Ensuring Elder Justice in the California Master Plan on Aging
Recommendations by the California Elder Justice Coalition (CEJC)
December 12, 2019

The Steering Committee of the California Elder Justice Coalition (CEJC) recommends the following overarching themes and goals to ensure that the California Master Plan on Aging protects the rights of all older Californians.

Overarching Themes:

- Achieving elder justice requires transformational, systemic changes to institutions and policies that protect the health, safety, security, and rights of older Californians. These include California's mandatory elder abuse, neglect, and exploitation reporting system; the civil and criminal justice systems; crime victims' assistance programs; the health and long-term care systems; and social and support programs that promote independence and autonomy.
- Elder justice requires fairness in access to services, benefits, and opportunities by people of all ages, races, ethnicities, gender identities, legal status, and residence. This is achieved by combatting ageism and other forms of discrimination and by promoting intergenerational equity in access to protective and supportive services and resources.
- Strategies for achieving elder justice must include achievable and measurable goals, objectives, timelines, benchmarks, and plans for sustainability.
- Elder justice requires the active participation of multiple sectors, including financial institutions, providers of health and long-term care and housing, the judiciary, and others.

Elder Justice Goals

1. Provide a "No Wrong Door" approach for reporting elder and dependent adult abuse with the assurance that all cases are investigated and responded to.
2. All adults have opportunities to complete advanced directives to protect their autonomy and personal choices.
3. Assure that individuals with cognitive impairments have supports and representation in decision making and in managing their care regardless of their place of residence (i.e. community or congregate settings).

4. Sound policy that protects all aging Californians with particular focus on those who are at highest risk of homelessness, neglect, poverty, disability, and abuse.

The following sections provide background information on each goal, along with short- and long-term objectives.

Goal 1: Provide a "No Wrong Door" approach for reporting elder and dependent adult abuse with the assurance that all cases are investigated and responded to.

Background:

- Glaring disparities exist between counties in their responses to elder abuse, neglect, and exploitation. The mandate to provide Adult Protective Services (APS) is unfunded and county support for local programs varies widely; in many, the level of support has not kept pace with the growing demand for the services.
- California's approach to elder abuse has focused on costly emergency, crisis, and remedial interventions, with lesser attention paid to services that reduce risk or address mistreatment in its early stages. Greater balance is needed.
- The reporting system is complex and confusing to the public, mandated reporters, responders, policy makers, and other stakeholders.

Long-Term Objectives:

A. All cases of elder abuse are investigated by qualified investigators and victims are offered appropriate services, interventions, and resources.
B. 100% compliance by every county and tribal APS program with state mandatory reporting statutes and in accordance with uniform performance standards such as the *Voluntary Consensus Guidelines for State APS Systems*, which address caseload size, supervision, training, worker safety, services provided, and access to specialized expertise.
C. Equity in counties' responses to abuse. Funding for services should reflect: 1) demographic trends and needs; and 2) parity among populations in need of protective services. Reporting and response must not vary based on race, gender, or income.
D. Greater emphasis on services and interventions that reduce the risk of elder mistreatment and identify it in the early stages.

Short-term Objectives:

A. Explore options for a "no wrong door" approach to abuse reporting. Examples include an 800 number, specially trained personnel to triage cases, electronic screening, and tools for assessing consistency in local response systems.
B. Create standards for APS investigators and responders that conform to California law and accepted standards of practice.
C. Appoint or designate a state level entity to address disparities in abuse reporting and response and develop benchmarks for achieving parity.

D. Provide training to APS and other investigators and responders in implicit bias, cultural humility, and other skills needed to overcome disparities.

Goal 2: All adults have opportunities to complete advanced directives to protect their autonomy and personal choices.

Background

- "Unrepresented" or "unbefriended" adults are those who: 1) lack decision-making capacity as the result of cognitive impairments or intellectual disabilities; 2) have not appointed (or been appointed) surrogates; and 3) have not indicated their wishes or preferences prior to the onset of incapacity through powers of attorney or other "advance directives." These individuals are at heightened risk for:
    - Abuse, neglect, exploitation, and the violation of their rights;
    - Unnecessary, prolonged hospitalization due to the lack of decision makers to authorize their release into long-term care facilities;
    - Poverty and homelessness if failure to manage their financial affairs goes unnoticed by families, doctors, and other third parties; and
    - Having personal choices about health and medical care, end of life decisions, and legacies disregarded or overridden.
- These consequences can be avoided if adults express their wishes or designate decision-makers before the onset of impairment through advance directives (e.g. powers of attorneys, living wills, and Advance Health Care Directives [AHCD]). Californians lack advance directives for the following reasons:
    - Lack of information about advance planning, its benefits, and available options;
    - Lack of access to help with advance directives, particularly by low income adults;
    - Misperceptions by professionals and the public about how advance directive work. Some, for example, reportedly believe that "agents" under POAs (those who have been granted authority) can rightfully take possession of "principles'" (those granting authority) assets. Others mistakenly believe that agents must be attorneys. These misconceptions may lead to failures to recognize and respond to abuse by agents; and
    - The need for authority to protect unrepresented elders is often identified during medical, financial, or family crises when fewer options are available.
- Even when advance directives have been executed, their existence may not be known to care providers, financial institutions, medical providers, or others who can see to it that they are enforced.
- California Probate Code section 4675 provides that when a resident of a skilled nursing facility executes an AHCD, the AHCD is not effective unless witnessed by a Long-Term Care (LTC) Ombudsman. Providing information to residents and serving as witnesses to the signing of AHCDs is an important LTC Ombudsman function and critical to safeguarding

residents' rights. However, due to an increasing workload of complaint investigations, LTC Ombudsman representatives are often not available to meet with residents in a timely manner.

- There is also a shortage of witnesses available for residents of assisted living facilities for the elderly (RCFEs) who are also likely to need advance directives and to have decision making capacity.
- Older adults and their families are often reluctant to talk about advance planning or directives. Elders may fear that they will be perceived as dependent or that executing directives will result in their losing their autonomy. Families may not recognize when older members need help.
- Many professionals do not recognize the need for advance directives or high-risk situations that may warrant them (e.g. when doctors prescribe or remove patients from medications that affect memory).

Long-Term Objectives:

A. 100% of older Californians (including residents of LTC facilities) have information about advance directives and assistance executing them.
B. 100% compliance with the choices and wishes delineated in advance directives.

Short-Term Objectives

A. Identify existing sources of data on advance directives (e.g. California's Secretary of State maintains a directory) to determine the type of information currently being collected, the extent to which directives are being used, and profiles of those executing them. This data can be used to identify underserved groups.
B. Gather data on:
    - Unnecessary, prolonged hospitalizations resulting from the absence of surrogate decision makers to assist with discharge plans; and
    - Availability of legal assistance providers currently assisting with advance directives.
C. Authorize and provide funding to LTC Ombudsmen or others to witness the signing of AHCDs and/or other advance directives in nursing homes and RCFEs.
D. Raise public awareness about advance directive though campaigns that convey:
    - Advance directives ensure autonomy ("make sure you have a voice");
    - The potential risks to autonomy and independence for not having directives;
    - Advance directives are not permanent or irrevocable; and
    - The importance of advance directives for younger individuals and caregivers.
E. Provide training to professionals, including APS, LTC Ombudsmen, legal service providers, private attorneys, and health and social service providers on: 1) how advance directives work, 2) types of directives; 3) when they are needed; 4) their benefits and risks; 5) sources of assistance, and 6) ensuring that they will be respected.

F. Explore models (potentially through pilot projects) for raising awareness about, or assisting older adults execute, advance directives. Examples include:
    - Toolkits that include sample materials, tips, and referral sources for assistance;
    - Community events that promote conversations about health care proxies and life preferences; and
    - Clinics or events. Examples include:
        - Older Americans Act legal service providers in New York collaborated with a local bar association to conduct 2-day trainings for older adults and family members, during which participants completed worksheets on their choices. The bar association provided paralegals to assemble documents and execute the directives. Special sessions were conducted with older refugees and their families.
        - A bar association in Utah provided private attorneys the opportunity to fulfill pro bono service requirements by preparing wills and advance directives for low income individuals.
        - The Long-Term Care Ombudsman program in Contra Costa and Solano Counties (California) visit long-term care facilities to talk to residents about advance directives and make "warm hand-offs" to legal assistance providers.
G. Initiate partnerships with hospitals and hospital associations, medical associations, and others to expand the use of advance directives.

Goal 3: Assure that individuals with cognitive impairments have supports and representation in decision making and in managing their care regardless of their place of residence (i.e. community or congregate settings).

Background

- When "unrepresented" or "unbefriended" adults who have not executed advance directives have their rights violated or are abused, neglected, or exploited (or, are at imminent risk); surrogate decision makers or representatives may be needed to represent their interests with respect to their medical care, finances, housing, and long term care needs. Few options are available for doing; one such option is conservatorship, which is considered by some to be the option of last resort because of its restrictive nature. There is also currently a shortage of conservators as well as alternative options that are less restrictive in their scope of authority and duration.
- Conservatorship[1] is a process by which courts appoint individuals or organizations to assume legal responsibility for those who are judged to be incapable of making decisions for themselves and who are at risk for serious abuse, neglect, or exploitation. Conservators may be family members, private professionals, or non-profit agencies. Public guardians,

[1] Called "guardianship" in some states. The term is also used in California to refer to conservatorships involving persons under the age of 18. Public guardians serve as conservators in California for unrepresented adults who lack alth.

considered by some to be the option of last resort, are public agencies that serve when other options are not available.

- Conservatorship can be a powerful tool for preventing elder abuse, neglect, and exploitation. It is often the only remedy for revoking misused powers of attorney once principles have lost capacity or recovering misappropriated assets. Conservators can arrange for appropriate levels of care, screen and monitor service providers, manage conservatees' finances, and authorize medical treatment.
- Conservatorship can also be misused to deprive people of basic rights. Deeply disturbing accounts of malfeasance, corruption, and neglect have been reported by the media, watchdog groups, and government agencies. These accounts typically point to a lack of due process protections and insufficient pre-appointment investigations and ongoing court monitoring and oversight of conservators.
- There is a severe shortage of conservators and resources related to conservatorship in California, including shortages in:
    - Public guardians and other non-profit conservators for non-affluent elders;
    - Court personnel to process conservatorships; and
    - Court-appointed attorneys with the training needed to effectively represent the interests of proposed conservatees.
- Persons authorized and trained to complete "capacity declarations," which are documents that attest to proposed conservatees' capacity to protect themselves. Currently, California law requires that declarations be signed by physicians, psychologists, or faith healers but does not impose training requirements to ensure that these individuals have expertise in the legal standards of capacity or other relevant topics. Others who have this expertise are not authorized to complete declarations.
- Under California law, when unrepresented skilled nursing facility (SNF) residents require medical interventions that require informed consent, physicians and SNFs may only proceed following reviews by interdisciplinary teams (IDTs) consisting of residents' attending physicians, registered professional nurses with responsibility for the residents, and patient representatives who are unaffiliated with the SNFs. At present, no entity in California has been designated or funded to represent patients on IDTs.
- California lacks less restrictive options for surrogate decision-making. These include, for example, limited conservatorship (limited in scope and/or duration) and supported decision makers. Little is known about the risks and benefits of alternative options.

Long Term Objectives

A. Continuum of decision-making supports for unrepresented older adults, regardless of their place of residence, ranging from informal supported decision-making to conservatorship;
B. Decision making authority is tailored to meet individuals' specific needs and capacity; and

C. Public guardians across the state are in compliance with uniform standards of practice that protect conservatees' and proposed conservatees' rights.

Short Term Objectives

A. Start a Working Interdisciplinary Network of Guardianship Stakeholders (WINGS). WINGS is a model designed by prominent national organizations and implemented by states across the country, that engage stakeholders in improving states' guardianship systems that operate under the aegis of state chief justices.
B. Identify or create standards for public guardians in consultation with the California Association of Public Administrators, Public Guardians, and Public Conservators (CAPA/PG/PA) and national guardianship organizations. These should include standards for caseload size, program management, and best practices.
C. Appoint a state level position within the Department of Social Services to 1) provide liaison among local PGs, and state and federal entities; 2) oversee the provision of technical assistance and training; and 3) represent the needs and interests of PGs within government.
D. Identify the training needs of those involved in the conservatorship process, including PGs, APS workers, court appointed attorneys, families, professional conservators, court appointed attorneys, and physicians; and develop core competencies specific to each group.
E. Request that the Legislative Analyst's Office explore public guardian programs, including their funding, staffing, training, and caseloads.
F. Review recommendations contained in the 2018 report by the LA County Department of Mental Health for the Board of Supervisors that offers 100 recommendations for improving conservatorship based on a comprehensive audit of the state and local system. Priority recommendations include the creation of a classification structure for public guardians; improvements to the referral and investigation process; and 5) improved tracking of the outcomes of conservatorship proceedings.

Goal 4: Sound policy that protects all aging Californians with special attention to those who are at highest risk of homelessness, neglect, poverty, disability, and abuse.

Background

- The combined and cumulative effects of ageism and other forms of discrimination in housing, health care, education, lending, and employment experienced across the life course reduce life expectancy and increase elders' risk of illness, disability, poverty, and abuse.
- Social determinants, which include education, economic stability, social and community support, and living environments, have been shown to be more significant than health care and individual behaviors in determining health outcomes and well-being.

- Eliminating disparities in life expectancy and rates of disease, disability, and elder mistreatment requires eliminating ageism and other forms of discrimination in public policy and improving access to protective and supportive services, benefits, and opportunities by underserved groups.

Long Term Objectives

A. Reduce disparities in life expectancies and rates of disease, disability, poverty, and abuse among older Californians;
B. Intergenerational equity in protective and supportive services that reflects California's population and demographic trends. This can be achieved by an "across the lifespan" approach to resource allocation;
C. Equity in access to protective and supportive services, benefits, and opportunities for all older Californians;
D. Public and professional understanding of the social determinants associated with abuse, homelessness, racism; and
E. A culturally competent ageing services workforce.

Short Term Objectives

A. Collect data on disparities in rates of abuse, neglect, and exploitation among older Californians;
B. Collect data on disparities in access to and utilization of protective and supportive services, the legal system, and advocacy services.
C. Enhance local service networks by increasing funding for adult protective services, legal assistance, money management, eviction assistance programs, and advocacy to ensure that older adults receive the full range of public benefits to which they are entitled.
D. Conduct a statewide anti-ageism campaign to address discrimination and prejudice against older people, and, in particular, older people from diverse backgrounds and orientations.

Additional Resources

Principles of Elder Justice:
https://www.elderjusticecal.org/uploads/1/0/1/7/101741090/cejc_handout_web.pdf

From Blueprint to Benchmarks: Building a Framework for Elder Justice
https://www.elderjusticecal.org/uploads/1/0/1/7/101741090/cejc_blueprint2016.pdf

For questions or additional information, contact CEJC at https://www.elderjusticecal.org/contactus.html or CEJC Executive Director Lisa Nerenberg at lisanerenberg.cejc@gmail.com

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