Securities America

Clients Displaying Diminished Capacity

AND

Recognizing Financial Elder Abuse

Part of Securities America's Business Mastery Series

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Introduction

The number of Americans 65 years or older was 39.6 million in 2009 and represented 12.9 percent of the U.S. population, about one in eight. By 2030, there will be about 72.1 million seniors, more than twice the number in 2000, and is expected to grow to be 19 percent of the population. [1] This explosion in the number of older Americans raises two issues that financial advisors should be well prepared for: recognizing clients' diminishing capacity to handle their financial affairs and signs of elder financial abuse perpetrated by not only strangers, but more commonly family and friends.

Older Americans are particularly susceptible to being victimized by family and friends due to declining cognitive and physical abilities causing them to be more reliant on these trusted individuals for their everyday care and financial management. Scammers target elderly individuals as they perceive them as vulnerable, knowing they are often confused, fearful or will be too embarrassed by the crime to report it to authorities.

Financial advisors are on the front lines to being able to recognize issues facing older Americans. Your relationships with your clients are the best offense in assisting them with finding the help they need should their mental acuity begin to deteriorate. You can also help them avoid severe financial loss should they become a target of financial abuse. Your processes help you stay in frequent contact with older clients giving you the ability to recognize changes and quickly bring in family or other professionals when the need becomes apparent.

Just as important as it is to protect your clients, you must also take steps to protect yourself and your practice from increased risk as your client base ages. For many advisors, the 65 and older age group makes up a substantial segment of their clients. Claims related to elderly clients often are similar in nature. An heir or personal representative accuses the financial advisor of mismanaging the client's money including not adequately preserving or protecting the assets. He or she will often assert that the financial advisor provided bad investment advice and that the elderly client may not have understood the impact of decisions made due to diminished mental capacity. Who will the jury side with?

In an article titled "The Coming Wave: Professional Liability Lawsuits for Failure to Recommend a Plan for Long-Term Care," elder-law and long term care expert Harley Gordon, president of CLTC, specifically points out that failure to talk with families about long term care planning issues "may subject financial planners to a claim of breach of due diligence."

In Mr. Gordon's article, he tells the story of Sheila Adams (not her real name), a seasoned financial planner with a major mid-west insurance company. She is also one of its top producers. Like a growing number of professionals she takes the subject of long term care seriously and talks about its consequences with clients. Apparently talking about it may not be enough. Ms. Adams received a call from a good client's son, a local attorney. He proceeded to tell her that his dad was in a nursing home and paying for it with his life savings. He then told her: "You have 15 minutes to produce evidence that you recommended a long term care plan in general and long term care insurance in particular." Fortunately, she had discussed the matter and had a letter recommending the sale of long term care insurance. Without it, she believes she would have been sued.

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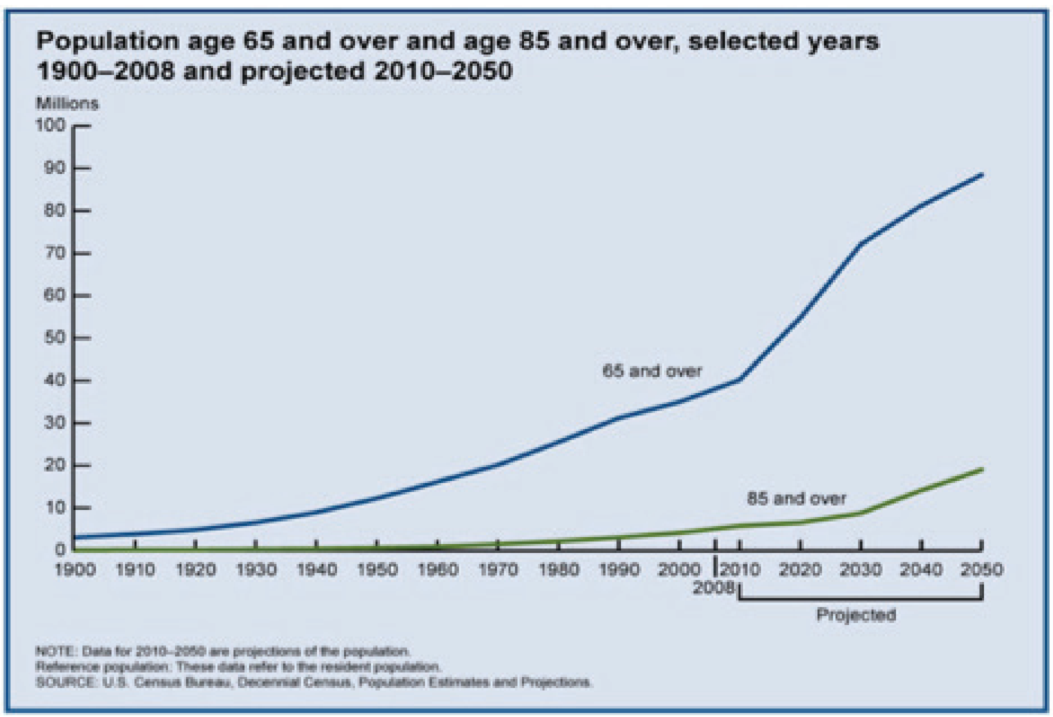
1 1-Department of Health & Human Services – Administration on Aging - http://www.aoa.gov/Aging_Statistics/

To help minimize this risk, make a practice of strongly encouraging older adult clients to include trusted family members or friends into planning meetings. This doesn't mean the family members are immediately included in all of the financial details, but more that they are educated on the decision-making process used to put the plan together and understand the goals in place currently. At some point it will be important to have a family meeting to discuss the elder client's desires for handling money, legacy, housing and care when they can no longer do so for themselves. Discussions for future care now can keep the client in control, even if capacity issues develop later.

There are few federal, state or industry guidelines to help advisors protect their practices from the legal and ethical challenges of dealing with clients who today are perfectly capable of making complex financial decision but may not be able to do so in six months to a year from now.

The purpose of this guide is to provide you with information and advice on how to recognize diminished capacity scenarios and what to do should you suspect such a scenario is occurring.



Recognizing Diminished Capacity

As the population ages, the occurrence of degenerative mental diseases increases. Recognizing diminished capacity in your clients may be more difficult than you expect at first. Initial signs are subtle before they begin to rapidly increase over time. Should you suspect a client is showing signs of diminished capacity, focus on the client's actual decisional abilities and do not be misled by cooperativeness, joviality or social skills.

Keep in mind that mental capacity can fluctuate depending on the task at hand, the course of the day and energy level. Your client may not show signs of diminished capacity during your in-person meeting, but may call your office seeming confused about financial arrangements or forgetting when they might receive a distribution check. Such confusion can be caused by problems with medication, inadequate diet, insufficient sleep or stress and not necessarily Alzheimer's or other serious mental impairment. Still, the symptoms that may signal the start of dementia or Alzheimer's include disorientation, asking the same questions repeatedly, being unable to follow directions and most notably, neglect of personal hygiene or safety.

Look for the "red flags" such as:

- The client appears unable to process simple concepts.
- The client appears to have memory loss.
- The client appears to have difficulty speaking or communicating.
- The client appears unable to appreciate the consequences of decisions.
- The client makes decisions that are inconsistent with his or her current long-term goals or commitments.
- The client's behavior is erratic.
- The client refuses to follow appropriate investment advice; this may be of particular concern when the advice is consistent with previously-stated investment objectives.
- The client appears to be concerned or confused about missing funds in his or her account, where reviews indicate there were no unauthorized money movements or no money movements at all.
- The client is not aware of, or does not understand, recently completed financial transactions.
- The client appears to be disoriented with surroundings or social settings.
- The client appears uncharacteristically unkempt or forgetful.

Financial advisors must be prepared to work with an aging client base. The complexity of the financial strategies and investment products that are implemented as part of an individual's income distribution plan will likely be a challenge to effectively communicate to older clients as each year progresses. The decisions necessary to maintain the income distribution strategy will likely become increasingly difficult for older clients to comprehend. It will become a challenge for advisors to continue to attempt to create the necessary income and maintain the suitability or appropriateness of the investment products in use.

We suggest that every client have a signed investment policy statement (IPS) on file. The IPS should detail all of the important information that is significant to managing the client's personal investment portfolio including:

- Target asset allocation
- Risk tolerance
- Timeframe for investment/use of assets
- Goals for the assets
- Liquidity needs
- Account restrictions/preferences
- Any special circumstances that might affect investments

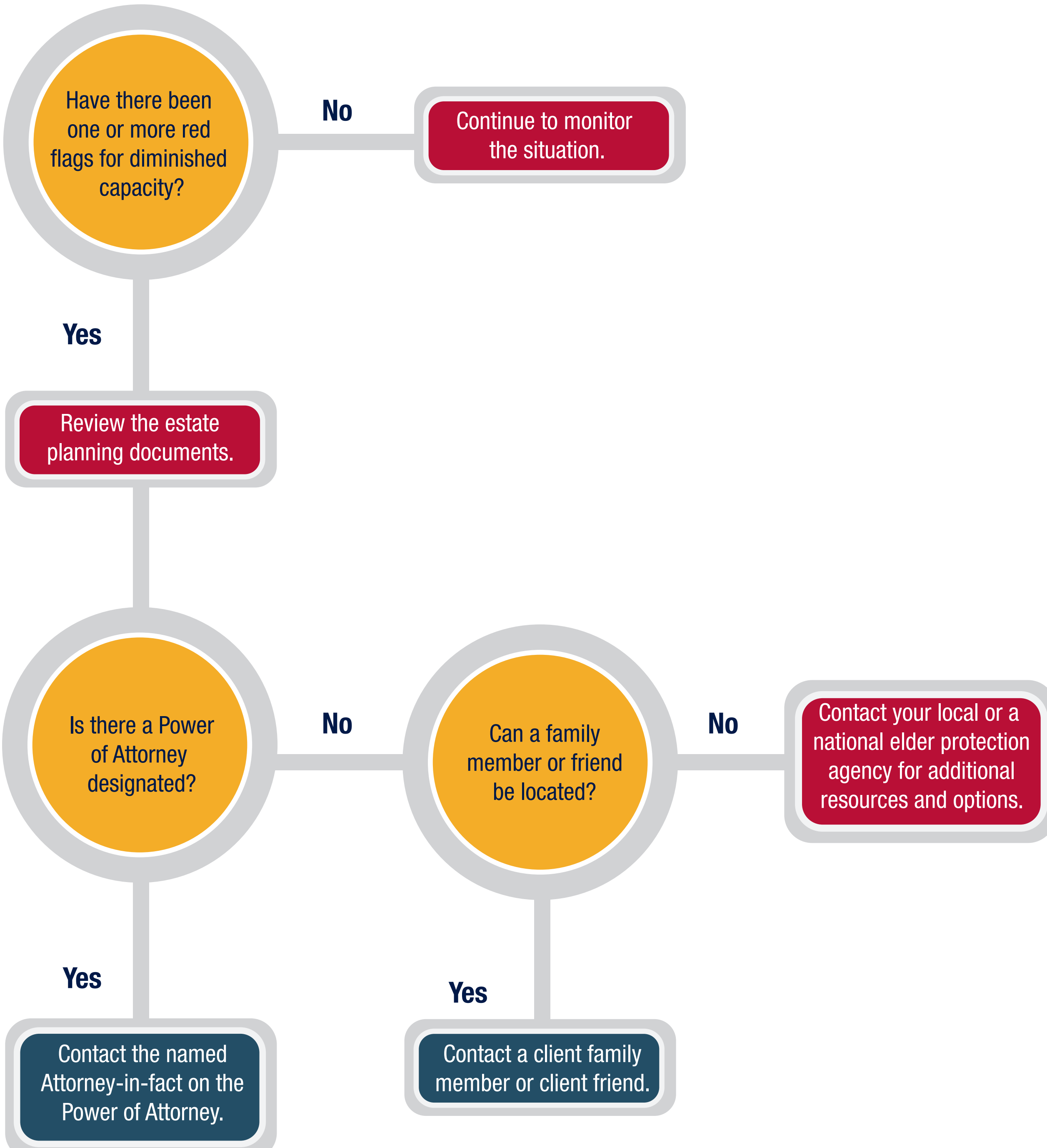
The IPS should be reviewed and validated annually with aging clients to update changes in circumstances.

Normal Aging	**Dementia**
Mild and gradual memory loss	Severe and rapid memory loss
Attention and concentration is decreased	Noticeably distracted and unable to concentrate
Slower reaction time and problem-solving	Faulty reasoning
Slower recall	Unable to recall specifics
Occasionally at a loss for words	Frequent loss of words
Interpersonal skills are the same	Inappropriate behavior / Disinterest in social activities

Adapted from: The American Medical Association

The Three Main Stages of Dementia	
Mild or early stage	• Memory loss and cognitive impairments are small but become increasingly noticeable. • The person can cover up or make adjustments for these gaps and lapses, they continue to function independently. • Signs and symptoms of this stage are often the results of stress or bereavement. In older people they may be the normal aging process.
Moderate or mild stage	• Memory lapses and confusion become more obvious and the person becomes more distressed by them. • The person can no longer hide these from friends and family. • Their personality and mental abilities may start to change and physical problems develop. • The person needs more support to help them manage the tasks of daily living. • They may need repeated reminders and help to hear, wash, dress and use the toilet.
Severe or late stage	• Individuals will become more severely disabled and need more help, gradually becoming dependant on caregivers. • Dementia may limit the person's ability to communicate. • Memory and personality will deteriorate further. • They will need more assistance with daily tasks of bathing, dressing and eating. They may no longer be able to live independently.

Diminished Capacity Decision Tree



Advisor Testimonial

"My client and his wife were both retired when I met them and would both be considered elderly. During our early meetings, I asked if they would mind inviting their son and daughter to a meeting, so they could meet me and understand everything that we were doing, as well as know who I was, in the event they ever needed me. After the son, a cardiologist, and the clients' daughter, whose husband is a partner with a large CPA firm, saw the relationship that I had built with their parents and the job that I was doing for them; both approached me about what I could do for them, and are all clients now as well! They have all been clients for about 15 years and we all visit together at the parent's house annually.

With that, the son called about two years ago to inform me that his father had been diagnosed with Alzheimer's and was not doing very well. He asked if I minded coming to see them the following day to discuss options. They all live a little more than three hours south of me, but I drove down and we had a roundtable meeting about his father, discussing what his medical prognosis was and would his wife be taken care of financially. At the end of the meeting, my client's wife understood that based on the years of saving and investing, she was going to be financially "fine" and she didn't need to worry about her standard of living as nothing would change for her in that matter.

Since then, during my monthly calls, the family keeps me updated on the father's health and I'm glad to say, he is doing much better!"

- Dennis Gilliam, Integris Capital Management

Recognizing Elder Financial Abuse

Financial scams targeting older Americans have become so prevalent that they're now considered "the crime of the 21st century." [1] There are three types of elder financial abuse crimes: occasion, desperation and predation. Crimes of occasion occur when an older person has what the perpetrator wants, money or property, and the occasion presents itself. An example of a crime of occasion would be when someone is robbed in their home after allowing someone they thought could be trusted to enter.

Crimes of desperation are typically those in which a family member or friend is so desperate for money they will victimize a vulnerable person. More often these crimes are committed by family members, because they are providing some form of care for a dependent elderly relative, such as housing. The exploiting family member or friend convinces themselves that they are due substantial compensation for the care they believe they are providing; however little that care may actually be.

Crimes of predation are the most sinister as they occur when the perpetrator builds trust with the elder person with the intention of financial abuse later. With this trust the perpetrator employs tactics ranging from simply taking money or property to forcing an elderly person to sign over property.

Desperation and predation offenders deceive, coerce, intimidate, emotionally abuse or make empty promises of lifelong care. Further, they usually try to isolate the victim from friends, family and other concerned parties. By doing so, they prevent others from asking about the elder's well-being or relationship with the offender, preventing the elder from consulting with others on important financial decisions, and, perhaps most tragically, giving the elder the impression that no one else cares about him or her.

The ability to recognize fraud can fade with aging, even among those without dementia. Victims of elder financial abuse often feel shame and embarrassment especially if victimized by a family member and will often avoid reporting crimes against them. Review the list of common scams from the National Council on Aging on the following page.

Statistics from the National Committee for the Prevention of Elder Abuse report that:

- Women are nearly twice as likely to be victims of elder financial abuse as men.
- Most victims were between the ages of 80 and 89 and lived alone or required some help with either their health care or home maintenance.
- Nearly 60 percent of perpetrators were males, mostly between ages 30 and 59.
- Victims were particularly vulnerable during the holidays when overall dollar losses due to family and friends were higher than other times.

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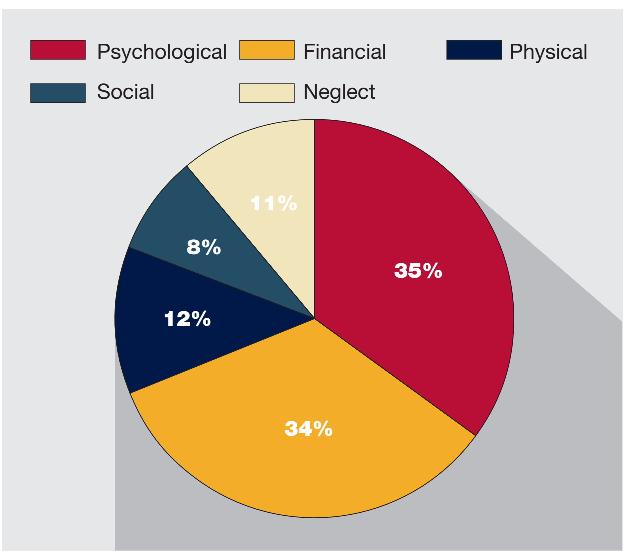
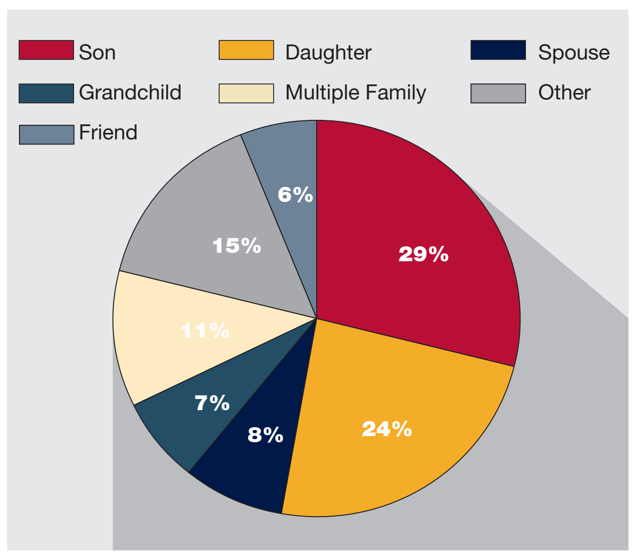
1 1-Department of Health & Human Services – Administration on Aging - http://www.aoa.gov/Aging_Statistics/

Look for the "red flags" such as:

- The client gives a power of attorney to someone that, to the advisor, appears inappropriate.
- Indications that the client does not have control over or access to his or her money.
- The clients mailing address has been changed to an unfamiliar and unexplained address.
- Changes in the will are being made when the person appears to be incapacitated.
- Inability of the advisor to speak directly to the client, despite attempts to do so.
- The client appears to be suddenly isolated from friends and family.
- There is a sudden, unexplained or unusual change in the client's transaction patterns.
- There are unexplained disbursements made in the client's account that are outside of the norm.
- The sudden appearance of a new individual involved in the client's financial affairs.
- Frequent or larger than what would be considered normal sums of money are being withdrawn to pay for care giver(s).

Elder financial abuse should be reported to and be investigated by local resources such as Adult Protective Services, District Attorney's offices, sheriff's offices and police departments. Financial advisors suspecting elder financial abuse should contact their broker-dealer to file a Suspicious Activity Report (SAR) through the Financial Crimes Enforcement Network (FinCEN) at www.fincen.gov.





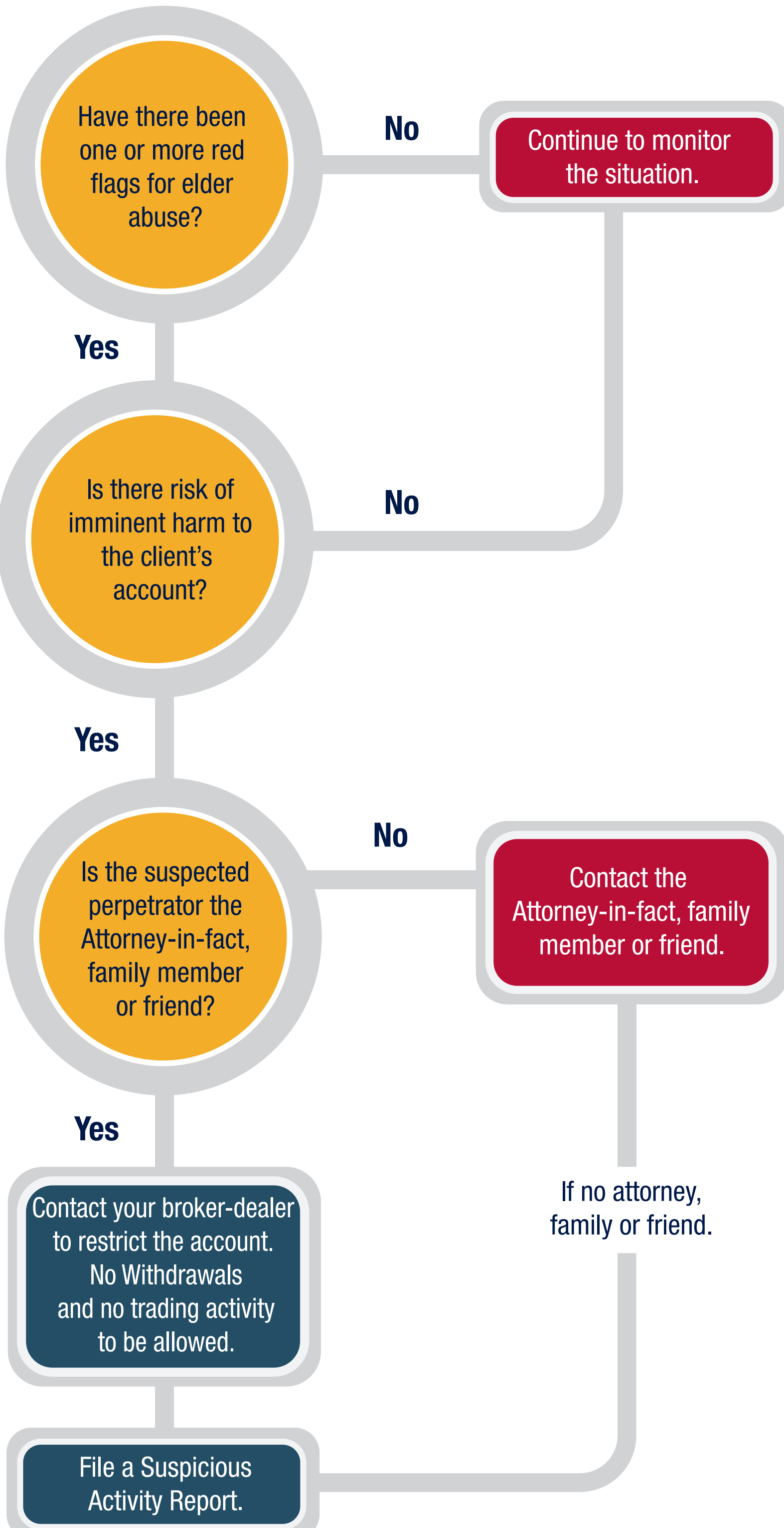
Current estimates put the overall reporting of financial exploitation at only 1 in 25 cases, suggesting that their may be at least 5 million financial abuse victims each year.[2]

While underreported, the annual financial loss by victims of elder financial abuse is estimated to be at least $2.6 billion dollars.[3]

2 Wasik, John F. 2000. "The Fleecing of America's Elderly," Consumers Digest, March/April.

3 The Metlife Study of Elder Financial Abuse - 2013

Elder Financial Abuse Decision Tree



Advisor Testimonial

"I never thought it would happen to one of my clients…I was wrong!

One of my older clients received a call from her young adult "grandson" about an accident that occurred while he was out of town, and he needed her to help with some money to get him out of a tight spot. And, of course, the plea from the grandson was to "not tell my dad." She spent the whole day running around the city to different locations to raise small amounts of cash that could be sent right away. The grandson said he needed $4,000, but she could only round up $2,500 before everything short-term had been maxed out – thankfully. Even then he continued to call, pleading for more.

My client said that the voice on the other end was her grandson, she was certain of it. He also knew precise details on items that led her to believe it was her grandson. She only realized that she had been scammed when that evening she called her son and casually asked how things were going and what her grandson had been doing. She was told that they had a great day doing things together – all day. She was very much relieved that her real grandson was not in a bind, but quickly realized the $2,500 was gone and not coming back.

I had never really heard much about the "Grandparent Scam" until I had a conversation with my broker-dealer as they were conducting research for this guide. I have since made this scam one of the review topics for all meetings with clients that I think it may affect. Now I tell clients that have grandchildren to be aware of this hoax and I tell the clients whose kids might be the impersonated party, for their parents to share it with them as well."

- Dan Goeken, Insight Financial Planning

Conclusion

Financial planners need to be prepared to meet the aging population boom and their potential capacity issues head on. Many aging clients will not even be aware that their mental capacity is diminishing and even if they do, they may try to hide it from everyone around them. With pride and fear of losing their independence, your best clients may someday become the biggest risk to your practice. This impending risk can be mitigated by taking steps necessary to recognize and react quickly to issues facing aging clients in your practice.

The relationships that you have developed with your clients put you and your staff in a unique position to recognize the red flags of diminished capacity and elder financial abuse. Take action now to put together a team of professional resources with additional processes aimed at protecting your older clients. Planning now will allow clients to age with grace, dignity and independence knowing you did everything in your power to protect them.

Appendix A

Top 10 Scams Targeting Seniors From The National Council On Aging

1. Health Care/Medicare/Health Insurance Fraud

Every U.S. citizen or permanent resident over age 65 qualifies for Medicare, so there is rarely any need for a scam artist to research what private health insurance company older people have in order to scam them out of some money. In these types of scams, perpetrators may pose as a Medicare representative to get older people to give them their personal information, or they will provide bogus services for elderly people at makeshift mobile clinics, then use the personal information they provide to bill Medicare and pocket the money.

2. Counterfeit Prescription Drugs

Most commonly, counterfeit drug scams operate on the Internet, where seniors increasingly go to find better prices on specialized medications. This scam is growing in popularity—since 2000, the FDA has investigated an average of 20 such cases per year, up from five a year in the 1990s. The danger is that besides paying money for something that will not help a person's medical condition, victims may purchase unsafe substances that can inflict even more harm. This scam can be as hard on the body as it is on the wallet.

3. Funeral & Cemetery Scams

The FBI warns about two types of funeral and cemetery fraud perpetrated on seniors. In one approach, scammers read obituaries and call or attend the funeral service of a complete stranger to take advantage of the grieving widow or widower. Claiming the deceased had an outstanding debt with them, scammers will try to extort money from relatives to settle the fake debts. Another tactic of disreputable funeral homes is to capitalize on family members' unfamiliarity with the considerable cost of funeral services to add unnecessary charges to the bill. In one common scam of this type, funeral directors will insist that a casket, usually one of the most expensive parts of funeral services, is necessary even when performing a direct cremation, which can be accomplished with a cardboard casket rather than an expensive display or burial casket.

4. Fraudulent Anti-Aging Products

In a society bombarded with images of the young and beautiful, it's not surprising that some older people feel the need to conceal their age in order to participate more fully in social circles and the workplace. After all, 60 is the new 40, right? It is in this spirit that many older Americans seek out new treatments and medications to maintain a youthful appearance, putting them at risk of scammers. Whether it's fake Botox like the one in Arizona that netted its distributors (who were convicted and jailed in 2006) $1.5 million in barely a year, or completely bogus homeopathic remedies that do absolutely nothing, there is money in the anti-aging business. Botox scams are particularly unsettling, as renegade labs creating versions of the real thing may still be working with the root ingredient, botulism neurotoxin, which is one of the most toxic substances known to science. A bad batch can have health consequences far beyond wrinkles or drooping neck muscles.

5. Telemarketing

Perhaps the most common scheme is when scammers use fake telemarketing calls to prey on older people, who as a group make twice as many purchases over the phone than the national average. While the image of the lonely senior citizen with nobody to talk to may have something to do with this, it is far more likely that older people are more familiar with shopping over the phone, and therefore might not be fully aware of the risk. With no face-to-face interaction, and no paper trail, these scams are incredibly hard to trace. Also, once a successful deal has been made, the buyer's name is then shared with similar schemers looking for easy targets, sometimes defrauding the same person repeatedly. Examples of telemarketing fraud include:

"The Pigeon Drop"
The con artist tells the individual that he or she has found a large sum of money and is willing to split it if the person will make a "good faith" payment by withdrawing funds from his or her bank account. Often, a second con artist is involved, posing as a lawyer, banker, or some other trustworthy stranger.

"The Fake Accident Ploy"
The con artist gets the victim to wire or send money on the pretext that the person's child or another relative is in the hospital and needs the money.

"Charity Scams"
Money is solicited for fake charities. This often occurs after natural disasters.

6. Internet Fraud

While using the Internet is a great skill at any age, the slower speed of adoption among some older people makes them easier targets for automated Internet scams that are ubiquitous on the web and email programs. Pop-up browser windows simulating virus-scanning software will fool victims into either downloading a fake anti-virus program (at a substantial cost) or an actual virus that will open up whatever information is on the user's computer to scammers. Their unfamiliarity with the less visible aspects of browsing the web (firewalls and built-in virus protection, for example) make seniors especially susceptible to such traps. One example includes:

Email/Phishing Scams
A senior receives email messages that appear to be from a legitimate company or institution, asking them to "update" or "verify" their personal information. A senior receives emails that appear to be from the IRS about a tax refund.

7. Investment Schemes

Because many seniors find themselves planning for retirement and managing their savings once they finish working, a number of investment schemes have been targeted at seniors looking to safeguard their cash for their later years. From pyramid schemes like Bernie Madoff's (which counted a number of senior citizens among its victims) to fables of a Nigerian prince looking for a partner to claim inheritance money to complex financial products that many economists don't even understand, investment schemes have long been a successful way to take advantage of older people.

8. Homeowner/Reverse Mortgage Scams

Scammers like to take advantage of the fact that many people above a certain age own their homes, a valuable asset that increases the potential dollar value of a certain scam. A particularly elaborate property tax scam in San Diego saw fraudsters sending personalized letters to different properties apparently on behalf of the County Assessor's Office. The letter, made to look official but displaying only public information, would identify the property's assessed value and offer the homeowner, for a fee of course, to arrange for a reassessment of the property's value and therefore the tax burden associated with it.

Closely related, the reverse mortgage scam has mushroomed in recent years. With legitimate reverse mortgages increasing in frequency more than 1,300 percent between 1999 and 2008, scammers are taking advantage of this new popularity. As opposed to official refinancing schemes, however, unsecured reverse mortgages can lead property owners to lose their homes when the perpetrators offer money or a free house somewhere else in exchange for the title to the property.

9. Sweepstakes & Lottery Scams

This simple scam is one that many are familiar with, and it capitalizes on the notion that "there's no such thing as a free lunch." Here, scammers inform their mark that they have won a lottery or sweepstakes of some kind and need to make some sort of payment to unlock the supposed prize. Often, seniors will be sent a check that they can deposit in their bank account, knowing that while it shows up in their account immediately, it will take a few days before the (fake) check is rejected. During that time, the criminals will quickly collect money for supposed fees or taxes on the prize, which they pocket while the victim has the "prize money" removed from his or her account as soon as the check bounces.

10. The Grandparent Scam

The Grandparent Scam is so simple and so devious because it uses one of older adults' most reliable assets, their hearts. Scammers will place a call to an older person and when the mark picks up, they will say something along the lines of: "Hi Grandma, do you know who this is?" When the unsuspecting grandparent guesses the name of the grandchild the scammer most sounds like, the scammer has established a fake identity without having done a lick of background research. Once "in," the fake grandchild will usually ask for money to solve some unexpected financial problem (overdue rent, payment for car repairs, etc.), to be paid via Western Union or MoneyGram, which don't always require identification to collect.

At the same time, the scam artist will beg the grandparent “please don’t tell my parents, they would kill me.” While the sums from such a scam are likely to be in the hundreds, the very fact that no research is needed makes this a scam that can be perpetrated over and over at very little cost to the scammer.

See more at: http://www.ncoa.org/enhance-economic-security/economic-security-Initiative/savvy-saving-seniors/top-10-scams-targeting.html#sthash.yKz0YiXG.dpuf

The ‘Grandpa Scam’ That’s Costing Seniors A Bundle

Maureen Mackey
CNBC July 18, 2014

Financial fraud against older Americans is growing rapidly – with some scams so brazen they almost defy belief.

In one scenario, phone scammers posing as relatives of older people aim straight for the seniors’ bank accounts – and all too often hit the jackpot. Last December, an 81-year-old Cincinnati grandfather received a call “that sent my life into a tailspin and conned me out of $7,000 in what I now know was a phone scam,” he told the Senate Select Committee on Aging at a hearing on Wednesday (July 16, 2014).

“The caller had a young voice and said, ‘Grandpa, this is your favorite grandson.’ To which I replied, ‘I have six grandsons and they’re all my favorites,’” the scam victim, “Roger W.,” testified on Wednesday. When the caller said he was the oldest grandson, the grandfather reflexively replied, “Tighe, how are you?” The grandson explained he had gotten into some trouble during a trip, needed money to get out of jail, “and I don’t want Mom and Dad to know about this,” he added. “Talk to this police officer.” As this increasingly sinister charade unfolded, a so-called “police officer” got on the phone to tell the shocked grandparent he should go to Walmart or CVS and “load a total of $3,000 into Green Dot Moneypak cards in $1,000 denominations,” Roger W. said, “and that I needed cash to purchase the cards.”

Distressed about his grandson’s predicament and desperate to help, Roger W. (who wanted his privacy maintained for fear of being further victimized) cashed a check for $3,000 “at my bank and went to Walmart and bought three MoneyPak cards, each loaded with $1,000 dollars. I returned home and called the police officer at a number with a 438 area code – the area code for Montreal, Canada – and gave him the scratch-off numbers on the MoneyPak cards.”

But the scammers needed another $4,000 to complete the transaction. It was only after sending additional money that Roger W. finally called other family members about his grandson’s situation. When he reached his actual grandson on the phone and learned he was safe and sound – and hadn’t asked for money – Roger W. realized he’d been sucker-punched.

He called the Cincinnati police, the FBI and the Federal Trade Commission, but even more than six months later, “I’m not sure what they’ve been able to do about it,” he said Wednesday.

Roger W. is one of almost too many to count – and his quickness to come to a beloved "grandson's" rescue is not uncommon. "Love definitely makes a difference, and it works to the scammer's advantage," Steve Baker of the Federal Trade Commission told AARP.

Senator Susan Collins (R-ME), the ranking member of the Select Committee on Aging, said Wednesday that one of her constituents, Sandra Jaegar, "got a call from someone who claimed to be her son. He said he had been in a car accident and didn't have insurance. He asked her to send $1,500 to pay off the other party, and Mrs. Jaeger did so, using Western Union to wire the money." When she realized she'd been scammed, Jaeger contacted "local and state law enforcement and the FBI, but was told there was nothing they could do."

Calling these scammers a "scourge," Sen. Collins warned Wednesday of the "dangers posed by con artists looking to swindle older Americans out of their life savings."

Last year alone, Americans lost more than $73 million to phone imposter scams, says the FTC – but that number is almost surely a drop in the bucket, since most victims don't report these scams out of fear, distress or embarrassment. Instances of imposter scams doubled between 2009 and 2013, says the Select Committee on Aging. That is why it seeks better detection of the crimes, more prosecutions, and better consumer safeguards on the part of retailers and phone companies whose products and services are often used during the transactions.

Daniel Marson, director of neuropsychology at University of Alabama-Birmingham and an expert on seniors and their financial decision-making, refers to this relatively new "financial elder exploitation" as a "time bomb," since the number of older Americans will swell in the years ahead. Consumers Digest reports there are at least five million cases of this financial abuse in the U.S. each year.

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Your business growth expert.