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**Testimony before the U.S. Senate Special Committee on Aging
“Fighting Elder Fraud: Progress Made, Work to Be Done”**

**Presented by Kansas Attorney General Derek Schmidt
January 16, 2019**

Chairman Collins, Ranking Member Casey and Members of the Committee:

Thank you for the invitation to testify before the committee on the ongoing efforts being made by state attorneys general, in conjunction with our federal, state and local partners, to combat the growing problem of elder abuse, particularly from scams and rip-offs. I appreciate and commend the committee for holding this hearing to highlight this work and to further the discussion on what more we can do to strengthen these efforts.

I am the Attorney General for the State of Kansas, a statewide, elected constitutional officer of our state. I have served in this capacity since January 2011. As Kansas attorney general, I have made a priority of building capacity and focusing resources on fraud and abuse investigations and prosecutions, including those involving older Kansans.

Policy of the National Association of Attorneys General

I also am the immediate past president of the National Association of Attorneys General (NAAG), the nonpartisan association that represents all 56 state, territory and District of Columbia attorneys general in the United States. During my year as NAAG president in 2017-2018, I led our Presidential Initiative titled: “Protecting America’s Seniors: Attorneys General United Against Elder Abuse.” As part of that initiative, our organization worked in a bipartisan, or nonpartisan, manner to gather information, hear from experts and practitioners, and help build capacity to prevent and combat elder abuse throughout the country and in our respective jurisdictions. One culmination of the year was a national summit on the subject, which I hosted in Manhattan, Kansas, in April 2018. Information from that summit is available on the NAAG website at <https://www.naag.org/meetings-trainings/video-and-other-av-archive/2018-presidential-initiative-summit.php>.

Another ongoing outcome from our yearlong focus on elder abuse was the formation of a new committee within NAAG focused on elder justice issues. It is clear the need for this focus will

last for years into the future. I am proud to co-chair that committee along with Oregon Attorney General Ellen Rosenblum.

My testimony today will contain references to certain letters, signed by a super-majority of NAAG members, which under our procedures reflect an official policy position of NAAG. Thus, to the extent my testimony today reflects the content of those NAAG letters, it constitutes the views of the National Association of Attorneys General; to the extent I testify to matters outside those letters, my testimony constitutes only my views as Attorney General for the State of Kansas.

Growing Senior Population Requires Added Focus

Between 1900 and 2010, the number of Americans age 65 and older grew from fewer than 5 million to more than 40 million, according to the U.S. Census Bureau. Over the same time, the portion of the population in that age bracket rose from about 3 percent to more than 12 percent. As the baby boomers continue into retirement, roughly 10,000 Americans turn age 65 each day, and that trend is expected to continue for the next decade.

By one estimate, only one in every 24 cases of elder abuse is detected or reported. Despite that underreporting, statistically one in every 10 Americans age 65 or older who lives at home will become a victim of abuse. The types of abuse this includes span the full spectrum from consumer fraud to financial abuse to physical and sexual abuse, all of which can disproportionately target elder victims.

Another pertinent factor, less discussed, is that the median net worth of a U.S. household with at least one resident age 65 or older now exceeds \$240,000 – the most of any age group in the United States. Thus, at precisely the time the population of older Americans is growing rapidly, that same population – which includes many members made vulnerable by characteristics and changes often associated with aging – controls more wealth than ever before. So it should not be surprising that fraudsters and scam artists are targeting older Americans more than ever before. They target older Americans for the same reason Willie Sutton robbed banks: Because that's where the money is.

In our office, we have acknowledged this growing problem by strengthening our resources both to help prevent elder abuse and to investigate and prosecute cases when they occur. In 2016, I reorganized the Kansas attorney general's office to establish a new Fraud and Abuse Litigation Division that focuses criminal investigation and prosecution resources, in part, on elder abuse. That division houses the Abuse, Neglect and Exploitation Unit established by the Kansas Legislature and also the prosecution of financial crimes involving insurance or securities. By law, the Fraud and Abuse Litigation Division also coordinates closely with the consumer-protection and Medicaid fraud and abuse enforcement work in the attorney general's office.

On the prevention front, we have increased the educational resources of our office to help make sure Kansans are aware of the types of fraudulent activities that are prevalent. In particular, our Consumer Protection Division offers presentations to community organizations, senior centers and business groups to keep Kansans informed about current scams and fraud schemes. We have also increased our online educational resources through our consumer protection website at www.InYourCornerKansas.org, which offers a user-friendly way to get tips on prevention and how to get help in the unfortunate circumstance when one has become a victim.

Combatting Robocalls

I know the Committee has placed a particular focus for this hearing on frauds that are perpetrated through robocalls, and rightfully so. The plague of robocalls that has exploded in recent years has resulted in a huge surge in complaints being filed with our office, other states' attorneys general offices as well as the federal agencies with jurisdiction. I often have conversations with Kansans who are frustrated with the number of calls they are receiving, despite having their numbers on the Do Not Call Registry.

The unfortunate reality is that these spam callers don't care about the Do Not Call list or any other laws we may pass to try to combat them. The vast majority are located overseas, armed with VOIP technology that allows them to make thousands of calls each day for very little cost. These callers know that they only need to reach a very small percentage of the people they are placing calls to in order to make a profit. An estimated 47.8 *billion* robocalls were made to Americans in 2018.¹ Like other federal, state and local law enforcement agencies, we continue to investigate bad actors and take enforcement actions – when we can find them. But after-the-fact enforcement alone never will be able to solve this problem because the volume of calls is simply too large. This problem was enabled by technology, which allows robocalls to be placed from halfway around the world into American living rooms at virtually no cost, and it will also require a technological solution.

Already, there are several products on the market that help reduce robocalls. There are a multitude of smartphone apps that allow users to block calls from known robocall numbers. However, these apps are only effective insofar as the caller is not spoofing its caller ID to come from a number that is known to the user, or even in some cases the user's own number.

That is where we believe the new protocols under consideration and implementation by the Federal Communications Commission known by the acronym SHAKEN/STIR may prove to be effective. These protocols provide frameworks that service providers can utilize to authenticate legitimate calls and identify illegally spoofed calls.

¹ YouMail Robocall Index, <https://robocallindex.com/history/time>.

In two comment letters to the FCC on the adoption of the proposed regulations to implement these protocols, groups of 30 and 35 state attorneys general, respectively, including myself, have urged their swift adoption by domestic and international service providers. While I doubt this will be a magic bullet that ends the scourge of illegal robocalls, I am hopeful that implementation will move us in the right direction. I have attached to my testimony copies of these two comment letters (Attachments A and B).

Recommendations Going Forward

As we continue working to improve our overall response to the growing problem of the abuse, neglect and exploitation of older Americans, I offer several suggestions for the committee's consideration.

First, on the robocall front, it is imperative that we continue and step-up cooperative efforts to improve the availability and ease-of-use of consumer technology to block unwanted robocalls. SHAKEN/STIR is promising, but it alone will not be the solution. Our National Association of Attorneys General has developed a bipartisan working group that is engaging, on an ongoing basis, with major telecommunications companies to continually advance our efforts on this front. The goals of this working group are:

- Develop a detailed understanding of what is technologically feasible to minimize unwanted robocalls and illegal telemarketing,
- Engage the major telecom companies to encourage them to expedite the best possible solutions for consumers, and
- Determine whether states should make further recommendations to the FCC.

I recommend these ongoing cooperative efforts continue and, as appropriate, engage all of the key players: Federal regulators, state enforcers and the private sector companies that provide the services.

Second, we should strengthen and coordinate our outreach and education efforts. The purpose is to help empower those who work with older Americans, or older Americans themselves, to prevent abuse, neglect and exploitation by knowing what to look for and what to do when they see it. There are many such efforts now underway – so many, in fact, that messaging and advice can be inconsistent, or sometimes contradictory. So coordination is key. In Kansas, we help lead the ongoing education and outreach for preventing elder abuse, neglect and exploitation through our In Your Corner Kansas outreach program, and I am considering adding an employee whose job will be lead this outreach and education.

Moreover, recurring joint federal-state public events focusing on the problem of frauds and scams targeting older Americans can be beneficial by raising the profile of the issue. Last February, I joined then-U.S. Attorney General Jeff Sessions, other federal law enforcement

leaders, and representatives of victimized older Americans at a news conference at the Department of Justice to announce the largest federal-state enforcement sweep against fraudsters targeting older Americans in history. Future events of this sort could be helpful in sustaining attention on the problem.

Third, while education, outreach and prevention are important, we must not lose sight of the fundamental importance of effective enforcement actions. Nothing gets the attention of those who abuse or exploit older Americans quite like seeing others who do so detected, caught, prosecuted and punished in a meaningful way for their actions.

To that end, I would like to bring to the committee's attention a potential model for stepping up prosecutions using existing resources. Several years, my office partnered with the Kansas City regional office of the Department of Health and Human Services—Office of Inspector General to increase enforcement against criminal home health care fraud in the Medicaid system. The concept was simple: Federal investigators at HHS-OIG encounter fraud involving losses small enough that obtaining prosecution by the United States Attorney was difficult or impossible. It is, of course, entirely understandable that U.S. Attorneys must prioritize use of their scarce prosecution resources and naturally focus first on larger cases. But smaller cases are no less important – just smaller.

We partnered with HHS-OIG for their agents to investigate and refer to our office cases with loss amounts less than what the U.S. Attorney chose to prosecute. Our only limitation was that we wanted the cases presented for prosecution in state court under state law, and that was agreeable to all parties. The result of this partnership – we called it “Operation No Show” – was about a dozen cases of home health care fraud successfully prosecuted. These were cases that otherwise would have been detected by federal authorities but never prosecuted in the federal system.

In short, it was a win-win for all involved.

That same model, it seems to me, has promise in addressing fraud and exploitation of older Americans. Federal agencies that encounter such fraud – the Postal Inspection Service, the Secret Service, Homeland Security Investigations, the Federal Bureau of Investigation, just to name a few – should develop standing partnerships with state attorneys general, where appropriate under state law, to obtain state prosecution of crimes against older Americans that otherwise would be unlikely to be prosecuted by federal authorities because of their relatively small size. The key is to institutionalize these relationships and the flow of cases, probably at the regional office level for the federal agencies, not to rely on *ad hoc* referrals.

Fourth, it is clear that our overall capacity to detect, investigate and criminally prosecute fraud and similar crimes against older Americans has not kept pace with the need that is being driven by the growing elder population. Most of this institutional capacity must come from states

because that is where most fraud is investigated and prosecuted. But we should continually seek opportunities for federal participation that could make a significant improvement in state capacity

One such area would be to change federal law in a manner that removes a limitation on the authority of Medicaid Fraud Control Units (MFCUs) to detect, investigate and prosecute patient abuse. Under current law, MFCUs may work to combat fraud against the Medicaid program itself wherever it may occur but may only combat abuse of Medicaid beneficiaries (including fraud committed against patients) when it occurs in a health care facility or board and care facility.

Last year, I testified before the U.S. House Committee on Energy and Commerce, Subcommittee on Health, in support of a bill that was backed by NAAG, to remove this limitation and allow our MFCUs to go after fraud or abuse of Medicaid beneficiaries *wherever it occurs*. That bipartisan bill, H.R. 3891, sponsored by Rep. Tim Walberg (R-MI) and Rep. Peter Welch (D-VT), was reported out of the House Energy and Commerce Committee by voice vote last September. It has been reintroduced by Reps. Walberg and Welch in this session of Congress as H.R. 233. To date, I am unaware of any Senate companion legislation. Attached for your consideration is my testimony in support of this legislation (Attachment C).

Conclusion

I again thank the committee for holding this hearing and for allowing me to share some information on the work that my colleagues and I are doing to combat elder abuse, including frauds, scams and ripoffs targeting older Americans. As the population of seniors in American continues to grow, we must continue to work together at all levels of government to ensure the resources, authority and coordination necessary to address this growing need are in place.

Thank you for your consideration.