



THE BASICS

The Elder Justice Act:

Addressing Elder Abuse, Neglect, and Exploitation

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Elder abuse, neglect, and exploitation affect older people across all socioeconomic groups and care settings. Although national data on the full extent of the problem are elusive,¹ one study found that 11 percent of older people living in community settings had experienced physical, emotional, or sexual abuse or potential neglect during one year.² Abuse and neglect of residents of nursing facilities and other institutions have been a continuing concern of policymakers and advocates for many years. The Government Accountability Office (GAO) has reported both weaknesses in nursing home oversight and enforcement by state survey agencies and insufficient federal and state safeguards to protect residents from potentially abusive individuals.³ Elder abuse and neglect in residential care facilities that are not subject to federal oversight, such as board and care homes and assisted living facilities, have also been identified. The aging of the population may increase the incidence of abuse, neglect, and exploitation in coming decades.⁴ These issues will be particularly salient for the most vulnerable, especially the frail elderly and those with Alzheimer's disease and other dementias.

ELDER JUSTICE ACT PROVISIONS IN PPACA

The Elder Justice Act (EJA), enacted as part of the Patient Protection and Affordable Care Act (PPACA) on March 23, 2010, sets forth a series of provisions designed to address some of the weaknesses in federal and state efforts to prevent and respond to abuse, neglect, and exploitation of older people. The EJA included authorization of several grant programs, such as a new state formula grant program for adult protective services (APS), established requirements for reporting of crimes in long-term care facilities,

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and created advisory bodies on elder abuse within the Department of Health and Human Services (HHS). Versions of the EJA had been considered by Congress for a number of years before its enactment in PPACA. As of November 2010, Congress has not approved appropriations for the EJA.

PPACA incorporated many of the elder justice provisions as amendments to Title XX of the Social Security Act. Title XX, Subtitle A [the Social Services Block Grant (SSBG) program] authorizes funds to states for a wide array of social services for vulnerable populations of all ages, and states are given wide discretion to define the services they wish to support.⁵ The EJA provisions added a Subtitle B to Title XX that authorizes appropriations for various activities and programs to address elder abuse, neglect, and exploitation. Some EJA provisions amended other laws and programs.⁶

Defining Elder Justice

The EJA defined elder justice activities as efforts to prevent, detect, treat, intervene in, and prosecute elder abuse, neglect, and exploitation and to protect elders with diminished capacity while maximizing their autonomy. Elder justice recognizes an older person's rights and his or her ability to be free of abuse, neglect, and exploitation.

The following describes selected provisions of the EJA. For a more complete listing of provisions, see Table 1 (see page 5).

Grant Programs Authorized

The EJA authorized funds for a number of grant programs to protect older people living in both community and institutional settings. Among the provisions authorized are grant programs to bolster the activities of state adult protective services (APS), long-term care ombudsman programs, and state surveyors of Medicare- and Medicaid-certified long-term care nursing facilities. Grant programs also create incentives for employment and training of individuals who provide direct care services to people with disabilities.

Adult protective services for adults age 60 and over — The largest authorization of funds under the EJA is for a new state formula grant to support activities of state and local APS programs. This is the first time Congress has authorized a specific federal funding source

for APS. Every state has an APS program authorized by state law. State and local APS agencies are considered among the first responders to reports of abuse, neglect, or exploitation. To date, APS programs have been supported by state Title XX SSBG allotments, with amounts determined at each state's discretion, and by state and local funding sources. The EJA provision authorized \$100 million per year from fiscal years 2011 through 2014 for APS programs. From appropriated funds, each state will receive an amount based on the proportionate share of people age 60 and over who reside in the state compared with all states.⁷

In addition to the APS formula grant program, the law authorized a training program to help state and local governments detect or prevent elder abuse and financial exploitation. This provision authorized \$25 million for each of fiscal years 2011 through 2014.

Activities of long-term care ombudsman and federal and state nursing home surveyors — The EJA authorized grants for a variety of activities to address elder justice issues for older people living in institutions. It authorized funds to improve state long-term care ombudsman activities, and for training programs for national organizations and state agencies involved in ombudsman activities. In addition, the law authorized funds for a National Training Institute to assist federal and state surveyors in their investigations of allegations of abuse, neglect, and exploitation in Medicare- and Medicaid-certified nursing facilities, and grants to provide training for state survey agencies to improve their complaint investigation procedures.⁸

Incentives for employment and training of direct care workers — Direct care workers (nursing assistants, home health aides, or personal care aides) provide most of the paid hands-on personal assistance received by older people and others with disabilities in nursing facilities, assisted living facilities, adult day care programs, and in-home settings where informal care from families is unavailable. The EJA authorized grants to encourage long-term care facilities and community-based long-term care providers to provide incentives for individuals to train for and seek employment in direct care of older people. Grants also support procedures for establishing career ladders, continuing training, and certification of direct care workers.

Mandatory Reporting of Crimes Occurring in Long-Term Care Facilities

The PPACA law⁹ established reporting requirements regarding suspected crimes against residents of long-term care facilities that receive \$10,000 or more in federal funds. Every individual employed by or associated with a long-term care facility as an owner, operator, employee, manager, agency, or contractor is required to report any reasonable suspicion of a crime against facility residents to the Secretary of HHS and to law enforcement officials. Tight deadlines are specified for reporting of any suspected crime. If the event that caused the suspicion results in serious bodily injury, the individual is required to report the suspicion immediately, but not later than 2 hours after forming the suspicion. If the event does not result in bodily injury, the individual is required to report no later than 24 hours after forming the suspicion. The law imposes stiff penalties for failure to report: up to \$200,000 in civil money penalties or, when lack of reporting results in exacerbation of harm to the victim, up to \$300,000. In both cases, the Secretary has the option to exclude the non-reporting individual from participating in federal health care programs.

Elder Justice Coordinating Council and Advisory Board on Elder Abuse, Neglect, and Exploitation

The EJA created two provisions that will bring national attention to issues of elder abuse, neglect, and exploitation. The law established in the Office of the Secretary of Health and Human Services an Elder Justice Coordinating Council whose purpose is to make recommendations to the Secretary regarding coordination of activities related to abuse, neglect, and exploitation undertaken by HHS, the Department of Justice, and other relevant federal, state, local and private agencies. The Act also established an Advisory Board on Elder Abuse, Neglect and Exploitation whose responsibilities include development of strategic plans regarding the field of elder justice.¹⁰

TABLE 1: Selected Elder Justice Act Program Activities Enacted by PPACA

Activity	Purpose of Activity	Funding Authorization
ADULT PROTECTIVE SERVICES (APS) ACTIVITIES		
Grants for state and local APS agencies	Authorizes grants to support state and local governments for APS, including reporting and investigation of abuse, neglect, and exploitation; planning, monitoring, and evaluation of case work and services on abuse, neglect, and exploitation; and providing medical, social service, economic, legal, housing, law enforcement, or other protective support services. Funds will be distributed to each state based on the proportionate share of people age 60 and over who reside in the state compared to all states (with minimum amounts specified for small population states and for territories). Funds are to supplement, not supplant, existing APS services.	\$100 million for each of fiscal years (FYs) 2011 through 2014.
State demonstration grants	Requires the Secretary* to award grants to states to enhance the provision of APS by developing training modules for use by state and local governments to help them detect or prevent elder abuse and financial exploitation, and to determine whether training on abuse forensics enhances the ability of government employees to detect abuse.	\$25 million for each of FYs 2011 through 2014.
APS support activities by the Secretary of HHS	Requires the Secretary to provide Elder Justice Act funding to state and local units of government involved in APS activities; collect and disseminate data on abuse, neglect and exploitation; develop and disseminate best practices and training on APS; conduct research on APS; and provide technical assistance to states and other entities that support APS.	\$3 million for FY 2011 and \$4 million for each of years FYs 2012 through 2014.
LONG-TERM CARE OMBUDSMAN SERVICES†		
Long-term care ombudsman services	Requires the Secretary to award grants to improve the capacity of state long-term care ombudsman programs to respond to and resolve complaints about abuse and neglect and to conduct pilot programs to improve ombudsman services.	\$5 million for FY 2011, \$7.5 million for FY 2012, and \$10 million for each of FYs 2013 and 2014.
Long-term care ombudsman training programs	Requires the Secretary to award grants to establish training programs for national organizations and state agencies involved in ombudsman activities.	\$10 million for each of FYs 2011 through 2014.

* Refers to the Secretary of the Department of Health and Human Services (HHS) unless otherwise noted.

† Long-term care ombudsman services are authorized by the Older Americans Act of 1965, as amended.

Activity	Purpose of Activity	Funding Authorization
GRANTS FOR TRAINING OF FEDERAL AND STATE NURSING FACILITY SURVEYORS		
National Training Institute for federal and state surveyors of Medicare- and Medicaid-certified long-term care facilities	Requires the Secretary to establish a National Training Institute to assist federal and state surveyors in their investigations of allegations of resident abuse and neglect and misappropriation of property in long-term care facilities. The Institute is required to assess the extent to which state agencies use specialized surveyors for reported abuse allegations and to evaluate how surveyor competencies can be improved to more effectively conduct investigations, among other things.	\$12 million for the period FYs 2011 through 2014.
Grants to Medicare- and Medicaid-certified long-term care facility state survey agencies	Requires the Secretary to award funds to state survey agencies to improve resident complaint investigation systems. The purpose of the grants is to help state survey agencies prioritize complaints to ensure rapid response to serious and urgent complaints, improve timeliness of responses, and ensure collaboration among local authorities, consumers and providers.	\$5 million for each of FYs 2011 through 2014.
FORENSIC CENTERS ON ELDER ABUSE, NEGLECT AND EXPLOITATION[‡]		
	Requires the Secretary, in consultation with the Attorney General, to award grants for stationary and mobile forensic centers to develop expertise on elder abuse, neglect, and exploitation. Grantees are to use funds to develop forensic markers and methodologies to determine whether abuse, neglect, or exploitation or a crime has occurred; develop forensic expertise regarding elder abuse, neglect, and exploitation to provide medical and forensic evaluation, therapeutic intervention, and victim support and advocacy; and develop the capacity of geriatric health care professionals and law enforcement to collect forensic evidence. Forensic centers are also required to conduct research on forensic markers and methodologies for determining when and how health care, emergency services, social and protective services, and legal service providers should intervene in a case, and when reports should be made to law enforcement officials.	\$4 million for FY 2011, \$6 million for FY 2012, and \$8 million for each of FYs 2013 and 2014.

[‡] As of November 2010, there are at least four elder abuse forensic centers in California (in Orange County, Los Angeles, San Francisco and San Diego) and a New York City Elder Abuse Center that also conducts forensic analysis in cases of suspected elder abuse. In addition, in recent years, several jurisdictions have developed elder fatality review teams. Per e-mail communication with Marie Connolly, Senior Scholar, Woodrow Wilson International Center for Scholars, and Director, Life Long Justice, November 17, 2010.

Activity	Purpose of Activity	Funding Authorization
HHS COORDINATING COUNCIL AND ADVISORY BOARD ON ELDER ABUSE, NEGLECT, AND EXPLOITATION		
Elder Justice Coordinating Council	Establishes authority for a federal Elder Justice Coordinating Council in the Office of the Secretary whose purpose is to make recommendations to the Secretary regarding coordination of HHS, Department of Justice, and other federal and state, local, and private organizations regarding abuse, neglect, and exploitation, and other crimes against older people. Each member of the Council is to be an officer or employee of the federal government. The Council must submit a report on its activities to the Senate Committee on Finance and the House Committees on Energy and Commerce and Ways and Means by March 23, 2012.	Such sums as may be necessary. [¶]
Advisory Board on Elder Abuse, Neglect, and Exploitation	Establishes an Advisory Board whose purpose is to create short- and long-term multidisciplinary strategic plans for the development of the field of elder justice and to make recommendations to the Coordinating Council. The Secretary is to appoint 27 members from the general public knowledgeable about elder justice issues.	Such sums as may be necessary. [¶]
PROGRAMS TO ENHANCE LONG-TERM CARE STAFFING, PROMOTION OF ELECTRONIC HEALTH RECORDS AND EXCHANGE OF CLINICAL DATA IN FACILITIES		
Direct care workers in long-term care settings	Requires the Secretaries of HHS and Labor to provide incentives for individuals to train for and seek employment as providers of direct care in long-term care settings. Authorizes grants to offer direct care workers continuing training and certification and to provide bonuses or increased compensation to those who achieve certification. Grantees are to use funds to improve management practices that promote retention of direct care workers, including policies that reward high performance, and creation of a workplace culture that values caregiver respect and resident rights.	\$20 million for FY 2011, \$17.5 million for FY2012, and \$15 million for each of FYs 2013 and 2014.
Electronic health care records (EHRs) and exchange of clinical data	Authorizes the Secretary to award funds to assist long-term care facilities to offset the costs of development of EHRs to improve patient safety and reduce adverse events and health care complications resulting from medical errors.	
Standards for clinical data used by long-term care facilities	Requires the Secretary to adopt electronic standards for the exchange of clinical data by long-term care facilities.	

[¶] Another provision of PPACA includes specific authorization of appropriations for the Coordinating Council, the Advisory Board, and Research Protections (see next page). This provision authorizes \$6.5 million in fiscal year 2011 and \$7 million for each of fiscal years 2012 through 2014.

Activity	Purpose of Activity	Funding Authorization
OTHER SELECTED PROVISIONS		
Mandatory reporting on crimes in federally funded long-term care facilities	Requires owners, operators, employees, managers, agencies, or contractors of long-term care facilities that receive at least \$10,000 in federal funds to report any reasonable suspicion of crimes against residents. Reports are to be made to the Secretary and to local law enforcement entities. Establishes time frames for reports to be made, and penalties for not reporting. Prohibits retaliation against reporters and establishes penalties for any violations of retaliation prohibitions.	Authorization of appropriations not specified. Effective on enactment of the Elder Justice Act.
Study on national nurse aide registry	Requires the Secretary to conduct a study on a national nurse aide registry. The study is required to evaluate who should be in the registry, how the registry would comply with federal and state privacy laws and regulations, how data would be compiled, and how the functions of a registry would be coordinated with a nationwide program for national and state background checks on direct care employees, among other things.	The cost of the study is limited to \$500,000. Authorizes such sums as may be necessary.
Research protections	Requires the Secretary to promulgate guidelines to assist researchers working in the area of elder abuse, neglect, and exploitation.	Authorization of appropriations not specified. ¶

¶ Another provision of PPACA includes specific authorization of appropriations for the Coordinating Council, the Advisory Board, and Research Protections. This provision authorizes \$6.5 million in fiscal year 2011 and \$7 million for each of fiscal years 2012 through 2014.

ENDNOTES

1. Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, "Congressional Report on the Feasibility of Establishing a Uniform National Database on Elder Abuse," March 2010; available at <http://aspe.hhs.gov/daltcp/reports/2010/elderCR.pdf>.
2. Ron Acierno *et al.*, *Final Report: The National Elder Mistreatment Study*, National Institute of Justice, March 2009; available at www.ojp.usdoj.gov/nij/topics/crime/elder-abuse/extent.htm. Note: this publication did not report on financial exploitation, and results were based on reports from telephone interviews with respondents able to report; therefore estimates may be understated.
3. See, for example, Government Accountability Office (GAO), "Nursing Homes: Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses," GAO-08-517, May 2008, available at www.gao.gov/new.items/d08517.pdf; GAO, "Nursing Homes: More Can Be Done to Protect Residents from Abuse," GAO-02-312, March 2002, available at www.gao.gov/new.items/d02312.pdf.
4. According to a national survey of state adult protective service programs, reports of suspected abuse and substantiated cases have increased in recent years. An increase in the number of cases could be attributed to an increase in abuse of the elderly or to increased awareness by the public, thus generating additional reports of abuse. See Pamela B. Teaster *et al.*, "The 2004 Survey of Adult Protective Services: Abuse of Adults 60 Years of Age and Older," National Center on Elder Abuse, 2006; available at www.ncea.aoa.gov/ncearoot/main_site/pdf/2-14-06%20final%2060+report.pdf. A forthcoming survey of states to assess the impact of the recession on long-term services and supports by the National Association of States United for Aging and Disability (NASUAD) has found increased calls to APS agencies regarding elder abuse, especially financial exploitation and neglect. E-mail communication with author, October 27, 2010.
5. Title XX is administered by the Office of Community Services, Administration of Children and Families in the Department of Health and Human Services (HHS).
6. Some EJA provisions are free-standing provisions of law, for example, the provisions creating the national nurse aide registry and the National Training Institute for nursing home surveyors.
7. Minimum amounts are specified for states with small populations of older people and for the territories.
8. For further information, see "Ensuring Nursing Home Quality, Continuing Challenges to Oversight and Enforcement of Nursing Home Reform," National Health Policy Forum, Forum Session, March 25, 2010; available at www.nhpf.org/library/details.cfm/2777.
9. This provision amends Title XI of the Social Security Act.
10. On July 14, 2010, the Secretary published a notice soliciting nominations to the Advisory Board. See the Federal Register, vol. 75, no. 134, p. 40838, July 14, 2010, <http://edocket.access.gpo.gov/2010/pdf/2010-17197.pdf>.

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