STATE RESTRICTIONS FOR ELDER DRIVERS: ENSURING ROAD SAFETY WHILE AVOIDING UNINTENDED CONSEQUENCES
Issue Brief

Introduction

The safety of elder drivers, those 65 and older, is a topic of continuing debate in the United States. A solid evidence base shows that older drivers are more prone to accidents in general, and even more prone to fatal accidents. Most states have enacted statutes or regulations that aim to identify and remove from the road older drivers that are no longer able to operate a motor vehicle safely. Yet some states have no provisions at all that address the issue. There are sound reasons for opposing provisions designed to deprive people of the privilege to drive. A driver’s license may be an elder person’s only way of gaining access to food, health care, and other necessities if they lack access to public transportation or family members available to assist them in daily tasks. Lack of a driver’s license can also lead to social isolation in older drivers, which affects their overall health and well-being.

This issue brief will set forth the evidence base that shows older drivers have a higher propensity for car accidents, discuss the legal approaches currently being taken across the United States, show the evidence base that justifies intervention, and discuss some of the unintended consequences of state intervention.

Identifying the Problem

Elder drivers face challenges on the roads that drivers in other age groups do not face. Vision problems, slower reaction time, medication that can affect decision-making capacity and general confusion may impact older drivers on a daily basis. Vision deteriorates as people age. The negative effects of deteriorating vision begin in our 40s and affect almost everyone by age 51. Crash data from the Insurance Institute for Highway Safety shows that older drivers are more prone to accidents. Although older drivers cause fewer accidents than drivers of other age groups, older drivers are involved in more accidents per mile traveled than any other age group except younger drivers (drivers 30 and under). Drivers aged 70 to 74 are almost twice as likely to be in a fatal accident, per mile traveled, than drivers aged 35 to 69. By age 85 and older, drivers become almost eight times as likely to be in a fatal accident per mile traveled.

There are more elder drivers on the road now than at any point in the past, making the problem more acute. And the number of older drivers is expected to climb. By 2030, 20 percent of Americans will be age 65 or older, as opposed to 12 percent in 2000, and 11 percent in 1980. Because older drivers are involved in proportionally more accidents than most other drivers, there will likely be more accidents attributable to older drivers overall as the number of older drivers increases. That imminent sharp increase makes older driving an emerging public health concern in the injury prevention community, leading to the questions: what policy changes can be implemented to prevent those accidents, what barriers exist for implementation, and what unintended consequences may follow?
Current Approaches Across the States

State laws vary with respect to the regulation of older drivers. In most states an administrative agency (e.g., the state motor vehicle administration) has discretion in requiring testing (e.g., vision or road) upon driver’s license renewal. Although this is not a provision specific to older drivers in most instances, it is an informal tool that may be available to insure that older drivers are capable of safely operating a vehicle before license renewal is granted. In addition to a general provision of this nature, several states impose specific requirements on older drivers.

One of the most common approaches is to require accelerated license renewal for older drivers. Eighteen states currently use accelerated license renewal, which allows the agents of the administrative agency to identify potentially dangerous older drivers and require testing if necessary. More frequent renewal means that older drivers will have to choose whether they want to renew their license or stop driving. More frequent renewal also means that older drivers will be subject to at least a cursory evaluation of their physical fitness from the state administrative agency’s agent; giving the agent the opportunity to observe the older person attempting to process the renewal information. Fourteen of these 18 states explicitly require some kind of testing of older drivers upon license renewal. More frequent renewal means more frequent testing and an increased likelihood that an impaired older driver would not be permitted to renew his license. Some states take a broader approach, requiring testing upon every renewal for every driver, regardless of age. Nineteen states currently follow this approach with one, Louisiana, also requiring road testing upon renewal.

Another approach is to require testing (e.g., vision or road) upon renewal for only older drivers. This approach is currently used by 14 states. Thirteen states require only vision testing upon renewal for older drivers. Illinois requires only road testing upon renewal for older drivers. No states require both vision and road testing upon renewal for older drivers.

A modified version of, or complement to, the mandatory testing provisions is a prohibition against license renewal by mail or through electronic means. Eleven states prohibit older drivers from executing license renewals that are not in-person; for five of those 11 states, this is the only provision related to older drivers. As previously discussed, in-person license renewal is valuable because it allows the agents of the state’s administrative agency to identify potentially dangerous older drivers by observation of the applicant’s actions, and require further testing if necessary.

Twenty-five states do not impose any additional requirements or restrictions for older drivers. In fact, a few states have more relaxed provisions for older drivers, such as Tennessee, where drivers over age 60 are not required to renew their licenses at all. North Carolina law indicates that older drivers may not be required to perform parallel parking as part of any road test, and four states make clear that age alone may not serve as the basis for discretionary vision or road testing.

Those states lacking tougher requirements for older drivers may nevertheless be able to remove driving privileges from an older person if referred to the agency for a medical review. Most states have a medical advisory board that accepts referrals from doctors or family members when they believe that a driver may be unfit to continue driving. The medical advisory board then examines the information and may require any testing that it deems necessary to determine the driver’s driving ability. While not restricted to older drivers, the medical advisory board can function as an effective check on incapable older drivers that are between renewal periods, or in states where there are no required tests upon renewal. Research shows that older drivers in Maryland are referred to the Medical Advisory Board by police officers (for moving violations) at a higher rate than other drivers. In the same vein, every state has some form of habitual offender program where the administrative agency of the state may suspend or revoke the license of a driver who has had a certain number of accidents over a certain period of time. The habitual offender programs are not limited to older drivers, but can serve as an effective check on accident-prone older drivers.

Many states have implemented provisions for older drivers. Most states with no provisions still have in-person renewal where the agents can observe applicants. Overall, states have recognized that there is a problem with older drivers and that it is affecting the public’s health.

Evidence Base for State Regulation: How It Can Work

Studies and analysis of crash data show that there are methods to reduce crash rates among older drivers. One study found that states with in-person renewal policies or age-related renewal policies experienced lower percentages of injury among older drivers than states without such policies. However, the same study found that there was no statistically significant difference in injury rates between states with vision screening and states without vision screening, meaning that the vision screening currently used by states may not be an effective means of predicting older driver accidents. These data do not suggest that vision screening is unimportant, but they do suggest that the type of vision screening being used by states may be ineffective or that diminished vision is not a significant contributor to crashes among older drivers. The American Medical Association (AMA) recommends that states continue to use screening methods to identify potentially dangerous older drivers, such as vision testing and road testing, but also suggests that there are better vision tests.
older drivers. Researchers concluded that the battery of tests in conjunction with the on road test form a reliable predictor for crash risks in automatic failure of the road test, but about 77 percent of older drivers that had poor performance on the battery of tests failed the road test, and took an average 50 minutes for the older driver to complete, and cost around $800 to implement. Older drivers did not mind the testing, and training is essential for the testers. The UFOV test proved to be the best measure of future crashes in the Maryland study. The older drivers reported some difficulty in administering the tests (except the UFOV test, because it was done on a computer), indicating that training is useful.36 The test administrator was pleased with the ease of executing the tests according to the study. The battery of tests can effectively screen and identify potentially dangerous older drivers based on their mental health, physical health, and driving behaviors.33 The drawback of the study is that the test subjects were not studied after they finished the testing to correlate their performance with their driving ability., in other words, to see whether or not the people that performed poorly had higher crash rates.

A study from Maryland also used a battery of tests and implemented them at the Maryland MVA. The tests included, among others, a useful field of vision test (UFOV), visual perception test, head/neck rotation, foot tap, and rapid walking. The Maryland MVA testers reported some difficulty in administering the tests (except the UFOV test, because it was done on a computer), indicating that training is essential for the testers. The UFOV test proved to be the best measure of future crashes in the Maryland study. The older drivers involved in crashes performed significantly worse on the UFOV tests than those who were not involved in a crash. No statistically significant difference existed for the rest of the tests between those involved in a crash and those not involved in a crash. Maryland used this study along with three other studies to compile a list of tests that are effective in predicting crash risk among older drivers. Maryland identified nine tests that are predictive of future crash rates in older drivers: visual contrast sensitivity, leg strength and stamina, head/neck flexibility, brake reaction time, working memory, visuospatial organization, visual search, visual information processing speed, and executive function.

A study from Europe suggests that a battery of testing may be the best starting point, with a follow up medical examination and on-road driving test if the older driver fails the initial battery of tests. The battery of tests does not take long to perform, and poor performance on the battery of tests correlated to failure of the on road driving test. Poor performance on the battery of tests did not predict an automatic failure of the road test, but about 77 percent of older drivers that had poor performance on the battery of tests failed the road test. Researchers concluded that the battery of tests in conjunction with the on road test form a reliable predictor for crash risks in older drivers.44

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Certain forms of testing can identify problematic older drivers and improve road safety. States can implement tests to identify potentially problematic older drivers and either restrict or rescind their license, or require further medical and/or on road testing. States taking the lead in preventing potentially dangerous older drivers from driving will also alleviate some of the difficult and often uncomfortable conversations family members have with older drivers who are no longer safe on the roads.45

Unintended Consequences of State Regulation

The potential unintended consequences of implementing driving restrictions on older drivers are also an important public health consideration. The decreasing mobility of seniors whose driving privileges have been rescinded is one such consequence. States may face opposition to more stringent provisions for driver’s licenses for older people because of the possible negative individual and public health impact of heightened restrictions. Many older drivers are reluctant to give up their driver’s license for fear that they will lose their independence. A driver’s license may also be the only way for some older drivers to get out of their homes and live a social, fulfilling life. In many rural and even in some suburban areas, a lack of public transportation further exacerbates the problem, and older drivers in those areas may not have access to other forms of transportation.46

Driving cessation can have a negative effect on older drivers’ physical and mental health, mobility and independence. However, it is difficult to quantify the actual effect of driving cessation because many seniors that stop driving do so because of poor health. Therefore, it is difficult to determine whether older people that stop driving experience further declines in health due to driving cessation, or if their health is declining due to their already poor health and advanced age. A study of older drivers over a five-year period found that “driving cessation is accompanied with significant declines in physical and social functioning.” Older drivers who stopped driving also faced more rapid health declines and a higher rate of depression over the five year time period.

Older people with no driver’s licenses stay inside more often, which can lead to social isolation and social loneliness. Social isolation is a condition in which an individual has little contact with others and a low involvement in community affairs, while social loneliness is a more subjective state defined by the individual and generally involving unhappiness with one’s social life. Social isolation is a major problem in preventing potentially dangerous older drivers from driving...
risk factor for morbidity and mortality, even when health factors and social status are taken into account.\textsuperscript{54} Therefore, driving cessation and social isolation together are significant determinants of poor health in older adults and responsible public health policy requires that they be considered and dealt with if driving restrictions are placed on older drivers.

Along those same lines, states should consider practical unintended consequences, including decreased access to health care, inability to engage in the political process, decreased access to food, and, for an increasing number of older drivers, difficulty commuting to work. Older people are a growing segment of American society, and denying them access to their own transportation while not providing improved access to other forms of transportation could be negative not only for the individual, but for the entire community and public health in general.

In addressing these unintended consequences of driver’s license restrictions for seniors, states could institute programs that would allow for lowered costs for older people who want to use public transportation, institute senior ride programs, or incentivize private transportation entities with tax breaks or other incentives.\textsuperscript{55} There are several organizations that address this issue and attempt to provide means of transportation for older drivers through volunteer transportation programs, community ride programs, and identification of lower cost public transportation for older citizens in some places.\textsuperscript{56} Obviously there are going to be costs associated with these programs, but the public health interest of safeguarding the mental, emotional, spiritual, and physical health of our elders when they are no longer able to drive certainly justifies them.

Legal Considerations

Are laws that impose specific requirements or prohibitions based on a driver’s age constitutional? Or is such an age-based distinction unlawful? The most likely argument challenging an age-based distinction would be based on the Equal Protection Clause of the 14th Amendment, essentially claiming that the discrimination against older drivers violates the older driver’s right to be treated equally under the law.\textsuperscript{57} While these laws draw distinctions based on age, they are likely constitutional.\textsuperscript{58} A statute or regulation imposing different standards for older drivers would be subject to the lowest level of scrutiny − rational basis. To survive rational basis review, the provisions imposed by the state need only be rationally related to furthering a legitimate state interest.\textsuperscript{59} The state interest is protecting the public health as well as the health of the vulnerable population of older drivers. The driving restrictions states would impose appear to be rationally related to the state interest because they can effectively screen potentially dangerous older drivers and limit their time spent on the roads, thus reducing the negative public health implications.

Recommendations

The research highlights some ways that states can implement programs and policies to improve older driver safety.\textsuperscript{60}

- **Educational Programs.** Older drivers are more likely than their younger counterparts to restrict their own driving (by driving less, not driving at night, and avoiding rush hours).\textsuperscript{61} Educational programs can describe to older drivers how to realize when their health may be getting in the way of their driving ability, and when they should reduce driving or stop altogether.\textsuperscript{62} Education programs have two positive effects: they harness older drivers’ tendency to self-regulate in a way that will improve road safety, and they can result in older drivers willingly relinquishing their driver’s license when they no longer feel safe on the road.

- **Improved Screening Tools.** The testing currently in place across the states is not as effective as it could be. Instituting improved vision and physical testing, like those used in the Maryland studies, before license renewal could lead to the identification of more at-risk older drivers. States could then require those drivers identified through testing to take a more detailed physical examination with their doctor, or restrict or revoke the license depending on the severity of the risk. States should, at minimum, consider a UFOV test upon renewal, because poor performance on the UFOV test is strongly correlated to increased crash risk in older drivers.

- **Increased Access to Transportation for Older People.** Studies show that older people are more likely to discontinue driving if they have a reliable means of transportation.\textsuperscript{63} States providing transportation through decreased bus fares, increased senior ride programs, or incentives for private transportation may be able to improve public health simply by providing alternatives. These alternatives can also prevent the rapid health deterioration that could result from the social isolation and decreased mobility of older people without licenses. Ensuring access to alternative modes of transportation, and addressing other possible unintended consequences of older driver restrictions, would mean a holistic policy approach to improving older driver safety while safeguarding seniors’ autonomy and health, and ensuring that society will continue to benefit from the important contributions of its elders.


7 Potts et al., supra note 1, at I–1–I–2.

8 The information used in this section can be found in the 50-state survey on The Network for Public Health Law website.

9 Florida, Georgia, Hawaii, Iowa, Idaho, Illinois, Indiana, Kansas, Maine, Missouri, Montana, North Carolina, North Dakota, New Mexico, Pennsylvania, Rhode Island, South Carolina, Texas

10 Potts et al., supra note 1, at V–31–32.

11 Florida, Georgia, Hawaii, Iowa, Illinois, Indiana, Kansas, Maine, Missouri, Montana, North Carolina, North Dakota, New Mexico, South Carolina

12 Arkansas, Delaware, Hawaii, Iowa, Kansas, Minnesota, Missouri, Montana, North Dakota, New Hampshire, New Jersey, New York, Ohio, South Carolina, South Dakota, Washington, Wisconsin, West Virginia, Wyoming

13 Alaska, Washington D.C., Florida, Georgia, Illinois, Indiana, Louisiana, Massachusetts, Maryland, Maine, New Mexico, Oregon, Utah, Virginia

14 Alaska, Washington D.C., Florida, Georgia, Louisiana, Massachusetts, Maryland, Maine, New Mexico, Oregon, Utah, Virginia

15 Arizona, California, Colorado, Idaho, Illinois, Indiana, Louisiana, Nebraska, New Mexico, Texas, Washington

16 Colorado, Idaho, Nebraska, Texas, Washington

17 Arizona, California, Colorado, Idaho, Illinois, Indiana, Louisiana, Nebraska, New Mexico, Texas, Washington

18 See sources cited supra note 9.


20 California, Washington D.C., Massachusetts, New Hampshire

21 Soderstrom et al., Police Referral of Drivers to the Maryland Motor Vehicle Administration’s Medical Advisory Board, 53 ANNALS OF ADVANCES IN AUTOMOTIVE MEDICINE 105, 109 (2009).


23 Id.


25 Id.; see Olivia Clay et al., Cumulative Meta-analysis of the Relationship Between Useful Field of View and Driving Performance in Older Adults: Current and Future Implications, 82 Optometry and Vision Science 724 (2005) (detailing the scientific evidence that shows the correlation between poor useful field of view and poor driving ability in older drivers).


27 Id.

28 Id. at 22.


DAVID W. EBY ET AL. supra note 30.

Id. at 20-21.

Id. at 22.

Id.

Ball et al. supra note 30.

Id. at 80–81.

Id. at 80.

Id. at 80–81.

Id.

Staplin, supra note 30.

Id. A description of each test can be found on the website.


Id.

Id.

Id.

Id.


Id. at 381.

Id. at 381, 396–97.


Id.

Id. at 1293.

Id. at 1293–94.


Aplin, supra note 16 at 403–04.


Id.

Id.


Choi supra note 56 at 8.