2026 Elder Abuse Protection Legislative Proposal Overview

Problem:

With the oldest Baby Boomers just now reaching their 80s, there will soon be a tsunami of elderly individuals who will be vulnerable to financial, physical, emotional, and other forms of exploitation and abuse from unscrupulous family members and third parties due to cognitive decline, Alzheimer's disease, and other types of dementia (e.g., vascular dementia, Lewy body dementia, and frontotemporal dementia).

The estimated lifetime risk of developing dementia for individuals over age 55 is approximately 42%. Elderly individuals—particularly those experiencing cognitive decline, including Alzheimer's disease and related dementias—are especially vulnerable to fraud, scams, and undue influence, and may lack the medical and legal capacity to make sound financial and personal decisions.

Importantly, symptoms of dementia can begin **up to 10 years or more prior to a formal diagnosis**, during which time individuals may continue to appear largely independent while experiencing diminished judgment and increased susceptibility to manipulation. During this early and often undetected phase, individuals are at heightened risk, as impairments may not yet be sufficiently apparent to trigger intervention, despite meaningful declines in decision-making capacity.

Before dementia progresses to a stage where incapacity becomes pronounced and readily identifiable, individuals are particularly vulnerable to undue influence and exploitation.

Symptoms of dementia go far beyond memory loss. They include behavioral and cognitive changes such as agitation, paranoia, impaired judgment and reasoning, hallucinations, delusions, and impulsivity.

All of these factors can severely compromise an individual's ability to manage their financial and personal affairs.

Protections for this population exist but are currently insufficient and must be significantly strengthened across the board.

Solution:

Require individuals aged 70 and older to obtain a Letter of Competency (LOC) from a qualified physician (e.g., primary care physician, neurologist, or psychiatrist) prior to executing a trust, will, or any amendment thereto with legal counsel.

An LOC would introduce an additional layer of "friction" at a critical decision point, helping to protect individuals experiencing cognitive decline—including Alzheimer's disease and other dementias—from financial exploitation, undue influence, and coercion.

This safeguard is particularly important given that symptoms of dementia may emerge years before a formal diagnosis, during which time individuals may retain apparent independence while experiencing diminished judgment and increased susceptibility to manipulation.

At the same time, LOCs would provide a contemporaneous medical record in which an individual's decision-making capacity is formally certified, strengthening the legal defensibility of estate planning documents for those who are not cognitively impaired. This certification could help reduce costly and time-consuming disputes, including challenges based on alleged lack of capacity or undue influence.

A useful parallel exists in other areas of public policy. For example, the California Department of Motor Vehicles requires older adults to undergo additional screening or testing to demonstrate their continued ability to safely operate a motor vehicle. These measures recognize that age-related cognitive decline can impair judgment and decision-making, and they introduce reasonable safeguards to protect both the individual and the public.

Background and Other Considerations:

Letters of Competency (LOCs) are often recommended by estate planning attorneys as a best practice in higher-risk situations—particularly for older individuals or where cognitive impairment is a concern—to help prevent wills and trusts from being contested on the basis of incapacity.

However, this practice is not standardized or consistently applied, leaving significant gaps in protection. They are often informal, non-standardized, and may consist of only a few subjective questions. In some cases, these assessments are conducted without the client being physically present (e.g., via phone or video), further reducing their reliability and consistency.

Physicians, by contrast, are significantly better positioned to assess cognitive and decision-making capacity. They are **clinically trained** to evaluate and identify signs of cognitive impairment, including Alzheimer's disease and related dementias. In addition, they often have established, longitudinal relationships with patients, allowing for more informed, contextualized assessments over time.

Trust documents commonly include provisions that require a determination of incapacity—often based on certification by one or more physicians—before a successor trustee may assume control. In other words, estate planning frameworks already rely on medical assessments to confirm when capacity has been lost.

However, there is no parallel, standardized safeguard to affirmatively establish capacity at the time legal documents are executed. **This creates a gap: while incapacity is formally documented, capacity is often assumed**. As a result, individuals in the early stages of cognitive decline—including Alzheimer's disease and related dementias—may execute or amend estate documents without a reliable, contemporaneous assessment of decision-making ability.

Requiring a Letter of Competency at the time of execution would close this gap by ensuring that capacity is evaluated and formally certified at the moment it matters most.

Financial institutions have also recognized the scale of this issue and are increasingly implementing enhanced safeguards to protect older adults from fraud and exploitation, particularly in cases involving sophisticated scams targeting individuals with diminished capacity.

Research indicates that the lifetime risk of developing dementia after age 55 is approximately 42%, highlighting the substantial likelihood of cognitive decline across the aging population.

Remedy through the courts is often impractical. Many attorneys will not take these cases on a contingency basis unless the potential recovery exceeds $500,000, and hourly legal fees commonly range from $400–$500, with total litigation costs frequently exceeding $50,000. As a result, meaningful legal recourse is often limited to individuals with substantial financial resources or large estates, leaving many victims without viable remedies.

Cost:

- None to the state – no need to go through Appropriations
- Small to no cost for most individuals as the LOC will be certified by their established PCP
- This legislation only requires amending existing business/professions or probate law

Political Benefits:

- Legislators will be lauded publicly and through the media for strengthening protections for vulnerable elderly people
- This legislation will support and protect a demographic who vote often