

Role of Decision Supports in Elder Abuse Prevention and Recovery

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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.

Introduction

Person-centered decision supports maximize independence and self-determination, and empower older adults to use trusted supports, selected by the person, to provide help in making informed choices. Advocates can support individual decision making in a variety of ways, including communication accommodations, technology, and person-driven decision making. Decision supports require trusted (and trustworthy) supporters. Many adults need help identifying and developing relationships with persons who can help them make decisions, especially when there may not be suitable family members to fulfill the role of supporter.

Oversight and accountability ensure transparency and reduce the risk of abuse, neglect, or exploitation and should be included in every way that decision making is supported. Acts of abuse, neglect, and exploitation can happen in any setting: when there is no help in place; when there are decision supports; when there are legal agents; and when there are guardians and fiduciaries. Being aware of the risks and being prepared to act in response to acts of abuse in various settings are critical.

What is Supported Decision Making and What Are Decision Supports?

Supported decision making is the process by which an adult selects trusted supporters to help them as needed to: understand issues, options, risks and consequences of decisions; empower the person to make choices; and assist as asked and needed to carry out those decisions. Supported decision making may be informal, such as asking a plumber to explain a problem, provide repair options, and share recommendations to help make a choice. It may be more formal, such as a written agreement about what issues an individual wants help with, what types of help they want, and who will help them. The focus should be on the process of helping the person understand and make choices, not on the formality of the arrangement.

Decision supports facilitate or accommodate understanding and decision making. These include communication accommodations, physical accommodations (such as transportation), delivery services, technological supports (such as automated banking), and remote health monitoring. This chapter summary describes some of these supports in detail, and more information on decision supports can be found in [NCLER Legal Training: Advance Planning & Decision Supports](#).

Elder Abuse and Exploitation

Most states define adult abuse as the abuse of any adult who is considered “vulnerable.” Vulnerability is also defined in state law, most often based on a limited ability to protect oneself from harm. Adult abuse occurs in many forms:

- **Physical abuse** is any physical contact aimed at inflicting pain, discomfort, or injury.
- **Psychological abuse** results in emotional discomfort or trauma.
- **Sexual abuse** is unwanted or unconsented sexual acts.
- **Neglect by a caregiver** is a failure of a caregiver to provide needed care.
- **Financial exploitation** is the taking or use of the money or property of a vulnerable adult, without their consent, for the benefits of another person.

[NCLER’s Elder Justice Toolkit](#) provides more information on elder abuse and responses.

Separating Abuse from the Legal and Support Options in Place

Abuse occurs because someone does something harmful or mistreats someone. Abuse is not caused nor stopped by the presence or lack of legal and support options. Abuse can occur when someone has not engaged in advance planning at all, and it can occur when someone has done significant planning, such as preparing a power of attorney, appointing a trustee, opening a joint account, or has a guardian, conservator, or other fiduciary in place. Abusers may perpetrate abuse despite the plans in place, and in some cases, the abuse is committed by the person trusted to help. The act of abuse is not a result of the planning tools, formal or informal, or the support network in place. Abuse happens because someone commits an act of abuse. No legal or planning tool is a guarantee of safety.

Advocates can best help protect against abuse by assisting in the careful selection of supporters, advisors, agents, and fiduciaries, and by planning oversight and accountability of all supports.

All persons asked to help, in any capacity, need to be trustworthy. Helpers and supporters who need money are more likely to exploit the relationship. It is important to carefully consider a number of factors before asking a specific person to serve as a supporter. Is there anything in the person’s life that could lead them to mistreat or hurt the person they are asked to help? Are they available—do they have the time and are they nearby? Are they emotionally prepared for the role of helping?

Accountability and oversight can be created by providing read-only access to financial accounts, requiring sharing of financial documents with trusted third parties, or [drafting](#) in “[trust protectors](#).” These provisions can be drafted into all planning documents. NCLER’s [Drafting Advance Planning Documents to Reduce the Risk of Abuse or Exploitation](#) has more information and recommendations.

Decision Supports and Abuse

Adults across the spectrum of abilities experience abuse. Abuse can happen whether or not decision supports are being used. When the abuser is a person who is important in the life of the adult, such as a family member or friend, the circumstances are more complicated. In keeping with the person-centered and person-driven principle of decision supports, advocates should work with the adult to determine what steps to take when abuse occurs. Advocates should reserve involuntary protections for when the person is unable to understand that abuse is taking place. We should treat the person as we would any other person with a family member or loved one who has abused them, by helping them to understand what is happening and offering strategies for self-protection. Protection over the objection of the person can be abuse in the form of social isolation.

PRACTICE TIP:**Supports for a Person Who Has Been Abused**

- Ask and listen to how the person is feeling.
- Validate the person's feelings.
- As needed, explain what has happened, and how it was maltreatment.
- Offer suggestions of ways to reduce future risks.
- Offer suggestions of ways to remediate losses.
- Ask the person what they would like to do and how you can help.
- If the adult understands the mistreatment, respect the person's choices—the person's choice may include maintaining social contact with the person who has hurt them.

Possible Remediation

- For physical or sexual abuse, facilitate medical care.
- Help the person obtain counseling and emotional supports, as desired and appropriate.
- When appropriate, suggest reporting to APS, law enforcement, or regulatory agencies.
- If you are a mandatory reporter, explain why you are required to report and offer to support the person through the follow-up.
- If the person has been isolated, offer to assist and facilitate in reestablishing social contacts and networks.
- For exploitation:
 - Offer options for recovery of money or property, if possible.
 - Suggest ways to eliminate or limit the abuser's access to money or property.
 - Offer help with changing banking and financial arrangements as needed.
- For caregiver-neglect, or self-neglect, offer support with obtaining goods and services.

What Technological Supports Are Available?

Communication accommodation technologies can dramatically support decision making and maximize autonomy. There has been rapid development in technologies such as screen readers, hearing appliances, communication apps, and story boards. Advocates can help connect the person with the best technicians or therapists to provide and practice communication accommodations. It is critical to recognize that not all people communicate the same way. A difference in communication should not be mistaken for an inability to make informed choices.

Some technological supports to consider include:

- **Direct Deposit & Automated Banking:** If it is not required by the payor, encourage direct deposit of all income. Direct deposit eliminates lost checks and the process of making deposits. Encourage direct automatic payment of bills and debts. Direct deposit and automatic payment should be monitored to

ensure that income is received as expected, and that payments are correct and timely. Many financial institutions and vendors can arrange read-only access to the supporter, which facilitates monitoring and oversight. Spending money can be provided in cash. Debit and credit cards can be provided with agreed upon limits. Financial institutions may be able to issue cards with agreed limits on daily, weekly, or per-transaction limits and limit the merchant codes that the card can be used at. Merchant codes identify the nature of the business, such as grocery stores, jewelry stores, general merchandise, or car repair services. Limiting the codes can reduce the risk of exploitation and misuse of funds.

- **Telehealth & Remote Medical Monitoring:** The COVID-19 pandemic has brought remote medical services to the forefront. Arranging remote medical consultations can eliminate transportation challenges and encourage seeking medical advice and care. Respect the person's wishes—in-person visits with health care providers may be very important to the person or provide much needed social contact. Remote medical monitoring is becoming increasingly common, with wearable consumer electronics monitoring routine health dimensions and containing emergency alert services and falls detectors. Advocates can discuss these supports with the person and help them to understand the value and the privacy issues, while honoring the person's choice.
- **GPS Tracking:** If the person has difficulty with direction finding, talk to them about GPS tracking. Always obtain the person's permission before turning on tracking. Virtually all smart phones and a growing range of smart watches and other devices offer GPS tracking. These allow third parties to monitor and offer help if the person asks for help or appears to be in need of help. The goal is to balance autonomy and safety.
- **Remote Video Monitoring:** Remote video monitoring can be a tool to enable independence with oversight. The laws on remote video monitoring vary from state to state, and advocates should always to consult an attorney in the state the person is in. Support the person's choice and honor their desire for privacy. If there are other persons sharing living space with the person you are supporting, those people should be consulted and their right to privacy respected.
- **Delivery Services:** Delivery services can provide nearly everything a person needs to live without ever leaving home. Some consumables are available on automatic replenishment. Supporters can work with the person to determine what the person wants or needs, and use delivery services to help fulfill their choices.
- **Transportation:** The availability of transportation services varies dramatically from area to area. Public transit, where available, should be accessible. Advocates should work with the person to support their transportation needs. Ride sharing services and taxi services with online apps are proving helpful for some—the convenience of charging to a card on file eliminates the need for cash or concerns about in-person payment. Local transportation services operated by local government or faith and community-based service providers may also be considered. Ultimately, most transportation assistance is often provided by family and friends.

Building a Support Network

Building a support network involves identifying and working with others who will work as a team—with the person in need of supports as their leader—to provide support with making decisions. This starts with drafting a list of trusted family members, friends, neighbors, and other community members that the person interacts with on a regular basis. Advocates should help the person seek supporters that the person connects with and trusts, who are willing to be involved long-term, who are flexible and open to new ideas and ways to support, and who accept and honor the person's abilities and integrity of choice.

It is important to remember that a support network is not a fixed system or group, and different team members play different roles in supporting the person. The team is expected to evolve, change, and grow just as the person's abilities, needs, and goals change. Once a core group is established and the team members get to know each other and learn how they best work together, members can more easily adapt to those changes in team structure and the person's needs.

It is important to look beyond the cultural assumptions of who may be a family member or a friend.

Case Study:

Bobby collapsed and was admitted to the hospital. After careful evaluation, it was determined that Bobby needed support with making choices and would need assistance with managing in-home services when discharged. Bobby reported having no close family or friends. A social worker from the hospital investigated, doing a visit to his home and neighborhood. The building manager and neighbors confirmed that Bobby had never talked about family, and he was not married and had no children. The neighbors expressed willingness to help with coordinating in-home services, but were hesitant about helping with decision-making as they reported not knowing Bobby well. They suggested talking with local businesses. The pharmacist at the local drug store reported knowing Bobby well and was willing to help. There was a long history of Bobby talking with the pharmacist about his health, and Bobby confirmed that he trusts the pharmacist. The bartender at the local restaurant appeared to be Bobby's best friend. Bobby had come in every day for lunch for over a decade and spent a couple of hours nearly every afternoon, lingering and talking about life. The bartender was genuinely concerned about Bobby's well-being and understood his desire for privacy and autonomy. A mindful investigation by the social worker identified neighbors willing to help and two people who knew Bobby's values, who cared about him, and who were willing to serve as supporters if that was what Bobby wanted.

Sometimes the person has family that they have no contact with. Advocates should ask about those relationships and if it is okay to reach out. Sometimes cutting off contact is intentional, and sometimes it just happens because of time, distance, or different interests. Distant family are sometimes eager to reestablish a relationship—and sometimes not. It is important to not pressure the person or the potential supporters.

Advocates should ask about neighbors, current or past co-workers, service providers, caregivers, connections with local community organizations, or faith communities, and trusted professionals. The role of the advocate at this point is to make contact and then support the decisions of the person. The supporters must be persons selected by and trusted by the person, or they are not supporters.

Supporters can be professionals. Social workers, nurse care managers, and professional money managers can all be successful supporters, if selected by and trusted by the person. If the person can afford to pay, they can hire a professional support team. If payment is not an option, look to local volunteer and government services for potential supporters. Everyone should be committed to the person-centered and person-driven model that is at the heart of supported decision making.

Conclusion

Decision supports are not the cause and not the cure for abuse. Abuse happens because someone commits bad acts. The perpetrator of abuse can be anyone. The role of the supporter when abuse has occurred includes helping the person understand what has happened and supporting care and remediation. Technical supports are increasingly available to facilitate support, empower autonomy, and many provide options for oversight and accountability. No support or legal intervention is a guarantee of safety, but many tools can be used to reduce risk.

Additional Resources

- [NCLER Guardianship & Decision Supports Training & Resources](#)
- [American Bar Association Resources on Supported Decision Making](#)
- [The PRACTICAL Tool on Supported Decision Making](#)
- [Department of Justice Elder Justice Initiative](#)
- [National Center on Elder Abuse](#)
- [NCLER Elder Justice Toolkit](#)
- [NCLER Trauma-Informed Lawyering Resources](#)

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

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