

Wisconsin's Elder Abuse and Adult at Risk Reporting Law

Attorney Betsy Abramson – August 2006

Special thanks to Jane A. Raymond, MS, Wisconsin DHFS's Advocacy and Protection Systems Developer and Attorney Ellen Henningsen, CWAG Elder Law Center, for their assistance with this outline.

NOTE: Changes in the law as a result of 2005 Act 388 (2005 AB 539) will become effective 12/1/06 and are noted below by the symbol “▲”

I. INTRODUCTION

- A. Abuse and neglect of the elderly and people with disabilities is a problem that has been acknowledged as a national issue.
- B. National statistics indicate at least 4% of the over 60 population will be abused or neglected sometime during their later years.
- C. While originally researchers believed that the majority of elder abuse was caused by "caregiver stress," more recent studies conclude that most elder abuse is a result of the same "power and control" factors as is other domestic violence.
- D. In fact, research indicates that elders with frailties are no more likely to be abused than elders without frailties.
- E. Additionally, while originally researchers believed that victims were dependent on their abusers, more recent research indicates that in fact the ABUSERS are dependent on their victims, whether for emotional or financial support.
- F. Other theories as to why elder abuse occurs include: caregiver stress; dependency of victim on abuser; abuser psychopathology, including alcohol and other drug abuse, mental illness, etc.; and transgenerational violence (violence in previous generations observed or experienced by abuser thus making violence appear to be a "normal" response and/or violence as learned behavior). Note that current research does not support retaliation/intergenerational theory of family violence as an explanation for elder abuse.

II. THE WISCONSIN [ELDER] ADULT-AT-RISK ABUSE LAW - 1983 Wis. Act. 398, § 46.90, Wis. Stats. and 2005 Wis. Act 388 (Act 388 makes significant changes to both § 46.90 and ch. 55, Wis. Stats.)

- A. Wisconsin-mandated development of a statewide system for reporting elder abuse to begin in 1985.
- B. The law requires each of Wisconsin's 72 counties to participate in the system and to provide an Elder Abuse Helpline telephone number, for elders, age 60+.
- C. ▲ As of 12/1/06, counties will be required to identify a lead “elder adult at risk agency” and an “adult at risk agency.”

1. This may be the same agency.
2. The agency does not need to have the term “adult at risk” in its name; rather, county boards must designate the agency that will take the lead in receiving and responding to allegations.

D. Responsibility for Implementation – State Level – Wisconsin Department of Health and Family Services assigned responsibility for: (1) coordination of system design and implementation; (2) provision of on-going consultation when required; and (3) monitoring of progress and needs. Wis. Stats. § 46.90(8) Accordingly, they:

1. Develop a plan to assist lead agencies in responding to reports of abuse.
2. Prepare and distribute sample report forms for county use.
3. Collect statistical information from each county pertaining to reported cases of abuse.
4. Develop and disseminate information on adult at risk abuse and the reporting system.

E. Responsibility for Implementation – County Level

1. County Board must designate an agency in county for local implementation of response system for both populations (i.e., age 60 and older and ages 18 to 59). Referred to as "Elder Adult-at-Risk Agency" and “Adult-at-Risk Agency” Wis. Stat. §§ 46.90(2) and ▲ 55.043(1d)
2. Five main duties of county elder adult-at-risk and adult-at-risk agencies Wis. Stat. §§ 46.90(3) and ▲ 55.043(1g):
 - a. Develop a policy for notifying other investigative agencies, including law enforcement officials in appropriate cases.
 - b. Establish an [elder] adult-at-risk reporting system. (See Reporting, at F. and G., below.)
 - c. Enter into a Memorandum of Understanding regarding operation of the system within county departments under Wis. Stat. § 46.215 (county department of social services in populous counties) or § 46.22 (county social services), and with any private or public agency, including county § 51.42 board (community mental health, developmental disabilities, alcoholism and drug abuse services) or § 51.437 (developmental disabilities services) that is participating in the elder abuse reporting system. (Memorandum of Understanding, at a minimum, must identify agencies responsible for investigation and for provision of specific direct services.)
 - d. Receive reports of abuse, financial exploitation, neglect or self-neglect of adults at risk.

- e. Publicize the existence of the adult-at-risk reporting system in the county and provide a publicized telephone number that can be used by persons to report suspected cases.

F. Who is Reportable? “Elder Adult at Risk” and “Adult at Risk Abuse”: Wis. Stat. §§ ▲46.90(1) and ▲55.01(1), (2s), (4) and (6)

1. An “**elder adult at risk**” is “a person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.” § 46.90(1)(br).
2. An “**adult at risk**” is “any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial exploitation.” § 55.01(1e).

NOTE: who can be reported is only the “top of the funnel.” What actually happens to or for that individual depends on other factors such as competence, present risk, available supports and funding.

G. What is reportable?¹

1. Abuse – §§ 46.90(1)(a) and 55.01(1) include the following:
 - i. Physical abuse²
 - ii. ▲ Emotional abuse³
 - iii. ▲ Sexual abuse⁴
 - iv. ▲ Treatment without consent⁵
 - v. ▲ Unreasonable confinement or restraint⁶
2. ▲ Financial Exploitation⁷ – replaces less descriptive term “material abuse”

¹ § 46.90(1)(a); 55.01(1).

² “Intentional or reckless infliction of bodily harm”

³ “Language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed.

⁴ “Violation of §§ 940.225(1), (2), (3) or (3m) (criminal sexual assault law), § 46.90(1)(gd)

⁵ “...the administration of medication to an individual who has not provided informed consent, or the performance of psychosurgery, electroconvulsive therapy, or experimental research on an individual who has not provided informed consent, with the knowledge that no lawful authority exists for the administration or performance.” § 46.90(1)(a)h; § 55.01(1).

⁶ “...includes the intentional and unreasonable confinement of an individual in a locked room, involuntary separation of an individual from his or her living area, use on an individual of physical restraining device, or the provision of unnecessary or excessive medication to an individual, but does not include the use of these methods or devices, in entities regulated by the department. If the methods or devices are employed in conformance with state and federal standards governing confinement and restraint.” § 46.90(1)(i)

⁷ “...any of the following: 1. Obtaining an individual’s money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent; 2. Theft under § 943.20; 3. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities; 4. Unauthorized use of an individual’s personal identifying information or documents, as prohibited in § 943.201; 5. Unauthorized use of an

3. ▲ Neglect⁸
4. Self-Neglect⁹

H. Who Reports?

1. Voluntary Reporting: Any person may report possible abuse, financial exploitation or neglect, if aware of facts or circumstances that would lead a reasonable person to suspect abuse, financial exploitation, neglect or self-neglect of an adult at risk....has occurred..." Wis. Stat. § 46.90(4)(a)1 and 55.043(1m)(br)
 - a. Wisconsin has always had, and will generally retain, a voluntary reporting system.
 - b. Voluntary rather than mandatory reporting was selected based on this state's commitment to an adult's right to self-determination.
 - c. An attorney or a person working under the supervision of any attorney may report abuse of an [elder] adult at risk. §§ 46.90(4)(ar) & 55.043 (1m)(br).¹⁰
 - d. Note that financial institution employees are also permitted reporters.¹¹
 - e. Although the law requires counties to provide a means for anyone to report abuse, neglect or exploitation, certain professionals, such as health care providers or social workers, are now required to report egregious situations.¹² (See number 3 below.)

entity's identifying information or documents, per § 943.203; 6. Forgery, per § 943.38; or 7. Financial transaction card crimes, per § 943.41.

⁸ "...the failure of a caregiver, as evidenced by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order under ch. 154, a power of attorney for health care under ch. 155, or as otherwise authorized by law." §§ 46.9(1)(f), 55.01(4r)

⁹ "...a significant danger to an individual's physical or mental health because the individual is responsible for his or her own care but fails to obtain adequate care, including food, shelter, clothing, or medical or dental care." §§ 46.90(1)(g)m 55.01(6)

¹⁰ Attorneys: Note that the new Ethics Rule, at SCR 20:1.14(b), if codified as proposed, specifically permits taking protective action for a client with diminished capacity (e.g., reporting concerns of abuse, neglect, self-neglect) and at 20:1:14(c) states that doing so is implicit authorization under SCR 20:1.6's otherwise strict rule of attorney-client confidentiality.¹⁰

¹¹ These professionals remain voluntary reporters and are permitted to report suspected financial exploitation (or other abuse) by federal law. Federal law provides a "safe harbor." "Any financial institution that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution, shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure." 31 U.S.C. sec. 5318 (g) (3).

¹² Prior to this requirement, certain professionals' licensing requirements (confidentiality requirements) would have precluded reporting.

2. Mandatory Reporting: The Caregiver Reporting System imposes a reporting requirement on regulated entities to report misconduct by caregivers. § 146.40(4r), Wis. Stats.
3. **▲ NEW: Required Reporting in Limited Circumstances**: 2005 Act 388 requires the following professionals to report. [See below, *if* i.-iii, *unless* d.] §§ 46.90(4)(ab) and (ad) and 55.043(1m)(a), Wis. Stats.
 - a. An employee of any entity that is licensed, certified, or approved by, or registered with DHFS
 - b. A health care provider as defined in s.155.01(7)¹³
 - c. A social worker, professional counselor, or marriage and family therapist certified under ch. 457

The above individuals must file a report *if* the elder adult at risk or adult at risk is seen in the course of the person’s professional duties *and*

- i. The elder adult at risk or the adult at risk has requested the person to make the report *or*
- ii. There is reasonable cause to believe that the elder adult at risk or the adult at risk is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss *and* is unable to make an informed judgment about whether to report the risk; *or*
- iii. other adults at risk are at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator;
- d. *EXCEPTION: No reporting required if* the professional believes that filing the report would not be in the best interest of the elder adult at risk or the adult at risk and documents the reasons for their belief in the case file of the suspected victim.
- e. Above professional who intentionally fails to report may be fined up to \$500 or imprisoned for up to six months. §§ 46.90(4)(e), 55.043(9m)(e)

I. Where To Report?

- A. County social / human services department
- B. Elder-adult-at-risk / adult-at-risk agency

¹³ Nurse, chiropractor, dentist, physician, physician assistant, perfusionist, podiatrist, physical therapist, occupational therapist, occupational therapy assistance, person practicing Christian Science treatment, optometrist, psychologist, and certain health care corporations and operational cooperative sickness care plans.

- C. DHFS if suspected abuse is by employee of regulated facility (or entity itself)
- D. State or local law enforcement agent
- E. Board on Aging and Long Term Care
§§ 46.90(4)(ar) and 55.043((1m)(br).
- F. Additional agencies to consider reporting directly to:
 - Register in Probate – if believe abuse is by guardian
 - Office of Lawyer Regulation – if believe abuse is by an attorney
 - Department of Regulation and Licensing, if believe abuse is by a credentialed individual
 - Licensing, permitting, registration or certification authorities or other regulatory bodies if residence, facility, or program where suspected abuse occurring should be licensed, permitted, registered, or certified or is otherwise regulated.

J. Immunity Provisions for Good Faith Reporters

1. ▲ Immunity provisions apply to both voluntary and required reporters. Immunity provisions apply if filed with incorrect agency but reporter had a good faith belief that the initial report was filed appropriately §§ 46.90(4)(ar) and (c); 55.043(1m)(d).
2. ▲ Penalty for retaliating against a reporter increased to \$10,000. §§ 46.90(9)(d); 55.043(1m) & (9m).
3. ▲ Rebuttable presumption created that any discharge or act of retaliation or discrimination taken against a reporter within 120 days after the report is made is retaliatory. §§ 46.90(4)(b)1.cm & 55.043(1m)(c).

K. Response / Investigations / Tools Available - §§ 46.90(5)(b) and 55.043(1r)(b)

1. Response must begin within 24 hours, not counting weekends and holidays, for any report of suspected abuse, financial exploitation, neglect or self-neglect.¹⁴
2. ▲ Reports regarding clients of entities regulated by DHFS will be referred to DHFS for investigation if suspect is caregiver or non-client resident of the entity. §§ 46.90 (5)(a)1 and 55.043(1r)(a)1g.
3. ▲ Authorizes multi-agency response, including strengthening law enforcement involvement; authorizes exchange of investigative information and reports with appropriate agencies.

¹⁴ Current law permitted five days to begin response to financial exploitation.

4. Adult-at-risk Agency¹⁵ response may include one or more of following:
- a. Visit to resident of adult at risk
 - b. ▲ Observation of adult at risk, with or without consent of guardian or agent under activated power of attorney for health care.
 - c. ▲ Interview with adult at risk, in private to extent practicable, with or without consent of guardian or agent under activated power of attorney for health care.
 - d. ▲ Interview with guardian or agent under activated power of attorney for health care or with any caregiver of adult at risk
 - e. Review of treatment and patient health care records of adult at risk
 - f. ▲ Review of any financial records of adult at risk maintained by financial institution, DHFS-regulated entity, caregiver or a member of the immediate family of adult at risk or caregiver. Records to be released without informed consent:
 - i. To adult at risk or other investigative agency, including by the financial record holder's initiating contact; or
 - ii. Under lawful order of a court of record
 - g. ▲ Adult at risk or other investigative agency may transport adult at risk for medical examination if:
 - i. Adult at risk or guardian or agent under activated power of attorney for health care consents; or
 - ii. If adult at risk is incapable of consenting and either:
 - Adult at risk has no guardian or agent under activated power of attorney for health care; or
 - Adult at risk has a guardian or agent under activated power of attorney for health care but guardian or agent is suspected of abusing, neglecting or financially exploiting the adult at risk; or
 - Examination is authorized by court order.
 - h. Immunities for all good faith efforts in investigations.
5. (Additional) Tools Available to County Adults-at-Risk Agency Workers
- a. Request a sheriff or police officer to accompany investigator or worker during visits to adult at risk residence or other assistance as needed. (If requested, law enforcement shall provide assistance, as necessary.)
 - b. ▲ Seek restraining order under §813.123 if anyone interferes with response

¹⁵ All references in this section to "adult at risk" include elder adult at risk.

or investigation or delivery of protective services. §§ 46.90(5)(d) and 55.043(3) (See e., below.)

- c. If investigator or agency worker has reason to believe that substantial physical harm, irreparable injury or death may occur to adult at risk, a request for immediate assistance in either initiating a protective services action under ch. 55 or a contact with law enforcement or another public agency, as appropriate, shall occur.
- d. ▲ If, after responding to a report, agency has reason to believe adult at risk has been subject of abuse, financial exploitation, neglect or self-neglect, the [elder] adult-at-risk agency:
 - i. shall determine whether there is a need for direct services under chs. 46, 47, 49, 51 or 880 (new ch. 54)¹⁶ and if so, provide them in the least restrictive conditions necessary. §§46.90(5m) and 55.043(4)(am) and
 - ii. may:
 - (1) Request immediate assistance in initiating a protective services action under ch. 55 or contact an investigative agency, as appropriate.
 - (2) Take appropriate emergency action, including emergency protective placement, if determined this is in adult at risk's best interests and is the least restrictive appropriate intervention.
 - (3) Refer case to law enforcement officials for further investigation or district attorney, if believe a crime has been committed.
 - (4) Refer case to licensing, permitting, registration or certification authorities of DHFS or other regulatory bodies if entity or program is or should be so regulated.
 - (5) Refer case to Department of Regulation and Licensing if situation involves an individual who is required to hold a credential under chs. 440-460.
 - (6) Bring a petition for guardianship and/or protective services or placement, or review of an existing guardianship if necessary to prevent abuse, financial exploitation, neglect, self-neglect or would otherwise be at risk of serious harm because of inability to arrange for necessary food, clothing, shelter or services. §§46.90(5m)(br); 55.043(4)(b) and

¹⁶ Chapters address: Social Services; Rehabilitation for Persons with Disabilities; Public Assistance, Mental Health and Guardianship, respectively.

- e. Seek an adult at risk restraining order – see b., above, for non-interference with investigation or provision of services. ▲ § 813.123
 - iii. Traditional, “true” restraining order may be petitioned for by an adult at risk, his/her guardian, interested person acting on behalf of an adult at risk or adult-at-risk agency.
 - iv. If someone other than the adult at risk petitions, there must be notice to the adult at risk and appointment of a GAL.
 - v. Actions that may be enjoined include: interfering with investigation or provision of services, actions or threats to engage in abuse, financial exploitation, neglect, harassment, stalking of adult at risk or mistreatment of animal.
- 4. An adult at risk may refuse to accept services unless a guardian so authorizes. The adult at risk or other provider must notify the adult at risk of the right to refuse before providing any services. §§ 46.90(5m)(c) and 55.043(5g)

L. Confidentiality of Reports and Records ▲ §§ 46.90(6) and ▲ 55.043(6)

- 1. Makes distinction between “reports” and “records” and distinguishes where each can be released.
 - a. “Reports”– are documentation of an agency’s response to a report and the investigation response that provides a summary of case, including DHFS-submitted report.
 - b. “Records” are any document relating to the response, investigation, assessment and disposition of a report.” i.e., “Records” bigger than “report.”
- 2. Release of “reports” generally same, but adds government agencies needing reports to carry out responsibilities related to protecting adults at risk and to reporters who made report in professional capacity, regarding actions taken to protect or provide services.
- 3. Notwithstanding, can’t release if might be contrary to victim’s best interests, cause victim harm, or might jeopardize on-going civil or criminal investigation.
- 4. Release of “records” only to [elder] adult at risk who is named victim, legal guardian, conservator or other legal representative (unless is alleged perpetrator), law enforcement officials and DA for their purposes, DHFS or law enforcement for certain statutory death investigations, to employee of county department providing services to determine whether victim should be transferred to less restrictive or more appropriate treatment modality, attorney or GAL to prepare for

certain court hearings,¹⁷ DHFS for management, audit, etc. purposes, staff members of protection and advocacy agency, coroner, pathologist, etc., investigating deaths in unexplained or suspicious circumstances, probation/parole agency where supervising alleged perpetrator in certain circumstances, grand juries, courts or administrative agencies under sec. 968.26, Stats.

¹⁷ To attorney or guardian ad litem for the adult at risk who is alleged victim named in the record, to assist in preparing for any proceeding, under ch. 48, 51, 55, 813, 880 (new ch. 54), 971 or 975 pertaining to the alleged victim.

NOTE: The four Appendices that follow are all part of the Wisconsin Department of Health and Family Services' Elder Abuse Interdisciplinary Team (I-Team) Manual. The entire Manual can be found at www.dhfs.state.wi.us/aps

APPENDIX 1: Indicators of ACTUAL abuse by others, Indicators of SUSPECTED Abuse of Elders by others and HIGH-RISK FACTORS for Abuse of Elders

The information in this Appendix provides listings of three sets of factors. Background on each list precedes it. The lists include: (1) Indicators of *ACTUAL* (i.e., observed, witnessed) elder abuse including domestic violence in later life; (2) Indicators of *SUSPECTED* (i.e., common signs and symptoms of) abuse or violence; and (3) Indicators of *RISK FACTORS* (i.e., research-validated factors that put vulnerable adults at risk for abuse or neglect).

National research has produced screening tools and referral protocols that have identified these factors and listings, which are culled from journal articles reporting on elder abuse studies.¹⁸

1. INDICATORS OF ACTUAL ABUSE, NEGLECT OR EXPLOITATION

This listing is appropriate for situations where there has been a reliable report of abuse or violence observed or witnessed. It provides a list of the major forms of abuse and violence along with examples of physical abuse, psychological abuse, neglect and exploitation. These examples focus on *clear behavioral manifestations* that are easily identified and were selected because they are among the more common representations of abuse in both research literature and clinical experience. They do not cover all possibilities. Any reliable report of *actual* abuse or violence should lead to subsequent decisions about an appropriate referral. Whether and to where a case will be referred in situations of *actual abuse* will depend on factors such as: (a) who witnessed the incident; (b) whether the situation is of immediate danger; and (c) the willingness of the victim to accept help.¹⁹

Examples of Physical Abuse

- Hit, pushed, shoved, scratched or restrained
- Threatened with a knife, gun or other weapon
- Sexually assaulted, harmed or hurt

Examples of Psychological (Emotional) Abuse

- Yelled at, called names, insulted
- Threatened with physical injury
- Locked in a room
- Stalked or followed around

Examples of Neglect by Others or Self

¹⁸ Anetzberger, Georgia J., PhD, ACSW, "Elder Abuse Identification and Referral: The Importance of Screening Tools and Referral Protocols" *Journal of Elder Abuse & Neglect*, Vol. 13, Number 2, 2001.

¹⁹ *Id.* at pp. 31-34.

- Denied adequate care and supervision (especially in cases of physically or mentally impaired persons)
- Not treated for physical health problems
- Isolated from others
- Inappropriately dressed for weather or environmental conditions
- Lacking adequate shelter

Examples of Exploitation

- Money, property or other assets used, taken, sold or transferred without consent
- Signature forged on checks or other financial and legal documents
- Large sums of money withdrawn from bank accounts without his/her knowledge

2. INDICATORS OF SUSPECTED ABUSE, NEGLECT OR EXPLOITATION

When actual abuse is not reliably reported, the question for an elder abuse worker or other individual involved with the elder is whether abuse, neglect, self-neglect or exploitation is *suspected*. The following list contains many of the *common signs and symptoms of abuse or violence*. It is organized by type of abuse/violence; these signs are serious and are considered *possible indicators* that some type of follow-up is needed. Observing any of the signs or symptoms listed should lead to a decision as to whether a referral should be made to an elder abuse agency, domestic violence agency or social services agency. As with the first listing, whether and to where a referral is made is also dependent on such factors as: (a) who witnessed the incident; (b) whether the situation is of immediate danger; and (c) the willingness of the victim to accept help.²⁰

NOTE: While this is a list of common signs or symptoms of abuse, it does not contain all possible signs and is not intended to replace a worker's own judgment. It is a supplement that assists in recognizing common signs of domestic violence, abuse, neglect or exploitation.

Signs of Suspected Physical Abuse

- Bruises, welts, cuts, or wounds, burn marks or blood on person/clothes (bilaterally on upper arms, clustered on trunk [but may be evident over area of the body], morphologically similar to an object, presence of old and new bruises at the same time)
- Internal injuries, including broken or fractured bones, sprains or muscle injuries
- Injury that has not been cared for properly
- Any injury incompatible with history
- Pain on touching
- Dehydration and/or malnourishment without illness-related cause; loss of weight
- Pallor
- Sunken eyes, cheeks
- Evidence of inadequate care (e.g., gross decubiti [bedsore] without adequate medical care)
- Eye problems, retinal detachment
- Poor skin hygiene

²⁰ *Id.* at 32, 35.

- Absence of hair and/or hemorrhaging below scalp
- Soiled clothing or bed
- Burns: may be caused by cigarettes, caustics, acids, friction from ropes or chains, from confinement or contact with other objects
- Signs of confinement (tied to furniture, bathroom fixtures, locked in a room)
- Lack of bandages on injuries or stitches when indicated, or evidence of unset bones

NOTE: Injuries are sometimes hidden under the breasts or on other areas of the body normally covered by clothing. Repeated skin or other bodily injuries should be noted and careful attention paid to their location and treatment. Frequent use of the emergency room, and/or hospital or health care “shopping” may also indicate physical abuse.

Signs of Suspected Psychological (Emotional) Abuse

- Sense of resignation and hopelessness with vague references to mistreatment
- Behavior that is passive, helpless, withdrawn
- Anxious, trembling, clinging, fearful, scared of someone/something
- Self-blame for current situation and partner/caregiver behavior

Signs of Suspected Neglect by Others or Self

- Unclean physical appearance
- Inadequate food or meal preparation items in household
- Underweight, physically frail or weak or dehydrated
- Under or overuse of, or confusion about, prescription or over-the-counter medications
- Inadequate utilities, including lack of heat, water, electricity and toilet facilities
- Unsafe or unclean environment, including insect infestation or unmaintained animals
- Neglected household finances, including unpaid bills or rent
- Lack of necessary adaptive aids such as walkers, canes, bedside commodes
- Lack of food or water
- Unsafe conditions in the home (no railings on stairs, etc.)

Signs of Suspected Exploitation

- Overpayment for goods or services
- Unexplained changes in power of attorney, wills or other legal documents (e.g., power of attorney given when elder is unable to comprehend the financial situation and in reality is unable to give a valid power of attorney)
- Missing checks or money, or unexplained decreases in bank accounts, activity in bank accounts that is inappropriate to the older person (e.g., withdrawals from automated banking machines when the elder cannot walk or get to the bank)
- Missing personal belongings
- Unusual interest in the amount of money being expended for the care of the older person, concern that too much is being spent
- Refusal to spend money on the care of the elders (e.g., numerous unpaid bills, overdue rent in situations where someone is supposed to be paying the bills)
- Recent acquaintances expressing gushy, undying affection for wealthy older person
- Recent change of title of house in favor of a “friend” when the older person is not capable of understanding the nature of the transaction
- Recent [new] will when person is clearly incapable of making (or amending) a will

- Caregiver asks only financial questions of a worker – does not ask care questions
- Placement not commensurate with alleged size of the estate
- Lack of amenities, e.g., TV, personal grooming items or appropriate clothing when the estate can well afford it
- Personal belongings missing – e.g., art, silverware, jewelry
- Caregiver tries to isolate older adult from old friends and family; tells older person no one wants to see him/her and older person then becomes isolated and alienated from those who care for her/him; comes to rely on caregiver alone who then has total control.
- Promises of life-long care in exchange for willing or deeding of all property/bank accounts to caretaker
- Checks and other documents signed when older person cannot write

Behavioral Indicators of Suspected Abuse, Neglect or Exploitation from the Elder

- Fear
- Withdrawal
- Depression
- Helplessness
- Resignation
- Hesitation to talk openly
- Implausible stories
- Confusion or disorientation
- Ambivalence/contradictory statements not due to mental dysfunction
- Anger
- Denial
- Non-responsiveness
- Agitation, anxiety

Indicators of Suspected Abuse, Neglect or Exploitation from the Family/Caregiver

- Elder is not given the opportunity to speak for him or herself or to see others without the presence of the caregiver or other suspected abuser
- Obvious absence of assistance, attitudes of indifference or anger toward a dependent elder
- Family member or caregiver “blames” the client (e.g., accusation that incontinence is a deliberate act)
- Aggressive behavior (threats, insults, harassment)
- Conflicting accounts of incidents by the family, victim advocate, neighbor, victim, others
- Unwillingness or reluctance to comply with service providers in planning for care and implementation
- Withholding of security and/or affection
- Exaggerated concern (or lack of concern) for the elder
- Prematurely or inappropriately discusses marriage with victim
- Isolates elder from family/friends/social contacts

3. HIGH-RISK FACTORS FOR ABUSE, NEGLECT OR EXPLOITATION

In many situations there may be neither actual abuse/violence nor related signs or symptoms. Nevertheless, research has shown that *potential abuse, neglect, self-neglect or*

exploitation may be based on the presence of risk factors that are associated with these problems. Risk factors are only indirect indicators; their presence simply means that there is an *increased probability or likelihood* of abuse or violence. Many risk factors are associated with vulnerability to a variety of problems such as alcohol use or unemployment. But risk factors are not definitive and do not alone warrant a referral to an elder abuse agency or domestic violence program. Appropriate referral sources for persons at risk of abuse or violence are agencies that deal with a *wide variety* of problems faced by older adults, including the local aging unit, a social services agency or an Adult Protective Services unit. This type of agency assesses adults at risk and would refer to an agency that specializes in abuse or violence if suspected or actual abuse/violence is determined.²¹ The list provided is based on research that validated the relevant factors and is divided into those that are relevant for the caregiver and those that are relevant for a care receiver.²²

Caregiver*

Has behavior problems
 Is financially dependent
 Has mental/emotional difficulties
 Has alcohol/substance abuse problem
 Lacks understanding of medical condition
 Caregiving reluctance
 Has marital/family conflict
 Has poor current relationship
 Caregiving inexperience
 Is a blamer
 Had poor past relationship

Care Receiver

Has been abused in the past
 Has marital/family conflict
 Lacks understanding of medical condition
 Is socially isolated
 Lacks social support
 Has behavior problems
 Is financially dependent
 Has unrealistic expectations
 Has suspicious falls/injuries
 Has mental/emotional difficulties
 Is a blamer
 Is emotionally dependent
 No regular doctor

**NOTE: Research concluded that the majority of the most important indicators were in the caregiver category.*

This same research study²³ also concluded that many issues previously found important in identifying cases of abuse were, in fact, not validated. These included:

For both Caregiver AND Care Recipient

Feelings of stress (physical, emotional and other)
 Dependence on family for ADL help
 Dependence on others for ADL help
 Has cognitive impairment
 Has physical impairment
 Has other financial difficulties than dependence
 Desires institutionalization

²¹ Id. at 32, 34 and 36.

²² Ries, Myrna, "The IOA Screen: An Abuse-Alert Measure That Dispels Myths," *Generations*, Vol. XXIV, No. 2, Summer 2000, pp. 13-16.

²³ Id.

For caregiver only

Past abuse
Social isolation
Lack of social support
Emotional dependence
Suspicious falls or injuries
No regular visits to a physician

For care recipient only

Poor past relationship with a caregiver

Interestingly, contrary to past theories, the physical or emotional impairment of a care recipient or the need of a care recipient for a great deal of help with ADLs does not signal risk of abuse. Nor does a situation in which a caregiver is under great stress and strain or is socially isolated. These are important problems that may well require help and professional intervention, but are not abuse markers and should not be a focus in specifically abuse-centered assessments and interventions. Rather, research shows that the typical abuse case is characterized by: (1) a trouble caregiver who has difficulty getting along with others; (2) a caregiver's personal and emotional problems; (3) financial dependence of a caregiver on a care recipient (though not to general financial problems); (4) a caregiver's general lack of knowledge and understanding concerning the care recipient's problems; and (5) a situation in which there has been past abuse of the care recipient (but not the caregiver) and in which there is inadequate social support of the care recipient (though not of the caregiver).

SOURCES:

Anetzberger, Georgia J., PhD, ACSW, "Elder Abuse Identification and Referral: The Importance of Screening Tools and Referral Protocols," *Journal of Elder Abuse and Neglect*, Vol. 13, Number 2, 2001.

The Illinois Department on Aging, Elder Abuse and Neglect Program, Multidisciplinary Team Member Handbook

Investigating Elder Abuse, Alameda County, California, District Attorney, Consumer Fraud Division, Elder Abuse Unit, 10/00.

Ries, Myrna, "The IOA Screen: An Abuse-Alert Measure That Dispels Myths," *Generations*, Vol. XXIV, No. 2, Summer 2000.

APPENDIX 2: Indicators of Self-Neglect by Elders

Examples of Neglect by Others or Self

- Denied adequate care and supervision (especially in cases of physically or mentally impaired persons)
- Not treated for physical health problems
- Isolated from others
- Inappropriately dressed for weather or environmental conditions
- Lacking adequate shelter

Signs of Suspected Neglect by Others or Self

- Unclean physical appearance
- Inadequate food or meal preparation items in household
- Underweight, physically frail or weak or dehydrated
- Under or overuse of, or confusion about, prescription or over-the-counter medications
- Inadequate utilities, including lack of heat, water, electricity and toilet facilities
- Unsafe or unclean environment, including insect infestation or unmaintained animals
- Neglected household finances, including unpaid bills or rent
- Lack of necessary adaptive aids such as walkers, canes, bedside commodes
- Lack of food or water
- Unsafe conditions in the home (no railings on stairs, etc.)

APPENDIX 3: Overview of Adult Protective Services (APS) Expectations and Functions

Prepared by Jane A. Raymond, Advocacy and Protective Services Developer, Bureau of Aging and Long Term Care Resources, Division of Supportive Living, Department of Health and Family Services - May 5, 1998

An essential and overriding distinctive feature of protective services for adults, over other social and health services, is the potential for the use of legal authority (intervention). The point is “that if legal action should be required the (APS) agency needs to be empowered, equipped and willing to undertake it.” For example, when an Adult Protective Services worker is unable to gain access or entry to a home to verify abuse or neglect, the worker relies on law enforcement to gain entry. Once face-to-face with the adult at risk, the social service worker uses advice, persuasion and encouragement, e.g., the client is motivated to leave unsuitable living quarters, assisted with money management, encouraged to take a medical or psychiatric examination, participate in a nutrition program and/or apply for public benefits. Only when advice, persuasion and encouragement fail, and risk is still present, would an adult protective service worker potentially use more strident (legal) intervention. This is because competent adults are presumed to be self-determining and independent. Any efforts to interfere with the right to be self-determine must be based on the belief that the adult’s situation, problems, circumstances or actions are so hazardous or harmful to the adult or others that it overrides the usual right to be left alone. Protective services are expected to be available to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect.

Balancing the client’s right to self-determine with the community’s responsibility to protect can be challenging. Often, there is no obvious “right” answer. Additionally, adult protective services (APS) cases often involve highly functionally impaired victims, more than one type of abuse or neglect and/or complex family dynamics. Studies have shown that decisions made by groups are more effective than those made by individuals when no one person has the solution, but each person can contribute to the answer. Therefore, an interdisciplinary team must be a key component of an ideal APS system. Given the complexity of APS cases, and the fact that there are often gaps in the services needed to assist victims, a broad range of professionals looking at a case and planning possible interventions and/or care plans is likely to arrive at effective results. Interdisciplinary teams provide many benefits including:

- Support and validation for case workers as well as consultations on complex case;
- Increased knowledge of community resources;
- Wider range of alternative solutions to consider;
- Better coordination of interagency efforts; and,
- Networking and “door opening” among professional groups.

The next page provides an outline of expectations and functions required to meet the needs of APS clients.

IDEAL ADULT PROTECTIVE SERVICES FUNCTIONS

1. (APS) SYSTEMS PLANNING AND DEVELOPMENT
 - Initial
 - Ongoing
(Both initial and ongoing activities should reflect local concerns/values)
2. PUBLIC EDUCATION AND AWARENESS
 - General Public
 - Professional Communities
 - Prevention/Early Intervention
3. INTAKE (24HOURS/PERDAY; SEVEN DAYS PER WEEK)
 - Determine Nature of Call
 - * Allegation of abuse, neglect, financial exploitation
 - *Complaint re: Department, Vendor, Licensed Facility, etc.
 - *Information/Referral Request
 - *Administrative/Operational Matter
 - Determine/Screen for Appropriate Response
 - *Immediate Danger, At-risk but no immediate danger, Non-emergencies, Non-APS
 - Arrange for emergency response as needed
4. APS ASSESMENT
 - Determine level of risk
 - Determine level of competency
 - Determine level of intervention, e.g., voluntary or involuntary
 - Determine potential service need, funding sources, supports (including informal)
5. DEVELOP APS SERVICE PLAN BASED ON ASSESSED NEEDS
 - Plan is to be person centered, highly individualized, creative and should reflect full array of community based services (e.g., legal, social, medical)
 - Plan assures prompt and adequate treatment delivered in the least intrusive manner
 - Plan maximizes supports which are natural and appropriate and consistent with lifestyle, preferences, values and choices
6. IMPLEMENT THE PLAN
 - In accordance with client's wishes, consistent with legal status
 - Arrange service delivery and funding
7. MONITOR PLAN IMPLEMENTATION
 - Update plan as necessary
8. COLLECT/ANALYZE DATA FOR APS SYSTEM QUALITY IMPROVEMENT & QUALITY ASSURANCE (see number one above)

NOTE: Functions three through seven above may require an interdisciplinary team approach and/or court activities including court reports and documents, petitioning for guardianship and protective services/placement.

<p>APPENDIX 4: Intervention Principles in Elder Abuse (generally applicable to abuse of younger adults-at-risk as well)</p>

NOTE: The principles below have been written in support of a competent older person's right to self-determination.

- (1) Involve the older person in the development of the intervention/care plan. Take the time to explain the range of legal, medical and social service options to the older person, beginning with the least restrictive alternatives in treatment and placement so that the older person can exercise his or her maximum decision-making ability for his or her competence.
- (2) Recommend community-based services rather than institutional placement, whenever possible. Institutions are generally considered a very restrictive environment. Often, an older person fears placement more than abuse. The older person may refuse services if placement is the only option presented.
- (3) Respect the older person's right to confidentiality. Information about the older person's affairs should only be shared as authorized by the older person or guardian, or as otherwise authorized by statute (e.g., see sec. 46.215, Wis. Stats., regarding exchange of information between relevant county agencies providing services) and as it pertains to obtaining assistance and guidance.
- (4) Recognize that inadequate or inappropriate intervention may be worse than none at all. Assistance that over-promises may be rejected by the older person. Inadequate or inappropriate intervention may greatly increase the risk to the victim.

The older person's interests are to be the first concern of the program. The older person's safety is also the foremost concern when he or she is unable to decide or act on his or her own behalf.