

# Right at the Front Lines: Financial Professionals and Financial Exploitation

Minnesota Bankers Association 2017

MINNESOTA  
ELDER JUSTICE  
CENTER

# Goals:

In this video, I hope to:

- ▶ Review definitions and statistics
- ▶ Discuss warning signs and reporting barriers
- ▶ Identify legal protections and resources

# Elder Abuse: toward a definition...

- ▶ In general, elder abuse is any knowing, intentional, or negligent act by a caregiver or any other person that causes harm or a serious risk of harm to an older adult.
- ▶ Defined by age, relationship, type of abuse
- ▶ Victims are often on a continuum from active to having various medical, cognitive, mobility issues
- ▶ 2/3 of perpetrators of elder abuse are family members, trusted individuals and/or caregivers

# Prevalence

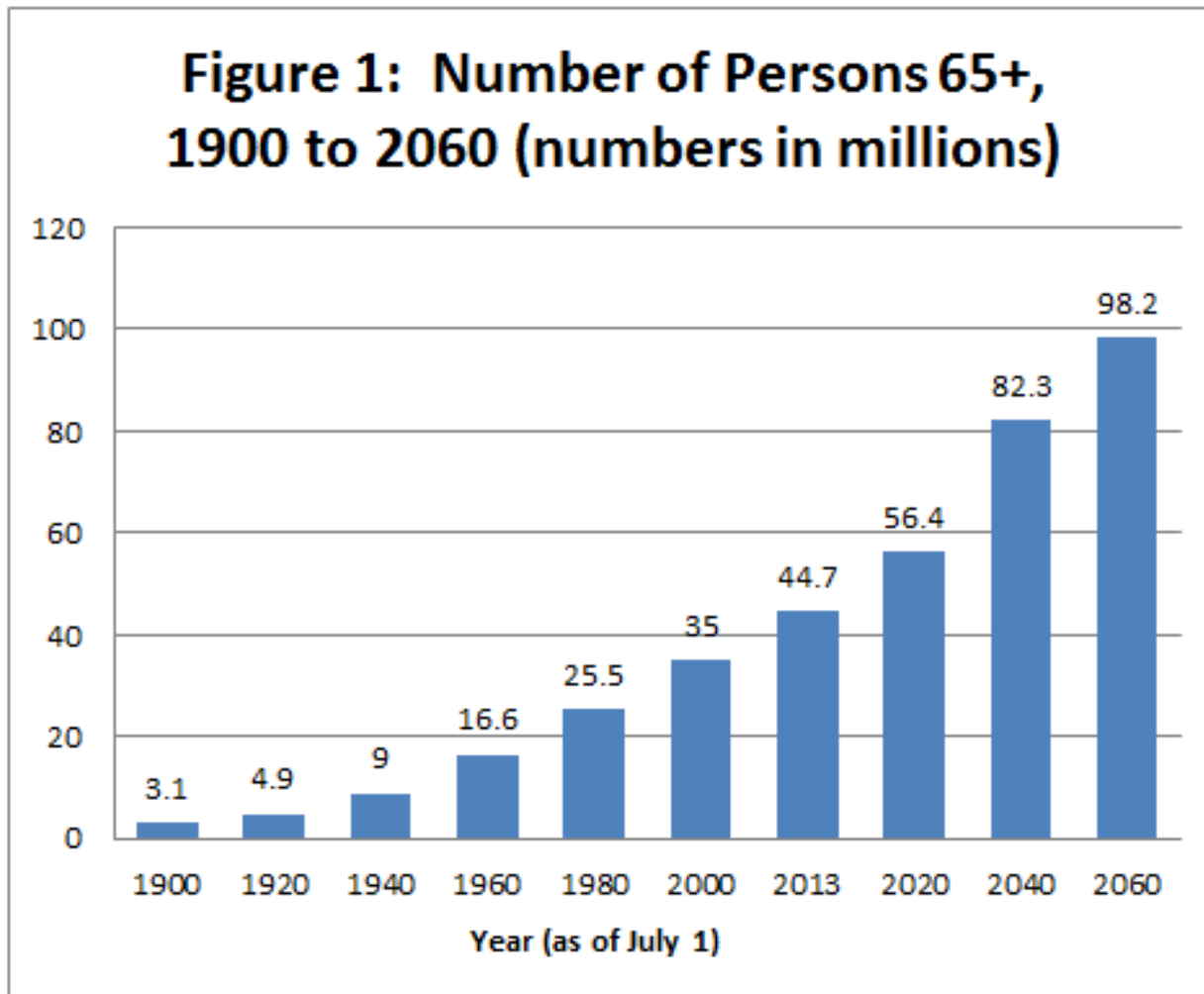
- ▶ 1,000,000 – 2,000,000 adults in later life in U.S. are victims of abuse<sup>1</sup>
- ▶ 1 in 10 persons over the age 60 are victims of elder abuse<sup>2</sup>
- ▶ Victims of elder financial abuse in U.S. lose close to \$3 Billion each year<sup>3</sup>

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

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

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

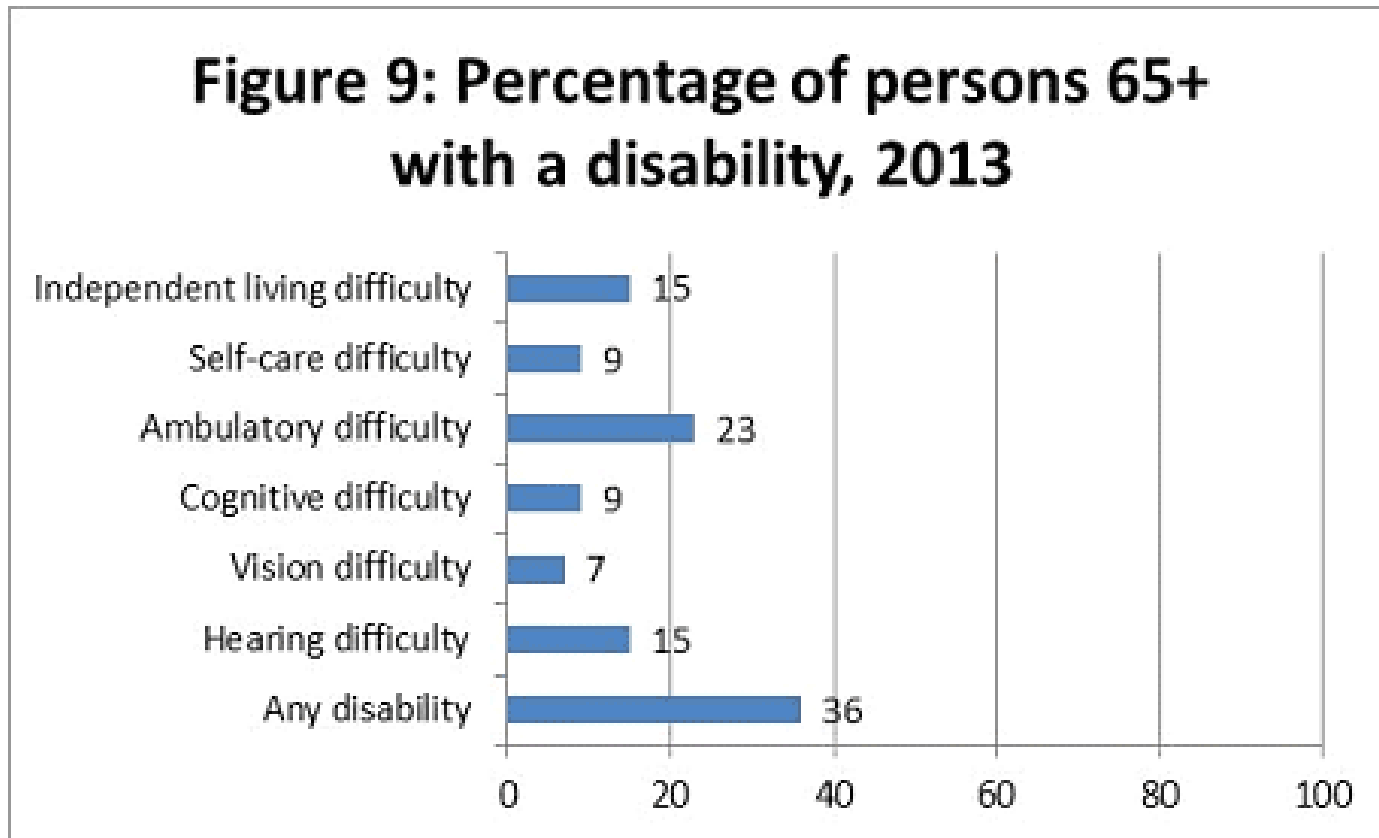
**Figure 1: Number of Persons 65+: 1900-2060 (numbers in millions)**



Note: Increments in years are uneven.

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

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



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

# What is Financial Exploitation?

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

# Criminal Financial Exploitation

## Minn. Stat. 609.2335 Subd. 1

- ▶ Breach of fiduciary obligation:
  - ▶ Intentionally fails to provide necessities
  - ▶ Deprives vulnerable adult of access to their own resources
  - ▶ Uses resources for someone other than the vulnerable adult
  
- ▶ Anyone who, without legal authority:
  - ▶ Acquires vulnerable adults resources through undue influence, duress, coercion
  - ▶ Forces vulnerable adult to perform services against their will for another
  - ▶ Establishes a fiduciary relationship via undue influence, duress or other enticement



# What is a Fiduciary?

Clients will benefit by understanding this basic definition:

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

# Understanding the Fiduciary Role

In our experience, individual laypersons frequently serve as family fiduciaries, and rarely have a complete understanding of their fiduciary responsibilities.

There is much we can do as professionals to provide assistance and guidance. Knowing your state's tools (such as statutory Power of Attorney) is a good place to start.

# Warning Signs of Financial Exploitation

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

# Warning Signs of Financial Exploitation

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

# Barriers to Reporting

- ▶ Cognitive impairment
- ▶ Denial
- ▶ Fear (of escalation, isolation, destruction of property, injury to pets, death)
- ▶ Incredulity of others
- ▶ Pride and desire to maintain autonomy
- ▶ Shame or embarrassment

# Barriers to Reporting

- ▶ Desire to protect relatives
- ▶ Cultural boundaries
- ▶ Belief that institutional care is only alternative
- ▶ Depression and/or grief
- ▶ Feeling that abuse is somehow appropriate response to victim's own action recently or prior in life

See: [http://elderabuse.Stanford.edu/screening/pt\\_barriers](http://elderabuse.Stanford.edu/screening/pt_barriers)

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

- ▶ Share our suspicions – talk to someone – make a report...
- ▶ To emergency services
- ▶ To law enforcement
- ▶ To adult protection
- ▶ To a Tribal Court or other Court
- ▶ To an advocacy organization

# Messages to our clients, customers and consumers:

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



# What might we want to encourage clients to consider?

- ▶ Refer clients to professionals who can create planning tools such as:
  - ▶ Power of Attorney (for financial matters)
  - ▶ Health Care Directive (for health decisions)
  - ▶ Testamentary devices
    - ▶ Will/Trust
    - ▶ Beneficiary designations
    - ▶ Other titling considerations

# Resources Available if you Suspect Financial Exploitation

- ▶ Minnesota Adult Abuse Reporting Center
- ▶ Supervisors, colleagues, coworkers
- ▶ Ombudsman's Office
- ▶ Social Security Administration
- ▶ Courts
- ▶ Consumer Financial Protection Bureau
- ▶ Other advocacy organizations...

# Adult Protective Services

- ▶ In some states, financial services professionals are mandated reporters
- ▶ Not mandated reporters in Minnesota
- ▶ What do investigators look for?
  - ▶ Is an individual vulnerable; what is the level of risk
  - ▶ Is financial exploitation or abuse/neglect occurring
  - ▶ Are emergency services needed
  - ▶ Does the alleged victim have capacity
  - ▶ Who is involved; what are their relationships

# The Minnesota Adult Abuse Reporting Center

- ▶ Began receiving reports on July 1<sup>st</sup>, 2015.
- ▶ Single toll-free number: **844-880-1574**
  - ▶ Available 24 hours per day
  - ▶ Immediately notifies county agency (EPS); law enforcement (crime); Med Ex, Ombudsman for MH (suspicious death)
  - ▶ Refers directly to Lead Investigative Agency

# Colleagues, Co-workers, Supervisors and Investigators

- ▶ Within financial services there are many routes to take:
  - ▶ Talk with a supervisor about reporting
  - ▶ Follow internal report-making procedures
  - ▶ Seek advice from supervisors, managers or colleagues if uncertain about how to proceed – someone may be aware of a process that's new to you

# Long Term Care Ombudsmen

- ▶ Long Term Care Ombudsmen advocate on behalf of the residents of Medicare/Medicaid licensed nursing facilities, care homes and residences.
- ▶ Every state has a full time State Ombudsman; many (like Minnesota) have regional offices
- ▶ Ombudsman duties to elder clients are bounded by federal law

# Social Security

- ▶ Contact local Social Security office if you suspect an elder's social security funds are being misused.
- ▶ Social Security: 1-800-269-0271 or online at [oig.ssa.gov/report](https://oig.ssa.gov/report)
- ▶ A “representative payee” can be nominated or changed

# Courts

- ▶ If an individual requires additional assistance managing money or meeting daily needs, a court may appoint a guardian or conservator (or both).
- ▶ County courts and tribal courts
- ▶ Contact the court that appointed the guardian or conservator if you suspect misuse of a protected person's funds or property



# The Department of Commerce

- ▶ The Fraud Bureau can sometimes intervene particularly if a person is experiencing identify theft or being scammed.
  - ▶ Leverage federal, state and local partnerships
  - ▶ Provide corroboration that consumer is experiencing scam
  - ▶ 1-888-FRAUD MN (1-888-372-8366)

# Criminal Responses

- ▶ Can be triggered by an adult protection report
- ▶ Can be initiated independent of an adult protection report
- ▶ Clients may or may not understand outcome of criminal proceeding

# Civil Legal Responses

- ▶ Civil suit (under variety of circumstances)
- ▶ Civil Protection Orders (details differ by state): OFP/HRO  
[http://www.mncourts.gov/mncourtsgov/media/fourth\\_district/documents/OFP v HRO Information Sheet.pdf](http://www.mncourts.gov/mncourtsgov/media/fourth_district/documents/OFP_v_HRO_Information_Sheet.pdf)
  - ▶ Understand client expectations, particularly regarding contact with family members or caregivers

# Civil Legal Responses

- ▶ Advance planning
- ▶ Supported Decision Making  
<http://supporteddecisionmaking.org/>
- ▶ Guardianship/Conservatorship action
- ▶ Agency involvement/Administrative action:
  - ▶ CMS (Medicare/Medicaid)
  - ▶ Social Security
  - ▶ Veteran's Administration
  - ▶ State Departments of Health or Human Services (re. licensure matters, among other reports)
- ▶ License impacts

Elder abuse and financial exploitation are problems with solutions!

Let's work together on behalf of Minnesotans. Let us know what resources you need!

Thank you for your attention.