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Policy Brief

Financial Decision Making and Financial Exploitation:

Assessment Issues in Older Adults

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The Problem

The largest increase in the older adult population in U.S. history is something to celebrate—yet at the same time, current and future trends signal that financial exploitation is, and will continue to be, a significant threat for older adults. Intergenerational wealth is being transferred now at the highest rate in our history, which is a good indicator that the current older generation has significant wealth. While anyone can be the victim of financial exploitation, declining cognition and early dementia are two of the greatest risk factors. The problem lies at the intersection of cognitive decline, financial capacity, and financial exploitation, and the root cause for much of this abuse is our limited ability, to date, to assess the decisional abilities that underlie financial decisions and transactions.

In this policy brief, I briefly summarize what is known about cognitive impairment and dementia, particularly as it relates to financial capacity and financial exploitation. Then I will provide an overview of efforts to reduce financial exploitation and present a new approach that front-line providers can use to assess an older adult's capacity to make specific sentinel financial decisions and transactions.

Cognitive Impairment and Dementia

In recent years, the Alzheimer's Association, the National Institute on Aging, and the Diagnostic and Statistical Manual of Mental Disorders (5th ed.; DSM-5; American Psychiatric Association, 2013) have updated the clinical criteria for Alzheimer's disease (McKhann et al., 2011). The McKhann (2011) guidelines continue to use the term dementia, which is now defined as the presence of two areas of cognitive decline that interfere with social, occupational, or functional abilities and are not related to a reversible cause of impairment, such as a delirium. The DSM-5 has replaced the word "dementia" with minor and major Neurocognitive Impairment. There is now general agreement that in the preclinical phase of Alzheimer's disease, the biological processes can begin decades before clinical symptoms are displayed (Sperling et al., 2011). The importance of the preclinical phase and the Mild Cognitive Impairment phase that follows (Albert et al., 2011) is that older adults are slowly and insidiously becoming cognitively more vulnerable, and often this decline is unrecognized by loved ones and professionals alike.

Plassman et al. (2008) used a subsample of the nationally representative Health and Retirement Study to estimate the prevalence of cognitive impairment, both with and without dementia, in the U.S.. The baseline data included more than 1,700 older adults and the longitudinal study 856 individuals age 71 and older. The baseline data indicated that in 2008 an estimated 5.4 million people age 71 and older had cognitive impairment without dementia and an additional 3.4 million had dementia. The findings are striking, in that they show a much higher rate of cognitive impairment than found in any other sample.

Financial Capacity and Cognitive Impairment

Financial capacity is defined as the ability to manage “money and financial assets in ways consistent with one’s values or self-interest” (Flint, Sudore, & Widera, 2012; Marson, 2001). While typical financial capacity instruments cover very broad domains—financial skills and financial knowledge—they were designed to answer the broad questions: how does financial capacity change with neurocognitive disorders, how early does it change, and how does it progress? Pinsker, Pachana, Wilson, Tilse, and Byrne (2010) propose that three abilities underlie financial capacity: (1) declarative knowledge (e.g., the ability to describe financial concepts); (2) procedural knowledge (e.g., the ability to write checks); and (3) sufficient judgment to make sound financial decisions. Marson (2001) conceives of financial capacity as relating to three things: (1) specific financial abilities, (2) broad domains of financial activity, and (3) overall financial capacity. In his 2001 study, for example, financial capacity was strongly linked to the individual’s stage of Alzheimer’s disease and even to those with Mild Cognitive Impairment (Sherod et al., 2009; Okonkwo, 2009).

One significant weakness of otherwise excellent current financial domain assessment instruments (e.g., Kershaw & Webber, 2008; Marson, 2009) is that they use neutral or hypothetical stimuli (e.g., “How could you be sure the price of a car is fair?”). It is critical, therefore, that we have valid and reliable tools to adequately assess specific financial decision-making abilities relevant to the individual at risk, especially those that affect “sentinel financial transactions,” which are defined as transactions that can result in significant losses or harmful consequences. It is precisely these transactions—and the judgments that accompany them—that are at the heart of much of the financial exploitation. Another way of viewing

this is that current financial-capacity instruments are quite hypercognitive, which means that nothing is rooted in the context of the individual's life or values. In the literature on medical decision-making capacity, it has been demonstrated that when individuals who may have diminished abilities are presented with a vignette that has no bearing on their own situation, they're much less likely to recall elements of the vignette and much more likely to be unable to manipulate the information. When the vignette concerns their own situation, however—for instance, a health situation they've been living with and thinking about—they're much more likely to be able to give consent for health care. The same may be true for financial decisions.

Financial Exploitation of Older Adults

Older adults continue to be exploited financially at disturbing rates (Conrad, Iris, Ridings, Langley, & Wilber, 2010). Compared to their MetLife 2009 study, Teaster, Roberto, Migliaccio, Timmerman, and Blancato (2012) found a 12% increase in unduplicated media articles about financial exploitation across three months. These accounted for \$530M in losses, including \$240M that were tied to other family members. Stuningly, 51% of the cases involved strangers.

Conrad et al. (2011) suggest six pertinent domains of financial exploitation: (a) theft and scams, (b) abuse of trust, (c) financial entitlement, (d) coercion, (e) signs of possible financial exploitation, and (f) money-management difficulties. Specifically, the authors define financial exploitation as the illegal or improper use of an older adult's funds or property for another person's profit or advantage.

The prevalence of financial exploitation has been a recent focus of research. Acierno et al. (2010) found that 5.2% of all respondents had experienced financial exploitation by a family member during the previous year; 60% consisted of family members' misappropriation of money. Laumann, Leitsch, and Waite (2008) reported that 3.5% of their sample had been victims of financial exploitation during the previous year. Younger older adults, ages 55-65, were the most likely to report financial exploitation. Beach, Schulz, Castle, and Rosen (2010) found that 3.5% of their sample reported having experienced financial exploitation during the six months prior to the interview, and almost 10% had at some point since turning 60.

The lack of research on assessment of financial decision-making capacities and financial judgment hinders efforts to formulate policies to address financial exploitation. For instance, Kemp and Mosqueda (2005) discuss the lack of validated assessment procedures to evaluate elder financial abuse and the importance of a qualified expert to conduct an appropriate assessment. The authors also strongly recommend using a team approach.

Efforts to Reduce Financial Exploitation

Forensic Centers. In response to this problem, in 2003 the Department of Justice launched a federal program designed to strengthen collaborative responses to family violence. This led to the creation of 80 Family Justice Centers, which are multidisciplinary alliances that coordinate intervention, strengthen community access, and provide education about family violence and elder abuse. Although the centers have made a significant impact, they have determined that case detection is the major impediment to the identification

of elder financial abuse. Specifically, most criminal justice professionals who come in contact with financial exploitation are not formally trained in the assessment of the key variables that underlie financial judgment; currently, standardized tools to guide such assessments do not exist. In fact, during a recent National Adult Protective Services Association–sponsored webinar presented by the leaders of an Elder Abuse Forensic Center, the lack of easily administered tools to assess for financial judgment (capacity) was identified as the chief weakness in the current identification and investigation process. This claim was supported by data from both Navarro, Gassoumis and Wilber (2013) and Wood et al. (2014), who found that significantly more cases had been prosecuted in which an explicit interdisciplinary approach was used (22% using a team approach vs. 3% using a traditional approach) and in which neuropsychological testing data were available. Not every community can have a Family Justice Center, so the creation of interdisciplinary elder abuse task forces offers a second approach for addressing financial exploitation and other forms of elder abuse.

Recognition of cognitive impairment by front-line providers.

One of the biggest risk factors for an older adult who is losing the ability to make decisions is cognitive impairment, which is seen in Alzheimer’s disease and other forms of dementia. High probability of cognitive impairment in an older adult can be detected through self-reported impairments or observed behavioral triggers.

Self-Report: Perceived Cognitive Impairment questions were developed by the CDC in 2010, and our research has supported the validity of this interview:

- 1a. Are your memory, thinking skills, or ability to reason worse than a year ago? (If no, stop here.)

1b. If yes, has this interfered with your everyday activities (e.g., shopping, paying bills, driving)?

1c. Has a physician or other health care professional evaluated your memory or changes in thinking?

If the answer to Question 1a is “yes,” then a significant risk of cognitive impairment exists. If 1b and/or 1c are affirmative, there is an even greater risk of cognitive impairment.

Behavioral Triggers are patterns of behavior exhibited by older adults that are recognizable by others and may indicate memory loss and associated vulnerability to financial exploitation. These are marked by several features, such as any change in the older adult’s status; it is especially important to note any changes since previous interactions. Triggers fall into four broad categories (see Table 1).

Integrated Approach. Similar to other aspects of aging, addressing financial abuse requires an integrated approach: No single profession can be solely responsible for helping to prevent financial exploitation. The following are just examples of a few of the many fields becoming more aware of and acquainted with financial exploitation of older adults. Professionals in the financial industries—for whom their role at the forefront of elder justice would have been inconceivable 10 years ago—are now being trained to detect and prevent financial exploitation. Criminal justice professionals who in the past rarely investigated or prosecuted financial crimes against older adults now find themselves in the middle of the financial exploitation crisis—and their communities expect them to provide solutions. Health professionals making diagnoses of Mild Cognitive Impairment or Alzheimer’s

| Table 1. Behavioral Triggers than may indicate memory loss and associated vulnerability to financial exploitation | |
|--|---|
| <p><i>Functional Status Triggers:</i></p> <ul style="list-style-type: none"> • Move to Senior housing or assisted living • Presentation of self-neglect • Getting lost • Requiring transportation • Family or others accompanying older adult to conduct business transactions • Anyone with durable power of attorney in force | <p><i>Communication Triggers:</i></p> <ul style="list-style-type: none"> • Missed office appointments • Repeated or frequent calls to the office • Repeated questions during interactions • Difficulty following directions • Trouble with paperwork |
| <p><i>Accidents as Triggers:</i></p> <ul style="list-style-type: none"> • Motor vehicle accidents • Fractures • Falls • Increased frequency of emergency room visits | <p><i>Cognition Change Triggers:</i></p> <ul style="list-style-type: none"> • Patient/family/others report memory problems • Older adult unable to recall financial recommendations from prior visits • Older adult unable to give good recent history of financial decisions/ dealings |

disease are becoming more aware of their patients' increased vulnerability to financial exploitation. Interdisciplinary approaches, and particularly those that include psychological and neurocognitive assessment, are the most effective for investigating financial exploitation in such a way that cases are subsequently prosecuted, as an older adult must be shown to be vulnerable for cases to go forward for prosecution, and the inclusion of neuropsychological test results is significantly related to increased prosecution rates.

A New Approach to Financial Decision-Making Capacity for Specific Sentinel Financial Decisions or Transactions

An integrated approach can be facilitated by the use of two scales that are based on a person-centered approach to financial decision making: a *comprehensive decision-making rating scale* and a *screening scale*. Our method is based on the belief that: (a) people are more than the sum of their cognitive abilities, (b) their values matter, (c) the context of their life matters, and (d) they make decisions based on what is important to them and not according to how good they are at remembering things or solving new problems. We argue that: (a) traditional approaches overemphasize deficits and underemphasize strengths, (b) the subjective experience of the person with dementia remains important, and (c) we need to listen to—and hear—what the individual has to say about the decision in question. The most difficult and important tension in financial decision-making assessment is balancing autonomy with the need for protection, because both under- and overprotection can be costly for the individual. Following Mast's (2010) whole person dementia assessment model, our goal is to use these person-centered principles in creating a standardized test.

Framework. None of the available instruments directly assesses financial judgment capacity or the underlying decisional abilities of the older adult. As described below, we conducted an in-depth process to create a new evaluation tool, the *Lichtenberg Financial Decision-Making Rating Scale (LFDRS)*; Lichtenberg et al., 2015), which focuses specifically on the financial decision in question.

First, a new conceptual model, *Financial Decisional Abilities (FDA)*, was developed. The FDA, which integrates the key contextual and intellectual factors that influence the major financial decisions older adults make, is shown below. Contextual factors include *Financial Situational Awareness*, which includes being aware of income streams, concerns about spending etc.; *Psychological Vulnerability*, which includes loneliness and depression; *Undue Influence*, which includes allowing others access to bank accounts, cash. Contextual factors directly affect the *Current Decision* associated with decisional abilities when making a sentinel financial transaction or decision. Current Decision factors refer to the functional abilities needed for financial decision-making capacity and include an older adult's ability to (a) express a *Choice*, (b) communicate the *Rationale* for the choice, (c) demonstrate an *Understanding* of the choice, (d) demonstrate *Appreciation* of the relevant factors involved in the choice, and (e) ensure that the choice is consistent with past cherished *Values*. Intellectual factors, unless they are overwhelmed by the impact of contextual factors, are the most proximal and central to the integrity of financial decisional abilities.

Process Used to Construct of the Lichtenberg Financial Decision-Making Rating Scale. Lichtenberg developed an initial conceptual model drawing on decisional abilities

research in general and financial exploitation work specifically; this model was used to create a set of questions to generate the LFDRS. Guided by the work of Ken Conrad and Madelyn Iris (see Conrad et al., 2010 and 2011) in the area of financial exploitation and assessment tools, we assembled two groups. One consisted of experts in financial-capacity work, and the other of individuals who work directly and on a daily basis with older adults who are making a sentinel financial decision or transaction (e.g., law enforcement, banking, adult protective services, financial planning, elder law). Separate conference calls were held with each group, to present the model and ask/answer questions. Based on their extensive feedback, the final conceptual model was refined, along with a broader set of multiple-choice questions. Three months after the first set of conference calls, new versions of the LFDRS were distributed and a second round of conference calls conducted. Feedback at that point led to minor revisions, and the LFDRS was completed soon afterward.

The final scale is based on 77 multiple-choice questions in separate sections to measure Financial Situational Awareness, Psychological Vulnerability, Undue Influence, Past Financial Exploitation, and Intellectual Factors. Instructions for administering and scoring the LFDRS were also finalized. After watching videotaped administrations of the LFDRS to five older adults, 10 experts rated their financial integrity, and inter-rater agreement ranged from very good to excellent. Additional details about the LFDRS can be obtained from the author at p.lichtenberg@wayne.edu.

Case Example. The LFSRS was used to assess the financial capability of ML, a 94-year-old retired autoworker who hired an attorney to create his first will after his older brother died and left him money. As a protective measure, the attorney referred ML for a capacity evaluation. He had been married to his current wife for 30 years, but had had two children with his first wife. His current wife also had two children from a previous marriage. ML went to the attorney without his wife's knowledge and accompanied by his daughter. ML presented as a frail man, with slowed gait, a history of weight loss, weakness, and low energy expenditure. His medical diagnoses included congestive heart failure and renal disease, for which he had been hospitalized one year previous. On the Mundt (2000) lay person screening questionnaire, his daughter indicated that ML did have some cognitive problems and had been having problems with memory, needed reminders for appointments, had turned over day-to-day finances to his wife, was no longer a safe driver and had given up driving in the past year. He was independent with all of his basic ADLs.

ML's capacity assessment included a cognitive assessment, clinical interview, review of his medical records, the LFDRS, and an interview with his daughter. He was fully cooperative with the assessment, and results were judged to be valid.

Cognitive Assessment. ML was aware that his memory was not as good as it used to be, admitting that he did not think as clearly as he used to and sometimes got confused about the month or date; he was also forgetful about where he had put his glasses and that he needed to mail bills. His mood was good, and he scored in the nondepressed range on the Geriatric Depression Scale. Cognitive testing revealed that overall, ML's deficits indicated a Major Neurocognitive disorder, with clear impacts on Instrumental Activities of Daily Living, including financial abilities.

Financial Decision-Making Assessment. As described previously, the LFDRS consists of five subscales, with the first being Financial Situational Awareness. ML's replies to the questions in this subscale revealed that he was aware that his wife managed their money and paid bills, but was dissatisfied with this arrangement because he believed that his wife's daughter was pressuring her mother for money and that his wife was acceding to her requests. He admitted to giving his own daughter money for food and lodging on a regular basis. While he approved of what he was doing for his own daughter, he believed that his wife was giving excessive amounts of money to hers. ML was not concerned about having enough money and reported that his expenses never exceeded his income. On the Psychological Vulnerability subscale, ML stated that he had a confidant—his stepson—with whom he discussed his financial situation. He reported that at times he was downhearted because he did not have more money to give his children and grandchildren. He was neither lonely nor concerned about others taking away his financial freedom.

The third and fourth subscales are Past Financial Exploitation and Undue Influence. ML stated that he had never been a victim of financial exploitation. He reported that his relationship with his son and daughter had changed slightly over the years and that they were not as close as they used to be. His only past conflict regarding money occurred when he decided to sell his auto company stock to send his grandchildren to college, which caused conflict with his wife.

The Current Decision Factors subscale measures understanding, choice, rationale, and appreciation of the major financial decision in question. ML reported that his attorney had suggested that he create a will. His daughter found the attorney and drove him to the attorney's office, but ML met

with the attorney alone. He stated clearly that his goal was to benefit his children by leaving them his brother's money, and demonstrated insight by stating that his wife would be surprised and might be hurt or angry when she found out about the will, but that his priorities were, and had always been, helping his children. He also stated that others who knew him would see this transaction as unusual, since he was generally open with his wife about all of his financial dealings.

Summary and resolution of the case. The discrepancies between ML's performance on cognitive tests and financial decisional abilities were notable. His cognitive testing revealed deficits consistent with dementia, although at a mild stage. His LFDRS responses, however, showed ML to be an extremely accurate historian (things such as gifting his daughter and sending his grandchildren to college were verified by the daughter). He was clear that he wanted to create a will so that his children would receive his inheritance from his brother (choice), and he demonstrated that he understood the transaction and appreciated how it might affect his wife in the future. His rationale (to gift his children) was consistent with his values, as evidenced by previous gifts to his children and grandchildren. There was no evidence of psychological vulnerability or undue influence. He was judged to have testamentary capacity, and the will was upheld when he died.

Conclusion

The fields of elder abuse, gerontology, and Alzheimer's disease are in need of new assessment approaches that recognize the wide range of conditions that may make an older adult vulnerable and in need of protection, and yet also support autonomy where possible. A person-centered approach to

assessment, which utilizes a strength-based assessment, offers great promise in helping to better understand financial capability, and in the future prevent some financial exploitation of older adults. Our new scale, the Lichtenberg Financial Decision Rating Scale is an example of a person centered approach that also has standardized administration and scoring procedures.

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