



*Shining Light
on the Hidden Problem
of Elder Abuse*

NEW YORK STATE
**Elder Abuse
Prevention**
**TRAINING
MANUAL**

Revised 2011

Funded by
New York State Office
for the Aging

Produced by
Lifespan of
Greater Rochester Inc.



Lifespan
take it on!



Elder abuse is violence, theft and neglect. It thrives in silence as victims are often too afraid, too embarrassed or too ill to ask for help. As the population of older adults increases, so does the prevalence of elder abuse. It is already all around us. Elder abuse is present in every community, at every income level and in every social and cultural group. National statistics show that the oldest older adults are more vulnerable to elder mistreatment; they are abused and neglected at two to three times their proportion in the older adult population (Tatara et al., 1998). *Under the Radar: New York State Elder Abuse Prevalence Study*, (Lifespan et al., 2011) also confirms that elder abuse is severely underreported — the best statewide estimate is that for every case of elder abuse that comes to the attention of authorities, roughly 24 remain undiscovered.

While New York State does not have a comprehensive mandatory reporting law, N.Y. Social Services Law § 473-b provides immunity from civil liability to any person who makes a good faith referral to Protective Services for Adults (in New York, Protective Services for Adults (PSA) and Adult Protective Services (APS) are used interchangeably), law enforcement, aging services or other agency concerning a person who may be an endangered adult in need of protective or other services.

A community-wide response is the only effective way to reduce the prevalence of elder abuse. Efforts to increase awareness and recognition of the various forms of domestic elder abuse will have a positive impact on its detection, reporting and prosecution.

This manual is an updated version of the original *Elder Abuse Training Manual*, which was produced by Lifespan in 1999 with funding from the New York State Office for the Aging. This revised manual, available electronically, is designed to serve as an introductory guide to help raise awareness among all professional groups who come in contact with older adults in the community. It contains general information that is important for everyone to know, including definitions of the types of abuse, high risk factors, indicators of abuse, barriers to reporting, interview techniques, the importance of careful documentation, and resources for further assistance and information. There is additional, specific information on financial exploitation, the fastest growing form of abuse and often the most devastating for the older victim.

Common case studies are included to encourage discussion of collaborative and innovative approaches to addressing different forms of elder mistreatment. As professionals throughout the state look toward improving the lives of older adults, a multidisciplinary, coordinated community response must be developed to address domestic elder abuse and to provide services to reduce its prevalence.

TABLE OF CONTENTS

I INTRODUCTION TO ELDER ABUSE

The Problem of Elder Abuse, Neglect and Exploitation in Community Settings	I-1
Understanding the Aging Process	I-3
Understanding the Types of Elder Abuse, Neglect and Exploitation	I-4
Definitions of Types of Abuse	I-5
Graphs	
Ages of Elder Abuse Victims for Selected Types of Mistreatment	I-6
Age Distribution of Self-Reported Elder Abuse Victims in New York State	I-7
Rates of Elder Abuse in New York State: Self-Reported Rate per 1,000 in a One-Year Period	I-8
Gender of Elder Abuse Victims in New York State: Self-Reported Data	I-9
Perpetrators and Their Relationship to Victims: Self-Reported Data for a One-Year Period	I-10

II HIGH RISK FACTORS AND INDICATORS

High Risk Factors	II-1
Indicators of Abuse	II-3

III CHALLENGES IN SUBSTANTIATING ELDER ABUSE

Barriers to Reporting Elder Abuse and Seeking Help	III-1
Interviewing Older Adults to Determine and Substantiate Elder Abuse, Neglect and Exploitation	III-3

IV FINANCIAL EXPLOITATION

The Fastest Growing Form of Abuse	IV-1
Fiduciary Relationships	IV-1
Frauds, Scams and Identity Theft	IV-3
Signs and Suspicious Behaviors Signaling Possible Financial Exploitation or Vulnerability to Exploitation	IV-5
Suggested Guidelines for Investigating Exploitation	IV-7

V CASE STUDIES

Case Studies for Discussion	V-1
-----------------------------	-----

VI REFERENCES AND RESOURCES

Bibliography	VI-1
Web Sites for Further Information on Elder Abuse	VI-3
Appendix A Power of Attorney Summary of Changes	VI-5
Appendix B Power of Attorney Sample Form	VI-9
Appendix C Power of Attorney Sample Gifts Rider	VI-15

I. INTRODUCTION TO ELDER ABUSE

THE PROBLEM OF ELDER ABUSE, NEGLECT AND EXPLOITATION IN COMMUNITY SETTINGS

The population of older adults is growing and Americans are living longer.

During the 20th Century, the number of Americans age 65 or older increased dramatically and will continue to do so in the first half of this century. In 2007, one in eight Americans was in this age group, and by the year 2050, the number of Americans age 65 or older is expected to increase to over 80 million. Older adults who are frail or the oldest old, those 85 or older, are the fastest growing population segment in the United States. In 2010 the oldest old numbered 5.7 million. By 2050 this number is expected to increase to 19 million or 24% of older adults and 5% of the total United States population. Additionally, older adults who are minorities will represent 24% of the older adult population in 2020 (U.S. Department of Health and Human Services, 2010).

What does this mean for our Communities?

Most older adults live in the community; just 4% of those age 75-84 live in a nursing home. Many older adults live alone, including an estimated 50% of women age 75 and older (U.S. Department of Health and Human Services, 2010). As more people live to an older age, many face chronic illnesses and other limiting conditions that decrease their independence. Each older adult's functionality and ability to remain independent in his or her home varies. Some may require assistance with activities of daily living (ADLs) from others such as family members, friends or home health aides; others can remain more independent. All older adults are vulnerable to the growing problem of elder abuse, neglect and exploitation in the community. Vulnerability to all forms of abuse increases with cognitive impairment.

The Growing Problem of Elder Abuse

Elder abuse is a growing, serious problem that exists in every community and every neighborhood, whether rich or poor. It is often hidden and thrives in silence. Two recent studies demonstrate its severity.

The 2010 New York State Prevalence Study, which surveyed over 4,100 older New Yorkers and their caregivers, found that 7.6%, or 1 in 13 older, community-dwelling persons experienced elder mistreatment in a one year period (Lifespan et al., 2011). The 2009 National Prevalence Study found that 11% of those surveyed self reported one form of mistreatment within the past year (excluding financial exploitation), with 1.2% reporting two or more forms of past mistreatment (Acierno et al., 2009).

Studies and reports from professionals in the fields of Protective Services for Adults (PSA) and aging services suggest that elder abuse in domestic settings is a widespread and escalating problem. As people live longer in the community and as frailty and vulnerability increase, there is greater potential for abuse, neglect and exploitation. Elder abuse occurs more often in people's homes than in nursing homes. Family members are

the most frequently reported perpetrators of elder abuse, and substance abuse and mental illness are factors in a large number of elder abuse cases. Recent studies confirm what aging experts have long believed: elder mistreatment is a growth industry.

Elder abuse, neglect and exploitation are largely hidden, shrouded in secrecy and shame. “Officially reported cases of abuse are only the ‘tip of the iceberg,’...of a much larger, unidentified problem.” (Tatara et al., 1998). Indeed, when comparing self-reported cases of abuse to those actually investigated by a variety of agencies in 2008, it was estimated that only 1 in 24 cases was reported in New York State (Lifespan et al., 2011).

Older adults are often reluctant to reveal incidents of abuse, particularly when the abuser is a family member. Adding to the problem, many health care, law enforcement, financial and aging service professionals often do not understand or recognize elder abuse, neglect or exploitation. When they do recognize the problem, they often do not know where to turn for help.

UNDERSTANDING THE AGING PROCESS

The effects of aging are different for everyone, but there are some commonalities.

- **Intellect:** degenerative disease may impair the person's ability to communicate, but generally the intellect remains at the same level.
- **Memory:** some memory loss, especially short-term memory, is common.
- **Hearing:** hearing loss varies.
- **Vision:** reading and night vision tend to become more difficult.
- **Taste/Smell:** these senses tend to dull over time.
- **Pain/Touch:** sensitivity to pain may diminish, especially skin sensitivity.
- **Movement:** bending and turning may become more difficult and affect walking and mobility.
- **Durability and Resilience:** bones and muscles tend to thin, leaving the body prone to injury.
- **Health:** many community-dwelling older adults consider their health to be excellent or very good.
- **Attitude:** attitude toward life is unique to each individual, but illness and isolation may have a profound effect. Depression can be common in the older adult population.
- **Activities of Daily Living (ADLs) (basic self-care activities such as bathing, dressing, eating, toileting, getting around the house, etc.):** difficulty in performing one or more ADLs increases with age.

UNDERSTANDING THE TYPES OF ELDER ABUSE, NEGLECT AND EXPLOITATION

Norma, age 85, lives alone and has been diagnosed with dementia. She was befriended by Jerry, a stranger who had painted her home. Jerry obtained power of attorney for Norma and began paying her bills and doing her taxes. Jerry's wife stops by several times a week to set up a plate of cookies, a glass of milk and a can of Ensure. For their services, they took \$3,000 per month from Norma's bank accounts.

74-year-old Sara lived in a rural town with her son, Tom, who had a history of drug and alcohol abuse. Sara was hospitalized with broken ribs, nose and wrist. She claimed she had fallen, but a neighbor said Tom had beaten her for years. The most recent incident occurred after Sara denied him access to her bank account. Subsequent to her hospital stay, Tom locked Sara in a chicken coop. She managed to free herself and crawled to a neighbor's for help, but she refused to press charges. Instead, she begged elder abuse prevention staff to get Tom help for his addictions. He did go into rehab, and Sara, despite having gone to court for an Order of Protection, let Tom back into the home. Several months later, Sara was dead. An autopsy showed all major bones in her body had been broken throughout the years; she was malnourished and had suffered severe head trauma. The police investigated, but were unable to obtain the evidence needed to charge Tom with her death. He now owns the family home and his mother's assets.

Elder abuse in community settings takes various forms. It can be physical, emotional, sexual or financial. It can be neglect of the older person's needs, even to the point of abandonment. It includes financial exploitation and consumer fraud and scams that target older adults. The older adult may be the victim of several forms of mistreatment. Financial exploitation, for example, is often linked with other forms of abuse, particularly physical, emotional or neglect.

DEFINITIONS OF ABUSE

While there is no universally accepted definition of elder abuse, N.Y. Social Services Law § 473 (6) does offer some guidance:

Physical Abuse

The non-accidental use of force that results in bodily injury, pain or impairment, including but not limited to, being slapped, burned, cut, bruised or improperly physically restrained.

Sexual Abuse

Non-consensual sexual contact of any kind, including but not limited to, forcing sexual contact or forcing sex with a third party.

Emotional Abuse

Willful infliction of mental or emotional anguish by threat, humiliation, intimidation or other abusive conduct, including but not limited to, frightening or isolating an adult.

Neglect

- Active Neglect – willful failure by the caregiver to fulfill the caretaking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment, willful deprivation of food, water, heat, clean clothing and bedding, eyeglasses or dentures, or health related services.
- Passive Neglect – non-willful failure of a caregiver to fulfill caretaking functions and responsibilities assumed by the caregiver, including but not limited to, abandonment or denial of food or health related services because of inadequate caregiver knowledge, infirmity, or disputing the value of prescribed services.
- Self Neglect – an adult’s inability, due to physical and/or mental impairments to perform tasks essential to caring for oneself, including but not limited to, providing essential food, clothing, shelter and medical care; obtaining goods and services necessary to maintain physical health, mental health, emotional well-being and general safety; or managing financial affairs.

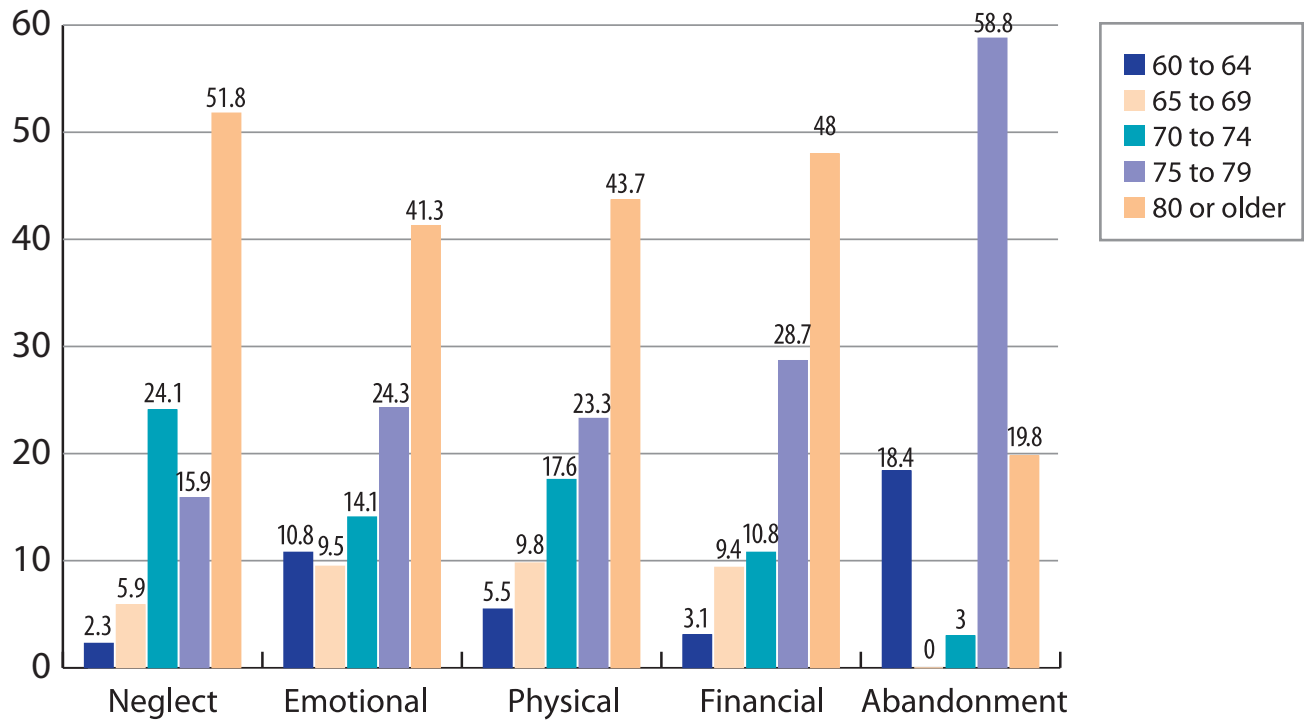
Financial Exploitation

Improper use of an adult’s funds, property or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers or denial of access to assets.

AGES OF ELDER ABUSE VICTIMS FOR SELECTED TYPES OF MISTREATMENT

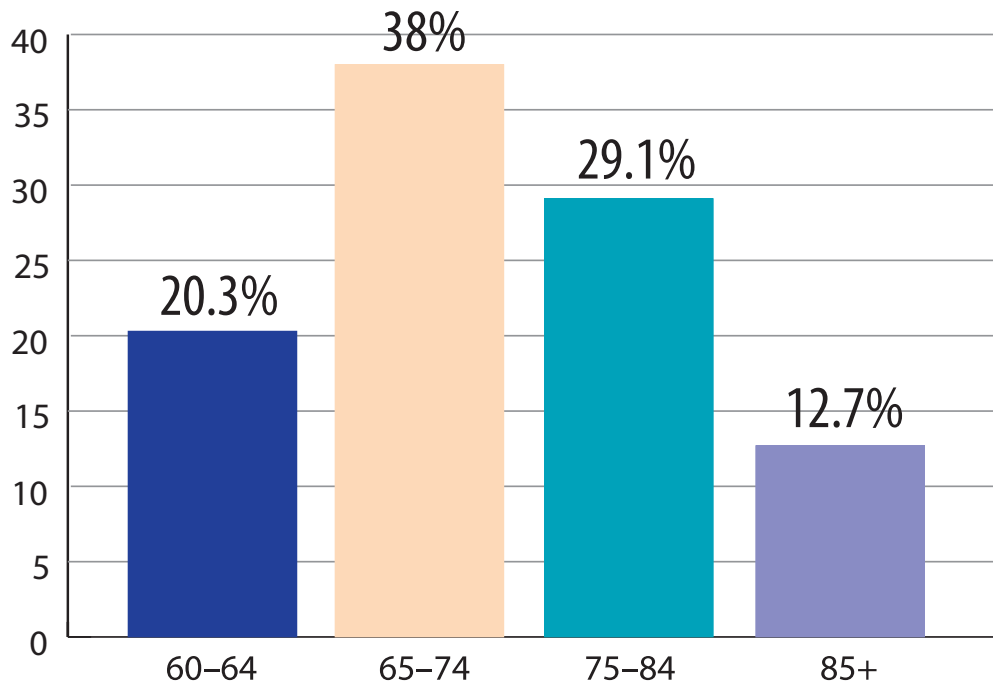
(Numbers represent percent of all victims in each category)

The National Elder Abuse Incidence Study, 1998



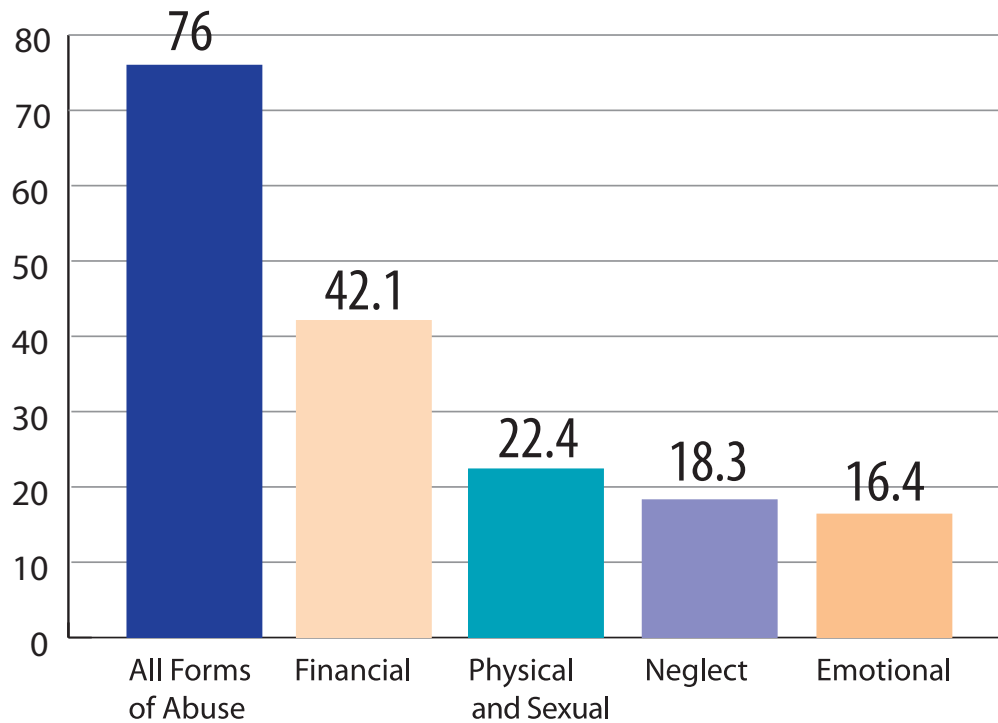
AGE DISTRIBUTION OF SELF-REPORTED ELDER ABUSE VICTIMS IN NEW YORK STATE

Under The Radar: New York State Elder Abuse Prevalence Study, 2011



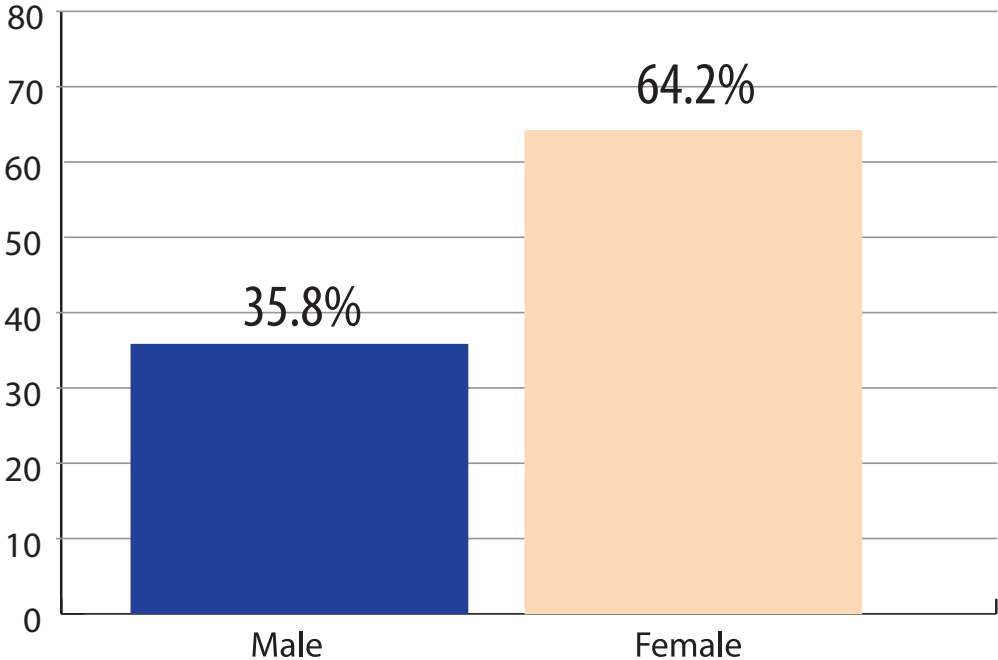
RATES OF ELDER ABUSE IN NEW YORK STATE: SELF-REPORTED RATE PER 1,000 IN A ONE-YEAR PERIOD

Under The Radar: New York State Elder Abuse Prevalence Study, 2011



**GENDER OF ELDER ABUSE VICTIMS IN NEW YORK STATE:
SELF-REPORTED DATA**

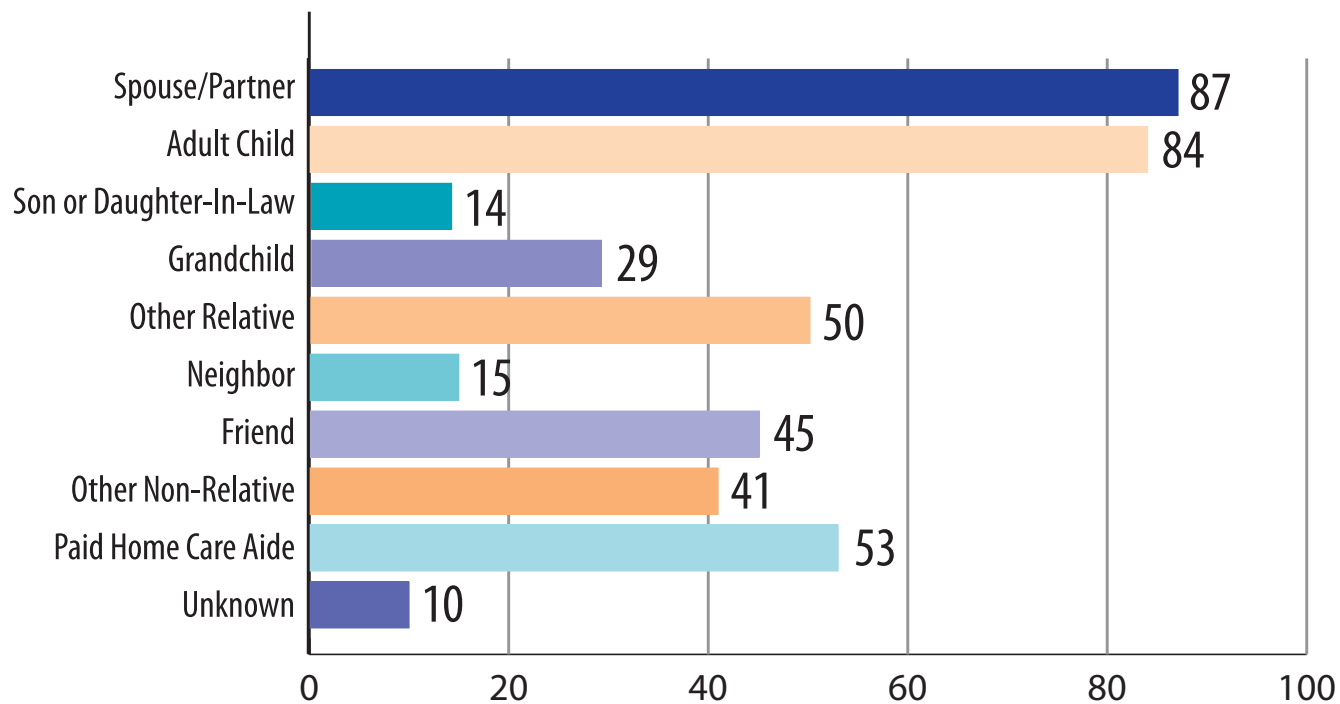
Under The Radar: New York State Elder Abuse Prevalence Study, 2011



PERPETRATORS AND THEIR RELATIONSHIP TO VICTIMS: SELF-REPORTED DATA FOR A ONE-YEAR PERIOD

(Total number of abusers = 428)

Under The Radar: New York State Elder Abuse Prevalence Study, 2011



II. HIGH RISK FACTORS AND INDICATORS

HIGH RISK FACTORS WHICH MAY PRECIPITATE ELDER ABUSE

Familial, Including Caregiver Stress

- Caregiver's lack of knowledge of the aging process and caregiving duties.
- Lack of knowledge of available community resources or services and how to access them, including respite, home care and other support services.
- Age, psychological and physical health of the caregiver.
- Caregiver stress, role fatigue, role dissatisfaction.
- Caregiver stress may be the context in which some abuse occurs; it is not the cause.
- Caregiver pressured into caregiving role because of guilt or for financial reasons.
- Caregivers experience a mixture of emotions, such as love, helplessness or resentment.
- Caregiver has poor impulse control.
- Caregiver's refusal to accept, or fear of, his or her own aging process.
- Caregiver has other dependents (i.e., the sandwich generation).
- Poor family relationships.
- Psychological and/or physical impairments in the older adult.
- Older adult is experiencing recent meaningful losses: bereavement, loss of independence or mobility.
- Social isolation of the caregiver and of the older adult.
- Lack of a social and emotional support network.
- Family history of violence, substance abuse, untreated mental health problems and/or gambling.
- Unreasonable expectations of the capabilities of the older adult by the caregiver and of the caregiver by the older adult.
- Responsibilities of the caregiver change as the needs of the older adult change.
- Substance abuse by the older adult and/or the caregiver.
- The older adult believes he or she is helpless.
- Increasing dependency of the older adult.
- Vulnerability to all forms of elder abuse increases with any kind of cognitive impairment.
- Refusal of older adult and/or caregiver to accept help.

Societal/Environmental

- Lack of societal concern for older adults.
- Lack of understanding of the aging process.
- Complex health needs of older adults.
- Stereotyping of older adults/ageism.
- Inadequate resources, social services, social planning, community support.
- Poverty of older women, who represent roughly 70% of poor Americans age 65 or older (AARP, 2010).
- Financial stress and a lack of reimbursement for caring for older adults at home.
- Inadequate housing, overcrowding.
- Unemployment of caregiver.
- Older adults' fear of crime may cause them to isolate themselves, particularly from social contacts.
- Isolation increases vulnerability.
- Lack of alternative living arrangements for older adults other than institutionalization. Less than 5% of those 65 and older live in nursing homes, although the percentage increases to approximately 14% of those 85 and older (AoA, 2010). Most older adults live in the community alone, with a spouse or with other family members.
- Lack of uniform definitions of elder abuse.
- Lack of professional awareness of signs of elder abuse; lack of detection or reporting protocols.

INDICATORS OF ABUSE — WHAT TO LOOK FOR

Certain signs can indicate the presence of elder abuse, neglect and exploitation. These signs warrant investigation to determine what is happening to the older adult so that steps can be taken to intervene and prevent further abuse. One of the biggest challenges in reducing the incidence of abuse is the lack of understanding about what elder abuse is. Victims, their families and professionals need to recognize it when they see it.

The National Elder Abuse Incidence Study (NEAIS) (Tatara et al., 1998) reported that older adults who are unable to care for themselves were more likely to suffer from all forms of abuse. Further, “approximately six out of ten victims of elder abuse experienced some degree of confusion.” That compares with the estimated 10% of the total national older adult population who suffered some form of dementia. About 44% of older adults who were abused were also determined to have some degree of depression.

The 2009 National Elder Mistreatment Study (Acierno et al., 2009) surveyed older victims and found that 40% used social services of some form and 38% reported that they needed some assistance with activities of daily living.

The NEAIS (Tatara et al., 1998) also reported that, overall, men were the most frequent perpetrators of physical, emotional and financial abuse. Women, more often the caregivers, were the perpetrators of neglect more than 50% of the time. Most perpetrators of abuse were 41 to 59 years old (38.4%) or 40 years or younger (27.4%). About one-third of the perpetrators were older adults themselves. Family members were the perpetrators in 9 out of 10 incidents of abuse in domestic settings, adult children 47.2% of the time and spouses 19.3% of the time.

The self-reported and documented case surveys in the New York State Elder Abuse Prevalence Study further emphasize these statistics. The self-reported survey of older adults in the study showed that 20.3% of perpetrators were spouses/partners and 19.6% were adult children. A total of 61.7% of respondents in self-reported cases indicated that a family member was the abuser. Likewise, the agencies that reported on cases in the documented case portion of the New York study specified that spouses/partners were perpetrators in 26% of cases, adult children in 39.7% of cases, sons-in-law or daughters-in-law in 2% of cases, grandchildren in 9.5% of cases, and other relatives in 13.1% of cases. In total, family members were the perpetrators of elder abuse in 90.3% of documented cases (Lifespan et al., 2011).

GENERAL INDICATORS OF ABUSE

The following are commonly recognized indicators that may signify elder abuse. This list is not exhaustive.

Indicators of Physical Abuse, Sexual Abuse and Intentional Neglect

- Bruises, welts, lacerations, punctures, fractures, burns, signs of hair pulling.
- Signs of possible strangulation or suffocation.
- Inability of the victim to communicate.
- Injuries to the upper body, especially the face, neck, throat, chest, abdomen or to the pelvic area.
- Bruises in the shape of objects such as belts, belt buckles or fingers.
- Location of bruises that are inconsistent with the victim's explanations.
- Unexplained sexually transmitted infections (STIs), bruising on the inner thighs, vaginal bleeding, unexplained difficulty walking or sitting, presence of sperm in the vagina or anus.
- Signs of physical confinement.
- Unexplained internal injuries.
- Burns of unusual size, shapes or in unusual locations.
- Malnutrition and/or dehydration.
- Injuries in different stages of healing.
- Soiled clothing or bed linens, excessive body odor.
- Hypothermia or hyperthermia.
- Medication mismanagement, such as over or under medicating, missing prescription medications, failure of caregiver to follow orders for prescribed medication.
- Absence of eyeglasses, hearing aids, dentures or prosthetic devices.
- Unexpected or unexplained deterioration of health.
- Decubitus ulcers (bed sores).
- Bilateral bruises.
- Insomnia, sleep deprivation or excessive sleeping.
- Change in appetite, unusual weight gain or loss.
- Tearfulness, unexplained paranoia, low self-esteem, excessive fear, agitation, loss of social contact.
- Ambivalence – the older adult is unsure of a course of action. “I don't know what to do.” “Should I do it, or should I not?”

- Confusion, especially over finances or care.
- Resignation – “It’s happening. There is nothing I can do about it.”
- Repeated use of emergency room services, possibly in different facilities.
- Delay in seeking medical care.
- Refusal of needed services by the caregiver or the older adult, especially when there are adequate finances.

Indicators of Financial Abuse

- Unexplained or sudden inability to pay bills.
- Unexplained or sudden withdrawal of money from accounts.
- Disparity between assets and living conditions.
- Refusal of needed services by the caregiver or the older adult, especially when there are adequate finances.
- Extraordinary interest by family member in older person’s assets.
- Recent interest in and/or caregiving for an older adult by a new acquaintance who has gained the trust of the older adult.

BEHAVIORAL INDICATORS OF ELDER ABUSE

Physical or Sexual Abuse

The victim:

- Is easily frightened or fearful.
- Is agitated or trembling.
- Is hesitant to speak openly.
- Gives implausible stories and explanations for physical injuries.
- Makes contradictory statements or exhibits denial.

The abuser:

- Tries to conceal the victim's repeated injuries by going to different medical facilities.
- Interferes with the investigation by trying to speak for the older adult or change the subject.
- Refuses to allow the victim to be interviewed separately.
- Is unreasonably critical or dissatisfied with social and health care providers.
- Offers inconsistent or implausible explanations for the victim's injuries.
- Appears to be overly protective or overly dominant.
- Inappropriate sex-role relationship between victim and suspect.

Psychological Abuse

The victim:

- Is fearful and/or withdrawn.
- Reluctant to speak with the investigator.

The abuser:

- Threatens the victim.
- Speaks poorly of the victim.
- Ignores the victim and his or her needs.

Financial Abuse

The victim:

- Gives implausible explanations about his or her finances.
- Is unaware of or does not understand the financial arrangements that have been made on his or her behalf.

The abuser:

- Is a recent acquaintance who expresses interest in the older adult's finances, and promises to provide assistance or care.
- Isolates the victim from friends and family.
- Expresses concern about the cost of caring for the older adult.
- Gives implausible explanations about the older adult's financial situation.

Neglect

The victim:

- Appears detached, exhibits hopelessness.
- Is unresponsive or helpless.

The abuser:

- Isolates the victim.
- Lacks caregiving skills.
- Refuses outside assistance.

III. CHALLENGES IN SUBSTANTIATING ELDER ABUSE

BARRIERS TO REPORTING ELDER ABUSE AND SEEKING HELP

Our nation's population of older adults is increasing and Americans are living longer. As people live longer and as frailty and vulnerability increase, the potential for abuse, neglect and exploitation also increases. Elder abuse is often a hidden problem. It is estimated that for every case of elder abuse that is reported, more than 24 cases are unreported, and the number of incidents of abuse is only expected to increase (Lifespan et al., 2011). There are a variety of barriers to reporting elder abuse.

Victims Are Reluctant and/or Unable to Report Mistreatment

- Guilt, shame and love prevent victims from reporting the abuse, particularly when the abuser is an adult child or grandchild.
- Fear that the perpetrator will end up in jail or on the streets instead of being helped or treated prevents victims from reporting, particularly when the abuser is an adult child or grandchild. Sometimes victims do not want to call the police.
- Physical or cognitive impairment may make it impossible for the victim to seek help.
- Victims are often isolated, do not know where to turn for help, or may distrust service providers or government agencies.
- Privacy issues – “It’s a family matter; it’s none of anybody’s business.”
- Guilt regarding the abuser – “It’s my fault my child has difficulty with drugs, alcohol or gambling.”
- Victims are or perceive themselves to be financially dependent because the abuser threatens them with loss of independence or nursing home placement.
- Victims fear the loss of a caregiver, even an abusive caregiver.

The Public Fails to Report Mistreatment

- There is general lack of understanding or awareness of elder abuse. People, including professionals, often do not recognize it when they see it.
- People may not personally be aware of incidents of elder abuse, therefore, they do not believe the problem exists.
- Lack of understanding of the aging process.
- Disbelief that older adults can be abusive. In cases of spousal abuse, law enforcement may be hesitant to make an arrest – “I can’t arrest that elderly gentleman. He is someone’s grandfather.”

- People fear liability if they report suspected abuse. However, N.Y. Social Services Law § 473-b provides immunity from civil liability to any person who makes a good faith referral to Protective Services for Adults, law enforcement, aging services or other agency concerning a person who may be an endangered adult in need of protective or other services.

Right to Self-Determination

- Adults, regardless of mental illness or physical infirmity, are presumed to have capacity and thus have the right to make decisions, including those regarding medical treatment, finances, choice of lifestyle and place of residence.
- Older adults have the right to refuse services and live in an abusive situation – unless found to be incapacitated by a court of law; older adult victims of abuse, neglect and exploitation have the right to make their own decisions, even if some of those decisions seem harmful.
- With very few exceptions, county Protective Services for Adults or law enforcement cannot remove victims from their homes in the same way that Child Protective Services may sometimes remove children from their homes in cases of imminent danger.

INTERVIEWING OLDER ADULTS TO DETERMINE AND SUBSTANTIATE ELDER ABUSE, NEGLECT AND EXPLOITATION

Although some victims of elder mistreatment may suffer from confusion or dementia that makes it difficult, if not impossible, for them to explain the abuse verbally; other victims may be very capable of participating in an interview to help establish the facts. These guidelines are designed to help reduce the older adult's anxiety during the interview process.

Fears or expectations may prevent the older adult from cooperating with an investigation. It is important that victims understand that the goal is to find a solution to the problem, not to make the situation worse. Safety is always a concern; therefore, a thorough evaluation of the older adult's home situation is an important part of the process. During the interview process, it is also important to be aware of and sensitive to any cultural values, beliefs and traditions that may affect the victim's family and community relationships.

Always remember — careful documentation and preservation of evidence is an essential part of the process.

EFFECTIVE INTERVIEWING TAKES INTO ACCOUNT:

Communication Problems

Older adults may have difficulty understanding an interviewer's questions and explanations because of the stress of the situation. The older adult may exhibit:

- Confusion over terminology.
- Feigned comprehension, nodding without understanding.
- Shock from the overall situation or the abuse itself.
- Strong emotional feelings such as fear or anger.
- Difficulty in hearing or seeing.

The interviewer may have difficulty understanding an older person's speech pattern, which may be caused by confusion, shock or physical impediments.

Overcoming Communication Barriers

- Use clear and simple language.
- Ask open-ended, simple questions.
- Be an attentive listener, allow for periods of silence.
- Allow sufficient time so the victim won't feel pressured.

- Allow eye contact, but do not force it.
- Use explanations that progress from simple to more complex.
- Keep background noise to a minimum.
- Offer privacy for the interview.
- Sit facing the person so that he or she can catch visual cues.
- Be aware of cultural, language or ethnic issues when discussing the situation.

Interviewing an Older Adult Victim

- Treat the older adult with respect.
- Understand that the victim may be frightened, ashamed or fearful. Try to gain his or her trust by starting out with non-threatening questions, then proceed to more difficult topics.
- Understand the victim's reluctance to reveal abuse or to accuse a trusted friend or relative. Reluctance may be out of fear of retaliation, shame or a lack of safer alternatives to the present living environment.
- Interview the victim first and separately from the alleged abuser or the caregiver. This helps to avoid the intimidation factor. If the alleged abuser or caregiver is unwilling to allow the victim to speak privately, this is a red flag.
- Interview the victim in a relaxing, quiet environment.
- Ask clear and direct questions and be specific about dealing with issues of violence. Allow enough time for the victim to respond.
- Assume that the victim's statements are true and correct, unless they are proved otherwise.
- Make it clear that the abuse was wrong and that it was not the fault of the victim.
- Ask how you can best help the victim.
- Assure the victim that he or she is not alone, and that help and services are available. Suggest contacting a local Victim Assistance Program or the New York State Office of Victim Services for immediate help and/or crime victim compensation.
- Discuss a safety plan and possible order of protection.
- Offer follow-up contact.
- If the primary language is other than English, contact an interpreter. A professional interpreter is recommended to ensure accurate communication, privacy and safety of the victim. (This includes individuals who are deaf or hard-of-hearing and communicate in American Sign Language – ASL.)

Direct Questions to Ask:

- Has anyone recently hurt you?
- Has anyone ever touched you when you did not want to be touched?
- Has anyone ever forced you to do something against your will?
- Has anyone ever forced or misled you into signing any documents?
- Does anyone ever talk to you in a way that makes you feel bad about yourself?
- Are you afraid of anyone?
- Has anyone ever threatened you?
- Has anyone ever taken anything that was yours without your knowledge or permission, including money, bank ATM or credit cards, checks, personal property or documents?
- Has anyone ever refused to help take care of you when you asked for help?
- Is there a history of family violence?

Other Questions and Approaches that Might Help with the Investigation:

- Does the victim and/or family member(s) use alcohol excessively?
- Use of illegal drugs by older adult and/or family member(s)?
- Has the older adult experienced major life changing events recently that may have altered his or her lifestyle or emotional well-being, such as retirement, diagnosis of a chronic illness, or death of someone close?
- Has the victim experienced any recent unexplained mood changes, disruption of sleep or eating patterns, weight loss or weight gain?
- Does victim or family member(s) have a history of mental illness?
- If mental illness is present, how does victim or caregiver cope with it?
- Explain all medical examinations and treatments that may be necessary. Document all injuries by photograph (with permission) or on a body chart.
- If the victim acknowledges and explains in detail how the abuse occurred, do not appear shocked or judgmental. Respond with compassion and respect.

IV. FINANCIAL EXPLOITATION

FINANCIAL EXPLOITATION – FASTEST GROWING FORM OF ABUSE

Financial exploitation is the fastest growing form of elder abuse, and often the most devastating for a victim who is an older adult. Staff members of financial institutions have a special role to play in the prevention of elder abuse, neglect and exploitation. Not only do they have frequent contact with older adults, they are well equipped to identify suspicious activity. They are a first line of defense against the exploitation of older adults and can begin the intervention process by reporting possible cases of financial exploitation, fraud and scams.

All professionals can help prevent financial exploitation by observing whether older adults are confused or experiencing mental or physical impairments that make it difficult for them to handle their accounts or other financial matters. Suspicions of financial exploitation should be reported to proper authorities, local elder abuse prevention programs or county Protective Services for Adults. Helping older adults access other agencies that provide needed services will also help prevent further abuse.

FIDUCIARY RELATIONSHIPS

You may come across various documents that give another person the legal right to act as an older adult's proxy. It is important to understand this person's responsibilities and the legal issues that may arise because of them.

Guardianship

Guardianship is a court-ordered appointment (pursuant to Article 81 of the N.Y. Mental Hygiene Law) wherein an individual, the "incapacitated person," has his or her personal needs (i.e., living arrangements, medical decisions, personal care, etc.) and/or property rights (i.e., authority to enter into contracts, pay bills, invest money, make gifts, etc.) managed by another person, corporation or public agency. The guardian's duties are explicitly stated in the order of appointment and the guardian is required to provide initial, annual and final reports to the court. A court action is the only legal way to declare a person incapacitated; a person is assumed to have capacity until that time. Guardianship is designed to provide assistance to individuals in the least restrictive manner. It is not "one size fits all." Because a person may retain capacity in some areas, and lack capacity in others, his or her capacity is carefully evaluated by the court in terms of functionality and cognitive impairment. Collateral information from doctors, family, friends and other pertinent individuals may be utilized in making a capacity determination.

Financial institutions are obligated to accept valid guardianships according to the terms of the court order appointing the guardian.

Power of Attorney

A power of attorney (POA) is an inexpensive and effective tool for financial management and estate planning. It is a notarized legal document that gives an individual or agency (the agent) authority to act on behalf of another person (the principal). Powers given to an agent can be very specific or very general. A power of attorney is not an indication of incapacity and does not in itself relinquish the principal's control or authority over his or her affairs. As of September 1, 2009, significant changes were made in New York's law governing powers of attorney (General Obligations Law, Article 5, Title 15); the law was further amended in 2010. See Appendix A for key highlights about these changes and general information about POAs. See Appendices B and C, respectively, for a sample copy of the Power of Attorney Statutory Short Form and Statutory Gifts Rider.

Representative Payee (Rep Payee)

A representative payee is an individual or organization appointed by the Social Security Administration (SSA) to manage monies received from the SSA (i.e., Social Security retirement or disability income, Supplemental Security Income) by a person who has been declared incapacitated or otherwise unable to manage his or her own finances. The rep payee is responsible for utilizing an SSA recipient's funds for the current or future needs of the individual. The payee is required to keep records of any transactions made with SSA funds and provide reports to the SSA upon request.

A representative payee does NOT have authority to manage non-SSA monies. A power of attorney or guardianship would be needed for this purpose. Likewise, a power of attorney does not give the agent the authority to act on a principal's behalf with the SSA. These two tools are not interchangeable.

FRAUDS, SCAMS AND IDENTITY THEFT

Older adults are a favorite target for con artists. Typically, these criminals use personal information, persistence and intimidation to swindle money from their victims. Unfortunately, scam victims may be too embarrassed or fearful to tell family or friends. Con artists usually appear to be trustworthy and sincere.

The Fake Accident/Arrest Ploy: The con artist gets the older adult to withdraw money on the pretext that the older adult's child, grandchild or another relative is in the hospital or jail and needs money immediately.

The Bogus Winner: The older adult receives a call saying they have won a free or cheap vacation, other prize, lottery or sweepstakes. They can redeem the winnings by merely paying some taxes and other costs. The older adult must provide bank account information, send a check or wire the money to receive the winnings or prize.

Telemarketing Fraud: Operators employing high-pressure and well-rehearsed sales tactics attempt to defraud the older adult by seeking money in exchange for services or products, which are never sent or are priced far above their actual value. This fraud is often accompanied by the requirement that the older adult make a 900 number call (or perhaps to other long-distance areas such as the West Indies or Virgin Islands) without knowing the calls are charged at a high rate to the caller. Some perpetrators then follow up with a new offer to assist the older adult in recouping fraudulent losses. Of course, there is a fee for this new service.

Mail Fraud: The con artist attempts to sell fraudulent or misrepresented investments, solicit funds for phony charities, promote participation in fraudulent work at home schemes or sell chances in phony sweepstakes or contests.

Internet Fraud: Victim receives an e-mail from either a familiar organization (IRS, their bank, etc.) or a notification that they are the beneficiaries of a bequest. The e-mail requires immediate response and the sharing of some personal information.

Low Ball Quotes: A debt consolidation scam – letters, TV and radio ads pitching a 50% reduction in debt. These organizations sometimes charge large fees up front, may be undercapitalized and use your money for payroll, or may be several months behind in processing, adding further to your debt. Similarly, gutter cleaning and other home repair services are offered at an extremely low price, but are then accompanied by hidden fees and other costs. It is always advisable to get several quotes.

Additional Fraud and Scam Information:

- In the past decade a number of new banking scams have emerged. Much fraudulent activity and many scams involve theft of identity or financial information.
- Many trusting, older adults often do not realize how important it is to protect their account numbers and confidential PIN numbers. They often welcome assistance with shopping and allow relatives, neighbors and friends to use their debit and credit cards for cash and purchases. Often, a portion of the funds is indeed used for legitimate purchases; however, the remainder is not used for the benefit of the older adult or is used without his or her knowledge.
- Credit card numbers are stolen and sold over the internet. Perpetrators have blank cards and equipment to duplicate the original card. There are many methods that can be used to obtain a person's credit card number.
- Beware of the contractor or door-to-door salesperson who offers to drive the older adult to the bank to get cash before starting a job.
- Any outgoing cash wires should be discussed with the older adult, especially monies being wired out of the U.S. How well do you know the person that will be receiving the money? Is this to purchase a product, or a loan? Worse yet, is it confidential because you have won money?
- Using a credit card is safer than using a debit card. It limits a person's losses.
- Bank Managers are often the first line of defense. If an older adult comes into a financial institution with an unknown person, it is advised that bank personnel greet the older adult and accompanying person, and then commence a discussion to determine whether the older adult is possibly being victimized. How is the person related? What is his or her reason for accompanying the older adult today? The two people may need to be separated to best ascertain this information. Consult with bank security if there is suspicion that the older adult is in danger or a possible victim of financial exploitation.

SIGNS AND SUSPICIOUS BEHAVIORS SIGNALING POSSIBLE FINANCIAL EXPLOITATION OR VULNERABILITY TO EXPLOITATION

Any one of these indicators alone does not necessarily mean there is exploitation. However, if a pattern occurs over time including one or more of these indicators, investigation is definitely warranted.

Older adults may be victims of financial exploitation, fraud or scams if they are:

- Accompanied by a stranger or family member who encourages or pressures them to withdraw a large amount of cash.
- Not allowed to speak for themselves or make decisions.
- Accompanied by someone who appears too interested in their financial information.
- Nervous or afraid of the person accompanying them.
- Providing implausible explanations about what they are doing with their money.
- Concerned or confused about missing funds in their accounts.
- Unable to remember financial transactions or signing paperwork.
- Fearful that they will be evicted or placed in a nursing home if money is not given to a caregiver.
- Appear to be neglected or receiving insufficient care for their needs in spite of sufficient financial means.
- Isolated from other family members by a relative or acquaintance.

Specific Suspicious Activities

Unusual volume of banking activity

- Frequent account changes.
- Change in pattern of withdrawals, or unusually large amounts.
- Large withdrawals or transfers from recently opened joint accounts.

Banking activity inconsistent with customer's usual habits

- Large withdrawals from previously inactive accounts.
- Frequent withdrawals made through ATMs, especially if the older adult is physically frail and has not used ATMs previously.
- Sudden changes in an established pattern of deposits and withdrawals.
- Revocation of stable, single beneficiary trusts.

Suspicious signatures on checks or other documents, such as credit card application or power of attorney

- Older adult's signature appears forged.
- The signature appears correct but the amounts are written in a different handwriting and/or with different pens.
- Older adult uses a signature stamp to sign documents.

Sudden increases in incurred debt when older adult appears unaware of transactions

- Bank loans, second mortgage, quitclaim deed.
- Large credit card debts.

Additional suspicious activity

- A fiduciary or other person begins handling the older adult's financial affairs, withdrawing funds with no apparent benefit to the older adult.
- Bank statements are no longer sent to the older adult's home.
- Implausible reasons for banking activity are given either by the older adult or by a family member or acquaintance.

SUGGESTED GUIDELINES FOR INVESTIGATING SUSPECTED FINANCIAL EXPLOITATION

- Interview victims and alleged abusers separately.
- Determine the relationship between the victim and the suspected abuser. Is the suspect a member of the victim's family? Is he or she in a position of trust? Does he or she live with the victim?
- Determine the extent of the victim's financial assets, including real properties, certificates of deposit, stocks, bonds, bank accounts, home furnishings, personal belongings, vehicles.
- Find out who owns the victim's home, whose name is on the deed, whose name is on the rental agreement, who pays the property taxes, who pays the rent and whose name is on the utilities.
- Check with the County Clerk's Office to determine if there have been any suspicious deed transfers.
- Make sure the victim does not sign any documents in the future to transfer property or give power of attorney to the suspected abuser.
- Determine if the victim is literate.
- Find out whose names are on bank accounts, certificates of deposit, investment accounts and stocks.
- Consult a forensic accountant in complex cases of financial exploitation.
- Find out if there is a representative payee, power of attorney or legal guardian.
- Find out who pays the bills.
- Find out how the victim's pension, social security or other income checks are received and deposited into bank accounts.
- Receive samples of the victim's and the suspected abuser's signatures.
- Determine what documents signed by the victim have placed the assets in the suspect's control. These documents may include powers of attorney, bank signature cards or title transfer documents. Get copies of the signed documents.
- Check for previous criminal charges against the suspected abuser.
- Take into consideration the victim's mental status. Does the victim appear to be capable of understanding documents, testifying or assisting in the investigation?
- If the person is incapacitated, or if his or her capacity is questionable, contact family members, friends or service providers to obtain mental health evaluations and history. This should include information about the relationship between suspected abuser and the victim, and the length of time that the victim has had diminished capacity in order to determine if he or she was able to give consent at the time it was given.
- If questionable purchases have been made, find out the value of the purchases, by whom and for whom they were made, the value of the purchases in relation to the suspected abuser's income and whether there has been a history of gift giving between the parties.

- Determine whether the older person's assets are still at risk of theft or misappropriation. If so, secure the assets as soon as possible.
- Follow the money trail. Determine who has (or had) possession of all misappropriated funds or property.
- Determine if the victim is willing to press charges.

Action Steps for Stolen Social Security, Pension or Annuity Checks

- Notify the Social Security Administration, the Veterans Administration or the appropriate pension system. The Social Security Administration, for example, can hold checks until the problem is resolved or can require assignment of a new representative payee if checks are being misused.
- Arrange for direct deposit of checks or for change of address for mailing of checks to a safe, reliable address. Changing an address can be accomplished more quickly than arranging for direct deposit. Changing the address, therefore, is recommended as an interim measure until the direct deposit request takes effect.

Remember

- Immediate response may minimize the exploitation of the older adult.
- Ask clear, non-threatening, factual questions; empathize with the victim and validate his or her feelings.
- Explain that there is help available that may be able to assist in resolving the problem.
- Careful documentation and preservation of all evidence are essential.

V. CASE STUDIES

CASE STUDIES FOR DISCUSSION

Case studies give trainees the facts of an elder abuse incident, providing an opportunity for discussion of possible ways to proceed with the investigative process and what interventions may be taken to stop the abuse. They are also a learning tool, as trainees become knowledgeable about the collaborative approach that is often necessary to solve the immediate problem and prevent further abuse.

For each case study, trainees should be asked:

1. to identify factors that are cause for concern and specific evidence of abuse;
2. to discuss other possible explanations for apparent abuse, neglect or exploitation;
3. to discuss effective interventions and community resources that can help intervene in and prevent further abuse, neglect and exploitation; and
4. to list steps to take in an investigation and intervention.

PHYSICAL ABUSE

Case 1: Mr. and Mrs. B are in their 70s. Responding to a call from the couple's home, police noticed bruises on Mrs. B's face and upper arms. Mr. B said that Mrs. B was just clumsy, but officers noted her nervousness. When asked about her physical injuries, she replied, "I'm okay now."

Case 2: Mrs. R, a 78-year-old woman, was brought to a local hospital's emergency room by the police following an incident in which she and her 24-year-old granddaughter were beaten with a metal pipe by Mrs. R's adult son. Police had arrested the son. The victims lived in the son's home.

Intervention

1. How can you learn the truth about the situation in both homes?
2. How would you intervene in these cases, including bringing in other agencies?

Point of Discussion

Physical abuse may have a much more serious impact on an older adult than on a younger person due to increased frailty of the older adult, and a slower recovery time.

SEXUAL ABUSE

A 68-year-old woman had a son who lost his job and came to live with her. He took over her finances and told her he was now in charge.

After several months, she tearfully confided to a close friend that the son had made unwanted sexual advances toward her and threatened to take her house and put her in a nursing home if she told anyone.

Intervention

1. How would you approach a discussion to explore what has occurred?
2. What steps would you take to intervene, including bringing in other agencies?

Point of Discussion

Many believe that older adults are not likely targets for sexual abuse. For this reason, many cases go undetected and unreported.

PSYCHOLOGICAL ABUSE

Alice, age 80, agreed to have her daughter, Susan, and Susan's three children move in with her while Susan looked for work. After one or two interviews, Susan ended her job search. She went out socially most evenings, leaving Alice to take care of the children.

When Alice reminded Susan of her responsibilities, she became verbally abusive and critical of Alice's own child rearing skills. Susan also told Alice that if she talked to anyone, she would put her in a nursing home and she would never see her grandchildren again.

Intervention:

1. What are Alice's rights?
2. What intervention steps can you take to end the psychological abuse, including bringing in other agencies?

Point of Discussion

The real or perceived threat of losing one's independence or fear of retaliation may cause a victim to feel reluctant to report or discuss the abuse.

NEGLECT

Case 1: An 82-year-old woman was referred to a home health agency by her physician. Her husband had canceled her scheduled office visit, stating she was too sick to come in.

When the agency nurse arrived at the home to complete an assessment, she found the older adult woman to be severely malnourished and wearing soiled clothing. The woman's husband, her only caregiver, had failed to contact her physician to report poor appetite, fatigue and difficulty breathing. He said it might seem he was ignoring her, but that was only to encourage her to do things on her own.

Case 2: Mrs. T was referred to Protective Services for Adults by a local hospital after experiencing several admissions for dehydration, malnutrition, dementia and burns caused by her attempts to cook food on her stove. A nurse and hospital social worker had previously met with a niece who had power of attorney, and despite the niece's promises, Mrs. T still lived alone in her own home with no assistance.

Intervention

1. How would you approach a discussion of neglect with the older adult couple? With Mrs. T and her niece?
2. What steps would you take to intervene, including bringing in other agencies?

Points of Discussion

Sometimes, a caregiver is unintentionally neglectful due to a lack of understanding of the aging process and care needs of an individual. Therefore, the caregiver may need guidance and education about how best to serve the care receiver. It is also possible that the caregiver may ultimately prove to be not appropriate for the caregiving role.

Neglect can occur along with financial exploitation.

SELF NEGLECT

An elderly man who lived alone had surgery for a broken hip. Although he had difficulty bathing and preparing food, he adamantly refused the home health agency's assistance.

His house was crowded with stacks of newspapers and it had not been cleaned for some time. The home was also in need of basic repairs to meet health and safety standards.

Intervention

1. How would you approach the subject of self neglect with this gentleman?
2. What interventions can be taken to alleviate the situation?

Point of Discussion

Older adults have a right to self-determination, even if some of their decisions may be detrimental to their well-being. Therefore, an older adult with capacity has the right to refuse the services of Protective Services for Adults (PSA), law enforcement or other sources of help.

FINANCIAL EXPLOITATION AND IDENTITY THEFT

Case 1: Sonya, a 79-year-old woman, lived alone and was recovering from a stroke. Her son, Carlos, called Sonya's power of attorney (a longtime friend) and demanded money. He was refused. Carlos and his girlfriend then moved into Sonya's home.

Carlos insisted that Sonya change the power of attorney to him and began spending Sonya's money. He and his girlfriend also isolated Sonya from her friends to aid in her recovery. They also disposed of Sonya's beloved dog.

When Sonya suffered another stroke and was re-admitted to the hospital, she told staff she was afraid to go home. Carlos insisted she not go into a nursing home as recommended by her doctor, since placement would use up Sonya's money.

Case 2: After enduring a long recovery following a serious car accident, Mrs. M decided to celebrate by purchasing new furniture for her deck. She was so happy to finally be able to get out of the house and enjoy the nice weather.

When Mrs. M attempted to use her credit card for the purchase, it was denied. Her request to open a new account was also denied for a bad credit history. Her nephew contacted her bank and discovered items had been charged to her MasterCard without her knowledge or permission. Mrs. M also reported receiving calls about overdue bills on accounts that were unfamiliar to her.

Intervention

1. How would you approach the subject of financial exploitation with Sonya? With Mrs. M?
2. What steps would you take to intervene, including bringing in other agencies?

Points of Discussion

Many older adults are very trusting. They may become increasingly vulnerable to financial exploitation for a variety of reasons, and may be tricked or coerced into signing documents they do not understand or may not realize that their personal information is being used by others.

FINANCIAL EXPLOITATION – FRAUDS AND SCAMS

Mr. Smith, a 90-year-old man, called the police when he became suspicious after giving over \$14,000 to a contractor who had promised to make major repairs on Mr. Smith's home. The police interviewed him, filled out a crime report and advised Mr. Smith not to have further contact with the contractor while they were investigating the matter. A week later, Mr. Smith again called the police stating that he had given the contractor an additional \$500, but this time he was sure the contractor would do the work because he had a written statement as to the start date for the job. The police looked over the supposed contract and found that it was not an actual contract and was neither legal nor binding.

Intervention

1. How would you approach the subject of financial exploitation with Mr. Smith?
2. What steps would you take to intervene, including bringing in other agencies?

Point of Discussion

Any person can be the victim of fraud or a scam, regardless of age. As technology advances, so do the ways in which a person can be taken advantage of.

VI. REFERENCES AND RESOURCES

BIBLIOGRAPHY

- American Association of Retired Persons (AARP). (2010). *Older Americans in poverty: A snapshot*. Washington, D.C.: Author.
- Acierno, R., Hernandez-Tejada, M., Muzzy, W., & Steve, K. (2009). *National elder mistreatment study* (NCJ 226456) U.S. Department of Justice, National Criminal Justice Reference Service. Retrieved from <http://www.ncjrs.gov/pdffiles1/nij/grants/226456.pdf>.
- Aravanis, S., Adelman, R., Breckman, R., Fulmer, T., & Holder, E. et al. (1993). Diagnostic and treatment guidelines on elder abuse & neglect. *Archives of Family Medicine*, 2 (4), 371-388.
- Bailly, R. M., Loewy, E. et al. (2007). *Financial exploitation of the elderly: Legal issues, prevention, prosecution, social services advocacy*. Kingston, N.J.: Civic Research Institute.
- Brookdale Center on Aging of Hunter College Institute on Law and Rights of Older Adults. (1995). *Adult abuse: Hospital trainers manual*. New York: Author.
- Grimley, B. & Kazmerzak, D. (1996). *The trainers guide for reporters of dependent adult abuse for financial institutions* and *The trainers guide for reporters of dependent adult abuse for law enforcement*. Des Moines: Iowa Department of Elder Affairs.
- Lifespan of Greater Rochester, Weill Cornell Medical College, & New York City Department for the Aging. (2011). *Under the radar: New York State elder abuse prevalence study*. Rochester, NY: Author. Retrieved from <http://lifespan-roch.org/documents/UndertheRadar051211.pdf>.
- Massachusetts Bank Reporting Project. (1995). *The bank reporting project – An edge against elder financial exploitation: Trainer reference manual*. Executive Office of Elder Affairs. Boston, MA.
- National Committee for the Prevention of Elder Abuse. (2008.) *The role of culture in elder abuse*. Retrieved from <http://www.preventelderabuse.org/elderabuse/issues/culture.html>.
- Nerenberg, L. (1993). *Improving the police response to domestic elder abuse: Instructor training manual and participant training manual*. Washington, D.C.: Police Executive Research Forum.
- Nerenberg, L. (1996). *Financial Abuse of the Elderly*. Washington, D.C.: National Center on Elder Abuse.

New York State Financial Exploitation Task Force, Pilot Project. (1997). *Bank training reference manual: Fighting financial exploitation of elder and impaired adults*. Albany, NY: State of New York Attorney General's Office.

Quinn, M. J. & Tomita, S. (1997). *Elder abuse and neglect: Causes, diagnosis, and intervention (2nd ed.)*. New York: Springer.

Tatara, T., Kuzmeskus, L., Duckhorn, E., Bivens, L., & Thomas, C. et al. (1998). *The national elder abuse incidence study*. U.S. Administration on Aging, National Center on Elder Abuse. Retrieved from http://aoa.gov/AoARoot/AoA_Programs/Elder_Rights/Elder_Abuse/docs/ABuseReport_Full.pdf.

Teaster, P., Dugar, T., Mendiondo, M., Abner, E., Cecil, K. & Otto, J. (2007). *The 2004 survey of adult protective services: Abuse of vulnerable adults 18 years of age and older*. U.S. Administration on Aging, National Center on Elder Abuse. Retrieved from http://www.ncea.aoa.gov/ncearoot/Main_Site/pdf/APS_2004NCEASurvey.pdf.

U.S. Department of Health and Human Services, Administration on Aging. (2010). *A profile of older Americans: 2010*. Retrieved from http://www.aoa.gov/aoaroot/aging_statistics/Profile/2010/docs/2010profile.pdf.

Wolf, R. (1996). Understanding elder abuse and neglect. *Aging Magazine*, 367, 4-9.

WEB SITES FOR FURTHER INFORMATION ON ELDER ABUSE

American Bar Association Commission on Law and Aging – <http://www.americanbar.org/aging>

Clearinghouse on Abuse and Neglect of the Elderly (CANE) – <http://www.cane.udel.edu/>

Lifespan of Greater Rochester – <http://www.lifespan-roch.org/>

MetLife Study of Elder Financial Abuse –
<http://www.metlife.com/mmi/research/broken-trust-elder-abuse.html> and
<http://www.metlife.com/mmi/research/elder-financial-abuse.html>

National Adult Protective Services Association (NAPSA) – <http://www.apsnetwork.org/>

National Center on Elder Abuse – <http://www.ncea.aoa.gov>

National Clearinghouse on Abuse in Later Life – <http://www.ncall.us/>

National Committee for the Prevention of Elder Abuse – <http://www.preventelderabuse.org/>

National Institute on Aging – <http://www.nia.nih.gov/>

New York City Elder Abuse Center – <http://nyceac.com/>

New York City Elder Abuse Network – <http://www.nycean.net/>

New York State Coalition on Elder Abuse – <http://www.nyselderabuse.org/>

New York State Legislature – <http://public.leginfo.state.ny.us/menuf.cgi>

New York State Office for the Aging (NYSOFA) – <http://www.aging.ny.gov/>

New York State Office for the Prevention of Domestic Violence – <http://opdv.ny.gov/>

New York State Office of Children and Family Services (OCFS) – <http://www.ocfs.state.ny.us/main/>

New York State Office of Victim Services – <http://ovs.ny.gov>

NY Connects – <http://www.nyconnects.org>

Office for Victims of Crime (OVC) – <http://www.ovc.gov/>

United States Administration on Aging – <http://www.aoa.gov/>

United States Department of Justice (DOJ) – <http://www.justice.gov/>

University of California, Irvine Center of Excellence on Elder Abuse & Neglect –
<http://www.centeronelderabuse.org/>

Utah Cost of Financial Exploitation Study –
<http://www.dhs.utah.gov/pdf/utah-financial-exploitation-study.pdf>

APPENDIX A

POWER OF ATTORNEY (POA) REFORM LEGISLATION – Summary of the Changes

Chap 644, Laws of 2008 (A6421-B / S4996-B) – signed Jan 27, 2009

Chap 4, Laws of 2009 (A4392 / S1728 – signed Feb 25, 2009 – changed effective date

Chap 340, Laws of 2010 (A8392-C / S7288-A) – signed Aug 13, 2010 – amended 2009 law

GENERAL BACKGROUND INFORMATION

- Financial exploitation of vulnerable older adults is the fastest growing form of elder abuse.
- Social workers, bankers, law enforcement, legal community (including prosecutors), and others consistently identified NY's law regulating POA as a major obstacle to preventing financial exploitation of the elderly and had advocated for changes in the law for over ten years.
- Legislation was first introduced in 2004 – amended several times based on input from Adult Protective Services, Aging Service Providers, Bankers, Judiciary, Law Enforcement, Lawyers specializing in elder law and trust and estates practice, Prosecutors, and others.
- Pre-2009 statute lacked direction and guidance regarding rights and responsibilities of Agent, Principal, and Third Parties – this contributed to confusion and interfered with APS, law enforcement and prosecution.
- New statute provides more clarity and direction – this will help (1) prevent financial exploitation, (2) uncover possible abuse, and (3) assist in stopping abuse, while still maintaining the flexibility of this popular instrument.
- POA reform was identified as a top priority during the 2004 NYS Elder Abuse Summit, and has been a priority for professionals who work diligently to protect vulnerable older adults.
- Goal is to reduce the incidence of financial exploitation by educating the Principal and Agent, and holding the Agent accountable if abuse occurs.
- No criminal sanctions – however, prosecutors say that the changes will help lay the groundwork for criminal prosecution of POA abuse cases.
- HIPAA issue – “health care billing and payment matters” added to the POA form so the Agent can examine, question and pay the Principal's medical bills.

To access legislation and NY statutes:

<http://public.leginfo.state.ny.us>

For the entire law governing powers of attorney:

Under Search, click on Laws of New York; GOB (General Obligations), Title 15 (5-1501 – 5-1514) – you will then be able to click on each section.

For individual bills:

Under Legislative Session, select year and type bill number in the Status box.

Changes affecting Agent (person granted authority to act as attorney-in-fact for the Principal) (§§ 5-1501B, 5-1504, 5-1510, 5-1511)

- Fiduciary obligations and accountability are clear (previous law was silent on these issues) — notice explaining role, fiduciary obligations and legal limitations on Agent’s authority — clear process for Agent to resign. (§§ 5-1505, 5-1513)
- Agent required to sign the POA, acknowledging fiduciary obligations. (§ 5-1507)
- When transacting business, Agent is attesting that he/she is acting under a valid POA and within scope of authority conveyed by the instrument. (§ 5-1507)
- Reasonable compensation if Principal agrees – without this designation, Agent is not entitled to compensation. (§ 5-1506)

Changes affecting Principal (individual, 18 or older, acting for himself or herself, who executes a POA) (§§ 5-1501B, 5-1505)

- Expands instructions to Principal – better information to Principal regarding the extent of the Agent’s authority and the fiduciary duty owed to the Principal. (§ 5-1513)
- Clear explanation regarding manner in which the Principal can revoke POA. (§ 5-1511)
- Allows Principal to appoint a monitor. (§ 5-1509)

Changes affecting Third Parties (§ 5-1510)

- Expands definition of financial institution to include retirement systems, securities brokers, securities dealers, securities firms and insurance companies. (§ 5-1501)
- Provides for Third Party refusal to accept a POA based on reasonable cause, which includes: (§ 5-1504)
 - Agent’s refusal to provide original or certified copy of POA.

- Third Party's good faith referral of Principal and Agent to local APS or actual knowledge of report to local APS by another person.
- Actual knowledge of Principal's death or actual knowledge of incapacity of Principal if POA is nondurable.
- Third Party must accept validly executed statutory form POA and cannot require use of institution's own form, or refuse based on lapse of time since execution or lapse of time between date signed by Principal and date signed by Agent. (§ 5-1504)
- Third Party does not incur any liability in acting on a POA unless Third Party has actual notice that POA is revoked, as specified in the statute. (§ 5-1511)

Statutory Gifts Rider Provisions (§§ 5-1501, 5-1501B, 5-1502I, 5-1514)

- Granting of authority to make certain gift transactions.
- Must be witnessed in same manner as a will – this alerts the Principal to the seriousness of granting the Agent this type of authority.
- Certain gift transactions to the Agent must be specified in the Gifts Rider.
- No Gifts Rider without a POA; and POA must include a separate Statutory Gifts Rider for a variety of gift transactions.

Abuse Prevention & Intervention (§§ 5-1501, 5-1503, 5-1504, 5-1505, 5-1506, 5-1507, 5-1508, 5-1509, 5-1510, 5-1511, 5-1513, 5-1514)

- Government investigation of abuse complaint can request accounting from Agent.
- Special Proceeding may be commenced for a variety of reasons, including:
 - Determine validity of POA, if POA was wrongfully procured, or to determine if Principal had capacity at time of execution, or whether procured through duress, fraud or undue influence.
 - Compel accounting - limited category of persons who have standing to bring action to compel accounting.
 - Determine whether Agent is entitled to compensation and if it is reasonable; or to remove agent for violation of fiduciary duty.
 - Compel acceptance of the POA.

Reform measures that also apply to powers of attorney executed prior to September 1, 2009:

1. Benefits from governmental programs or civil or military service. (§ 5-1502J)
2. Health care billing and payment matters. (§ 5-1502K)
3. Acceptance of validly executed statutory form POA. (§ 5-1504)
4. Agent fiduciary responsibility and process for resignation. (§ 5-1505)
5. Special proceedings. (§ 5-1510)

Prepared by Lifespan of Greater Rochester Inc. Adapted from various sources including the bill memo and NYS Law Revision Commission documents. Last updated by Lifespan on May 31, 2011.

APPENDIX B

Form below is a sample New York Statutory Power of Attorney, durable unless modified, GOL §5-1513, effective September 12, 2010

POWER OF ATTORNEY NEW YORK STATUTORY SHORT FORM

(a) CAUTION TO THE PRINCIPAL: Your Power of Attorney is an important document. As the “principal,” you give the person whom you choose (your “agent”) authority to spend your money and sell or dispose of your property during your lifetime without telling you. You do not lose your authority to act even though you have given your agent similar authority.

When your agent exercises this authority, he or she must act according to any instructions you have provided or, where there are no specific instructions, in your best interest. “Important Information for the Agent” at the end of this document describes your agent’s responsibilities.

Your agent can act on your behalf only after signing the Power of Attorney before a notary public.

You can request information from your agent at any time. If you are revoking a prior Power of Attorney, you should provide written notice of the revocation to your prior agent(s) and to any third parties who may have acted upon it, including the financial institutions where your accounts are located.

You can revoke or terminate your Power of Attorney at any time for any reason as long as you are of sound mind. If you are no longer of sound mind, a court can remove an agent for acting improperly.

Your agent cannot make health care decisions for you. You may execute a “Health Care Proxy” to do this.

The law governing Powers of Attorney is contained in the New York General Obligations Law, Article 5, Title 15. This law is available at a law library, or online through the New York State Senate or Assembly websites, www.senate.state.ny.us or www.assembly.state.ny.us.

If there is anything about this document that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

(b) DESIGNATION OF AGENT(S):

I, _____, hereby appoint:
name and address of principal

_____ as my agent(s)
name(s) and address(es) of agent(s)

If you designate more than one agent above, they must act together unless you initial the statement below.

(_____) My agents may act SEPARATELY.

(c) DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL)

If any agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

_____ name(s) and address(es) of successor agent(s)

Successor agents designated above must act together unless you initial the statement below.

(_____) My successor agents may act SEPARATELY.

You may provide for specific succession rules in this section. Insert specific succession provisions here:

(d) This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under “Modifications”.

(e) This POWER OF ATTORNEY DOES NOT REVOKE any Powers of Attorney previously executed by me unless I have stated otherwise below, under “Modifications.”

If you do NOT intend to revoke your prior Powers of Attorney, and if you have granted the same authority in this Power of Attorney as you granted to another agent in a prior Power of Attorney, each agent can act separately unless you indicate under “Modifications” that the agents with the same authority are to act together.

(f) GRANT OF AUTHORITY:

To grant your agent some or all of the authority below, either

- (1) Initial the bracket at each authority you grant, or
- (2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

I grant authority to my agent(s) with respect to the following subjects as defined in sections 5-1502A through 5-1502N of the New York General Obligations Law:

- (_____) (A) real estate transactions;
- (_____) (B) chattel and goods transactions;
- (_____) (C) bond, share, and commodity transactions;
- (_____) (D) banking transactions;
- (_____) (E) business operating transactions;
- (_____) (F) insurance transactions;

- (_____) (G) estate transactions;
- (_____) (H) claims and litigation;
- (_____) (I) personal and family maintenance. If you grant your agent this authority, it will allow the agent to make gifts that you customarily have made to individuals, including the agent, and charitable organizations. The total amount of all such gifts in any one calendar year cannot exceed five hundred dollars;
- (_____) (J) benefits from governmental programs or civil or military service;
- (_____) (K) health care billing and payment matters; records, reports, and statements;
- (_____) (L) retirement benefit transactions;
- (_____) (M) tax matters;
- (_____) (N) all other matters;
- (_____) (O) full and unqualified authority to my agent(s) to delegate any or all of the forgoing powers to any person or persons whom my agent(s) select;
- (_____) (P) EACH of the matters identified by the following letters

You need not initial the other lines if you initial line (P).

(g) MODIFICATIONS: (OPTIONAL)

In this section, you may make additional provisions, including language to limit or supplement authority granted to your agent.

However, you cannot use this Modifications section to grant your agent authority to make gifts or changes to interests in your property. If you wish to grant your agent such authority, you MUST complete the Statutory Gifts Rider.

(h) CERTAIN GIFT TRANSACTIONS: STATUTORY GIFTS RIDER OPTIONAL

In order to authorize your agent to make gifts in excess of an annual total of \$500 for all gifts described in (I) of the grant of authority section of this document (under personal and family maintenance), **you must initial the statement below and execute a Statutory Gifts Rider at the same time as this instrument.** Initialing the statement below by itself does not authorize your agent to make gifts. The preparation of the Statutory Gifts Rider should be supervised by a lawyer.

(_____) (SGR) I grant my agent authority to make gifts in accordance with the terms and conditions of the Statutory Gifts Rider that supplements this Statutory Power of Attorney.

(i) DESIGNATION OF MONITOR(S): (OPTIONAL)

If you wish to appoint monitor(s), initial and fill in the section below:

(_____) I wish to designate _____,

whose address(es) is (are) _____, as monitor(s).

Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the Power of Attorney and a record of all transactions done or made on my behalf. Third parties holding records of such transactions shall provide the records to the monitor(s) upon request.

(j) COMPENSATION OF AGENT(S): (OPTIONAL)

Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your behalf. If you ALSO wish your agent(s) to be compensated from your assets for services rendered on your behalf, initial the statement below. If you wish to define “reasonable compensation”, you may do so above, under “Modifications”.

(_____) My agent(s) shall be entitled to reasonable compensation for services rendered.

(k) ACCEPTANCE BY THIRD PARTIES: I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Power of Attorney. I understand that any termination of this Power of Attorney, whether the result of my revocation of the Power of Attorney or otherwise, is not effective as to a third party until the third party has actual notice or knowledge of the termination.

(l) TERMINATION: This Power of Attorney continues until I revoke it or it is terminated by my death or other event described in section 5-1511 of the General Obligations Law.

Section 5-1511 of the General Obligations Law describes the manner in which you may revoke your Power of Attorney, and the events which terminate the Power of Attorney.

(m) SIGNATURE AND ACKNOWLEDGMENT:

In Witness Whereof I have hereunto signed my name on _____, 20_____.

PRINCIPAL signs here: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the _____ day of _____, in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature and office of individual taking acknowledgment

(n) IMPORTANT INFORMATION FOR THE AGENT:

When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes on you legal responsibilities that continue until you resign or the Power of Attorney is terminated or revoked. You must:

- (1) act according to any instructions from the principal, or, where there are no instructions, in the principal's best interest;
- (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) keep the principal's property separate and distinct from any assets you own or control, unless otherwise permitted by law;
- (4) keep a record of all receipts, payments, and transactions conducted for the principal; and
- (5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manners: (Principal's Name) by (Your Signature) as Agent, or (your signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or anyone else or make gifts to yourself or anyone else unless the principal has specifically granted you that authority in this document, which is either a Statutory Gifts Rider attached to a Statutory Short Form Power of Attorney or a Non-Statutory Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest. You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of agent:

The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

(o) AGENT’S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:

It is not required that the principal and the agent(s) sign at the same time, nor that multiple agents sign at the same time.

I/we, _____, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as agent(s) for the principal named therein.

I/we acknowledge my/our legal responsibilities.

Agent(s) sign(s) here: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the _____ day of _____, in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature and office of individual taking acknowledgment

It is not required that the principal and SUCCESSOR agent(s), if any, sign at the same time, nor that multiple SUCCESSOR agents sign at the same time. Furthermore, successor agents can not use this power of attorney unless the agent(s) designated above is/are unable or unwilling to serve.

I/we, _____, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as SUCCESSOR agent(s) for the principal named therein.

Successor Agent(s) sign(s) here: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the _____ day of _____, in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature and office of individual taking acknowledgment

APPENDIX C

Form below is a sample New York Statutory Gifts Rider (SGR), GOL §5-1514, effective September 12, 2010

POWER OF ATTORNEY NEW YORK STATUTORY GIFTS RIDER AUTHORIZATION FOR CERTAIN GIFT TRANSACTIONS

CAUTION TO THE PRINCIPAL: This OPTIONAL rider allows you to authorize your agent to make gifts in excess of an annual total of \$500 for all gifts described in (I) of the Grant of Authority section of the statutory short form Power of Attorney (under personal and family maintenance), or certain other gift transactions during your lifetime. You do not have to execute this rider if you only want your agent to make gifts described in (I) of the Grant of Authority section of the statutory short form power of Attorney and you initialed “(I)” on that section of that form. Granting any of the following authority to your agent gives your agent the authority to take actions which could significantly reduce your property or change how your property is distributed at your death. “Certain gift transactions” are described in section 5-1514 of the General Obligations Law. This Gifts Rider does not require your agent to exercise granted authority, but when he or she exercises this authority, he or she must act according to any instructions you provide, or otherwise in your best interest.

This Gifts Rider and the Power of Attorney it supplements must be read together as a single instrument.

Before signing this document authorizing your agent to make gifts, you should seek legal advice to ensure that your intentions are clearly and properly expressed.

(a) GRANT OF LIMITED AUTHORITY TO MAKE GIFTS

Granting gifting authority to your agent gives your agent the authority to take actions which could significantly reduce your property.

If you wish to allow your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.

To grant your agent the gifting authority provided below, initial the bracket to the left of the authority.

(_____) I grant authority to my agent to make gifts to my spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. For gifts to my children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code.

This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

(b) MODIFICATIONS:

Use this section if you wish to authorize gifts in amounts smaller than the gift tax exclusion amount, in amounts in excess of the gift tax exclusion amount, gifts to other beneficiaries, or other gift transactions.

Granting such authority to your agent gives your agent the authority to take actions which could significantly reduce your property and/or change how your property is distributed at your death. If you wish to authorize your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.

(_____) I grant the following authority to my agent to make gifts pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

(c) GRANT OF SPECIFIC AUTHORITY FOR AN AGENT TO MAKE GIFTS TO HIMSELF OR HERSELF: (OPTIONAL)

If you wish to authorize your agent to make gifts to himself or herself, you must grant that authority in this section, indicating to which agent(s) the authorization is granted, and any limitations and guidelines.

(_____) I grant specific authority for the following agent(s) to make the following gifts to himself or herself:

This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

(d) ACCEPTANCE BY THIRD PARTIES: I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Statutory Gifts Rider.

(e) SIGNATURE OF PRINCIPAL AND ACKNOWLEDGMENT:

In Witness Whereof I have hereunto signed my name on _____, 20__.

PRINCIPAL signs here: _____

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

On the _____ day of _____, in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature and office of individual taking acknowledgment

(f) SIGNATURES OF WITNESSES:

By signing as a witness, I acknowledge that the principal signed the Statutory Gifts Rider in my presence and the presence of the other witness, or that the principal acknowledged to me that the principal's signature was affixed by him or her or at his or her direction. I also acknowledge that the principal has stated that this Statutory Gifts Rider reflects his or her wishes and that he or she has signed it voluntarily. I am not named herein as a permissible recipient of gifts.

Signature of witness 1

Signature of witness 2

Date

Date

Print Name

Print Name

Address

Address

City, State, Zip code

City, State, Zip code

(g) This document prepared by: _____



New York State Elder Abuse Prevention Training Manual
Funded by New York State Office for the Aging
Produced by Lifespan of Greater Rochester Inc.

