



DOCUMENTATION AND REPORTING OF ELDER ABUSE IN HOMES

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MY BACKGROUND

- ▶ - 4 YEARS WITH THE SECURITIES DIVISION
 - ▶ STATE / NATIONAL INVESTMENT FRAUD INVESTIGATIONS
- ▶ - 25 YEARS WITH THE PHOENIX POLICE DEPARTMENT
 - ▶ 18 YEARS AS A DETECTIVE SPECIALIZING IN CRIMES AGAINST THE ELDERLY
 - ▶ 10 YEARS IN THE VULNERABLE ADULT CRIMES UNIT
- ▶ - 21 YEARS MEMBER WITH NATIONAL FRAUD INVESTIGATIONS GROUP
 - ▶ NATIONAL ASSOCIATION OF BUNCO INVESTIGATORS (NABI)
 - ▶ PRESIDENT 2006 – 2008
 - ▶ BOARD OF DIRECTORS 2005 – 2010
- ▶ - NATIONALLY RECOGNIZED SUBJECT MATTER EXPERT
 - ▶ VULNERABLE ADULT CRIMES OF ABUSE, NEGLECT AND EXPLOITATION
 - ▶ FORENSIC INTERVIEWER OF PERSONS WITH DISABILITIES



WHAT ARE THE PRIORITIES TODAY

- ▶ Recognizing the signs and symptoms of abuse, neglect or exploitation
 - ▶ In your clients
 - ▶ In the client's family
 - ▶ In your employees
- ▶ How to document occurrences in order to safeguard
 - ▶ Your clients
 - ▶ Your employees
 - ▶ Your business
- ▶ Knowing when to report an incident and who to report it to
 - ▶ Adult Protective Services
 - ▶ Police
 - ▶ 9-1-1
 - ▶ 2009 Elder Justice Act

A.R.S. 46-451.a.10

Vulnerable Adult- any individual who is eighteen years of age or older who is unable to protect himself from abuse, neglect, or exploitation because of **physical or mental impairment**

- **Mental deficiency, disorder or illness**
- **Physical illness or disability**
- **Advanced age**
- **Chronic use of drugs or intoxication**
- **Or other cause (traumatic injury)**

To the extent: that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his person.

("his person" means all aspects of care and daily needs, including financial)

DOES 'DUMB AND DUMBER' = VULNERABLE?

A person who is able to seek help and who understands that they have been victimized in some way 'may not be a vulnerable adult'.

Bad decisions by smart people do not qualify

Divorce situations do not qualify

Do get rich quick schemes qualify?





VULNERABLE ADULT CRIMES


➤ Emotional Abuse

- Verbal abuse / non-verbal bullying
- Isolation / disruptive torment
- Social or religious ridiculing

➤ Physical Abuse


- Hitting, pinching, choking
- Whipping, restraints, over-medication
- Forced confinement, physical harm

➤ Neglect of Care

- Failure to feed / medicate
 - Failure to ensure safety (equipment)
 - Lack of cleanliness
 - Failure to seek medical attention
- 

A.R.S. 46-451

- ▶ **DEFINITION OF A VULNERABLE ADULT –**
- ▶ This section has clear definitions of ‘vulnerable adult’ and ‘incapacitated’ as required to meet the A.R.S. statutes we just discussed.
 - ▶ “Vulnerable adult” means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment.
 - ▶ “Incapacitated person” means any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.
- ▶ A person not living in an assisted living facility, nursing home or other care setting, is not normally deemed to be a vulnerable adult.



A.R.S. 13-3623.a

- ▶ **VULNERABLE ADULT ABUSE AND NEGLECT –**
- ▶ **under circumstances likely to produce death or serious physical injury**, any person who causes a vulnerable adult to suffer physical injury or, having the care or custody of a vulnerable adult, who causes or permits* the person or health of the vulnerable adult to be injured or who causes or permits the vulnerable adult to be placed in a situation where the person or health of the vulnerable adult is endangered is guilty of a felony.
- ▶ *THIS CAN PERTAIN TO MANAGERS AND OWNERS WHO HAVE KNOWLEDGE OF A SITUATION AND DO NOTHING TO PREVENT ITS OCCURRENCE

A.R.S. 13-3623.b

- ▶ **VULNERABLE ADULT ABUSE AND NEGLECT –**
- ▶ **Under circumstances other than those likely to produce death or serious physical injury** to a vulnerable adult, any person who causes a vulnerable adult to suffer physical injury or abuse or, having the care or custody of a vulnerable adult, who causes or permits* the vulnerable adult to be injured or who causes or permits the vulnerable adult to be placed in a situation where the person or health of the vulnerable adult is endangered is guilty of a lesser felony.
- ▶ *THIS CAN PERTAIN TO MANAGERS AND OWNERS WHO HAVE KNOWLEDGE OF A SITUATION AND DO NOTHING TO PREVENT ITS OCCURRENCE

A.R.S. 13-3623.d

➤ **VULNERABLE ADULT EMOTIONAL ABUSE –**

➤ A person who intentionally or knowingly engages in emotional abuse of a vulnerable adult who is a patient or resident in any setting in which health care, health-related services or assistance with one or more of the activities of daily living is provided or, having the care or custody of a vulnerable adult, who intentionally or knowingly subjects or permits* the vulnerable adult to be subjected to emotional abuse. Such abuse consisting of a pattern of ridiculing or demeaning, making derogatory remarks, verbally harassing or threatening to inflict physical or emotional harm on a vulnerable adult is guilty of a class 6 felony.

➤ **Actions that are passive, can be considered aggressive**

➤ **Non-verbal actions can be just as demeaning and intimidating as words**

➤ **Isolation and undue influence are ‘invisible restraints’**

➤ *THIS CAN PERTAIN TO MANAGERS AND OWNERS WHO HAVE KNOWLEDGE OF A SITUATION AND DO NOTHING TO PREVENT ITS OCCURRENCE

A.R.S. 13-1802.b

➤ THEFT FROM A VULNERABLE ADULT –

➤ The same statute as normal theft, and the same charging classes which depend on the dollar amount of the theft / loss to the victim. However, in 2020 the TASA Committee was successful in getting the Arizona legislature to amend this statute to add the following wording;

- EXISTING WORDING: "...the person knowing takes control , title, use or management of a vulnerable adult's property while acting in a position of trust and confidence and with the intent to deprive the vulnerable adult of the property."
- NEW WORDING: "...The following acts may give rise to an inference that the person intended to deprive the vulnerable adult of the property;
 - Proof that a person took control, title use or management of the property without consideration to the vulnerable adult.
 - Any ...transfer of money or property valued in excess of \$10,000, whether in single or multiple transfers, by a vulnerable adult to a non-relative whom they knew for less than two years... regardless of whether the transfers were as a gift or loan."

A.R.S. 13-1815.a

- ▶ **UNLAWFUL USE OF A POWER OF ATTORNEY –**
- ▶ An agent who holds a principal's power of attorney pursuant to Title 14, chapter 5, article 5 and who **uses or manages the principal's assets or property with the intent to unlawfully deprive that person of the asset or property is guilty of theft.** (See theft statute for amount and charging)
 - ▶ Can't use a power of attorney to give yourself loans
 - ▶ Can't use a power of attorney to give yourself gifts
 - ▶ Can't use a power of attorney to sign over assets to yourself or others who may benefit you (agent's family)
 - ▶ Can't make yourself a beneficiary on assets such as life insurance, Trusts or annuities via POA
 - ▶ **POWER OF ATTORNEY DUTIES MUST BE USED FOR THE BENEFIT OF THE PRINCIPAL**
 - ▶ Power of Attorneys can be paid for their services ONLY if it is written out in the POA

OTHER TYPES OF EXPLOITATION

➤ **A.R.S. 13-2002 – FORGERY**

- Writing checks without permission and/or signing the client's name

➤ **A.R.S. 13-2008 – IDENTITY THEFT**

- Using information known about a client (DOB, SSN) to open account for their benefit

➤ **A.R.S. 13-2105 – FRAUDULENT USE OF A CREDIT CARD**

- Taking a credit card of a client to make purchases for personal benefit
 - Online or in person

➤ **A.R.S. 13-2107 – FRAUDULENT INFORMATION TO A FINANCIAL INSTITUTION**

- Calling a bank and pretending to be a client to access accounts, move \$\$\$
- Opening an account online in the client's info, but for their benefit

➤ **A.R.S. 13-2310 – FRAUDULENT SCHEMES**

- All of the above wrapped into an ongoing course of conduct and behavior
- May also contain elements of abuse or neglect

A.R.S. 46-454.a

➤ DUTY TO REPORT

ABUSE, NEGLECT AND EXPLOITATION OF VULNERABLE ADULTS-

- Persons responsible for the care of an adult who is incapacitated or vulnerable adult and who have a reasonable basis to believe that abuse, neglect or exploitation of an adult or the adult's property has occurred **must** report the incident to a peace officer or a protective services worker.
 - Law enforcement
 - Adult Protective Services
 - Failure to report is a class 1 misdemeanor.
- “Any person filing a complaint... is immune from a civil or criminal liability by reasons of such action, unless the person acted with malice.”



ELDER JUSTICE ACT OF 2009

- ▶ **Reporting to Law Enforcement of Crimes Occurring in Federally Funded Long-Term Care Facilities**
 - ▶ **Determination** – Owner or Operator of each facility that receives federal funds **shall** be responsible for notifying every covered individual in the facility that they are responsible to report; upon seeing or any reasonable suspicion of a crime (as defined by the law) against any individual who is a resident of, or who is receiving care from, the facility. (This means every employee, contract worker)
 - ▶ **Timing** – The reporting of any such events seen or perceived shall be done;
 - ▶ Immediately but no later than 2 hours if there is serious bodily injury of becoming aware of the injury; and
 - ▶ Within 24 hours when there is not a result of serious bodily injury or obvious signs of injury.
 - ▶ (If there is a fall, consider it a serious injury)
 - ▶ **Penalties** – The civil penalties for each violations assessed will be \$10,000; up to \$200,000 and can result in a loss of all federal funding.



WHAT DID THIS MEAN FOR FACILITIES?

- ▶ COMMON SENSE IS THE BASIC DENOMINATOR
 - ▶ The Elder Justice Act of 2009 scared the nursing care industry and for months afterwards the police were receiving dozens of reports from care facilities like these;
 - ▶ LOST SOCKS
 - ▶ BROKEN DENTURES
 - ▶ BROKEN OR LOST EYEGLASSES
 - ▶ LOST HEARING AIDS OR BATTERIES
 - ▶ TORN BLANKETS OR CLOTHING
 - ▶ BROKEN WHEELCHAIR
 - ▶ “See something – Say something” is the motto of the day, but in the nursing care world, it is a duty to report which dictates that what you see and what you say relies on common sense.
 - ▶ Does every little thing have to be reported to the police or APS? NO~~~



DOES THE ELDER JUSTICE ACT AFFECT YOU?

- ▶ DO YOU YOUR EMPLOYEES EVER GO INTO CARE FACILITIES?
 - ▶ EVEN TEMPORARILY?
 - ▶ TO CHECK ON A CLIENT WHO MAY BE IN REHAB AFTER A FALL?
 - ▶ TO PICK UP A CLIENT AND TRANSFER THEM BACK HOME?
- ▶ The Elder Justice Act says that 'any covered individual' in a care facility is a mandatory reporter...
 - ▶ Upper management, front line management, nurses, CPA's, caregivers
 - ▶ Contract workers such as maintenance, housekeeping or repairmen
 - ▶ The term 'caregiver' means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an elder who needs supportive services in any setting.



SO WHAT SIGNS SHOULD YOU LOOK FOR?

- ▶ BE AWARE OF WHAT IS GOING ON IN YOUR CLIENT'S HOMES
 - ▶ Your employees are your eyes and ears inside the client's homes
 - ▶ Are there red marks on the client's jaw during feeding times (forcing mouth open)
 - ▶ Do the client's mobilization aids (walker) always seem to be placed out of reach or hidden from client's view
 - ▶ Does the family member try to talk for the client, explaining an incident instead of letting the client talk
 - ▶ Does the family member insist on being in the room or standing nearby with 'busy work' when someone visits or comes to talk with the client
 - ▶ Does the client's property come up missing and then suddenly be 'found' when an issue is raised
 - ▶ Does the client's behavior change, become more sullen or withdrawn, less talkative around one particular family member

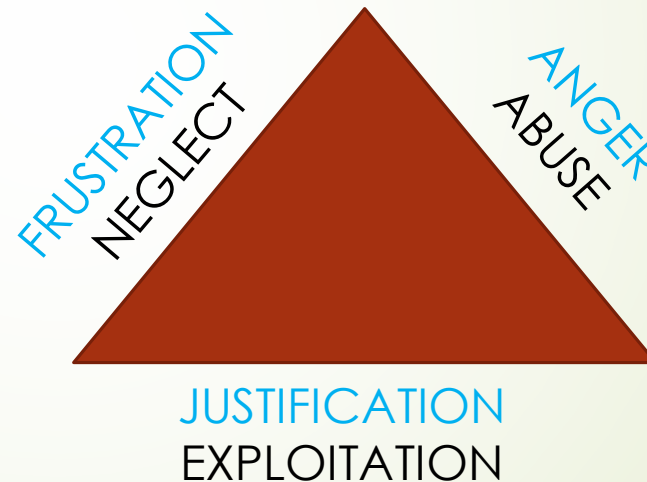


SO HOW DO YOU PROTECT YOUR CLIENT?

- ▶ If your employee overhears family or friends stating, 'they had to stand in the way of a client to keep them from going outside'; this is something that should be documented and reported to a supervisor. Make sure they know this is not the proper way to divert a client and this could be considered non-verbal emotional abuse. Do you call it non-verbal emotional abuse in your notes... **NO~~** but if it continues, you are documenting a pattern of abuse.
- ▶ When an employee overhears someone talking about 'smacking an old man because he won't keep his hands off her during his bath'... this is a problem. "Smacking" is hitting and that is abuse. This would be a time when they should take action and report the matter.
- ▶ Frustration is where it all begins. Then anger takes over and abuse is justified in the person's mind.

THE NEGLECT / ABUSE / EXPLOITATION PYRAMID

- Most abuse begins with frustration and being overwhelmed with the task of caring for a vulnerable adult. That leads to passive neglect, then verbal and active abuse and resentment which leads to a feeling of entitlement for all they are forced to endure... so they take what they feel they are due.
- Start- Good intentions
- Quickly overwhelmed
- Frustrations set in
- Anger at patient
- Verbal then physical
- Take what I deserve



Guilt at inability
Inner torment
Bullying
Degradation
Blame victim
Self - pity




SO HOW DO YOU PROTECT YOUR STAFF?

- ▶ IS EVERY DECISION SOMETHING THAT SHOULD BE DOCUMENTED BY MANAGEMENT? **YES~~~**
- ▶ Why you ask? Because it will protect you and your employees if something does get reported to APS or the police later.
- ▶ What happens when a family complains about a caregiver suddenly working more than the normal amount of shifts with their elderly mother?
 - ▶ DO YOU KNOW ABOUT IT? IS IT OFF THE BOOKS?
 - ▶ Approved: Explain this employee needs extra shifts and not only works for this client, but others also. Show documentation. Don't let it be a big mystery when the police come.
 - ▶ If it isn't approved... the company can be held liable for the caregivers conduct. What is the reason for the extra time spent with this client?
 - ▶ False complaints get filed all the time. Make sure your employees are doing their jobs... and only their jobs to avoid conflicts.



SO WHAT SHOULD YOU LOOK FOR?

- ▶ BE AWARE OF WHAT IS GOING ON WITH YOUR EMPLOYEES
 - ▶ Listen to the comments being made by your employees
 - ▶ “She’s so absent minded I had to fill out her checks for her again.”
 - ▶ “That lady is a pain in my... I gave her an extra dose of her sleeping meds just to keep her quiet.”
 - ▶ ARE THESE SIGNS OF AN OVERLY HELPFUL EMPLOYEE?
 - ▶ OR ARE THESE SIGNS OF FRUSTRATION?
 - ▶ OR A FUTURE COMPLAINT AGAINST YOUR EMPLOYEE?
- 



Continued...

- ▶ Know what your employees are doing... trust them, but watch.
- ▶ Does the caregiver offer to work extra shifts with one particular client
 - ▶ Isolation and influence of victim, access to accounts, checks, etc.
- ▶ Does the caregiver offer to work late shifts, nights, weekends
 - ▶ Less supervision and staff on duty, physical and sexual abuse more likely
- ▶ Has one caregiver ever shown up for a shift to find the previous caregiver is not there?
 - ▶ Did they leave early?
 - ▶ Did they not show up?
 - ▶ Did they falsify timesheets?

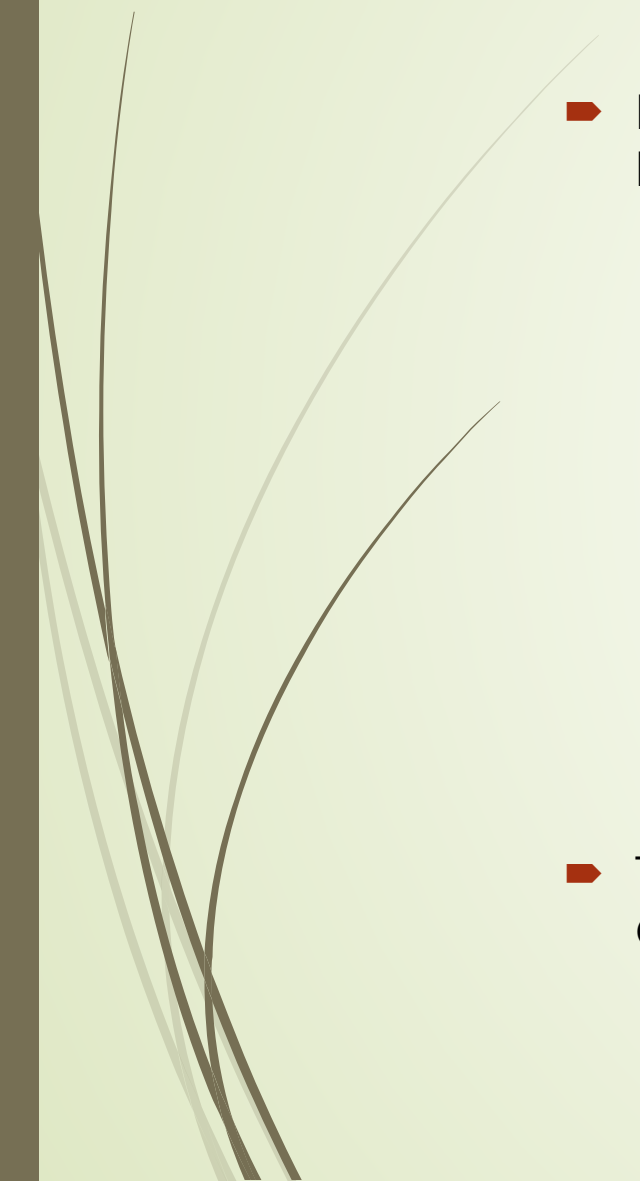


SO HOW DO YOU PROTECT YOUR BUSINESS?

- ▶ Any time you have an employee who is filling out checks for a client, they should have gone through special training on financial exploitation and be assigned to this task as part of their job duties... if not; they absolutely should NOT be doing it.
 - ▶ Especially not to fill out their own paychecks, gifts or loans to themselves or any credit/debit card use that would benefit them personally.
- ▶ Any time you have an employee that is over-medicating a client to control behavior; this is a very serious matter and should be reported immediately. The same goes for an employee who is under-medicating in order to 'supplement' or steal medications from a client.
 - ▶ These are felony crimes and should be reported immediately to the police
 - ▶ This can have serious health issues to the client and medical attention should be sought to ensure over-medication, lack of medication or substitution of another medication did not cause harm to the client.



IS IT BETTER TO BE REACTIVE OR PROACTIVE?

- ▶ **REACTIVE** IS WHEN YOU RUN YOUR BUSINESS DAY TO DAY WAITING FOR THE KNOCK ON THE DOOR FROM THE POLICE OR APS.
 - ▶ Then you scramble to figure out who filed a complaint against your employee
 - ▶ You try to piece together the paperwork asked for and figure out what happened, was a client really injured or wronged?
 - ▶ You start asking your other employees if they knew anything or saw anything
 - ▶ Your managers are defensive and unorganized, often deferring to owners
 - ▶ Sometimes the required paperwork isn't available or up is locked up with no access by those working
 - ▶ The employees involved are not still on the premises, having ended their shift/s or been told to go home if 'caught in the act' by a manager
 - ▶ THE POLICE AND APS ARE LOOKING AT YOU LIKE YOU HAVE NO IDEA WHAT GOES ON WITH YOUR STAFF.
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IS IT BETTER TO BE REACTIVE OR PROACTIVE?

- ▶ **PROACTIVE** IS WHEN YOU RUN YOUR BUSINESS DAY TO DAY KNOWING WHAT IS GOING ON AND PLANNING FOR THE MOMENT WHEN THAT KNOCK COMES.
 - ▶ When the police or APS (or both) show up with a complaint filed, the manager has all the records in order.
 - ▶ If there is a particular issue with a client, it is documented thoroughly in the care notes “has palsy, needs head stabilized during feedings, per doctor”, “towel used for comfort” or “client requires two persons during bathing to monitor hands”, “3 incidents of client attempting to grab caregiver last week”.
 - ▶ If it does occur in the nighttime hours, the night employees must have access to the care records, the manager must be readily available by phone. (Many times care records are locked up and EMT and police cannot access records after hours).
 - ▶ Logbooks show employee work schedules, sign in and out times.



IS IT BETTER TO BE REACTIVE OR PROACTIVE?

- ▶ PROACTIVE IS PROTECTING YOUR EMPLOYEES AND YOUR BUSINESS
 - ▶ MAKE SURE EMPLOYEES KNOW THEIR ASSIGNED JOB DUTIES
 - ▶ MAKE ONGOING TRAINING A REGULAR PART OF THE WORK PROCESS
 - ▶ MAKE SURE YOUR EMPLOYEES KNOW WHAT TO REPORT AND WHEN
 - ▶ EMPOWER YOUR EMPLOYEES TO REPORT AN INCIDENT WHEN THEY NEED TO
 - ▶ IF AN INCIDENT DOES OCCUR, BE UPFRONT AND COOPERATIVE WITH THE AUTHORITIES ABOUT ANY INCIDENT – SELF-REPORTING IS ALWAYS A POSITIVE
 - ▶ DO NOT ATTEMPT TO CLEAN-UP A SCENE BEFORE THE POLICE ARRIVE
 - ▶ DO NOT ATTEMPT TO MINIMIZE THE SERIOUSNESS OF AN INCIDENT BEFORE FAMILY OR POLICE ARE NOTIFIED.... IT ALWAYS ENDS UP LOOKING LIKE A COVER-UP
 - ▶ REWARD YOUR EMPLOYEES FOR DOING THE RIGHT THING... AND THEY WILL DO IT AGAIN



TMB CONSULTING

- ▶ TRAINING SERVICES OFFERED IN A WIDE VARIETY OF TOPICS
 - ▶ BASICS OF VULNERABLE ADULT ABUSE AND NEGLECT
 - ▶ BASICS OF VULNERABLE ADULT FINANCIAL EXPLOITATION
 - ▶ RECOGNIZING, DOCUMENTING AND REPORTING FOR FACILITIES MANAGERS
 - ▶ FINANCIAL EXPLOITATION FOR CAREGIVERS
 - ▶ ABUSE AND NEGLECT FOR CAREGIVERS
 - ▶ RECOGNIZING AND DEALING WITH VICARIOUS/COMPASSIONATE TRAUMA SYNDROME
 - ▶ RECOGNIZING CAREGIVER STRESS AND THE ABUSE PYRAMID IT LEADS TO
 - ▶ INTERVIEWING VULNERABLE ADULTS



COMMUNITY INVOLVEMENT

- ▶ INTER-GOVERNMENTAL REVIEW BOARDS
 - ▶ APS REVIEW BOARD – assess problem areas and how to improve them to provide a better response and support to vulnerable adults
 - ▶ DHS REVIEW BOARD – assess training issues and promote better communication to licensees and those who inspect facilities
 - ▶ TASA COMMITTEES – identify areas of concern and promote legislative and community resolutions
- ▶ INTER-COMMUNITY ORGANIZATIONS
 - ▶ Organizations like yours that come together to set standards, meet to resolve issues and adjust to the changing world of vulnerable adult care
 - ▶ Area Agencies that offer support such as training, senior helplines and ombudsman services

STAYING AHEAD OF THE TSUNAMI WAVES

- JUST WHEN WE THOUGHT WE LEARNED TO SURF THE SILVER TSUNAMI WAVE...



- THINGS BEGAN TO SETTLE INTO A ROUTINE,
- AND THEN THERE WAS...



...THE COVID TSUNAMI WAVE



AND WE NEED TO LEARN HOW TO SURF ALL OVER AGAIN.



- Thank you for your time and if you have any questions, I would be happy to take them at this time.
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