

PREPARED STATEMENT OF

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on

THE VICTIMIZATION OF ELDERLY THROUGH SCAMS

Before the

SENATE SPECIAL COMMITTEE ON AGING

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I. Introduction

Good afternoon Chairman Smith, Ranking Member Kohl, and members of the Special Committee on Aging. I appreciate the opportunity to testify before you today on behalf of a uniquely vulnerable population in the area of fraudulent practices, our senior citizens. I am Helen Marks Dicks and I serve as Director at the Elder Law Center of the Coalition of Wisconsin Aging Groups¹. The Coalition's largest department, the Elder Law Center, is a public interest law firm that provides legal education and services to seniors throughout Wisconsin².

Educating and empowering the elderly to recognize, report, and combat scams and other fraudulent practices minimizes the victimization of seniors and protects the viability of federal and state benefits programs. Today I offer testimony on the concerns our organization has about the increasing number and sophistication of scams targeting the elderly. Through our work in the field of financial elder abuse prevention, education and services, we have observed how an aging baby boom generation and greater use of technology by seniors has provided criminals with a target-rich environment in which seniors become financial prey. I will also speak to an area of particular concern, the public's lack of knowledge and interest in these issues. Finally, I would like to discuss the obstacles professionals face in reporting elder exploitation due to the nature of our nation's legal environment, making reputable professionals unintended accomplices in exploitation.

II. Identification of Elder Financial Exploitation.

Through our work, the CWAG Elder Law Center has observed three types of financial exploitation. Most easily recognized are traditional fraudulent practices where a third party contacts a senior through mail, internet, phone, and direct solicitation in an attempt to defraud the senior and obtain their savings or personal information. Traditionally, scams of this type were perpetuated through direct mailings, disappearing contractors, or unseen contract provisions. However, traditional financial misappropriation from seniors has expanded in recent years to include electronic identity theft and reverse mortgage scams.

¹ The Coalition of Wisconsin Aging Groups (CWAG) is a statewide federation of individuals and member groups that represents over 125,000 people. As a nonprofit, nonpartisan organization, CWAG pursues justice and quality of life for people of all ages through legal and legislative advocacy, education, and leadership development.

² The CWAG Elder Law Center assists in obtaining public benefits, such as Medicare and Medicaid, as well as provides counseling on issues of guardianship, elder abuse prevention, victim services and pension rights. The Elder Law Center receives funding through several sources including the Administration on Aging, The Victim of Crimes Act, The Older Americans Act, the State of Wisconsin, and private foundations. The Elder Law Center is also a Title III legal service provider for 65 of Wisconsin's 72 Counties.

Waste, abuse, error, and other fraud within our Medicare and public benefits programs is another common problem. Unscrupulous providers receive payment from seniors for products and services that were billed to the senior's account, but were never received. The government is also bilked out of federal and state funds when seniors request products and services that have been improperly marketed as "free". With the introduction of a new and complex Medicare prescription drug benefit this fall, marketing to seniors will reach a new level of intensity. The CWAG Elder Law Center anticipates opportunists will use this development to scam seniors and people with disabilities who receive Medicare.

The third type of exploitation is the most common, the most underreported and the most appalling. It is the financial abuse of seniors by family members and other trusted people in their lives. These often-ignored scam artists use legal documents such as powers of attorney to drain seniors of a lifetime of earnings and savings. Errantly trusted family and friends use estate planning as a means of gaining access to savings accounts, real estate, and personal possessions. The abuser often isolates the senior from people who might report their questionable activity. Unfortunately, law enforcement rarely polices these criminal acts because seniors are often reluctant to report a family member or caregiver. If investigated, the financial agent will often defend their legal right to make monetary decisions on the senior's behalf. Prosecution of these acts is complicated by questions about the senior's competency to testify clouding what traditionally would be a simple criminal case.

To address these concerns, the CWAG Elder Law Center uses a four-fold approach:

- 1) Educate on the prevention of financial elder abuse, benefits fraud, and agent exploitation.
- 2) Provide legal assistance and emergency representation for victims of elder financial exploitation and fraud;
- 3) Encourage and support the reporting, investigation and prosecution of elder abuse, benefits fraud, and agent exploitation by training professionals, government employees, and community advocates;
- 4) Advocate for improvements in the law and additional government funding to support the prevention of elder financial exploitation and assist the prosecution of abusers.

I will address each of these areas separately.

III. The Four-fold Approach to Eliminating Elder Financial Exploitation

Consumer education on financial elder abuse, benefits fraud, and agent exploitation.

At the CWAG Elder Law Center we focus our educational outreach on both consumers and professionals. For individuals, we provide several informative

booklets, such as *Elder Exploitation Basics*³, *It Pays to Plan Ahead*⁴, *Plan, Prevent and Protect*⁵, and the *Identity Theft Toolkit*⁶. These publications inform and instruct readers on ways to protect seniors from financial exploitation through properly executed advanced directives, well-secured personal information, and informed financial decision-making. In addition, we distribute a monthly *FRAUD ALERT!*⁷, published by the CWAG Elder Law Center's Medicare Integrity Project, one of the Senior Medicare Patrols⁸ funded by the Administration on Aging. Through the *FRAUD ALERT!* consumers learn about current scams and benefits fraud issues occurring in the State of Wisconsin. The CWAG Elder Law Center's Wisconsin Guardianship Support Center⁹ also produces *The Guardian*¹⁰, a quarterly newsletter for seniors, guardians, social workers and policy makers to informing its readers on agent and guardian issues. In addition, the Wisconsin Guardianship Support Center provides one-on-one counseling and instruction for seniors, agents, and others with guardianship questions. The CWAG Elder Law Center also hosts an Elder Abuse listserve¹¹ that routinely alerts participants about scams targeting seniors and encourages members to share information on issues such as elder financial exploitation.

With the implementation of the new Medicare prescription drug benefit, Medicare Part D, we anticipate a flood of consumer scams targeting elders. To warn

³ THE COALITION OF WISCONSIN AGING GROUPS, ELDER EXPLOITATION BASICS (2004). For information on how to obtain this booklet, or any other CWAG Elder Law Center publications. Please contact the CWAG Elder Law Center, 2850 Dairy Drive, Suite 100, Madison, WI 53718.

⁴ THE COALITION OF WISCONSIN AGING GROUPS, IT PAYS TO PLAN AHEAD (2004).

⁵ THE COALITION OF WISCONSIN AGING GROUPS, PLAN, PREVENT AND PROTECT (2004).

⁶ THE COALITION OF WISCONSIN AGING GROUPS, ELDER FINANCIAL EXPLOITATION PROJECT IDENTITY THEFT TOOLKIT (2004).

⁷ The FRAUD ALERT! is a monthly publication of the Wisconsin Medicare Integrity Project of the Coalition of Wisconsin Aging Groups.

⁸ The Senior Medicare Patrol Projects (SMP) were established in 1997. The Administration on Aging funds over 57 SMP projects in the United States, and Puerto Rico. SMPs work with law enforcement, community organizations and beneficiaries to identify and reduce the billions of dollars that are lost each year to Medicare and Medicaid error, fraud, waste and abuse.

⁹ The Wisconsin Guardianship Support Center is operated by the Elder Law Center of the Coalition of Wisconsin Aging Groups. It is funded, in part, by Wisconsin's Department of Health and Family Services.

¹⁰ THE GUARDIAN is produced and published quarterly by the Elder Law Center of the Coalition of Wisconsin Aging Groups with funding from the Wisconsin Department of Health and Family Services.

¹¹ The Elder Abuse listserve is open to any professional who may have contact with incidents of Elder Abuse and is operated by the Wisconsin Guardianship Support Center, housed within the CWAG Elder Law Center.

the public about this type of criminal activity we will publish a reoccurring consumer notice identifying scams associated with this new benefit. We have also developed a Wisconsin Medicare Part D website¹² that contains a consumer alert section describing deceptive sales practices and agent misbehavior. Consumers are encouraged to report dishonest agents, fraudulent sales practices and other misleading behavior to the appropriate governmental agency. Also, all CWAG Elder Law Center outreach materials on the Medicare drug benefit includes information about reporting Medicare fraud, waste and abuse. Witnesses to fraud can report suspicious activity to our dedicated email address, medfraud@cwag.org.

Legal assistance and emergency representation for elder financial exploitation victims.

At the CWAG Elder Law Center, we understand that victimized seniors are often isolated by their abusers and do not have access to senior centers or participate in programs where we can reach them. To reach this population, we have initiated a program that distributes bookmarks to seniors in their home-delivered meals encouraging them to call our Elder Financial Exploitation Helpline. The Elder Financial Exploitation helpline, along with our Guardianship Support Center helpline, provides individual legal assistance and general information to seniors on a host of issues, including fraud, financial abuse, and family exploitation. The helplines will mail instructions on how to revoke a power of attorney, correct a credit rating or report identity theft. In fact our oldest caller, a 102 year old woman, sought helpline assistance in revoking an activated power of attorney that a family member was misusing. While we provide limited direct services to victims, we refer more complex issues to the Wisconsin Elderly Benefit Specialist Program¹³, a pro bono panel, or the private bar.

Through our legal services staff we are often alerted to adult children who pressure their elderly parents to give assets to family members in the name of Medicaid “divestment” and estate planning. In the process of estate planning, attorneys, real estate agents and other professionals may become unwitting accomplices to financial exploitation. Often these arrangements are contingent upon the adult children providing continuing care or permitting the parent to remain in their own homes. Unfortunately, many are forced to live in substandard conditions or are even effectively evicted from their home. Our staff is often appalled by the boldness of potential abusers who restrict their parents from spending money in an attempt to preserve an inheritance. As elder advocates, we must remember our responsibility is to protect the rights of the senior, not the rights of a potential heir.

¹² WISCONSIN RX: MEDICARE & OTHER DRUG COVERAGE OPTIONS, www.WisMedRx.org.

¹³ The Wisconsin Elderly Benefit Specialist Program is a federal and state mandated advocacy program designed to provide older adults with free legal services. The program is funded by the Older Americans Act, state tax dollars, and county human services departments.

Encourage the reporting, investigation and prosecution of elder financial abuse, benefits fraud, and agent exploitation.

The CWAG Elder Law Center seeks to encourage the reporting of elder abuse. However, reporting is meaningless when questionable practices are not investigated or prosecuted. In Wisconsin, some adult protective service workers complained to our organization that they had referred cases for criminal or civil litigation without any action taken on behalf of the elder. Upon investigation, we found that lawyers were under the impression that there was no remedy available for financially abused seniors. Therefore, the CWAG Elder Law Center began training attorneys through continuing legal education courses on elder financial exploitation. Our staff also produced an attorney's toolkit for preventing and remedying elder financial exploitation through both the criminal and civil legal systems¹⁴.

This past year the Wisconsin Attorney General created a task force on Financial Elder Abuse. Through our involvement with this task force, our chief elder financial exploitation attorney, John Hendrick, presented at the law enforcement training program of the Wisconsin Department of Justice (WDOJ). He educated trainees on how to recognize and prosecute financial elder abuse. In addition, the WDOJ distributed our attorney's manual to all district attorneys in Wisconsin. We also participated in a statewide conference for law enforcement, prosecutors and adult protective service workers, sponsored by the Wisconsin Attorney General.

All Wisconsin counties have Elder Abuse Interdisciplinary Teams (I-Teams) made up of adult protective service workers, law enforcement, economic support workers, elderly benefit specialists, bankers and others who discuss and respond to elder abuse. Some counties have FAST (Financial Abuse Specialty Teams). These teams meet a monthly basis to discuss cases of elder financial exploitation. The CWAG Elder Law Center is member of the Dane County FAST team and has trained I-Teams statewide. Through our involvement in FAST, the CWAG Elder Law Center has developed and sponsored additional statewide trainings for bankers, and others working within the financial community, on elder abuse issues and reporting.

Recently, John Hendrick of our office worked with Wisconsin Senators, Herb Kohl and Russ Feingold, in obtaining written guidance from federal bank regulators addressing whether federal privacy law prohibits banks from reporting activities that appear to be elder financial abuse. This guidance permits financial institutions to report dubious activity in the accounts of elderly customers without violating the Gramm-Leach-Bliley Act¹⁵. Hopefully, this will encourage greater reporting of elder financial abuse by banks and other thrift institutions. Having a fraud prevention

¹⁴ The CWAG Elder Law Center also created a reference for social workers on how to deal with abuse in regulated facilities, such as nursing homes. See THE COALITION OF WISCONSIN AGING GROUPS, FINANCIAL ABUSE IN REGULATED FACILITIES AND PROGRAMS, (2004).

¹⁵ Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 (1999).

partner at the places where seniors invest their savings will go a long way to preventing financial abuse.

Banking institutions also often manage property transfers. Most are planned, legal and appropriate however, any property exchange is susceptible to exploitation by both family members and professional scammers. The current trend in fraudulent lending solicitation is predatory mortgage scams. Seniors receive a check in the mail that when cashed becomes a lien on their home. By notifying lenders and banks about these types of scams, hopefully, banks and other institutions will intervene when seniors come to cash these checks. In conjunction with the new guidance on reporting, this means elder advocates have a way to prevent emerging fraud at the source.

As briefly mentioned earlier, CWAG Elder Law Center receives a Senior Medicare Patrol grant that funds the Wisconsin Medicare Integrity Project. This program enables our organization to train retired professionals who help beneficiaries spot Medicare fraud, waste and abuse by analyzing their Medicare Summary Notices (MSN). If a beneficiary or volunteer identifies a discrepancy on an MSN, they report it to our offices and we refer the matter to the appropriate authorities.

Advocate for improvements in the law and additional government funding.

The CWAG Elder Law Center is active in supporting legal reform on both the state and federal level. Nationally, we support the Elder Justice Act. On a state level, we successfully advocated for increased funding to support elder abuse investigations at the county level. We are currently assisting state legislators in revising Wisconsin law governing guardianship, powers of attorney and adult protective services. While we are a state that takes pride in its services to seniors, we still are limited in what we can accomplish by a lack of funding. In addition, our efforts to protect elders would significantly benefit greater clarity within the law and stronger enforcement of elder rights.

Recommendations

I believe financial elder abuse is now where domestic violence was twenty years ago. No one wants to admit how extensive the problem is, nor divert resources for public awareness campaigns. Unfortunately, elder financial abuse is a low priority among the general public, law enforcement, and within our government. We need to change this. We need greater coordination between social service agencies and the law enforcement community. We need to create a dialogue between those who have direct contact with vulnerable seniors and those who can take action to protect them. We need to realize that some matters aren't just "family matters." We need a major change in the public attitude toward the victimization of seniors, a population we should esteem and protect rather than ignore. Frankly, this will require the reintroduction and

passage of the Elder Justice Act¹⁶, and funding to support increased coordination between the aging community, financial institutions and law enforcement.

In closing, I am proud to be a part of the CWAG Elder Law Center and the elder advocate network. But limited resources mean limited results. We need to empower our local communities with the financial and legal means to prevent and prosecute elder financial exploitation. If we don't, there will only be more victims and more abusers.

¹⁶ THE ELDER JUSTICE ACT, S. 333, 108th Cong. (2003).