

# Protecting Our Seniors: Emerging Issues in Elder Law and Resources for Prevention and Reporting

*by Thomas J. Freeman*

In the Consumer Protection Division of the Nebraska Attorney General's Office, we frequently come across scams aimed at senior citizens. Criminals and law enforcement alike have long recognized this population is especially vulnerable to exploitation. Recent research has revealed that segments of the elderly population may be at even more risk than has been realized. Financial exploitation of the elderly costs Americans almost \$3 billion per year.<sup>1</sup> This article will explore the factors that make the elderly vulnerable, outline some examples of scams that target them, and provide some common sense methods to protect them.

## What makes the elderly more vulnerable to scams?

A general cognitive decline often accompanies the aging

process. The Alzheimer's Association estimated in 2016 that 5.1 million Americans 65 and older had Alzheimer's disease, with that number expected to increase to 7.1 million by 2026. Yet several studies have shown that as many as 10-20% of people age 65 or older have mild cognitive impairment, and prevalence increases with age.<sup>3</sup> According to the Brookings Papers on Economic Activity, close to half of the U.S. population between the ages of 80 and 89 has a medical diagnosis of substantial cognitive impairment.<sup>4</sup> The ability to handle one's financial affairs is one of the first skills to decline, often before other signs of cognitive impairment have become apparent.<sup>5</sup>

Seniors are more likely to have savings, own a home, and have excellent credit, all factors which make them attractive targets for scammers.<sup>6</sup> Older individuals often lack the physical strength or mobility to handle tasks or maintenance issues with their homes.<sup>7</sup> As a result of this increasing frailty, many senior citizens begin to invite more contractors and other service providers into their lives and homes.<sup>8</sup> Most contractors and service providers are honest, but others may look for ways to take advantage.

Senior citizens are also more likely to be lonely, willing to listen, and more trusting than younger individuals.<sup>9</sup> Scams that target them are often performed over the telephone, door-to-door, and through advertisements.<sup>10</sup> The elderly are more likely to be willing to listen or pay attention to a fraudulent sales pitch.

I have observed cases where a senior remains in willful denial he has been scammed, even continuing to send money to the scammer after being notified it's a scam. Some would prefer to continue to send money rather than admitting, even to themselves, they were scammed. Others suffer from cogni-

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tive impairment to such a degree that they are unable to understand or appreciate they fell prey to a scam. Seniors may also be concerned that if they reveal they have fallen prey to a scam, their relatives may not think they can handle their own affairs.

## **How often are the elderly targeted for scams?**

Scammers are undoubtedly aware of the vulnerabilities of the elderly. While senior citizens make up only 19% of the population, they file 35% of complaints. Studies also indicate that elder abuse is dramatically underreported. One study, conducted in New York State, estimated that the elder abuse incidence rate is nearly 24 times greater than the number of cases referred to authorities.<sup>11</sup> Due to memory issues and cognitive impairment, seniors often make poor witnesses and are unable to supply investigators with key information about how they were swindled.

## **What types of scams targeting the elderly are most common?**

Some common scams targeting the elderly that we are hearing about lately include:

### **1. Imposter Scams**

Imposter scams occur when a scammer approaches a potential victim pretending to be someone else. The goal is to either get the senior citizen to send money or to acquire personal information, which can then be used for some form of fraud or identity theft. There are a variety of variations of this type of scam, with more emerging all the time.

#### **IRS Scam**

In one example of this, scammers contact potential victims by phone or email, pretending to be an employee or representative of the IRS. They tell potential victims they are due a refund and request personal or financial information. Alternatively, the scammers will claim to be calling about unpaid taxes and threaten the potential victims, demanding payment or personal or financial information.

A business colleague of mine was targeted by this scam last month. She was called by someone who said he was from the IRS. He insisted she owed money due to unpaid taxes and threatened to put a lien on her home. He told her that she needed to immediately drive to Best Buy and purchase thousands of dollars worth of gift cards. He also said that her ability to make this go away quickly and quietly would go away if she told anyone what she was doing.

#### **Grandparent Scam**

Another type of imposter scam involves calls to senior citizens where the scammer will pretend to be a grandchild

or other relative. The scammer will pretend she is: in jail and requires bail, in the hospital and requires money for surgery, or is otherwise in some sort of trouble that requires an immediate payment. These scams can even involve what is called a 'reload,' where once a victim has sent money once, they are contacted again. This time the scammer will pretend to be a police officer who needs more money for property damage, a doctor who requires more money for unanticipated medical fees, etc.

#### **Tech Support Scam**

This scam usually involves a phone call telling a potential victim that there is something wrong with her computer. The scammer will offer his services to fix the computer problem by phone and seek personal and financial information to process a payment for that service. The scammer has no ability to detect or fix computer issues.

### **2. Medicare/Medicaid/Social Security Scams**

These scams are becoming more common. They can take several forms, including fraudulent offers for durable medical equipment, over-billing, shoddy product, and fraudulent submissions for seniors under their Medicare number. One example of this takes advantage of Medicare issuing new cards to recipients, which replace the recipient's Social Security Number with a random number/letter sequence to help to reduce identity theft and fraud.<sup>12</sup> The Medicare Access and CHIP Reauthorization Act of 2015 requires that change to the random sequence be made by April 2019. Scammers are posing as Medicare agents or health care providers and contacting seniors to tell them they need to purchase replacement Medicare cards.

Medicare replacement cards are free and will be mailed to all Medicare recipients between April 2018 and April 2019. The only action a Medicare recipient needs to take is to ensure Social Security has her current address, as that is where the new card will be sent. Fraudulent Medicare solicitations should also be reported at 1-800-HHS-TIPS (1-800-447-8477), or by submitting a complaint online<sup>14</sup> to the Office of the Inspector General of the U.S. Department of Health and Human Services. Any solicitation from a possible Medicaid scammer, or claim of abuse, neglect, or financial exploitation of a Medicaid recipient or a resident of a facility that receives Medicaid should be reported by calling our office's Medicaid Fraud and Patient Abuse Unit at (402) 471-3549 or (800) 727-6432 or by submitting a complaint form through our website.<sup>15</sup>

### **3. Identity Theft**

The end game in many scams, such as imposter scams, is to acquire the information necessary to steal someone's identity, for purpose of financial gain. "Once identity thieves have your personal information, they can drain your bank account, run up charges on your credit cards, open new utility accounts, or get

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medical treatment on your health insurance. An identity thief can file a tax refund in your name and get your refund. In some extreme cases, a thief might even give your name to the police during an arrest.”<sup>16</sup>

There are some basic and common sense tips that people can use to protect themselves if they feel their information has been compromised.<sup>17</sup> If a scammer might have a bank account or credit card number, the account should be closed and a new one opened. If a drivers’ license has been lost or stolen, that should be reported to the State Department of Motor Vehicles (DMV). If an online login or password is lost or exposed, that information should be changed immediately. If that password is used elsewhere, it should be changed there as well. The federal government provides a one-stop resource to help people report and recover from identity theft at IdentityTheft.gov. The Federal Trade Commission also offers a variety of resources for victims of identity theft.<sup>18</sup>

### How do we protect our Seniors?

There are a variety of things that we can and should be doing to protect our elderly family members, friends, and neighbors from scams and financial abuse. It is important to regularly communicate with them and watch for any sudden changes in behavior. Many investment scams, for example, will involve telling the elderly victim that there is some reason that

the investment must be kept secret. In the grandparent scams, it is not uncommon for the elderly victim to be told they are receiving some sort of special one-time deal that will be put in jeopardy should they tell anyone about it. Keeping the lines of communication open is vital, so our seniors will be more likely to share they have been approached about scams.

We should also take measures to report scams targeting the elderly when we discover them. By one measure, just 1 in 44 financial elder abuse cases are reported.<sup>19</sup> If more of these scams were reported more frequently, it would enable law enforcement to do more to stop it. The fact that most scammers who target the elderly ultimately get away with it obviously emboldens them to target the elderly more often and more aggressively.

### Legal Tools Available to Assist Seniors

In Nebraska, the Consumer Protection Act, Uniform Deceptive Trade Practices Act and the Nebraska Credit Report Protection Act are available to protect consumers. The Consumer Protection Act, Neb. Rev. Stat. § 59-1601, et seq., prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Most scams targeting seniors would qualify as a prohibited act or practice and permit a civil action for damages under the Consumer Protection Act.<sup>20</sup> The Uniform Deceptive Trade



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Practices Act (UDTPA), Neb. Rev. Stat. § 87-301, et seq., also prohibits scams which involve deception, likelihood of confusion, misrepresentation, or fraud. Under the Nebraska Credit Report Protection Act (NCRPA), Neb. Rev. Stat. § 8-2601, et seq., a consumer can contact a consumer reporting agency and request a credit freeze. When LB 757 (2018) takes effect in July, there will be no fee associated with placing, temporarily lifting, or removing a credit freeze or substantially similar type of security product. The Adult Protective Services Act (APSA), Neb. Rev. Stat. § 28-348, et seq., provides definitions of abuse, neglect, and exploitation of vulnerable adults. The APSA also provides the Department of Health and Human Services with the authority to investigate claims of such abuse, neglect, and exploitation.

## Resources Available Through the Nebraska Attorney General's Office

In the Nebraska Attorney General's Office, our Consumer Protection Division is available to report scams, including those targeting the elderly. (<https://protectthegoodlife.nebraska.gov/>) Seniors who encounter scams, or simply want to ask questions, may call either our Consumer Protection Division Mediation Center Hotline at (800) 727-6432 or the Division's Senior Outreach Hotline at (888) 287-0778.

When a potential scam affects the public interest, the Consumer Protection Division will take action to defend Nebraska consumers. In such cases, we will conduct an investigation to determine whether and how an individual or business is violating Nebraska's consumer protection laws and whether bringing an enforcement action is appropriate. Individual victims have the ability to hire their own attorneys to pursue their claims. When deciding whether to bring an action, the Nebraska Attorney General's Office will look to factors such as whether a fraudulent or illegal business practice is persistent and the number of victims and potential victims involved. The Nebraska Attorney General's Office also has a separate Medicaid Fraud and Patient Abuse Unit (<https://ago.nebraska.gov/medicaid-fraud>), which investigates and prosecutes Medicaid provider fraud and patient abuse and neglect. That unit can be reached at (402) 471-3549 or (800) 727-6432.

It is often said that an ounce of prevention (or education) is worth a pound of cure. We also offer Consumer Education services, which are available at no charge. A speaker or presentation can be scheduled by calling the Nebraska Attorney General's Office Outreach Coordinator at (402) 471-3878 or making a scheduling request on our website at <https://protectthegoodlife.nebraska.gov/request-presentation>

## Other Available Resources

There are a variety of other resources available to help protect our elderly family members, friends, and neighbors.

The AARP provides links to a number of resources for reporting fraud or financial exploitation:

<https://www.aarp.org/aarp-foundation/our-work/income/elderwatch/report-fraud/>


Many federal authorities for fraud reporting can be found here:

<https://www.stopfraud.gov/sf/report-financial-fraud>

A variety of resources for reporting investment fraud can be found here:

<https://www.saveandinvest.org/protect-your-money-report-fraud/reporting-investment-fraud>

Office of the Inspector General, U.S. Department of Health and Human Services

<https://oig.hhs.gov/fraud/report-fraud/> 

## Endnotes

- <sup>1</sup> <https://www.pnc.com/en/about-pnc/topics/pnc-pov/innovation-security/elder-fraud.html>
- <sup>2</sup> <http://www.finra.org/investors/diminished-capacity-can-place-seniors-money-risk>
- <sup>3</sup> *Id.*
- <sup>4</sup> *Id.*
- <sup>5</sup> *Id.*
- <sup>6</sup> <https://www.fbi.gov/scams-and-safety/common-fraud-schemes/seniors>
- <sup>7</sup> <https://www.aarp.org/money/scams-fraud/info-2015/how-to-spot-early-warning-signs-of-elder-financial-abuse.html>
- <sup>8</sup> *Id.*
- <sup>9</sup> <http://www.acfe.com/fraud-examiner.aspx?id=4294997223>
- <sup>10</sup> *Id.*
- <sup>11</sup> Under the Radar: New York State Elder Abuse Prevalence Study, Self-Reported Prevalence and Documented Case Surveys, Final Report, May 2011.
- <sup>12</sup> <https://www.ncoa.org/blog/3-most-popular-scams-targeting-seniors/>
- <sup>13</sup> <https://www.cms.gov/Medicare/New-Medicare-Card/>
- <sup>14</sup> <https://forms.oig.hhs.gov/hotlineoperations/report-fraud-form.aspx?AspxAutoDetectCookieSupport=1>
- <sup>15</sup> <https://ago.nebraska.gov/medicaid-fraud-and-patient-abuse-complaint-form>
- <sup>16</sup> <https://www.identitytheft.gov/warning-signs-of-identity-theft>
- <sup>17</sup> <https://www.identitytheft.gov/Info-Lost-or-Stolen>
- <sup>18</sup> <https://www.consumer.ftc.gov/features/feature-0014-identity-theft>
- <sup>19</sup> <https://www.aarp.org/money/scams-fraud/info-2015/how-to-spot-early-warning-signs-of-elder-financial-abuse.html>
- <sup>20</sup> Neb. Rev. Stat. § 59-1609 (Rev. 2002)