

Adult Protective Services & Public Guardianship

Maine Geriatric Conference
June 11 & 12, 2015

DISCLOSURE

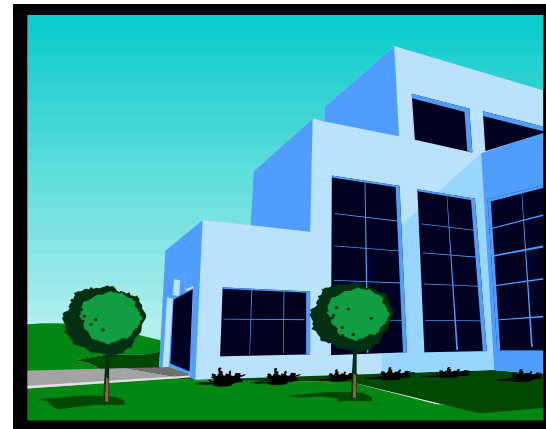
- The presenters DO NOT have an interest in selling a technology, program, product, and/or service to CME/CE professionals.
- Jeff Shapiro & David White have nothing to disclose with regard to commercial relationships.
- The content of this presentation does not relate to any product of a commercial interest. Therefore, there are no relevant financial relationships to disclose.

Key Training Points

- Focus on Victim Safety
- Be aware of, and avoid, assumptions
- Recognize abuser tactics
- Work collaboratively

Elder Abuse Settings

- Community
- Institutions and Facilities (4.5%)



Forms of Abuse: Overview

- Often more than one form is present
- One form may be the method to achieve a desired outcome
 - Abuse or neglect to convince an elder to give up assets
 - Always consider if financial present
- Psychological is usually present

What is “Elder Abuse”

- When an older person suffers
 - Physical abuse
 - Neglect
 - Sexual abuse
 - Financial exploitation
 - Emotional abuse/psychological abuse

In Maine, APS serves all adults over the age of 18 who are incapacitated and/or dependent and being abused, neglected or exploited or are at high risk of being abused, neglected or exploited.

IMPORTANT NOTE

- While APS will investigate, assess and assist adults who are dependent, we have no ability to intervene against the will of a capacitated adult.
- The law recognizes a person's, "Right to Folly." Meaning a person has the right to live in risky or dangerous situations, so long as they have the capacity to make their own choices.

Physical Abuse

- Actions that have caused, or are likely to cause, harm to the individual.
- Can be the result of unreasonable restraint.
- May be intentional or well-meaning.
- If imminent and serious, call 911.

Sexual Abuse

- Engaging in unwanted sexual acts with a person.
- Exposing a person to unwanted sexual acts.
- May exhibit itself in a preoccupation with personal hygiene or aggressive cleaning of the genitalia
- Watch for “coded” disclosures
- The most under-reported form of abuse.

Emotional/Psychological Abuse

- Belittling of the person, their culture or values.
- “Crazy making” behavior
- Threats to place in a home, leave or isolate a person.
- Very often used to gain control of finances or assets. (Undue Influence)
- Rarely the only form of abuse/neglect or exploitation found.

Neglect

- Deprivation of a person's needs, the failure to act to meet those needs
- Failure to protect from any other form of abuse or harm.
- Whether a caretaker is unwilling, or unable, the impact to a person is the same.
- Can include Self-Neglect

Financial Exploitation

- Using a person's assets for anything other than their wishes and benefit
- It is very unusual to be able to recoup what has been taken from an individual. Prosecution is difficult and not frequently undertaken.
- Frequently the best possible intervention is a timely report, response and intervention to stop the outflow of assets.

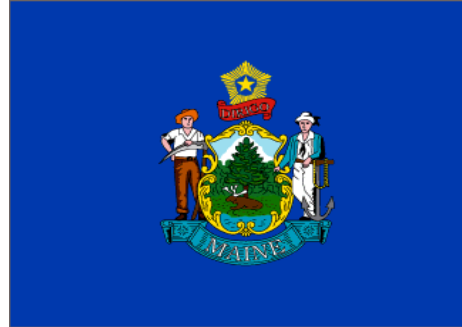
Incidence of Elder Abuse

A. The most recent major studies on incidence reported that 7.6%–10% of study participants experienced abuse in the prior year. One study that found an incidence of 1 in 10 adults experiencing abuse did not include financial abuse. (National Council on Elder Abuse)

B. The New York State Elder Abuse Prevalence Study found that for every case known to programs and agencies, 24 were unknown.

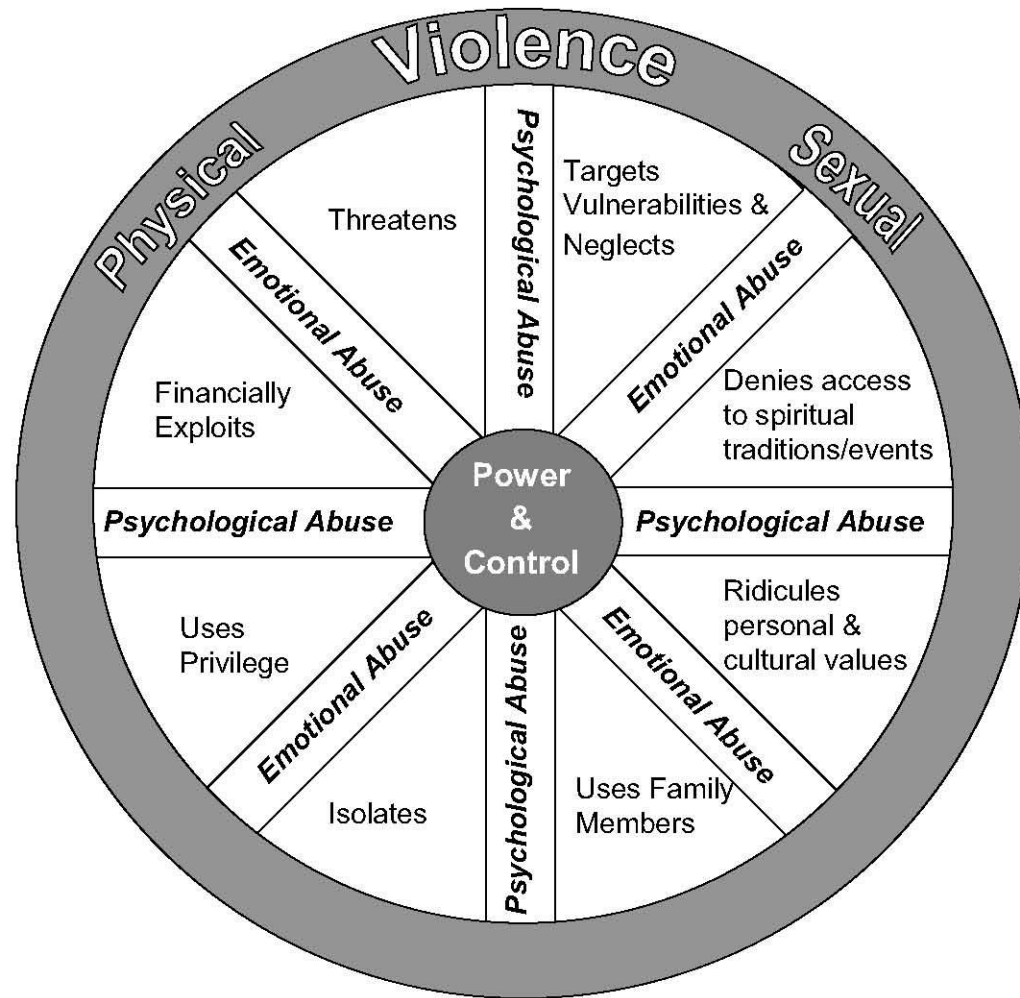
- Severely underreported
- Most occurs in the community not in facilities

Maine



- 14,000 cases of elder abuse in Maine annually
- Maine is oldest state in the country: 540 seniors per 1,000 workers by 2030, increasing by 500+/month.
- 84% are unreported
- Percentage of family caregivers--70%

Abuse in Later Life Wheel



Created by the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV).

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This diagram adapted from the Power and Control/Equality wheels developed by the Domestic Abuse Intervention Project, Duluth, MN

Mandated Reporting and Adult Protective Services

Mandated Reporting

- The Adult Protective Services Act
 - Title 22, Section 3477 lists the professions
 - Who is a mandated reporter?
 - Essentially, if you have a license or are responsible for care of a person, you are a mandated reporter.

Statewide 24 hour
Intake Line
1-800-624-8404

- Together, we're working to protect
Maine's seniors.



The report to APS should include:

- Name, age, address and telephone number of adult.
- Name, relationship and telephone number (if known) of the suspected perpetrator.
- A description of the circumstances that gave rise to the report.
- Origin of the report.
- What actions if any have been taken by the others.
- Emergency or non-emergency nature of the report.

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Mandated Reporting

- Sub-Section 3477 D. The duty to report under this subsection applies to individuals who must report directly to the department. A supervisor or administrator of a person making a report under this section may not impede or inhibit the reporting, and a person making a report may not be subject to any sanction for making a report. Internal procedures to facilitate reporting consistent with this chapter and to ensure confidentiality of and apprise supervisors and administrators of reports may be established as long as those procedures are consistent with this chapter.

IMMUNITY & CONFIDENTIALITY

- When reports are made in good faith, reporters are protected if someone files suit in civil court
- DHHS will respect a request for confidentiality. The reporter's name will not be given out unless required to protect the adult from serious harm or required by a court order

CONFIDENTIALITY

- APS records are confidential
- Relevant information will be released to a guardian ad litem, Court, grand jury, person having legal responsibility, treating physician, agency responsible to investigate reports when authorized by statute or agreement

What About HIPAA?

- HIPAA does not override Maine's state law requiring the reporting of abuse, neglect, and exploitation of dependent and incapacitated persons.

Cooperation

- Sub-Section 3486
- “All other state and local agencies as well as private agencies receiving public funds shall cooperate with the department in rendering protective services on behalf of incapacitated and dependent adults.”

Adult Protective Services

- Provide and arrange for services to protect adults who are unable to protect themselves from abuse, neglect or exploitation.
- Investigate reports of abuse, neglect or exploitation
- Assessment, Findings, Case Management
- Arrange services to help make adults safe while allowing the most personal freedom possible
- Seek guardianship &/or conservatorship of adults who are incapacitated and have no family/friend to help them

Services

- Based on the client's needs and abilities, the caseworker with the client determines appropriate services.
 - Services will be offered and will be provided only with the consent of the client or the client's legal representative.
 - Competent adults have the right to refuse services, and to remain in a dangerous situation. We must respect their civil liberties, including choices and decisions that we don't necessarily agree with. We live in a democracy.
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What APS *CANNOT* Do!

- Remove an abuser from the home.
- Get any service, or priority for a service, they are not otherwise qualified for.
- Represent them in court to get money or property returned.
- Be the “bad guy” to tell unwanted people to leave a capacitated person’s home.
- Force anyone to do anything.



Guardianship Investigations

- Statute directs this service (Public Guardianship) to victims of abuse, that are incapacitated and have no one else to assist them.
- Probate Code and our Policy direct that we are the guardian of last resort, and guardianship needs to be appropriate, necessary and desirable.

What information is gathered?

- Info around abuse/neglect/exploitation.
- PP505, statement of incapacity
- What least restrictive measures have been tried.
- What is the plan for the AIP.
- Diligent search for all related persons.
- 6 Pillar Assessment.

Decision Making

- Is it appropriate – Does the person lack capacity, and is a victim of abuse?
- Is it necessary – have all other least restrictive measures been tried and failed? Will the AIP be in danger without it?
- Is it desirable – can guardianship mitigate or remove the danger and justify the loss of civil rights?



What do Public Guardians provide?

- Referrals for services
- Medical and Psychiatric authorizations for Public Wards
- Visit with Public Wards, at least, quarterly.
- Develop a case plan
- Use the Public Ward's funds to meet their needs.
- Report to the court annually

What Public Guardians **Cannot** do?

- Access, or pay for, services the ward is not qualified for, or get priority status for the ward.
- “Make” a ward take their meds, stop drinking/drugging, or maintain their placement.
- Restrain, involuntarily hospitalize or involuntarily commit a public ward.



Emergency Services

- APS does not have:
 - Special placements such as shelters or crisis beds
 - In-Home protection or emergency providers of services
 - Transportation
 - The ability to qualify anyone for any service they do not otherwise qualify for
- APS works with community programs and resources that provide relevant services
 - Critical importance of coordinated, multidisciplinary responses
 - Not like CPS who has their own services

Adult Protective Services Act

Title 22 § 958-A

- 3470 to 3486
(General Provisions, Reporting, Investigations)
- <http://janus.state.me.us/legis/statutes/22/title22ch958-Asec0.html>

District Offices

- 55 caseworkers statewide
- Offices in Biddeford, Portland, Lewiston, Augusta, Rockland, Bangor, Ellsworth, Machias, Calais, Houlton, Caribou and Fort Kent
- Statewide intake unit located in Houlton

Maine Department of Health & Human Services



Adult Protective Services
24 Hour Hotline
1-800-624-8404

To report suspected abuse, neglect or exploitation of
incapacitated or dependent adults