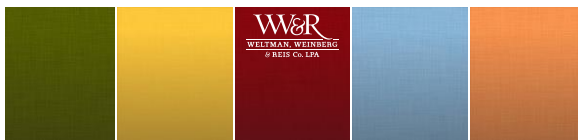


Financial Exploitation as a form of Elder Abuse

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Today's Seminar Agenda

- *What is Abuse?*
- *Financial Misappropriation*
- *Applicable Elder Abuse Laws*
- *Impact on Others*
- *Available Resources*



What is Elder Abuse?

- Any form of mistreatment that results in harm or loss to an older person, generally divided into the following categories:
 - Physical abuse is physical force that results in bodily injury, pain, or impairment. It includes assault, battery, and inappropriate restraint.
 - Sexual abuse is non-consensual sexual contact of any kind with an older person.
 - Domestic violence is an escalating pattern of violence by an intimate partner where the violence is used to exercise power and control.



What is Elder Abuse?

- Psychological abuse is the willful infliction of mental or emotional anguish by threat, humiliation, or other verbal or nonverbal conduct.
- Financial abuse is the illegal or improper use of an older person's funds, property, or resources.
- Neglect is the failure of a caregiver to fulfill his or her care giving responsibilities. Self-neglect is failure to provide for one's own essential needs.



Who are the Perpetrators?

- Children
 - Other family members/next to kin
- Powers of Attorney
- Home cleaning and services providers
- Healthcare Providers
 - Home health care workers



Elder Financial Abuse Conduct

- Taking money or property
- Forging an older person's signature
- Getting an older person to sign a deed, will, or power of attorney through deception, coercion, or undue influence
- Using the older person's property or possessions without permission
- Promising lifelong care in exchange for money or property and not following through on the promise
- Confidence crimes ("cons") are the use of deception to gain victims' confidence



Elder Financial Abuse Conduct

- Scams are fraudulent or deceptive acts
- Fraud is the use of deception, trickery, false pretense, or dishonest acts or statements for financial gain
- Telemarketing scams
- Perpetrators call victims and use deception, scare tactics, or exaggerated claims to get them to send the money
- They may also make charges against victims' credit cards without authorization



What are the Signs of Abuse?

- Sudden changes in a bank account or banking practice, such as unexplained withdrawals of large amounts of money;
- Additional names on an older person's bank card;
- Abrupt changes in a will or other financial document;
- Disappearance of funds or valuable possessions;
- Unpaid bills or substandard care despite the availability of funds;
- Evidence of the older person's signature being forged;

What are the Signs of Abuse?

- The sudden appearance of previously uninvolved relatives;
- Payment for unnecessary services; and
- Reports from the older person of financial exploitation.



Statistics

- The National Center of Elder Abuse defines elder abuse as
 - “any knowing, intended or careless act that causes harm or serious risk of harm to an older person – physically, mentally, emotionally, or financially.”
- A National Institute of Justice study showed that nearly 11% of Americans 60 years of age and older faced some type of elder abuse in the past 12 months
 - The Elder Justice Coalition, Retrieved July 22, 2012 from: <http://www.elderjusticecoalition.com>





Applicable Laws

- | | |
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| <ul style="list-style-type: none"> • Federal <ul style="list-style-type: none"> – Few relate specifically to elder abuse and neglect – Lack regulatory mechanisms to support state programs – Authorize minimal funding for state and local programs – Applicable to criminal law is minimal | <ul style="list-style-type: none"> • State <ul style="list-style-type: none"> – Chief source of protections and remedies for elder abuse – Have regulatory mechanisms to support local programs – Appropriate minimal funding for state and local programs – Criminal laws and civil remedies may be applied |
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Older American Act

- (42 U.S.C. § 3001 et seq., as amended)
- Congress passed the Older Americans Act (OAA) in 1965 in response to concern by policymakers about a lack of community social services for older persons
 - the first federal level initiative aimed at providing comprehensive services for older adults
- In 2006 congress reauthorized the act in its entirety, effective through FY 2011



Older Americans Act

- Congress passed the Older Americans Act (OAA) in 1965 in response to concern by policymakers about a lack of community social services for older persons
- Definitions of elder abuse
 - "Elder abuse" means abuse of an older individual
 - "Elder abuse, neglect, and exploitation" means abuse, neglect, and exploitation of an older individual
 - "Exploitation" means the fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an older individual for monetary or personal benefit, profit, or gain, or that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets



Federal Law – Elder Abuse Justice Act

- Signed into law by President Obama on March 23, 2010, as part of the Patient Protection and Affordable Care Act.
- It provides federal resources to
 - *"prevent, detect, treat, understand, intervene in and, where appropriate, prosecute elder abuse, neglect and exploitation."*



Federal Law – Elder Abuse Justice Act

- Requires that the Department of Health and Human Services oversee the development and management of the federal resources for protecting our seniors from elder abuse, through the following:
 - Establishment of the Elder Justice Coordinating Council
 - Establishment of an Advisory Board on Elder Abuse
 - Establishment of Elder Abuse, Neglect, and Exploitation Forensic Centers
 - Enhancement of Long-Term Care
 - Funding to State and local adult protective service offices
 - Grants for long-term care ombudsmen programs and for evaluation of programs
 - Programs to provide training
 - Grants to State agencies to perform surveys of care and nursing facilities



State Law

- Ohio Revised Code 5101.60
 - Mandates the Adult Protective Services (APS), to protect and assist adults 60 and older who may be victims of abuse, neglect, self-neglect and/or financial exploitation
 - APS is responsible for investigating reports of suspected abuse, neglect or exploitation of Ohioans age 60 and older
 - APS is party of each county's Department of Job and Family Services



State Law

- Ohio Definitions
 - "Abuse" - infliction upon an adult by self or others of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm, pain, or mental anguish
 - "Adult" - any person sixty years of age or older within this state who is handicapped by the infirmities of aging or who has a physical or mental impairment which prevents the person from providing for the person's own care or protection, and who resides in an independent living arrangement



State Law

- An "independent living arrangement" is a domicile of a person's own choosing, including, but not limited to, a private home, apartment, trailer, or rooming house. An "independent living arrangement" includes a residential facility licensed under section 5119.34 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults, but does not include other institutions or facilities licensed by the state or facilities in which a person resides as a result of voluntary, civil, or criminal commitment.



State Law

- Ohio Definitions
 - "Caretaker" - the person assuming the responsibility for the care of an adult on a voluntary basis, by contact, through receipt of payment for care, as a result of a family relationship, or by order of a court of competent jurisdiction
 - "Exploitation" - the unlawful or improper act of a caretaker using an adult or an adult's resources for their monetary or personal benefit, profit or gain

State Law - Reporting

- Any attorney, physician, osteopath, podiatrist, chiropractor, dentist, psychologist, any employee of a hospital as defined in section 3701.01 of the Revised Code, any nurse licensed under Chapter 4723. of the Revised Code, any employee of an ambulatory health facility, any employee of a home health agency, any employee of a residential facility licensed under section 5119.22 of the ORC that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults, any employee of a nursing home, residential care facility, or home for the aging, as defined in section 3721.01 of the ORC, any senior service provider, any peace officer, coroner, member of the clergy, any employee of a community mental health facility, and any person engaged in social work or counseling

State Law - Reporting

- Having reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation shall immediately report such belief to the county department of job and family services. This section does not apply to employees of any hospital or public hospital as defined in section 5122.01 of the ORC

State Law – Reporting

- The reports made under this section shall be made orally or in writing (except oral reports shall be followed by a written report if requested by the department)
- Written reports shall include:
 - Name, address and approximate age of the adult who is the subject of the report
 - Name and address of the individual responsible for the adult's care, if any individual is, and if the individual is known
 - Nature and extent of the alleged abuse, neglect, or exploitation of the adult
 - Basis of the reporter's belief that the adult has been abused, neglected, or exploited



State Law – Liability

- Any person with reasonable cause to believe that an adult is suffering abuse, neglect, or exploitation, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from such a report, or any employee of the state or any of its subdivisions who is discharging responsibilities under section 5101.62 of the Revised Code
 - Shall be immune from civil or criminal liability on account of such investigation, report, or testimony, except liability for perjury, unless the person has acted in bad faith or with malicious purpose



State Law – Enhanced Penalties

- Theft – 2913.02
- Identity Fraud – 2913.49
- Unauthorized Use of Property – 2913.04
- Misuse of Credit Card – 2913.21
- Unauthorized Use of M/V – 2913.03
- Forgery – 2913.21
- Securing writings by Deception – 2913.43



State Law – Civil Remedies

- Guardianship
- Conservatorship
- Orders of Protection



State Law

- Investigations
 - The county department of job and family services shall be responsible for the investigation of all reports
 - And for evaluating the need for and, to the extent of available funds, providing or arranging for the provision of protective services. The department may designate another agency to perform the department's duties under this section
- Investigation of the report shall be initiated within twenty-four hours after the department receives the report or case if any emergency exists; otherwise investigation shall be initiated within three working days



State Law

- Investigations
 - Investigation of the need for protective services shall include a face-to-face visit with the adult who is the subject of the report, preferably in the adult's residence, and consultation with the person who made the report, if feasible, and agencies or persons who have information about the adult's alleged abuse, neglect, or exploitation
 - The department shall give written notice of the intent of the investigation and an explanation of the notice in language reasonably understandable to the adult who is the subject of the investigation, at the time of the initial interview with that person



State Law

- Investigations
 - Upon completion of the investigation, the department shall determine from its findings whether or not the adult who is the subject of the report is in need of protective services
 - No adult shall be determined to be abused, neglected, or in need of protective services for the sole reason that, in lieu of medical treatment, the adult relies on or is being furnished spiritual treatment through prayer alone in accordance with the tenets and practices of a church or religious denomination of which the adult is a member or adherent
 - The department shall write a report which confirms or denies the need for protective services and states why it reached this conclusion



State Law

- Considerations
 - Capacity
 - Consent
 - Undue Influence



State Law – Capacity

- Fundamental element of clinical and legal standards and practice
- Involves many areas of functioning
 - Physical, mental, emotional, behavioral
 - Fluid concept
- Law presumes that persons over the age of majority have capacity
- Established standards of capacity



State Law – Consent

- Significant factor in determining the legitimacy of a wide range of activities and transactions
- Critical element of consent is capacity
- Capacity to consent
 - Ability to understand a transaction or activity
 - Make rational judgments
 - Make decisions



State Law – Undue Influence

- Misuse of one’s role and power
 - Deceptive and manipulative
 - Exploits trust, dependency, and fear
 - Victim may do things contrary to their beliefs
- Means to commit a crime



State Law

- Temporary Restraining Order (TRO)
 - If, during the course of an investigation, any person, including the adult who is the subject of the investigation, denies or obstructs access to the residence of the adult
 - the CDJFS may file a petition in court for a TRO to prevent the interference or obstruction
 - The TRO is to prevent the interference or obstruction if the court finds there is reasonable cause to believe that the adult is being or has been abused, neglected, or exploited and access to the person’s residence has been denied or obstructed
 - Such a finding is prima-facie evidence that immediate and irreparable injury, loss, or damage will result, so that notice is not required



State Law

- Evaluating ability to pay for services
 - If it appears that an adult in need of protective services does not have the financial means sufficient to pay for such services, the services shall be provided in accordance with the policies and procedures established by the CDJFS for the provision of welfare assistance.
 - An adult shall not be required to pay for court-ordered protective services unless the court determines upon a showing by the department that the adult is financially able to pay and the court orders the adult to pay.
 - Whenever the department has petitioned the court to authorize the provision of protective services and the adult who is the subject of the petition is indigent, the court shall appoint legal counsel.



Resources Available

- County or Local Bar Association (elder law experts)
- County Dept. of Senior and Adult Services
- First Call for Help (Northeast Ohio)
- Ohio Attorney General's Office 216-787-3030
- Ohio Consumer Protection Public Action Line (Ohio) 800-282-0515
- ProSeniors/Ohio (legal and long-term care issues) 800-488-6070
- Western Reserve Area Agency on Aging 216-621-8010
- National Center on Elder Abuse



Questions?





Thank You

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