

Identifying and Responding to Elder Financial Exploitation



**ELDER ABUSE AND EXPLOITATION UNIT OF
THE OFFICE OF THE ATTORNEY GENERAL**

NEW HAMPSHIRE LEGAL ASSISTANCE

Overview of Topics



Demographics and Statistics

Definition and Methods of Financial
Exploitation

Potential Perpetrators

Telltale Signs of Exploitation

Ways to Respond

Demographics and Statistics



Demographics and Statistics



In 2023 AARP reported that 28.3 billion is stolen from seniors annually.

New Hampshire second “oldest” state in U.S.

2021 Census, population of NH 1,388,952, with 377,828 sixty and above. (27.2%)

Increased numbers of older adults will result in increased incidents of exploitation

What is Elder Financial Exploitation?



What is Elder Financial Exploitation?



Illegal or improper use of income
or assets of older adult

Methods of Exploitation



Scams and identity theft (stranger)

Theft, coercion, and fraud

Undue influence

Abuse of legal authority (i.e., Power of Attorney)

Scams



Romance, Social Security, IRS, Tech, Lottery, Grandparent, Publisher's Clearing House

Amazon / Phishing

Identity theft

Charity

Unsolicited work or home improvement scam

Theft, Coercion or Fraud



Forging an older person's signature on checks or other documents

Stealing an older person's money or possessions

Cashing checks or using credit cards without authorization or permission

Coercing or deceiving an older person into signing any document

Borrowing money (sometimes repeatedly) and not paying it back

Undue Influence



Definition: Use of tactics by person in trust/confidence relationship to obtain an unfair advantage over elderly person

Purpose: To deceptively obtain control over elderly person's property or assets

Pattern of tactics using emotional, psychological or legal manipulation

Victim may or may not recognize that it's happening

Victim identifies with perpetrator, who is often a "trusted other"

Undue Influence



Common tactics:

- Create fear
- Prey on vulnerabilities
- Create dependency
- Create lack of faith in own abilities
- Induce shame and secrecy
- Occasionally act kind
- Keep unaware
- Isolate from others and information

Powers of Attorney



Very common estate planning tool

Grants power to another person (agent) to make financial decisions

Do not need an attorney to create POA

Abusing Powers of Attorney



Unless the powers are broad, the agent has limited power to sell grantor's property and spend grantor's money **unless for the benefit of the grantor**

It is effective when it is signed and delivered to the agent

The agent's power ends when:

- **Grantor dies**
- **Is revoked by grantor**
- **Is revoked by the court or guardian**

Abusing Powers of Attorney



Not a license to steal

Agent has fiduciary duty to the grantor

- Can only do what the POA document authorizes them to do.
- Cannot treat money like it is their own.
- Can only spend the grantor's money for things that benefit the grantor.
- Should be “stepping in the shoes” of the grantor when making decisions

NH RSA 564:E: Uniform Power of Attorney Act



- Enacted in 2018
- Includes provisions related to 3rd parties accepting and relying on POAs and consequences for refusing to accept POAs.
- 3rd parties may rely on POAs that are properly “acknowledged” (notarized)

NH RSA 564-E: Uniform Power of Attorney Act



- RSA 564-E:119(d): A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:
- (1) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;
- (2) an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and
- (3) an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

NH RSA 564:E: Uniform Power of Attorney Act



- RSA 564-E:120 - Liability for Refusal to Accept Acknowledged Power of Attorney
- Have 7 days to either accept or request certification, translation or legal opinion
- Must accept POA no later than 5 days after receipt of certification, translation or legal opinion
- RSA 564-E:120(b): Lists reasons when POA can be refused including actual knowledge that agent's authority has been terminated; good faith belief that POA is invalid or agent lacks authority

NH RSA 564:E: Uniform Power of Attorney Act



- If 3rd party violates statute:
- Can be subject to a court order mandating acceptance of POA
- Liable for attorneys' fees incurred in any action or proceeding related to refusing to accept POA

Who are the Perpetrators?



Who are the Perpetrators?



Professional criminals who target older adults

Family – primarily adult children and grandchildren

Hired, professional or voluntary caregivers

Friends, acquaintances or others in position of trust

Telltale Signs of Exploitation



Telltale Signs of Exploitation



Unpaid or overdue bills

Utility shut-off

Excessive banking (frequent ATM withdrawals or purchases of “Money Grams”)

Excessive credit card activity with no goods or services to show for it

Disparity between income/assets and lifestyle

Telltale Signs of Exploitation



Evasiveness or confusion over account depletion

Constant companionship by new friend

Increased social isolation or sudden estrangement from family or friends

Abrupt and unexpected changes in a will, trust, power of attorney, or other legal document in favor of the new friend

Change in physical appearance or personal hygiene

Factors That May Increase Risk of Exploitation



Older adult's dependency on abuser

Abuser's dependency on older adult

Older adult's physical condition

Older adults's social isolation

Substance abuse, cognitive impairments or mental illness

Ways to Respond



Barriers to Response



Underreported, under investigated and under prosecuted

Special knowledge and skills needed to effectively respond

Victims may be unable or reluctant to seek help:

- **Don't recognize the exploitation**
- **Fear, shame, disbelief or retaliation**
- **Dependent on perpetrator**
- **Reluctant to get perpetrator in trouble**
- **Fear of being placed under guardianship or long-term care facility**
- **Fear of loss of relationships**

Ways to Respond



Civil Legal Remedies

Prevention: Change POA, freeze accounts, restraining orders, money management services, guardianship/conservatorship, injunctions

Asset Recovery: accounting, breach of fiduciary duty, constructive trusts, conversion, fraud, rescission, restitution

NH RSA 383-A



- Reasonably believe disbursement may result in financial exploitation
- Freeze for 15 days
- Notify Commissioner
- Notify bank account holder
- Continue review and investigation
- Report to commissioner within 7 days
- Commissioner may extend for another 25 days
- Can extend further with court order

Ways to Respond



How civil remedies can be used to respond to exploitation:

Not used enough

Banks want more time

Case in Dover with bank, BEAS and PD

Ways to Respond



Criminal Remedies

Prosecution: theft, theft by unauthorized taking, forgery, fraud (Medicaid, Social Security, etc.)

Ways to Respond



Financial Exploitation Law- RSA 631:9 and :10- went into effect on January 1, 2015, amended 2016

Sets forth acts which constitute financial exploitation of elderly, disabled or impaired adults. Broader group than “incapacitated” adults

Makes it a crime for a fiduciary to deprive or take real or personal property for their own benefit or advantage

Ways to Respond



Makes it a crime to use undue influence, harassment, duress, etc. to acquire possession or control of interest in real or personal property

Imposes criminal penalties on offenders who know or reasonably should have known that the victim is an elderly, disabled or impaired adult

Gives law enforcement concurrent jurisdiction to investigate reports of abuse, neglect or exploitation of incapacitated adults

Ways to Respond



How criminal remedies can be used to respond to exploitation:

Reports made

Investigation

Prosecution

Accountability / Punishment / Restitution

State v. Elvis Guzman / Starlyn Pimentel

Referral Sources and Reporting



Ways to Respond



Mandatory Reporting

- RSA 161-F:46: Any person...suspecting or believing in good faith that any adult who is or who is suspected to be incapacitated has been subjected to abuse, neglect, self-neglect, or exploitation or is living in hazardous conditions shall* report or cause a report to be made.

Ways to Respond



Under NH adult protection law, any “vulnerable” person age 18 or older.

RSA 161-F:43, VII – “Vulnerable” means that the physical, mental, or emotional ability of a person is such that he or she is unable to manage personal, home, or financial affairs in his or her own best interest, or he or she is unable to act or unable to delegate responsibility to a responsible caretaker or caregiver.

Ways to Respond



RSA 161-F:43, IV- “Exploitation” means the illegal use of a vulnerable adult’s person or property for another person’s profit or advantage, or the breach of a fiduciary relationship through the use of a person or a person’s property for any purpose not in the proper and lawful execution of a trust, including but not limited to, situations where a person obtains money, property, or services from a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud.

Ways to Respond



Oral report to commissioner (Health and Human Services) followed by a written report if requested.

Law enforcement officials receiving a report shall notify the commissioner within 72 hours of receipt of such report.

BEAS Central Intake: 1-800-949-0470

Ways to Respond



Immunity from civil or criminal liability for making report in good faith

RSA 161-F:47: “Any person or agency, other than an alleged perpetrator, participating in good faith in the making of a report of an alleged incident of adult abuse, neglect or exploitation ... shall have immunity for any liability, civil or criminal, that might otherwise be incurred or imposed.”

Ways to Respond



Financial Abuse Specialist Team (FAST) multi-disciplinary team

Assists service providers with special expertise regarding financial exploitation

Can also provide education on financial exploitation to the community and professionals who serve older adults

FAST teams or their members may also provide advice on legislation pertaining to financial exploitation

NH FAST: Created in 2015.

Ways to Respond



Resources

- NH Bureau of Elderly and Adult Services – Adult Protective Services Central Intake: 1-800-949-0470
- Elder Abuse and Exploitation Unit of the Attorney General's Office: 603-271-3658
- NH Legal Assistance Justice in Aging Project: 1-888-353-9944

Additional Information



Resources

- GAO Report on Combating Elder Financial Exploitation
<http://www.gao.gov/products/GAO-13-110>
- National Center on Elder Abuse,
<http://www.ncea.aoa.gov/index.aspx>
- National Legal Resource Center,
http://nlrc.aoa.gov/Legal_Issues/Elder_Abuse/Financial_Exploitation.aspx

Questions

