



Identifying and Intervening in Financial Exploitation

Protecting Vulnerable Adults in Congregate Settings

*Iris C. Freeman, MSW, Associate Director
Center for Elder Justice & Policy, William Mitchell College of Law*

Pre-Conference Intensive

NCCNHR: The National Consumer Voice for
Quality Long-Term Care

35th NCCNHR Annual Meeting &
Conference

Caribe Royale Hotel

Orlando, Florida

October 19, 2010

Objectives

- Review legal definitions
- Identify behavioral descriptions and warning signs
- Explore tools for prevention
- Learn a model protocol for providers
- Consider the range of reasons for unpaid bills by families
- Discuss roles and limitations of public agencies
- Identify scams that target the elderly

Personal Tragedies

Public Costs

- Case vignettes
- Shared experiences
- Global problem

Improved MN Laws 2009

- Vulnerable Adult Justice Project (VAJP)
- VAJP legislative initiative
 - Strengthened definition of criminal financial exploitation
 - New banking provisions to encourage reporting
 - Standardized criteria for Medicaid hardship waivers
 - Private right of action

Protocol Project

- The cases everyone recognized
- 9 month foundation grant to identify and record best practices
- Literature search
- Focus groups & interviews
- Role of Vulnerable Adult Justice Project
- Availability
- A word about terminology

Broad Themes

- Recognize
- Record
- Report
- The basics, regardless of differences across states and jurisdictions

Defining Financial Exploitation



Defining Financial Exploitation

Financial or material exploitation is defined as the illegal or improper use of an elder's funds, property, or assets. Examples include, but are not limited to, cashing an elderly person's checks without authorization or permission; forging an older person's signature; misusing or stealing an older person's money or possessions; coercing or deceiving an older person into signing any document (e.g., contracts or will); and the improper use of conservatorship, guardianship, or power of attorney.

http://www.ncea.aoa.gov/NCEARoot/Main_Site/FAQ/Basics/Types_Of_Abuse.aspx

Definition in MN Law (Civil)

- Financial exploitation of a vulnerable adult
 - MN Statutes Section 626.5572
 - Violating a legal obligation (e.g. power of attorney)
 - Failure to spend on behalf of the VA
 - Stockpiling
 - Spending for someone else
 - Without a prior legal obligation
 - Taking control of VA's money or property by misleading
 - Forced servitude

Definition in MN Law (Criminal)

- Criminal financial exploitation of a vulnerable adult
 - MN Statutes Section 609.2335
 - The key: proving that exploitation was intentional
 - Misuse of money or property
 - Establishing a relationship for the purpose of controlling money or property
 - Consent is not a defense when perpetrator knows or has reason to know that victim is a vulnerable adult.

States Define Financial Exploitation

- [http://www.abanet.org/aging/about/pdfs/Abuse Types Statutory Provisions by State Chart.pdf](http://www.abanet.org/aging/about/pdfs/Abuse_Types_Statutory_Provisions_by_State_Chart.pdf)
- [http://www.abanet.org/aging/about/pdfs/Undue Influence Context Provisions and Citations Chart.pdf](http://www.abanet.org/aging/about/pdfs/Undue_Influence_Context_Provisions_and_Citations_Chart.pdf)
- Resources: ABA Commission on Law and Aging

States Define Mandatory Reporters and Processes

- <http://www.abanet.org/aging/docs/MandatoryReportingProvisionsChart.pdf> (ABA Commission on Law and Aging)
- <http://www.rainn.org/public-policy/sexual-assault-issues/mandatory-reporting-adult-victims> (Rape, Abuse, and Incest National Network)

Recognize Warning Signs



Things a Resident Tells You or that You or Observe about the Resident

-
-
-
-
-
-
-
-

Things a Resident Tells You or that You or Observe about the Resident

- Resident tells you someone is misusing his/her money (regardless of cognitive loss)
- Resident reports missing checkbook, credit card, important papers
- Resident agitated after family or friend visits
- Resident agitated after family or friend brings him/her back from an outing
- Sometimes, resident's hoarding behavior

Things You Observe in or about a Resident's Room

-
-
-
-
-
-
-
-

Things You Observe in or about a Resident's Room

- Possessions disappear
- Nice items replaced with those of lesser value
- Or...high cost items brought for resident who is unable to use them
- Personal needs account drained while resident needs basics like underwear
- ATM withdrawal slips

Family Dynamics and Visitors

-
-
-
-
-
-
-
-

Family Dynamics and Visitors

- Observing resident pressured into a decision or signature that has to be made NOW
- Threats that unless a document is signed, the family or visitor will stop taking care of the resident
- “Chaperoning” – someone who lets others visit only when he/she is there to monitor
- New acquaintance showing extreme affection, cutting resident off from others

More Family Dynamics

- Previously uninvolved relatives show up claiming authority to manage finances
- Agent or family member declining recommended treatments on basis of cost
- Known gambling addiction of resident or family
- Conflicts between resident's adult children about money

Money and Money Management

-
-
-
-
-
-
-
-

Billing

- Unpaid facility and/or pharmacy bills
- Stalling or broken promises from person handling resident's money
- Abrupt changes in responsibility for paying resident's bills
- Bills paid in cash
- Threat that resident will be moved out after questions arise about financial exploitation

Power of Attorney

- Resident who lacks decisional capacity “appoints” power of attorney
- Multiple people with power of attorney
- Attorney in Fact “playing dumb” about money or documents needed to establish Medicaid eligibility

Checks and Imbalances

- Checks and other documents signed when resident was no longer able to write
- Suspicious signatures
- Frequent checks made out to “cash”
- Check numbers out of order in resident’s checkbook
- Gifts (either frequent or costly) to staff or volunteers
- Sales of valuables to staff or volunteers

The Importance of “Maybe”



Prevention and Deterrence

- Staff orientation and training
- Resident and family council programs
- Admissions contracts
- Monitoring payments and responding to common problems
- Monitoring resident fund accounts

Prevention and Deterrence

- Staff orientation
 - Commitment to prevention
 - Definitions and signs
 - Risks of allowing financial exploitation to escalate
 - Resident fund accounts
 - Policies prohibiting gifts and loans from residents
 - Reporting and resources

Prevention and Deterrence

- Resident and family council programs
 - Commitment to prevention
 - Definitions and signs
 - Safeguarding your valuables (money and possessions)
 - Facility policies (e.g. about gifts to staff)
 - Whom to talk to at the facility when you have a concern
 - Resources in the community

Prevention and Deterrence

- Admission contracts
- Official documentation of financial authorities
- Address change to Social Security & benefits
- Monitoring payment with communication starting a few weeks after admission
- Monitoring resident fund accounts, as applicable

Unpaid bills

Is exploitation a factor?

- Don't wait more than 60 days (2 payment cycles) to assess an arrearage
- Match the response to the problem, e.g.
 - Person responsible for payment is bewildered and failing to manage
 - Application for public assistance is pending and “stuck in neutral”
 - Documented signs of financial exploitation

Model Protocol



Establish and Maintain a Financial Security Team

A Financial Security Team, composed, at a minimum, of the administrator, business office, and social work representatives, should conduct early, effective responses to perceived financial exploitation through monthly meetings, case review, and coordinated action. Staff in other pertinent roles, such as Admissions Coordinator, should be considered as additional members; however, larger teams can be more difficult to manage.

Coordinated Action

- At the risk of feeding stereotypes 😊
 - Social worker's role – focus on the resident: listen, support, advocate
 - Business office role – confront nonpayment: monitor, document, act to recover delinquent payments
 - Administrator's role – leadership support: obtain outside consultation if necessary, act when facility staff or volunteer is suspected of exploitation

Challenges to Coordinated Action

- Lack of support from the leadership
- Unwillingness to confront families or others who are seen as customers
- Staff turnover
- Staff inexperience
-
-
-

Model Protocol

Foundation of Common Sense

- Investigate and report as soon as signs appear
 - Engage the team
 - Consult with other staff who may have observed relevant behavior
 - Keep written documents of pertinent phone calls, meetings, letters, witnesses
 - May be a string of episodes that form a pattern over time

Model Protocol

Foundation of Common Sense

- Advocate for the Vulnerable Adult
 - Talk with the resident separately from the person(s) suspected of exploitation
 - Note inconsistencies in their stories
 - Note nonverbal cues when the two are together
 - Provide the resident with information about help in the community (e.g. ombudsman)

Report in Accordance with State Law

- Reporters report
 - Who
 - What
 - Where
 - When
 - How
- When the picture is unclear – obtaining advice
- Follow up – Once may not be enough, and persistence counts.

Elements of an APS Report

- Time, date of report
- Name, address, telephone of reporter
- Time, date, location of incident(s)
- Names of people involved
- Risk of imminent danger?
- Description of alleged exploitation
- Health condition of alleged victim
- Relationship of alleged perpetrator to victim, if known
- Whether law enforcement was notified

“They Refuse to Help”

- Agency roles and limitations, from your perspective
 -
 -
 -
- Bridging the waters
 - Multidisciplinary teams
 - Stakeholder groups and summits
 - Educational programs

Challenge Misunderstandings

- Oldies (not goodies) – Minnesota APS myths our group confronted
 - A discharge notice copied to an ombudsman or county APS agency is not a report.
 - Nothing in MN law requires a discharge notice to be issued before a report can be made or investigated.
- What are some in your state?

Beyond APS and Law Enforcement

- Social security offices – to report suspected rep payee fraud, to advocate for an alternative payee
- Private right of action (in approximately 10 states) – for the vulnerable adult or his/her advocate to pursue a civil lawsuit to recover the money or property
- Legal services attorneys – potential help with public assistance delays, but they need a client
- Long-term care ombudsmen – client advocacy and staff inservices

Working with Families

- Urge them to seek professional advice for public assistance applications or delays
- State Health Insurance Counseling programs for help with health insurance and Medicare Part D choices
- When a family/responsible party appears to be intentionally delaying and fabricating
 - confront the individual as a team
 - describe what you have seen and documented
 - say that you are legally required to report suspected exploitation to law enforcement authorities

Scams – Just a Few

- Receiving a phone call about winning a lottery or sweepstakes – just has to send processing fee NOW
- Receiving goods or subscriptions that were not ordered
- Sales call “out of the blue” followed by a sales visit
- The grandson in trouble

Scams

- Beside the contemporary ones, resident and family may be dealing with debt incurred because of a scam that happened before moving in
- Resources
 - State Attorneys General
 - State Public Safety Departments
 - Federal Trade Commission

Manual and Model Protocol

Identifying and Intervening in Financial Exploitation: Manual and Protocol for Providers Serving Vulnerable Adults in Congregate Settings

<http://cejp.org/resources/FinancialExploitationJune2010.pdf>

Discussion



Contact Information

- Iris C. Freeman, Associate Director
- Center for Elder Justice & Policy
- William Mitchell College of Law
- 875 Summit Avenue
- St. Paul, MN 55105

- iris.freeman@wmitchell.edu
- Direct line – 612-834-4747