

Hiding in Plain Sight: Financial Exploitation in Vermont

Financial exploitation of the elderly is alive and well in Vermont. The National Center on Elder Abuse defines financial exploitation as the illegal or improper use of an elder's funds, property, or assets.¹ Examples include cashing 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 a will), and the improper use of guardianship or power-of-attorney powers. Perpetrators may be friends, family, caregivers, or complete strangers. Victims are drawn from across the socio-economic spectrum.

We in the state of Vermont are uniquely positioned by virtue of our population size and commitment to social justice to be a national leader on this issue. Yet, it appears another legislative session will end without any substantive action and the key players will continue to work without a shared vision or participation of state leadership.

Why Should We Care?

Exact statistics on the incidence of financial crimes against the elderly are not available. The impact of these crimes is surely substantial; a recent study published by MetLife Mature Market Institute estimates that financial losses incurred nationally by victims of elder financial crimes and exploitation exceed \$2.9 billion dollars annually.² Vermont does not capture these statistics. But the impacts go far beyond the monetary. As an investigator for Adult Protective Services (APS), I witnessed firsthand the devastation of financial exploitation: eviction notices, shut-off utilities, choosing between food and medicine, and broken trust and embarrassment. Victims blame themselves for trusting the perpetrator and often are ashamed and reluctant to seek help or restitution.

So why should we care? We need to care because the financial and emotional toll is enormous. We need to care because this crime touches our most vulnerable populations: elders and those with disabilities. We need to care because we can do better.

What's Working?

The problem is intractable but not impossible to address. Responders to financial abuse and exploitation include Adult

Protective Services (APS), law enforcement, financial institutions, private attorneys, offices of state's attorneys, and the Attorney General's Consumer Protection Division. In Vermont, financial exploitation is implicated in four statutes: Title 13, Title 33, Title 8, and Title 14. Under the criminal and the Department of Disability, Aging, and Independent Living statutes, the definitions of financial exploitation are virtually identical, allowing law enforcement and APS investigators to work in tandem. Further, collaboration has begun between APS and the Attorney General's Office to assist victims of cross-border scams. I created, and until recently coordinated, the Vermont Financial Abuse Specialist Team to provide for cross-sector networking, collaboration, and case review. These steps are positive.

What's Wrong?

Nonetheless, we can do better. Law enforcement agents cannot file a Title 33 relief from abuse, neglect, or exploitation complaint. There is no statutory framework for financial institutions to assist APS or law enforcement in emergency situations in which a victim is having funds drained from her account. The Department of Aging and Independent Living has backed away from legislation introduced this session, H.112, which would have addressed this problem in part. Added to which, many battling financial exploitation are not aware of the complexities of the statutes and mitigation tools available. For example, a credit-card company will not recognize a fraud dispute absent a police report. Similarly, Title 33 and Title 8 must be in harmony if any financial records are to be released. Private attorneys can be unaware that remedies and penalties under Title 14 are weak. Finally, the Adult Abuse Registry - essentially the only penalty faced by perpetrators - is not public.

What Do We Need to Do?

There is a clear path forward. We need a leader to step forward: DAIL, law enforcement, members of the Vermont bar, offices of state's attorneys, or the Attorney General's Office. Or, better yet, all of them. We need a leader to provide a unified vision and break down the institutional silos that isolate state agencies, service providers, and financial institutions. We've had

a health-care czar, why not a financial-exploitation czar? We need better data collection and better use of the data currently collected; it seems an unfortunate anachronism that basic statistics about financial exploitation are lacking in an era when all decisions seem to revolve around data. Citizens should have the right to freely search the Adult Abuse Registry so that they can make informed decisions about who should care for vulnerable adults. Law enforcement needs training and tools so that more cases end in prosecution. Adult Protective Services cannot adequately protect vulnerable adults when it is chronically under-resourced. The probate courts would do better to have clear guidelines for financial guardians and meaningful penalties when the standard of care has not been met. And finally, we need public acknowledgement from our legislators and executive branch leaders that financial exploitation is a crime, and should be treated as such.

Victoria S. Lloyd, Esq., recently launched Athena Fiduciary Services, LLC with Paula McCann, Esq., to provide a variety of fiduciary services as well as asset tracing and trainings. Previously, Ms. Lloyd was an investigator for the State of Vermont Adult Protective Services and specialized in financial exploitation and determining fulfillment of fiduciary responsibilities. She received a J.D. from the Vermont Law School and is a member of the Vermont Bar Association.

¹ <http://www.ncea.aoa.gov/faq/index.aspx>.

² National Conference of State Legislatures, Financial Crimes Against the Elderly 2013 Legislation, at <http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2013-legis.aspx> (last updated Jan. 15, 2013).



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