

sustained and systematic efforts to monitor the system, evaluate new programs and policy, and respond to new needs. The challenges they face in doing so are explored further in Chapter 9.

NOTES

1. For more information, see <http://www.reft.org/TA/NAPSA/catalog/catalog.htm>.
2. For more information, see the center's Web site at <http://www.centeronelderabuse.org>.
3. See <http://www.law.stetson.edu/Eliazercourtroom/>.
4. A free video describing the Santa Clara FAST is available from the Office for Victims of Crime. Information is available on OVC's Web site at <http://www.ojp.usdoj.gov/ovc/publications/infores/other.htm>.
5. For more information on VAST and the Center of Excellence, see <http://www.centeronelderabuse.org>.
6. For more information on CREST, see <http://www.bcm.edu/crest/>.
7. For more information, see <http://www.mtelderabuseprevention.org/projects.html#SAFE>.
8. For more information on the Oregon materials, see <http://www.oregonbankers.com/community/efapp/>.
9. For more information, see <http://www.bewiseonline.org/index.shtml>.
10. For more information, see <http://www.calbankers.com/content/fea.asp>.
11. For more information on Texas's Protective Services Training Institute, see <http://www.utexas.edu/research/cswr/psti/>.

CHAPTER SEVEN

What States and Tribes Are Doing

INTRODUCTION

With little guidance from the federal government, states and tribes in the United States have taken the lead in developing systemic responses to elder abuse. They have mandated or encouraged professionals and the public to report suspected cases of abuse, set up response systems, funded APS and other services, assessed needs, improved the response of the civil and criminal systems, and taken steps to ensure that professionals have the training and tools they need to respond effectively. Some states have gone further in developing comprehensive strategic plans.

This chapter provides examples of public policy and activities that were spearheaded by state and tribal governments, agencies, and coalitions. The list is not exhaustive, but rather, provides a sampling of trends and promising practices. It begins with what states are doing, followed by tribal initiatives. Public awareness campaigns are covered separately in Chapter 8.

WHAT STATES ARE DOING

States' initiatives to improve their response to elder abuse are organized according to the goals they were created to accomplish.

Ensuring that Professionals Report and Respond Appropriately

Preventing elder abuse requires that professionals and the public recognize abuse and know what to do when they encounter or suspect it. It further requires that once cases are identified they are investigated by trained professionals and that the parties involved are offered services to stop abuse, prevent its recurrence, or treat its effects. To achieve these objectives, reporting laws need to be clear, and the response needs to be timely, uniform, and well coordinated.

As described in Chapter 3, reporting laws are the foundation of state elder abuse prevention programs. In most states (44), the duty to report is mandatory, which means that people in certain jobs, settings, or professions must report. Those typically covered include health and mental health care providers, caregivers, social service providers, nursing home employees, and virtually anyone who works with elders. Voluntary reporting laws encourage professionals and the public to report. All states provide immunity from liability for those reporting in good faith (Moskowitz, 2003).

Most states have designated APS as the agency to investigate reports in both private homes and long-term care facilities and to provide support and referrals to victims. Other agencies play primary or supportive roles depending on the type of abuse, the setting in which it occurs, and whether it constitutes criminal conduct. In some states, for example, LTC ombudsmen have responsibility for investigating abuse in long-term care facilities. Other agencies that may have roles to play when abuse occurs in long-term facilities are Medicaid fraud control units, which are authorized to prosecute patient abuse and mistreatment in facilities that receive Medicaid funds, and agencies that license and oversee long-term care facilities.

Abuse reporting statutes vary widely, but typically they do the following:

- Define elder abuse and neglect and establish what types of abuse are reportable
- Define the circumstances in which victims are eligible for services and what services are provided
- Provide protections for reporting parties and penalties for failure to report and knowingly making false reports
- Define what agencies have responsibility for investigating reports and providing services
- Establish the roles, relationships, and responsibilities of local and state agencies, including provisions for the cross-reporting of cases

- Provide for data collection that permits intra- and interstate evaluation
- Provide due process protections for alleged abusers

Although little is known about the impact of reporting laws, the number of reports received by APS has risen by 30% in the past ten years (Teaster, Lawrence, & Cecil, 2007), which suggests that reporting has been successful in bringing cases to light. States are also increasingly extending coverage to include new professional groups. Recent additions in some states include bank employees, clergy, animal care and control workers, and coroners.

But as states gain experience with reporting laws and response systems, they have encountered new problems, needs, and challenges. Many mandated reporters fail to report, and problems with coordination among APS and the other agencies involved in investigating and responding are frequently reported (Rosenblatt, Cho, & Durance, 1996). As cases become more complex and the potential consequences for alleged abusers become more severe, APS and other agencies involved in the reporting process need guidance in how to substantiate claims, protect the rights and privacy of both victims and abusers, prevent abusers from reoffending, and manage programs effectively.

Lack of compliance with reporting laws has been attributed to many factors. Among these are mandated reporters' failure to recognize abuse, a lack of awareness about the reporting process, a fear of becoming involved in legal proceedings or having to appear in court, a fear of arousing the anger of abusers, and concerns about confidentiality (Moskowitz, 2003).

State lawmakers have attempted to improve compliance by adding penalties for failure to report, clarifying definitions, and addressing the training needs of reporters. Some require that all mandated reporters receive training, whereas others require training for certain groups or for certain types of abuse. For example

Δ Iowa requires that all mandated reporters receive two hours of training relating to the identification and reporting of dependent adult abuse within six months of initial employment (or self-employment) and at least two hours of additional training every five years (Iowa Code § 235B.16). The state also has a panel to review and approve mandated reporter training curricula.

Revisions to states' reporting laws are also increasingly addressing the management of APS programs. They are, for example, adding or modifying policies and procedures in many areas including quality control, program oversight, disclosure of client information, time frames for

investigations, case substantiation, and confidentiality. Some states have also created registries of offenders and due process protections for offenders.

Problems in coordination often stem from a lack of clarity with respect to the roles, responsibilities, and relationships among those involved in the reporting process, as well as concerns about information sharing and confidentiality. To improve coordination, states have revised or added provisions about cross-reporting, notification, and referral among APS, LTC ombudsmen, law enforcement, medical examiners, and others. Some states have also authorized or encouraged APS programs to develop or participate on multidisciplinary teams and allowed for the sharing of information among team members. Because state statutes covering elder abuse may appear in multiple sections of state codes—including guardianship laws, penal codes, and health and safety codes—states are increasingly cross-referencing reporting laws with other statutes and addressing variations in definitions.

Ensuring Justice

As more abuse cases reach the criminal and civil justice systems, states are addressing the myriad problems involved in holding offenders accountable and ensuring victims' rights.

Improving Prosecution Rates

Experts and professional associations have identified a variety of problems and challenges involved in building criminal cases (American Prosecutors Research Institute, 2003; Heisler & Stiegel, 2002; Morgan & Scott, 2003). They include the following:

- A lack of training for police, prosecutors, and judges
- Victims who are unwilling or unable to participate in the criminal justice process
- A shortage of forensics experts and information
- A lack of sufficient resources and personnel for law enforcement agencies and prosecutors' offices to marshal evidence, locate witnesses, and secure expert witnesses
- A lack of clarity with respect to roles and responsibilities because elder abuse cases may fall under local, state, or federal jurisdiction or because, in some instances, jurisdiction may be overlapping

States have responded to these problems and others and attempted to enhance prosecution rates by creating special offenses, enhancing sentences, relaxing evidentiary rules, and using other methods.

- **Creating Special Offenses.** As described in Chapter 5, many forms of elder abuse correspond to "traditional" crimes like assault, battery, domestic violence, attempted murder, theft, larceny, or extortion. Some states, however, have created special offenses that reflect the special relationships victims are likely to have with their abusers, their heightened vulnerability, the greater impact crimes are likely to have on them, and the obstacles they are likely to face in seeking justice. For example

Δ *California Penal Code § 368 contains provisions concerning physical, mental, and financial elder abuse. Three of its major provisions are (1) anyone who knowingly allows or inflicts unjustifiable physical pain or mental suffering on an elder is guilty of a felony or misdemeanor; (2) care providers who willfully cause or permit elders to be placed in situations where their health is endangered are guilty of felonies or misdemeanors; and (3) predators may face sentence enhancements if victims suffer great bodily harm or death.*

- **Enhancing Penalties.** Other states have also enhanced penalties in certain situations (National Center for Victims of Crime, 1999):

Δ *In Nevada, offenders who commit crimes against persons over the age of sixty are subject to a prison term twice as long as that normally allowed for the same offense.*

Δ *Louisiana law mandates that all violent crimes against the elderly be punished by a minimum of five years imprisonment with no opportunity for parole.*

Δ *Georgia imposes an enhanced penalty for unfair or deceptive business practices directed toward the elderly.*

- **"Relaxing" Evidentiary Rules.** The U.S. Constitution guarantees criminal defendants the right to be confronted with the witnesses against them. For that reason, out-of-court statements, called *hearsay*, are generally not permitted because those making them are not available for cross-examination. Some states have modified their rules in light of special obstacles that elder abuse cases pose (see below).

In the past, when victims of domestic violence failed to appear in court, judges commonly dismissed the cases. As domestic violence was better understood, courts stopped dismissing criminal charges solely on the basis of a victim failing to appear. Instead, they permitted the use of compelling out-of-court testimony. This includes recordings of calls to 911 and "spontaneous declarations" (or "spontaneous utterances"), which are statements made by people when they are upset or under stress, and which are considered to be reliable.

Victims of elder abuse are also likely to recant their stories or refuse to testify. Some are unable to come to court because of declining health or disability. To overcome these obstacles, some states have permitted the use of videotaped or out-of-court statements by elders (Meyers, 2005; Moskowitz, 2003).

In 2004, however, the Supreme Court issued a warning to states about relaxing evidentiary rules regarding hearsay through the *Crawford v. Washington* decision. The case involved the assault conviction of Michael Crawford, who was convicted of stabbing a man he believed had tried to rape his wife. The court barred the tape-recorded, eyewitness account of the stabbing by Crawford's wife, ruling that "testimonial statements" made out of court cannot be used at trial unless the person who made the statement is available for cross-examination. Statements are considered "testimonial" if they are knowingly made to law enforcement or government agents associated with law enforcement and provide evidence for later use at court (Meyers, 2005).

This decision has severely restricted the use of evidence that was previously admissible. However, the long-range effects of the ruling are not known. The court did not define the various types of testimonial statements that are covered, and new cases are testing the decision. Lower courts, for example, have been trying to resolve when 911 calls can be used when callers are not available to testify (*Davis v. Washington*).

- Other states have enacted a variety of other provisions, including expedited trials and the extension of statutes of limitations, to increase the prosecution rates of elder abuse offenders.
 - Δ *Delaware allows for the extension of the statute of limitations for a period of up to three years beyond the normal five-year limitation for felonies when "an offense is committed as one in a continuing course of conduct of offenses involving forgery, fraud, falsification or tampering with records, breach of fiduciary duty, theft, or misapplication of property," and the offense was discovered after the passing of the normal limitation time (Delaware Code § 205, Title 11).*

Encouraging Civil Attorneys to Handle Abuse Cases

Civil attorneys have historically been reluctant to handle elder abuse cases. Many victims are unable to pay private attorneys; judges may not award attorneys fees; and, because compensatory damages are based on life expectancy and earning power, they are significantly lower for elders than for younger clients (Moskowitz, 2003). In addition, pain and

suffering claims do not survive the death of the plaintiff in most tort cases. This raises concerns that the plaintiffs will die or become incapacitated before the cases are settled (in which case, lawyers may not get paid). The slow pace of the legal system further increases that risk. Cases are also difficult to prove as a result of victims' being unwilling or unable to come to court or testify, delays in discovering that abuse has occurred, and a shortage of expert witnesses.

These problems have prompted some states to pass laws that make it more practical for elderly victims to file civil suits and for lawyers to represent them. California was the first state to pass a law that makes it more financially viable for lawyers to represent elderly victims in civil lawsuits (Hankin, 1996). Passed in 1992, the Elder Abuse and Dependent Adult Civil Protection Act allows for postmortem recovery for pain and suffering and mandates attorney fees and costs (Cal. Welf. & Inst. Code §§ 15600-15657.3).

Other states have also made elder abuse cases more economically feasible through the following measures:

- **Increasing damages.** These provisions vary widely in terms of the situations in which they apply:
 - Δ *Georgia law doubles civil damage awards if it is shown that the perpetrator specifically targeted elderly victims (Ga. Code Ann. § 10-5 B-6[c]).*
 - Δ *Illinois law authorizes treble damages for losses incurred by an elderly or disabled person as a result of financial exploitation when the exploiter is criminally charged and fails or refuses to return the victim's property (720 ILCS 5/16-1.3).*
 - Δ *In Arizona, persons in positions of trust and confidence who violate their duties are subject to civil damages up to three times the amount of the monetary damages and forfeit their claims on the elders' estates (Ariz. Rev. Stat. § 46-455).*
 - Δ *In Nevada, if an older person suffers personal injury or death caused by abuse or neglect or suffers a loss of money or property by exploitation, the offender may be ordered to pay up to two times the actual damages incurred. If the offender acted with recklessness, oppression, fraud, or malice, the court must order the person to pay the attorney's fees and costs of the person who initiated the lawsuit (NRS 41.1395 1).*
- **Modifying standards of proof.** The standard of proof typically applied to elder abuse cases in the civil justice system is "clear and convincing" evidence. Some states have changed the standard used in some cases to "preponderance of evidence," which is easier to meet.

- **Expedited handling of cases.** Some states have expedited the handling of civil cases under certain circumstances. For example
 - Δ *Colorado provides for earlier trial dates when a party suffers from an illness or condition that raises a medical doubt of survival beyond one year or if the person is age seventy or older and can prove to the court that he or she has a meritorious claim and a substantial interest in the case (Ridgway, n.d.).*

Extending Victim Compensation and Assistance to Elders

As described in Chapter 3, many elderly victims of crime or abuse do not receive victim compensation or assistance. The Office for Victims of Crime, which administers Victim of Crime Act (VOCA) compensation and assistance funds, acknowledged the need to improve access to these funds for elderly crime victims (U.S. Department of Justice, Office for Victims of Crime, 2002b). In response, the federal guidelines that dictate how states can use VOCA funds were revised to permit and encourage states to extend eligibility for compensation to elders who report to APS only (they were previously only available to victims who cooperated with law enforcement). Under the revised guidelines, victims who have experienced financial, as well as violent, crimes are eligible for services, including mental health assistance and support groups, credit counseling and advocacy, and restitution advocacy.

The extent to which states have taken advantage of these changes is not known. According to the National Center for Victims of Crime, as of 2005, only six states had modified their state laws or procedures to allow VOCA compensation funds to be used for services to financial crime victims (Deem, Nerenberg, & Titus, 2007).

States have, however, taken other steps to benefit elderly victims, which include the following:

- Waive minimum loss and deductible provisions for compensation for elders. Many victim compensation programs have "minimum loss standards" ranging from \$100 to \$200, which preclude claims for lesser amounts, or they require victims to absorb the first \$100 or \$200 of their losses. Recognizing that even small losses can be a hardship for people on fixed incomes, some states have waived these provisions for elders (National Center for Victims of Crime, 1999).
- Although many programs will not compensate victims for the loss of personal property, some states have created an exception when the property lost is considered essential to elderly crime victims (such as eyeglasses, dentures, hearing aids, or other medical equip-

ment). A few states have even compensated home-bound victims for the loss of their television sets or radios (National Center for Victims of Crime, 1999).

- Create outreach programs to the elderly to educate them about compensation.
 - Δ *Illinois has enlisted the aid of librarians to help older victims of crime and abuse apply for resources under the Illinois Crime Victim's Compensation Act. Seminars are offered for community outreach librarians to increase their awareness of the needs of older victims, to increase their understanding of victims' legal rights and options, and to facilitate community connections with local elder rights advocates.*

Addressing Problems with Restitution

Restitution is when criminal courts order perpetrators to repay victims for money or property losses incurred as a result of crimes. Although many victims have a legal right to restitution, and restitution is among the most highly valued rights of many crime victims, few elderly victims receive it for a variety of reasons (U.S. Department of Justice, Office for Victims of Crime, 1999). Judges often fail to order restitution and, when they do, may underestimate the amount of losses. Also, because most criminal cases are settled without trials, sentencing judges frequently have limited information about the crimes, including the amount of money or property lost by victims. Additionally, victims who are not officially included in formal indictments are ineligible to receive restitution unless their repayment is part of a plea negotiation.

Perhaps the most commonly cited barrier to restitution is the fact that many perpetrators have spent the money, placed assets in the names of others, or hidden assets. As a result, victims usually collect a fraction of what they are owed. Other problems associated with recovery include the fact that most restitution payments begin after defendants are released from custody, which may be years later. It may further be unclear who is responsible for ascertaining victims' losses and enforcing restitution.

The federal government has acknowledged these and other problems associated with restitution and encouraged states to improve collection and distribution. In January 2005, the U.S. General Accounting Office (GAO) released *Criminal Debt: Court Ordered Restitution Amounts Far Exceed Likely Collections for the Crime Victims in Selected Financial Fraud Cases*. The report revealed that of the cases it reviewed, only 7% of the ordered restitution had been paid despite the fact that the defendants had reported significant wealth or assets

prior to their judgments. The report recommends that asset forfeiture measures be taken earlier in investigations and prior to sentencing, and encourages prosecutors to place more pressure on offenders to pay off all restitution and fines prior to sentencing as part of plea agreements. It further calls for aggressive collection and fair distribution of restitution (GAO, 2005).

States are addressing the problems of restitution through policy reform and special programs. Examples include:

- Δ *In California, restitution for medical and psychological treatment is mandatory for victims of assault, assault with a deadly weapon, or battery who are over the age of sixty-five.*
- Δ *Rhode Island mandates restitution for breaking and entering the dwelling of an elderly victim.*
- Δ *The Juvenile Court in Louisiana may distribute unclaimed restitution to elderly victims of nonviolent crimes for whom restitution has been ordered but not paid.*
- Δ *In Vermont, victims are paid restitution from a government fund that is generated by a 15% state surcharge on criminal and traffic court fines. The Vermont Center for Crime Victims Services administers the program, assumes the debt, and collects from offenders. In this way, trained professionals, rather than individual victims, are the ones tracking down perpetrators' assets. Furthermore, victims do not need to wait months or years to collect; they are paid up to \$10,000 from the fund immediately after their abuser is sentenced. The approach is also fairer because historically, victims who could afford to hire lawyers were the most likely to collect restitution.¹*
- Δ *In 2003, Oregon passed SB 617, which requires courts to order full restitution when the state presents evidence to support a victim's loss, injury, or damages. In addition, it states that the restitution is due and payable at the time of the judgment. This is a change from the previous law, which allowed the courts to consider the defendants' ability to pay before ordering restitution. It acknowledged that restitution should be ordered based on the loss to the victim, not on a defendant's ability to pay at the time of sentencing.*
- Δ *Colorado conducted a pilot project in which courts employed collections investigators to ensure that victims received court-ordered restitution. A review of the state's restitution statutes also led to revisions, which include the requirement that criminal restitution be considered after conviction for any felony,*

misdemeanor, petty offense, or traffic misdemeanor offense (USDOJ, 2002).

- Δ *In Dakota County, Minnesota, the probation department allows probationers to pay off restitution by doing community service. Offenders work for minimum wage, and the county pays victims from a restitution fund (Murray & O'Ran, 2002).*

Ensuring a Comprehensive, Coordinated Service Response

Exploring Needs

States have explored unmet needs for services and policy by conducting legislative hearings, convening summits, and commissioning studies. Coalitions or politicians have spearheaded some of these initiatives, whereas others were in response to criticism leveled against agencies that are charged with responding to abuse reports.

- Δ *Michigan's Task Force on Elder Abuse, which was established by Governor Granholm in 2005, developed one of the country's most comprehensive (Walker, 2005). Led by the Michigan Office of Services to the Aging, the task force studied statewide initiatives concerning elder abuse across the country and developed sixty recommendations covering a wide range of issues.² The report includes detailed rationales for each recommendation and estimates the costs associated with its implementation. Among the recommendations are the following:*
 - Δ *Create a statute to provide that durable powers of attorney (DPAs) be registered, prior to use, on a Web-based registry. The statute would also require agents to sign an acknowledgment of duties informing them of their responsibilities. The DPA would then be validated with a Certificate of Registration.*
 - Δ *Require financial institutions to read a disclosure to customers who want to create joint bank accounts and have them sign an acknowledgment disclosing the true nature of the account*
 - Δ *Adopt the Uniform Securities Act in a form that treats annuities as securities and regulates them under the authority of the State Securities Commissioner*
 - Δ *Establish an educational and advocacy campaign about annuities fraud*
 - Δ *Establish public/private partnerships with unions and other groups representing nonlicensed direct care workers to enhance awareness of elder abuse, develop appropriate courses of action when union workers identify cases of elder abuse,*

and investigate the willingness of union officials to report elder abuse when workers are unable or unwilling to come forth individually

- Δ Require that transactions benefiting caretakers (including conveyances and estate plans) above a certain amount be prepared and witnessed by disinterested attorneys (to reduce the risk of undue influence)
- Δ Authorize expedited, ex parte financial protection orders
- Δ Ensure that home appraisals are accurate, that appraisers do not inflate property values, and that lenders do not influence the appraisal process
- Δ Establish an automated system that selects appraisers from panels
- Δ Amend Michigan's appraiser licensing code to sanction appraisers who inflate or manipulate appraisal values
- Δ Establish an in-home care regulatory and education study committee comprising public and private stakeholders to review existing laws/regulations, make recommendations, and provide oversight of the implementation of those recommendations. The committee will also identify and review outcome measures to prevent or reduce the risk of elder abuse, neglect, and exploitation by individuals and business organizations providing in-home services of any kind, particularly those agencies that are not certified by Medicare or Medicaid.
- Δ In August 2000, the Wisconsin Department of Health and Family Services launched the Adult Protective Services Modernization Project. The project was designed to examine the state's APS services, elder abuse reporting system, and other laws and regulations, and to recommend ways to improve the state's response.³
- Δ In 2004, Texas Governor Rick Perry ordered an investigation of the state's APS program. The investigation following a series of negative media stories about elders living in deplorable conditions. These elders had been repeatedly referred to the agency, but had apparently been lost in the system. The investigation revealed the need for increased funding to hire adequate employees and improve training (Mixon, 2005).
- Δ Following the National Summit on Elder Abuse (convened by the National Center on Elder Abuse in 2001 to develop a national plan of action for elder abuse), Oregon and New York sponsored statewide summits. Following the Oregon event, Governor Ted Kulongoski assigned a task force to develop a statewide plan. The group developed comprehensive recommendations and urged the governor to implement the following measures:

- Δ Expedite criminal background checks for employees of long-term care facilities and other people who work with vulnerable populations; provide closer supervision to new hires until the checks are finalized; and create a list of disqualifying crimes to be used in "fitness determinations" for applicants
- Δ Explore the development of a registry of individuals who have committed abuse against vulnerable adults
- Δ Assign the Department of Corrections to develop a system to notify managers of long-term care facilities when predatory sex offenders are placed in facilities and establish a standardized referral process
- Δ Urge the Department of Human Services to work with the Oregon Medical Association and the Oregon Nurses Association to develop a list of qualified experts to serve as expert witnesses in elder abuse criminal cases
- Δ Urge the Oregon Health and Science University (OHSU) to convene a broad-based panel of experts to discuss the identification and classification of pressure ulcers to help in the successful prosecution of criminal abuse or neglect cases
- Δ Encourage academic institutions and community groups to develop standardized information to educate guardians and conservators and to discuss the development of statewide standards for guardians and conservators
- Δ Encourage the state-wide expansion of community-based volunteer programs (like AARP's Money Management Program) to help protect lower income vulnerable adults

Improving Interagency Collaboration and Coordination

States have fostered collaboration and coordination among agencies and departments that provide elder abuse prevention services by creating incentives for working together, facilitating multidisciplinary teams, and developing protocols and memoranda of understanding that define working relationships.

- Δ When Wisconsin's Bureau of Aging and Long Term Care Resources received an increase in elder abuse direct service funds, counties were told that to receive the additional funds, they had to (1) have or develop an interdisciplinary team, which should include representation from a local domestic violence program; and (2) provide evidence of ongoing collaboration with domestic violence programs (Raymond, 2002).

- Δ *The Oregon Attorney General's Task Force on Elder Abuse coordinates policy and related issues regarding elder abuse and neglect.*
- Δ *California passed legislation authorizing the establishment of elder death review teams. The law eliminated confidentiality barriers by allowing for the exchange of information among members (California Penal Code §§ 11174.4–11174.9).*

Protecting Elders with Diminished Capacity and Those at Risk for Undue Influence

States have taken a variety of approaches to protect elders with diminished capacity and those susceptible to undue influence. They have provided detailed definitions of capacity; addressed the critical shortage of guardians and other surrogates, particularly for elders with limited assets; and instituted guardianship reform measures.

Clarifying Capacity and Undue Influence

As described in earlier chapters, mental capacity and undue influence are critical considerations in elder abuse cases. Among the complexities that service providers face are defining capacity for specific tasks and proving when elders have been unduly influenced. Examples of measures that states have taken to help include the following:

- Δ *California's Due Process in Competency Determination Act, enacted in 1996, provides guidance to courts in determining what mental functions are needed to make specific legal decisions, including contracting, conveying, marrying, making medical decisions, executing wills or trusts, and other actions. The law is based on a "presumption" of capacity, which means that it assumes that people have legal decision making capacity until or unless it is proven that they do not. It further assumes that having a deficit alone does not affect this presumption and that judicial determinations of incapacity cannot be based on diagnoses alone (e.g., a diagnosis of Alzheimer's disease). The statute lists "mental function deficits," including alertness and attention, the ability to process information, etc., which are also listed on the state's Capacity Declaration for Conservatorship.⁴ The statute further specifies that incapacity determinations must demonstrate how deficits correlate with the acts or decisions in question (Cal Probate Code §§ 810-814).*
- Δ *Maine's "Improvident Transfers of Title" statute involves the transfer of real estate for "less than full consideration." Typically,*

plaintiffs have had the burden of presenting evidence to support their claims that defendants exercised undue influence. The new statute created a presumption that the transfer was the result of undue influence in certain situations and placed the burden to prove they did not use undue influence on defendants (Me. Rev. Stat. Ann. Tit. 33 § 1022).

Increasing the Supply of Guardians

Although the impact of widespread shortages of guardians has not been formally assessed, anecdotal evidence suggests that impaired individuals who lack guardians or other surrogates are at risk of becoming homeless, impoverished, dependent, or debilitated. Some are institutionalized unnecessarily.

Guardians include family members and friends; private, nonprofit agencies; public guardians; and private professionals. The shortage of guardians for people with limited assets stems from problems involving the first three groups (Quinn & Nerenberg, 2005). Barriers that discourage family members and friends from serving as guardians include difficulties securing bonding, lack of information, and the associated expenses, which may include attorneys' fees.

The shortage of private, nonprofit agencies willing to provide all forms of money management, including guardianship of estate, has, in part, been attributed to concerns about liability. Some agencies have encountered difficulties finding affordable insurance that provides adequate protection against staff errors, omissions, or malfeasance. Concerns about liability are heightened by obstacles that agencies face in screening employees. Laws that were created to protect workers' privacy make it difficult for employers to obtain information on employees' past work experience, histories of abuse, or criminal backgrounds. Providing guardianship is also costly and labor intensive. For example, in some situations, guardians must be available twenty-four hours a day to respond to emergencies. And, because agencies for the elderly are strongly committed to preserving clients' freedom and autonomy, some are understandably reluctant to provide a service that is typically involuntary.

The public guardianship system is particularly overburdened (Teaster et al., 2005). Public guardianship has been defined as "the appointment and responsibility of a public official or publicly funded organization to serve as legal guardian in the absence of willing and responsible family members or friends to serve as, or in the absence of resources to employ, a private guardian" (Teaster et al., 2005). Factors that contribute to the shortage include the heightened demand that has

resulted from the increase in the old-old population. Another factor is that public guardians have experienced reductions in revenue. This has been attributed by some, in part, to the growing number of private professional guardians who typically serve incapacitated clients with assets. In the past, public guardians were more likely to serve some wards with assets (guardians are entitled to request reimbursement for their services).

Examples of approaches that states have employed to address the shortage of all forms of guardians include the following (Quinn & Nerenberg, 2005):

- Δ *Virginia has encouraged family members and friends to serve by passing legislation that provides for petitioners to be reimbursed for costs and fees from the estate. The reimbursement is paid even if the guardian is not appointed as long as the court finds that the petition was brought "in good faith and for the benefit of the respondent."*
- Δ *Contra Costa (California) County has a conservatorship workshop where family members who want to serve or who are currently serving as conservators can get help.*
- Δ *Texas enacted legislation that permits agencies that serve as guardians to charge a portion of their fees to Medicaid clients. The fees are deducted from the clients' share of cost for nursing home care.⁵*
- Δ *Florida uses unclaimed funds from the estates of wards to extend the resources of its public guardianship program. The funds are held by the state treasurer for five years and then deposited in the Department of Elderly Affairs' trust fund to be used for the benefit of public guardianship.*
- Δ *Illinois has a two-tiered public guardian system in which the county public guardians serve individuals with estates over \$25,000 and the state guardian serves those with estates of \$25,000 or less.*
- Δ *In Massachusetts, incapacitated nursing home residents needing guardians sued the state Medicaid agency. The court ruled that a medical guardian was an essential prerequisite for providing medical care to a resident unable to give informed consent to treatment, and therefore, Medicaid must allow a medical or remedial deduction for such care (Rudow v. Commissioner of the Division of Medical Assistance [Mass., No. SJC-07760, March 11, 1999]).*

Ensuring Accountability by Guardians

Problems associated with guardianship and public guardianship have been widely acknowledged by the media, Congress, the Government Accountability Office, and national organizations. These groups and

other forums have identified widespread abuses of the personal liberties of wards, a lack of standards for guardians, and the absence of court monitoring (Quinn, 2005). The rapid growth of the field of private professional guardianship, which is largely uncontrolled and unregulated, has been the cause of particular concern.

States have implemented a variety of measures to assure greater accountability by guardians. Resources that have been developed to help them include the National Probate Court Standards for Guardianship, which were developed by the National College of Probate Judges and the National Center for State Courts.⁶ Measures that states have taken reflect four trends (Quinn, 2005):

1. Enhanced, procedural due process safeguards including meaningful notice, representation by counsel, and the presence of alleged incapacitated persons at hearings
2. Functional determinations of incapacity, relying less on medical labels and more on evidence concerning how the person functions in society
3. Emphasis on less restrictive alternatives
4. Strengthening accountability of guardians, including better reporting requirements, training for guardians, court oversight, and meaningful notice

Specific examples of state initiatives include the following:

- Δ *Arizona's Supreme Court oversees a certification program for all public and private guardians (National Association of State Units on Aging, 2006). A similar program will begin in Texas in September 2007.*
- Δ *New York provides for the appointment of "special guardians for protective arrangements" who are appointed for a short period of time to perform specific tasks or transactions such as selling homes or spending down assets and applying for Medicaid (N.Y. Mental Hygiene Law § 81.16[b]).*
- Δ *In New Jersey, if a hospital ethics or "prognosis committee" determines that a patient's prognosis is hopeless, a specially appointed guardian may be appointed who has the authority to withhold treatment. In the case of elderly residents in long-term care, the state Office of the Ombudsman must determine that the decision does not constitute abuse (Section 4: N.J.S.A.3B:12-4).*

Protective Custody

A few states have created special provisions for "protective custody" of people who are incapacitated or gravely disabled for reasons other than

mental illness and who are at risk for abuse, neglect, or exploitation. Under these statutes, designated individuals may remove adults from their homes and place them in protective settings for short periods to assess their protective service needs. The goal is to remove the immediate risk, stabilize the situation, and determine whether the impairment is permanent or temporary. These statutes vary widely with respect to who can initiate placements and under what circumstances. Examples include the following:

- Δ *In Texas, APS can place into protective custody elderly or disabled persons who are in need of protective services and lack the capacity to consent to them (Texas Human Resources Code § 48.208). The statute has been used effectively to meet the needs of people suffering from self-neglect.*
- Δ *In Montana, APS workers who have reasonable grounds to believe that older persons or persons with developmental disabilities are being abused, neglected, or exploited may place them into protective custody (MCA 52-3-804 [5][b]). The placement can be maintained for two days during which services are provided or a petition for guardianship is filed. APS is the only entity that can provide protective custody.*
- Δ *In Florida, vulnerable adults may be taken into protective custody under two circumstances, both of which require court orders: (1) vulnerable adults who lack capacity to consent to protective services can be taken into custody for a period of sixty days for further evaluation in determining their mental status; and (2) when a vulnerable adult who lacks capacity to consent is in imminent risk of death if protective measures are not taken. Removals require the collaboration and approval of law enforcement and medical personnel (Chapter 415, Florida Statutes).*
- Δ *In Utah, unlike other states, there are circumstances in which it is possible to order protective custody for nonconsenting victims who have capacity but refuse to take steps to protect themselves. According to the statute, "a peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility if the officer has probable cause to believe that by reason of abuse, neglect, or exploitation there exist emergency exigent circumstances and (a) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment; (b) the vulnerable adult refuses to consent, or lacks the capacity to consent; and (c) there is not time to notify interested parties or to apply for a warrant or other court order." The peace officer must notify APS of these actions within four hours. APS or the division must then file petitions with the court*

for emergency protective orders. APS may also obtain emergency orders for temporary protection of no more than three working days by contacting the local district attorney or the state attorney general. If a client lacks the capacity to consent, the worker obtains a letter from a physician or psychologist stating this and prepares an affidavit for the court (Utah Code § 62A-3-308).

Special Challenges

States have enacted countless other measures to prevent elder abuse and respond to its effects. Although it is beyond the scope of this chapter to describe them all, several important trends and areas of activity are described.

Reducing Abuse of Powers of Attorney (POAs)

Many of the abuses associated with powers of attorney (POAs) and durable powers of attorney (DPAs) that were described in Chapter 5 can be attributed to the lack of safeguards and oversight. For example, few states require that POAs be recorded or registered, or that principals be notified when attorneys-in-fact use their powers. Many principals do not realize the extent of the authority they are assigning to others.

Chapter 5 also referred to the Uniform Durable Power of Attorney developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). NCCUSL is an organization of lawyers, judges, and law professors who are appointed to draft proposals for uniform and model laws. In 2006, NCCUSL revised its Uniform Durable Power of Attorney to add additional safeguards and remedies. The new model law, which contains a sample form, describes minimum fiduciary duties of agents, expressly states (rather than implies) gift-making authority, and revokes spouse-agents' authority in the event of divorce or annulment.⁸ Another major change from the earlier version is that all POAs are durable (survive incapacity) unless they expressly indicate otherwise. This is in contrast to the earlier version that required special language stating that the powers were intended to be durable.

State initiatives to prevent abuse involving POAs include the following:

- Δ *North Carolina requires that POAs and DPAs be recorded with registrars of deeds (N.C. Gen. Stat. § 32A-11).*
- Δ *In Washington, principals, agents, or certain other interested individuals can ask courts to get involved when problems arise. Courts can order agents to give accountings to the principal or to a third*

party, interpret or modify the powers, decide whether a third person must honor a power of attorney, or remove the agent.⁹

Preventing Predatory Lending

Although anyone can fall prey to predatory lenders, elderly homeowners are believed to be at particularly high risk. According to the Center for Responsible Lending, twenty-four states have passed antipredatory lending laws.¹⁰ Predatory practices that are addressed include *property flipping*, which is when first-time homebuyers are targeted by “flippers” who arrange loans on homes that they bought cheap, made only cosmetic repairs on, and sold at inflated prices. Consequently, buyers are left with loans for the inflated sales price. *Loan flipping* is when the broker encourages the homeowner to refinance several times over a short period to generate fees for the broker (thereby stripping the homeowner of equity). Predatory loans also typically have stiff prepayment penalties. Prepayment penalties occur when a buyer pays off a loan early. These penalties are usually based on a percentage of the outstanding balance at the time of prepayment or a specified number of months of interest. Borrowers with subprime loans often cannot afford the penalties when they need to refinance. According to a report on subprime lending by the HUD/Department of the Treasury Task Force, about 70% of subprime loans contain prepayment penalties, whereas only 1% to 2% of prime loans include prepayment penalties (Stein, 2001). Predatory lenders also trap seniors into *deed theft* scams, where the senior is asked to sign over the deed to their home in order to “refinance” it. The senior is then made a tenant in his or her own home and is quickly evicted.

North Carolina's predatory lending statute¹¹ is widely considered the gold standard. It prohibits predatory flipping, sets a threshold for lenders' fees for high-cost loans at 5%, and protects consumers from abusive practices related to late fees (e.g., declaring all payments subsequent to a late payment also late). A study of the North Carolina law showed that it resulted in a reduction of loans with predatory terms without restricting the access or increasing the cost of loans to borrowers with imperfect credit (U.S. House of Representatives, 2003).

Adapting Restraining Orders to Meet Elders' Need for Protection

As described in Chapter 5, restraining orders are an important protection for elderly victims. Some states have created new orders or added protections for elderly victims.

Δ *California's "elder or dependent adult abuse restraining order" can be used to protect people from abusive roommates, atten-*

dants, and other nonrelatives as well as spouses, intimate partners, and other family members. The orders are a protection against physical and financial abuse, neglect, abandonment, and treatment that results in physical harm or mental suffering.¹²

Δ *Colorado has a restraining order that provides protection against emotional abuse of the elderly (Colo. Rev. Stat. § 13-6-107). The order may restrain a party from repeated acts that constitute verbal threats or assaults, or verbal harassment. The law also addresses the inappropriate use of medications, physical or chemical restraints, and powers of attorney.*

Δ *New York's "limited orders of protection" permit abusers to remain in victims' homes under certain conditions (e.g., they do not use drugs or alcohol). The order is particularly useful for elder abuse victims who have mixed feelings about family abusers who have personal problems and with whom they do not want to sever ties.¹³*

Δ *In 2006, Maine, Vermont, and New York passed laws that allow judges to include pets in protective orders. The laws were passed in recognition of the fact that harming pets is a common tactic used by domestic violence perpetrators and that battered women often delay the decision to seek safety out of fear for their animals' welfare (Ascione & Arkow, 1999; McIntosh, 2002). One study showed that over 71% of battered women reported that their batterers had harmed, killed, or threatened animals (Ascione & Arkow, 1999).*

Preventing Abuse in Long-Term Care Facilities

Recognizing that regulation alone has not been effective in preventing abuse and neglect in long-term care facilities (U.S. General Accounting Office, 1999, 2002), states have taken increasingly aggressive measures to remedy the situation. Most states now have laws requiring criminal background checks for current and prospective employees and forbid facilities from hiring applicants who have been convicted of certain crimes. Generally, those applicants who have committed “crimes against persons,” sexual crimes, and crimes having to do with families are disqualified. Applicants may be permanently disqualified or prevented from working for specified time periods (typically five or ten years). States may also direct agencies to consider mitigating circumstances, such as employees' age at the time they committed crimes or the length of time since the crimes.

Some states have encountered problems in implementing these laws. For example, when Pennsylvania prohibited long-term care facilities from hiring applicants with certain criminal convictions, the state's Supreme Court held that some aspects of the law were unconstitutional (U.S. Department of Health and Human Services, 2006). A pilot program by

the Centers for Medicare and Medicaid Services is exploring how states can perform affordable background checks and evaluating the effectiveness of checks.¹⁴

Other approaches to improving care in long-term care facilities include the following:

- Δ *Arkansas enacted a law in 1999 that requires nursing homes to report all deaths to local coroners and gives county coroners legal access to conduct investigations in facilities following residents' deaths.*¹⁵ A study of death investigations by the National Institute of Justice is exploring the impact of the law on the quality of resident care in the state (Lindbloom et al., 2005).
- Δ *"Granny cams." Some states, including New Mexico and Texas, have passed laws that let families install surveillance cameras in nursing home residents' rooms. Other states have debated the approach, raising questions about how tapes that capture abuse should be handled (e.g., should facilities have access to them and can they be used as evidence in criminal or civil legal matters) (Moskowitz, 2003).*
- Δ *Operation Guardian, a project of the California Attorney General's Office, conducts surprise inspections of skilled nursing facilities.*¹⁶ A group that includes district attorneys, city attorneys, fire marshals, building code inspectors, ombudsmen, health inspectors, and geriatric care specialists identifies violations of federal, state, and/or local laws and regulations.
- Δ *New York State's Public Health Law creates a private right of action for nursing home abuse. Any residential health care facility that injures a resident by virtue of violating any federal statute or code is liable. Some of the more common grounds for suing nursing homes include negligence, wrongful death, intentional tort, negligent hiring and supervision, and breach of statutory/regulatory rights, duties, or responsibilities.*¹⁷
- Δ *After a Chicago Sun-Times investigation revealed that one hundred registered sex offenders and sixty-one parolees convicted of nonsex crimes were living in nursing homes statewide, Illinois became the first state to require state police criminal background checks on nursing home residents. The law, which was passed in 2006, requires the state's Department of Public Health to develop monitoring plans for residents identified as having violent and sex-related convictions. In addition, nursing homes must place sex offenders in private rooms and notify all residents when offenders are housed in the facility. Homes must also provide plans for resident safety and to notify residents of offenders' background.*¹⁸

Preventing Abuse by In-Home Helpers

Just as states are requiring criminal background checks for current and prospective employees in long-term care facilities, some are also exploring ways to improve the screening of in-home-care providers. Some states permit home-care agencies to access criminal records and have established criteria to disqualify workers.

However, some states have encountered problems in developing screening policies. Just as keeping dangerous workers out of the market is a problem, so too is keeping rehabilitated or nondangerous ex-offenders in. When New Jersey passed a law requiring all home-care workers to have FBI fingerprint checks, for example, they discovered that 400 current employees had committed disqualifying crimes (Layton, 2001). Many had been working for years, and losing them would have dealt a devastating blow to the system. The state was able to get some of the workers exempted. The need for research on which to base hiring decisions is described in Chapter 9.

WHAT TRIBES ARE DOING

In 2006, the National Congress of American Indians passed Resolution #SAC-06-073, "Developing a Comprehensive Tribal Response to Elder Abuse." In doing so, the Congress "endorsed and recognized the importance of taking a proactive stance toward identifying and responding to elder abuse." The resolution calls for the establishment of tribal laws and procedures, supports the development of professional and family training, and encourages collaboration among tribal nations, the federal government, tribal justice systems, and community agencies in providing needed services for victims and offenders living in tribal communities.

In 2002, the National Indian Council on Aging (NICOA) launched a project, funded by the National Center on Elder Abuse, to explore elder abuse in Indian country, including areas of need and promising responses. The initiative included a review of the literature, discussions with experts, a national survey of professionals, and focus groups (Nerenberg, Baldrige, & Benson, 2003).

Several overarching themes emerged. "Key informants," including researchers, service providers, and elders, called for prevention and intervention programs that draw from traditional Indian values and beliefs and that address social, economic, and historical factors that contribute to abuse and neglect. Specifically, they called for programs that do the following:

- Promote family unity and cooperation
- Reflect traditional models of dispute resolution

- Employ informal community networks
- Attempt to prevent abuse by maintaining or supporting families and preserving and restoring cultural values and traditions
- Address "structural" inequalities and antecedents that place elders at risk. This includes, for example, decreasing younger family members' dependence on elders through jobs that pay adequate salaries. Education and access to health care, daycare, and eldercare services are also viewed as critical. It was further noted that income maintenance programs must reflect the intergenerational structure of Indian families, recognizing that elders will spend income to care for children and grandchildren during hard times.

Key informants also emphasized the need for extensive planning to ensure that programs meet tribal needs and are supported by tribal leaders. The planning process itself needs to reflect traditional Indian approaches such as consensus-building and intergenerational dialogue. In addition, all programs need to be evaluated to make sure they accomplish their intended objectives.

Although tribal codes are seen as essential in providing authority to intervene and to establish the roles and responsibilities of tribal and non-tribal agencies, codes alone were not viewed as a solution. In fact, codes that do not provide for services are perceived as harmful to families. It was also noted that codes should be designed to maintain family units whenever possible.

Key informants further identified challenges that tribes face, including (1) coordinating service delivery, (2) ensuring justice, (3) training professionals, and (4) meeting the demand for services. The following sections describe these challenges as well as programs and initiatives that have been crafted to address them.

Improving Coordination

Because tribal, federal, state, and county organizations may all be involved in investigating abuse and providing services, coordination can be challenging. For example, on reservations with more than one tribe, separate law enforcement or social service programs may need to work together, and on reservations that extend across state lines, multiple state and county personnel may be involved. Other entities that have a role to play include tribal court personnel, social service providers, and housing and health services providers.

Tribes have fostered coordination among tribal departments and non-tribal entities through interagency agreements, task forces, and multidisciplinary teams and planning councils. Examples include the following:

- Δ *The Standing Rock Reservation has a multidisciplinary team that includes representatives from several tribal Veterans Administration, Indian Health Service, and Bureau of Indian Affairs (BIA) programs. It is coordinated by the tribe's Community Health Representative (CHR) program. The team reviews cases and addresses problems with service coordination.*
- Δ *The Blackfeet Tribe Elder Protection Team, a volunteer group, was created to review cases that are referred by family members or other concerned persons (the state of Montana does not provide or fund adult protective services on the reservation). The team includes representatives from BIA Social Services, Blackfeet Housing, Indian Health Services, a senior citizen center, and personal care providers.*
- Δ *The Cherokee Nation's principal chief and tribal council have made it a priority to provide tribal services to elders. The Nation employs two full-time "Elder Advocates" to help elders access tribal services and, if needed, services outside the tribe. The advocates further help elders fill out applications, retrieve documents, and perform other tasks.*
- Δ *The Pokagon Band of Potawatomi Indians is working with the Cass County (Michigan) Council on Aging and the Sheriff's Office to increase awareness about elder abuse. They are initially focusing on financial abuse under the guidance of the Pokagon Elders Council.*

Ensuring Justice

Civil or criminal courts at the federal, state, or tribal levels may have jurisdiction in abuse cases. Tribal elder abuse codes vary with respect to their coverage, what agencies are designated to respond, and what services are provided. Some tribes have developed elder abuse codes similar to state codes, whereas others have adapted codes to reflect traditional values and approaches to resolving conflicts. Traditional approaches are also being used in tribal courts.

- Δ *The "Model Tribal Elder Protection Code," published in 1990 by the University of New Mexico's American Indian Law Center, contains provisions that tribes can adapt or modify and instructions to guide them. The code is a civil code designed to promote reporting and services to elders and their families.¹⁹*
- Δ *The Navajo Nation passed an elder protection code in 1996. In 2002, the tribe began working with Three Ts Inc., a private non-profit agency, to review the code and recommend changes. The*

review included meeting with prosecutors, staff at senior centers, members of the Navajo Nation Bar Association, Indian Health Service representatives, and others. These activities revealed that those most likely to observe abuse were unfamiliar with the code, were unclear about the roles of various tribal agencies and departments in handling cases, and lacked the skills to handle complex situations. The findings and recommendations were presented to the Navajo Nation's Council on Aging and the Health and Social Services Committee (a standing legislative committee of the Navajo Nation Council).

Training Professionals

Professionals and nonprofessionals who work with abused and vulnerable Indian elders need tribe-specific information about the nature and extent of the problem. They also need information about elder abuse codes and their reporting responsibilities. Non-Indian professionals who work with Indian elders may perceive abuse and neglect differently from those they serve, and therefore, also need training. The following programs have addressed these needs:

- Δ *"Restoring the Sacred Circle: Responding to Elder Abuse in American Indian Communities" is a training video that was produced by the Oregon Department of Human Services (ODHS) in consultation with an advisory committee that included representatives from the Yakama Nation, Confederated Tribes of Warm Springs, Confederated Tribes of Grand Ronde, the Trenton Indian Service Area, the Nez Perce Tribe, the Quinault Indian Nation, Klamath Tribes, and the National Indian Council on Aging (NICOA). ODHS also produced a fourteen-minute video to be shown during "roll call" for tribal law enforcement. The video illustrates various types of abuse.*²⁰
- Δ *NECHI Training, Research and Health Promotions Institute of Edmonton, Alberta offers a course in elder abuse that covers the following topics:*
 - Δ *The traditional role of elders within native culture*
 - Δ *Four categories of elder abuse within the native community*
 - Δ *Symptoms of abuse and neglect*
 - Δ *Community resources*
 - Δ *Factors that lead to abuse of the elderly*
 - Δ *The ways in which grieving issues are linked to depression and/or acting out behaviors in the elderly*

The NECHI course also provides an opportunity for service providers to explore their feelings about working with elder abuse and to assess their strengths and weaknesses.

- Δ *Project SHARE: Native American Elder Abuse Nurses' Training is a project of South Dakota State University's College of Nursing. It was designed to improve the health status of elderly Native Americans who experience a high rate of preventable acute and chronic illnesses. Developed in 2002 by Native American nurses and caregivers, the multimedia, culturally specific online continuing education program for nurses contains a section (Module 3)²¹ that focuses on the following:*
 - Δ *How changes in Native American culture have increased the risk for elder and substance abuse*
 - Δ *Ways to work with Native American elders who are abused or have substance abuse problems*
 - Δ *Identifying culturally appropriate nursing interventions for elders at risk for elder or substance abuse*

Meeting the Demand for Services

A major impediment to meeting the service needs of vulnerable Indian elders is a lack of adequate financial and human resources. "Mainstream" programs or services may be inaccessible, inappropriate, or unacceptable to vulnerable Indian elders as a result of the following:

- Age barriers. Some vulnerable elders may not be eligible for needed services as a result of age requirements. The qualifying age for some services, including those offered under Title VI of the Older American's Act, varies by tribe.
- Geographic barriers
- Language and literacy barriers. Some Indian elders do not speak English fluently, and some do not speak it at all.
- Distrust of, or nonresponsiveness by, non-Indian service agencies and law enforcement

Some tribes have attempted to address these limitations by improving access to mainstream programs. An example is the Cherokee Nation's "Elder Advocates" program, described earlier. Other tribes have developed new programs that better reflect the needs of Indian elders and their families. An example is the Jamestown S'Klallam's Family Group Conferencing program, which was described in Chapter 5. In addition, several tribes have developed culturally specific approaches to community awareness, which are described in Chapter 8.

CONCLUSIONS

Lack of federal guidance in shaping states' responses to elder abuse has had both positive and negative repercussions. On the positive side, it has spurred states to develop creative solutions to a wide range of highly complex and multifaceted challenges. In doing so, some states have probed new areas of public policy and fostered new relationships at the state and local levels. In some cases, states have built upon foundations laid by earlier advocacy movements. Policy makers and program developers have also watched what other states have done, refined and modified promising approaches, and ventured off in new directions. This experimental approach has yielded valuable insights and innovations.

On the other hand, this independence has also led to a lack of cohesion and wide variations across the country with respect to how abuse is defined and responded to. These include variations in what services and interventions are available and the number of cases that are reported, investigated, and substantiated. These differences have made it virtually impossible to develop a national profile of abuse or to anticipate national needs.

This chapter has merely scratched the surface in terms of what has been done. New state and tribal programs and policies are emerging on an almost daily basis. To take advantage of these innovations and the knowledge they have yielded, we need to create opportunities for states to learn from each other's experiences and explore how lessons learned in one state may apply to others. We also need to find ways to balance the benefits of states' and tribes' diversity with the need for cohesion and a national profile of elder abuse.

NOTES

1. For more information, see <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=13&Chapter=167&Section=05363>.
2. For more information, see <http://www.miseniors.net/NR/rdonlyres/0E5BFE7E-BD49-4088-BF87-82A36BD83E11/0/ElderAbuseTFRecomm.pdf>.
3. <http://www.dhfs.state.wi.us/APS/index.htm>.
4. Available online at <http://www.courtinfo.ca.gov/forms/documents/gc335.pdf>.
5. Beneficiaries' income is applied toward their care, with the state paying whatever portion of the actual costs the beneficiary's income cannot cover. Medicaid, however, allows patients to retain a portion of their income for approved services that are not covered by other third parties.
6. See <http://www.ncpj.org/standard.html>.
7. See <http://www.abanet.org/aging/docs/guardian1.pdf>.
8. The Uniform Durable Power of Attorney Act is available on the Web site of the National Conference of Commissioners on Uniform State Laws at <http://www.nccusl.org>.
9. See <http://www.lawhelp.org/documents/1543119900EN.pdf?stateabbrev=WA/>.
10. See <http://www.responsiblelending.org/issues/mortgage/reports/page.jsp?itemID=28546805>.

11. See http://www.house.gov/htbin/leave_site?ln_url=http://www.kenan-flagler.unc.edu/assets/documents/CC_NC_Anti_Predatory_Law_Impact.pdf.
12. For more information on California's "elder or dependent adult abuse restraining order," see the Web site of the California Courts Self-Help Center at <http://www.courtinfo.ca.gov/selfhelp/protection/eaproblems.htm>.
13. For more information on New York's "limited orders of protection," see http://72.14.253.104/search?q=cache:GtSfVLZf7-QJ:www.safehorizon.org/files/What_Expect_Crim_Crt_Bklt.pdf+New+York+%E2%80%9Climited+orders+of+protection%E2%80%9D&hl=en&ct=clnk&cd=4&gl=us.
14. For more on the CMS project, see http://www.cms.hhs.gov/SurveyCertificationGenInfo/Downloads/bc_GeneralInfo.pdf.
15. P.L. 499, Arkansas Statutes [2005].
16. For more information on Project Guardian, see <http://ag.ca.gov/bmfea/elder.php>.
17. Can the law protect nursing home residents? (2006). Retrieved April 15, 2007, from http://www.ltccc.org/newsletter/documents/ltccc_fall2006_web.pdf.
18. For more on the Illinois law, see the Web site of A Perfect Cause at http://www.aperfectcause.com/artman/publish/article_2900.asp.
19. Information on the Model Tribal Elder Protection Code is available on the Web site of the American Indian Law Center at <http://lawschool.unm.edu/ailec/publications.php>.
20. Information on the videos is available on the ODHS Web site at <http://www.oregon.gov/DHS/spwpd/abuse/videos.shtml>.
21. The curriculum is available online at <http://learn.sdstate.edu/share>.

CHAPTER EIGHT

Community Outreach

INTRODUCTION

An essential element for preventing elder abuse is an informed public. This assumption has led abuse prevention groups at the local, state, tribal, national, and international levels to carry out community outreach campaigns. Yet, although the need for outreach is universally acknowledged, there is widespread disagreement about what outreach actually can or should attempt to accomplish. There are also wide variations in the approaches used, the audiences that are targeted, and the “messages” that campaigns convey.

This chapter describes these differences and provides examples. It begins by presenting some of the fundamental goals and assumptions behind outreach and describes how they shape specific campaigns. Several local, state, and national campaigns are described, as well as one tribal and one international campaign.

GOALS OF OUTREACH

The primary goals of most elder abuse outreach campaigns are to inform the public that help is available and to urge victims and witnesses to report. This is to ensure that those in need know that help is available and how to access it. But educating the public about abuse can also serve broader goals. It can shape public attitudes about the problem and what should be done about it, generate support for new or improved public policy, and enlist the public’s help in stopping abuse. In addition, some campaigns have reinforced cultural traditions that hold elders in high esteem and affirmed families’ responsibilities toward their elderly members.

Alerting Victims and Others That Help Is Available

Although public consciousness about abuse has clearly increased in the last two decades, many people are still unclear about what elder abuse is. Some believe that abuse only occurs in nursing homes or that the term only refers to physical violence against elders. Many victims and concerned third parties are unaware that help is available or how to access it. Many campaigns, therefore, describe the various forms of abuse and direct people to points of entry into the service delivery system such as APS programs or elder abuse help lines.

Because victims and others are likely to have apprehensions about disclosing abuse or about what will happen if they do, campaigns may further address these concerns. They may, for example, explain how the reporting system works and assure victims that their wishes, choices, and rights will be respected. Some campaigns address victims' denial, fear, or shame. They may attempt to motivate victims to seek help with messages like "You are not alone," or "Nobody deserves to be abused." Some, like the Texas Department of Protective and Regulatory Service's "Elder Abuse is Everybody's Business" campaign, which is described later in this chapter, negates the notion that abuse is a "family matter," and emphasizes instead that abuse is a community problem that calls for a concerned and vigilant public. Others, like California's "Face It—It's a Crime" campaign, also described later, emphasize the public's duty to hold perpetrators accountable. Some focus on specific forms of abuse. In recent years, for example, several communities have launched campaigns addressing telemarketing and mortgage fraud, and domestic violence.

Shaping Attitudes and Behavior

Many people have misconceptions or counterproductive attitudes about abuse or the response system. For instance, a number of people believe that certain types of abuse like investment or telemarketing fraud are the result of victims' gullibility or greed, and therefore, cannot be stopped. Other people believe that if they report abuse, it will have negative consequences for victims or their families, or that abusers will be treated unjustly. For these reasons, many campaigns have attempted to counter mistaken public attitudes. For example, campaigns that frame elder abuse as a crime or emphasize that it can happen to anybody remove the onus from victims and places it instead on offenders.

Negative attitudes about the elderly are believed by many to contribute to abuse. Some people believe that abuse is caused by the breakdown of cultural values and traditions. As a result, certain outreach campaigns have focused on instilling positive perceptions about the elderly, teaching

children to respect elderly family members, and creating opportunities for intergenerational exchange (Podnieks & Baillie, 1995).

Using the media to change the public's attitudes and behaviors is sometimes referred to as "social marketing," an approach that has been used extensively in the field of public health. Social marketing employs many of the same techniques that commercial businesses use to persuade people to buy products or to change behaviors. These techniques include the use of commercials on television and radio, billboards, and ads in newspapers. Just as commercial marketers attempt to get the biggest "bang for the buck" by targeting advertising campaigns to groups that are most likely to buy products, social marketing campaigns target groups that are at heightened risk for problems. As described in Chapter 3, some advocacy groups have been extremely successful in using social marketing to change social norms. An example is Mothers Against Drunk Drivers (MADD), which has used the media to discourage people from driving while intoxicated. The results have been dramatic, with "designated driver" becoming part of our vocabulary and lifestyle. Family violence prevention advocates have also used the media effectively to radically alter public attitudes about appropriate behavior. Campaigns have conveyed the message that violence among family members is not acceptable and that society has a responsibility to stop it.

A few elder abuse outreach campaigns have targeted children. This approach is based on the assumption that preventing elder abuse requires changing attitudes instilled during childhood. The programs attempt to strengthen children's appreciation of older people, sensitize them to what it's like to be old, and enlist their help in reporting abuse.¹

Shaping Public Policy

Public awareness campaigns can advance public policy objectives by helping the public understand problems and encouraging people to advocate for needed change. Campaigns can generate public debate as well as community support for specific policies. Family violence prevention advocates have, for example, generated support for public policy that criminalizes family violence. Some campaign planners have attempted to reach policy makers directly. For example, planners of California's "Face It—It's a Crime" campaign selected Sacramento, the state's capital, as one of its target counties so that state legislators would be sure to get the message.

Reaching Underserved Groups

Targeted outreach has been used to overcome geographic, functional, and cultural barriers that impede access to services and information.

Underserved groups that have been targeted for outreach include elders in long-term care facilities, homebound elders, and elders who are members of diverse cultural communities.

Reaching victims in long-term care facilities is extremely difficult because the facilities, which may be responsible for the abuse, have control over victims' access to information. In addition, many residents are likely to have physical or cognitive impairments that make it impossible for them to ask for help. A "code of silence" among workers purportedly discourages many who observe abuse by coworkers from reporting abuse. Reaching homebound elders entails many of the same problems. Perpetrators often control victims' access to the phone, e-mail, mail, or visitors. Extreme caution has to be taken when encouraging institutionalized or homebound victims to disclose abuse to avoid endangering them further.

One approach to reaching homebound or isolated seniors is to enlist the help of "gatekeepers." The term *gatekeeper* refers to individuals who have access to elders, including homebound or hard to reach groups. Gatekeepers include postal workers, employees of utilities companies, barbers, grocers, and clergy. There are many examples of successful elder abuse prevention gatekeeper programs listed on the "promising practices" section of the National Center on Elder Abuse's Web site.²

The obstacles that members of specific cultural communities face in accessing services, which include language and literacy barriers and fear of negative consequences, have already been described at length. Culturally specific outreach campaigns that target specific communities address these obstacles. These campaigns further acknowledge the important role that culture plays in how members of specific cultural communities experience and think about abuse and how it influences if, when, and to whom victims turn for help. Culturally specific campaigns have also reinforced cultural attitudes and values that support family cohesiveness. And finally, they have sensitized families, including children, to elderly members' needs.

THE IMPACT OF OUTREACH

Little is known about the impact of outreach, and the few existing studies have yielded puzzling findings. This lack of information about impact is troubling, as it threatens to discourage APS and other service providers from undertaking outreach for fear of generating more cases than they can handle.

This fear is not unfounded. Some communities have observed significant increases in reporting during or following outreach campaigns.

In the three months following the launch of California's "Face It—It's a Crime" campaign, which is described later, one county's APS program reported a 35% increase in reports.³ Other communities and states, however, have reported only moderate increases in reports yielded by outreach campaigns or have noted that the number of reports levels off over time. These experiences reinforce the need for outreach campaigns to be monitored closely and for those carrying out campaigns to make sure that their communities are prepared to respond to a heightened demand.

One of the few efforts to explore the impact of outreach on elderly victims raised more questions than it answered (Davis & Medina-Ariza, 2001). Conducted by Victim Services, Inc. of New York, the study used a methodology developed in the field of domestic violence to analyze the impact of a twelve-month experimental outreach program. The program paired police officers with domestic violence counselors to respond to incidents of family violence in housing projects. Modeled after a campaign to prevent domestic violence, the program selected thirty housing projects to receive public education on elder abuse. Program staff: (1) held community meetings to discuss elder abuse; (2) placed posters in public areas of the housing projects; and (3) distributed leaflets, which included definitions of abuse, the legal rights of victims, and services available from the police and social service agencies.

The researchers also randomly selected households from participating and nonparticipating housing projects that reported elder abuse to the police. Counselors visited the elderly victims to discuss their legal options and service needs and encouraged them to report to the police if the abuse continued. When possible, the police spoke with abusers.

The impact of the outreach program was evaluated by checking police records for new incidents of abuse in the projects and interviewing victims six to twelve months following the incidents that had triggered the interventions. In doing so, they found that new incidents of abuse were more frequent among households that had received information. They also found a significant increase in reports of physical abuse, indicating that the interventions had not suppressed abuse and may have actually accelerated it.

These findings were in sharp contrast to those yielded by the earlier studies on domestic violence. The earlier studies had found that the outreach activities had resulted in significantly more reports to the police, which implied greater victim willingness to report, but the follow-up home visits did not reveal actual increases in violence in the families that had received education. In other words, the abusers were not incited to commit further violence after the intervention.

LOCAL, STATE, NATIONAL, TRIBAL, AND INTERNATIONAL CAMPAIGNS

Outreach campaigns have been carried out at the local, state, tribal, national, and international levels. The following examples describe general campaigns, gatekeeper programs, and culturally specific programs at these levels.

Local Outreach Campaigns

Outreach at the local level may be carried out by individual agencies or organizations, governmental entities, or coalitions. Local outreach programs offer several advantages. They can reflect communities' own populations and address their special needs, such as perceived or real barriers to access. They can also be very specific in describing services and resources (e.g., listing local agencies by name and providing phone numbers).

Local programs can also be monitored closely for impact, enabling those in charge to respond to changes in demand or to problems that arise. For example, if outreach activities generate a greater demand for services than local agencies can absorb, they can scale back outreach activities or advocate for more resources.

A disadvantage of local campaigns is that they are too expensive and labor intensive for many communities to carry out. In addition, many of the important avenues for communicating to the public—including newspapers, television, the Internet, radio, billboards, and other media—reach beyond the boundaries of a single city, county, or community.

Examples of single agency or local programs include the following:

- Δ *Ventura County California's "Prescription for Prevention" campaign was carried out by the county's district attorney to reach homebound seniors. The DA's office produced a one-page message on abuse and the office's services, which local pharmacists inserted in bags along with prescriptions. The same group developed a paper placemat with an elder abuse prevention message on it for home-delivered meal programs to distribute with meals.*
- Δ *Lakeshore Legal Aid in Clinton Township, Michigan, provides advocacy for limited English proficiency and undocumented elderly victims of abuse, domestic violence, and sexual assault. The agency has conducted culturally appropriate and linguistically accessible outreach and community legal education on elder abuse.*
- Δ *WE ARE FAMILY: Outreach to African-American Seniors, a program of the San Francisco Consortium for Elder Abuse*

Prevention, was created in 1992 to raise awareness about elder abuse in the African American community (Nerenberg & Njeri, 1993). Concluding that outreach is most effective when it is personal, the "Leadership Group," which spearheaded the campaign, created opportunities for seniors and professionals to come together in an environment where the seniors felt comfortable asking for information and assistance. Churches and community centers hosted events that incorporated African American traditions and art forms—such as poetry, story telling, and music—into presentations about abuse and services. At these events, representatives from social service agencies and businesses that offer senior programs and discounts set up information tables and were available to talk to seniors informally. The Leadership Group also worked closely with trusted sources of information in the community, including clergy, civic organizations, community leaders, and the ethnic media. Another area of emphasis was ensuring that the agencies elders were referred to were prepared to respond appropriately and treated clients respectfully and in a timely manner.

State Outreach Campaigns

States have taken two primary approaches to outreach. Recognizing the benefits of engaging local communities in outreach campaigns, most states have chosen to support local efforts by providing communities with resources, technical assistance, and materials. They have, for example, hired advertising firms to plan campaigns and produce artwork and media placements that local communities can customize for their own use.

The economic advantages to this approach are obvious. Having a single entity conduct research and design materials is clearly more cost effective than having communities carry out these activities separately. The approach also results in a unified "look" and message within states.

In contrast, a few states have taken a second approach. These states operate statewide campaigns, in which state agencies carry out and control activities. The advantage of this approach is greater uniformity across the state. A disadvantage is that the approach does not reflect local variations in terms of their populations and resources. Examples of approaches to statewide campaigns are described below.

- Δ *The Texas Department of Protective and Regulatory Services (TDPRS) has, for many years, produced "Elder Abuse Prevention Kits" for its regional offices to use and share with other community groups. TDPRS works with a production company to produce*

the kits, which contain fact sheets, public service announcements (PSAs), camera-ready artwork, and other resources in both English and Spanish.⁴ The Department also works with media outlets to disseminate information and produces novelty items like pens, magnets, magnifiers, and rulers that protective service staff can distribute at events for professionals and seniors.

TDPRS has adopted different outreach messages over the years. The current campaign's message is "Protecting Vulnerable Adults from Abuse, Neglect, Financial Exploitation, or Isolation Is Everyone's Business," which encourages concerned citizens to get involved. A previous campaign, "Not Forgotten," focused on reducing isolation, a primary risk factor for abuse, and encouraged elders and dependent adults to stay active in their communities. Both campaigns emphasize that agencies alone can't protect the state's vulnerable citizens and enlist the community's help. To further promote this goal, TDPRS works with advisory boards and local citizens' groups to generate new resources. In addition, local community groups operate resource centers that provide food, supplies, and clothes to protective service clients; raise funds to make local shelters "elder-ready"; and sponsor caseworkers.

- Δ "Elderly Pennsylvanians Deserve Honor and Respect," a culturally specific campaign that was carried out by the Pennsylvania Department of Aging in the mid-1990s, has served as a model for numerous other programs across the country. After observing that African American, Latino, and rural elders were less likely than other seniors to access services, the department contracted with an advertising agency to develop a campaign to reach these groups.

Focus groups and individual interviews with seniors revealed that respect for elders remained high in the targeted communities. Elders also expressed a preference for campaigns that emphasized and reinforced honor and respect, as opposed to campaigns that focus on reporting abuse to authorities. On the other hand, professionals who were interviewed wanted a more hard-hitting campaign that emphasized reporting.

The Department chose to follow the seniors' recommendation and adopted the theme "Elderly Pennsylvanians Deserve Honor and Respect," which was used in brochures, posters, and radio and television PSAs. All of the materials depicted positive images of elders and caregivers. The primary targets of the campaign were elders, their families, neighbors, and anyone else who was likely to observe abuse. Like TDPRS, the Pennsylvania

Department of Aging developed the materials and encouraged local communities to customize them to reflect individual needs. The Department also provided communities with small grants to help them in this effort.

- Δ California's "Face It—It's a Crime" is an example of a campaign that was designed and carried out at the state level. The attorney general's office, which spearheaded the project, conducted interviews and focus groups with seniors and professionals before choosing its crime prevention message. The campaign targeted communities where awareness was low as reflected by low reporting rates and the findings of an "attitudes and awareness" survey (an exception was Sacramento County, which, as described earlier, was targeted to reach policy makers). Counties where awareness was lowest were given the highest priority and received the most resources, which included television commercials and PSAs, brochures, billboards, and flyers. The AG's office also hosted community forums and established a toll-free hotline to receive reports and requests for information generated by the campaign. The system directs callers to dial 911 in emergencies. In nonemergencies, callers who want to report abuse are directed to punch in their zip codes. They are then automatically transferred to their local APS units.

- Δ Oregon's "Everyday Heroes" campaign acknowledges the important role of the public in abuse prevention. Each year, the Governor's Commission on Seniors honors members of the community who have recognized abuse and done something about it (e.g., investigated or reported to professionals). Professionals who have gone "above and beyond" the normal scope of their jobs may also qualify. The attorney general presents the reward at a ceremony.⁵

- Δ Illinois' "Break the Silence Campaign" is sponsored by the state's Department on Aging. The campaign adopted July as Elder Abuse Awareness Month, and activities are carried out throughout the month. The state provides press releases, camera-ready artwork, and customized design services to communities that want to publicize the activities with billboards, advertisements, or other materials.

National Outreach Campaigns

The national elder abuse outreach campaigns that have been carried out to date have focused on specific types of abuse and populations. An example of the former is AARP's campaign to raise awareness about telemarketing