Combating Financial Exploitation/Crimes Against the Elderly

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The Problem

- Financial elder abuse includes theft; the misuse of financial instruments like powers of attorney (POAs), trusts, and deeds; and personal fraud, which includes affinity fraud, mortgage fraud, home repair scams, telemarketing scams, investment fraud, ponzi schemes, and identity theft (Nerenberg, 2008).
- According to a report by Met Life, the financial losses to victims are at least $2.6 billion a year (MetLife Mature Market Institute, 2009).
- It has been estimated that only one in 25 cases of financial abuse is reported and there may be at least 5 million financial abuse victims each year (Wasik, 2000).
- Family members are the most common perpetrators. Adult sons are 2.5 times more likely than other family members to take advantage of elders.
- Loneliness and isolation appear to raise the risk of elder financial abuse.
- In addition to financial losses, the long-term effects include credit problems, health issues, depression, and the loss of independence.
- Red flags for elder financial abuse include caregivers who isolate elders from family and friends, elders' experiencing anxiety about their finances, new "best friends," missing belongings, elders' no longer receiving financial reports or documents from banks and other financial institutions.

Why Elders Are Targeted

Many elders have assets

- About 77% of older homeowners own their homes free and clear.
- Many have good credit ratings.

High rates of dementia among the elderly

- In the US, four to five million people are affected by dementia. The prevalence increases rapidly with age, with prevalence rates doubling every five years after the age of 60. Over half of elders over the age of 85 are affected.
- The 85+ population is projected to increase from 4.2 million in 2000 to 5.7 million in 2010 (a 36% increase) and then to 6.6 million in 2020 (a 15% increase for that decade).
- The prevalence of dementia among nursing home residents is estimated to be 60 to 80%

Many elders with dementia or diminished mental capacity lack responsible parties or legally-designated surrogates who can:

- Take steps to prevent abuse
- Identify and report abuse
- Take steps to mitigate the harm

Elderly are likely to have in-home helpers, including personal care attendants, friendly visitors, and meal service providers who have access to their clients' property, financial papers, and identifying information.

- A severe shortage of in-home helpers has resulted in more seniors hiring "independent providers" directly from newspaper ads or referral services who are not screened or supervised by agencies.

Challenges in Stopping Elder Financial Abuse

- Many victims are unable or unwilling to report.
- Service providers who are in a good position to observe abuse often don't recognize the signs and symptoms or how to interpret financial information.
- Traditionally, seniors have been encouraged to keep all their important documents together in one easily accessible place, which raises their risk for identity theft.

Abuse of Powers of Attorney (POA)

A POA is a document with which one person (the principal) grants authority to another (the "agent," or "attorney in fact") to act on the principal's behalf. It gives the agent the power to manage, dispose of, or sell the principal's property or to use the property as security to borrow money on the principal's behalf.

A durable power of attorney (DPA) "endures" after the onset of incapacity. A DPA must contain language stating that it is intended to be durable, such as "This power of attorney shall not be affected by the subsequent incapacity of the principal." Without this provision, the POA terminates once the principal becomes incapacitated. Executing a DPA allows a competent elder to choose a trustworthy person to handle his affairs and continue to do so even if he or she becomes incapacitated. The power may become effective at the time it is signed or, in the case of a "springing power of attorney," at a specified time or event in the future. For example, a DPA may be designed to "spring" only if and when the principal is deemed incapacitated by his or her physician.

At present, there is little oversight of powers of attorney and the following problems and abuses are increasingly being reported:

- The requirements for signing are not met (e.g. the power of attorney must be signed in the presence of a notary public or by at least two witnesses, the attorney in fact may not act as a witness, etc.)
- The principal was coerced or tricked into signing the document
- The principal lacked sufficient mental capacity at the time he or she signed it (the principal must understand the document at the time of signing regardless of the type of POA)
- The attorney-in-fact uses the power after it has terminated (the principal has become incapacitated and the power is not a durable one
- The attorney-in-fact uses the POA for purposes other than those for which it was intended
- The agent transfers the principal's property to herself without specific authorization in the power of attorney
- The agent does not act solely in the interest of the principal
- The agent has failed to keep the principal's property separate and distinct from his own

Identity Theft: A Growing Concern

Why are elders vulnerable?

Linda Foley, executive director of the San Diego-based Identity Theft Resource Center, states that seniors are more susceptible to identity theft because:

- Many hospitals and nursing homes use patients' Social Security numbers as identification information, and some print the number on wristbands worn by the patients.
- Seniors usually carry their Medicare cards with them in case of emergency. The cards contain beneficiaries' Social Security numbers.
- Seniors are more susceptible to muggers because of frailty.

Fraudulent telemarketers, through sustained contact and pressure, are often able to get elders to tell them their Social Security numbers.

Security Breaches. For example, in 2004, hackers gained access to a database that contained the names, addresses, telephone and Social Security numbers, and birth dates of 1.4 million recipients of the state's In-Home Support Service (IHSS) program.

The identities of deceased elders may be stolen, leaving surviving spouses or other family members with debt or other problems.

- Identity thieves obtain information about deceased individuals by watching obituaries, stealing death certificates, or accessing Social Security Death Index files.
- Thieves may be family members who have been using the identity for a long time.
- Because financial institutions are not always immediately notified when customers die (e.g. the Social Security Administration does not promptly transmit Death Master Files to the financial industry), accounts remain open, sometimes for many years. Thieves continue to use the deceased persons' Social Security numbers.

References

MetLife Mature Market Institute. (2009). *Broken Trust: Elders, Family and Finances.* Available online at http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf

Nerenberg, L. (2008). Elder abuse prevention: Emerging trends and promising strategies. New York: Springer.

Teaster., P. B., Dugar., T. A., Mendiondo, M. S., Abner, E. L., & Cecil, K. A. (2006). The 2004 survey of state adult protective services: Abuse of adults 60 years of age and older. Available online at http://www.elderabusecenter.org/pdf/2-14-06%20FINAL%2060+REPORT.pdf

U.S. Department of Health and Human Services. Administration on Aging. (2000). *A Profile of Older Americans (2008).* Available online on the Administration on Aging Web site: http://www.aoa.gov/AoARoot/Aging_Statistics/Profile/index.aspx

Wasik, J.F. (2000). The fleecing of America's elderly. *Consumers Digest*, March/April.

Services for Elders and Professionals

- **Adult protective services (APS).** APS is the primary agency to accept and investigate reports of abuse and neglect to elderly and dependent adults in most states. APS programs are typically housed within local or state departments of social services or aging. Information about state and local APS programs is available on the Web site of the National Center on Elder Abuse at http://www.ncea.aoa.gov/NCEAroot/main_site/Find_Help/State_Resources.aspx

- **Daily Money Management Programs (DMM)**. DMM programs help individuals with cognitive or physical impairments perform routine financial tasks such as paying bills. It can reduce a vulnerable elder's vulnerability to fraud, coercion, trickery or undue influence by preventing unscrupulous people from gaining access to an elder's assets. Money management can be tailored to meet an individual's specific needs.

- **Guardianship of estate or finances** is when a court grants authority to another individual to manage the impaired individual's financial affairs.

- **Financial Abuse Specialist Teams (FASTs)** have been formed in several communities to focus on complex financial abuse cases. Members include persons with expertise in real estate, insurance, banking practices, investments, trusts, estate planning, financial planning and other financial matters. Because some forms of financial abuse fall under state and federal jurisdiction, FASTs are also likely to include representatives from state and federal law enforcement and regulatory agencies, including Attorneys General, U.S. Attorneys and the Federal Bureau of Investigation. Although FASTs focus on financial abuse, they may address other types of abuse that may accompany financial abuse.

Resources

National Center on Elder Abuse (NCEA)

http://www.ncea.aoa.gov/ncearoot/Main_Site/index.aspx

NCEA conducts research; provides technical assistance; and produces reports and monographs to federal, state, and local agencies, professionals, and the public. Services include:

- Web site with fact sheets, a database of promising practices, a calendar of events, training library, and a database of state laws. http://www.ncea.aoa.gov/ncearoot/Main_Site/index.aspx
- A listserve for practitioners, administrators, educators, health professionals, researchers, law enforcement, advocates, legal professionals and policy makers. For information on how to subscribe, visit NCEA's Web site.
- Clearinghouse on Abuse and Neglect of the Elderly (CANE). Operated by the College of Human Resources of the University of Delaware, CANE is a collection of materials and resources. It produces annotated bibliographies for professionals and the public. http://www.ncea.aoa.gov/NCEAroot/Main_Site/Library/CANE/CANE.aspx

The Elder Financial Protection Network (California)

http://www.bewiseonline.org/

EFPN provides community education and professional training to employees of financial institutions and social service agencies.

The Eldercare Locator

http://www.eldercare.gov/Eldercare.NET/Public/Home.aspx

A public service of the U.S. Administration on Aging that helps older persons and their families find local services like transportation, meals, home care, and caregiver support services in every U.S. community. Available online or by phone at 800.677.1116.