The Law

- Worthless services is a viable theory for the United States to pursue against a skilled nursing facility under the False Claims Act.

- Worthless services theory states – you cannot knowingly bill the government for goods and services where “the service is so substandard as to be tantamount to no service at all.”

- In *Mikes*, the Second Circuit explained that “[i]n a worthless services claim, the performance of the service is so deficient that for all practical purposes it is the equivalent of no performance at all.”
FCA “Worthless Services” Theory

- The Houser Court made the following conclusion of law:
  - A worthless services claim stands for the unexceptional proposition that an entity may not bill the Government for products or services that are not rendered, or that are so deficient that they have no value to the resident, or are totally undesirable. Worthless services are services that are so inadequate, deficient, and substandard, or so completely lacking in value or of no utility to the resident, that a reasonable person would understand that any services provided were worthless.
FCA Worthless Services Theory

- It is not a successful defense to a worthless services claim that some services were provided.
- The court in Houser stated:
  - Defendant's contention that he is not guilty because the nursing homes may have provided some care or some portion of the bundle of services paid by Medicare and Georgia Medicaid is without merit. Even though the services were paid per diem, reasonable persons would know that supplying limited, or no, basic services fails to comport with the very essence of the provider and benefit agreements, and that seeking reimbursement for such deficient services constitutes fraud.
FCA Worthless Services Theory

- It is also not a successful defense that surveys did not find services to be worthless.

- “The fact that CMS did not ‘declare the services to be worthless’ does not constitute a representation from the government that the claims submitted by Villaspring were not false.” 2011 WL 6337455, at *3.
Case study: Extendicare
Extendicare

- One of nation’s largest nursing home chains with 146 facilities in 11 states
- Investigated allegations that between 2007 and 2013, in 33 of its skilled nursing homes in eight states, Extendicare billed Medicare and Medicaid for materially substandard skilled nursing services and failed to provide care to its residents that met federal and state standards of care and regulatory requirements.
- The government alleges, for example, that Extendicare failed to have a sufficient number of skilled nurses to adequately care for its skilled nursing residents; failed to provide adequate catheter care to some of the residents and failed to follow the appropriate protocols to prevent pressure ulcers or falls.
Extendicare investigation

- 4 year investigation
- HHS OIG, Medicaid fraud control units, 4 United States Attorneys Offices, DOJ Trial Attorneys
- Hundreds of thousands of documents
- Medical review
- Data analysis
Investigative findings

- Frequent Medication Errors
- Inadequate Catheter Care
- Failure to Follow Appropriate Pressure Ulcer Protocols
- Failure to Follow Appropriate Falls Protocols
- Failure to Provide for Residents’ ADLs
- Failure to Treat Diagnosed Depression
Severe deficiencies

Extendicare – Severe Deficiencies Nationwide

- 2007: 15%
- 2008: 20%
- 2009: 22%
- 2010: 25%
- 2011: 28%
- 2012: 30%
Medication issues

Extendicare Nationwide - Medication Issues

Percent of Extendicare Facilities Cited by Deficiencies
Most recent survey as of June 30, 2010

Drug Regimen Free
Significant Error
Med Error less 5%

Extend Actual
National
Infection control issues

Extendicare Nationwide - Infection Control Issues

Percent of Extendicare Facilities Cited by Deficiencies
Most recent survey as of June 30, 2010

- All Infection Deficiencies
- Fail to Establish Infection Control

Extend Actual
National
Inadequate staffing

- Failed to have an adequate methodology to budget and staff the facilities based on resident needs
- Inadequate human resources and management to ensure delivery of quality care
- Understaffing and inadequately trained staff linked to patient harm (e.g., inadequate wound care, falls, medication mismanagement, etc.)
Extendicare Settlement

- Extendicare paid $38 million to resolve False Claims Act allegations.
- Entered five year chain wide Corporate Integrity Agreement with HHS OIG.
  - Extendicare’s compliance program must include, among other things, corporate-level committees to address compliance and quality, including a committee to assess staffing, and an internal audit program to assess the quality of care provided to its residents.
  - Extendicare must retain an independent monitor, selected by the OIG, who will regularly visit Extendicare’s facilities and report to the OIG.
  - In addition, an independent review organization will perform annual reviews of Extendicare’s claims to Medicare.
Lessons learned?
Elder Justice Roadmap
THE ELDER JUSTICE ROADMAP

A resource (created by and for the field) for strategic planning at the local, state and national levels to reduce elder abuse
750 stakeholders were invited to respond to the question: “To understand, prevent, identify or respond to elder abuse, neglect, or exploitation, we need…”

Their 686 responses were distilled into 121 statements, and sorted (by 118 stakeholders) into 4 domains:

- Direct services
- Education & training
- Policy
- Research & translation
Of those who responded...

Which of the following **best** describes the system in which you work in relation to elder abuse?

- Aging network (42)
- Faith-based (2)
- Financial system (1)
- Health care (17)
- Legal system (33)
- Mental health (4)
- Protective service (26)
- Social service (12)
- Victim service (25)
- Other (40)
Of those who responded...

What is the principal nature of your work relating to elder abuse?

- Direct or front line services (45)
- Education/Training (59)
- Policy (45)
- Research (25)
- Other (28)
Of those who responded...

Which of the following best describes the primary geographic focus of your work?

- Local (60)
- Statewide (51)
- Nationwide (88)
- Other (2)
Of those who responded...

How long have you been involved in elder abuse-related work?

- 5 years or fewer (34) 17%
- 6-10 years (37) 19%
- 11-20 years (51) 25%
- More than 20 years (79) 39%
Conceptually *different* ideas appear farther apart.

- Law enforcement officers and units dedicated to addressing and investigating elder abuse. (70)
- To research the impact and value of mandatory reporting. (28)
- More funds for elder abuse victims’ services. (108)
1. Direct Services (Practice)
   - 5. Safety and Accountability
2. Education & Training
   - 6. Awareness and Capacity Building
3. Policy
   - 8. Leadership and Engagement
4. Research
   - 1. Research
   - 2. Research Translation
   - 3. Evaluation and Methods
   - 4. Under-Recognized Populations and Issues
5. Prevention and Response

The FOUR DOMAINS
EJRP: Multiple Steps and Stakeholders to Distill Priorities

- 750 Stakeholders invited to answer question
- Expert Guidance meetings
- 6 Facilitated Discussions
- 12 Leadership Interviews
- FINAL Roadmap report (July 2014) including
  - 5 Top Priorities
  - Action Items
  - High Priorities by Domain
  - Universal Themes
5 Top Priorities

- **Awareness:** Increase public awareness of elder abuse, a multi-faceted problem that requires a holistic, well-coordinated response in services, education, policy, and research.

- **Brain health:** Conduct research and enhance focus on cognitive (in)capacity and mental health – critical factors both for victims and perpetrators.

- **Caregiving:** Provide better support and training for the tens of millions of paid and unpaid caregivers who play a critical role in preventing elder abuse.

- **Economics:** Quantify the costs of elder abuse, which is often entwined with financial incentives and comes with huge fiscal costs to victims, families and society.

- **Resources:** Strategically invest more resources in services, education, research, and expanding knowledge to reduce elder abuse.
Some ways the Roadmap is being used

- Forum hosted in NYC about multidisciplinary teams
- Weinberg Foundation expressed interest in projects
- Some states using it to structure projects and RFPs
- Planning underway for events and action on some priority items
- Distilling research priorities identified in the process
- Local programs using it to avoid “recreating the wheel”
- Helped generate White House interest and inclusion of EJ among WHCoA topics
Some ways Roadmap can be used

- As a “toolbox” for action and advocacy
- One-pagers with info on the problem and toll (pp 3, 4)
- Resource for idea generation and strategic planning
- Great quotes (not just platitudes)
- Research resource (with new DOJ website)
- Providing ways to make taking on a big overwhelming problem a bit more manageable – do one thing
- Using the one-pager brought to you by the new NCEA
Welcome to the Elder Justice Website, a resource for victims of elder abuse and financial exploitation and their families; practitioners who serve them; law enforcement agencies and prosecutors; and researchers seeking to understand and address this silent epidemic plaguing our nation's elders.
If you or someone you know is a victim of elder abuse, help is available. Every state, commonwealth and territory has resources to assist you and to inform those interested in preventing or reporting elder abuse. You can locate the names of agencies and places to go for help when you click a geographic location on the map. These resources may include:

**Adult Protective Services**
Adult Protective Services (APS) is the most frequently used name for a state government agency established to investigate reports of elder abuse and, when appropriate, provide or arrange for victims services.

**Areas Agencies on Aging**
Area Agencies on Aging (AAA) respond to the needs of Americans 60 and over in local communities by providing services and living arrangements that allow older adults to remain in their homes and communities as long as possible.

**Domestic Violence Organizations**
Domestic violence organizations provide services to increase victim safety, abuser accountability and public awareness of domestic violence and its prevention.

**Federal Law Enforcement Contacts**
Victim resources
You may wish to access materials drafted by other Federal prosecutors in order to see how your colleagues in other jurisdictions have addressed elder abuse and financial exploitation issues. In the spirit of cooperation, Federal prosecutors across the United States have contributed publicly-filed (and appropriately redacted) documents used in elder abuse, neglect and exploitation cases in and out of court. PACER citations have been provided where available.

You may use this database to search by category and sub-category for documents. You may also search by keyword or year, depending on your needs. Each search type may yield different results, so you are encouraged to use different search terms to increase the likelihood of finding documents to suit your needs.

Please note that this database is provided for your convenience and assistance, and as a starting point for your independent research. Neither it nor the documents contained in it are guaranteed to be legally current and/or accurate. Each document is provided solely for informational purposes, and including any particular document here should not be construed as an endorsement by the United States Department of Justice (USDOJ). The copyrights, if any, to the content contained within the documents are held by the respective copyright owners of such content, not USDOJ. These documents are therefore provided solely for your convenience and should not be construed as giving permission to distribute or otherwise reproduce the content other than as properly authorized by the owner. If a document should be added to or deleted from the list, please report changes to elder.justice@usdoj.gov.

Category: 
Sub-Category: 
Keyword: 
Year: 

Search  Clear
# Researcher Resources

## Advanced search options

### Categories:
- Contains: ☐ all of the selected (and): ☐ any of the selected (or):

### Type of publication:
- □ Non-research piece
- □ Original research

### Approach:
- □ Intervention
- □ Non-intervention
- □ Case report(s)
- □ Not specified

### Type of elder mistreatment considered:
- □ Financial exploitation
- □ Verbal, emotional &/or psychological
- □ Neglect by others
- □ Self neglect
- □ Physical
- □ Sexual
- □ Other or none specified

### Location of abuse:
- □ Community
- □ Institutional
- □ Not specified

### Prevention:
- □ Primary prevention
- □ Secondary or tertiary prevention

### Risk Factors:
- □ Social, contextual, and other
- □ Cognitive capacity of victim &/or perpetrator

### Outcomes or Consequences:
- □ Morbidity
- □ Mental health
- □ Mortality
- □ Institutionalization
- □ Forensic markers
- □ Other

### Other:
- □ Screening
- □ Reporting
- □ Incidence/prevalence estimates and other statistics
- □ Caregiving (not institutional)
- □ Adult Protective Services (APS) or Social Services
- □ Legal system (judges, juries, attorneys, etc.)
- □ Health Care Providers
- □ Law Enforcement
- □ Prosecution
- □ Guardianship and/or Conservatorship
- □ Power of Attorney (PoA)
- □ Ombudsman Programs
- □ Forensic Centers, Multi-disciplinary Centers, FASTs
- □ Future Directions
- □ Training and/or Tool-kits
- □ Social &/or Legislative Policy
- □ Cross-cultural research
Financial Exploitation

FINANCIAL EXPLOITATION SCENARIOS

- Financial Exploitation by a Financial Advisor
- Financial Exploitation by a Friend
- Financial Exploitation by a New Sweetheart
- Financial Exploitation by a Power of Attorney
- Financial Exploitation by a Professional Caretaker
- Financial Exploitation by a Spouse
- Financial Exploitation by a Tax Preparer
- Financial Exploitation by an Adult Child
- Financial Exploitation by Professional Caregivers
New resources

- Department of Justice’s elder justice website: [http://www.justice.gov/elderjustice/](http://www.justice.gov/elderjustice/)
- Web-based training for legal services lawyers on EA: [https://www.ovcttac.gov/views/dspLegalAssistance.cfm?tab=1#onlinetraining](https://www.ovcttac.gov/views/dspLegalAssistance.cfm?tab=1#onlinetraining)
Additional resources

- National Center on Elder Abuse; [www.ncea.aoa.gov](http://www.ncea.aoa.gov)
- Pocket Doc – guide to geriatric conditions and warning signs of elder abuse and neglect (Amazon.com)
- Pocket Lawyer – ABA Commission on Law & Aging
- Consumer Financial Protection Bureau Older Americans page: [www.consumerfinance.gov/older-americans/](http://www.consumerfinance.gov/older-americans/)
- ABA Comm’n on Law and Aging Elder Abuse resources: [www.americanbar.org/groups/law_aging/resources/elder_abuse.html](http://www.americanbar.org/groups/law_aging/resources/elder_abuse.html)
- Apps, including videos, general info & state-specific laws