

# All In the Family: Understanding the Financial Exploitation of Older Family Members

Minnesota Elder Justice Center webinar

October 30, 2018

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# MEJC Webinar Series!

- Today's webinar runs for 1 hour.
- You are muted, but can ask questions via the Q and A function. The hand-raising function will not work during this webinar.
- For more information about CLE and CEU credit, please visit the [MEJC materials](#) page under the resources tab on our website.

# Upcoming Webinars!

Please tell your friends and colleagues about our webinar series. Dates and registration for the following free webinars will be released soon:

- ▶ **November:** “Critical Conversations – Identifying and Confronting Elder Abuse in Families” | Learn strategies to spot and stop abuse within families
- ▶ **December:** “Understanding Poly-victimization and Elder Abuse” | Most elder abuse is not an isolated incident or occurrence. Learn why victims often experience multiple types of abuse or exploitation and how to prevent and address it.

# Welcome to the webinar!

This morning, I hope to:

- ▶ Review definitions and statistics
- ▶ Discuss fiduciary relationships
- ▶ Explore victim-perpetrator dynamics within relationships of trust
- ▶ Introduce the Elder Justice Center
- ▶ Share additional resources

# Special Thanks to:

- ▶ Dr. Marlene Stum, Professor of Family Social Science, University of Minnesota
- ▶ Iris Freeman, Adjunct Faculty, Mitchell Hamline School of Law
- ▶ Cheryl Hennen, State Ombudsman for Long-Term Care

# Elder Abuse: toward a definition...

- ▶ In general, elder abuse is any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to an older adult.
- ▶ What do we mean by “family?” A broad definition...
- ▶ Defined by age, relationship, type of abuse
- ▶ 2/3 of perpetrators of elder abuse are family members, trusted individuals and/or caregivers

# Prevalence

- ▶ 1,000,000 – 2,000,000 adults in later life in U.S. are victims of abuse<sup>1</sup>
- ▶ 1 in 10 persons over the age 60 are victims of elder abuse<sup>2</sup>
- ▶ Victims of elder financial abuse in U.S. lose close to \$3 Billion each year<sup>3</sup>

<sup>1</sup>National Center of Elder Abuse:2005 Elder Abuse Prevalence and Incidence

<sup>2</sup> National Institute of Justice: Elder Abuse as a Criminal Problem

<sup>3</sup> Blancato, Robert: Violence Against Older Women and The Elder Justice Act; 3/04/12

# Prevalence

- ▶ Family members are most common perpetrators of financial exploitation of older adults (57.9%).<sup>1</sup>
  - ▶ And yet, 51% of news articles related to elder financial exploitation concern instances of fraud perpetrated by strangers.<sup>2</sup>
- ▶ Perpetrators of elder abuse most likely to be adult children or spouses.<sup>3</sup>

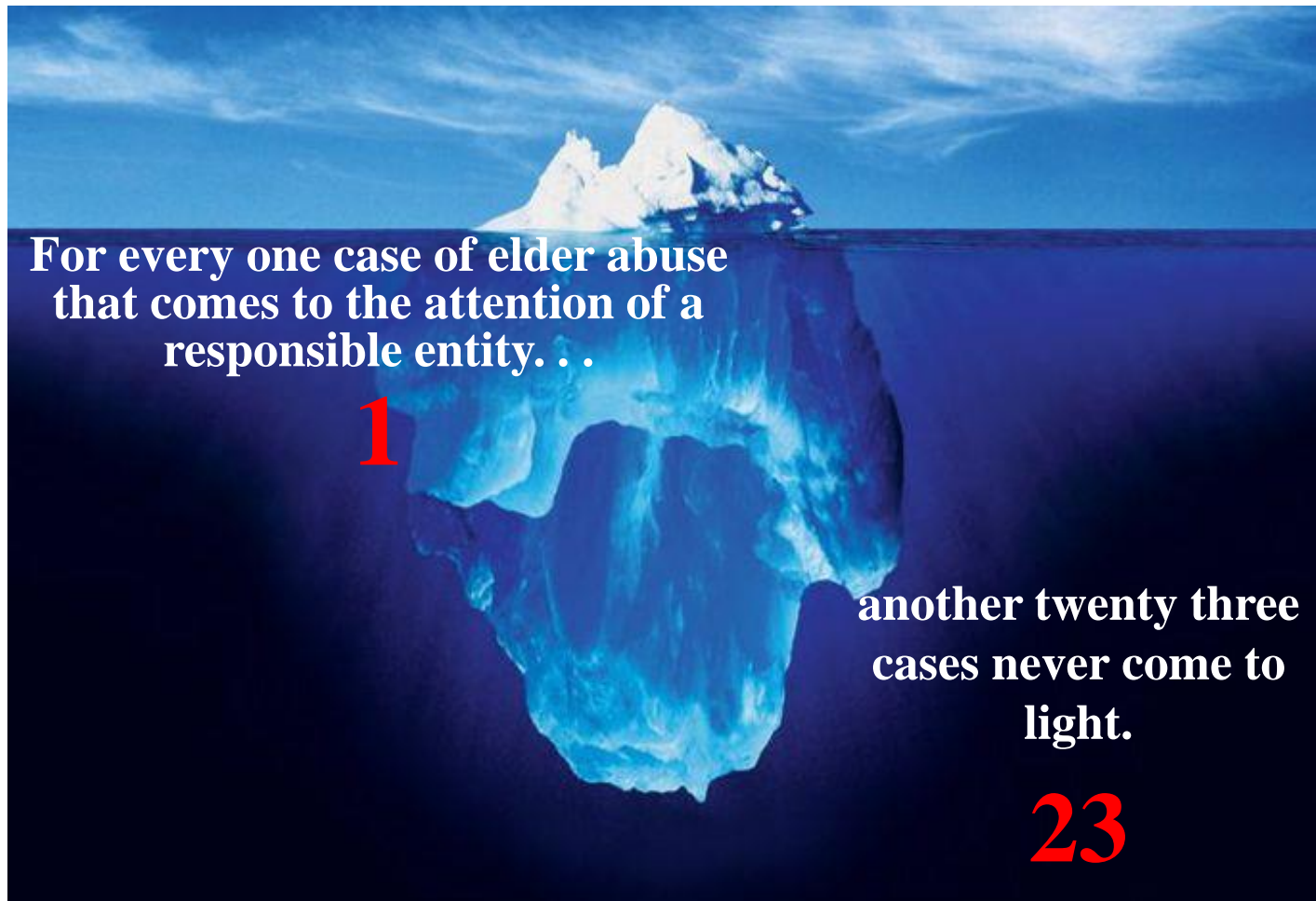
<sup>1</sup>Peterson, J., Burnes, D., Caccamise, P., Mason, A., Henderson, C., Wells, M., & Lachs, M. (2014). Financial exploitation of older adults: a population-based prevalence study. *Journal of General Internal Medicine*, 29(12), 1615–23. doi: 10.1007/s11606-014-2946-2

<sup>2</sup>MetLife Mature Market Institute. (2011). [\*The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders\* \(PDF\)](#).

<sup>3</sup>Lachs, M., & Pillemer, K. (2015). Elder abuse. *New England Journal of Medicine*, 373, 1947–56. doi: 10.1056/NEJMr1404688



# Elder Abuse: Under the Radar

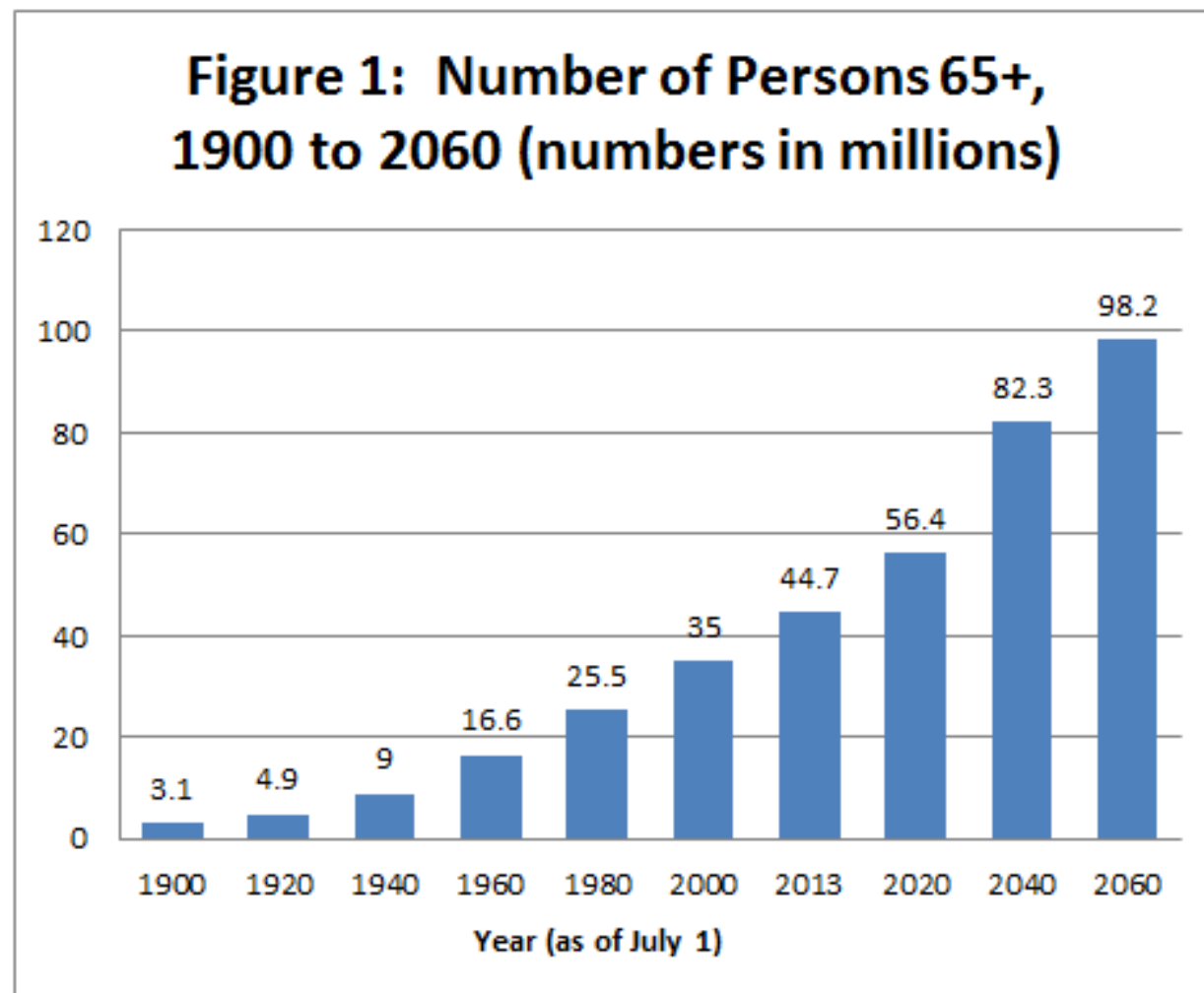


Source: NYS Elder Abuse Prevalence Study; Weill Cornell Medical College, NYC Department for the Aging; Lifespan; (2011)  
Slide courtesy of Life Long Justice

# Growth of Older Adults

- ▶ The Administration on Aging expects that by 2030, the U.S. population over age 65 will have doubled from 2000, with older adults representing 19% of the population.

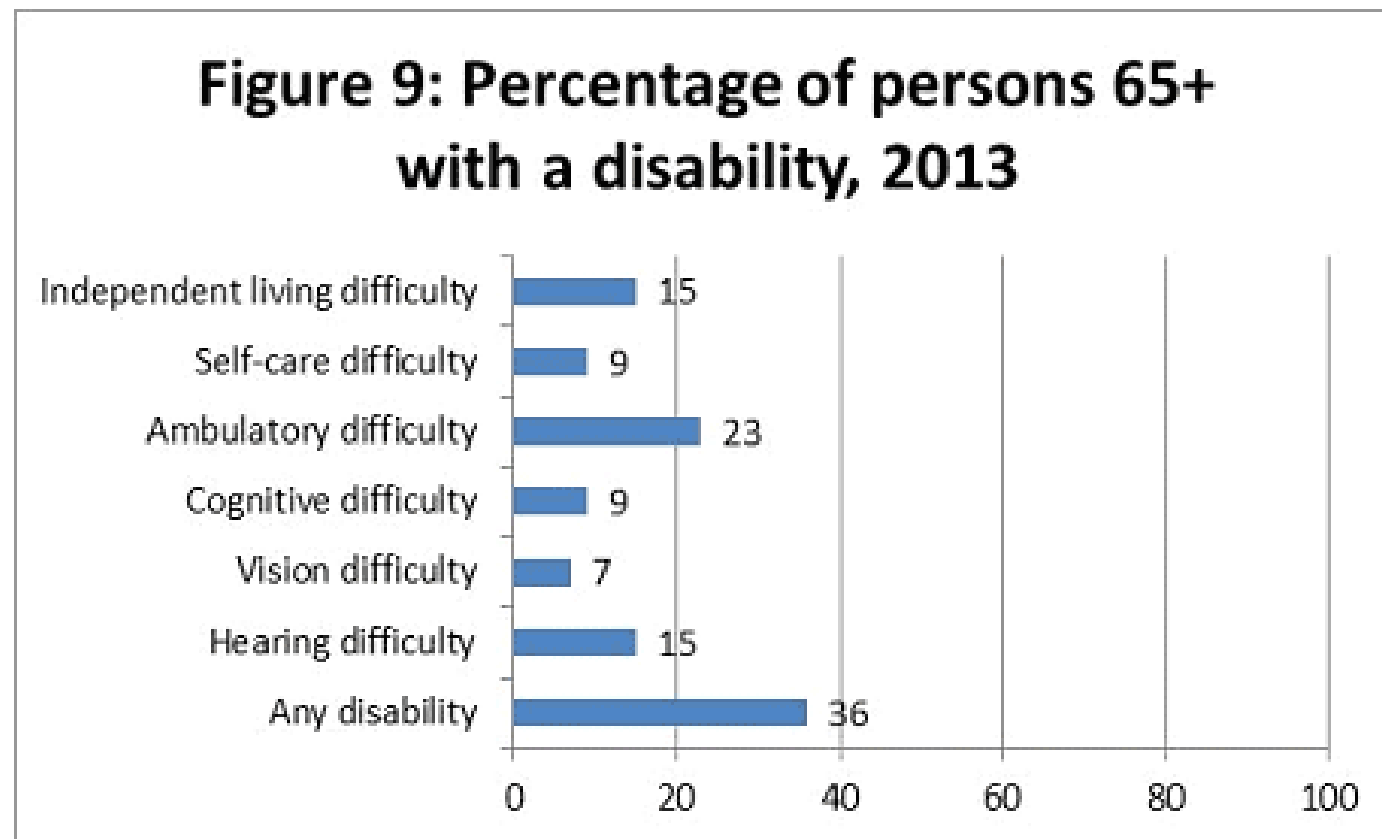
**Figure 1: Number of Persons 65+: 1900-2060 (numbers in millions)**



Note: Increments in years are uneven.

Source: U.S. Census Bureau, Population Estimates and Projections.

**Figure 9: Percentage of persons 65+ with a disability, 2013**



Source: U.S. Census Bureau, American Community Survey.

# Frameworks Gaps Analysis: Elder Abuse

1. Salience: Priority Problem vs. Off the Radar	7. Increased Mortality Risk: Known vs. Unknown Effect
2. Self-Neglect: Included vs. Excluded	8. Societal Effects: Salient vs. Unnoticed
3. Sexual Abuse: Explainable vs. Hard to Think	9. Solutions: Systemic vs. Individualized
4. Older Americans: Subjects to Empower vs. Objects of Care	10. Locus of Responsibility: Collective vs. Everyone/No One
5. Type of Explanation: Scientific vs. Moralized	11. Orientation: Forward vs. Backward
6. Level of Explanation: Structural vs. Individualized	12. The Problem: Solvable vs. Unsolvable

# Connections with Victim Advocacy

- ▶ Autonomy as a protective factor against abuse
  - ▶ Khemka, Hickson and Reynolds, Am. J M. Ret. (2005); O'Connor and Vallerand, Psych. and Aging (1994).

# Types of Abuse

- ▶ Domestic Violence Late in Life
- ▶ Physical abuse
- ▶ Emotional abuse
- ▶ Sexual abuse
- ▶ Spiritual abuse
- ▶ **Financial Exploitation**
- ▶ Neglect
- ▶ Self Neglect

# What can we do when we suspect abuse or financial exploitation is happening?

- ▶ Share our suspicions – talk to someone – make a report...
- ▶ To emergency services: 9-1-1
- ▶ To law enforcement
- ▶ To adult protection: 844-880-1574
- ▶ To a Tribal Court or other court
- ▶ To an advocacy organization



# What is Financial Exploitation?

- ▶ Scams
- ▶ Identity theft
- ▶ Theft
- ▶ Coercion and extortion
- ▶ Fraud and deception
- ▶ Abuse of legal authority (i.e. Power of Attorney)

# What is a Fiduciary?

- ▶ A Fiduciary is someone who manages money or property for someone else.
- ▶ A Fiduciary has four basic duties:
  - ▶ To act only in the best interest of the person he or she is helping.
  - ▶ To manage the other person's money or property carefully.
  - ▶ To keep the other person's money or property separate from his or her own.
  - ▶ And to keep good records.

# Minnesota's Statutory Protection

- ▶ Financial Exploitation: Minn. Stat. 609.2335
- ▶ In addition to identifying theft and other basis for charges:
  - ▶ Breach of fiduciary duty - ie Power of Attorney
  - ▶ Use of property for something other than the benefit of the vulnerable adult
  - ▶ Fails to use property for benefit for vulnerable adult
  - ▶ Deprives vulnerable adult of financial resources

# Who should we choose as a fiduciary?

Spouse?

Parent?

Child?

Sibling?

Friend?

Neighbor?

Coworker?



# Who should we choose?

No one?!



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# What qualities are we looking for?

- ▶ Trustworthiness
- ▶ Responsibility
- ▶ Discernment
- ▶ Empathy
- ▶ Organization

And if all those...

- ▶ **AVAILABILITY**

# How many have served as a(n):

- ▶ Executor?
- ▶ Attorney in Fact/Power of Attorney?
- ▶ Health Care decision-maker?
- ▶ Personal Representative?
- ▶ Representative Payee?
- ▶ Trustee?
- ▶ Guardian or Conservator?

# Serving as a Fiduciary

Some (rhetorical) considerations:

- ▶ Is it an easy job?
- ▶ Is it an honor we bestow upon our family members or friends?
- ▶ Do we *really* want to give it to the person who wants it?
  - ▶ Distinguishing between willingness and desire



# Families Under Pressure

- ▶ Sadness and regret regarding individual capabilities
- ▶ Criticism from siblings
- ▶ Perhaps unrealistic expectations about what will happen regarding health, living situation
- ▶ Costs keeps going up
- ▶ Limited resources for respite or support
- ▶ Feel stonewalled by systems responses

Other factors or context for families?

# Context Within Families:

Dr. Stum identifies the complex contexts in which financial exploitation takes place:

- ▶ Long, complicated parent/child, sibling relationships
- ▶ Power and control battles, conflict
- ▶ Sibling rivalries and estrangements
- ▶ Histories of dependency, unaccountability, lack of responsibility, bullying, manipulation
- ▶ Privacy and secrecy

# Financial Exploitation Can Be Opportunistic

Dr. Stum identifies specific circumstances that could create vulnerability to Fin. Exp.:

- ▶ Older Adults
  - ▶ Widowhood
  - ▶ Isolation
  - ▶ Compromised health
  - ▶ Financial insecurity
- ▶ Perpetrators
  - ▶ Divorce, financial dependency, justified or exploitive entitlement

# Assistance as a Mask for Financial Exploitation

- Of those 68% of calls we receive concerning financial exploitation, many of them begin this way:

“My sister is my dad’s attorney in fact, and I’m not sure she’s doing what she’s supposed to be doing...”

# What might we want to consider (or discuss)?

- ▶ Planning tools such as:
  - ▶ Power of Attorney (for financial matters)
  - ▶ Health Care Directive (for health decisions)
  - ▶ Testamentary devices
    - ▶ Will/Trust
    - ▶ Beneficiary designations
    - ▶ Other titling considerations

# Power of Attorney

- ▶ Legal document that gives permission for another person (people) to conduct financial business on your behalf.
- ▶ You: “Principal”
- ▶ Other(s) (Fiduciaries) identified as “Attorneys In Fact”

# Power of Attorney

- ▶ Two types of Power of Attorney documents in Minnesota:
  - ▶ General (or Common Law)
  - ▶ Statutory Short Form MN Stat. 523.23

# Power of Attorney

- ▶ Statutory Short Form Power of Attorney
- ▶ Four Sections:
  - ▶ Powers
  - ▶ Durability
  - ▶ Gifting
  - ▶ Accounting



# Power of Attorney

- ▶ Properly Executed
  - ▶ Statutory Form
  - ▶ Signed or acknowledged in front of Notary
  - ▶ Initialed “Special Notice”
  - ▶ Note: specimen signatures and acknowledgement signatures NOT notarized
  - ▶ Note: no expiration date required

# Termination of Durable Power

- ▶ Durable Power of Attorney terminates on the earliest to occur of:
  - ▶ The death of the principal
  - ▶ The expiration date specified in the document
  - ▶ Or in the case of a spouse as an attorney in fact; the commencement of separation, dissolution or annulment proceedings

# Revocation of Power of Attorney

- ▶ An executed POA may be revoked by a **written revocation** signed by the principal (or on behalf of principal by another, f.ex. a guardian) and **acknowledged by a notary public**.

# Health Care Directive

- ▶ Minnesota Statute 145C is the Minnesota Health Care Directive
- ▶ You can view a sample form there, or at the Minnesota Attorney General's Website:  
<http://www.ag.state.mn.us/pdf/consumer/healtcaredir.pdf>

# Health Care Directive

- ▶ Names a person (or people) to make a health care decision on your behalf if you are not able to make a decision
- ▶ Unification of two prior documents:
  - ▶ Living Will
  - ▶ Power of Attorney for Healthcare

# Health Care Directive

- ▶ Best documents contain both elements
  - ▶ Nomination of substitute decision maker
  - ▶ Instructions regarding interventions
- ▶ Opportunity to articulate preferences with regard to intervention; but also
  - ▶ Organ donation
  - ▶ Burial or cremation
  - ▶ Other desires/preferences

# Health Care Directive

- ▶ Proper execution requires:
  - ▶ Signature in front of a notary
  - ▶ Or two disinterested witnesses
  - ▶ Either nomination of proxy, provision of intervention instructions or both

# Health Care Directive

## ▶ Revocation:

- ▶ A Health Care Directive may be revoked by:
- ▶ Preparing a written statement saying it is revoked or cancelled
- ▶ Destroying it (remember multiple copies)
- ▶ Telling at least two other people it has been revoked
- ▶ Writing a new Health Care Directive



## Keep this distinction in mind:

- ▶ While the authority of the Health Care Agent is triggered by the incapacity of the principal person under a Health Care Directive; the Attorney In Fact is empowered to act as soon as the Power of Attorney document is executed (even if the principal person retains capacity).

# POLST

- ▶ Provider Order for Life Sustaining Treatment
- ▶ Type of Health specific advance directive
- ▶ Completed by provider with patient
- ▶ Ideal under specific circumstances – terminal condition; end-of-life

# All Advanced Directives:

## ▶ Considerations:

- ▶ Multiple decision makers – agreement?
- ▶ Clarity of instructions
- ▶ Change in perspectives over time – remember, these are living documents
- ▶ Coordinate with other planning tools
- ▶ Seek good guidance!

# Secrets? Or News...?

- ▶ To share or not to share? That is the question...
  - ▶ ...For each person to answer for him or herself.
  - ▶ POA – depends on circumstances
  - ▶ Health Care Directive – best if distributed to providers and health care decision makers.

# Warning Signs of Financial Exploitation

- ▶ Long before the past-due bills pile up, you might see:
  - ▶ An elder who is agitated before a family member or friend comes to see them or take them to an “appointment”
  - ▶ An elder who lacks the basics even though he or she should have sufficient resources
  - ▶ An elder pressured to sign a document
  - ▶ An elder, family member, or friend with a known gambling, drug or alcohol dependency

# Warning Signs of Financial Exploitation

- ▶ Long before the past-due bills pile up, you might see:
  - ▶ The creation of a new Power of Attorney document
  - ▶ The erratic use of an elder's funds or personal needs allowance by family members or fiduciaries
  - ▶ The sales of an elder's valuables to friends, facility staff or others

# Warning Signs Present for Older or Vulnerable Victims

- ▶ Isolation
- ▶ Hints at being alone or afraid (or fearful in presence of particular person)
- ▶ Repeated “accidental” injuries
- ▶ Presents as “difficult” patient or client
- ▶ Has vague, chronic complaints
- ▶ Is unable to follow-through on treatment plans; misses appointments\*

\*<http://www.ncall.us/sites/ncall.us/files/resources/Victim%20Centered%20Safety%20Planning-2014.pdf>

# Perpetrator Profile / Signs

- ▶ Often times family members or caregivers
- ▶ Always with victim
- ▶ Controlling
- ▶ Short-tempered
- ▶ Under/unemployed
- ▶ Prior history
- ▶ Overly involved
- ▶ Gambling/substance abuse addiction
- ▶ Dismissive
- ▶ Unusual relationship with victim



# Perpetrator Profile / Signs

- ▶ Provides conflicting explanations about the older adults injuries
- ▶ Deliberately isolates victim
- ▶ Controls and dominates
- ▶ Portrays self as victim; or as the only caring person in the older or vulnerable adult's life
- ▶ May be charming and helpful toward professionals

OVW, FLETC and NCALL training (2012)

# Common Abuser Justifications

- ▶ Perpetrator excuses:
  - ▶ “I have an anger management problem.”
  - ▶ “I was drunk,” or “I was high.”
  - ▶ “I’m sick; it’s not my fault.” (physical or mental health issue)
  - ▶ “In my culture, elders share their resources.”
  - ▶ “He is too difficult for me to care for.”

OVW, FLETC and NCALL (2012)

# Reframing Caregiver Stress and Abuse

- ▶ Everyone experiences stress, but most do not abuse.
- ▶ Abusers target only the older adult – not others.
- ▶ Abusers tend to use caregiver stress as an excuse to create sympathy for themselves.

OVW, FLETC and NCALL (2012)

# Outcomes if Perpetrators' Justifications Are Believed

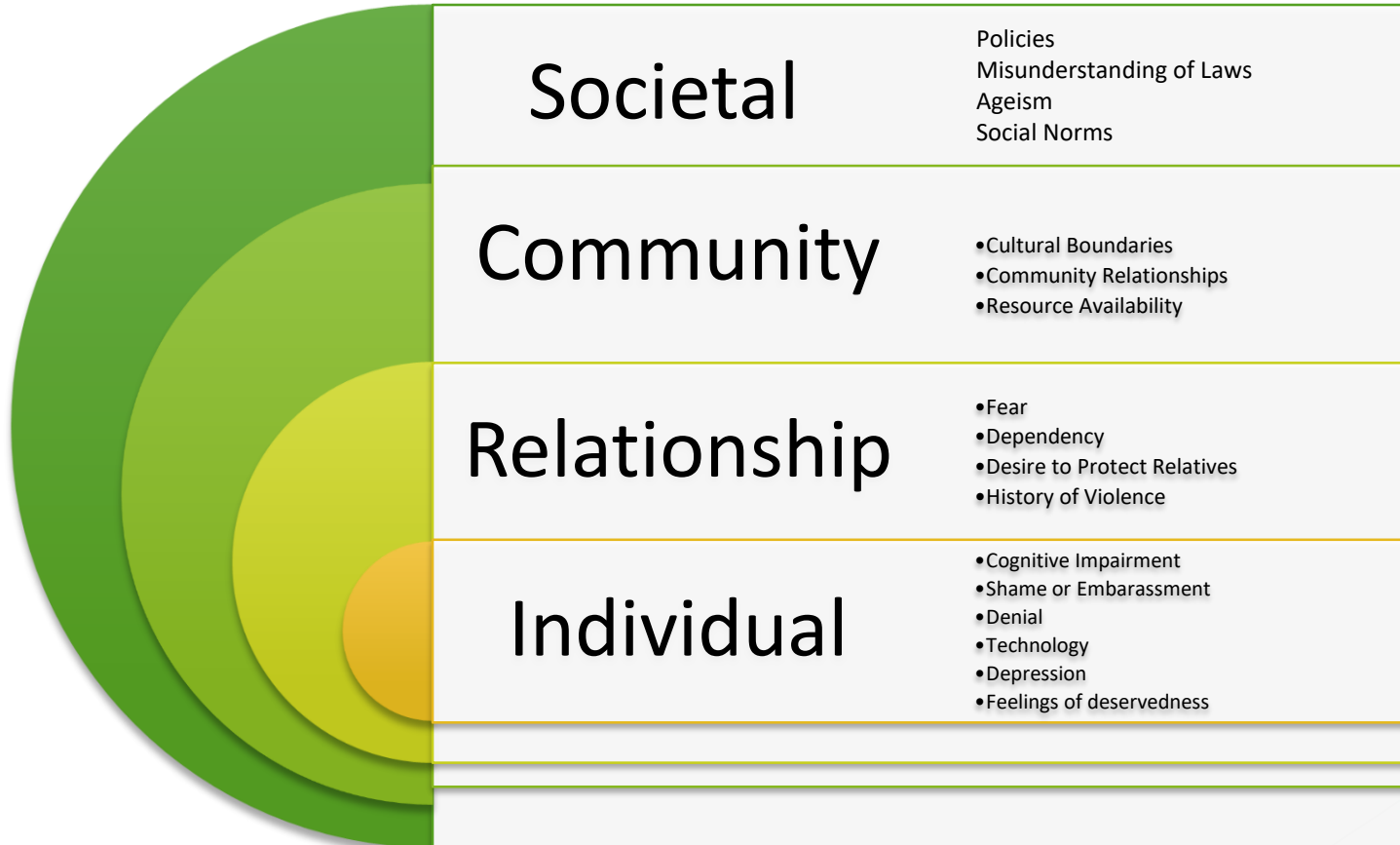
- ▶ Offenders are not held accountable
- ▶ Message to abusers: no consequences
- ▶ Offering services to address perpetrator stress, anger or substance abuse doesn't address power and control or greed as motive
- ▶ Victims may not seek help again
- ▶ Victim safety is not addressed

# Barriers to Reporting

Victims are often reluctant to seek help or report their experiences.

- ▶ Pride/Shame
- ▶ Fear
- ▶ Concern about outcomes for family member
- ▶ Communication barriers

# Reporting Barriers: Social-Ecological Model



# Resources Available if you Suspect or are Experiencing Financial Exploitation

- ▶ Ombudsman's Office
- ▶ Adult Protective Services – MAARC: 1-844-880-1574
- ▶ Law Enforcement
- ▶ Social Security Administration
- ▶ Courts
- ▶ Banks
- ▶ Consumer Financial Protection Bureau
- ▶ Other advocacy organizations...



## Consumer Financial Protection Guides:

Available free-of-charge from the CFPB website at  
[www.consumerfinance.gov/managing-someone-elses-money](http://www.consumerfinance.gov/managing-someone-elses-money)



# How can we prevent elder abuse?

- ▶ This is a question many people around the country are working to answer...including the Minnesota Elder Justice Center!

# The Minnesota Elder Justice Center

- ▶ **Mission** - Mobilizing communities to prevent and alleviate abuse, neglect, and financial exploitation of elders and vulnerable adults.
- ▶ Focus on:
  - ▶ Public Awareness
  - ▶ Professional Education
  - ▶ Public Policy
  - ▶ Direct Service

# The Minnesota Elder Justice Center

Our website:

[www.elderjusticemn.org](http://www.elderjusticemn.org)

Resources available there:

- ▶ Downloadable, printable handouts, discussion guides, and information about our presentations
- ▶ To learn more about how you or your organization can join the community conversation about elder abuse prevention, consider joining our monthly gathering of professionals known as Minnesota Elder Justice Center Partners. [Learn more and sign up for the Center Partners' mailing list on our website.](#)
- ▶ 26 minute documentary and DVD “Extras” – [Elder Victims: Abused, Exploited, Alone](#)
  - ▶ 26 minute documentary available free of charge through [www.elderjusticemn.org](http://www.elderjusticemn.org), includes discussion guide and facilitator notes
  - ▶ Co-produced by Twin Cities Public Television and the Minnesota S.A.F.E. Elders Initiative

# Messages to our neighbors and friends:

- ▶ Be on the lookout for common consumer scams
- ▶ Encourage friends and neighbors to S.T.O.P.:
  - ▶ Systematize Finances
  - ▶ Tell Someone
  - ▶ Obtain the Documents
  - ▶ Practice saying: “No.”

# Looking to the future: opportunities for conversation...

- ▶ We know that conversation can help us identify when elder abuse is happening:
  - ▶ Ask: Is anyone hurting you?
  - ▶ Are you afraid of anyone?
  - ▶ Is anyone taking or using your money or belongings without your permission?
  - ▶ Are you being disrespected? If so, in what ways?

# Additional Resources

- ▶ National Center on Elder Abuse: [www.ncea.acl.gov](http://www.ncea.acl.gov)
- ▶ Cornerstone: [www.cornerstonemn.org](http://www.cornerstonemn.org)
- ▶ National Indigenous Elders Justice Initiative: [www.nieji.org](http://www.nieji.org)
- ▶ Indian Women's Resource Center: [www.miwrc.org](http://www.miwrc.org)
- ▶ National Clearinghouse on Abuse in Later Life: [www.ncall.us](http://www.ncall.us)
- ▶ White House Conference on Aging:  
[www.whitehouseconferenceonaging.gov](http://www.whitehouseconferenceonaging.gov)
- ▶ Senior LinkAge: [www.mnaging.net](http://www.mnaging.net)
- ▶ National Center for the Prevention of Elder Abuse:  
[www.preventelderabuse.org](http://www.preventelderabuse.org)
- ▶ Consumer Financial Protection Bureau: [www.cfpb.gov](http://www.cfpb.gov)
- ▶ Minnesota Department of Commerce: [www.mn.gov/commerce](http://www.mn.gov/commerce)

# Thank you!

Questions?

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