

The Role of APS in Elder Abuse Cases: Leveraging Strengths Across Disciplines

CHAPTER SUMMARY • April 2020

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ABA Commission on Law and Aging

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the American Bar Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons. The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

APS TARC

In coordination with the Administration for Community Living's Office of Elder Justice and Adult Protective Services, the Adult Protective Services Technical Assistance Resource Center (APS TARC) works with state APS programs to improve reporting of data through the National Adult Maltreatment Reporting System (NAMRS), conduct evaluation and identify promising practices, support communities of practice among ACL grantees, and provide technical assistance to state and local APS programs.

Key Lessons

- Collaborations among APS, legal services, and other aging services leverage all community resources to address issues of abuse, neglect, and exploitation.
- Essential to collaboration is developing an understanding of who APS can help, what issues they can help with, and the programs and services APS is able to provide.
- Collaborating with APS leverages the resources, programs, and services that can be accessed through local APS programs.
- Collaborating with APS will broaden the array of programs and services available to help persons who experienced abuse, neglect, or exploitation.
- It is important to develop community resources to help persons who APS is unable to help.

Adult Protective Services

Adult Protective Services programs (APS) operate in every state with the mission of helping adults who "need assistance because of abuse, neglect, self-neglect, or financial exploitation."¹ APS is limited in what they can do by state laws, by available resources, and often by what victims will allow. Collaborations with APS allow other aging services to effectively connect clients with APS and expand the resources available to APS by offering to help both APS clients and persons that APS is unable to help.

1 apstarc.acl.gov/

Every state has unique laws on elder abuse and Adult Protective Services (APS.)² The statutes vary in who is eligible for services from APS³, what issues APS can help with, and what programs and services APS can or must provide. There are hundreds of local APS programs, and each one will vary in capacity to provide help based on the expertise and resources available.

State law defines who is eligible for services from APS. In most states a person must be vulnerable, based on illness or disability. Age is also a factor in eligibility, with a minimum age, and in some states categorical eligibility is based on age without other considerations. The form of abuse, neglect, or exploitation must fall within the definitions in state law; the person must either consent to APS helping, or the APS caseworker must determine that the person is unable to make an informed choice on accepting or rejecting help. Ethics dictate that APS balance protection with self-determination.⁴

APS Basics

Who can APS help?

APS programs serve older adults and adults with disabilities who have been abused, neglected, or exploited (maltreated), or are at risk of being maltreated, by others. APS can also help adults who are being harmed or are at risk of harm through self-neglect.

What can APS help with?

APS investigates reports of abuse, neglect and exploitation, and, when needed, may assist adults with identifying and accessing services to help them live safely and as independently as possible.

What investigative & intervention tools does APS have available?

APS will work collaboratively with law enforcement and regulatory entities, as appropriate, to complete investigations. In addition, some APS programs use standardized assessments to identify service needs. APS honors the adult's right to self-determination, provided they have the capacity to understand the consequences of their actions. If it is determined that the adult lacks decision-making capacity, APS may seek court intervention to obtain restraining orders, conduct medical or cognitive evaluations, provide emergency services, or freeze assets, among other things.

What are the most common resources available through APS?

The investigation of adult maltreatment is by far the most common resource available via APS. In addition to investigations, APS programs may work with local, publicly available resources or even provide direct services to victims to ameliorate maltreatment. Services that are frequently provided or arranged for include: transportation, mental health services, housing or relocation services, emergency assistance or material aid, medical care, nutrition services such as home delivered meals, and caregiver support. It is important to note that while some APS programs will fund these services directly, they frequently do so only on an emergency or limited basis, depending on the availability of funds.

2 Adult Protective Services, Institutional Abuse And Long Term Care Ombudsman Program Laws: Citations, By State (2006), American Bar Association Commission On Law And Aging; available at [aemqa.americanbar.org/content/dam/aba/administrative/law_aging/APS_IA_LTCOP_Citations_Chart.pdf](https://www.aemqa.americanbar.org/content/dam/aba/administrative/law_aging/APS_IA_LTCOP_Citations_Chart.pdf).

3 Threshold Eligibility For Adult Protective Services: Comparison Chart Of Criteria, By State, (2006), ABA Commission on Law and Aging, available at [aemqa.americanbar.org/content/dam/aba/administrative/law_aging/Threshold_Eligibility_Criteria_for_Adult_Protective_Services.pdf](https://www.aemqa.americanbar.org/content/dam/aba/administrative/law_aging/Threshold_Eligibility_Criteria_for_Adult_Protective_Services.pdf).

4 See National Adult Protective Services Code of Ethics available at [napsa-now.org/about-napsa/code-of-ethics/](https://www.napsa-now.org/about-napsa/code-of-ethics/). Some states use their own code of ethics.

What are the special or cutting-edge resources?

With grant funding provided by the Administration for Community Living⁵ in the past few years, APS has seen an increase in innovative program activity. State APS programs have begun projects, involving the development of resources such as predictive analytics, an APS Leaders Institute, motivational interviewing, partnerships with nurses, and special hoarding intervention.

How does APS view self-determination?

Adults have the right to live where, how, and with whom they choose, provided they have the capacity to understand the consequences of those decisions, even when those decisions create an unsafe or unhealthy environment for the adult. In cases where the adult does not demonstrate capacity for decision-making, APS may seek court orders as previously noted. If there is concern that a third-party decision maker is necessary and the adult is unable to grant Power of Attorney to another individual for specific activities or decisions, a formal evaluation may be requested or ordered to determine capacity and the need for appointment of a guardian.

What Attorneys Can Do to Collaborate With APS

The first step in collaborating is developing relationships before you need them. Reach out to APS in your community, invite them to tell you what they can do, explain what you can do, and look for both common ground and resources that you can bring to the table to enhance the work of APS. Often, the first contact with APS is done in a moment of crisis, when someone is in immediate need of help. If that is your first contact, use that to open the door and continue the conversation after the emergency has passed. Ideally, reach out to APS and meet to discuss how to collaborate to improve the lives of persons experiencing abuse, neglect, and exploitation before help is needed.

Develop an awareness of the abuse reporting rules in your state,⁶ and how those rules interact with the ethics rules of your profession.⁷ The NCLER training on [Mandatory and Permissive Reporting for Lawyers](#) provides more guidance for attorneys to understand their ethical responsibilities regarding reporting to APS. Understanding what to report, when to report, and how to report leads to collaboration. It is important to know where to report in your state. An [interactive map of where to report is maintained by the National Adult Protective Services Association](#).

Legal Services and APS Referrals: What Legal Services Can Do For APS

APS workers are not attorneys—they are social services professionals—and they are going to encounter issues that need the help of a lawyer. Many clients are going to be eligible for legal aid or pro bono assistance. Other APS clients need to be connected to attorneys in private practice. All of the attorneys need to understand trauma informed lawyering and the challenges of working with clients who have experienced abuse, neglect, or exploitation. For more information, read the [NCLER Chapter Summary on Trauma-Informed Lawyering](#).

Appointment and Revocation of Agents

Powers of attorney can be tools for abuse and exploitation, or tools to help remedy various forms of abuse. APS needs the help of attorneys to both create powers of attorney when they are part of the solution and to revoke them when powers of attorney are part of the problem. Depending on state law and the issues in the

5 Administration for Community Living, Elder Justice Grants for APS, elderjustice.acl.gov/Elder-Justice-Grants.

6 Mandatory Reporting Statutes, Stetson College of Law, 2016, available at stetson.edu/law/academics/elder/home/media/Mandatory-reporting-Statutes-for-elder-abuse-2016.pdf.

7 ABA Model Rules of Professional Conduct, American Bar Association, 2019, available at americanbar.org/groups/professional-responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/; National Association of Social Work, Code of Ethic, NASW, 2017, available at socialworkers.org/about/ethics/code-of-ethics/code-of-ethics-english; American Medical Association, Code of Medical Ethics, AMA, available at ama-assn.org/delivering-care/ethics/code-medical-ethics-overview.

client's life, APS may need help from lawyers to assist clients with appointing or revoking the appointment of health care agents and completing advance health care directives.

Litigation and Administrative Issues

In cases of exploitation, legal help is needed in sorting out titles to assets, bringing or defending litigation, seeking return of stolen money or property, and seeking damages. Some clients will need help with domestic violence or family law restraining orders, bringing or defending family law, visitation, or support cases. Financial exploitation often results in consumer law and collection issues. Housing issues can include foreclosure, eviction, code enforcement, and eligibility for home assistance programs. Many clients need help with qualifying for or retaining public benefits and income stability resources such as pensions and Social Security. Trusts may be needed for some clients.

Social and Aging Services Collaborations

Collaboration is a two-way street. APS programs have the ability and expertise to investigate, direct connections to law enforcement, and access unique programs and services that can help legal and aging services help clients. Working with APS can result in access to financial records and other vital information. APS also is limited in what they can do, and in the resources they have available. The first step is finding out what APS can do, and what APS needs that other collaborators might provide. The goal is to leverage the resources of all service providers, though some APS programs are able to provide the services noted below directly when maltreatment has been substantiated. It is important to note that when these services are provided directly by the APS program, they are often done so on a temporary basis until more permanent services can be applied for and secured. The following services are some of those that APS relies on to keep clients safe and independent:

- **Nutrition:** persons who have experienced abuse, neglect, or exploitation may need help with meeting basic nutritional needs. Gaining access to food pantries and home delivered meals can be a huge help. Joining in community meals can help the person make new friends and be a vital step in recovery. Offering to collaborate with APS in making these services easily available to APS clients can make a huge difference.
- **Housekeeping:** this can be a challenge for a person who has experienced abuse or neglect. If you can, organize community volunteers to help. Share with APS your ability to provide these services.
- **Personal care:** the majority of personal care is provided by unpaid caregivers, often family and close friends. If this is interrupted by abuse, neglect, or exploitation, community-based volunteers are essential to helping people remain in their homes. One of the reasons many persons choose not to report abuse, or refuse help when it is offered, is a fear of the loss of a caregiver or their own independence. Everything we can do to provide care helps to improve the lives of the most vulnerable in our communities.
- **Companion services:** often a vital step in helping to avoid or respond to abuse, neglect, or exploitation, is social contact. Friendly visitor programs or phone contacts can provide much needed companionship and also serve as a check on the well-being of persons who are at risk.
- **Transportation:** transportation may be the most widespread challenge in providing services. While the challenges are different in urban and rural areas, most communities struggle with providing transportation for health care, shopping, and social interaction. Know what is available in your community and help create new programs and services.
- **Shopping:** though increasingly almost anything can be ordered online and delivered, shopping, especially for fresh food, can be a major challenge for persons with mobility or transportation challenges.
- **Lawn care, snow removal:** this is likely a needed service in every community, and one that can easily be met by organizing community volunteers.

Multi-Disciplinary Teams

APS programs may use Multi-Disciplinary Teams (MDTs) to address issues of adult maltreatment in their communities. MDTs are comprised of community professionals from different disciplines and provider agencies who meet regularly to review complex APS cases. The teams focus on collaboratively addressing the concerns presented in the cases, sharing information regarding past or present involvement of their individual agencies, and in some instances, identifying systemic issues revealed by the case (e.g., service gaps). It is common for legal services attorneys to participate in MDT's, and their participation serves as a great way to enhance relationships between APS and legal services.

Some jurisdictions have specialized teams such as a Financial Abuse Specialist Team (FAST), which looks at financial exploitation cases, or an elder death review team, which reviews elder deaths where abuse and/or neglect may have played a role. An Elder Abuse Forensic Center is a “one stop shop” focused on working through an elder abuse case where one agency is in need of assistance from other agencies with expertise in elder abuse. The forensic center team members not only identify a course of action, but also assist in carrying it out within the constraints of their individual agencies.

Helping Persons APS Can't Help

APS is limited by state law and by resources in who they can provide services to and what kinds of services they can provide. Many times, APS sees people who need help, but the person is ineligible for services, or the issue is outside of the scope of that APS can do. This is when collaboration can really help.

Open the Door for Referrals

Developing relationships with APS, letting APS know who you can help, and what you can help with is the key that unlocks the door to effective referrals. A starting point is talking with APS about what they are unable to help with. Then look for the community-based service providers that may be able to help and connect the two.

Sometimes It Is A Civil Matter

Probably the most common lament of people who have talked with APS or law enforcement and not received help is that they were told “it is a civil matter.” Not all civil matters are crimes, and some may not fall within the definitions of elder abuse under the state statutes. This may result in an individual being found to be ineligible for services from APS. For these persons, civil actions for protection, recovery of money or property, or damages for pain and suffering may be the primary legal remedies. Civil litigation to recover assets taken by exploitation is a rapidly growing area of practice. Know which attorneys in your community are skilled at taking on these cases and refer for screening.

EXAMPLE

LeRoy is 78. Based on advice from his attorney, he signed a Power of Attorney naming his daughter Lisa as his agent, created a revocable trust, transferred most of his savings and his home into the trust, and named Lisa as trustee. The stated purpose of the trust was to assure that his needs were met during his lifetime and to transfer assets to Lisa after his death. Within weeks Lisa emptied the trust account and mortgaged his home, putting the loan proceeds into an account in her name. When LeRoy learned what Lisa had done, he called APS and the police. APS interviewed LeRoy and told him it was a civil matter between him and his daughter, and, in the closing notes, APS checked the boxes that LeRoy had no unmet care needs or signs of physical needs or diminished capacity. The police responded that mismanagement of the trust was a civil matter.

- What else can be done?
- What referral would be helpful?
- Might the breach of fiduciary duty be a crime?

Glossary

Abuse

Defined by state law, the maltreatment of an elder or vulnerable adult

Adult Protective Services (APS)

Social services program provided by state and local governments serving older adults and adults with disabilities who need assistance because of abuse, neglect, self-neglect, or financial exploitation (adult maltreatment)

Attorneys in Private Practice

Attorneys not affiliated with a legal aid or government entity that charge fees for their services

Exploitation

The taking or use of the assets of an adult for the benefit of another person

Law Enforcement

Local police, state police

Legal Aid

Non-profit program that provides attorneys to represent clients who are unable to pay – generally with paid staff attorneys

Neglect/Self-Neglect

Failure by a caregiver to provide needed care, or failure by an individual to meet their own basic needs.

Pro Bono

Attorneys who volunteer to provide legal services without charge to clients who have limited ability to pay

Prosecutors

Pursue criminal charges on behalf of the state, district attorneys, or state attorneys

Public Defenders

Attorneys who provide criminal defense without charge to persons unable to pay

Conclusion

By working together, APS, attorneys, and community-based service providers can have a coordinated approach to improving the lives of persons who have experienced abuse, neglect, or exploitation. Collaborative referrals between APS and other programs and services can expand what APS can offer, and make available the resources of APS for other service providers. APS is limited in who they can help, what issues they can provide help with, and what resources they have to work with. By collaborating, we can provide help to a wider array of persons who have experienced maltreatment.

Additional Resources

- [Adult Protective Services Technical Assistance Resource Center](#)
- [National Adult Protective Services Association](#)
- [Legal Service Corporation program locator](#)
- [LawHelp.org](#)
- [Free Legal Answers](#)
- [Multi-Disciplinary Teams](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

This Chapter Summary was supported by a contract with the National Center on Law and Elder Rights, contract number HHSP233201650076A, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.