

Supreme Court of Wyoming
Cheyenne, Wyoming 82002



KATE M. FOX
JUSTICE

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CHEYENNE, WY 82002
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January 20, 2017

Governor Matthew H. Mead
Idelman Mansion
2323 Carey Avenue
Cheyenne, WY 82001

Re: Elder and Vulnerable Adult Task Force

Dear Governor Mead:

A year ago, you recognized that the needs of Wyoming's elder and vulnerable adult population deserved special consideration, and you established the Elder and Vulnerable Adult Task Force by Executive Order to "examine areas of concern regarding Wyoming's elderly population." You appointed an excellent group to the Task Force, comprised of people representing the judiciary, banking, prosecutors and law enforcement, nursing homes and healthcare, attorneys specializing in elder law, Wyoming Guardianship Corporation, AARP, and the Wyoming Department of Family Services and Department of Health. In addition to the list of people you appointed in your Executive Order, we had help from Carolyn Paseneaux, Sam Shumway from AARP, and Dr. James Bush from Department of Health. I am happy to report that this group has worked very hard, under the direction of co-chairs Gary Scott and Kristi Skinner, meeting several times as a whole group, and numerous more times in break-out working groups to address the issues you identified in your Executive Order.

The Task Force's final charge was to produce a report summarizing its findings and recommendations. I am happy to report that has been accomplished, and I enclose that report with this letter. This is very impressive work from a group of people who all have very busy day jobs! As you will see, the Task Force tried to make specific and concrete recommendations where it could. I hope that you find both the information presented and the recommendations useful.

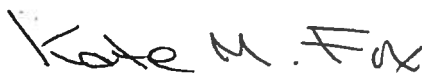
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Thank you for this opportunity to work on this important issue.

cc via email: Chief Justice James Burke; Dr. James Bush, DOH; Fran Cadez, Cheyenne Regional Medical Center; Jane Carlson, DFS; Theresa Clark, DFS; Steve Corsi, DFS; Kelly Davis; Rick Davis; Bob Golden, First Bank of Wyoming; Justice Kautz; Byron Oedekoven, Wyoming Association of Sheriffs & Chiefs; Carolyn Paseneaux, Wyoming Health Care Association; Senator Drew Perkins; Judge Catherine Rogers; Judge Wes Roberts; Gary Scott; Nance Shelsta; Brianne Sherman, Long Reimer Winegar Beppler LLP; Mary Lynne Shickich, AARP; Sam Shumway, AARP; Kristi Skinner, DOH; Bryan Skoric, Park County & Prosecuting Attorney; Emily Smith, Wyoming Guardianship Corporation; Dan Statkis, EmpRes Healthcare; Dorothy Thomas, DFS (retired); Cheryl Wadas, Cheryl Wadas Law Office.

Sincerely,

A handwritten signature in black ink that reads "Kate M. Fox". The signature is written in a cursive, flowing style.

Kate M. Fox
Justice

KMF/dh

**Elder and Vulnerable Adult Task Force
Report to Governor**

January 20, 2017

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Appendix 1 Existing Laws and Resources

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Elder and Vulnerable Adult Task Force

Report to Governor

January 20, 2017

I. Executive Summary

The population of Wyoming is aging and will continue to age for the foreseeable future. State agencies, courts, law enforcement and prosecutors, and private care facilities are faced with increasing challenges to prevent and address issues of physical abuse, neglect, and financial exploitation of elder and vulnerable adults. While Wyoming has a number of resources¹ to assist elder and vulnerable adults, critical improvements need to be made, beginning with a greater awareness of the issues associated with this population.

Based upon its review of Wyoming's current laws and resources, the Elder and Vulnerable Adult Task Force (EVA Task Force) makes the following recommendations:

1. The public needs to be better educated regarding elder abuse, neglect, and exploitation, what can be done to prevent it, and the resources that currently exist for our elder and vulnerable adult population. Vulnerable adults' rights and resources should be posted on a user-friendly State website.
2. Law enforcement, Department of Family Services (DFS) employees, and health care providers need training to better identify needs of the vulnerable adult population and to understand the resources available to them to best respond to those needs.
3. A pilot project should be established so the Attorney General (AG) and Division of Criminal Investigation (DCI) can assist prosecuting attorneys and law enforcement in developing and successfully pursuing cases of abuse, neglect, and exploitation, based in part on the successful Park County model.
4. Inter-agency communication must be improved to promote efficiency and effectiveness in providing services to the vulnerable adult population. Specifically communication will be improved with:
 - a. more effective use of the Adult Protective Services (APS) Community Teams, put in place pursuant to W.S. 35-20-104(a)(iv) (requiring DFS to provide appropriate training to all investigative agencies and personnel);
 - b. reporting of alleged abuse between DFS and law enforcement;
 - c. sharing appropriate information with the Wyoming Department of Health (DOH); and
 - d. providing the DOH with access to Wyoming's prescription drug monitoring program.

¹ See Appendix 1, Existing Laws and Resources.

5. Wyoming should adopt the Uniform Power of Attorney Act.
6. The statutory definition of “vulnerable adult” should be amended to recognize that age, physical frailness, isolation, and mild cognitive impairment render a person susceptible to abuse, neglect, and exploitation.
7. Guardianships and conservatorships should be more effectively utilized by:
 - a. providing better education, training, and supervision of court-appointed guardians and conservators;
 - b. providing more guardians and conservators to indigents who need them, including persons for whom the courts appoint a *guardian ad litem* (GAL) following a petition for emergency services; and
 - c. creating a guardian and conservatorship registry which law enforcement and medical providers can quickly access to determine who has authority to make decisions concerning an abused or vulnerable adult.

II. Formation of the EVA Task Force and its Mission

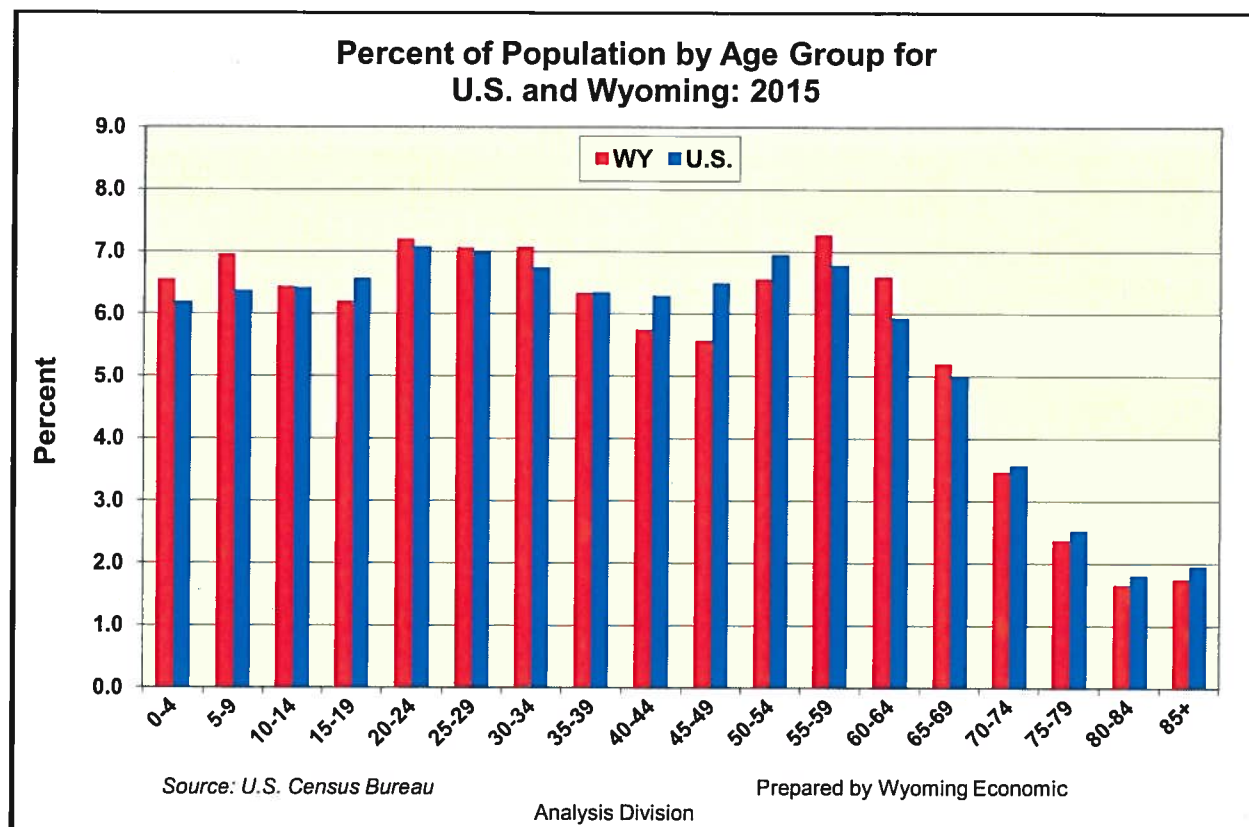
In response to a request from Wyoming Supreme Court Chief Justice Burke, on February 17, 2016, Governor Mead signed Executive Order 2016-1, Elder and Vulnerable Adult Task Force (Appendix 2). That Executive Order stated that the mission of the EVA Task Force was to compile data and identify areas of concern; identify existing laws and resources that could assist vulnerable adults; propose changes to Wyoming’s laws and policies relating to vulnerable adults; make recommendations for increasing awareness of current resources; increase public awareness of issues facing our vulnerable adult population; and examine and make recommendations specifically in regard to the state’s current laws relating to guardianships, conservatorships, powers of attorney, and financial exploitation, as well as abuse and neglect of vulnerable adults. The order directed that the EVA Task Force summarize its findings and recommendations in a report to the governor. A list of EVA Task Force members is attached to Appendix 2. What follows are the EVA Task Force’s findings and recommendations.

III. What is the Problem?

According to the American Community Survey (ACS)², about 20% of Wyoming’s population was aged 60 or older in 2014, including about 2% aged 85 and older. The elder population is growing and is expected to continue growing beyond 2030, as the generation of baby boomers (born between 1946 and 1964) reach retirement age. The fastest growing age group will be those aged 85 and older—a group most likely to experience disabilities and impairments that often require specialized programs and services.

² <http://www.census.gov/programs-surveys/acs/>

Although Wyoming shares this demographic trend with other states, its sparse population and the distribution of that population make it unique. Cities and towns are widely dispersed across the state's 97,093 square miles; and long distances between communities are the norm. According to ACS estimates, there were fewer than 600,000 Wyoming residents in 2014, equating to only about 5.8 persons per square mile (compared to 87.4 persons per square mile, nationally).



Facts regarding Wyoming's aging population:

- Wyoming's population over 60 is growing.
- Wyoming's population under 60 is shrinking.
- 20.4% of Wyoming's population was over 60 in 2012.
- 31% of Wyoming's population will be over age 60 by the year 2030.
- By 2030, Wyoming will be the 4th oldest state in the country.

With the population of older adults increasing, there will inevitably be an accompanying increase in abuse, neglect, and exploitation of vulnerable adults in Wyoming. Studies on elder abuse, neglect, and exploitation reveal some alarming statistics.

1. An estimated 1 in 10 seniors over the age of 60 is abused (not including financial abuse) each year.
 - <https://www.justice.gov/elderjustice/research/>
(last accessed on January 18, 2017)
2. Some estimates range as high as 5 million elders who are abused each year. One study estimated that only 1 in 14 cases of abuse are reported to authorities. Another study estimated that only 1 in 25 cases are reported.
 - <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/>
(last accessed on January 18, 2017)
 - <https://ncea.acl.gov/whatwedo/research/statistics.html#perpetrators>
(last accessed on January 18, 2017)
3. Abusers are both women and men. In almost 60% of elder abuse and neglect incidents, the perpetrator is a family member. Two thirds of perpetrators are adult children or spouses.
 - <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/>
(last accessed on January 18, 2017)
4. The majority of elder abuse victims are women living in the community, rather than nursing homes or other senior living facilities.
 - <https://www.justice.gov/elderjustice/research/>
(last accessed on January 18, 2017)

According to the National Center on Elder Abuse (NCEA), two studies have found that the typical victim of elder abuse, neglect, and exploitation is a female, age 78 or older, who has some physically limiting condition or a mental health condition, or who is isolated, thereby making her vulnerable.³ A 2011 study conducted by MetLife Mature Market Institute found that the typical victims have some mild cognitive impairment, meaning that they may need some assistance in paying bills, but are not generally so demented as to obviously be in need of a caregiver.⁴

The NCEA studies find that the perpetrators of abuse are most often adult male children or spouses who have a history of substance abuse and trouble with the police, are socially isolated, unemployed or have financial problems, and are experiencing major stress.⁵ A study by Allianz Life Insurance Company reports that the average cost of financial

³ Regan, J., Morgan, R., and English, D., *Tax, Estate & Financial Planning for the Elder*, ch. 11.03 [1], LexisNexis (2016).

⁴ National Committee for the Prevention of Elder Abuse, Virginia Tech, Metlife Mature Market Institute, *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders* (2011).

⁵ Lachs, M., and Pillemer, K., *Elder Abuse*, New England Journal of Medicine, 373; 1947-56. DOI: 10.1056/NEJMr1404688 (2015).

exploitation is \$30,000, but that for 10% of the victims the loss exceeds \$100,000.⁶ The cost of abuse is not just borne by the victim. EVA Task Force member and retired APS Program Analyst Dorothy Thomas prepared a report in 2014 for DFS using Wyoming data. In it, Ms. Thomas found that the average cost of exploitation experienced by the Division of Health Care Financing (Medicaid) was \$22,103 (2011), \$22,217 (2012), and \$22,688 (2013), for an annual total of \$381,545 (2011), \$266,060 (2012), and \$431,072 (2013).⁷ This does not include lawfully conducted Medicaid planning which may involve the transfer of assets.

The causes of elder abuse are complex and difficult to precisely determine but generally involve a combination of psychological, social, and economic factors filtered through the mental and physical conditions of both the victim and the perpetrator.⁸ Some factors are seen more frequently than others, including caregiver stress, physical and mental impairment, learned violence, personal problems of the abuser, society's negative attitude towards the elder, isolation, and the characteristics of nursing home staff and facilities.⁹ It is also important to consider society's attitude toward elder abuse which may be reflected in a 1990 report by the House Select Committee on Aging, which states elder abuse often goes unreported. While 1 in 3 cases of child abuse are reported,¹⁰ it is estimated that today only 1 in 14, or fewer, cases of elder abuse are reported to the authorities.¹¹

Wyoming

All the available data regarding the abuse and exploitation of vulnerable adults supports the conclusion that a problem exists. The EVA Task Force identified the following problems specific to Wyoming:

⁶ Allianz Life Insurance Company, *Safeguarding Our Seniors* (2014), www.allianzlife.com/about/community-outreach/preventing-elder-financial-abuse (last accessed on January 18, 2017), cited in Margolis, H., *How to Protect Clients from Financial Abuse*, The Elder Law Report, vol. XXVII, No. 4 (2015).

⁷ Thomas, D., *The Wyoming Cost of Financial Exploitation 2011, 2012 and 2013*, Wyoming Department of Family Services (2014).

⁸ Office of Justice Programs, National Institute of Justice, *Causes and Characteristics of Elder Abuse*, <https://nij.gov/topics/crime/elder-abuse/pages/understanding-causes.aspx> (last accessed on January 18, 2017).

⁹ Begley, T., and Jeffreys, J., *Representing the Elder Client, Law and Practice*, Wolters Kluwer, ch. 14.03 (2016).

¹⁰ House Subcommittee, Elder Abuse: A Decade of Shame and Inaction, Comm. Pub. No. 752, 101st Cong., 2d Sess. (Apr. 1990).

¹¹ Office of Justice Programs, National Institute of Justice, *Causes and Characteristics of Elder Abuse*, <https://nij.gov/topics/crime/elder-abuse/pages/understanding-causes.aspx> (last accessed on January 18, 2017).

DFS/Adult Protective Services

The DFS reports that for the approximate two-year period between January 1, 2015 and December 1, 2016, APS received 3,706 cases, with 2,140 of those resulting in an open case. Of those cases, 174 were opened as an investigative case and 49 were substantiated by the DFS. A recent study evaluating states elder-abuse protections ranked Wyoming as 50th (though it ranked 26th in resources).¹²

There was no shortage of stories related by EVA Task Force members in which APS or law enforcement failed to accept an incident report or investigate a complaint of elder abuse, neglect, or exploitation. A typical story might consist of a report of abuse, neglect, or exploitation being made to APS or law enforcement by a family member, a neighbor, or a professional, with the response being that a civil judgment should be obtained first, then the complaint might be pursued. Often this assessment is incorrect and there are criminal laws applicable to the situation. Further, the obvious problems with this approach is that the person making the report may lack standing to maintain a lawsuit, the victim may not have sufficient capacity to prosecute their claim in court, and the amounts involved, while significant to the victim, may not be sufficient to cover the costs and legal fees of litigation. The result ends up being that, in spite of the clear intent of the statute, nothing is done to protect or restore the victim.

Since 2007, DFS has had 16 APS Community Teams in place to cover 23 counties. With the exceptions of Natrona and Park Counties, the effectiveness of these teams seems mixed and uneven. The track record of some APS Community Team members in recognizing or even acknowledging there is a problem with the abuse, neglect, and exploitation of elder and vulnerable adults, or in doing anything to address it, does not instill confidence. Regular meetings with the stakeholders do not appear to be held, there seems to be no accountability, and training seems to lack commitment. It is reported that in some cases APS Community Team members have refused to accept intakes or process complaints about elder or vulnerable adult abuse, neglect, and exploitation, saying that they only deal with child abuse or that the victim does not meet the criteria of a “vulnerable adult” without ever conducting an evaluation. Part of the problem is that, in many of the smaller counties, caseworkers cover APS in addition to other types of cases.

By statute, APS is required to maintain a central registry of substantiated adult protection cases that identifies and locates prior reports of abuse, neglect, exploitation, intimidation, or abandonment.¹³ Information contained in the central registry is available to individuals and certain types of entities for the purpose of screening prospective

¹² 2016's States with the Best Elder-Abuse Protections, <https://wallethub.com/edu/states-with-best-elder-abuse-protection/28754/> (last accessed on January 18, 2017).

¹³ W.S. 35-20-115, *et seq.*

employees and volunteers.¹⁴ The general public, however, who might be looking to hire a private caregiver, is generally ignorant of the central registry. The impact of this valuable resource in preventing abuse, neglect, and exploitation could be greatly enhanced if the general public was more aware of its existence.

Much of the general public is unaware of the existence of the APS central registry. Persons for whom there are substantiated reports of abuse, neglect, and exploitation can still find private employment as caregivers for vulnerable adults because no one knows to check the central registry. Offenders from out-of-state appear not to be identified in the Wyoming central registry. Perpetrators who enter into plea agreements for deferred sentences under the provisions of W.S. 7-13-301 may not be reported to and identified in the central registry because technically they have not been convicted.

Law enforcement/prosecutors

When reports of elder abuse, neglect, or exploitation are accepted, it often seems that nothing further is done. Few perpetrators are charged or prosecuted. When law enforcement officers have been questioned about the seeming lack of follow up or investigation, a reoccurring pattern of response appears. Officers have related “off the record” that if they spend significant time on an investigation, prepare, and then file a report with their district or prosecuting attorney, the matter is often placed in the “deep file.” With a few exceptions, while district attorneys seem ready and willing to prosecute cases of child abuse, there appears to be a lack of either the resources or the desire to prosecute cases involving abuse, neglect, and exploitation of elders and vulnerable adults. As a consequence, the law enforcement officers do not aggressively pursue their investigations. When prosecutors have been candidly asked about the situation, some have attributed the problem to a perceived difficulty in proving their case, including the current statutory definition of “vulnerable adult,” setting the evidentiary bar for conviction too high.¹⁵

There appears to be the lack of “buy-in” by APS Community Team members and law enforcement, which may be a reflection of their training, sense of urgency, or accountability, but it may also be symptomatic of low morale attributed to a perceived disinterest on the part of supervisors, management, and/or prosecutors in the enforcement of the law in past cases involving elder abuse, neglect, and exploitation. Stated simply, people need to feel that their efforts matter.

There is a perceived general failure of APS and law enforcement to pursue, and failure of prosecutors to prosecute elder abuse, neglect, and exploitation.

¹⁴ W.S. 35-20-116.

¹⁵ W.S. 35-20-102(a)(xviii).

Guardianship/conservatorship

Formal guardianship and conservatorship proceedings have the advantage of imposing fiduciary duties on the guardian/conservator, along with court supervision. However, the degree of court attention is variable across the state, and often guardians and conservators are unaware of the responsibilities of their positions.

Although it is cheaper to keep an indigent ward living in the community rather than having them institutionalized, often there is no suitable person to act as guardian or conservator for vulnerable adults. Wyoming Guardianship Corporation (WGC), a 501(c)(3) non-profit corporation, can serve as the guardian or conservator of last resort for Wyoming's indigent elder and vulnerable adult populations, but its resources are extremely limited. WGC currently receives \$113,244 per year from the DOH to provide guardianship services. Of that amount, \$60,000 is earmarked for the severely mentally ill and residents at the state hospital. The balance of \$53,244 is allocated for wards under the Developmental Disability (DD) Waiver program. (These numbers do not include residents at the Life Resource Center in Lander.) It costs WGC \$105 per person per month or \$1,260 a year, per ward. That limits the number of severely mentally ill/state hospital residents WGC can serve to less than 48 individuals a year (47.62), with only about 42 (42.26) persons annually under the DD Waiver. There are currently 13 indigent mentally ill/state hospital and DD Waiver persons on the waiting list for guardianship services from WGC. Other than these funds for mentally ill/state hospital and DD Waiver individuals, the State of Wyoming provides no guardianship funds to WGC for any category of ward (like elders having no fit/proper persons to serve).

There is no funding provided for guardianship of people who have age-related disabilities, Alzheimer and other dementias, or people who live in nursing homes. WGC currently has a waiting list of 24 individuals for Guardianship (private pay guardianship services have no waiting list).

The problem of suitable guardians is a critical issue in cases of Petitions for Emergency Services to assist vulnerable adults who are mentally ill, critically ill, and/or elder, resulting in the creation of an emergency guardianship. Time is of the essence in these situations, and while the current emergency provisions may work well in Laramie County, codifying a state-wide uniform system would simplify the process. Attorneys who petition on behalf of a vulnerable adult are challenged by lack of resources. Some courts may require the appointment of a GAL, which in turn may become the financial responsibility of the county. (Only in rare cases does a wealthy person require a court-appointed guardian.) Attorneys relate that they often have either no or insufficient funds to pay a guardian, which sometimes results in criticism from the bench concerning the substandard performance of the GAL—the concern justifiably being an infringement on civil rights without representation.

IV. Issues and Recommendations

The EVA Task Force has identified areas where it believes changes could be implemented so as to better serve and protect the vulnerable adult population of the state.

A. Education of the General Public/Awareness of Existing Resources

The majority of the general public of the state may not know what vulnerable adult abuse or neglect is, or that it is a problem, or what to do if they become aware of a possible case of abuse, neglect, or exploitation. Few people are aware of the obligation for mandatory reporting of a suspected case of abuse or who to report it to. The public should have the same understanding of the issues surrounding vulnerable adult abuse as they do of child abuse or general domestic violence.

1. Preparing for being elder

Age and its disabilities can be anticipated and for many people, plans can be made while they still have the capacity. Such plans can include estate planning, selection of a guardian or trustee, and advance medical directives. Healthcare professionals, financial advisors, attorneys, and relatives can all play a part in encouraging such preparation. Many people find such planning distasteful, but with education, they may understand that it is preferable to becoming an “orphan adult.”

2. An accessible website

While DFS offers many educational and training materials online regarding elder abuse, locating them on the website can be daunting for members of the general public, particularly the elder and vulnerable. It is recommended that the links to these materials be displayed more prominently on the website to make it easier for the target population to navigate. There is a wide selection of YouTube videos available online on the topics of recognizing and preventing elder abuse, neglect, and exploitation. Links to these resources could be posted on the DFS website.

3. A focused ad campaign

As the population of Wyoming ages, the prevention of elder abuse, neglect, and exploitation needs to be elevated to a critical priority. In addition to the measures outlined above, a series of public service announcements should be recorded to make people aware of what constitutes abuse, how to recognize it, and what can be done to prevent it. The scope of each announcement does not need to be broad. It can be focused on a single tip or issue. See for an example, the “Top Ten Tips” PowerPoint slides by San Diego District Attorney Paul Greenwood.¹⁶

¹⁶ See *Be Wise, Be Aware: Prevent Elder Financial Abuse*, <https://www.youtube.com/watch?v=zaWxXZU1P6w> (last accessed on January 18, 2017; see also the Paul

4. Wider distribution of information

DFS/APS currently has a brochure that is distributed statewide at conferences, health fairs, etc. Local offices could distribute it more widely.

A new brochure focusing on the recognition and prevention of elder abuse specific to Wyoming could be developed and made available for display in public places (law offices, bank lobbies, accountants' offices, doctors' offices, senior centers, libraries, etc.). Funding to develop, print, and support this project might be from grants from the federal government or from the stakeholder groups and professional associations like the Wyoming Bar Association, the Wyoming Bankers Association, the Wyoming Medical Society, the Better Business Bureau, AARP, etc.

B. Training and Education of Responsible Persons

Prosecutors, law enforcement, DFS/APS, and healthcare providers all would benefit from greater training regarding the unique issues associated with the elder and vulnerable adult population. The DOH is often in a position to detect or address issues of vulnerable adult neglect or abuse, but is often left out of the communication loop between DFS and law enforcement.

The EVA Task Force recommends the following enhanced training for those groups:

1. Law enforcement/prosecutors

Currently law enforcement training at the Wyoming Law Enforcement Academy consists of a brief review of both child abuse and adult protective services topics. The EVA Task Force recommends that an online continuing Police Officer Standing Training (POST) training credit course be developed and made available to law enforcement officers statewide on a continuing education basis to cover more in-depth procedural, as well as substantive issues that arise in the context of vulnerable adults. For example, law enforcement and prosecutors must have a clear understanding of what issues are criminal versus civil and what warning signs and risk factors to be aware of. DFS/APS personnel are also available (and statutorily mandated, W.S. 35-20-104(a)(iv)) to provide training to all investigative agency personnel.

The greatest success rate in recognizing, investigating, and prosecuting abuse, neglect, and exploitation of elders and vulnerable adults occurs in Park and Natrona counties. Laramie and Uinta counties have begun to show some progress in this area. The low rate of prosecution in the remaining counties may be attributed to there being few reported

Greenwood series, *Tips for Preventing Elder Abuse*, <https://www.youtube.com/watch?v=Z0EqLbKI4NI> (last accessed on January 18, 2017).

cases, but the cause may also be attributed to a lack of experience or resources in developing cases for prosecution.

Park County has an excellent APS Community Team with proper support from all necessary authorities and stakeholders (i.e., DFS, Police, DA, etc.). Lessons learned from this group should be shared to improve the performance of groups in other counties. Focus should be placed on the better utilization of the APS Community Teams in the worst counties first. Training, coupled with recognition and reward for improved performance and success, can be used to motivate APS Community Teams and their members.

A pilot project should be established so the AG and DCI can assist prosecuting attorneys and law enforcement in developing and successfully pursuing cases involving abuse, neglect, and exploitation, similar to what is done in drug enforcement.

2. Department of Family Services and Adult Protective Services

DFS/APS has recently modified its training programs. New workers receive 2 days of APS training, and existing workers are required to have annual APS training of at least 6 hours. Training is coordinated by the Adult Protection Program Services Analyst, and has been augmented to include the Wyoming Practice Model which is a solution focused practice model. This training includes monthly staffing calls with DFS caseworkers to discuss/staff difficult cases and quarterly conference call meetings with DFS caseworkers to address DFS policy, rules, and APS statutes. In addition, local training on the various agencies occurs during monthly adult protection team meetings in each county. The services analyst will also develop a Continued Quality Improvement (CQI) tool to review APS files in each county.

The EVA Task Force recommends that this training continue and that in conjunction all DFS workers be trained on Adult Protective Services matters, not just APS staff.

3. Healthcare providers

The DOH has recently initiated its ECHO project to educate community service providers to vulnerable adult issues. This program is proving to be very popular and successful. It is hoped that this program will raise the standards of care for elder and vulnerable adults statewide. The EVA Task Force recommends that this program continue.

C. Inter-agency Communication

The EVA Task Force recognizes that any individual vulnerable adult may encounter a number of different agencies, including their own healthcare providers, the DOH, DFS/APS, and law enforcement. Enhanced communication between agencies would go a

long way to better serve the needs of the elder and would assist those who are there to provide services to the elder population.

One mechanism already in place which should be better utilized is the APS team meetings hosted by the DFS in each county. Better attendance by other agencies would greatly enhance inter-agency communication.

To that end, the DOH has engaged Navigant, a national consultant, to recommend changes regarding communications between the DOH, APS, law enforcement, and others. The Navigant report is attached as Appendix 3.

In addition, an APS representative has begun attending the DOH Quality Assurance meetings, where APS can gain insight into issues encountered by clinicians. This type of information sharing is beneficial to all involved.

The EVA Task Force identified three areas where communication between agencies would be beneficial. First, while DFS is mandated to cross-report to law enforcement, there is no required exchange of information going from law enforcement to DFS. Currently a law enforcement officer must make a determination that abuse or neglect is occurring before they are required to make a report to DFS, yet DFS is required to notify law enforcement merely after receipt of a report. The EVA Task Force recommends adding statutory language mandating cross-reporting upon an initial report of abuse or neglect being made to either DFS or law enforcement.

Second, statutory changes allowing for cross-sharing information between the DOH and other agencies could improve the effectiveness of the involved agencies. The DOH funds primary care givers, nurses, and case workers who often identify cases of abuse or neglect of the elder. These individuals have the clinical expertise that would aid in the drafting plans of correction and in monitoring. Once DOH nurses or case managers have identified a particular concern, the DOH needs to be able to have two-way communication with appropriate agencies. Many cases do not require prosecution, but rather education, additional support, or resources and guidance, which could potentially be provided by the DOH. The DOH can provide a valuable service to law enforcement and DFS when the DOH is made aware of a potential abuse or neglect situation. The EVA Task Force recommends adding statutory language allowing DFS and law enforcement to report abuse or neglect and communicate regarding the status of individual cases, as needed, and when any particular case might warrant involvement of the DOH.

Third, the DOH is often hampered in its investigation of deaths that may have occurred as a result of abuse or neglect related to narcotic use, but it is unable to access prescription information. The DOH should have access to the WORX system, Wyoming's

prescription drug monitoring program, in order to provide effective services. The EVA Task Force recommends adding statutory language allowing this access.

D. Legislation

The governor's charge to the EVA Task Force included specifically examining Wyoming's existing laws regarding guardianships, conservatorships, powers of attorney, financial exploitation, and abuse and neglect, and determining what specific changes should be made to those laws so as to better serve and protect the vulnerable adult population of the state. The EVA Task Force's recommendations follow.

1. Wyoming should adopt the Uniform Power of Attorney Act

The durable general power of attorney (DGPOA) has evolved into an alternative for court-established guardian and conservatorships. It can be a valuable tool in the right hands. As stated by University of Wyoming, Department of Family and Consumer Sciences Professor Virginia Vincenti, "POA documents can help elders remain autonomous, avoid guardianships, and limit costs at a vulnerable stage of life."¹⁷ But as Dr. Vincenti's research reveals, when the DGPOA is misused, it "offers vast potential for abuse."¹⁸ With the development of online legal service programs, "check-the-box" and "fill-in-the-blank" legal documents prepared by non-lawyers off the internet have mushroomed. This growth has not been accompanied by an increase in public awareness regarding the requirements for executing a DGPOA and the fiduciary duties imposed upon the attorney-in-fact/agent. These readily available online DGPOA forms are frequently the tool of choice used by perpetrators to abuse and exploit elders and vulnerable adults. A strong DGPOA statute with clear definitions, one that sets out the duties of the agent, would help in preventing abuse and exploitation. Unfortunately, Wyoming's statutes on DGPOAs are both sparse and vague.

The EVA Task Force notes the following DGPOA problem areas:

- Wyoming's current Durable Power of Attorney Act generates confusion by failing to give clear guidance regarding the language contained within and the appropriate use of a DGPOA. Our current Act is silent about what limitations apply to the agent's authority, or even that the agent has a fiduciary duty towards the principal.¹⁹ Without guidance in the statute to which they can

¹⁷ Vincenti, V., *Researchers Study Elder Financial Exploitation*, Reflections Magazine, University of Wyoming, College of Agriculture and Natural Resources, Laramie, Wyoming, pp. 15-17 (2015); see <http://www.wyomingextension.org/emagazine/reflections2015/index.html> (last accessed on January 18, 2017).

¹⁸ *Id.*

¹⁹ *Id.*

- refer, the principal, the agent, the general public, and law enforcement are left guessing as to the meaning of the DGPOA and how it should be applied. This fosters a common misconception that the agent under a DGPOA is free to engage in any activity he chooses with the frequent outcome being financial abuse, neglect, and exploitation, whether reckless or intentional.
- Cheap and readily available online “check-the-box/fill-in-the-blank” DGPOA form documents increase the opportunity for abuse, neglect, and exploitation.
 - Without adequate guidance and training, agents are often unaware of their fiduciary duties.
 - Many people do not understand that any authority under a DGPOA must be granted by a principal having the legal capacity to act, rather than being something they can just “get off the Internet” and have the principal sign. This confusion, coupled with readily available online documents, increases the risk of abuse, neglect, and exploitation.
 - People will often name multiple agents to serve simultaneously without specifying how to resolve disagreements or the refusal of third-parties to honor the document.
 - One way of preventing exploitation is to have more than one set of eyes review banking and financial transactions, but under Wyoming’s current laws, it can be difficult for non-agent family members to obtain an accounting.
 - Even though the issue is addressed under the Wyoming Rules of Professional Conduct, many attorneys are unfamiliar about working with diminished capacity clients and using DGPOAs.
 - Traditionally, contingent or “springing” DGPOAs are triggered by having doctors make the determination as to whether the principal lacks the capacity to handle their financial affairs. Recently, doctors in Wyoming have begun refusing to provide such opinions on capacity, saying that is a legal determination that must be made by lawyers and judges. Even though conducting and scoring a Mini Mental Status Evaluation (MMSE) to determine whether an individual suffers from a cognitive impairment is a rather straightforward and self-explanatory process, it is frowned upon to have anyone other than a doctor or psychiatrist perform it. This makes triggering a DGPOA more difficult to achieve and thwarts the desire of avoiding having a court declare a person incompetent to have bills paid.
 - Without being adjudicated incompetent, a non-compliant principal with diminished capacity can still legally revoke their DGPOA, thereby necessitating the filing of a guardian/conservatorship proceeding.
 - While a DGPOA can be made a public document by recording it with the office of the county clerk, not all DGPOAs get recorded. There are private companies that will scan a Health Care Power of Attorney (HCPOA) and make it retrievable online, but they generally charge an annual fee for their services and the means of alerting emergency personnel to check the company’s records

can be rather hit and miss. Currently there is no central registry of DGPOAs or HCPOAs in Wyoming, making it difficult in emergency situations to determine if there is an agent authorized to act on a person's behalf.

Recommendations

Adopt the Uniform Power of Attorney Act

1. The Joint Editorial Board for Uniform Trust and Estate Acts, composed of members of the Uniform Law Commission, the American Bar Association (ABA), and the American College of Trust and Estate Counsel (ACTEC), surveyed the leadership of the ABA Real Property, Probate and Trust Law Section, the fellows of ACTEC, and members of the National Academy of Elder Law Attorneys (NAELA), to determine whether there was actual divergence of opinion about default rules for powers of attorney or only the lack of a detailed uniform model. As reported by the Uniform Law Commission in the Prefatory Notes to the Uniform Power of Attorney Act (UPOAA), the survey found a consensus of opinion in excess of 70% that a power of attorney statute should:

- (1) provide for confirmation that contingent powers are activated;
- (2) revoke a spouse-agent's authority upon the dissolution or annulment of the marriage to the principal;
- (3) include a portability provision;
- (4) require gift making authority to be expressly stated in the grant of authority;
- (5) provide a default standard for fiduciary duties;
- (6) permit the principal to alter the default fiduciary standard;
- (7) require notice by an agent when the agent is no longer willing or able to act;
- (8) include safeguards against abuse by the agent;
- (9) include remedies and sanctions for abuse by the agent;
- (10) protect the reliance of other persons on a power of attorney; and
- (11) include remedies and sanctions for refusal of other persons to honor a power of attorney.²⁰

Incorporating these survey results, along with input from the ABA Commission on Law and Aging, the National Conference of Lawyers and Corporate Fiduciaries,

²⁰ See Uniform Power of Attorney Act text and comments at: http://www.uniformlaws.org/shared/docs/power%20of%20attorney/UPOAA_2011_Final%20Act_2016aug1.pdf (last accessed on January 18, 2017).

the American Bankers Association, AARP, and other professional groups, the Uniform Law Commission developed the UPOAA, which codifies both legislative trends and best practices, striking a balance between the need for flexibility and acceptance of an agent's authority and the need to prevent and redress financial abuse.

2. The adoption of the UPOAA in Wyoming would address numerous problem areas on which our current durable power of attorney statute²¹ is silent, including the authority of multiple agents, the authority of later-appointed guardians, the impact of the dissolution of the principal's marriage to the agent, and arbitrary refusals to honor powers of attorney by banks, brokerage houses, and insurance companies. The UPOAA provides clear statutory guidelines for agent conduct, thereby helping to deter the use of the power of attorney as a tool for financial abuse by imposing mandatory and default fiduciary duties on the agent, the imposition of liability for agent misconduct, broad provisions for judicial review of the agent's conduct, and the requirement of express language to grant certain powers that could be used to dissipate the principal's property or alter the principal's estate plan. Responding to concerns within the medical community regarding the triggering of "springing" DGPOAs, the UPOAA addresses how and by whom the determination of incapacity can be made. Such provisions render it easier to educate both the general public, professionals, and law enforcement regarding the scope, nature, and use of DGPOAs. Currently adopted by or introduced in all the states surrounding Wyoming, this Task Force views the adoption of the UPOAA as a critical step in preventing abuse and exploitation of elders and vulnerable adults in Wyoming.²²

3. Past discussions regarding the merit of model legislation which contains standardized, "check-the-box" document forms, like Article 3 of the UPOAA, have been met with resistance from some sectors of the state bar. In part, this discord has been driven by concerns that making "one-size-fits-all" documents readily available opens the door to misuse by untrained and unscrupulous persons to the disadvantage of elders and vulnerable adults. With the increase in popularity of online "do-it-yourself" legal documents without the counterbalancing guidance of clear statutory language, those fears have become a reality. With a little educational effort as to the scope and advantages of the UPOAA, utilizing existing resources like the Wyoming Bar Association publication, *The Wyoming Lawyer*, these concerns can be addressed proactively

²¹ W.S. 3-5-101 thru 3-5-103.

²² For information on the Uniform Power of Attorney Act, visit the Uniform Law Commission website at: <http://uniformlaws.org/Act.aspx?title=Power%20of%20Attorney> (last accessed on January 18, 2017).

and opposition softened. For example, the UPOAA incorporates restrictive definitions for certain critical “hot powers” like the making of gifts whereas neither the current Wyoming Durable Power of Attorney Act nor online form documents provide guidance. These hot power restrictions can be modified for purposes like Medicaid or estate planning by customized attorney drafting.

4. In emergency situations, law enforcement and medical providers can have a hard time determining who has authority to make decisions. Wyoming currently allows persons voluntarily to register their “next of kin” when applying for or renewing their driver’s license. The same mechanism might be used to identify the agent appointed under a HCPOA.

2. Improve effectiveness of guardianships and conservatorships

The traditional mechanism used to prevent abuse, neglect, or exploitation of an incompetent person is the court-appointed guardian or conservator. In practice, the effectiveness of Wyoming’s statutory guardian/conservatorship scheme in protecting elders and vulnerable adults has some loop holes. Current guardian/conservatorship problem areas:

- The needs of vulnerable adults and children under a guardian or conservatorship are substantially different, but the guardianship and conservatorship laws do not differentiate between them.
- Courts often appoint both guardians and conservators upon being petitioned, without any vetting process beyond the bare allegation that the petitioner is a “fit and proper person” to serve. For example, there is no prohibition on the petitioner having previously been convicted of a felony involving moral turpitude or any requirement that the petitioner possess the knowledge, training, or experience to understand their fiduciary duties. Merely requiring the posting of a bond may not adequately address these concerns. Bonds can be waived, and today many people who would otherwise make good fiduciaries are unable to obtain a surety bond.
- Courts are not always vigilant about the timeliness and completeness of guardian and conservator reporting.
- There is no requirement of a background check for a guardian/conservator.
- Unlike for children, there is no program or training for GALs to serve in cases involving elders or vulnerable adults in Wyoming.
- Guardians/conservators often fail to understand their fiduciary duty or lack the skill or resolution to timely file reports with the court. Unlike in other jurisdictions, there is no licensing requirement or training program in Wyoming to address this concern.
- Guardians and conservators who fail to submit their reports to the court in a timely manner, and as a result, have their appointments terminated, often

- continue to act in the capacity of guardian or conservator for years without being questioned by third-parties about their authority.
- There is no system in Wyoming for law enforcement, medical providers, or other third-parties in an emergency situation to quickly identify whether an individual is under guardian/conservatorship and who has been appointed to serve in that capacity.
 - Often there is no suitable person to act as guardian or conservator for vulnerable adults. The WGC, a 501(c)(3) non-profit corporation, can serve as the guardian or conservator of last resort for Wyoming's indigent elder and vulnerable adult populations.

Recommendations

1. Develop standardized reporting forms, available through The Wyoming Supreme Court website, which guardians and conservators can use in preparing their reports to the courts. Courts in other jurisdictions post such forms online.²³
2. Orders and letters appointing guardians and conservators should contain an expiration date so third-parties to whom such documents are presented can easily determine whether the authority purportedly being granted under such documents has expired or is still in effect. When the guardian or conservator submits their report in a timely fashion, the court could issue a new order reflecting a new expiration date when it approves the report.
3. Judicial guidelines should be established for determining the fitness of a proposed guardian or conservator to serve, including different licensure and training requirements for family and non-family fiduciaries. Courts should demand timely reporting by guardian and conservator and carefully scrutinize the reports.
4. Training is available for GALs for children. GALs for elder and vulnerable adult should also receive training to better inquire into the fitness to serve of proposed guardians and conservators, including running background checks and inquiring into appropriate training and licensure. At a very minimum, a training or information page could be posted on the Supreme Court or State Bar website.
5. Family member guardians and conservators should receive instruction or training into the nature and scope of their fiduciary duties. WGC offers a guardian training

²³ For an example, see the Idaho Supreme Court's Guardianship & Conservatorship web page at: https://isc.idaho.gov/guardianship/current_guardianship-conservatorship/forms (last accessed on January 18, 2017); see also Colorado Judicial Branch web page at: <https://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Guardian> (last accessed on January 18, 2017).

program to the public for a fee. Training modules could be posted on the Supreme Court website as has been done in other states.²⁴

6. In emergency situations, law enforcement and medical providers can have a hard time determining who has authority to make decisions. A central state registry of guardian/conservatorships should be established on the Supreme Court website for third-parties to check for this information.²⁵

7. Even though Wyoming is experiencing a period of budget cuts, the DOH should still allocate more resources to fund grants to entities like WGC to provide guardianship services for indigent persons.

3. Mandate cross-reporting between DFS and law enforcement

(See discussion at Inter-agency Communication above)

W.S. 35-20-103 (c) and (d) should be amended for complete cross-sharing of information between law enforcement and DFS. This is a simple fix that would simply mandate cross-reporting upon the initial report being made to either DFS or law enforcement. The current statute should be amended as follows:

(c) After receipt of a report that a vulnerable adult is suspected of being or has been abused, neglected, exploited, intimidated or abandoned or is committing self-neglect, the department shall notify law enforcement and may request assistance from appropriate health or mental health agencies.

(d) If a law enforcement officer ~~determines~~ receives a report that a vulnerable adult is abused, neglected, exploited, intimidated or abandoned, or is committing self-neglect, he shall notify the department concerning the potential need of the vulnerable adult for protective services.

²⁴ For an example, see the Idaho Supreme Court's Guardianship & Conservatorship web page and the Prospective Guardian and Conservator Online Training Module at: <http://www.isc.idaho.gov/guardianship/guardianship-conservatorship> (last accessed on January 18, 2017); see also Minnesota Judicial Branch's Guardianship and Conservatorship web page at: <http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx> (last accessed on January 18, 2017).

²⁵ For an example, see the Minnesota Judicial Branch's Guardian/Conservator Registry at: <http://www.mncourts.gov/Help-Topics/Guardianship-and-Conservatorship.aspx> (last accessed on January 18, 2017).

4. Strengthen adult protective services

The Wyoming Adult Protective Services Act²⁶ generally is a “solid piece of legislation” although it does contain certain weaknesses that render it difficult to enforce in some situations and therefore of limited value in preventing elder abuse, neglect, and exploitation. One of the biggest problems lies in the definition of “vulnerable adult.” To be afforded protection under the Wyoming Adult Protective Services Act, a person must be “unable to manage and take care of himself or his money, assets, or property without assistance.”²⁷ But according to the Metlife study cited above, the typical victim of elder abuse, neglect, and exploitation may only suffer some “mild cognitive impairment” and may not be so demented as to obviously need a caregiver. “Mild cognitive impairment” includes a decline in one’s financial ability which often accompanies the progressive loss of cognition. It is characterized by a difficulty in managing bank statements, paying bills, and in financial judgement.²⁸ A person can become vulnerable due to isolation, age, or disability and yet not be sufficiently incompetent to meet the APS definition of vulnerable adult. This disjuncture between the statutory definition of vulnerable adult and the clinical reality of the typical victim is one of the greatest problems faced in enforcing the Wyoming Adult Protective Services Act and preventing abuse. It should be addressed through amendment of the statute.

Recommendation

Amend the statutory definition of “vulnerable adult” under the Wyoming Adult Protective Services Act to include the population that studies have found to be most typically the victims, those who may only have some “mild cognitive impairment” but are not so demented as to need a caregiver. “Mild cognitive impairment” refers to a decline in financial ability accompanying the progressive loss of cognition and is characterized by a difficulty in managing bank statements, paying bills, and making good financial decisions.²⁹ This victim group also includes those who, through age or disability, are isolated. For an excellent discussion on elder abuse, see the interview of Deputy San Diego County District Attorney Paul Greenwood that is posted on the AARP website.³⁰ Recommended amended language might read:

“Vulnerable adult” means any person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect, exploitation, intimidation, abandonment, or self

²⁶ W.S. 35-20-101 *et seq.*

²⁷ W.S. 35-20-102(a)(xviii).

²⁸ Price, T., *Clinical Assessment of Financial Decision Making Capacity*, appearing in Factora, R., *Aging and Money, Reducing the Risk of Financial Exploitation*, Springer Science + Business Media, New York (2014), cited in *The ElderLaw Report*, Vol. XXVII, Issue 4.

²⁹ Price, T., *Clinical Assessment of Financial Decision Making Capacity*, *supra*.

³⁰ See http://www.aarp.org/politics-society/advocacy/info-02-2010/ending_elder_abuse.html (last accessed on January 18, 2017).

neglect, as those terms are defined under this section, or who lacks the capacity to consent, or is unable to provide for his own care, due to:

- (A) Diminished physical or mental abilities because of the infirmities of aging, limitations in hearing, vision, mobility, or the ability to perform the activities of daily living, or cognitive impairment;
- (B) Mental, emotional, physical, or developmental disability or dysfunction, or brain damage;
- (C) The effects of illness, injury, or accident; or
- (D) Residency in a long-term care facility, nursing home, or similar care facility or institution.

While the current definition of “vulnerable adult” closely resembles the definition of “incompetent person” under Title 3 of the Wyoming Statutes governing guardianships by focusing on a person’s inability to take care of himself or manage his property without assistance,³¹ this proposed amendment recognizes that the typical victim of abuse, neglect or exploitation often is not so cognitively or physically impaired so as to need assistance in managing their affairs, but may still be “unable to protect himself from abuse, neglect, exploitation, intimidation, abandonment, or self neglect.” The new subparagraph (A) is intended to identify that group of persons struggling with diminished abilities due to infirmities of aging, limitations in hearing, vision, mobility, the inability to perform ADLs or those with cognitive impairment but who are not so bad off as to be “incompetent” or “disabled.” Those persons who fall into the traditional “incompetent” or “disabled” categories are included under subparagraph (B). Under a new subparagraph (C), those individuals suffering the effects of an illness, injury, or accident which may temporarily render them unable to protect themselves has been included. Persons residing in long-term care facilities are automatically deemed vulnerable in subparagraph (D).

5. Adopt a civil cause of action for vulnerable adult abuse

The unfortunate reality for many abused and exploited adults is that when someone reaches out to report, the response of APS and law enforcement often is to advise the reporting party to call back when a civil judgment has been obtained. The cost of obtaining such a judgment is a practical impossibility when the reporter lacks standing to raise a cause of action, the victim suffers from a cognitive impairment, or limited resources prohibit the victim from retaining an attorney. Legislation should be adopted to

³¹ Compare “unable unassisted to properly manage and take care of himself or his property” (W.S. 3-1-101(a)(ix), with “unable to manage and take care of himself or his money, assets or property without assistance” (W.S. 35-20-102(a)(xviii)).

create a new civil cause of action which would allow elders, vulnerable adults, and interested third-parties to bring suit to recoup their losses, providing for treble damages and attorney fees. This is an approach recently recommended by the South Dakota Elder Abuse Task Force Report following the lead of Arizona and Florida.³²

6. Extend time for emergency protective services

The 72 hour timeframe in W.S. 35-20-107(c) should be amended to cover the reality that emergency services cannot reasonably be expected to occur in such a short time frame. Currently multiple extensions are required before the emergency can be removed. It is recommended that the seventy-two hour timeframe be extended to 14 days with allowance for extensions. The statute should be amended to read:

The order for emergency protective services shall remain in effect for a period not to exceed ~~seventy-two (72) hours~~ 14 days. The order may be extended for an additional ~~seventy (72) hour~~ 14-day period if the court finds that the extension is necessary to remove the emergency. The vulnerable adult, his agent, his court appointed representative, or the department, through the attorney general or the district attorney, may petition the court to set aside or modify the order at any time.

7. Improve process and resources for emergency guardianships

Often, hearings on petitions for emergency services to assist vulnerable adults who are mentally ill, critically ill, and/or elder result in the creation of an emergency guardianship. Time is of the essence in these situations, and codifying a state-wide uniform system would simplify the process. Attorneys who petition on behalf of a vulnerable adult face issues which include:

- Lack of resources: some courts may require the appointment of a GAL, which in turn may become the financial responsibility of the county. (Only in rare cases does a wealthy person require a court-appointed guardian.) Attorneys relate that they often have either no or insufficient funds to pay a guardian, which sometimes results in criticism from the bench concerning the substandard performance of the GAL—the concern justifiably being an infringement on civil rights without representation.
- Access to the medical/mental health records: medical records are important in determining incompetency; however, there is no mechanism to obtain these

³¹ See <http://www.eldersandcourts.org/~/.media/Microsites/Files/cec/South%20Dakota%20Elder%20Abuse%20Task%20Force%20ReportFinal%202015.ashx>, at p. 48 (last accessed on January 18, 2017).

records until a GAL is appointed. Having these records available before a GAL is appointed would not only reduce the burden on the GAL, it would serve to defray costs in the long run. Judges will ask if the GAL has reviewed the medical records, talked to the doctors, etc. However, access to those records is difficult, expensive, and time consuming, requiring releases, discovery, subpoenas, etc.

The EVA Task Force recommends a statutory change providing that medical/mental health records shall be immediately released to the GAL; and the GAL is authorized to confer with treating physicians. This would avoid the cost of subpoenas and releases, refusals by medical personnel to participate in fear of liability, and reduce the time and cost involved in issuing discovery or subpoenas.

A statute for the admissibility of records similar to W.S. 16-3-108 would serve to facilitate the above suggestions resulting in a streamlined process. Frequently in the administrative hearing context, records are admissible if relevant and commonly relied upon by reasonably prudent men and that would simplify matters. We recommend language similar to W.S. 16-3-108:

In guardianship/conservatorship matters irrelevant, immaterial or unduly repetitious evidence shall be excluded and no sanction shall be imposed or order issued except upon consideration of the whole record or such portion thereof as may be cited by any party and unless supported by the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs.

Finally, perhaps an appointment of a guardian/conservator commission/hearing officer would then allow these matters to be treated similar to other statewide administrative processes, i.e., hearings conducted for the Medical Commission, Division of Worker's Safety and Compensation, and the Department of Labor. Those hearings are statewide. Video hearings are available at all sites and now Google dropbox.

V. Conclusion

Wyoming has in place many of the processes and laws necessary to address the growing problems of vulnerable adult abuse, neglect, and financial exploitation. This report contains recommendations for specific changes that the EVA Task Force believes would enhance the effectiveness of those processes and laws, so that the state is in a better position to address the important issues relating to its aging population.

Appendix 1

Existing Laws and Resources

A. Summary of Current State Statutes Relating to Vulnerable Adults

Adult Protective Services Act (W.S. 35-20-101 et seq.)

The definition of “protective services” is those emergency services provided in a coordinated effort facilitated by the Department of Family Services (DFS) within communities to assist vulnerable adults to prevent or terminate abuse, neglect, exploitation, intimidation or abandonment. Those services can include casework, emergency short-term in-home services, daycare, social services, evaluations, and other emergency services.

“Vulnerable adult” means any person 18 years or older who is unable to manage and take care of himself or his property without assistance as a result of advanced age (60 years or older) or physical or mental disability. Mental disability means a condition causing mental dysfunction resulting in an inability to manage resources, carry out the activities of daily living or protect oneself from neglect, abuse, exploitation, or hazardous situations without assistance from others, which is to be determined by a qualified professional.

Any person who has reasonable cause to believe that a vulnerable adult is being abused, neglected, exploited, intimidated, or abandoned, or is committing self-neglect shall report the information immediately to law enforcement or to the DFS.

After receipt of a report that a vulnerable adult is suspected of being abused, neglected, exploited, intimidated, or abandoned, or is committing self-neglect, the DFS shall notify law enforcement and may request assistance from appropriate health and mental health agencies.

If a law enforcement officer determines that a vulnerable adult is abused, neglected, exploited, intimidated, or abandoned, or is committing self-neglect, he shall notify the DFS of the potential need for protective services.

Any report to the DFS of possible abuse, neglect, exploitation, intimidation, abandonment or self-neglect shall be investigated and a determination shall be made as to whether protective services are necessary. If services are determined to be necessary, they shall be furnished by the DFS within three days from the time the report or the notice is received by the DFS. The investigation may include an interview of the vulnerable adult.

If an emergency exists and the DFS has reasonable cause to believe that a vulnerable adult is suffering from abuse, neglect, self neglect, exploitation, intimidation, or abandonment, and lacks the capacity to consent to protective services, the DFS may petition the court for an order for emergency protective services for a period not to exceed 72 hours. The court may extend that period for an additional 72 hours. The vulnerable adult may be placed by the court in a hospital or other suitable facility.

The DFS shall coordinate a protective services program with the goal that every vulnerable adult in need of protective services will have access to the services. The DFS shall adopt rules, regulations, and standards for the services provided by the DFS necessary to effect the provisions and purposes of the Act. (The current regulations, which are thorough and detailed, can be found on the Secretary of State's website.). The DFS shall also develop and maintain statistical data which sets forth referrals by type of incident and disposition. The DFS is to also develop and participate in local multi-disciplinary community based protection teams that discuss protection issues. The DFS shall also provide training to all investigative agency personnel and shall assign workers for adult protective services within the department to carry out the activities of the statute.

The DFS may furnish protective services in response to a request for assistance from the vulnerable adult or his caregiver, conservator, guardian, *guardian ad litem*, or agent or family member. The DFS shall not serve as a caregiver. No vulnerable adult shall be required to accept protective services without consent. An exception allows the DFS to obtain a court order.

The DFS shall establish and maintain a central registry of substantiated adult protection cases which can be accessed upon application by certain service providers for employee or volunteer screening purposes.

Guardianships (W.S. 3-2-101 et seq.)

Any person may file with the court a petition for the appointment of a guardian of a minor, an incompetent person, or a mentally incompetent person.

The court may appoint any qualified person as guardian, but may not appoint a person as guardian if that person is likely to provide professional or business services to the ward, is a creditor of the ward, or has interests that may conflict with those of the ward.

The court may appoint a temporary guardian for 90 days. The court may appoint an emergency guardian but must hold a hearing on the appropriateness of the appointment within 72 hours.

Every six months the guardian shall file with the court a report on the condition of the ward, the level of incapacity, treatment, care and activities of the ward, and a description of the actions taken by the guardian.

Conservatorships (W.S. 3-3-101 et. seq.)

Any person may file with the court a petition for the appointment of a conservator for the property of a minor, incompetent person, or a mentally incompetent person. The court may appoint a conservator if the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by a preponderance of the evidence.

The conservator of the ward's estate shall protect and preserve it, invest it prudently, account for it as provided by statute, and expend it for the benefit of the ward.

Within 90 days of his appointment, a conservator shall file a report of the verified inventory of all of the property of the ward.

A conservator is to file a report each year with the court that accounts for all of the assets, property, and income of the ward during the period since the last report.

A guardianship shall cease and a conservatorship shall terminate upon the death of the ward, the court determines that the ward is competent and capable of managing his property and affairs, the court determines that the guardian or conservator is not acting in the best interest of the ward, or there is a determination of the court that the guardianship or conservatorship is no longer needed.

Durable power of attorney (W.S. 3-5-101 et. seq.)

A person, known as the principal, may designate an attorney in fact. A durable power of attorney (DPOA) must be in writing and provide that the principal intends that the authority given by the DPOA shall be exercised notwithstanding the principal's disability.

The authority of the attorney in fact is determined by the terms of the DPOA.

All acts done by the attorney in fact pursuant to the DPOA during any period of incompetency binds the principal.

Unless the DPOA otherwise specifically provides, any DPOA may be revoked by recording an instrument of revocation in the County Clerk's office.

Criminal statutes concerning abuse, neglect, abandonment, intimidation or exploitation of a vulnerable adult (W.S. 6-2-507)

A person is guilty of a crime if he intentionally or recklessly abuses, neglects, abandons, intimidates, or exploits a vulnerable adult.

Reckless abuse, neglect, abandonment, intimidation, or exploitation is a misdemeanor punishable by not more than one year in jail and/or not more than a fine of \$1,000, and the registration of offender's name in the central registry.

Intentional abuse, neglect, abandonment, or intimidation is a felony punishable by not more than ten years in prison and/or not more than a fine of \$10,000, and the registration of the offender's name in the central registry.

Exploitation is a felony punishable by not more than ten years in prison and/or not more than a fine of \$10,000, and the registration of the offender's name in the central registry.

The definitions of abandonment, abuse, caregiver, central registry, exploitation, neglect, and vulnerable adult are those contained in the Protective Services Act.

Other criminal statutes

In addition to W.S. 6-2-507, there are other criminal statutes that could be used to charge and prosecute a crime against a vulnerable adult or his property, although the following statutes do not specifically reference vulnerable adults as does W.S. 6-2-507.

- Felonious restraint (W.S. 6-2-202)
- False imprisonment (W.S. 6-2-203)
- Blackmail (W.S. 6-2-402)
- Simple assault and battery (W.S. 6-2-501)
- Aggravated assault and battery (W.S. 6-2-502)
- Reckless endangering (W.S. 6-2-504)
- Domestic assault (W.S. 6-2-510)
- Domestic battery (W.S. 6-2-511)
- Theft (W.S. 6-3-402)
- Obtaining property by false pretenses (W.S. 6-3-407)
- Forgery (W.S. 6-3-602)
- Unlawful use of credit card (W.S. 6-3-802)
- Unauthorized use of personal identifying information (W.S. 6-3-901)
- Unauthorized impersonation through electronic means (W.S. 6-3-902)

B. Summary of Resources Currently Available to Vulnerable Adults

The EVA Task Force has identified a number of existing resources for elder and vulnerable adults and other stakeholders. Those resources include the following:

Local Law Enforcement Offices: To report crimes against the elder or disabled persons, contact your local law enforcement office.

Department of Family Services, Adult Protective Services: DFS has 28 field offices located in 23 counties. In addition, DFS is charged pursuant to W.S. 35-29-101 *et seq.* with protection of vulnerable adults. To report a concern about a vulnerable adult, contact your local DFS office, local law enforcement agency, or call Wyoming's elder abuse hotlines:

- 800-457-3659 -- suspected elder mistreatment in the home or in facilities (in-state callers), 8 am-5 pm
- 307-777-3602 -- suspected elder mistreatment in the home or in facilities (out-of-state callers)
- 307-777-7123 -- healthcare facility licensing
- <http://dfsweb.wyo.gov/social-services/adult-protective-services-aps>

FAST Teams: In some Wyoming counties financial abuse specialist teams are available to address financial abuse of elder adults. Those teams serve to advise on the handling of financial abuse cases once they have been identified and are comprised of members with a variety expertise, including the county attorney, law enforcement, DFS, mental health, and financial services.

Wyoming Department of Health, Aging Division: The Wyoming Department of Health's Aging Division is committed to providing care, ensuring safety and promoting independent choices for Wyoming's older adults. Its website contains links and resources for older adults and caregivers, including information on health care facilities, healthcare consumer information, and other links and resources. The Department of Health's (DOH) four other divisions—Administration & Support, Behavioral Health, Healthcare Financing, and Public Health—may have resources appropriate for older adults as well. The Division also conducts an annual statewide symposium which serves to educate both the attendees and members of the public through media coverage of the event.

<https://health.wyo.gov/aging> (last accessed on January 18, 2017)

Wyoming Guardianship Corporation: Wyoming Guardianship Corporation (WGC) is a non-profit organization that provides guardians and conservators for incapacitated persons when no other person is willing or able to serve in that capacity. WGC also

operates the only pooled special needs trusts approved for use in Wyoming to help maintain over-resourced disabled individuals' eligibility for Medicaid benefits.

<http://wyoguardianship.org> (last accessed on January 18, 2017)

Operation Blue Angel: This program provides emergency personnel access to homes of older residents in the event of an emergency, the resident becomes incapacitated, or is otherwise unable to open the door. Contact the local sheriff's department for eligibility and participation information.

Wyoming Attorney General's Office, Consumer Protection Unit: To report instances of fraud (home equity fraud, telemarketing fraud, mail fraud, health fraud), contact the Wyoming Attorney General's office.

Attorney General's Office Consumer Protection Unit

1-800-438-5799

307-777-8962

<http://ag.wyo.gov/contact-us> (last accessed on January 18, 2017).

Wyoming Attorney General's Office, Victim Services Division: The Division of Victim Services provides awareness, education, and technical support to programs serving victims of crime throughout Wyoming. Their site contains a link to victim services programs statewide.

<http://ag.wyo.gov/victim-services-home-page> (last accessed on January 18, 2017)

<https://drive.google.com/file/d/0Bx6poawfal01Vlg0SHhbbTFoOFE/edit> (last accessed on January 18, 2017)

Wyoming Center on Aging (WyCOA): WyCOA was established by the Advisory Council to the Wyoming Geriatric Education Center and the College of Health Sciences at the University of Wyoming. It offers resources to healthcare professionals, older adults, caregivers, and students. Those resources include educational materials, DVDs, and books covering a variety of topics such as care-giving, protection against fraud, decision-making capacity, dementia, and Alzheimer's disease.

<http://www.uwyo.edu/wycoa> (last accessed on January 18, 2017)

Wyoming Senior Citizens, Inc.: A private non-profit agency that provides a variety of services to seniors and their caregivers, including its Senior Companion Program, Long Term Care Ombudsman Program, Wyoming State Health Insurance Information Program, Senior Medicare Patrol Program, and Foster Grandparent Program.

<http://www.wyomingseniors.com> (last accessed on January 18, 2017)

U.S. Department of Health and Human Services:

- **U.S. Administration on Aging:** Part of the U.S. Department of Health and Human Services which provides a variety of resources intended to connect people with disabilities, older adults, caregivers, families, and professionals to federal, national, and local programs and information.
www.acl.gov (last accessed on January 18, 2017)
- **National Institute on Aging:** The NIA is one of the 27 institutes and centers of the National Institute of Health, U.S. Department of Health and Human Services. Its mission is to conduct and support research on aging and the health and well-being of older people, and its website contains up-to-date information on numerous health and aging topics.
<https://www.nia.nih.gov/> (last accessed on January 18, 2017)
- **Department of Health and Human Services Eldercare Locator:** 1-800-677-1116.
- **MedlinePlus:** This website is established by the National Institute of Health and contains a collection of resources from the federal government and national associations. Topics include Overview, Prevention/Screening, Specific Conditions, Related Issues and more.
<https://medlineplus.gov/elderabuse.html> (last accessed on January 18, 2017)

Protection and Advocacy System, Inc.: A federally funded nonprofit corporation that was established to protect the rights of people with disabilities.

- 1-800-624-7648
- 307-632-3496
- www.wypanda.com (last accessed on January 18, 2017)

National Center on Elder Abuse (NCEA): The NCEA serves as a national resource dedicated to the prevention of mistreatment of elders. The NCEA is a source of information, data, research, and provides technical assistance and training to states and community-based organizations.

www.ncea.acl.gov (last accessed on January 18, 2017)

National Committee for the Prevention of Elder Abuse (NCPEA): The NCPEA is an association of professionals, practitioners, and researchers from various disciplines working together to address abuse, neglect, and exploitation of older and vulnerable adults. Its website contains valuable information on elder abuse and how communities, professionals, and citizens can act to prevent it.

<http://www.preventelderabuse.org/elderabuse> (last accessed on January 18, 2017)

HelpGuide.org: This website collaborates with Harvard Health Publications to provide information on mental, emotional, and social health. Its Elder Abuse and Neglect: Warning Signs, Risk Factors, Prevention and Reporting Abuse page offers valuable

information regarding topics such as: What is elder abuse?, The different types of elder abuse, Signs and symptoms, Risk factors, Reporting, and Preventing.

<http://www.helpguide.org/articles/abuse/elder-abuse-and-neglect.htm> (last accessed on January 18, 2017)

AARP: AARP is a resource on a wide variety of topics concerning older adults.

<http://www.aarp.org> (last accessed on January 18, 2017)

- **AARP Fraud Watch Network:** Research conducted by AARP has shown that consumer education can reduce an older person's likelihood of being victimized by more than 50%. To that end, AARP created the AARP Fraud Watch Network, a free resource that provides education, tools, tips, and resources to help prevent identity theft and frauds and scams. Signing up for the network means individuals will receive the latest breaking scam alerts, prevention tips based on thousands of hours of interviews with con artists and law enforcement, access to resources from AARP's network of experts, and access to a special network of everyday people who are sharing their experiences with scams, so others know what to watch out for. Individuals who sign up will also receive free education on how to shop and bank safely, create strong passwords, protect themselves from identity theft and scams, and use social media risk-free.

<http://www.aarp.org/fraudwatchnetwork> (last accessed on January 18, 2017)

- **AARP Fraud Fighter Call Centers:** AARP has a dedicated group of trained volunteers that fight the financial exploitation of older Americans through education, and outreach, data collection and by providing information and assistance. Individuals who have been a victim or think they might be a victim of a fraud or scam can call and speak with a fraud fighter volunteer to receive assistance.

1-877-908-3360

Legal Aid of Wyoming: Legal Aid of Wyoming Inc. is a 501(c)(3) non-profit organization committed to providing legal services to indigent individuals, seniors and veterans across the State of Wyoming. Clients must be at or below 200% of the federal poverty level to receive services. Senior citizens over the age of 60 have no income requirements to receive services. Due to the number of applications received by Legal Aid, not all seniors receive services. A triage of cases are performed and cases must have merit, have no conflicts of interest, and generally meet the priorities of Legal Aid. Seniors in domestic violence situations or victims of neglect receive first priority.

Legal Aid provides the following services directed toward senior clients:

1. Powers of attorney
2. Simple wills
3. Healthcare directives

4. Affidavits of survivorship
 5. Adult and child guardianships
 6. Protection orders
 7. Divorce and general family law
 8. Landlord/tenant dispute
 9. Public benefit and entitlement disputes
- 1-877-432-9955
 - <http://www.lawwyoming.org> (last accessed on January 18, 2017)

University of Wyoming, College of Law Estate Planning Legal Assistance: The UW College of Law Estate Planning Practicum (EPP) enhances access to Wyoming's legal system by offering free estate planning. The EPP helps clients maximize control over their end-of-life decisions, plan for incapacity, and declare their wishes for the distribution of assets after death. Student interns draft wills, powers of attorney, advance healthcare directives (living wills). Additionally, student interns provide general estate planning and probate advice including: assisting in simple probate proceedings, drafting affidavits of distribution of personal property, trusts, guardianships/conservatorships, and transfer on death deeds.

- Email: wyowills@uwyo.edu
- Phone: 307-766-6441

Wyoming Department of Workforce Services: Provides vocational rehabilitation services and assistance with locating jobs, and job training.
<http://www.wyomingworkforce.org> (last accessed on January 18, 2017)

Salvation Army: The Salvation Army offers many services from its community centers located throughout Wyoming. Those services vary by location, but can include adult programming, rehabilitation, services for older adults, domestic violence assistance, family counseling, and emergency shelter.
<http://www.salvationarmy.org> (last accessed on January 18, 2017)

Wyoming Services for Independent Living (WSIL): The mission of WSIL is to provide opportunities for individuals with disabilities to live as independently as possible. WSIL provides information, referrals, counseling, assistance with developing independent living skills, individual and systems advocacy, and transitions from institutional care to more independent arrangements.
<http://www.wysil.org> (last accessed on January 18, 2017)

U.S. Department of Veterans Affairs (VA): The VA offers a wide variety of services for those who have served in the military and their families. Those services include medical benefits, healthcare, disability, home loans, life insurance, education, training, vocational rehabilitation, and burial and memorial services.

<https://www.va.gov> (last accessed on January 18, 2017)

Volunteers of America: Volunteers of America is a national faith-based, non-profit organization that is dedicated to helping those in need. The organization provides housing for low and moderate incomes, and a continuum of services to the elder requiring long-term care, including nursing care, assisted living, memory support, home health care, and rehab.

<https://www.voa.org/get-help> (last accessed on January 18, 2017)

U.S. Department of Housing and Urban Development: HUD provides information and resources regarding housing. HUD can assist in finding low-income rental housing, as well as mortgage assistance and debt counseling.

<http://portal.hud.gov/hudportal/HUD> (last accessed on January 18, 2017)

Other resources include:

- Medical professionals, including doctors, nurses, paramedics, and others who work in public or private hospitals, mental health centers, clinics, home health agencies, assisted living, and nursing home facilities.
- Local food banks and pantries
- Local banks and financial institutions
- Elder law attorneys



Office of the Governor

STATE OF WYOMING
EXECUTIVE DEPARTMENT
EXECUTIVE ORDER
Order 2016-1

ELDER AND VULNERABLE ADULT TASK FORCE

WHEREAS, elders compose a major segment of the population of the State of Wyoming; and

WHEREAS, the population of persons age 65 and over in the State of Wyoming is projected to grow from 85,133 (14% of the total 587,662) in 2015 to 124,693 (19% of 624,847) by 2025; and

WHEREAS, the particular needs and concerns of the elder and vulnerable adult population must be considered as an integral part of the planning and implementation of state statutes, programs and services affecting their lives and well-being; and

WHEREAS, the health and well-being of elder and vulnerable adult citizens will positively impact the State in areas such as economic development, health care, and quality of life; and

WHEREAS, elder and vulnerable adult abuse, neglect and exploitation are long recognized human and civil rights issues that raise fundamental questions about how we value life and suffering in old age; and

WHEREAS, elder and vulnerable adult abuse takes many forms, including physical, sexual, financial, and psychological abuse and exploitation; and

WHEREAS, it is currently estimated that more than one in ten older Americans suffer from abuse, neglect, and exploitation; and

WHEREAS, financial exploitation of elders and vulnerable adults is a significant concern and is estimated to effect one in twenty older Americans; and

WHEREAS, an increased use of guardianships and conservatorships to attend to the needs of elders and vulnerable adults is accompanied by potential for abuse, fraud and theft; and

WHEREAS, experience in Wyoming and other states demonstrates that an increase in the population of older adults will likely magnify elder abuse problems.

NOW THEREFORE, in consideration of the future impact of the elder and vulnerable adult population in the State of Wyoming and the potential for abuse of those citizens, and pursuant to the authority vested in me by the Constitution and Laws of the State, I, Matthew H. Mead, Governor of the state of Wyoming, do hereby issue this Executive Order providing as follows:

1. The Elder and Vulnerable Adult Task Force is established in order to examine areas of concern regarding Wyoming's elderly population.
2. The mission of the Elder and Vulnerable Adult Task Force is:
 - a. To compile data and identify areas of concern for our elder and vulnerable adult population;
 - b. To identify existing laws and resources that could assist the elder and vulnerable adults and other stakeholders;
 - c. To identify and propose changes to Wyoming's laws and policies affecting elders and vulnerable adults;
 - d. To make recommendations for increasing stakeholder awareness of resources currently in place and available to stakeholders;
 - e. To increase public awareness of the issues concerning the elder and vulnerable adult population; and
 - f. To specifically examine Wyoming's existing laws regarding guardianships, conservatorships, powers of attorney, financial exploitation, and abuse and neglect and determine what specific changes should be made to those laws to better address the needs of the elder and vulnerable adult population.
 - g. To produce a report summarizing the Task Force's findings and recommendations.
3. Members of the Aging and Vulnerable Adult Task Force shall include an ex officio representative of the Wyoming Supreme Court to be named by the Chief Justice, an ex officio representative of the Governor's Office to be named by the Governor and the persons on the attached list.
4. The Aging and Vulnerable Adult Task Force shall be established for a duration of one year and, unless renewed for an additional year, shall terminate no later than March 1, 2017.
5. This Executive Order shall take effect upon signing and shall expire on March 1, 2017, unless extended by the Governor.

Given under my hand and the Executive Seal of the State of Wyoming this 17 day of February, 2016.




Matthew H. Mead
Governor

ELDER AND VULNERABLE ADULT TASK FORCE

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ELDER AND VULNERABLE ADULT TASK FORCE

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Recommendations to Improve Support and Response for Vulnerable, At-Risk Adults in Wyoming Needing Protective Services

Wyoming Department of Health – Division of Healthcare Financing

January 10, 2017

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I. Introduction

In February 2016, Wyoming Governor Matthew Mead signed *Executive Order 2016-1*. This Executive Order established the Elder and Vulnerable Adult Task Force (EVA Task Force or the Task Force) whose mission is to research and provide recommendations regarding areas of concern for elderly and vulnerable adult populations. These recommendations include changes in Wyoming's statute, operational improvements and proposed methods to increase public awareness. The EVA Task Force is currently drafting their final report and will submit their report to Governor Mead by February 1, 2016.

As a result of the most recent 1915(c) waiver amendment, the Wyoming Department of Health had to assure the Centers for Medicare and Medicaid Services (CMS) it was coordinating with Adult Protective Services (APS) and responding to instances of abuse, neglect and exploitation (ANE) of vulnerable adults. In partnership with the Wyoming Department of Health, Navigant Consulting Inc. (Navigant), conducted interviews with key stakeholders to identify opportunities to improve the coordination of healthcare and protective services, barriers to effective delivery of protective services and to make recommendations for improving services to at-risk and vulnerable adults in Wyoming. Navigant conducted all interviews, identified recurrent themes post-interview and provided recommendations based on the information collected. Sections I – III provide a summary of these efforts.

This report is intended to supplement the report and recommendations offered by the Elder and Vulnerable Adults Task Force. The EVA Task Force recommendations span a wide range of considerations and methods that could improve the prevention, reporting, investigation and resolution of abuse, neglect and exploitation cases. Navigant's report provides in-depth description of defined actions the Task Force and aligned agencies can pursue on a statewide level in 2017 and beyond, to drive response to the Task Force's recommendations and improve coordination between the Wyoming Department of Health and other primary and secondary responders to abuse, neglect and exploitation.

A. Elder and Vulnerable Adults Task Force Findings

The EVA Task Force reviewed publically available data, Wyoming law and agency resources to identify opportunities for improvement or changes that could better serve and protect vulnerable adults. The issues identified include:

- A need to increase education of the general public regarding the definitions, possible warning signs and their obligations to report suspected incidents of abuse, neglect and exploitation of vulnerable adults
- A need to raise awareness of available resources including the Department of Family Services
- The need for training and education for law enforcement (LE), Adult Protective Services employees and healthcare providers
- A need to improve inter-agency communication

- A need to change the Wyoming law to better serve and protect the vulnerable adult population

B. Elder and Vulnerable Adults Task Force Recommendations

The Task Force provided recommendations to address several of the findings. These are briefly summarized below:

- Implement a centralized information and referral system
- Increase and improve training for key stakeholders
- Increase and streamline inter-agency communication, particularly communication between law enforcement and the Department of Family Services, inter-agency notification when policy and statutory changes occur and increasing access to the Wyoming Online Prescription Database (WORx) system
- Update and re-evaluate Wyoming laws regarding Durable General Power of Attorney (POA), Guardianship and Conservatorship, Adult Protective Services and other miscellaneous legal issues
- Strengthen the definition of "vulnerable adult"

The research and recommendations identified by members of the EVA Task Force informed Navigant's work. To complement the Task Force, Navigant conducted additional interviews with a focus on inter-agency communication, collaborative opportunities between the Wyoming Department of Family Service: Adult Protective Services and Wyoming Medicaid and identification of trending concerns for elder and vulnerable adult populations. We describe the method and results of this process in Sections II and III of this report.

II. Stakeholder Interview Summary

A. Interviews

Navigant conducted thirteen interviews with stakeholders between December 15th and January 5th. We interviewed a wide range of interested parties including public and private stakeholders to collect a variety of perspectives and recommendations. Navigant completed interviews with the following organizations and agencies:

- Wyoming Department of Health: Division of Healthcare Financing
- Wyoming Department of Family Services: Adult Protective Services
- Wyoming Department of Family Services: Services Division
- Wyoming Medicaid Fraud Control Unit (MFCU)
- Wyoming Guardianship Corporation, Inc.
- Cheyenne Regional Medical Center
- First Bank of Wyoming

- Wyoming Judicial Branch, Supreme Court and District Court
- Legal Aid of Wyoming

The goal of each interview was to ascertain the interviewee's perspective of Wyoming's statewide system to respond to ANE of vulnerable adults and solicit recommendations about how to:

- Improve the overall system and multidisciplinary efforts
- Strengthen the partnership between the Department of Family Services, Wyoming Medicaid, law enforcement and other key State agencies
- Better support adult victims of abuse, neglect and exploitation

We tailored interview questions to fit the role and extent to which interview subjects participate in ANE response. Although we developed our interview questions in advance, we wanted the interviews to be conversational, thus interviewees did not always address all questions. We provide a sample interview template in Appendix A of this document.

B. Themes

As we conducted interviews, we identified recurrent themes specific to the policies, protocols and systemic culture that impact how cases of adult abuse, neglect and exploitation are addressed. Other topics discussed by stakeholder were noted, yet were not applicable to the focus of this report. Recurrent themes, those that several different participants identified as contributing to many of the challenges facing vulnerable adults and the entities that serve them, are the focal point upon which Navigant's recommendations are based. We identified the following themes:

Siloed Agencies and Misunderstanding of Agency Roles

One of the greatest challenges facing Wyoming's response to ANE is the lack of defined protocol to structure for inter-agency collaboration, communication and defined jurisdiction. As we conducted the system-wide scan, countless professionals expressed frustration with the difficulties they face in information sharing and working with needed partners. Many identified that other collaborating agencies often ignored or refused requests or denied referrals, citing policy or lack of capacity. Interviewees also voiced concern that their own agencies' jurisdiction and limitations were frequently misunderstood by external partners. Many provided feedback suggesting that more should be done to drive collaboration and partnership, as opposed to using territorial, siloed approaches which result in misunderstanding, frustration and service gaps.

State agencies and partnering organizations suggested that a statewide, inter-agency mission and vision shared across all partners would improve cohesion and facilitate ongoing communication and follow-up, as entities work concurrently to respond to reported cases.

Although communication and siloed work streams were a clear concern, interviewees also highlighted examples of success. Model counties, such as Park County, have healthy working relationships between individual employees of law enforcement, APS and the county's attorney and judiciary. These partnerships have bolstered ANE investigations and

led to increases in resolution and conviction of criminal cases. APS coordinators have also seen success with monthly APS meetings, but only in certain counties. These face-to-face, monthly meetings support interdisciplinary team discussion, education and problem solving. These meetings require a privacy agreement as part of sign-in and participation, alleviating many of the client privacy and Health Insurance Portability and Accountability Act (HIPAA) compliance-related barriers that exist in day-to-day inter-agency operation.

Lack of Inter-agency Data Sharing

Data sharing among State agencies was identified as a significant barrier to coordination, collaboration and timely provision of services. Several individuals discussed ways in which access to sister agency records for common clients was essential for the prevention of abuse, as well as to reduce the likelihood that someone suffers from ANE after protective services were put in place. Participants agreed that data sharing is an important aspect to combating ANE because it helps achieve better outcomes for the people being served, helped to identify possible resources a person may be eligible to receive and could result in less time spent obtaining records, which would allow more time for case management. Many states struggle with data sharing as privacy concerns have caused an overly cautious approach to data sharing by State agencies. As we heard numerous times in Wyoming, these concerns have created what can be described as imaginary barriers. However, it appears that Wyoming is on the path toward overcoming many of these barriers and processes are in place to formalize the practice of sharing information between State agencies when there is a common client.

Lack of Education and Training

Throughout the interviews, interviewees requested more professional training and public education about abuse, neglect and exploitation of vulnerable adults. Most emphasized the need for training for first responders and county/district attorneys. Several expressed concern that cases were not prosecuted or appropriately referred to APS, Legal Aid and other entities, due to a lack of training or understanding among these professionals. Interviewees felt that additional training on these subjects would likely improve referrals and reporting.

Interviewees also noted that topic-specific training related to ANE of vulnerable adults, and how to work within the statewide system, would have high impact when targeted toward new hires across disciplines. Interviewees shared that because of the high turnover rates for first responders and APS staff, it is critical to have comprehensive training, offered consistently for new staff.

APS currently provides training for external partners including law enforcement and healthcare providers. However, there is no statewide standard for these trainings, rather, they often are introduced by a local APS caseworker who champions these activities and builds and delivers the training.

Lack of National Standards for APS

Another recurring theme is the stark difference in response to cases of child ANE and ANE of vulnerable adults. Unlike child protective cases, adults cannot be categorized incompetent or guardian eligible solely due to age. For adults, issues of competency, capacity and

personal autonomy and decision-making must be considered in the process of securing a guardianship, conservatorship or other legal designation. Capacity determination is subjective, may be temporary and many interviewees advised that there are cultural challenges in Wyoming related to personal privacy, unwillingness to intrude on family dynamics and a misconception about what is truly “chosen” versus what is neglect or abuse. Compounding the ability of the social services and APS programs to resolve cases without legal action is the lack of available resources. For example, dedicated federal funds (Title IV-E, IV-B, Child Abuse Prevention Act) are available to create a statewide response system for protecting children, including funding for foster care, emergency placements and out-of-home care. However, there is currently no dedicated federal funding stream for vulnerable adults, or even requirements that states have protective services in place for vulnerable adults. As a result, few of these resources are available for the protection of adult victims of abuse, neglect or exploitation.

While the National Adult Protective Services Association (NAPSA) has published a guide entitled “Adult Protective Services Recommended Minimum Program Standards,” it focuses heavily on intake, investigation and service planning performed by APS and only references the need for coordination with other agencies¹. It does not address inter-agency communication or define best practices for how social services providers can work together to protect adults without stripping away individual autonomy and decision-making authority.

Lack of Resources

Like many states, Wyoming has encountered budget challenges in recent years. These challenges have led to budget cuts across several State agencies including those that assist vulnerable adults. APS currently operates at capacity and while caseworkers are able to address their caseloads, interviewees expressed a concern that a drastic increase in caseload would overextend the department. In addition to staffing, the resources available to APS to meet the needs of at-risk adults are largely limited to those resources held by the victim, or the victim of abuse is eligible as a result of age, income or disability status. State Medicaid and APS staff identified opportunities for closer collaboration in obtaining services for victims of ANE or those at most risk for ANE, but recognized that many of these services also have waiting lists and, due to the circumstances surrounding the abuse and / or exploitation, there may be delays in obtaining means-tested services such as the 1915(c) waiver. Interviewees expressed concern that several of the recommendations discussed to raise awareness of ANE and thus would increase caseloads and possibly reduce already scarce resources available for protective services. They advised that any reforms that would increase the reporting frequency should be coupled with an increase in resources for vulnerable adults.

Public Awareness of APS Cases

Many interviewees expressed concerns that public awareness of ANE is minimal and only occurs when a case has escalated to criminal charges and / or a trial. Little is known about early warning signs of ANE, prevention and the State statute on mandated reporting. Interviewees would like to see increased awareness among the general public of issues

¹ <http://www.napsa-now.org/wp-content/uploads/2014/04/Recommended-Program-Standards.pdf>

facing vulnerable adults and the warning signs that indicate abuse, neglect or exploitation. This is especially relevant for members of the general public who provide service to vulnerable adults. While not directly tied to the system, local merchants, bankers, post office staff and other professionals consistently interact with vulnerable adults and can often be good stewards of information. They are also best able to detect small changes in a vulnerable adult's behavior, appearance or daily patterns that can signal possible ANE.

Culture and Independence

Wyoming is well known for its frontier culture and its residents' desire for independence, self-reliance and in some areas of the State, solitude. The culture of the State agencies, including APS, appears to support this preference of the State's residents. According to stakeholders, self-neglect was the most frequently reported incidence of ANE in the State. This presents a challenge for APS as its mission is to assist vulnerable adults who find it challenging to care for themselves, but at the same time, to respect an individual's independence and choice, regardless of whether these choices are unhealthy or carry high risk. APS caseworkers described limited options for assistance and a frustration with their ability to implement services in these cases. Caseworkers and agency partners echoed a sense of resolution and inability to respond at times. While each case is individual in nature, there appears to be potential benefit in offering training related to culture, interpersonal communication, motivational interviewing and engaging resistant clients who may benefit from services. Interviewees perceive that professionals "give up" easily, or defer to personal choice when more could be attempted to engage the consumer. A deeper dive in this area may reveal where personnel shortages or lack of community engagement plays a role in this pattern.

Respect for client independence was also noted as playing a role in financial exploitation. On several occasions, interviewees referenced instances where vulnerable adults knowingly allowed themselves to be financially exploited by friends or family members in order to keep social relationships, or maintain a caregiving dynamic with their abusers. While these individuals were knowingly exploited, it was by choice and not due to a cognitive impairment. Again, APS is limited in its ability to respond to prevent future exploitation or remove an individual from an unhealthy situation. Acting swiftly in these instances often involves obtaining some measure of capacity determination from a medical professional, which entails a robust engagement with local and regional healthcare providers. Several interviewees indicated that it is not always easy to engage physicians and other sources of capacity determination. Additionally, there are limited resources within State agencies to assist with capacity determination. Variations on telemedicine, using existing handheld technologies, may present one option for providing this capacity determination in rural or frontier areas; sub-contracting with a licensed professional who can assist when a provider is not available may be another way to meet this need when there is gray area about whether a victim truly possesses the personal or financial decision-making.

These themes depict a clear picture of the vulnerable adult landscape in Wyoming, and presents several opportunities for implementing some of the needed changes necessary to begin advancing the response to ANE in Wyoming. While some of these findings will need to be addressed through statutory changes, others will require inter-agency coordination and a multidisciplinary approach to achieve results. Improving the ANE response system and

supports for vulnerable adults will require both short and long-term initiatives that change laws, formal policies, protocols and institutional culture, along with public education and awareness. These changes will require a renewed investment in protecting vulnerable adults and preventing and responding to ANE in a way that respects the autonomy and independence of Wyoming adults, and maximizes utilization of available resources for adults in need. The recommendations provided in Section III of this report reflect many of the themes identified from the stakeholder interviews as well as those noted by EVA Task Force members and provide actionable next steps that can be implemented to advance the ANE response statewide.

III. Recommendations

The work of the Task Force is an important first step in recognizing the issues to address and respond to EVA issues, there is a need for defined next steps, both in the short and long-term, that engages all stakeholders and advances the system as a whole. Taking into account the breadth of agencies, organizations and types of professionals who contribute to the statewide response to ANE, it is critical that any plan implemented be inter-disciplinary in nature, driving a collective vision, mission and a path that allows Wyoming to advance its services to vulnerable adults using approaches that encourage multidisciplinary collaboration and sustained commitment.

To strengthen the existing network of entities who have a vested interest in ANE prevention and intervention, Navigant recommends that the State move forward with a comprehensive work plan that includes the following elements:

- Multidisciplinary trainings – Regular trainings should be offered, with a defined inter-agency plan for training new and experienced hires on system-wide practices and approaches. Training should be applied using a defined curriculum that can be adjusted to relate directly to each discipline, but offer some degree of consistency in education and information sharing across partners in the ANE response system.
- Formalized Inter-agency agreements – The high impact agencies that play a significant role in ANE response need to establish memorandums of understanding (MOU). These MOUs need to offer defined work scopes, and practical, transparent information sharing agreements that are rooted in a shared mission and defined objectives for preventing, responding to and reducing incidence of ANE among vulnerable adults. These agreements should identify the agency role and how it is involved in the ANE response.
- Policy and statutory modifications – There are several statutes and policies that exist today that hinder the ANE response; a joint agency review of policy, procedures and statutes should be conducted with a lens focused toward promotion of collaboration and empowering the legal system to enforce existing law. A similar endeavor should involve APS, law enforcement, prosecuting attorneys and the Judiciary to identify opportunities for modifying statutes which inhibit an effective criminal justice response to ANE.

- Use of alternative funding streams – There are several funding opportunities, including Medicaid administrative match opportunities, that can help alleviate some of the funding constraints in the current APS system and strengthen the partnership between APS and Medicaid.

We describe each of these elements below.

A. Multi-disciplinary Trainings

One consistent message conveyed across interviewees was the need for ongoing, consistent, interdisciplinary trainings for all professionals active within the system that responds to ANE for vulnerable adults. Today, there are a number of training efforts being considered and built by several agencies, but there is not a uniform approach or delivery of training, which represents a significant missed opportunity.

Multidisciplinary systems benefit from trainings offered using multidisciplinary approaches. This type of training format is not currently in place, which limits opportunity to consistently educate the myriad of professional types engaged in ANE response, in a learning environment that promotes inter-agency discussion and knowledge. Interviewees pointed out that in those counties where there are strong and regularly scheduled ANE team meetings, the opportunity to digest information and discuss concepts through the lens of multiple industries and professions, drove shared understanding and enhanced learning.

Based on our scan of the current ANE system, we would recommend the following groups be engaged in this training. It may, in fact be appropriate to require that training be mandatory for certain State agencies and law enforcement:

- Adult Protective Services specialized caseworkers and shared caseworkers
- Adult Protective Services supervisors and leadership
- Medicaid waiver case managers and supervisor
- Law enforcement
- County and District Attorneys
- County and District Judges
- Medicaid Fraud Control Unit staff
- Professional guardians
- Local providers active on county APS teams (healthcare providers, senior service providers, legal aids, family members and caretakers, health department nurses and entities that regularly interact with the elderly such as banks, post office workers and grocery store employees)

The proposed basic curriculum for comprehensive ANE training is described in Table 1 below.

Table 1. ANE Training Curriculum

Topic	Description
Recognizing signs of abuse, neglect and exploitation; Mandatory reporting laws	The State has a very broad definition of mandatory reporters, thus this training would offer all disciplines impacted by mandatory reporting laws education on how to identify and report suspected ANE.
Wyoming Regulation 101	<p>This topic would aim to address all of the statute surrounding ANE, including:</p> <ul style="list-style-type: none"> • Definition of "vulnerable adult" • Difference between criminal and civil cases of ANE • Possible charges and penalties for criminal ANE • Sharing of State agency policy around ANE response (i.e., Medicaid critical incidence reporting, MFCU response, APS Procedures, etc.)
Legal Guardians/Conservators and other Designees	<p>In this course, participants would learn the authority granted to a court appointed guardian or conservator, be briefed on the process and requirements to appoint a legal guardian or conservator and receive education about limitations of Representative Payees, Durable General Power of Attorney, etc.</p> <p>This course will also provide an overview of capacity determination, the standards for declaring incompetency and the legal standards for appointing a Professional Guardian.</p>
Interviewing and Investigations	<p>This course would target the criminal justice response to ANE and effective coordination with protective services, emergency, regulatory, social, healthcare, victim services and other agencies in order to promote a comprehensive of investigating abuse, neglect and exploitation of at-risk adults. Consideration will be given to communicating with people with disabilities, forensic interviewing techniques and the benefits of joint investigations of at-risk adults. Training will emphasize victim protection and autonomy while promoting utilization of all available law enforcement and social service options that may be available. Multidisciplinary teams will participate in mock joint interviews and investigations illustrating the value of this approach and ways in which each enhances the effectiveness of the other.</p>
Suspicious Deaths	<p>Because disease and death are more likely with disabled and older adults as they age, those who investigate suspicious deaths have a particular challenge when it comes to deciding which deaths to investigate. This course would provide training to first responders (law enforcement, emergency medical technicians, fire departments, etc.) and medical examiners/coroners on indicators of fatal abuse/neglect, including pressure ulcers, malnutrition and dehydration to differentiate accidental/natural deaths from vulnerable adult ANE in community and institutional settings</p>

Topic	Description
	and when to notify the appropriate agencies.
Financial Exploitation and Undue Influence	This course would focus specifically on financial exploitation, risk populations and the unique methods used such as scams, lotteries, exploitation by professionals, fraud, etc. The course would educate participants about how to identify and respond to suspected exploitation, provide coaching on how to detect if an adult is subject to undue influence and educate attendees on when to cross-refer to MFCU. Curriculum for this course would also include disclosing the costs of exploitation statewide, to the extent that information is available.
Understanding Neglect and Determining Capacity	Neglect is the most common form of ANE, and can be one of the most difficult forms to address. In some instances, the neglect is criminal, but in most cases, a criminal justice response is unwarranted. This course would offer training on how to intervene in cases of neglect, including caregiver and self-neglect, while providing an overview of community resources (including both Medicaid and non-Medicaid) to help combat neglect. The course would also offer insight on capacity determination, including who is able to determine capacity and how decision making capacity is assessed and used to determine whether a person is neglected due to choice or vulnerability. This course would also offer cultural training on how to professionally engage in uncomfortable dialogue with victims of self or caregiver-neglect, who can often be defensive or difficult to engage.
Knowing your Network and Resources	In this course, the roles of the various agencies and how they contribute to ANE response, reporting and intervention are defined. The appropriate agency leads (APS, State Unit on Aging (SUA), Medicaid, Law enforcement, County/District Attorneys, Legal Aid, Guardianship, Aging and Disability Networks, etc.) will discuss the mission, operation and resources of the agencies as well as discuss key partners and what role, along with their jurisdiction, and any restrictions or limitations there maybe, in response to ANE. Participants will be introduced to the concept of multidisciplinary teams, how they function and how to establish local team meetings.

The curriculum recommended is based on the opportunities identified in the Navigant interviews as well by the EVA Task Force. It is intended to jumpstart a coordinated approach to improving the ANE response system in Wyoming. We recommend initial deployment of this curriculum via a formal conference, or day-long intensives offered in several regions of the State in 2017. Whenever possible, we strongly recommend partnering with local law enforcement agencies to host or co-host training. It is essential that professional working in a specific region of the State have an opportunity to meet and interact with other primary and secondary responders to abuse, neglect and exploitation. It is this formal, structured interaction which begins the collaborative and problem solving process.

Moving forward, it would be optimal for key agencies to identify champions and send these

designees to attend county-specific APS team meetings, held on a monthly basis and serve as a point of contact on an ongoing basis. This would help to combat the disparity in attendance that exists county by county today, and drive consistent collaboration and learning opportunities throughout the State. Finally, we recommend that key State agencies, law enforcement, county attorneys and judiciaries have a formal plan in place for training new hires within the first six months of employment.

B. Formal Inter-Agency Partnerships

One of the biggest challenges facing Wyoming's Adult Protective Services system is the lack of definition around inter-agency collaboration, communication and jurisdiction. We recommend that key statewide agency leaders convene for a day-long ANE summit in 2017, including members of the EVA Task Force and State agency leadership, to define a statewide mission and clear objectives for a systemic approach to ANE prevention, identification and response.

Once core values and approaches are defined, we would recommend that responsible agencies be provided a set time frame during which to execute formal memorandums of understanding or other agreements that encourage the following:

- Cross-referral standards and adherence to mandatory reporting
- Information sharing protocol and confidentiality agreements, up to and including shared release of information
- Protocols for referral to and from law enforcement and legal assistance
- Practices for shared responses to suspected and confirmed ANE, including formal lead agency designation
- Granting access to databases or registries such as the WORx and other centralized registries

Beyond inter-agency agreements, we would recommend that formal agreements be executed between State agencies and other relevant parties such as the Wyoming Guardianship Corporation, Inc., Legal Aid of Wyoming and other direct service providers who have a defined role in serving vulnerable adults at high-risk for ANE. Executing formal agreements provides a clear framework for partnership, and brings into the planning process legal authorities for all involved parties, which promotes thorough risk assessment and appropriate legal protections across all partnerships.

C. Policy and Statutory Modifications

Navigant's interviews also revealed opportunities to update policy and statutes to build the foundation for an APS system that cultivates cooperation and coordination. Current multi-department coordination efforts vary county by county within the State. By updated statewide policies and statutes regarding collaboration, reporting and warm transfers, multi-departmental activities may be reinforced and standardized.

Additionally, some statutes and policies, such as Durable General Power of Attorney laws, have become vulnerable to misuse. Current State statutes result in confusion, misuse of agent's authority and a lack of knowledge of their fiduciary duties. As pointed out in the EVA

Task Force Report, these statutes are also out of date in the internet age. Although readily available online resources can be beneficial to collecting general knowledge, they do not take the place of power of attorney, guardianship and conservatorship professionals that provide the legal expertise and education to the agent and principal.

Based on institutional knowledge and experience with other states, Navigant collected the following list of possible changes.

Table 2. Policy and Statutory Modifications

Modification	Description
Establish a CMT (Coordinated Multi-Departmental Team)	<p>Through rule, policy, statute or executive order, establish a long-term CMT (including leadership from Medicaid, APS, MFCU, LE). The CMT will continue the work of the Elderly and Vulnerable Adults Task Force. The role of the CMT should include:</p> <ul style="list-style-type: none"> Establish a statewide inter-agency mission and goal regarding elder issues Receive feedback from local MDTs on issues and barriers Research issues and offer solutions Recommend/modify programs, policies, regulatory changes and offers possible statutory changes <p>The CMT will bring issues and solutions to the attention of decision makers across agencies and keep the challenges facing vulnerable adults in the forefront. The CMT should also identify opportunities and criteria when investigative agencies (LE, APS and MFCU) should make expedited referrals external agencies to ensure appropriate, timely, involvement for joint investigations or division of responsibilities.</p>
Modify Statutes to Support Collaboration	<p>Vulnerable adults interact with several government agencies. By modifying statutes based on goals of inter-agency collaboration, coordination and data sharing, the State can facilitate a more seamless APS reporting and investigative process, as well as support vulnerable adults before situations escalate to the point of involving APS.</p> <p><i>Title 35, Chapter 20 of the Wyoming State Statute articulates the State laws regarding adult protective services. Included in the statute are provisions regarding multidisciplinary protection teams, mandated reporting between APS and law enforcement and confidentiality. These statutes may be modified to facilitate more collaboration among agencies. The EVA Task Force discusses this further in Section D of its report².</i></p>
Serious Incident Review Team (SIRT)	<p>To facilitate coordination between APS and Medicaid, in reference to the health, safety and welfare assurances in the 1915(c) waiver program, Medicaid should establish agreed-upon guidelines and standardized processes for reviewing serious incidents involving Medicaid recipients receiving home and community base services³.</p> <p>The purpose of the SIRT will be to serve as a joint agency review of incidents in which a vulnerable adult receiving services was seriously injured, abused, neglected, or exploited or unexpectedly died and to determine if the incident could have been prevented. The SIRT should</p>

² Note: References to the EVA Task Force Report draft dated December 14, 2016.

³ <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/waivers/downloads/3-cmcs-quality-memo-narrative.pdf>

Modification	Description
	<p>make informed recommendations for corrective actions, policy revision or practice changes to reduce future incidents.</p> <p>The SIRT will serve as the venue in which Medicaid receives updates on agency referrals to APS for compliance with waiver assurances and will receive relevant data for inclusion in an incident management system to effectively reduce or resolve instances of abuse, neglect, exploitation or unexplained death.</p> <p>The SIRT should conduct careful examination of adverse outcomes and identify opportunity to develop education, prevention and strategies that will lead to improved coordination of services to prevent or mitigate similar adverse outcomes in the future.</p> <p>Other possible benefits of SIRT include improved inter-agency case management, identification of gaps and breakdowns in agencies and systems designed to protect this population and the development of data systems that can guide the formation of protocols and policy for agencies that serve vulnerable adults.</p> <p>In addition to staff from Medicaid and APS, the SIRT Coordinator should consider inviting, on a case-specific basis (and to the extent allowed by law), participation by professionals with a legal or care relationship to the client (public guardian, behavioral health case manager, etc.).</p>
Update Guardianship, Power of Attorney Statutes and Procedures	<p>Evaluate and strengthen statutes surrounding guardianship and powers of attorney, and expand use of less restrictive alternatives while also limiting misuse and abuse of guardianship, conservatorship and POA powers.</p> <p>Future legislation can strengthen and clarify legal definitions and fiduciary duties to prevent abuse. In particular, the legal definition and process for determining capacity should be clarified. Legal representatives and healthcare professionals are often at odds over who is responsible for determining capacity and what the medical and legal standard is for making such a determination. Additionally, current laws and procedures do not leave room for more fluid definitions of cognitive impairment such as capability or methods of addressing them. While a vulnerable adult may need assistance with financial decisions, they may be fully capable of making other choices. The system should allow for adults to get the proper amount of help when needed without fully stripping them of self-decision making. Durable General Power of Attorney, Representative Payees and conservators may be more appropriate than full legal guardianship.</p> <p>However, these legislative and procedural updates may not be enough. Training and education of inexperienced guardians, conservators and POAs (i.e., family members) are necessary for agents to understand their roles and responsibilities and have resources available for guidance.</p> <p>The EVA Task Force Report also provides thoughts regarding updates to guardianship, conservatorship and POA statutes in Section E and F⁴.</p>
Revise Reporting Procedure	<p>Currently, reporting procedures are determined on a regional or county level with little statewide guidance or standardization. By developing a structured statewide reporting system, reports of abuse, neglect and exploitation will be standardized via a central intake process. Standardizing this process can enhance collaboration with law enforcement when</p>

⁴ Note: References to the EVA Task Force Report draft dated December 14, 2016.

Modification	Description
	<p>referring criminal cases of ANE.</p> <p>A new standard and centralized system would require training for intake staff on how to conduct standardized risk assessments and how to make appropriate referrals when necessary to community based agencies. Considering the large area and dispersed population in Wyoming, intake staff could be quasi-centralized. County/District staff would conduct all activities as they do today but would be provided statewide training, tools and technology. This approach would allow the State to maintain county-level staff, however they would be further trained and capable of providing warm transfers to other Wyoming State agencies, ADRC or other partners.</p> <p>Navigant has also found in our work with first responders, that they are largely unfamiliar with the array of social service agencies that exist to serve vulnerable or at-risk adults and often get frustrated trying to navigate the myriad of numbers, agencies and regions. Having multiple contact numbers presents a significant barrier which discourages law enforcement from reaching out for assistance or making referrals. Many of these barriers are overcome through the establishment of a single point of contact or single phone number dedicated to law enforcement; its purpose is to streamline access and assist first responders in connecting with the correct "social service" agency the first time.</p> <p>Centralized reporting can also be used to create standardized summary reports for local or regional law enforcement entities to assist in raising awareness of ANE and that it occurs in every community. For instance, Georgia, in addition to making immediate referrals of criminal cases to LE, also provides a monthly aggregate summary report of ANE to the chief law enforcement officer and district attorney in each county. If the data systems allow, reports formatted in a manner that is familiar to law enforcement, categorized substantiated non-criminal (self-neglect, neglect) or criminal (abuse, neglect, exploitation, etc.) could prove helpful in raising awareness.</p>
Transfer of Ongoing Services	<p>Several State agencies expressed a desire to provide additional assistance for victims of ANE as well as local organizations that play a role in servicing vulnerable adults. The roles, responsibilities and duties of each entity are poorly defined and transition of cases from one entity to another is not standardized and, in some cases, not recognized as a viable option when developing a service plan. By updating agency policies, warm transfers may be successfully completed, and accountabilities maintained across partners when other funded services are put in place that has a case management role.</p> <p>Funding for these transfers may be available through Social Services Block Grants, Community Service Block Grant, targeted case management and other funding opportunities.</p>
Partnership with State Unit on Aging	<p>Wyoming should pursue enhanced partnership with Wyoming's State Unit on Aging, Medicaid, Public Health and Adult Protective Services and Family Services to support a statewide ANE awareness campaign as well as to evaluate feasibility of transforming local senior centers into economic security centers, where individuals can learn about and apply for a broad array of social services and supports. These supports and services may be critical in preventing neglect (both caregiver neglect and self-neglect). These centers also serve as mandated reporters to help identify ANE in the community.</p>

Modification	Description
Modify the Legal Definition of Vulnerable Adult	<p>The majority of recommendations described in this report focus on adults that have already suffered from ANE. By modifying the definition of a vulnerable adult to be more inclusive of not only current victims of ANE but also those at high-risk of ANE, more preventive measures can be taken to address ANE risks before there is case escalation. Appendix B provides sample statutory language defining vulnerable or at-risk adults from several states.</p> <p>In addition to modifying State statute, there is an opportunity for State agencies to work together to establish a common understanding for what constitutes a vulnerable or at-risk adult in order to streamline access to public resources. This is beneficial not only to APS when reaching out to sister agencies for support or services, but also for agencies responsible for providing services and protections for vulnerable adults during emergency situations – recognizing that some groups may be more vulnerable in some situations or during certain times of year than others.</p>

D. Additional Funding Streams

All interview subjects expressed concern about the need for additional resources in order to increase agency capacity and better serve vulnerable adults. Although Wyoming has experienced budget cuts, there are additional opportunities for federal funding and reallocation of resources.

For example, Medicaid programs can provide funding for administrative activities in addition to paying for case management and medical costs. Recent changes in Medicaid policy also allow for funding for housing assistance and Medicaid waiver programs have a renewed focus on tracking and addressing critical incidents of ANE of vulnerable adults through waiver assurances.

Additionally, federal funding is available for programs that target older Americans and victims of crime. Although these funding opportunities are relatively small, they are specifically intended to serve vulnerable adults and build the capacity of agencies that serve them.

Table 3 provides a summary of potential funding and capacity building opportunities for Wyoming.

Table 3. Alternative Funding Opportunities

Funding Opportunity	Description
Modify Medicaid Cost Allocation Plan to include APS	<p>Modify Medicaid cost allocation plan to include certain services provided by APS as an allowable Medicaid administrative claim. Certain activities performed on behalf of Medicaid clients (i.e., eligibility determination, referrals and coordination) are reimbursable under the Medicaid Administrative Claiming process. Medicaid reimbursement for administrative claiming can be based on amount of time, number of clients or cost of services.</p> <p>Based upon initial interviews, it appears that Wyoming has in place an</p>

Funding Opportunity	Description
	<p>infrastructure and established processes to collect the information necessary to meet federal requirements for reimbursement. Currently, a portion of APS staff time is spent on Medicaid-related functions. The value of this staff time is eligible for administrative match which could result in additional funding to enhance APS staff.</p> <p>Targeted Case Management (TCM) funding can also be used to designate Medicaid resources to APS. TCM is a service that assists beneficiaries in gaining or coordinating access to necessary medical, social, and educational care or other services appropriate to their needs⁵. Wyoming currently offers TCM to adults with serious mental illness aged twenty-one and over, as well as the developmentally disabled. This service could be expanded to adults at risk or victims of ANE and this expansion can be supported with an enhanced Federal Medical Assistance Percentage (FMAP).</p> <p>It should be noted that this option requires diligence, accuracy and strict oversight. Careful consideration should be given to modifying the cost allocation plan and to structuring the process in which data is collected and audited as these activities are subject to close scrutiny.</p>
Modify 1915(c) Medicaid Waivers	<p>Wyoming currently operates a 1915(c) waiver targeting the elderly and disabled. A 1915(c) waiver allows the State to offer Home and Community-Based Services (HCBS) to qualifying beneficiaries that are outside the scope of the Medicaid State Plan.</p> <p>1915(c) waivers allow for a proportion of waiver slots to be reserved for beneficiaries in certain qualifying groups or with certain conditions, such as nursing home residents or beneficiaries transitioning from another waiver. Wyoming can reserve slots specifically for established victims of confirmed ANE.</p> <p>Additionally, Wyoming's current waiver is operated on a first-come-first-serve basis of admissions. Wyoming Medicaid could modify the existing waiver to identify vulnerable adults eligible for priority/emergency waiver services when the individual meets income and level of care criteria as a result of abuse, neglect or exploitation. This, for example, would require:</p> <ul style="list-style-type: none"> • A method of confirming abuse, neglect, or exploitation; • A risk of institutionalization or homelessness assessment due to abuse, neglect or exploration or; • A sudden change in needs that can no longer be met through existing or state plan services. <p>Consideration should be given to overall waiver capacity, the number of people currently being served within the waiver and what impact there would be in allowing priority placement for individuals who are victims of confirmed ANE.</p>
Medicaid Funding for	<p>Several interviewees noted the frustration of not being able to provide</p>

⁵ <http://kff.org/medicaid/state-indicator/targeted-case-management/?currentTimeframe=0>

Funding Opportunity	Description
Housing Assistance	<p>temporary or permanent housing for vulnerable adults. Although Medicaid does not provide Federal Financial Participation for room and board, Medicaid now can assist states with coverage of certain housing-related activities and services for at-risk adults⁶. These activities may include:</p> <ul style="list-style-type: none"> • Individual Housing Transition Services • Individual Housing and Tenancy Sustaining Services • State-level Housing Related Collaborative Activities <p>These services are intended to assist states with identifying and securing housing options for individuals with disabilities, older adults needing long-term services and supports and adults that are experiencing chronic homelessness. Interviewees suggested that affordable housing resources are more readily available in Wyoming than in other more populated states, however certain high-risk populations, especially those with serious mental illness (SMI), do not always self-maintain their housing arrangement. Thus, this type of waiver funded service may pose a significant opportunity to better stabilize HCBS service plans; thus reducing instances of recidivism due to self-neglect.</p>
Older Americans Act Program and Services	<p>The purpose of Title III of the <i>Older Americans Act</i> (OAA) is to encourage and assist State agencies to plan for and deliver aging programs and services, concentrating resources to develop greater service capacity and foster the development and implementation of comprehensive and coordinated systems to improve supportive services and multipurpose senior centers. Title III is separated into the following:</p> <ul style="list-style-type: none"> • Title III B. Supportive Services and Multipurpose Senior Centers • Title III C. Nutrition Program Services • Title III D. Disease Prevention and Health Promotion Services • Title III E. National Family Caregiver Support Program <p>Most of these fund sources may be made available for older (60+) victims of ANE or those at risk.</p> <p>Title VII of the OAA, which established the Prevention of Elder Abuse, Neglect and Exploitation program, is another resource. However, funding is limited, with only \$4.7 million dollars available nationally in FY 2015; Wyoming receives an estimated \$27,000 annually. These funds may be used to train law enforcement, healthcare providers and other professionals in how to recognize and respond to elder abuse; support outreach and education campaigns to increase public awareness; and supports State and local efforts to form prevention coalitions and multidisciplinary teams.</p> <p>The State Unit on Aging, which is primarily responsible for administering OAA funds, has additional responsibility with regard to vulnerable adults</p>

⁶ <https://www.medicaid.gov/federal-policy-guidance/downloads/cib-06-26-2015.pdf>

Funding Opportunity	Description
	<p>and ANE. Included in the federal assurances for receiving OAA funding are requirements to ensure there is coordination with existing APS; priority for people needing services related to protective services, guardianship and victims of ANE; and to coordinate services with other State programs that benefit older adults and people with disabilities.</p> <p>The OAA intends that the SUA be a leader relative to all aging issues on behalf of all older persons in the State. It should carry out a wide range of functions related to advocacy, coordination, inter-agency linkages, information sharing, brokering, monitoring and lead the enhancement of comprehensive and coordinated community-based services. As such, we recommend the SUA be involved in activities and training associated with improving the response to ANE in Wyoming.</p>
Victims of Crime Assistance (VOCA) Fund	<p>The VOCA Fund is a U.S. Department of Justice program administered by states. VOCA provides federal funding to states to compensate victims of crime, assist victims of crimes and provide funding for training and technical assistance of agencies providing crime victims' services. Assistance includes:</p> <ul style="list-style-type: none"> • Crisis intervention • Counseling • Emergency shelter • Criminal justice advocacy • Emergency transportation <p>Recent changes to VOCA allow these funds to be used by Adult Protective Services to serve underserved victims of crime⁷. Federal requirements do not require a criminal conviction or a referral to law enforcement for an APS program to use the funds; only a reasonable assumption that the client is victim of a crime. It is at the discretion of the State to award funding. However, most states award funding to local community-based organizations and public agencies through a competitive bidding process. A portion of VOCA funding can be earmarked for APS to provide support services to victims of elder abuse, emergency, short-term nursing care expenses, or to contractors to provide direct services to victims of ANE.</p>

⁷ <https://ojp.gov/ovc/voca/vaguide.htm>

IV. Conclusion

The challenges facing Wyoming's vulnerable adults are vast and complicated, as is the system that addresses them. The recommendations contained in this report provide several discreet actions that Wyoming can pursue to take advantage of the momentum created by the EVA Task Force and the recognized need to develop a coordinated system to respond to abuse, neglect and exploitation of vulnerable adults. However, these recommendations provide only a starting point. As the ANE response system continues to mature, Wyoming will recognize the need for further development and enhancement throughout the justice continuum. Our recommendations focus primarily on the role of State agencies and how these agencies interact with each other and the criminal justice system (law enforcement, prosecutors and the judiciary). Our recommendations emphasize an approach that begins to build relationships and level of trust between the social services agencies and law enforcement. These interactions should lay the foundation for future initiatives specifically targeted toward the education and training of the criminal justice system.

Until then, by removing barriers, clarifying roles and responsibilities, and cultivating a culture of collaboration, State agencies, law enforcement and the legal system, and the myriad of community organizations vested in ANE response can work together to provide the best services and resources possible to address cases of ANE and prevent future cases. There are actionable steps available to the State that will better unite the many engaged partners in today's system, and drive the system forward to become one of the premier networks in the nation for ANE prevention, identification, response and enforcement. This population represents some of the State's most vulnerable citizens for whom collective action is appropriate, to drive systems change that promotes health, quality of life and safety for Wyoming's vulnerable adults.

Appendix A Interview Template

Wyoming Adult Protective Services Review Adult Protective Services Representative Interview Template 12/1/16

Introduction

Hello, I am _____ and this is my colleague _____. We have been contracted by Dr. James Bush and Wyoming Medicaid to provide research and recommendations regarding the Wyoming Adult Protective Services system.

[INSERT BACKGROUND ABOUT INTERVIEWERS]

The intention of today's discussion is to understand your perspective of the Adult Protective Services system in the state of Wyoming and collect your thoughts on how to:

- Improve the APS system
- Strengthen the partnership between the Department of Family Services and Medicaid
- Better support adult victims of abuse, neglect and exploitation

Today's conversation will last roughly 60 minutes. Your participation in this interview is voluntary and you may stop the interview at any time. We have a notetaker present so we may accurately summarize your thoughts in our final report.

Lastly, we will not attribute any statements or quotes to you specifically within our final report and nothing you say here will impact your position or employment. Please be as candid and thorough in your answers as possible, we recognize there is opportunity for improvement, and value both positive and critical feedback to understand the current system and where to enhance it.

Do you have any questions before we begin?

Role and Responsibilities in Adult Protective Services

1. Tell us about yourself.
 - a. What is your background?
 - b. What organization do you represent? How long have you worked there?
 - c. What is your role within [or relationship with] Adult Protective Services in Wyoming?
2. Can you please tell us about your knowledge of the intake, investigation and closing process of an APS case? What is your role in that process?
3. Can you please share with us your understanding of Medicaid home-and community-based waiver programs?
4. How are intakes received from Medicaid? (may want to try to interview Medicaid staff first).
 - a. Does the process differ from reports received from other mandated reporters?

- b. Describe the investigative process?
- c. What barriers or difficulties do you have when working with APS/Medicaid/MCFU, etc.
- d. How often are Medicaid cases successfully closed?
- e. Probe from here, how could the process be improved?

The Elderly and Vulnerable Adults Landscape

1. From your perspective, what is the most frequent form of abuse, neglect or exploitation experienced by elderly and vulnerable adults that you work with?
2. What proportion of ANE victims you have worked with also received Medicaid benefits?
3. What methods would you suggest to prevent cases of abuse, neglect and exploitation?

Inter-Agency Partnerships

1. Considering the current system, how do APS, law enforcement, Medicaid and the justice system work together to detect, investigate and prosecute abuse, neglect and exploitation cases?
 - a. From your perspective, what is the primary role of the following entities in ANE cases:
 - i. law enforcement;
 - ii. the Medicaid Fraud Control Unit, and;
 - iii. the Division of Healthcare Financing (Medicaid).
 - b. How do these entities work with APS to address ANE cases?
2. How is information shared, if at all, between APS, law enforcement, and Medicaid?
 - a. What technology is used?
 - b. How is information stored?
 - c. Who has access to this information and how?
3. Why would you consider it important for these systems to collaborate and share information?
4. What reforms would you suggest to improve inter-agency relationships and communication?

Strengths and Opportunities for Improvement

1. What are the strengths of the current APS system and it's relationships with sister agencies? What can be improved upon?
2. What barriers might keep you from participating in the referral, investigation and resolution process for ANE, to the best of your ability?

Potential Policy Changes

1. Are there any statutes, policies or regulations that should be changed?
 - a. If so, what policy or regulations?
 - b. Why should these policies be changed?
 - c. What would you change about them?

Wrap-up and Closing Statements

1. Is there anything that you would like to share that we have not already discuss?
If you have any further comment or think of anything that you would like to add to this conversation, please contact _____ at _____. [provide business cards]

Appendix B Statutory Definitions for Vulnerable Adults

Wyoming:

"Vulnerable adult" means any person eighteen (18) years of age or older who is unable to manage and take care of himself or his money, assets or property without assistance as a result of advanced age or physical or mental disability;

Colorado:

"At-risk adult" means an individual eighteen years of age or older who is susceptible to mistreatment or self-neglect because the individual is unable to perform or obtain services necessary for his or her health, safety, or welfare, or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or affairs.

Georgia:

"Disabled adult" means a person 18 years of age or older who is mentally or physically incapacitated or has Alzheimer's disease or dementia.

"Elder person" means a person 65 years of age or older.

"Alzheimer's disease" means a progressive, degenerative disease or condition that attacks the brain and results in impaired memory, thinking, and behavior.

"Dementia" means an irreversible global loss of cognitive function causing evident intellectual impairment which always includes memory loss, without alteration of state of consciousness, as diagnosed by a physician, and is severe enough to interfere with work or social activities, or both, and to require at least intermittent care or supervision; or a comatose state of an adult resulting from any head injury.

"Mentally or physically incapacitated" means an impairment which substantially affects an individual's ability to: Provide personal protection; Provide necessities, including but not limited to food, shelter, clothing, medical, or other health care; Carry out the activities of daily living; or Manage his or her resources.

Florida:

"Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

"Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

Louisiana:

"Adult" means any individual eighteen years of age or older, or an emancipated minor who, due to a physical, mental, or developmental disability or the infirmities of aging, is unable to manage his own resources, carry out the activities of daily living, or protect himself from abuse, neglect, or exploitation.

"Capacity to consent" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person, including but not limited to provisions for health or mental health care, food, shelter, clothing, safety, or financial affairs. This determination may be based on assessment or investigative findings, observation, or medical or mental health evaluations.

Tennessee:

"Adult" means a person eighteen (18) years of age or older who because of mental or physical dysfunctioning or advanced age is unable to manage such person's own resources, carry out the activities of daily living, or protect such person from neglect, hazardous or abusive situations without assistance from others and who has no available, willing, and responsibly able person for assistance and who may be in need of protective services; provided, however, that a person eighteen (18) years of age or older who is mentally impaired but still competent shall be deemed to be a person with mental dysfunction for the purposes of this chapter;

"Advanced age" means sixty (60) years of age or older;

"Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts. A decision itself to refuse services cannot be the sole evidence for finding the person lacks capacity to consent;

Vermont:

"Vulnerable adult" means any person 18 years of age or older who: is a resident of a facility required to be licensed; or is a resident of a psychiatric hospital or a psychiatric unit of a hospital; or has been receiving personal care and services from an agency certified by the Vermont department of aging and independent living or from a person or organization that offers, provides, or arranges for personal care; or regardless of residence or whether any type of service is received, is impaired due to brain damage, infirmities of aging, or a physical, mental, or developmental disability that results in some impairment of the individual's ability to: provide for his or her own care without assistance, including the provision of food, shelter, clothing, health care, supervision, or management of finances; or protect himself or herself from abuse, neglect, or exploitation.

Washington:

"Vulnerable adult" includes a person: Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or Found incapacitated; or Who has a developmental disability as defined under; or Admitted to any facility; or Receiving services from home health, hospice, or home care agencies licensed or required to be licensed; or Receiving services from an individual

provider; or Who self-directs his or her own care and receives services from a personal aide under chapter.

“Incapacitated person” means a person who is at a significant risk of personal or financial harm under.