant. The patchwork of laws and regulations combined with fragmented efforts will achieve limited success at a higher cost. With limited resources, Maryland must focus on the most cost-effective method of successfully managing this complex issue; that is, to establish a center that offers a comprehensive and coordinated approach that will best protect the most vulnerable Marylanders from abuse.