

MANDATORY REPORTING STATUTES: A NECESSARY YET UNDERUTILIZED RESPONSE TO ELDER ABUSE

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The United States is only beginning to recognize that elder abuse is a growing problem within our society. Mandatory reporting statutes have become an important mechanism for fighting elder abuse. In this note, Ms. Velick discusses and dismisses the most common arguments against mandatory elder-abuse reporting statutes. She then examines proposals to increase compliance with mandatory reporting laws in view of budgetary restrictions. Ms. Velick then suggests three low-cost methods to boost compliance, including increasing public awareness, interagency cooperation, and amending state statutes to protect reporters. She concludes that it is time for critics to stop complaining about the lack of adequate funding and take meaningful action now to combat the growing societal problem of elder abuse.

I. Introduction

A. GAO Study Sidesteps Issue of Mandatory Reporting

In 1991, the Subcommittee on Human Services of the House Select Committee on Aging conducted hearings on elder abuse.¹ An associate director of the General Accounting Office (GAO) testified that the GAO had studied the effectiveness of existing mandatory and voluntary state reporting laws for noninstitutional elder abuse.² He asserted that there was not enough data to make a

1. *Elder Abuse: What Can be Done?: Hearings Before the Subcomm. on Human Services of the House Select Comm. on Aging*, 102d Cong., 1st Sess. (1991) [hereinafter *Elder Abuse House Hearings*]. For the purposes of this note, elder abuse is defined as physical conduct that results in bodily harm or mental distress, or withholding of medication, medical treatment, food or personal care necessary for the well-being of the elderly person. CHAIRMAN OF SUBCOMM. ON HEALTH AND LONG-TERM CARE, HOUSE SELECT COMM. ON AGING, 101ST CONG., 2D SESS., *ELDER ABUSE: A DECADE OF SHAME AND INACTION* 1, 2 (Comm. Print 1990) [hereinafter *ELDER ABUSE HOUSE REPORT*]. Only noninstitutional abuse is addressed in this note.

2. *Elder Abuse House Hearings*, *supra* note 1, at 43-44.

"meaningful comparison" of voluntary and mandatory state reporting laws.³ Moreover, experts surveyed by the GAO considered factors other than reporting more effective in the prevention and treatment of elder abuse.⁴ Consequently, the GAO concluded that it was relatively unimportant whether states' reporting laws were mandatory or voluntary.⁵

B. Response to GAO Study

Surprisingly, the hearing participants had little reaction to the GAO's lack of support for mandatory reporting,⁶ even though twenty-seven states have adopted mandatory reporting statutes since 1980.⁷ Forty-three out of the fifty states now have mandatory reporting laws on the books.⁸ Furthermore, since Congress first recommended that

3. *Id.* at 44.

4. *Id.* at 44-45, 51. The other factors included increasing public awareness, developing governmental protocols to handle elder abuse, and increased inter-agency governmental cooperation. *Id.*

5. *Id.* at 44. The GAO found three reasons why voluntary and mandatory reporting laws cannot be meaningfully compared. First, state laws addressing elder abuse vary widely. In particular, definitions of abuse and neglect vary from broad and inclusive to very narrow. Second, data collection practices differ from state to state. As a result, states cannot provide comparable data on the total number of elder-abuse cases identified. Third, experts believe that many factors in addition to reporting laws have an important effect on case identification and these effects must be accounted for to determine the independent impact of mandatory and voluntary reporting laws. *Id.* at 49-50; see also Timothy W. Silva, *Reporting Elder Abuse: Should It Be Mandatory or Voluntary?*, HEALTHSPAN, Apr. 1992, at 13 (reviewing the GAO report which evaluates the effectiveness of reporting laws).

6. *Elder Abuse House Hearings*, *supra* note 1, at 35, 66, 82.

7. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI, 63.

8. *Id.* The subcommittee also included the District of Columbia to bring the total to 43 "states" that had enacted statutes or adult protective-services laws to provide for mandatory reporting of elder abuse at that time. The eight states with voluntary reporting systems at the time of the report in 1990 were Colorado, Illinois, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, and Wisconsin. *Id.* at 44. Since then, Colorado has added a mandatory reporting requirement to its protective services laws. For mandatory reporting statutes, see ALA. CODE § 38-9-8 (Michie 1992 & Supp. 1994); ALASKA STAT. § 47.24.010 (Michie Supp. 1994); ARIZ. REV. STAT. ANN. § 46-454 (West 1988 & Supp. 1994); ARK. CODE ANN. § 5-28-203 (Michie 1993); CAL. WELF. & INST. CODE § 15,600-15,755 (West Supp. 1995); COLO. REV. STAT. § 26-3.1-102 (West 1994); CONN. GEN. STAT. § 17a-431 (West 1992 & Supp. 1994); DEL. CODE ANN. tit. 31, § 3910 (Michie Supp. 1994); D.C. CODE ANN. § 6-2503 (Michie 1989); FLA. STAT. ch. 415.103 (West 1993); GA. CODE ANN. § 30-5-4 (Michie 1993); HAW. REV. STAT. § 346-224 (Michie 1994); IDAHO CODE § 39-5303 (Michie 1993); IND. CODE ANN. § 12-10-3-9 (West 1994); IOWA CODE ANN. § 235B.3 (West 1994); KAN. STAT. ANN. § 39-1431 (1993); KY. REV. STAT. ANN. § 209.030 (Michie/Bobbs-Merrill 1991); LA. REV. STAT. ANN. § 14:403.2(C) (West 1986 & Supp. 1994); ME. REV. STAT. ANN. tit. 22, § 3477 (West 1992); MD. FAM. LAW CODE ANN. § 14-302 (Michie 1991); MASS. GEN. LAWS ANN. ch. 19A, § 15 (West 1988 & Supp. 1994); MICH. COMP. LAWS ANN. § 400.11a (West Supp. 1994); MINN. STAT. ANN. § 626.557 (West 1983 & Supp. 1995); MISS. CODE ANN. § 43-47-7 (1993);

states pass mandatory reporting laws in 1980, it has not retreated from its support for the mandatory reporting of elder abuse.⁹

Mary Rose Oakar, a U.S. Representative from Ohio, was one of the few participants in the hearing who disagreed with the GAO's conclusions.¹⁰ She was cosponsoring a bill (House Bill 385) that would provide federal funds for state protective services for the elderly.¹¹ Representative Oakar expressed her fear that if states were not required to have mandatory reporting laws in place before receiving funds under House Bill 385, then "you will not see the decline in elder abuse that I think all of us want."¹²

C. The Necessity of Mandatory Reporting

Although the GAO dismissed the importance of mandatory state reporting laws for elder abuse, this note will discuss why mandatory reporting is an appropriate and necessary response to the problem of elder abuse. First, even a small increase in reporting due to a mandatory reporting requirement helps to decrease underreporting, estimated at ninety percent.¹³ Second, although critics claim that mandatory elder-abuse reporting laws are an invasion of the victims' privacy¹⁴ and an affront to elder self-determination,¹⁵ these concerns

MO. ANN. STAT. § 565.188 (Vernon Supp. 1994); MONT. CODE ANN. § 52-3-811 (1993); NEB. REV. STAT. § 28-372 (1989); NEV. REV. STAT. § 200.5093 (Michie 1992); N.H. REV. STAT. ANN. § 161-F:46 (Butterworth 1994); N.M. STAT. ANN. § 27-7-30 (Michie Supp. 1992); N.C. GEN. STAT. § 108A-102 (Michie 1994); OHIO REV. CODE ANN. § 5101.61 (Anderson 1993); OKLA. STAT. ANN. tit. 43A, § 10-104 (West Supp. 1995); OR. REV. STAT. § 410.620-.990 (Butterworth 1993); R.I. GEN. LAWS § 42-66-8 (Michie 1993); S.C. CODE ANN. §§ 43-35-5 to -90 (Law. Co-op. Supp. 1993); TENN. CODE ANN. § 71-6-103 (Michie Supp. 1994); TEX. HUM. RES. CODE ANN. § 48.036 (West 1990); UTAH CODE ANN. § 62A-3-302 (Michie 1993); VT. STAT. ANN. tit. 33, § 6903 (Equity Supp. 1994); VA. CODE ANN. § 63.1-55.3 (Michie Supp. 1994); WASH. REV. CODE ANN. § 74.34.030 (West Supp. 1995); W. VA. CODE § 9-6-9 (Michie 1990); WYO. STAT. § 35-20-103 (Michie 1994). For voluntary reporting statutes, see 320 ILL. COMP. STAT. § 20/4 (West 1993); N.J. STAT. ANN. § 52:27D-409 (West Supp. 1994); N.Y. SOC. SERV. LAW § 473-b (McKinney 1992); N.D. CENT. CODE § 50-25.2-03 (Michie 1989); 35 PA. CONS. STAT. ANN. § 10,215 (West 1993); S.D. CODIFIED LAWS ANN. § 22-46-6 (Michie Supp. 1994); WIS. STAT. ANN. § 46.90 (West 1993).

9. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XV.

10. *Elder Abuse House Hearings*, *supra* note 1, at 17-19.

11. *Id.* at 18-19.

12. *Id.* at 19.

13. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI.

14. See, e.g., Lawrence R. Faulkner, *Mandating the Reporting of Suspected Cases of Elder Abuse: An Inappropriate, Ineffective and Ageist Response to the Abuse of Older Adults*, FAM. L.Q., Spring 1982, at 69 (criticizing mandatory reporting laws because they intrude on the privacy of older adults).

15. ELDER ABUSE & NEGLECT PROGRAM, ILLINOIS DEP'T ON AGING, ELDER ABUSE AND NEGLECT 5 (1991) (explaining that voluntary reporting achieves goals envi-

pale in the face of serious underreporting¹⁶ and graphic examples of its consequences.¹⁷ Third, the argument that mandatory reporting laws require a breach of physician-patient privilege¹⁸ can be refuted in several ways. Hospitals and professional medical organizations are training medical personnel to report elder abuse while avoiding a breach of physician-patient privilege.¹⁹ Moreover, statutory waivers of the privilege in mandatory elder-abuse reporting laws minimize intrusion into the physician-patient relationship.²⁰

This note also will discuss why adopting mandatory reporting laws alone is not enough to boost reporting of elder abuse. Funding should be increased for state adult protective-services departments and other governmental agencies that provide resources for elder-abuse victims. Mandatory reporters hesitate to report elder abuse unless adequate remedial resources are available for the victims.²¹ Additionally, public awareness of elder abuse and of the reporting requirements must be raised in order to increase compliance with mandatory reporting laws.²² Next, interagency cooperation should be heightened among the various state departments and agencies responsible for different facets of service delivery to elder-abuse victims. Cooperation will lead to better coordination of scarce remedial resources.²³ Finally, elder-abuse reporting laws should be amended to

sioned by mandatory reporting proponents without unnecessary invasion of the elderly person's right to self-determination).

16. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 42. The House Subcommittee on Health and Long-Term Care evaluated questionnaires returned by the states to determine the extent of the underreporting. The subcommittee found that the states were unanimous in responding that a significant number of elder-abuse cases are never reported. For example, Indiana responded that as few as 1 in 50 cases of elder abuse are reported in that state. *Id.*

17. *Id.* at 2-4 (providing examples of serious and graphic elder abuse). Specific instances of elder abuse are discussed later in this note.

18. See, e.g., Faulkner, *supra* note 14, at 82-83; see also Christine A. Metcalf, Comment, *A Response to the Problem of Elder Abuse: Florida's Revised Adult Protective Services Act*, 14 FLA. ST. U. L. REV. 745, 753 (1986).

19. See generally Roberta Gerry, *Diagnosing Elder Abuse: AMA Urges Doctors to Identify and Act on Growing Problem*, AM. MED. NEWS, Dec. 14, 1992, at 2 (discussing the American Medical Association's education of physicians to diagnose, treat, and report elder abuse in ways that minimize invasion of victims' privacy); Flora J. Skelly, *When the Golden Years Are Tarnished*, AM. MED. NEWS, Jan. 6, 1992, at 17 (explaining the role physicians play in victims' decisions to seek or to accept help).

20. E.g., ARIZ. REV. STAT. ANN. § 46-453 (West Supp. 1994).

21. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 44. See generally Andrew Webb, *Services Strained by Funding Shortages*, AM. MED. NEWS, Jan. 6, 1992, at 41-42.

22. *Elder Abuse House Hearings*, *supra* note 1, at 51-52.

23. *Id.* at 75.

include more protection for mandatory reporters and to expressly waive the physician-patient privilege.²⁴

II. History and Background

The fastest-growing segment of the United States's population is the elderly—thirteen percent of Americans were sixty-five and older in 1990 compared with eleven percent in 1980.²⁵ When the elderly population increases, the number of elder-abuse cases grows as well.²⁶ An estimated 1.5 million elderly persons may be abused each year, up approximately 500,000 cases annually since 1980.²⁷

Elder abuse first drew the nation's attention in 1981 when the House Select Committee on Aging held hearings about the problem.²⁸ The committee recommended that states enact protective laws, including mandatory reporting requirements.²⁹ In 1980, only sixteen states

24. E.g., CONN. GEN. STAT. § 17a-431 (West 1992 & Supp. 1994) (providing that any person who makes any report pursuant to statute shall be immune from any civil or criminal liability and reporter need not give name at all); N.H. REV. STAT. ANN. § 161-F:48 (Butterworth 1994) (abrogating privileged communications). See generally *Elder Abuse House Hearings*, *supra* note 1, at 70 (discussing provisions in state statutes that encourage reporting: statutory immunity for good-faith reporting, anonymity for reporters, and language that requires only suspected abuse).

25. *ElderLaw Facts: Census Reports Growth of Older Population*, ELDERLAW REP., July-Aug. 1991, at 3.

26. See Audrey S. Garfield, *Elder Abuse and the States' Adult Protective Services Response: Time for a Change in California*, 42 HASTINGS L.J. 861, 861 (1991) (discussing the increase in elder-abuse reports in California).

27. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI. A vast majority of the states, 90%, told the subcommittee that the incidence of elder abuse was increasing. Six states told the subcommittee that the incidence of elder abuse was not only increasing, but was increasing at a rapid rate. *Id.* at XIV. Of the victims of elder abuse, approximately 29% are under 60, 11% are ages 60-69, 23% are 70-79, 27% are 80-89, and 8% are 90 or older. Approximately 40% of victims are male, and 60% are female. Deborah Sharp, *Reports of Abuse of Elderly Rise, More Go Undiscovered*, USA TODAY, June 2, 1992, at 3A. But see *Elder Abuse House Hearings*, *supra* note 1, at 83 (doubting validity of conclusion that 1.5 to 2 million cases of elder abuse occur each year). In response, see *Study to Probe Abuse of Elderly*, CHAMPAIGN-URBANA NEWS GAZETTE, Sept. 16, 1994, at C-3 (reporting that the U.S. Department of Health and Human Services will finance a study to gauge the scope of abuse of the elderly in response to concern that the number is actually higher than 1.5 million annually).

28. See H.R. REP. NO. 277, 97th Cong., 1st Sess. (1981) (summarizing data from 1980 hearings on elder abuse and exploring the issue further).

29. *Id.* at 94.

had mandatory reporting laws.³⁰ Since then, twenty-seven more states have enacted the recommended laws.³¹

These state laws generally mandate that a wide variety of professionals report known or suspected cases of elder abuse.³² The professionals include both health care and social service professionals: physicians and nurses, police officers, social workers.³³ Some state laws grant absolute immunity from any civil or criminal liability that reporters might incur; other states require that the reporters act without malicious intent and in good faith to qualify for immunity.³⁴ A number of states impose penalties for failing to report, although prosecution is rare.³⁵ A small number of states waive the physician-patient privilege in their mandatory reporting laws to encourage doctors to report suspected elder abuse without fearing reprisal from their patients.³⁶ All mandatory reporting laws specify a time frame within which reporters must report suspected abuse to designated authorities.³⁷ Designated authorities vary from state to state—protective-services statutes often allow more than one agency to receive reports.³⁸ Reporting statutes also detail the required contents of each report.³⁹

Congress has kept the elder-abuse issue in the national spotlight by continuing to study and report on this problem. Part of its efforts included holding extensive hearings before the Subcommittee on Human Services of the House Select Committee on Aging in 1991.⁴⁰ A decade after the first hearings on elder abuse, the chairman of the 1991 subcommittee was still asking, “[W]hat can be done [about elder abuse]?”⁴¹ The chairman noted that the subcommittee was returning once again to a “tragic problem that affects roughly one and a half to

30. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI.

31. *Id.* “Mandatory reporting provisions were the first major laws enacted in response to the problem [of elder abuse] and continue today to be the mainstay of most state elder abuse laws.” Garfield, *supra* note 26, at 874. For a list of states with mandatory report laws, see *supra* note 8.

32. Garfield, *supra* note 26, at 874 n.83.

33. *Id.*

34. *Id.* at 875.

35. *Id.*

36. *E.g.*, ARIZ. REV. STAT. ANN. § 46-453 (West 1988 & Supp. 1994) (waiving confidentiality).

37. Garfield, *supra* note 26, at 876.

38. *Id.*

39. *Id.*

40. *Elder Abuse House Hearings*, *supra* note 1.

41. *Id.* at 3.

two million of our older citizens—elder abuse.”⁴² This statistic seems staggering because by 1990, Congress had defined elder abuse quite broadly to include not only physical abuse and neglect, but also psychological and financial abuse.⁴³

Ten years after this serious national problem was uncovered, the Subcommittee on Health and Long-Term Care of the House Select Committee on Aging prepared a comprehensive report on elder abuse, describing the preceding decade as one of “shame and inaction.”⁴⁴ The subcommittee found that elder abuse continues to increase nationally even though many states have adopted mandatory reporting laws designed to identify and prevent the problem.⁴⁵ The report concluded that without more federal funding, the states are “severely hampered in channeling monies into this newly designated social services area—elder abuse protective services—on their own authority.”⁴⁶ This note will discuss mandatory reporting within the context of severe federal and state underfunding and will suggest methods to increase effectiveness of mandatory elder-abuse reporting laws.

III. Analysis

A. Why Mandatory Reporting Is Necessary: Addressing Some of the Criticism

1. EFFECTIVENESS OF MANDATORY REPORTING AS COMPARED WITH VOLUNTARY REPORTING SYSTEMS

A common argument against mandatory reporting is that it is no more effective than voluntary reporting.⁴⁷ This criticism may reflect a general feeling of uneasiness about “unnecessary” government involvement in a sensitive and personal matter.⁴⁸ As the GAO study demonstrated, obtaining solid data to compare the two systems can be difficult.⁴⁹ The GAO study, however, was based solely on survey re-

42. *Id.*

43. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XII.

44. *Id.* at 1.

45. *Id.* at XI.

46. *Id.* at XII.

47. See Faulkner, *supra* note 14, at 79, 89.

48. See generally Elder Abuse House Hearings, *supra* note 1, at 36 (chairman of subcommittee expressing his state’s concern about elder abuse and their feeling that mandatory laws will not help to abate the problem).

49. *Id.* at 47. There is more data on child abuse, and the public has come to believe and accept that this problem exists. Nothing is known about the back-

sponses of forty officials from state agencies on aging and adult protective services.⁵⁰ The GAO did not evaluate circumstantial evidence that indicates, at a minimum, mandatory reporting requirements are more effective than voluntary reporting laws, even if the degree of effectiveness cannot be measured exactly.

Representative Oakar testified at the 1991 subcommittee hearings about mandatory reporting of elder abuse.⁵¹ She estimated that, if voluntary reporting states adopted mandatory reporting laws, underreporting in those states would be cut in half.⁵² Studies verify the general notion that mandatory reporting laws increase reporting. One such study evaluated the impact of Washington state's elder-abuse mandatory reporting law.⁵³ The authors compared data from the first six months after the law was enacted to data from an equivalent period during the previous year and found a "significant" increase in the number of reported cases.⁵⁴

With only one in eight cases of elder abuse currently being reported, even a small percentage increase in reporting can result in large absolute numbers.⁵⁵ For example, one study estimated that switching from a voluntary system of reporting to mandatory reporting increases reports by ten percent.⁵⁶ Even this conservative estimate translates into the annual reporting of approximately 19,000 more cases of elder abuse nationwide under mandatory laws than under a voluntary system.⁵⁷

2. INVASION OF VICTIM'S PRIVACY WORTH THE SACRIFICE

Another argument against mandatory reporting laws is that they are an unnecessary invasion of the victim's privacy.⁵⁸ Critics assume that an elderly person who is mentally competent can report abuse or

grounds of the abused elderly because data have not been collected yet. Aida Rogers, *Abuse of the Elderly*, SHEPARD'S ELDERCARE L. NEWSL., July 1991, at 7, 8.

50. *Elder Abuse House Hearings*, *supra* note 1, at 51.

51. *Id.* at 35.

52. *Id.*

53. *Id.* at 72.

54. *Id.*

55. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI. "Elder abuse is one of the most underrecognized social problems, . . . and therefore underreported." Rogers, *supra* note 49, at 9 (quoting Toshio Tatara, Director of the National Aging Resource Center on Elder Abuse).

56. *See Elder Abuse House Hearings*, *supra* note 1, at 71.

57. *See id.*

58. *See generally* Faulkner, *supra* note 14, at 84-86; Metcalf, *supra* note 18, at 754.

give permission for it to be reported; thus, the state and mandatory reporters have no reason to get involved.⁵⁹ For a variety of reasons, however, some mentally competent elderly victims cannot or will not report abuse or seek assistance. One commentator has described these mentally competent victims who nevertheless fail to report abuse as “‘in a dependent position and frail, confused or ignorant of the societal protection mechanism available.’”⁶⁰ Another author describes some elderly victims as isolated and unwilling to implicate a loved one because of fear of retribution or embarrassment.⁶¹

The evidence supporting these contentions is mainly anecdotal,⁶² although the Subcommittee on Health and Long-Term Care of the House Select Committee on Aging reached some firm conclusions after thoroughly researching the subject.⁶³ The subcommittee found that many elder-abuse cases share a number of common elements: victims generally depend on their family or an unrelated care giver for care and protection, and elderly victims are less likely to report abuse than victims in other age groups, either because they are too ashamed to admit that their children or loved ones abuse them or they fear reprisals if they complain.⁶⁴ In their report on elder abuse, the sub-

59. See Metcalf, *supra* note 18, at 754. “They [lawmakers who balk at the idea of a mandatory reporting system] reason that elderly people are adults, not children, and should determine for themselves if they are being abused.” Rogers, *supra* note 49, at 7.

60. Faulkner, *supra* note 14, at 86 (quoting E. SALEND ET AL., MANDATORY REPORTING LEGISLATION FOR ADULT ABUSE, NATIONAL CONFERENCE ON ELDER ABUSE (1981)).

61. Melissa B. Robinson, States News Service, May 1, 1990, available in LEXIS, Nexis Library, States News Service File. Other descriptions of victims of elder abuse include “vulnerable” and “homebound.” *Elder Abuse House Hearings*, *supra* note 1, at 19. One graphic example of a victim’s reluctance to report abuse occurred when the son of a 79-year-old man attacked his father with a hatchet. Luckily, the son was drunk and the ax, aimed for the throat, just nicked the father’s back. In this case, the abuse had begun when the son was a teenager and continued unabated until the hatchet incident occurred. Remarkably, the father did not want to press charges, still referred to his son emotionally as “my boy,” and was astonished that the son had bought a brand new hatchet to “finish the job.” The father was embarrassed and afraid of his son and was still making excuses for him despite the attempted murder. Bella English, *It’s Society’s Secret Crime*, BOSTON GLOBE, Aug. 2, 1989, at 17.

62. See *Elder Abuse House Hearings*, *supra* note 1, at 36 (Rep. Oakar relating to the subcommittee that her evidence of dependent elder-abuse victims consisted of anecdotal examples, and the chairman responding that it is only anecdotal until you run into it yourself).

63. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI-XIV.

64. *Id.* at XIII; see also Phyllis Coons, *Harshbarger Seeks Protections for Elderly*, BOSTON GLOBE, May 21, 1992, at 40 (supporting the proposition that victims of elder abuse are ashamed to admit abuse).

committee cited an example of a mentally competent eighty-two-year-old woman who was brutally beaten by her forty-year-old daughter and was hospitalized for eight weeks.⁶⁵ The mother was passive, withdrawn, weak, and so intimidated by her daughter that she was incapable of taking remedial action such as moving out of her daughter's home or even seeking help.⁶⁶ In another case, an elderly woman was subjected to passive abuse when her family neglected to feed and bathe her properly.⁶⁷ She weighed sixty pounds and was severely dehydrated when she was finally admitted to the hospital.⁶⁸ The victim would not confirm to the police that her family had denied her care because she did not "want to get anyone in trouble."⁶⁹

Elder-abuse victims also tend to be isolated from others in the community, which compounds the problem of underreporting. One Massachusetts district attorney, who has implemented a comprehensive plan to combat elder abuse, contrasted child abuse with elder abuse in terms of the latter's isolation.⁷⁰ He concluded that at least child-abuse victims are seen by others when they go to school or to doctors and when they interact with other children.⁷¹ In contrast, elder abuse thrives on total isolation—it is a "secret crime."⁷² Therefore, when people do spot a victim, it is crucial that they report the suspected abuse. A physician may be the only person outside the family who regularly sees the elderly person.⁷³ He or she is uniquely qualified to diagnose and report suspected abuse.⁷⁴ Consequently, the physician, or any other professional who suspects abuse, should be required to report it because another opportunity to address the problem may not arise.⁷⁵

A recent University of New Hampshire study discovered yet another impediment to reporting.⁷⁶ The study found that a number of

65. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 1.

66. *Id.* at 2.

67. *Id.*

68. *Id.*

69. *Id.*

70. English, *supra* note 61, at 17.

71. *Id.*

72. *Id.*

73. Gerry, *supra* note 19, at 2.

74. *Id.*

75. See *id.*; see also Metcalf, *supra* note 18, at 753-54 (suggesting that elder abuse will be difficult to discover unless doctor or other professional reports the suspected abuse).

76. David Streitfeld, *Abuse of the Elderly: Often It's the Spouse*, WASH. POST, Nov. 26, 1986, at D5.

elder-abuse victims actually assisted their abusers with cooking, cleaning, housing, and transportation.⁷⁷ The victims were reluctant to acknowledge or to report the abuse because they were unwilling to leave the abuser without adequate care.⁷⁸ Apparently, families try to stick together, both when the victim relies on the abuser and when the abuser depends upon the victim.⁷⁹

Mandatory reporting can bypass this misplaced concern about family members, which may take precedence over the victim's own well-being. Mandatory reporting also addresses situations in which victims are dependent on their families for care. In both instances, the reporter can give the victim an out by asserting that the report is required by law.⁸⁰ Reporters and even victims can say to themselves, "It is not me. I have to do this."⁸¹ The California Department of Social Services discovered the true value of mandatory reporting when it evaluated 12,000 documented reports of elder abuse that occurred in California in 1987.⁸² The survey found that eighty-five percent of abuse victims were willing to accept some help with respect to the abuse.⁸³ This statistic clearly indicates that once the abuse victim is given an out, most likely he or she will acknowledge the abuse and accept remedial services.

Once a report is made under a mandatory reporting system, almost all states restrict access to elder-abuse records in some manner.⁸⁴ Most statutes stipulate that the initial report and all information gathered during the subsequent investigation are not a matter of public record.⁸⁵ A number of states mandate total confidentiality, and others provide that information may be released with the victim's permission.⁸⁶ This protection also helps to blunt the argument that mandatory reporting is an invasion of privacy because confidentiality requirements protect the rights and sensibilities of the family members involved.⁸⁷

77. *Id.*

78. *Id.*

79. Rogers, *supra* note 49, at 9.

80. See *Elder Abuse House Hearings*, *supra* note 1, at 36.

81. *Id.*

82. Garfield, *supra* note 26, at 920.

83. *Id.* at 921.

84. *Id.* at 887.

85. *Id.*

86. *Id.* at 888.

87. *Id.*

3. PHYSICIAN-PATIENT PRIVILEGE NOT HARMED

Critics claim mandatory reporting laws may cause a breach of physician-patient privilege,⁸⁸ and "[t]his situation creates a serious conflict between the physician's or clergyman's professional and legal responsibilities."⁸⁹ Although many reporters are professionals who have an obligation to uphold their clients' privilege of confidential communication, specific provisions within some state reporting statutes expressly abrogate many of these privileges.⁹⁰ Those states' statutes that fail to provide the waiver are less effective. They will be addressed in a later section about improving the effectiveness of mandatory reporting laws.

Some critics believe that a statutory exception to the physician-patient privilege for reporting elder abuse cannot be justified.⁹¹ Their view is that exceptions are only justified when there is a "significant social interest" at stake, such as preventing violent crimes or the use of dangerous drugs.⁹² However, states that have imposed mandatory reporting requirements found that preventing elder abuse is a significant social interest. In fact, many state statutes are prefaced with a legislative policy section or a declaration of intent similar to section 15,600 of California's Welfare and Institutions Code: "[T]he Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse"⁹³

A recent development that will minimize forced breach of the physician-patient privilege under mandatory reporting laws is the American Medical Association's (AMA) National Campaign Against Family Violence.⁹⁴ The AMA is training health care professionals to encourage elder-abuse victims to willingly utilize remedial services.⁹⁵ AMA training programs teach doctors how to ask the victim questions

88. See Faulkner, *supra* note 14, at 82-83; Garfield, *supra* note 26, at 884.

89. Metcalf, *supra* note 18, at 753.

90. Garfield, *supra* note 26, at 884.

91. See Faulkner, *supra* note 14, at 83.

92. *Id.* Faulkner actually takes the argument one more step and hypothesizes that victims of elder abuse are unlikely to be participants in a crime. Therefore, there is no reason to create an exception to the physician-patient privilege for their abuse. He also argues that the perpetrator of the "crime" of elder abuse is unlikely to commit it against members of the general public. *Id.*

93. CAL. WELF. & INST. CODE § 15,600 (West Supp. 1994).

94. Teri Randall, AMA, *Joint Commission Urge Physicians Become Part of Solution to Family Violence Epidemic*, 266 JAMA 2524, 2524 (1991).

95. *Id.*

about violence and how to discuss such issues as safety options, legal remedies, and advocacy programs.⁹⁶ This open and supportive approach should alleviate some of the concerns about breach of physician-patient privilege because physicians will encourage victims of elder abuse to report on their own behalf.⁹⁷

Perhaps the most significant aspect of the AMA's campaign is its strong support for mandatory reporting laws.⁹⁸ In 1992, the AMA organized a network of violence-prevention committees in state and local medical societies to lobby for state and federal legislation pertinent to the mandatory reporting of elder abuse.⁹⁹ The AMA is even drafting model state and federal legislation for those areas not adequately addressed by existing law.¹⁰⁰ This stance demonstrates that physicians are more concerned about getting help for elder-abuse victims than they are about potential breaches of physician-patient privilege.

B. Improving the Effectiveness of Mandatory Reporting Laws

Although the shortcomings of mandatory reporting laws are partially addressed by the above arguments, some serious problems still exist with these laws. Forty-three states now have mandatory reporting requirements in place,¹⁰¹ yet only one in eight cases of elder abuse is reported.¹⁰² Now that the laws are on the books, compliance with them must be increased. Four possible methods to increase compliance will be discussed below: (1) increase funding of state adult protective services; (2) publicize mandatory reporting requirements; (3) increase interagency cooperation to provide more effective delivery of remedial services; and (4) amend state statutes to protect reporters.

96. *Id.* The AMA has recently developed protocols that encourage physician inquiry about abuse, even if specific indicators are not present, for use in a variety of medical settings. *Id.*

97. *Id.* This supportive approach also will address concerns that victims of elder abuse may not seek medical care because of fear that the physician will breach the physician-patient confidentiality and report the abuse. See generally Faulkner, *supra* note 14, at 83; Metcalf, *supra* note 18, at 753.

98. Randall, *supra* note 94, at 2527.

99. *Id.* The societies will lobby for more state and federal legislation addressing spousal and child abuse at the same time. *Id.*

100. *Id.*

101. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI.

102. *Id.* at XI; see also Rogers, *supra* note 49, at 8.

1. INCREASE FUNDING TO STATE ADULT PROTECTIVE-SERVICES DEPARTMENTS

Many states have enacted adult protective-services legislation to combat elder abuse. Adult protective services are services provided by the state which are necessary to prevent abuse and neglect.¹⁰³ Protective-services legislation generally provides guidelines for reporting, facilitated access by investigators to suspected victims, and social and health services for victims.¹⁰⁴ A standard list of social and health services includes medical care for physical and mental health needs; assistance in personal hygiene; food, clothing, and adequately heated and ventilated shelter; protection from health and safety hazards; protection from physical mistreatment; and protection from exploitation.¹⁰⁵

The importance of fully funded adult protective services, beyond assisting the victim, is that reporters will have a greater incentive to report elder abuse if they know that adequate remedial services are available to support the victim.¹⁰⁶ A system in which legislated services are not provided or are inadequate because of underfunding forces physicians and social workers who suspect elder abuse to make tough decisions. They must either comply with mandatory reporting requirements or leave the elderly person in the abusive situation where the victim is at least fed, clothed, and sheltered.

Generally, state adult protective-services legislation is comprehensive. The state statutes detail various types of services that state agencies and health departments should provide.¹⁰⁷ Unfortunately, states may not provide some or even all of the services described in the statutes because state and federal funding is insufficient.¹⁰⁸

The 1990 report on elder abuse by the House Subcommittee on Health and Long-Term Care continually refers to government's "woefully inadequate" funding of adult protective services.¹⁰⁹ The report also notes that many states which passed mandatory reporting laws during the 1980s expected to receive federal funding for adult protec-

103. Metcalf, *supra* note 18, at 749-50.

104. *Id.* at 749.

105. Laurie A. Lewis, *Toward Eliminating the Abuse, Neglect, and Exploitation of Impaired Adults: The District of Columbia Adult Protective Services Act of 1984*, 35 CATH. U. L. REV. 1193, 1196 n.27 (1986).

106. See generally Webb, *supra* note 21, at 41; Daniel A. Quirk, *An Agenda for the Nineties and Beyond*, GENERATIONS, Summer-Fall 1991, at 23.

107. See generally Webb, *supra* note 21, at 41.

108. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 67, 69.

109. *Id.* at 69.

tive services.¹¹⁰ The states anticipated that eligibility for such funding would be based in part on the enactment of mandatory reporting requirements.¹¹¹ The Elder Abuse and Prevention Act (House Bill 7551), a bill originally introduced in the Ninety-sixth Congress, promised funding for state adult protective services.¹¹² When the bill failed to pass, however, states were hard pressed to actually carry out their new adult protective-services mandates.¹¹³ Congress did pass another piece of legislation aimed at helping the elderly, the Older Americans Act Amendments of 1987, but it did not appropriate any money to implement the Act until 1990.¹¹⁴ Even then, Congress appropriated only a meager \$3 million.¹¹⁵ If the money were distributed equally among the fifty states, each state would have received the trivial sum of \$60,000.¹¹⁶

The elder-abuse report then made the "shocking" discovery that, in 1989, each state spent about \$45.03 per resident child on protective services, while spending only \$3.80 per elderly resident on adult protective services.¹¹⁷ In addition, protective services for the elderly accounted for only about 3.9% of the average state's budget in 1989.¹¹⁸ This figure represents a forty-percent decrease from the 1980 average state funding level for adult protective services.¹¹⁹ States also have been unable to channel funds into newly designated elder-abuse protective services because the federal government has reduced federal social services block grants by nearly one-third.¹²⁰ These grants are the primary source of existing federal funding for state protective services.¹²¹

After the elder-abuse report was released, the 101st Congress appropriated \$5.5 million in federal funding to combat elder abuse.¹²²

110. *See id.* at V.

111. *See id.*

112. *Id.* at 66.

113. *Id.* at 67.

114. *Elder Abuse House Hearings, supra* note 1, at 4.

115. *Id.* at 24.

116. *See generally* Quirk, *supra* note 106, at 26 (noting that the promise of federal legislation to aid the elderly has not been realized).

117. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 67. In Massachusetts, the disparity is even more severe. The state spent \$229.95 per child in 1989 and only \$2.48 per elderly resident. Robinson, *supra* note 61.

118. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 67.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Elder Abuse House Hearings, supra* note 1, at 24.

As part of the fiscal year 1991 Labor-HHS appropriations bill, Congress earmarked \$3 million for state elder-abuse programs and \$2.5 million for the state long-term care ombudsmen program.¹²³ However, this minimal amount of funding will not even begin to close the gap between current funding levels and actual need.¹²⁴ In fact, some critics of the government's limited funding of adult protective services insist that society must change its attitude toward the elderly before the government will fund elder-abuse programs adequately.¹²⁵ They argue that the United States must reexamine its current notion of equity in distribution of government resources and become an "elder-oriented" society such as the Scandinavian countries and the Netherlands.¹²⁶

This idealistic point of view is admirable, but it ignores the reality of scarce federal resources. States *must* find low-cost ways to prevent and identify elder abuse, as well as to increase compliance with mandatory reporting laws, without relying on the federal government to fully fund adult protective services.¹²⁷

2. INCREASE PUBLIC AWARENESS OF ELDER ABUSE AND OF THE REPORTING REQUIREMENTS

The same GAO report that dismissed the importance of mandatory reporting requirements recommended increasing public awareness as a strategy for combatting elder abuse.¹²⁸ The GAO surveyed forty public officials from adult protective-services agencies in twenty-five states and found that they rated a high level of public and professional awareness as the most effective factor in elder-abuse identification.¹²⁹ Little headway will be made in treating or eliminat-

123. *Id.*

124. Webb, *supra* note 21, at 42. Advocates are, at best, cautiously optimistic. They say it is heartening that Congress seems to be taking a greater interest in these issues, but they question the extent to which this interest will translate into actual dollars. *Id.*

125. Rogers, *supra* note 49, at 9.

126. *Id.* One commentator asserts that during the '90s, the United States must consider new ways to organize effective responses to the needs of older people, gain experience with new delivery vehicles, and fundamentally address funding realities. New concepts must be forged and tested. New attitudes must be considered by administrators, consumers, providers, and payers about both public and private roles in meeting the needs of the older population. Quirk, *supra* note 106, at 26.

127. See *Elder Abuse House Hearings*, *supra* note 1, at 82 (noting that the public is unaware that reporting laws fail to provide additional funding).

128. *Id.* at 51, 74.

129. *Id.* at 51.

ing elder abuse without an informed public and trained governmental service staffs to identify elder abuse and to provide remedial resources.¹³⁰

A recent North Carolina study reinforced this conclusion when it found that eighty percent of the doctors interviewed did not know there was a state law requiring them to report abuse.¹³¹ In response to such studies, the director of the National Aging Resource Center on Elder Abuse said, "[W]ho's to blame? It's easy to blame physicians, but someone has failed to inform them and those adult protective service people of the law."¹³² Before reporters can report abuse, they must know how to recognize abuse, that they are required to make the reports, and how reports are made.

The 1991 House hearings on elder abuse claimed there was no objective evidence demonstrating that education increased awareness and thus reporting of elder abuse.¹³³ Despite inadequate objective evidence, however, the report concluded that the correlation between education and increased reporting seemed a "reasonable connection."¹³⁴ Objective evidence is now available to confirm that connection. There was a 350% increase in elder-abuse reports from 1987 to 1989 when a program in Middlesex County, Massachusetts provided special training on the state's mandatory abuse reporting law.¹³⁵ Similarly, Montana officials encouraged and trained adult protective-services staff to publicize elder abuse and the services available to victims in their communities.¹³⁶ Reported cases of abuse increased fifty percent in one year.¹³⁷

The successful Middlesex County program is an action plan developed by the Middlesex County District Attorney.¹³⁸ The District Attorney's Office implemented the action plan in 1988 in response to

130. See *id.* at 74.

131. Rogers, *supra* note 49, at 7. Some professionals would even deny that the problem of elder abuse exists. Some would say the problem exists, but that it only touches an insignificant number of people. Some of those same skeptics would say that the problem rests with social workers trying to find a new cause or problem. *Id.*

132. *Id.* (quoting Toshio Tataru).

133. *Elder Abuse House Hearings*, *supra* note 1, at 74.

134. *Id.*

135. Robinson, *supra* note 61.

136. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 38.

137. *Id.* at 38-39.

138. SCOTT HARSHBARGER, DISTRICT ATTORNEY'S OFFICE OF MIDDLESEX COUNTY, MASS., ACTION PLAN FOR CRIMES AGAINST THE ELDERLY (1988) [hereinafter ACTION PLAN].

extreme underreporting of elder abuse.¹³⁹ The District Attorney was convinced that increasing public awareness, better training of the professionals who are in contact with the elderly, and enhancing awareness among the elderly of the available resources would encourage more people to report elder abuse and enable the office to respond more effectively to the reports.¹⁴⁰ The action plan targets the four groups of people who are most likely to come in contact with the elderly for education and training: the police, state protective-services workers, staffs of hospitals (including clinics and other medical service providers), and employees of financial institutions.¹⁴¹ The training programs explain and describe warning signals of physical and emotional abuse and neglect, how and where to report abuse once it is suspected, and how to report deaths where abuse is suspected as the precipitating factor.¹⁴²

The professional staffs of hospitals and clinics, including physicians, nurses, and social workers, are all mandated to report elder abuse in Massachusetts.¹⁴³ Nonetheless, these professionals routinely reported very few cases of elder abuse before the Middlesex County action plan was implemented in 1988.¹⁴⁴ Assistant district attorneys now meet with representatives of hospitals, clinics, and other medical institutions to educate them about their reporting responsibilities and to encourage them to develop internal protocols for handling suspected elder abuse and neglect.¹⁴⁵

Professional medical organizations also recognize the value of increasing physicians' awareness of elder abuse and of the mandatory reporting laws. The AMA designed its National Campaign Against Family Violence partly to educate physicians to recognize and report suspected elder abuse.¹⁴⁶ Furthermore, the AMA's ethics guidelines for physicians include considering elder abuse as an alternative diagnosis and avoiding misconceptions that can affect diagnosis and

139. *Id.* at 3.

140. *Id.*

141. *Id.* at 11.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. Randall, *supra* note 94, at 2524. The medical consequences of physicians' misperceptions about the existence of elder abuse are: failure to consider abuse in diagnosis; disbelief, even when signs are evident; reluctance to broach the subject; and failure to acknowledge elder abuse in the medical record. *Family Violence: A Doctor's Ethical Duty*, AM. MED. NEWS, Feb. 3, 1992, at 2.

management of a case.¹⁴⁷ The AMA's guidelines also encourage physicians to learn protocols for diagnosing and treating abuse, including state reporting requirements, protective services, and community resources.¹⁴⁸

By December 1992, the AMA had distributed more than 20,000 copies of its elder-abuse guidelines to medical schools, residency training programs, and local medical societies.¹⁴⁹ The guidelines provide a list of questions for physicians to ask suspected elder-abuse victims and advise which steps to take if any of the answers indicate a need to report.¹⁵⁰ The guidelines stress that mistreatment need only be suspected, not proved, in order to report.¹⁵¹ Physicians are cautioned that if they treat abused elders and do not report suspected mistreatment, they may be civilly or even criminally liable.¹⁵² The guidelines also advise that "most experts" believe that a physician's duty to report suspected abuse supersedes physician-patient confidentiality issues.¹⁵³

The medical media also is educating physicians about elder abuse. *American Medical News* recently reprinted a portion of "Guidelines for Physicians: Identification of Abuse Victims," a document prepared by the Elder Abuse Prevention Project, Community Care Organization of Milwaukee County.¹⁵⁴ The guidelines list a number of signs of elder abuse.¹⁵⁵ Physical indicators include bruises, malnutrition, poor hygiene, and duplication of medication.¹⁵⁶ Behavioral indicators are agitation, anxiety, withdrawal, confusion, fear, and nonresponsiveness.¹⁵⁷ Care-giver indicators include an elderly person's silence within the presence of the care giver, the care giver characterizing the elderly person's medical condition as intentional or as a deliberate act, and a care giver's previous history of abusing others.¹⁵⁸ The guidelines also recommend that physicians document all sus-

147. *Family Violence: A Doctor's Ethical Duty*, *supra* note 146, at 2.

148. *Id.*

149. Gerry, *supra* note 19, at 2.

150. *Id.*

151. *Id.*; see Jay E. Jorgensen, *An Intervention Program for Dentists to Detect Elder Abuse and Neglect*, PUB. HEALTH REP., Mar.-Apr., 1993, at 171 (discussing that even dentists are attempting to educate themselves to recognize signs of elder abuse).

152. Gerry, *supra* note 19, at 25.

153. *Id.*

154. Skelly, *supra* note 19, at 17.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

pected elder abuse.¹⁵⁹ Accurate elder-abuse reports depend on physicians documenting suspected victims' physical and emotional symptoms.¹⁶⁰

Thus, affirmative evidence suggests that increasing public awareness of elder abuse and of reporting requirements does increase compliance with mandatory reporting laws. States that lack educational programs must develop them through adult protective-services departments, through district or state's attorneys' offices, or by cooperating with professional associations.

3. INCREASE INTERAGENCY COOPERATION

The GAO survey of state adult protective-services agencies demonstrated that public officials believe mandatory reporting is required to "define the responsibilities of government and private citizens . . . and [to] establish official procedures for making, receiving, and investigating reports."¹⁶¹ The dilemma is that state health departments and agencies, although aware of reporting requirements, have not developed an actual protocol for abuse identification and referral.¹⁶²

A contributing factor to this apparent lack of progress is that state elder-abuse legislation generally places implementing authority with human services or law enforcement agencies rather than with health departments and adult protective-services agencies.¹⁶³ State health departments are ostensibly familiar with the law and concerned about the welfare of vulnerable populations, and they are critically situated to educate health providers about elder abuse and their reporting obligations.¹⁶⁴ State health departments and adult protective-services agencies are in a unique position of authority and possess knowledge to initiate such programs as awareness campaigns for reporters and in-service training of health care providers.¹⁶⁵

159. *Id.*

160. *Id.*

161. *Elder Abuse House Hearings*, *supra* note 1, at 52.

162. Phyllis Ehrlich & Georgia Anetzberger, *Survey of State Public Health Departments on Procedures for Reporting Elder Abuse*, PUB. HEALTH REP., Mar.-Apr. 1991, at 153.

163. *Id.*

164. *Id.* at 154.

165. *Id.* The health departments can be useful facilitators in the coordination process because they are in a better position to be neutral in interdepartmental discussions than agencies charged with report investigation and provision of protective services. *Id.*

Currently, most states have assigned implementation of reporting laws to a single agency.¹⁶⁶ However, multidepartmental responsibility is a more appropriate mechanism to protect elder-abuse victims than single-agency responsibility.¹⁶⁷ Protocols and guidelines must be developed across departmental lines to utilize as many sources of information and resources as possible. Such coordinated efforts encourage mandatory reporters to report suspected elder abuse because they know that remedial resources will be efficiently and effectively provided to the victim.

Several states, such as Illinois and Montana, are experimenting with a multidisciplinary approach. They are testing "interorganizational coordination projects" to determine if such an approach will improve service delivery to elder-abuse victims.¹⁶⁸ Montana was the first state to create multidisciplinary teams, generally comprised of adult protective-service social workers and supervisors, representatives from health departments and mental health centers, and the police.¹⁶⁹ The teams' goals are to assist adult protective-services staff in training reporters to comply with reporting laws, to generally support adult services caseworkers in their work, and to help resolve cases.¹⁷⁰

A few states have established educational and advocacy programs that involve both the public and private sectors.¹⁷¹ Each state's approach is geared to unique local needs, yet the goals are similar: to enhance the state agencies' services to elderly clients who are at risk of abuse.¹⁷² Representatives from governmental units such as adult protective services, mental health, social services, and criminal justice pair up with hospitals, home health care services, and legal services to increase public awareness of elder abuse, to conduct education programs and training, to advocate for needed services, and to promote interagency communication.¹⁷³

166. *Id.*

167. *Id.*

168. *Elder Abuse House Hearings*, *supra* note 1, at 75.

169. *Id.* at 76. Illinois also has implemented an experimental team system although it is a voluntary reporting state. *Id.*

170. *Id.*

171. *Id.* at 75; *see also* Quirk, *supra* note 106, at 26 (arguing that new sophistication must be applied in the ongoing management of existing programs).

172. *Elder Abuse House Hearings*, *supra* note 1, at 75.

173. *Id.* at 75-76. Case consultation is another specialized function that the teams perform. For example, the New York Coalition on Elder Abuse Task Force has a case consultation subcommittee that meets on a regular basis. *Id.* at 75.

The Middlesex County District Attorney's action plan, discussed above, is based on a multidisciplinary approach.¹⁷⁴ The District Attorney's Office works closely with protective-services agencies and the police to provide joint training programs and to develop guidelines for managing elder-abuse cases.¹⁷⁵ The goal is to establish ongoing relationships between protective-services workers and the police.¹⁷⁶ Cooperative relationships encourage more reporting and referrals of suspected elder abuse to the proper officials.¹⁷⁷

Studies are now being conducted to ascertain the degree to which multidisciplinary approaches will succeed in elder-abuse education, prevention, and identification. One of these studies examined multidisciplinary teams in Illinois and found increased awareness of elder-abuse issues among team members and also in their communities.¹⁷⁸ Further studies must be conducted to determine the most effective approach in this area—whether coordinating efforts should be initiated through state health departments or criminal justice departments, whether interagency governmental efforts can be enhanced through private-sector involvement, and which guidelines are the most effective in encouraging multidisciplinary cooperation.

4. AMEND STATE STATUTES TO PROVIDE MORE PROTECTION FOR THE MANDATORY REPORTER

Very few mandatory state reporting laws address the inherent conflict between physicians' confidential relationships with their patients and a duty to report suspected abuse.¹⁷⁹ The medical media has encouraged physicians to report, stating that "experts" interpret the mandatory reporting laws as superseding physician-patient confidentiality.¹⁸⁰ However, physicians are still reluctant to violate that confidentiality.¹⁸¹ Thus, to increase compliance with mandatory reporting laws, states must amend their statutes to explicitly waive physician-

174. ACTION PLAN, *supra* note 138, at 11.

175. *Id.*

176. *See generally id.*

177. *Id.* The plan also provides specific instructions as to case referral and the initial investigatory response, as well as how to handle ongoing cases and how to close out a case. *Id.* at 8-10.

178. *Elder Abuse House Hearings*, *supra* note 1, at 76.

179. *See Metcalf*, *supra* note 18, at 753.

180. *Gerry*, *supra* note 19, at 25.

181. *Rogers*, *supra* note 49, at 7.

patient confidentiality.¹⁸² Waivers will encourage physicians to report suspected elder abuse and protect them from liability.¹⁸³

Almost all mandatory reporting statutes immunize the reporter from civil and criminal liability that might otherwise be incurred or imposed for reporting suspected elder abuse.¹⁸⁴ "Some states grant absolute immunity, but others require that the report be made without malicious intent and in good faith to qualify for complete immunity."¹⁸⁵ Such immunity clauses provide some protection for the reporter, but accused abusers still may bring civil actions against them. Reporters must absorb the legal costs of defending against such actions, even though they are ultimately immune from liability. States should consider expanding protection for the reporter to guard against this problem. California, for instance, provides that reasonable attorneys' fees incurred by reporters in defending actions will be reimbursed if the reporter presents a claim to the State Board of Control.¹⁸⁶

The majority of states also protect reporters of elder abuse by either guaranteeing their anonymity or confidentiality or by limiting circumstances under which the reporter's name may be disclosed.¹⁸⁷ For example, some states specify that the reporter may be asked to divulge his or her identity only during the course of a subsequent investigation.¹⁸⁸ Confidentiality or anonymity is essential because it encourages reporting by those who fear discovery or retaliation by the alleged abuser or victim.¹⁸⁹ Thus, all state statutes must provide anonymity for reporters to increase reports of suspected elder abuse.

Even if all states amend their mandatory reporting laws to expand protection for reporters—i.e., abrogate confidentiality require-

182. *See id.*

183. *See, e.g.,* ARIZ. REV. STAT. § 46-453 (West Supp. 1994) (waiving confidentiality); N.H. REV. STAT. ANN. § 161-F:48 (Butterworth 1994) (abrogating privileged communications). *See generally* Rogers, *supra* note 49, at 7 (noting that doctors who fail to report are hindered by patient-physician confidentiality issues).

184. Garfield, *supra* note 26, at 875.

185. *Id.*

186. CAL. WELF. & INST. CODE § 15,634(c) (West 1991). The parties who may recover under this statute are care custodians, health practitioners, and employees of an adult protective-services agency or a local law enforcement agency. Only if the court has dismissed the action upon a demurrer or motion for summary judgment made by that party, or if he or she prevails in the action may the defendant recover. *Id.*

187. Garfield, *supra* note 26, at 875.

188. *Id.*

189. *Id.*

ments, reimburse legal costs incurred in defending actions stemming from a report, and allow for anonymity—these provisions must be publicized to make reporters aware of them. Even when reporters are aware of their responsibility to report, they may not know about protections built into the laws for their benefit.

IV. Resolution

The GAO was mistaken in ignoring the importance of mandatory reporting laws. Critics of mandatory reporting are also wrong to call for the adoption of voluntary systems of reporting. Elder abuse is a hidden and growing problem that produces severe results if not brought to light and addressed. Because only one out of eight cases of elder abuse is ever reported,¹⁹⁰ all reasonable means must be used to increase reporting. Requiring professionals to report suspected elder abuse, although arguably an intrusion into the lives and families of the elderly, can only result in more investigation and remedial action.

Instead of ignoring the type of reporting statute a state has adopted, as the GAO report has done, mandatory reporting requirements should be publicized. Health care professionals and providers are just now beginning to understand the problem of elder abuse and to recognize the symptoms.¹⁹¹ These reporters should know that they are expected to report the suspected abuse once they identify it. In the states with mandatory reporting, there have been very few objections to it.¹⁹² Why *not* add an extra incentive to report?

State legislatures and government agencies must move beyond complaining about funding shortages for adult protective services. The recommendations discussed in this note—publicity, interagency cooperation, and statutory amendments—will increase compliance with mandatory reporting laws at a relatively low cost to the states. All states should implement them as soon as possible to stop a serious social problem from becoming even worse.

Not only do the three methods listed above have the advantage of being low-cost, but they can be modeled after successful programs

190. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XI.

191. See Oscar W. Clarke & David Orentlicher, *Reporting Abuse of Competent Patients*, 268 JAMA 2378, 2378 (1992); Gerry, *supra* note 19, at 2; Skelly, *supra* note 19, at 17.

192. *Elder Abuse House Hearings*, *supra* note 1, at 35.

in Massachusetts, Illinois, New York, and other states that are proactive in identifying and preventing elder abuse. The problem of how to allocate responsibility for initiating measures among existing state government agencies has been solved in the proactive states. They have divided the assignments in the following manner: state adult protective-services agencies or district attorneys' offices publicize the elder abuse and reporting laws; state health departments or departments on aging coordinate interagency cooperation; and state legislatures review and amend their states' reporting laws to include better protection for reporters.

States have no excuse for failing to adopt these relatively simple measures to improve compliance with their mandatory reporting laws. Only by getting past the excuse of underfunding and by implementing these measures can the states avoid having a congressional subcommittee look back on the nineties as yet another decade of shame and inaction.

V. Conclusion

The United States is finally beginning to realize that elder abuse is a serious social problem of increasing magnitude. This awakening, and the realization that efforts to address elder abuse over the past decade have been ineffective, provide the context in which this note has discussed and dismissed the three most common arguments against mandatory reporting of elder abuse.

First, mandatory reporting brings to light more cases than voluntary systems of elder-abuse reporting. Second, careful handling of reporting situations by mandatory reporters and state statutes mandating restricted access to elder-abuse records minimizes the invasion of elder-abuse victims' privacy. Third, states should abrogate the physician-patient privilege to prevent claims of breach and thus encourage physicians to report elder abuse. The AMA supports this position and is even drafting model legislation for states that lack such confidentiality waivers.¹⁹³

This note also examined proposals to increase compliance with state mandatory reporting laws. Ideally, all state adult protective services should be fully funded. When adult protective services are fully funded, reporters do not hesitate to report because they know

193. Randall, *supra* note 94, at 2527.

that victims will receive adequate remedial services. Full funding also sends a signal to potential reporters that the government is taking elder abuse seriously and expects reporters to respond. Unfortunately, there never seems to be enough money to fully fund protective and preventive services for those in need. Therefore, the note also suggested three low-cost alternatives to the initial proposal of full funding.

First, states should increase public awareness of elder abuse and of the reporting requirements. They must publicize the reporting requirements directly and also work with professional organizations who are just beginning to educate their ranks about elder abuse and the reporting laws. Second, state and local government agencies must increase interagency cooperation to assure potential reporters that the victims they are trying to help will receive timely and appropriate assistance. Third, states should amend their mandatory reporting laws to provide maximum protection for reporters. These amendments also should be publicized to reach potential reporters who fear reprisals for reporting.

State agencies that fail to take the measures described in this note are ultimately failing to adequately protect the elderly, a growing segment of our population who need more help than they are currently receiving. It is time to quit complaining about deficient funding and to take some meaningful steps toward decreasing elder abuse.