Elder Financial Exploitation in California: Addressing the Impact on Public Benefits

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• All on mute. Use Questions function for substantive questions and for technical concerns.

• Problems with getting on to the webinar? Send an e-mail to trainings@justiceinaging.org.

• Slides and a recording are available at Justice in Aging - Advocates Resources - Trainings: justiceinaging.org/resources-for-advocates/webinars. See also the chat box for this web address.
Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we’ve focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.
Diversity, Equity, and Inclusion

To achieve Justice in Aging, we must:

• Acknowledge systemic racism and discrimination

• Address the enduring negative effects of racism and differential treatment

• Promote access and equity in economic security, health care, and the courts for our nation’s low-income older adults

• Recruit, support, and retain a diverse staff and board, including race, ethnicity, gender, gender identity and presentation, sexual orientation, disability, age, economic class
Financial Exploitation in CA
Prevalence of Financial Exploitation

- Estimated 184,500 reported cases in California*
- Elder abuse is underreported
  - For every 1 case reported, 24 are unknown
  - Even fewer financial exploitation cases are reported

* California Association of Area Agencies of Aging, 2018.
Victims of Financial Exploitation

• Elder financial exploitation affects older adults at all income and resource levels
  ▪ Poverty can actually increase the risk of financial exploitation
  ▪ Access to benefits is critically important
Acts of Financial Exploitation

- Can go from seemingly small actions to large-scale exploitation
  - All have negative impact on older adults
  - Family dynamics play a role in some cases
Impact of Elder Financial Exploitation

• **Non-financial**
  - Loss of trust and or confidence
  - Depression
  - Increased risk of hospitalization

• **Financial**
  - Loss of savings
  - Behind on bills
  - Disqualification from benefits
  - Reduced benefits
Role of Civil Legal Aid

• Protection
  ▪ Orders of protection, stay away orders, etc.

• Redress
  ▪ Recovery of funds through civil action

• Associated issues
  ▪ Consumer debt
  ▪ Housing
  ▪ Health Care
  ▪ Benefits
Public Benefits

• As a result of financial exploitation:
  ▪ Older adults may need to qualify for benefits due to loss of income and/or savings
  ▪ Older adults who were already relying on benefits may be at risk of losing them

• Challenges:
  ▪ Stolen funds could be perceived as “gifts”
  ▪ Recovered funds could create excess resources
  ▪ Documents could be missing or taken by the perpetrator
  ▪ Gaps in benefits may occur
SSI in California

- Federal safety net program that provides a very basic income to older adults and people with disabilities who have little-to-no other income or resources

- Eligibility:
  - Low-income people over age 65 or with disabilities
  - Low resource and income limits
SSI & Reissued Benefits

- If a rep payee misuses benefits, in some cases, funds will be reissued to the beneficiary.
  - SI 01130.602 Reissued funds are not countable resource for 9 months following the month the restitution is received

- How to help:
  - Determine if client is eligible for returned funds
  - Alert Social Security office
  - Have new rep payee appointed- try to avoid lapse in benefits during investigation
SSI & Victim Compensation

- Victims of elder abuse may receive funds from state-based victim compensation funds
  - POMS SI 00830.660 - excludes from income payments made from state fund
  - POMS SI 01130.665 - excludes unspent funds from state fund for 9 months
  - California Victim Compensation Board

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FIGHTING SENIOR POVERTY THROUGH LAW
SSI & Returned Funds

• If stolen funds are replaced or returned, they may be excluded from resources for 9 months.
  • POMS SI 01130.630 - excludes funds that replacement stolen excluded resources for 9 months from the date of their receipt
Medi-Cal

- Requires financial eligibility to receive assistance
- Covers long-term care, including
  - Nursing home care
  - In-Home Services & Supports (IHSS)
  - Community Based Adult Services (CBAS)
  - Other Waiver Programs (e.g. assisted living, MSSP)
Challenges Faced by Victims in Accessing Medi-Cal

• Denial of eligibility due to missing paperwork
• Penalty periods based on “gifts” or transfers
• Eviction or involuntary discharge from nursing homes
• Need for a hardship waiver
Medi-Cal: Denial of Eligibility

- Problem: Unable to provide financial documents, are missing documents or have questionable records
- How to help:
  - Assist with accessing missing records
  - Argue that records are not needed to determine eligibility
Medi-Cal: Penalty Periods for “Gifts”

• Problem: A penalty period may be imposed if assets are given away during the 30 month lookback period if the applicant is entering a nursing home. Some stolen funds can appear to be “gifts”.

• How to help:
  - Work with Medicaid office
  - Fair hearing to argue that the transfers were not gifts
Medi-Cal: Eviction from Nursing Home

• Problem: There may be threats of eviction or involuntary discharge due to bills not being paid or did not qualify for Medi-Cal.

• How to help:
  ▪ Challenge discharge
  ▪ Pursue Medi-Cal eligibility
Medi-Cal: Undue Hardship

• An undue hardship exists when application of the restricted coverage would deprive the individual of the following:
  ▪ Medical care such that the individual's health or life would be endangered; or
  ▪ Food, clothing, shelter, or other necessities of life.

• Hardship waiver requires clear, convincing, and credible evidence.
In-Home Services & Supports

• Problem: Family or non-family caregiver receiving IHSS reimbursement forces the older adult to supplement pay, sign off on incorrect time sheets or not providing services.

• How to help:
  - Work with DHSS
  - File complaint
Medicare Fraud

• **Examples:**
  - Someone uses another person’s Medicare card to obtain services or equipment
  - Healthcare provider bills for services not received
  - Healthcare provider performs unnecessary procedures
  - Supplier bills for equipment that is never received
Harm To Older Adults

• Medicare fraud can result in:
  • Medical harm
  • Higher co-payments
  • Difficulty obtaining equipment or services in the future
  • Inferior equipment
Addressing Medicare Fraud

- **California Senior Medicare Patrol**
  - Provides education, counseling & assistance
  - If fraud is determined, referrals are made to appropriate state & federal agencies for further review or action

- **Civil Legal Services**
  - Identity theft recovery
  - Improper billing issues
Other Considerations

- Impact on amount of benefits when someone moves out
- Impact on housing
  - Subsidized housing
  - Domestic violence protections
  - Home Safe Pilot
- Important to look at the full picture
New Resources for Advocates
New Elder Justice Resource

Financial Exploitation of Older Adults
A Guide for Civil Legal Aid Attorneys in California

Produced by Justice in Aging with support from the California Community Foundation.
Adapted from information from the National Center on Law & Elder Rights.

JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW
A Guide for Civil Legal Aid Attorneys in California

• State-specific attorney practice guide
• Legal strategies and statutes for protection & redress

• Guide is designed for
  ▪ Civil legal aid attorneys
  ▪ Pro bono attorneys
  ▪ Law students
Guide Sections

• **Practice Guidance**
  - Trauma-Informed Legal Advocacy
  - Mandated Reporter Policy
  - Capacity
  - Screening

• **Legal Strategies**
  - Protection
  - Redress
  - Fraud & Scams

• **Additional Issues**
  - Coordination with Criminal Proceedings
  - Associated Legal Issues
  - Collaboration/Multidisciplinary Teams
Additional Resources

• National Center on Law & Elder Rights- Legal Training on Elder Abuse
• CANHR Recovering Compensation for Victims of Elder Abuse
• CANHR Elder Financial Abuse Restitution Guide
• CA Dept. of Aging: Medicare Fraud Toolkit
• USC Training Resources on Elder Abuse
• CA Elder Justice Coalition
• DOJ Elder Justice Initiative Webinars
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