

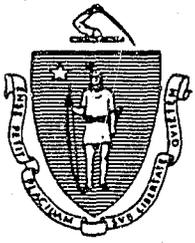
FINANCIAL EXPLOITATION OF ELDERS & PEOPLE WITH DISABILITIES: PREVENTION & INTERVENTION

150723

Presented by:
Scott Harshbarger
Attorney General
and

Franklin P. Ollivierre, Secretary
Executive Office of Elder Affairs

Michael Brooks, Executive Director
Disabled Persons Protection Commission



The Commonwealth of Massachusetts

150723

Office of the Attorney General

One Ashburton Place,

Boston, MA 02108-1698

NCJRS

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

OCT 21 1994

May 20, 1993

ACQUISITIONS

To Providers and Professionals Involved in the Protection of
Older Americans and People with Disabilities:

When I was sworn in as Attorney General, I pledged to give priority to cases involving vulnerable victim groups who find it difficult to obtain redress on their own for injuries suffered. Foremost among these are cases that involve the elderly and people with disabilities. It was clear to me then, and it is even clearer to me now, that an essential element of my role as Attorney General is to be an aggressive partner with consumers, especially elder and disabled consumers.

With that sense of commitment in mind, it is my pleasure and privilege to welcome you to the "Financial Exploitation of Elders and People With Disabilities: Prevention and Intervention" conference which we are proud to co-sponsor with the Executive Office of Elder Affairs and the Disabled Persons Protection Commission. The multidisciplinary cooperative effort displayed during the planning of this conference reflects the strong dedication of all of you - in both the public and private sectors - to enhancing the quality of life of the elderly and persons with disabilities.

As Attorney General, I am in a unique position to foster a free exchange of information and ideas about issues of critical importance to our elder and disabled citizens. This conference is meant to provide you with a forum for the discussion of ideas that will help you develop effective programs and strategies to deal with the complex issue of financial exploitation of these groups.

Thank you for joining me today. Your commitment to the creation of an alliance of professionals in this area will enable us to detect and prevent financial exploitation of the elderly and people with disabilities.

Sincerely,

Scott Harshbarger



The Commonwealth of Massachusetts
Executive Office of Elder Affairs
One Ashburton Place, Boston, M.A 02108

WILLIAM F. WELD
 GOVERNOR

ARGEO PAUL CELLUCCI
 LIEUTENANT GOVERNOR

FRANKLIN P. OLLIVIERRE
 SECRETARY

May 20, 1993

Welcome Conference Participants

Welcome to the Second Annual Conference on Elder Issues co-sponsored by the Attorney General's Office and The Executive Office of Elder Affairs, "Financial Exploitation of Elders and People With Disabilities: Prevention and Intervention". The topic of today's conference is particularly important because it addresses an issue which concerns us all, financial exploitation. We see injustices every day in many ways, but when the most vulnerable members of our society are targeted for scams and taken advantage of by the very people they trust to protect and care for them, we tend to become outraged.

One of the best ways to prevent exploitation is through knowledge: know what you have, what you need, who you are dealing with, and what your rights are. An informed consumer is not an easy target and therefore not a likely target.

We hope this conference will help to give you the tools you need to protect yourself and avoid the heartbreak of being victimized. If knowledge is power, then may you all leave here today ten times more powerful than you were this morning. Enjoy the conference!

150723

Sincerely,

Franklin P. Ollivierre

U.S. Department of Justice
 National Institute of Justice

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Disabled Persons Protection Commission
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May 20, 1993

Dear Colleague,

On behalf of the Commissioners and staff of the Disabled Persons Protection Commission, welcome to the conference on *Financial Exploitation of Elders and People with Disabilities: Prevention and Intervention*. Financial exploitation of vulnerable persons is a serious problem, one to which human services and law enforcement agencies are just beginning to respond in an effective manner. Today's conference seeks to explore the issue of financial exploitation, explain some of its underlying aspects, and develop practical means of combatting as well as preventing financial exploitation.

In order to reduce and ultimately eliminate the incidence of financial exploitation, an ongoing partnership between many groups is required: the business community, public and private human service agencies, law enforcement agencies, and the legal system, among others. The planning of this conference reflects such a partnership, and I hope that all of us at this event will learn ways to work together so that an intergrated response to financial exploitation of elders and people with disabilities is a constant and not an exception.

Again, welcome to the conference. I am confident that it will provide you with useful tools for your work on behalf of elders and people with disabilities.

Very truly yours,

A handwritten signature in cursive script that reads "Michael J. Brooks".

Michael J. Brooks
Executive Director

**FINANCIAL EXPLOITATION OF ELDERS & PEOPLE WITH DISABILITIES:
PREVENTION & INTERVENTION**

Thursday, May 20, 1993

AGENDA

8:30 - 9:00 a.m.

REGISTRATION

9:00 - 9:30 a.m.

WELCOMING REMARKS

Scott Harshbarger
Attorney General

Franklin Ollivierre, Secretary
Executive Office of Elder Affairs

Michael Brooks, Executive Director
Disabled Persons Protection Commission

9:30 - 11:00 a.m.

MULTI-DISCIPLINARY PANEL

"At the Movies: Financial Exploitation in Popular Culture"

A multi-disciplinary panel will review and discuss scenes from popular films depicting various types of financial exploitation of elders and persons with disabilities.

Moderator:

Scott Harshbarger
Attorney General

Panelists:

Speed Davis, Director
Massachusetts Office on Disability

Elsie Frank, President
Massachusetts Association of Older Americans

Paul Lanzikos, Principal
Lanzikos & McDonough

Harry Margolis, Esq.
ElderLaw Services

Donna M. Reulbach, LICSW, Protective Services
Director
Executive Office of Elder Affairs

Ernest Sarason, Deputy Chief and Assistant
Attorney General
Consumer Protection Division

Dr. Rosalie Wolf, Ph.D., Executive Director
Institute on Aging, Medical Center of Central
Massachusetts

11:00 - 11:15 a.m.

BREAK

11:15 - 12:30 p.m.

CONCURRENT WORKSHOPS

**(1) Conservatorships/Guardianships:
Prevention or Intervention?**

This panel will discuss the use of conservatorship and guardianship proactively in the prevention of financial exploitation or alternatively as an effective means of intervention in financial exploitation cases.

Moderator:

John Ford, Esq.
Neighborhood Legal Services

Panelists:

Judith Lennett, Esq.
Cambridge/Somerville Legal Services

Harry S. Margolis, Esq.
ElderLaw Services

**(2) Bank Protocols: A Public/Private
Partnership**

This workshop will provide a description of protocol that has been established between elder protective services and a local bank as a means of preventing financial exploitation.

Moderator:

Craig Fox, Regional Supervisor
Elder Protective Services

Panelists:

Elaine M. Reall, Esq.
Springfield Institute for Savings

Ann Sabato, LICSW
Greater Springfield Senior Services

(3) Consumer Fraud: Strategies for Prevention

Our panelists will present examples of consumer fraud cases and will discuss prevention strategies.

Moderator:

Nancy Dale, Consumer Issues Representative
AARP

Panelists:

Myra Herrick, Former New England
Representative
AARP

Frank Rosen, Director of Consumer Education
Executive Office of Consumer Affairs

Ernest Sarason, Deputy Chief and Assistant
Attorney General
Consumer Protection Division

(4) Hazard to Financial Security: Insurance Fraud

This workshop will discuss fraudulent practices in the marketing and sale of insurance and related products. The panelists will address recent cases and give them tips of how to evaluate whether the "deal of a lifetime" is actually an invitation to financial ruin.

Moderator:

Virginia Hoefling, Assistant Attorney General
Regulated Industries Division

Panelists:

Richard Cody, Director
Special Investigations Unit
Division of Insurance

Jean Farrington, Chief Enforcement Counsel
Massachusetts Division of Insurance

Kevin McDonough, Fraud Specialist
U.S. Postal Inspection Service

(5) Fraud in the Medicaid System: Detection & Prevention

The panelists will discuss various abuses within the medicaid system and how elders and other medicaid recipients often become unwitting victims. This workshop will focus on identifying these frauds and abuses and what to do upon detection.

Moderator:

Michael T. Kogut, Chief and Assistant
Attorney General
Medicaid Fraud Control Unit

Panelists:

William E. Casper, M.P.H., President, Sisters
of Providence Care Centers, Inc.

Attorney Michele Feinstein
Cohen Rosenthal Price Mirkin & Wernick, P.C.

Mary E. McLaughlin, Assistant Attorney
General
Medicaid Fraud Control Unit

Donna Nowak-Scibelli, L.C.S.W.
MSW Consultant
Director of Social Services
Birch Manor Nursing Home

(6) Models of Financial Counseling and Management Programs

Models of financial counseling and management programs will be presented and panelists will discuss the aspects of these programs which are most effective in preventing financial exploitation.

Moderator:

Martha Prybylo, Executive Director
Massachusetts Association of Council on
Aging and Senior Center Directors

Panelists:

Liz Babbitt, Director
Massachusetts Money Management Program

Jim Baxter
Social Security Administration

Susan Ramsey, Associate Director
Age Center of Worcester Area, Inc.

(7) Access to the Court System: Challenges & Opportunities

This workshop will explore access to the criminal justice system with special focus on the implementation of the Americans with Disabilities Act (ADA).

Moderator:

Michael Brooks, Executive Director
Disabled Persons Protection Commission

Panelists:

The Honorable Jonathan Brant
Cambridge District Court

Alex Moschella, Esq.
Metro Elder & Disabilities Law Associates

Susan Motika, Deputy Chief and Assistant
Attorney General
Family and Community Crimes Bureau

(8) The Investigation and Prosecution of a Financial Exploitation Case

This workshop will review the investigation of a financial exploitation case for purposes of a criminal prosecution and the need for a collaborative relationship between protective services and law enforcement.

Moderator:

Jane Tewksbury, Chief and Assistant
Attorney General
Family and Community Crimes Bureau

Panelists:

Robert Jackson, Investigator
Middlesex County District Attorney's Office

Marian Ryan, Assistant District Attorney
Middlesex County District Attorney's Office

Joan Hatem - Roy, Director of Services
Merrimack Valley Elder Services

12:30 - 1:15 p.m.

LUNCH

1:15 - 1:45 p.m.

LUNCHEON SPEAKER

Patricia Moore, Author
Disguised: A True Story

2:00 - 3:30 p.m.

STRATEGY SESSIONS

Getting to the Front Burner: Issues Affecting Elders and People with Disabilities

These sessions will seek to identify specific steps which may be taken to increase awareness of issues regarding the exploitation of elders and persons with disabilities. Facilitated discussions will focus on the development of strategies to be utilized in mobilizing the media, professionals in the field, the legal field, community leaders and elected officials to make these issues a priority.

(1) Public Education and Communication: Recipes for Action

Facilitators:

Paul Lanzikos, Principal
Lanzikos & McDonough

Martha Prybylo, Executive Director
Massachusetts Association of Council on
Aging and Senior Center Directors

(2) Multi-Disciplinary Training and the Development of Professional Standards

Facilitators:

Donna Ruelbach, LICSW, Protective Services
Director
Executive Office of Elder Affairs

Susan Love, Director of Abuse Prevention
and Outreach
Disabled Persons Protection Commission

(3) Legal Strategies: An Integrated Response

Facilitators:

Jane Tewksbury, Chief and Assistant
Attorney General, Family Community Crimes
Bureau

Chuck Walker, General Counsel
Executive Office of Elder Affairs

(4) Legislative Advocacy on Behalf of Elders and Persons with Disabilities

Facilitators:

John Ford, Esq.
Neighborhood Legal Services

Michael Brooks, Executive Director
Disabled Persons Protection Commission

3:30 - 4:00 p.m.

NETWORKING RECEPTION

MULTI-DISCIPLINARY PANEL
"AT THE MOVIES: FINANCIAL EXPLOITATION IN POPULAR CULTURE"

MODERATOR:

Scott Harshbarger
Attorney General
One Ashburton Place
Boston, MA 02108

PANELISTS:

Speed Davis
Director
Mass. Office on Disability
One Ashburton Place, Rm. 1303
Boston, MA 02108

Elsie Frank
President
Mass. Association of Older Americans
108 Arlington Street
Boston, MA 02116

Paul Lanzikos
Principal
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Ten Post Office Square
Boston, MA 02109

Harry Margolis, Esq.
ElderLaw Services
101 Arch Street, 9th Floor
Boston, MA 02110

Donna M. Reulbach, LICSW
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Executive Office of Elder Affairs
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Boston, MA 02108

Ernest Sarason, Assistant Attorney General
Deputy Chief
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Dr. Rosalie Wolf, Ph.D.
Institute on Aging
Medical Center of Central Massachusetts
119 Belmont Street
Worcester, MA 01605

TIN MEN

CONSUMER FRAUD

In the initial scene from this movie, you will be "introduced" to some aluminum-siding salesmen. They will be shown in an office setting "breaking in" a new salesman. They will demonstrate a technique for "scamming" the consumer.

In the next scene, two of the aluminum-siding salesman have found their "victim", an elderly, apparently retired couple. One of the salesman has already offered the homeowner a "free" siding job. The second salesman, whom the homeowners have not yet met, will then return to the home to inform the couple that the first salesman is about to get sued for having offered to side their house for free. The scam technique demonstrated in the first scene is then used.

RAIN MAN

GUARDIANSHIP OF PERSONS WITH DISABILITIES

You will be introduced to the one of the leading characters, Charlie Babbit, at his late father's lawyer's office. He has just been told that he has been cut out of his father's estate and that the 3 million dollar estate has been left to a trust.

In the second scene, Charlie is in an office speaking with a Doctor Bruner who is the trustee of the trust established by Charlie's father. Dr. Bruner refuses to reveal the beneficiary of the trust. As Charlie is leaving, he meets Raymond. He soon discovers that he and Raymond are brothers and that Raymond is the beneficiary of the trust.

In the next scene, Raymond and Charlie are in a restaurant. Charlie is on the phone talking with Dr. Bruner. He has apparently taken Raymond from Dr. Bruner's facility and is negotiating with Dr. Bruner for the return of Raymond in exchange for one-half (1.5 million dollars) of his father's estate.

In the final scene, Charlie is with Raymond in a motel room and is on the phone with a lawyer. He is discussing getting custody of Raymond through a guardianship proceeding in order to gain control of the trust.

JUNGLE FEVER

FINANCIAL EXPLOITATION IN AN ELDER ABUSE CASE

This presentation consists of one scene from the movie. Gator knocks at the door of his parents', Rev. and Mrs. Purify's, apartment. His mother is obviously concerned about why he is there and what he wants. When Gator he comes in, he is in an agitated state and almost immediately begins demanding money from his mother to buy drugs. He is very angry and hostile and physically as well as verbally abusive of his mother. While they are arguing, his father comes in and intervenes. Mrs. Purify then tries to mediate between her husband and her son. Rev. Purify leaves the room and Mrs. Purify tries to get Gator to take some items of value and leave.

A PIANO FOR MRS. CIMINO

GUARDIANSHIP OF ELDERS

In several scenes, you are introduced to Mrs. Cimino. She is a widow who has been very depressed since her husband's death the year previously. She lives alone in a large house in the suburbs and in the first scene she is being taken away in an ambulance screaming and protesting.

In the second scene, her two sons are seen with her doctor who tells them that their mother is suffering from senile dementia. The next scene is with the hospital social worker who is explaining the guardianship process to the family.

In the following scene, Mrs. Cimino is in restraints in a wheelchair at a "competency hearing" at the hospital. Her family is present along with a judge, a stenographer, her doctor, and a lawyer who is apparently representing her. After a few questions, the judge finds her incompetent, appoints one of her sons as her guardian and her bank as the conservator of her estate.

Mrs. Cimino is put into a nursing home. Her granddaughter is seen meeting with the nursing home administrator who expresses concern about the diagnosis of Mrs. Cimino as suffering from senile dementia.

In the next scene, Mrs. Cimino's son meets with the bank trustee. The trustee advises him to sell her house so that they can pay her nursing home expenses.

In the final scene, Mrs. Cimino's granddaughter tells her that her house has been sold.

**CONSERVATORSHIPS/GUARDIANSHIPS:
PREVENTION OR INTERVENTION?**

MODERATOR:

John Ford, Esq.
Neighborhood Legal Services
37 Friend Street
Lynn, MA 01902

PANELISTS:

Judith Lennett, Esq.
Cambridge/Somerville Legal Services
432 Columbia Street
Cambridge, MA 02141

Harry S. Margolis, Esq.
ElderLaw Services
101 Arch Street, 9th Floor
Boston, MA 02110

THE ATTACHED MATERIALS ARE

EXCERPTED FROM:

THE HANDBOOK ON GUARDIANSHIP AND THE ALTERNATIVES

AN EXPLANATION IN
SIMPLE TERMS OF CONSERVATORSHIP,
GUARDIANSHIP, AND OTHER OPTIONS

MENTAL HEALTH LEGAL ADVISORS COMMITTEE

FEBRUARY 1978

APRIL 1980

OCTOBER 1984

JANUARY 1993

PART III GUARDIANSHIP AND CONSERVATORSHIP

1. What is guardianship?

Guardianship provides the most broad and controlling form of decision-making help. A guardian is a person appointed by the court to handle both the personal and financial affairs of another person: the "ward." The judge must find that the ward is incapable of handling her own affairs due to mental retardation, mental illness, inability to communicate as a result of a physical or medical condition, minority, or other specific conditions. The authority of the guardian should be limited to those areas of decision making in which the ward is clearly incompetent.

In Massachusetts everyone 18 years or older is legally considered to be on her own. Parents are not presumed to be legal guardians and do not have any official decision-making authority over their adult children unless they go to court and are appointed guardians. Thus, a guardian would have to be appointed for even severely mentally retarded persons after they reach the age of 18.

2. What is conservatorship?

Conservatorship is not as broad a form of control as guardianship. A conservator handles only the ward's financial affairs, allowing the ward to make personal decisions.

3. When is guardianship appropriate?

Guardianship should be used only for people with serious problems of judgment or extremely limited intellectual capacity due to mental illness or mental retardation, or who are unable to communicate with anyone because of a serious physical condition or illness. Most mentally retarded and mentally ill people do not fall into these categories and should not be placed under guardianship.

Guardianship should be sought only when impaired judgment or capacity prevent understanding of basic information necessary for decision making and pose a major threat to the person's welfare. It is impossible to define precisely a major threat to a person's welfare. One of the more frequent situations requiring the appointment of a guardian is the need for medical treatment when the person is incapable of understanding the treatment and cannot,

therefore, give consent to the treatment.*

A person's living situation and access to advice and help are major considerations in determining whether guardianship is necessary. For example, one should consider: how protected is the environment; how complex are the decisions that need to be made; how much help in decision making can the person get from friends, family, or staff; and will the person seek and accept advice and help.

Guardianship should not be used to protect the person from the normal daily risks we all face in working, having a residence, moving about, being consumers, or associating with others. A guardian should not be appointed simply because the person has made or is about to make poor or harmful decisions; has trouble sticking to a decision; or relies heavily on other people for advice. Otherwise, many of us would find ourselves under guardianship at various points in our lives.

4. When is conservatorship appropriate?

Less restrictive than guardianship, conservatorship can be helpful for a person who is capable of making decisions about personal affairs but cannot handle financial decisions. In the past conservatorship was used primarily for people with large estates, but it can be just as important for people with small amounts of money who cannot handle their finances.

For people whose only source of income is benefit checks such as Social Security, SSI, or Veteran's benefits, and who need help managing this income, a representative payee may provide adequate protection without the more intrusive aspects of conservatorship. See Part II Section C.

Conservatorship should be considered only for people whose judgment or intellectual capacity is so seriously impaired that they cannot absorb the basic information needed for financial decision making. Many mentally disabled people are quite capable of adequately handling their financial affairs, either alone or with informal help, and should not be placed under guardianship or conservatorship.

* Informed consent of the patient is usually required for all non-emergency surgery and treatment. In life-threatening emergencies, doctors can give treatment without consent.

5. What legal standards must be met to obtain guardianship?

To appoint a guardian for a mentally ill person, the court must find that the person is incapable of taking care of herself due to mental illness. Mass. General Laws, chapter 201, section 6.

To appoint a guardian for a mentally retarded person, the court must find that:

- (1) The person is so disabled by mental retardation as to be incapable of making informed decisions about personal and financial affairs;
- (2) Failure to appoint a guardian would create an unreasonable risk to the person's health, welfare and property;

AND

- (3) Appointing someone with more limited powers (namely a conservator authorized to handle only financial affairs) would not be adequate. Mass. General Laws, chapter 201, section 6A.

To appoint a guardian for a person who is unable to make or communicate informed decisions due to physical incapacity or illness, the law appears to require an individualized factual analysis of the proposed ward's circumstances. Mass. General Laws, chapter 201, section 6B. These cases involve accident victims, stroke victims, or comatose individuals. There is little judicial experience with these cases.

The requirements for guardianship in each of the above three categories may be separated into three parts. The first requirement incorporates a clinical standard. The doctor and psychologist assess the individual, diagnosing disabling conditions and evaluating behavior. The second requirement incorporates a social work type assessment of the person's ability to care for herself and the potential for harm. These factors depend upon the individual's social context, including where she lives (home, institution, community program, etc.), who is available to help her with decisions and advocate for her, and what are her medical needs. The third requirement incorporates an evaluation of whether any less restrictive alternative is possible, such as a conservatorship, a representative payee, or a citizen advocate. Ultimately, a judge decides whether these legal standards are met.

Although the law does not define the standards more precisely, one might consider whether the person can do some of the following:

- Understand in simple terms the basic facts and implications of a decision. For example, a medical operation might entail certain risks and discomforts, but still be desirable;
- Take care of oneself by recognizing potentially harmful situations and responding appropriately;
- Understand and follow the basic laws of the community;
- Demonstrate or learn enough basic living skills to live in a group residence or one's own home.

The person need not be able to read or write, or even talk, as long as she can communicate effectively her needs and preferences. The ability to support oneself financially is not required.

Potential for improvement as well as present ability should be considered. Guardianships are difficult to remove on grounds of improvement, so permanent guardianship probably should not be sought for someone who is likely to outgrow the need and whose immediate needs can be met by a temporary guardianship.

Guardianship should not be sought if a less restrictive option such as a conservatorship or a representative payee, might work just as well.

6. What legal standards must be met to obtain conservatorship?

The court may appoint a conservator if by reason of "mental weakness" the person is "unable to properly care for his property." Mass. General Laws, chapter 201, section 16.

Physical incapacity is also a legally sufficient reason for appointing a conservator, provided the person agrees to the appointment. The law does not authorize involuntary conservatorship on the basis of "physical incapacity."

For a mentally retarded person, the court must find that (1) the person "is incapable of making informed decisions with respect to the conduct of his financial affairs" and (2) "failure to appoint a conservator would create an unreasonable risk to the person's property." Mass. General Laws, chapter 201 section 16B. The question of risk is crucial; without indication of risk, a court cannot appoint a conservator.

7. How does guardianship affect the daily life of the mentally disabled individual?

The individual under guardianship gains certain protections and loses certain rights. Whether the net effect is positive or negative depends largely on the performance of the guardian and whether the individual needed guardianship in the first place.

Unless the court limited the guardianship, the guardian will have total control of both the personal and financial affairs of the ward, including decisions on education, food and shelter, medical care, public benefits, legal assistance, debts, and expenditures. However, the guardian must obtain the express authorization of the court for extraordinary medical treatment or admission to a locked psychiatric facility. See Part IV.

The individual loses many civil and legal rights under guardianship, including the rights to make contracts, to choose a place of residence or type of treatment program or educational program, to make major expenditures, to travel at will, to sign benefit checks, and to decide whether to accept or refuse routine medical treatments. However, guardianship does not prevent a ward from marrying, making a will or voting. The ward has the right to vote unless the court specifically finds otherwise. Although the ward remains the "owner," the ward also loses the right to manage her property and assets. The guardian must use the property and assets for the ward's benefit. For details on finances, see question 11 below.

Guardianship does not guarantee access to medical or social services. However, it should eliminate one cause of exclusion, the apparent inability of some mentally disabled persons to give informed consent to treatment. Having a guardian does not make the ward eligible or ineligible for any services, nor does it necessarily have an effect on the legal power of public or private agencies to discharge or transfer an individual. Guardianship does require the agency to consult the guardian rather than the ward in these matters, and it gives the guardian the right to participate in the treatment planning process on behalf of the ward.

Certain medical decisions are so personal, involve highly intrusive treatment, or have such profound implications that a guardian may not make them. See Part IV. For example, neither sterilization nor treatment with antipsychotic medication can be authorized by a guardian. Court authorization is required.

*Sometimes the court will allow the person to keep a certain amount of money to spend while the guardian controls the rest of the income and assets.

Decisions on admitting a ward to a mental health or retardation facility require a special court hearing and cannot be made by the guardian alone. The ward must be present and represented by a lawyer. If the ward is indigent, the court will appoint an attorney. If the ward objects to placement in a mental health facility, the guardian can admit the ward only if the court finds beyond a reasonable doubt that the individual is mentally ill, dangerous to herself or others, and that there is no less restrictive alternative available. Where the ward objects to placement in an institution for the mentally retarded, the judicial standard for admission is ambiguous. The standard may be the same standard as stated above. The law again is unclear where the ward agrees with the placement or is unable to state a preference. The court, at a minimum, must find that the placement is in her "best interests." In an emergency, the court can authorize an admission for a short period of time without the patient having an opportunity to be heard.

8. How does conservatorship affect the daily life of the mentally disabled individual?

Under conservatorship or guardianship, the person loses the right to sign checks; use credit cards; buy, sell, or mortgage property; sign a lease; sign a contract involving money; make investments; or make major expenditures. Property, bank accounts, paychecks, Social Security checks, stocks and bonds all "belong" to the ward, but are managed by the conservator or guardian. These items would be put in the name of "Joseph Crowe, Conservator of the Property of Jack Robbin."

The conservator or guardian is responsible for paying the ward's bills and debts out of the ward's funds, and managing the ward's assets so as to maximize the benefit to the ward.

The court may allow the ward to keep small amounts of money from paychecks, Social Security checks or the like, or other cash assets, to spend as desired. The ward should request control over some money whenever reasonable; it can be an important way for the person to learn how to manage money for daily affairs and to reach a degree of independence. Typically, this exemption has been granted for mentally retarded people, but could be requested for mentally ill people as well.

9. What are the guardian's responsibilities?

The guardian's role is similar to that of a parent. The guardian must remain informed about the ward's needs and make decisions regarding those needs. Unlike a parent the guardian need not use her own money for the ward's expenses, provide daily supervision of the ward, or even live with the ward. However, the guardian must attempt to ensure that the ward is receiving proper care and supervision.

The guardian is responsible for making decisions in the best interests of the ward. This role is different from that of a parent who must also be concerned about the interests of other family members. Neither the convenience of the guardian nor the welfare of future heirs should factor in the guardian's decisions. A court specifically must give the guardian permission to pursue a course of action on the ward's behalf that would protect the future welfare of heirs, such as approving a particular type of estate plan. See Mass. General Laws, chapter 201, section 38.

To remain informed of the ward's needs, the guardian should visit the ward and consult with caretakers. When a major decision or problem arises, the guardian should gather information about the situation, the various options, the risks and consequences, and use her judgment to determine the best course of action for the ward. The guardian should emphasize with the ward's care givers that major decisions regarding the ward's care or treatment require the guardian's consent.

A guardian is not expected to be a medical or psychiatric expert, but a responsible and intelligent adult, acting as if facing the issue for herself or her child. While the guardian should involve the ward as much as possible to determine her needs and preferences, the guardian must make the final choices.

For a highly unusual decision which was not anticipated at the time of the original guardianship hearing, the guardian may and probably should ask the court for instructions. Certain personal and serious decisions, such as participation in hazardous research experiments, should be made by the court, not by the guardian alone. The guardian initially may find that some judges are reluctant to get involved in this type of decision making, but the court has a duty to provide guidance.

Decisions involving intrusive forms of treatment such as administration of antipsychotic medication, ECT, sterilization and the withdrawal of life-prolonging treatment, must be made by the court. The court makes a "substituted judgment determination" of what the ward would decide were the ward competent. See Part IV.

Unless the guardian's powers have been limited by the court, the guardian is responsible for:

- (1) The ward's basic needs such as food, shelter, clothing, and education. If the ward lives with the guardian, the responsibilities in these areas would be quite detailed. However, if the ward lives in an institution or community residence the guardian's responsibilities could be limited to regular inquiries as to clothing or incidental needs, participation in the institution's periodic reviews and treatment plans, and decisions on educational plans;

- (2) The ward's medical needs, authorizing or withholding consent for most non-emergency medical care including tests and surgery. Where the court made a "substituted judgment determination" involving extraordinary medical treatment, it is the guardian's responsibility to act, thereafter, as a monitor. The guardian should report to the court and seek its approval if the treatment plan must be modified; and
- (3) Participating in decisions regarding institutional admission, discharge, and transfer. The guardian must be notified of these actions, but does not necessarily have total decision-making authority in these areas. The guardian must act in the ward's best interests and cannot block an action which would be more beneficial to the ward than an alternative. An institution cannot transfer the ward without the guardian's consent. The guardian cannot admit the ward to a mental health or mental retardation institution. The guardian must seek special authority from the court as described in Part IV.
- (4) Standing in the place of the ward in any legal proceeding in which the ward is a party;
- (5) Settling the ward's accounts and debts using the ward's funds. See Question 11 for details;
- (6) Managing the ward's money and property as carefully as possible and using it for support and maintenance of the ward." See Question 11 for details;
- (7) Applying for any benefits (SSI, Veterans, Medicaid, Medicare, housing, emergency aid, food stamps) to which the ward may be entitled; and
- (8) From time to time, re-evaluating the need for guardianship and requesting the court to remove or limit it if it is no longer necessary.

10. What is the role of the conservator?

The conservator must handle the ward's financial affairs in the ward's best interests. The conservator shares decision-making power with the ward. The conservator handles financial matters and the ward handles personal decisions. If the ward wants to purchase

*Occasionally, a portion of the ward's estate may be used for needy family members once the ward's needs are met. However, the guardian must be cautious about making these gifts and should seek advance court approval.

a stereo, the conservator must determine if funds permit an expenditure for a luxury item and if the price is reasonable, but not decide if a television would be a better purchase than a similarly priced stereo. In choosing a residence, the ward needs the conservator's involvement. The conservator decides how much can be spent for housing. The ward can then select the location and type of housing.

Like guardians, conservators must manage the ward's estate solely for the benefit of the ward rather than for the sake of future heirs or the conservator's convenience. With large estates, the conservator can use money partially for support and maintenance of needy dependent children, a spouse, or parents, however, the first beneficiary must be the ward.

11. What are the responsibilities of the guardian or conservator for the ward's finances?

The ward's finances should be handled in the best interests of the ward. However, certain decisions are considered too important for the conservator or guardian to make without special court authorization: selling real estate, making substantial gifts, or disposing of assets for tax purposes. A lawyer or financial advisor, paid out of the ward's funds, should be consulted on those matters, and in many cases, prior court approval is required. In addition to making financial decisions, the conservator or guardian is responsible for initiating or responding to any legal actions concerning debts owed to or by the ward. Again, a lawyer should be consulted and may be paid out of the ward's funds. If the ward's estate is large, a lawyer or financial advisor, paid out of the ward's estate, should be hired to give expert investment and tax advice. For estates consisting primarily of a small bank account and a monthly income check, a responsible conservator or guardian should not have difficulty handling the funds.

Upon appointment the guardian or conservator must review the ward's financial situation. The guardian or conservator should:

- (1) Obtain several certified or attested copies of the court order from the court. The court order is the only official proof of the guardian's or conservator's authority. Hospitals, banks, and other institutions dealing with the guardian or conservator may require certified copies
- (2) Take an inventory of the ward's estate, including bank accounts, real estate, valuable personal property, and other sources of income. If the ward is in an institution, the staff should identify funds or property held at the institution. The inventory should be filed with the court.

- (3) Change bank accounts to "fiduciary accounts." Fiduciary accounts are recognized by writing, "John Smith, conservator of the property of Rebecca Pocahontas." The ward's money must remain separate from that of the guardian, conservator and other family members.
- (4) Notify any agency sending benefit checks such as the Social Security Administration, of the appointment and instruct the agency where to send the checks.
- (5) Take possession of any credit cards to prevent misuse and notify any creditors.
- (6) Settle any debts owed by or to the ward. For example, a lawyer may be hired out of the ward's funds to declare bankruptcy or collect on a debt. The guardian or conservator is obligated only to settle the ward's debts from the ward's funds.
- (7) By talking to the ward and the ward's caretakers, determine the ward's current, day-to-day, financial needs as well as long-term needs. Priority for expenditure of the ward's funds should be given to necessities such as food, shelter, clothing, education, medical treatment and insurance. If the ward is not living with the guardian or conservator and the ward requires supervision, clear arrangements should be made with the caretakers as to when and how regularly occurring expenses will be paid and how the guardian or conservator will be notified of unusual needs. The caretakers should know how to reach the guardian or conservator at all times, including vacations.
- (8) If the ward has funds beyond what is necessary to meet basic living expenses, attend to special items. Otherwise, the funds should be placed in a savings account, or if substantial, conservatively invested with the help of a lawyer or financial advisor.
- (9) If the ward has dependents for whom the ward's financial support is required, such as children, spouse, or parents, the guardian or conservator may allot a portion of the ward's money for their support. However, the ward's needs should come first and the guardian or conservator should seek court approval before making these types of support payments.

- (10) File an annual accounting of the ward's funds with the appointing probate court. This report protects both the ward and the guardian or conservator.

Guardians or conservators of wards who are residents of facilities of the Departments of Mental Health or Mental Retardation must file annual accounts of the ward's finances with the respective departments. Failure to file such accounts or abuse of the ward's funds may subject the individual to criminal prosecution.

- (11) Re-evaluate the ward's ability to handle her affairs. The ward may learn to make various decisions. To act in the best interests of the ward, the guardian or conservator should encourage the ward to act independently whenever appropriate. When the ward can exercise independent judgment in an area, the guardian or conservator should return to court and have the decree revised to reflect the ward's progress. The decree should never be more intrusive than is necessary to protect the ward.

These guidelines are general and should not be taken as the final word on every individual situation. For most residents in state institutions, the guardian should be able to give competent and legally sufficient services by following these guidelines. For an estate more complicated than a small bank account and a monthly disability check, a lawyer should be consulted.

12. Who can become a guardian or conservator?

Anyone over 18 whom the court feels will act in the ward's best interests can become a guardian or conservator. Usually the court will look to one or both parents, another relative, a friend, a lawyer, or certain nonprofit corporations. Courts prefer to appoint family members as guardians or conservators unless there are reasons that counsel to the contrary, such as potential conflicts of interest. If the proposed guardian or conservator does not reside in Massachusetts, a local resident must be appointed as agent.

13. How does one obtain guardianship or conservatorship?

A parent, two or more relatives or friends, certain nonprofit corporations such as the local Associations for Retarded Citizens, or any agency within the Executive Office of Human Services including the Departments of Mental Health and Mental Retardation, can file a petition in probate court requesting a guardian or conservator. The petition should be filed in the local probate court in the county in which the ward is an inhabitant or resident. The petitioner need not be the person who will act as guardian or

conservator. A person willing to become the guardian or conservator should be available in court when the petition is filed; otherwise the petition might not be heard. If no suitable person is available to serve as guardian and the court is being asked to make a decision regarding medical treatment, the court may make the treatment decision and monitor the treatment plan without the appointment of a guardian. The practice in most courts is to appoint an attorney to act as the monitor in such cases.

Prior to filing the petition, the petitioner should obtain documentation from medical experts about the person's inability to handle her own affairs.

- (1) For mentally ill people: a medical certificate should be obtained attesting to the mentally ill person's inability to care for herself or her finances. The physician must examine the person and sign the certificate no more than 30 days prior to the entry of the guardianship or conservatorship decree. Medical certificate forms are available at the Registry of Probate.
- (2) For mentally retarded people: a "clinical team report" must be obtained from a physician, social worker and a licensed psychologist, all experienced with mental retardation, stating that they have examined the person and believe she is incapable of making informed decisions about her personal and/or financial affairs by reason of mental retardation. The examinations must take place no more than 180 days prior to the filing of the petition. Proper court forms are available from the Registry of Probate.

Notices must be given to the mentally disabled person, her "heirs at law," and other interested parties, typically the closest living relatives, in order to give them an opportunity to object. A hearing is held at which the judge weighs the evidence and either approves or rejects the guardianship or conservatorship. In certain emergency situations, the court may authorize guardianships for a short period of time without the ward having an opportunity to be heard.

14. How does one obtain a clinical team report?

Clinical team reports are necessary in guardianships and conservatorships based on mental retardation. If the person is in an institution, the head of the institution should be contacted for a report. Otherwise, one must find on one's own the three requisite professionals: a physician, licensed psychologist, and social worker. Consider contacting a family physician, staff at a local mental health center, or professionals through the local Department of Mental Retardation area office. The clinicians must examine the individual no more than 180 days before the

guardianship petition is filed in probate court.

15. Does one need a lawyer to obtain a guardianship or conservatorship?

A lawyer experienced in mental disabilities law is strongly recommended, especially if there are issues of substantial money, property or extraordinary medical treatment.

16. How long does it take to obtain a guardianship or conservatorship?

Permanent guardianships and conservatorships take roughly 4-8 weeks, and longer if contested or the whereabouts of the heirs are unknown. An uncontested temporary guardianship usually takes 7-10 days. In an emergency, a temporary guardianship or conservatorship may be obtained in a matter of hours or days.

17. What is temporary guardianship and when is it appropriate?

Temporary guardianship may be appropriate when an emergency exists and the welfare of the proposed ward requires the "immediate" imposition of a temporary guardian. The period for giving notice to the potential ward and her heirs is reduced drastically or eliminated altogether. Consequently, the ward and/or relative will have greater difficulty contesting the guardianship and preventing the emergency treatment. For this reason, a judge is likely to require greater evidence of both incompetence and the existence of an emergency. Unlike many permanent guardianships which do not have expiration dates, temporary guardianships can last 90 days and may be renewed once for an additional 90 days.

Temporary guardianship is also used when no one is willing to become a permanent guardian, yet a decision must be made such as one involving medical treatment. The theory is that volunteers are easier to find for the shorter time period.

Conservatorships also may be issued as temporary orders.

18. What is a limited guardianship?

In a limited guardianship, the guardian's role is restricted to those areas where the ward is clearly incompetent. The ward retains the authority to make decisions in other areas. For example, guardianships may be limited to important medical decisions or the court may permit the ward to retain some money without guardian approval. These limitations are important mechanisms to help in tailoring guardianship decrees to fit the special needs of the ward in the least restrictive manner.

19. How may conservatorship be limited?

The law allows for up to \$300 per month to be exempt from the conservatorship and left to the ward to handle independently. While technically authorized only for mentally retarded people, this exemption probably could be requested for mentally ill people as well, as long as the ward responsibly could handle the funds.

20. How long does guardianship or conservatorship last?

A permanent guardianship or conservatorship lasts until: (1) the ward dies; or (2) the court orders the guardianship or conservatorship terminated due to the ward's improved judgment and capacity. For guardianships involving antipsychotic medication, see Part IV.

A temporary appointment lasts up to 90 days and may be renewed once for an additional 90 days. When a temporary appointment is requested, permanent guardianship or conservatorship must also be requested. However, the court may grant the request for the temporary guardianship without acting on the permanent guardianship. The permanent order is not granted unless the petitioner requests action. If action is not taken and the temporary guardianship expires, the request for the permanent order may lapse or the ward may request that the court dismiss it.

A guardianship can outlast a particular guardian if: (1) the guardian dies; (2) the guardian voluntarily resigns; or (3) the guardian is removed by the court for failure to properly perform her duties. In each of these situations, the guardianship continues and the court will consider a petition to fill the vacancy. If no one comes forward with a petition, the court may, on its own motion, appoint a successor. The same procedure applies to conservatorships.

21. How much does it cost to obtain a guardianship or conservatorship and who pays?

It is impossible to give an exact dollar figure for the cost of obtaining guardianship or conservatorship. An uncontested case may cost six to fifteen hundred dollars, plus filing fees and court costs. The ward's estate may pay this fee if the guardianship is successful. If the proposed ward is indigent and receiving services from the Departments of Mental Health or Mental Retardation, the departments should obtain guardianship at no cost to the ward. Otherwise, the petitioner may be financially responsible.

22. What is a bond?

The bond is a form of insurance to protect the ward from an inept or dishonest guardian or conservator. The bond is supported by "sureties," either "personal" (two individuals) or "corporate" (a bonding company) which will pay if the guardian or conservator misuses the ward's money and cannot be found or repay the money. The court requires a corporate surety for large estates. Occasionally the judge will consider waiving the sureties, but only in cases of small estates or those cases involving guardianship of the person only.

23. Can the guardian or conservator resign?

The guardian or conservator may resign with the court's permission. The court may require assurances that the resignation would not create a crisis for the ward. The court might ask the guardian or conservator to help find a replacement. The resigning person must file a final account of all of her expenditures on behalf of the ward. The court must approve this account before the guardian or conservator resigns.

24. Can a guardian or conservator be removed if: (1) the ward becomes more capable, or (2) the guardian or conservator is not performing her duties properly?

A guardian or conservator may be removed if the ward becomes more capable. The judge must approve the removal. Guardianships and conservatorships for mentally retarded persons are fairly difficult to terminate. If the guardian or conservator is not performing her duties properly, one should carefully document the abuses that have occurred, including requests for money or decisions that have been ignored and any misuse of the ward's funds. The ward, or anyone on the ward's behalf, including the Department of Mental Health or the Department of Mental Retardation, may ask the court at any time to discharge a specific guardian or conservator or to terminate the guardianship or conservatorship.

25. Can a guardian or conservator be held personally liable for her actions?

Guardians and conservators are seldom held liable for anything except embezzlement or gross misconduct. To avoid problems, the guardian or conservator should remain informed of the ward's needs, keep accurate records, make decisions as needed, and act with care in the ward's best interests. A guardian whose ward does not live with her should keep abreast of any decisions regarding her ward. The guardian should send a letter to the ward's institution or residence requesting notification of periodic reviews and any unusual changes in health, behavior, and living conditions. A guardian who goes on long vacations or moves should leave a

forwarding address. When unsure about duties, the guardian should return to the probate court for instructions. Guardians and conservators are not expected to be financial or medical experts; they are expected to act as reasonably responsible and intelligent adults. See Question 9.

Cases in which a guardian could be held liable by a third party typically arise when the guardian has had dealings with third parties on behalf of the ward and has failed to state she was acting as guardian.

One common mistake of guardians or conservators is to allow the ward's money to accumulate while the ward's current needs for clothing, housing, community placement or medical care are not adequately met. This mistake occurs most often when the ward lives in an institution or nursing home. The guardian should respond quickly to legitimate requests for funds and should regularly contact the institution or caretakers to insure that the ward is receiving sufficient care.

A second frequent mistake guardians and conservators make is to divert the ward's money to someone else. The ward's money is for the ward's use, even if the ward appears to be unable to appreciate it. The only exception to this rule is that with explicit court approval a portion of the estate can go to the ward's needy and dependent family members. The guardian or conservator may not use the ward's funds for herself or mix the ward's funds with her own money. However, the court may authorize a small amount of the ward's money for reasonable expenses and compensation for acting as guardian or conservator.

The guardian cannot be held personally responsible for the ward's debts and does not have to pay the ward's expenses out of the guardian's personal money. The guardian should contest unjustifiable bills and, in extreme situations, declare the ward bankrupt. The ward's estate should cover the costs of legal action.

26. How does one object to guardianship or conservatorship?

The court must give notice of the filing of the petition for guardianship or conservatorship to the ward and heirs at law, typically the closest relatives. This notice is called a "citation" and is an official court document. If the ward or any relative objects to the proceedings she or her attorney must notify the court before the date stated on the citation. After the objection is filed, the person asking for the guardianship or conservatorship must request a court hearing on the petition and the ward must be given notice of the hearing. The ward has a right to appear at the hearing and contest the guardianship or conservatorship. Although some probate courts regularly appoint an attorney for the ward, the ward is required to have a lawyer only

FACT SHEET

AN ACT PROTECTING THE LIBERTY OF INCAPACITATED PERSONS S. H. 1337

Present Law

When guardianship is sought for people who become incapable of caring for themselves, the Probate and Family Court has three standards it can employ in determining whether a guardian is necessary. These are "mental illness," "mental retardation," and "inability to communicate due to physical incapacity." Guardians are generally appointed without any specific findings concerning the ways in which a person may be unable to care for him or herself. Since there are no such findings, guardians' powers are rarely limited in any way. As a result, incapacitated individuals often lose much more of their independence than may be necessary when guardians are appointed to make decisions for them. In addition, individuals who are subject to the appointment of a guardian are rarely present at the court proceedings in which they stand to lose much, if not all, of their independence.

What This Bill Does

This bill removes the standards of "mental illness" and "inability to communicate due to physical incapacity" from present law. A new standard, "legal incapacity," is established which is based on the Uniform Guardianship and Protective Proceedings Act. This standard is based on functional limitations which lead to a person's inability to provide for basic personal needs or manage financial affairs. A petition for the appointment of a guardian would have to contain detailed facts about the way a person is unable to take care of himself or herself.

The court would then be required to make specific findings of incapacity before appointing a guardian and the guardian's powers would be tailored to meet the specific needs of the legally incapacitated person. In order to appoint a guardian without limiting his or her powers, the court would have to find by clear and convincing evidence that the person is totally without capacity to care for himself or herself. In addition, the proposed ward would have the right to be present at the hearing, even if that requires moving the location of the hearing.

For More Information Contact Judith Lennett, Cambridge and Somerville Legal Services, 432 Columbia Street, Cambridge, MA, 02141, (617) 494-1800.

NOTE: The Judiciary Committee referred this bill "for further study." This means that the bill is dead.

SECTION-BY-SECTION SUMMARY

H. 1337

AN ACT PROTECTING THE LIBERTY OF INCAPACITATED PERSONS

SECTION 1 removes the term "mentally ill person" from the guardianship statute (General Laws, chapter 201) and replaces it with the term "legally incapacitated person."

SECTION 2 deletes section 6(a) of General Laws, chapter 201 and replaces it with a new section 6(a). The new section 6(a) provides that a petition for the appointment of a guardian must contain detailed facts about a proposed ward's condition which necessitate the appointment of a guardian. It defines the term "incapacity" and describes the type of evidence that must be presented to the court. The new section 6(a) allows for a court-ordered examination of the proposed ward and sets out requirements for any written report filed pursuant to such an examination. The right of the proposed ward to be present at a hearing on the petition is also established in this new section 6(a).

SECTION 3 re-designates the current section 6(b) of General Laws, chapter 201 as section 6(c).

SECTION 4 adds a new section 6(b) to General Laws, chapter 201. This new section 6(b) establishes a presumption in favor of a limited guardianship whenever possible and provides that a plenary guardian can only be appointed if the court finds, by clear and convincing evidence, that the proposed ward is so incapacitated as to need a guardian whose powers are not expressly limited by the court at the time of appointment.

SECTION 5 re-designates the current section 6(c) of General Laws, chapter 201 as section 6(d).

SECTION 6 re-designates the current section 6(d) of General Laws, chapter 201 as section 6(e).

SECTION 7 re-designates the current section 6(e) of General Laws, chapter 201 as section 6(f).

SECTION 8 re-designates the current section 6(f) of General Laws, chapter 201 as section 6(g).

SECTION 9 deletes section 6B of General Laws, chapter 201. This section permits the appointment of a guardian for an individual who is unable to make or communicate informed decisions due to physical incapacity.

SECTIONS 10 THROUGH 27 bring all applicable provisions of the General Laws (including other sections of chapter 201 not already amended, chapter 206, relating to accounts and settlements of guardians and other fiduciaries, and chapter 208, relating to guardians in divorce cases, into conformity with the terms of this Act.

BANK PROTOCOLS:
A PUBLIC/PRIVATE PARTNERSHIP

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SIS News Release

SPRINGFIELD INSTITUTION FOR SAVINGS
1441 Main Street, P.O. Box 3034, Springfield, Ma. 01101

For Immediate Release

Contact: Maria Wilson/Public Relations 748-8294

Springfield, MA May 10, 1993 - Springfield Institution for Savings will conduct a training seminar on financial exploitation of elders for its branch office staff on Tuesday, May 11, 1993 from 9:00 a.m. - 10:30 a.m. in the 12th floor community room at SIS Center. This seminar will identify specific steps and a description of protocol which may be taken to increase awareness of and prevent the financial exploitation of elders.

Craig Fox, Western Regional Supervisor of Elder Protective Services from the Commonwealth of Massachusetts' Executive Office of Elder Affairs, has invited SIS as the first bank in the state to conduct this type of training for its associates. According to SIS Assistant General Counsel Elaine Reall, "SIS is pleased to be the first bank to respond to this community need. In forming this partnership with local and statewide elder service programs, we believe SIS will be better informed and prepared to handle exploitation cases if they occur. We want to provide the best service to our customers at all times."

Mr. Fox will open the program and define and discuss the role of the Executive Office of Elder Affairs, the Protective Services Program, elder abuse and neglect and the applicable law.

Mr. Fox will be joined by Ann Sabato, Protective Services Supervisor from the Greater Springfield Senior Services, Brenda Perry, Protective Services Supervisor of the Chicopee/Holyoke WMASS Elder Care, Inc., and Elaine Reall, SIS Assistant General Counsel. Ms. Sabato will present actual abuse cases and signs and symptoms of elders as targets for abuse and exploitation. Ms. Perry will review the facts needed from SIS associates when reporting an abuse case in order to conduct external investigations. Ms. Reall will present the SIS internal reporting procedures.

Case studies will be presented to the associates by protective service workers. Associates will then analyze and apply the new protocol. In closing, a question and answer period will take place.

INDICATORS OF FINANCIAL EXPLOITATION
AND OTHER ELDER ABUSE

Training Material for Bank Personnel

Prepared by

The Executive Office of Elder Affairs
Elder Protective Services Program
Commonwealth of Massachusetts

The following is intended to be used as a checklist in identifying and reporting possible elder abuse. Asterisks mean that this one indicator may be reason to suspect and report elder abuse.

INDICATORS OF FINANCIAL EXPLOITATION

- * 1. A substantial increase in account activity particularly when a joint bank account has recently been set up or someone is now assisting the elder with their finances.
- * 2. Elder is accompanied by family or others who appear to coax or otherwise pressure elder into making transactions.
- * 3. Persons with the elder speak for the elder, and do not allow the elder to speak or make decisions.
- 4. Elder expresses concern that s/he does not have enough money for basic needs.
- * 5. Elder is confused about "missing funds" in his/her accounts.
- 6. Sudden increase in checking overdrafts.
- * 7. Unusually large cash withdrawals or transfers to other accounts from a joint bank account, without the elder's knowledge or consent.
- * 8. Elder can not obtain checking or savings passbooks from person assisting with finances, or passbook/checkbook are frequently "missing".
- * 9. Elder signs blank checks, with large amounts filled in by another party.
- * 10. Someone else signs [forges] elder's signature.

- * 11. Elder complains furniture, jewelry or other items are missing from his/her home.
- * 12. Elder expresses fear that s/he will be kicked out of his/her home or placed in a nursing home if money is not given to a family member.
- * 13. Defaults on a loan where a joint bank account is set up, and a loan is obtained using the account as collateral. A default occurs shortly after the loan is obtained.
- * 14. Stable, single beneficiary trusts are revoked or distribution provisions are altered to require payments to third parties.
- * 15. Certificates of Deposit are withdrawn incurring penalties by persons acting on behalf of the elder, or an elder under duress to obtain cash for someone else.
- * 16. Family members seek to cash the elder's social security or pension checks.
- * 17. A Guardianship or Conservatorship is obtained for an elder who appears competent and has been recently handling her/his own financial affairs, and the elder complains about not having access to his/her own money.

INDICATORS OF OTHER ABUSE

Injuries or Abusive Acts

- * 18. Elder shares s/he has been pushed or hit, screamed/yelled at, and/or exhibits physical injuries caused by a family member, live-in companion, spouse, friends or caretaker.

Neglectful Conditions

related to care not being provided by caregiver:

- * 19. Has extremely poor hygiene such as urine/ feces odor, dirty nails/ skin, matted hair.
- * 20. Is improperly clothed for the weather such that injury might result.

Outbursts.

- 31. Is unemployed and dependent on elder's income.

FrontLine

FROM THE FRONTLINES: BANKS AND THE RESPONSIBILITY TO REPORT FINANCIAL EXPLOITATION

*A. Paul Blunt, J.D., notes that while banks are often in an excellent position to identify suspected cases of financial exploitation, very few are willing to breach their wall of confidentiality by reporting suspicions to public authorities. The penalties for non-compliance with reporting laws can be significant. On the other hand, by properly reporting these cases, the banking community protects both itself and its customers. Blunt is an attorney in Scottsdale, Arizona, whose private practice concentrates on representing victims of fiduciary abuse.*¹

As elder citizens continue to account for an increasing segment of our population, the instances of physical abuse, neglect and financial exploitation are occurring at an ever increasing rate. The media and the average citizen tend to focus on the most visible tragedy: physical abuse. However, the most permanently devastating of these may be financial exploitation, involving the illegal or improper use of an adult's resources or property. With all or most of their earning capacity behind them, older people find it difficult, if not totally impossible, to regain their financial independence once the "nest egg" is lost.

NARCEA finds that, based on data from 24 states, financial exploitation constitutes approximately 20% of all national domestic elder abuse reports. Substantiation is imprecise due in part to the variations of definitions and reporting practices among the states.

The State of Arizona, though, because of its strong senior population, collects fairly precise data and can serve as an illustration.

In the fiscal year ending June 30, 1990, Arizona Adult Protective Services investigated 6,290 cases of which 1,024 involved alleged financial abuse. Of these, APS substantiated over 34% of the cases.

In many financial exploitation cases, the culprit is not the slick salesman or unscrupulous investment adviser. The exploiter is usually a relative, friend or caregiver in whom the elder has reposed trust and confidence. Often, a banking institution is an active, albeit unwitting participant.

Because they administer the accounts, trusts and other financial assets of these exploited persons, financial institutions are in a unique position to have early (and often the only) knowledge of on-going financial abuse of the elderly. Yet, because of the normally justifiable industry practice of confidentiality regarding their customers' affairs, banking institutions rarely report these cases to public authorities, potentially placing both themselves and their customers in jeopardy.

(See Frontline continued on page 7)

¹ The views expressed are those of the author, and are not necessarily endorsed by NARCEA and the Administration on Aging.

AN EXPLOITATION SAMPLER

Although each case of financial exploitation has its own peculiar facts, the case patterns typically fall into three general scenarios.

The first is the case of the "financial prisoner", an elder who is physically, emotionally or psychologically dependent on a family member, friend or caregiver. Over a period of time the senior comes to depend on the exploiter for virtually every aspect of well-being. So long as this dependent relationship continues, the victim (who otherwise appears rational and lucid) may even ratify the exploitative transaction after the fact.

The second typical scenario involves the elder person who is "slipping." In these cases, the elder may find it increasingly difficult to handle personal financial matters, and turn for help to someone he or she has grown to trust. Often the delegation of financial responsibility is not overt, but is simply assumed by the exploiter with little or no understanding by the elder of the extent or consequences of the exploitation.

The third typical case involves the "bereaved widow[er]." These cases involve persons of long marriages whose spouses ran the financial business of the family. The spouse dies, leaving the survivor to cope with the emotional devastation of being left alone, coupled with the anxiety and confusion of having to deal with all of the financial aspects of the family. For such persons, dealing with banks, creditors and investment counselors is a nightmare. The entrance of the exploiter is a welcome relief, relieving them of financial responsibilities for which they have little or no training or experience.

In each of the above scenarios, the exploiter gains control of the elder's financial

assets. Often symptoms of financial exploitation can be spotted at the operations level of a financial institution.

WARNING SIGNS FOR BANKS

Since most older persons typically do their banking at a single bank or branch, it is not unusual for the tellers and operations officers of that office to know the elder by sight, by name, or both. When exploitation begins, the symptoms are readily observable. For example, the bank may receive a general power of attorney authorizing a third party to act on behalf of the elder or an instruction to change the elder's accounts into joint accounts. These changes are soon followed by transfers or withdrawals of large sum into separate accounts from the elder. A checking account will incur a substantial increase in account activity over past history (for example 50 checks per month being written on an account that traditionally had 15 or fewer checks written per month). The senior's credit card or credit line will incur a substantial increase in activity, followed by payment arrearages and/or defaults.

Loan officers may also see symptoms of potential exploitation. After obtaining joint account status, the exploiter may obtain a loan, in which the elder's substantial money accounts are pledged as collateral. Shortly thereafter, the loan goes into default and the bank offsets the elder's account in order to collect its loss, yet the bank hears nothing after notice of the setoff is sent.

Trust departments typically see exploitation cases when stable, single beneficiary trusts are revoked or the distribution provisions altered to required payments to third parties. Danger signs are particularly evident when the beneficiary has little or no experience or ability in handling money, these events occur without any personal

(See FrontLine continued on page 8)

contact by the beneficiary, and/or the beneficiary's contact is chaperoned by the party receiving the benefits of the elder's actions.

FAILURE TO REPORT

Forty-nine states have reporting systems established by statute, with the other state operating a reporting system by administrative rule. These statutes identify a total of 50 professional groups, job titles or groups of persons who are required to make reports. In some states anyone with knowledge or a reasonable basis to believe that an incident has been or may be occurring is required to make a report to a human services or law enforcement agency. In other states, such reports are optional.

In those states where reports of suspected exploitation are mandatory, statutes typically target anyone who has responsibility over the use or preservation of the adult's property. Banks are clearly within the confines of such a group, since they have responsibility for holding the adult's financial assets. Even in the 31 states where such reports are optional, statutes clearly encompass banks as one of the groups that "may" report suspected exploitation.

The penalties for failure to report can be severe. In over 30 states, failure to report will subject the non-reporting party to criminal misdemeanor liability. However, beyond potential criminal liability, banks have a far greater concern in terms of civil liability.

In most states, the violation of a statute enacted for the public safety is not merely evidence of negligence, but is considered by the courts to be negligence *per se*. The mere fact that a statute is silent as to civil liability

does not affect whether a duty of care and the attendant standard of conduct may be found therein.

In the case of the reporting statutes, failure to report suspected cases in which the adult is later determined to have been incapacitated (or in states where incapacitation is not even necessary) will almost certainly subject the bank in question to an action by the injured depositor for negligence *per se*. If the bank was found to have violated the reporting statute and the depositor was exploited and thereby damaged, the bank may find itself on the paying end of a verdict not only for the actual damages resulting from the illegal transfer but potentially for the elder's mental anguish, attorney's fees, interest and court costs.

In addition, liability for negligent failure to report, the bank risks the inability to offset the accounts of the incapacitated adult which were pledged by the exploiter as collateral for defaulted loans. One of the means used to preserve assets of the incapacitated adult by a responsible fiduciary is a declaratory action against the exploiter and the bank to establish ownership and management of the pledged accounts. Where, in such cases, exploitation is proven along with a violation of the bank's duty to report, the bank's right of setoff may be lost.

BANKS' RESPONSIBILITY TO REPORT

By reporting circumstances in which bank officers or employees have a reasonable basis to believe financial exploitation is taking place, financial institutions thereby protect themselves from potential liability. By reporting, the institution has complied with the statutory standard of care in such cases.

Second, banks generally incur no potential liability as a result of the report itself. All states grant civil and criminal immunity to

any person making a complaint or furnishing a report, information or records required or authorized under the reporting statute (providing the reporting person did not act with malice or is not an accomplice in the abuse or exploitation itself). Thus, the financial institution will not only fulfill its statutory standard of care, but is given extensive immunity from civil liability.

When a financial institution has a reasonable basis to believe that exploitation may be occurring, the statutes dictate that a report be made immediately to the local office of the protective service agency for the aging or, alternatively, to a peace officer or public fiduciary of the local county. The report may be made in person or by telephone, but in most states must be followed within forty-eight hours by a written report of the facts giving rise to the incident. Along with the report, the bank is either required to or should furnish all financial records pertaining to the incident.

In most states, protective service agencies typically have broad powers of investigation. Case workers have the power to obtain medical records from health care providers of the exploited person, and may require accounts, inventories or audits of the exploited adult's property provided that they pay the associated costs. The protective services worker may conduct interviews of the allegedly exploited person and, if they are not granted access to that person, many states authorize special visitation warrants from the court.

Upon finding that a case of exploitation has occurred, in addition to actions by the state agency, the exploited person, his or her guardian or conservator, or members of the immediate family, may take private action against the exploiter to recover lost assets. Frequently, the guardian/conservator or the elder may create a trust. It is not uncommon to nominate the bank who reported the exploitation as trustee, in view of the bank's demonstrated concern for the older person.

IN EVERYONE'S BEST INTEREST

Although it happens all too frequently, cases of financial exploitation develop in identifiable patterns that can be recognized by most banks engaged in a regular relationship with its older customers. By failing to report suspected cases of exploitation, financial institutions incur a substantial risk of both criminal and civil liability far beyond the amount of exploitation taking place. On the other hand, by fulfilling its statutory duty to report such cases, banking institutions avoid such outcomes, obtain statutory immunity from any claim which might be asserted against the bank as a result of the report, and demonstrate their concern and care for the well being of their customers. By reporting such cases to the proper authorities, the banking community acts in the highest tradition of its profession. ♦

REQUEST FOR TEST CASES

Although banks generally have a legal duty to report suspected cases of financial abuse, very few do so routinely. There are no known cases in which financial institutions have been held liable for failure to report, even though this failure may have resulted in financial exploitation. NARCEA is working with A. Paul Blunt, the author of this issue's FrontLine, to obtain an appropriate case that could serve as a test case in establishing legal precedent regarding bank liability for failure to report. Mr. Blunt is willing to undertake the prosecution of such a case under appropriate circumstances.

If you are aware of a case in which an elder was financially exploited following circumstances in which the elder's bank or trust company knew or should have known that the exploitation was taking place, yet failed to make any effort to report the matter to the local public fiduciary or protective services agency, please contact Mr. Blunt to discuss the case. His telephone number is 602-949-8523.

PROTECTIVE SERVICES REPORT CONTENTS

DETAILS WE NEED FROM YOU -

- . Client ' s name and address
- . Temporary address
- . Reporter ' s name
- . Telephone number
- . Telephone number where they may be contacted
- . Clients age (60 years of age or older)
- . Sex '
- . Language spoken, if not English
- . A narrative of information

INFORMATION TO INCLUDE IN THE NARRATIVE

- . Date and time of contact.
- . Where did the contact take place?
- . Circumstances by which reporter became aware of the financial exploitation, abuse or neglect.
- . Who was present?
- . Information regarding the nature and extent of the financial exploitation, abuse or neglect.
- . Whether, in the belief of the reporter, the situation reported is an emergency. (An emergency is defined as a potentially life-threatening or immediate and substantial irrevocable financial loss to an elderly person.)
- . Recommendations (contact elder at bank only; contact immediately).

REMEMBER -

Be descriptive, not general or vague. Do not forget to report any new information to Protective Services.

PROTECTIVE SERVICES RESPONSE

WHAT YOU CAN EXPECT FROM US -

- . You can expect that emergency reports will be responded to within 24 hours.
- . You can expect that non-emergency reports will be responded to within 5 days.
- . You can expect a comprehensive investigation to be completed within 14 days.
- . You can expect the Protective Service Worker to be sensitive toward the client's needs, and the least restrictive alternatives explored with the client.
- . You can expect a wide range of options and services to be offered and explained to the elder. These services include, but are not limited to:
 - Protective Services Casemanagement
 - Legal Assistance
 - Counseling
 - Protective orders through the court
 - The capacity to petition the court for guardian and conservatorship services.
 - Assistance in obtaining a restraining order
 - Home Care Services
 - Personal Care Assistance
 - Transportation
 - Home Delivered Meals
 - Lifeline
- . You can expect sensitivity towards the client's needs.

Case Scenario #1

Mr. P. aged 79 was referred to Protective Services by SIS bank after branch personnel noted a pattern of frequent withdrawals. During a 2 1/2 month period of time, approximately \$18,000 was withdrawn. Names on the joint bank account had been changed just prior to the time of the reported changes in account activity; a debtors name was dropped and Mr. P. was sole account holder.

Branch personnel stated that the elder and his son (with whom he lived) were at the bank almost daily. The elder would approach the counter alone, however, his son was always either at the door (inside the bank) or waiting in an old car or taxi.

The elder appeared somewhat shaking however it was not known if that was due to age, medical problems or possible exploitation circumstances. Although typically pleasant by nature Mr. P. was said to always "grumble" about having to make withdrawals. He never expressed or exhibited fear or apprehension. The withdrawal slip is always made out prior to the elder's arrival; it was not known whether son or elder had completed it.

Mr. P. was described as alert and oriented. His personal hygiene and dress not noted to be problematic.

Important points noted by reporters:

- Change in pattern of withdrawals - not always this excessive or obvious.
- Sudden change in name on account.
- Consistent presence of son.
- Veiled (in this case) comments by elder about withdrawals i.e. "grumbling".
- Bank personnel showed they took note of elder's affect, behaviors and condition of person.
- Took note of the fact that withdrawals were completed ahead of time.

Withdrawals

| | |
|--------|---------------|
| 6-8-92 | \$2,500 |
| 6-15 | 300, 400, 400 |
| 6-17 | 500 |
| 6-18 | 300 |
| 6-22 | 1,600 |
| 6-25 | 375 |
| 6-26 | 200 |
| 6-27 | 50, 225 |
| 6-30 | 300 |
| 7-1 | 1,500 |
| 7-3 | 1,000 |
| 7-6 | 900 |
| 7-7 | 1,000 |
| 7-10 | 750 |
| 7-13 | 50, 1,000 |
| 7-14 | 1,000 |
| 7-16 | 150 |
| 7-17 | 1,020 |
| 7-20 | 2,000 |
| 7-22 | 5,000 |
| 8-5 | 1,250 |
| 8-7 | 1,150, 100 |
| 8-10 | 600 |

Case Scenario #2

Mrs. M., aged 89 was initially evaluated for protective services after she was forced out of the home she shared with her sister-in-law and nephew.

During the course of the investigation, it was discovered that financial exploitation was really the basis of the entire case. When she came to this area. Mrs. M. had \$60,000 which she entrusted to her nephew to deposit and set up bank accounts.

One passbook account bore only her name. Each social security check was signed by elder however she was never allowed to actually make the transaction. She either remained in the car or by the door inside the bank. The nephew always negotiated the check or made withdrawals.

A money market account was set up at a separate bank. In this case, Mrs. M. had signed the bank check, made out to her, that was used to open the account. The money market account bore only the names of her nephew and his girlfriend.

Concerns the bank personnel might have noted.

- Bank account with elder's name, deposits and withdrawals were never made by the account owner.
- The fact that only elder's funds were used to maintain account however she clearly had no involvement.
- There was no POA in effect that would enable nephew to make all transactions with total independence of elder.
- Signature for all transactions always completed prior to entering into bank. Elder was not allowed to speak with bank personnel.
- Money market account opened with elder's signed check however she had not signed check over to nephew, nor was she present when account opened.

SPRINGFIELD INSTITUTION FOR SAVINGS ("SIS")
FINANCIAL EXPLOITATION OF ELDERS:
REPORTING PROCEDURES

I. FORMAT OF REPORTS

Reports of suspected elder should be made orally to the SIS Security Department. An incident report/checklist will be furnished to all branches by Security. This form (Attachment A) should be filled out at the time of the initial telephone call to the Security Department.

If a teller or customer service person is unsure as to whether a reportable situation exists, they should discuss the matter with the Branch Manager or Assistant Branch Manager.

II. WHEN REPORTS SHOULD BE MADE

Chapter 19A of the Massachusetts General Laws (M.G.L.) defines the illegal financial exploitation of elders as follows:

"Financial exploitation," an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, undue influence, coercion or threat of force by such other person; and provided further, that financial exploitation shall not be construed to interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of Chapter Ninety-Three (Consumer Protection Act)

III. TYPES OF FINANCIAL EXPLOITATION

1. Mismanagement of Income/Assets:

Willful misuse of the elder's finances by a family member, caretaker, friend, or legal fiduciary. Included would be cases where large sums of the elder's money are removed from a joint account without the elder's consent.

2. Signing/Cashing Checks or Documents without elder's authorization:

Forging and cashing of checks, or removal [theft] of an elder's money from a bank account without the elder's knowledge, for use by another person.

3. Transfer of Assets Under Duress:

Transfer of title or deed to property, such as homes, stocks, vehicles bank accounts, or other assets, as a result of coercion, force, intimidation or threat of force.

* Note: Use of force can include such acts as the withholding of food, isolation, confinement, as well as acts of physical violence.

4. Obtaining Money or personal possessions by threat of force or force:

Use of coercion, intimidation, force or threat of force, in order to obtain money or material possessions from the elder.

5. Obtaining money or other assets by deceit or trickery:

Obtaining consent of the elder to give or sign over money or other assets through misrepresentation of the intent of the transaction.

IV. DESIGNATED CLEARINGHOUSE FOR REPORTS

All reports of suspected financial exploitation of elders must be submitted to SIS' Security Department. The Director of Security (in consultation with the Bank's Compliance Department) is charged with making the final determination as to whether a report of apparent violation shall be filed with the Elder Abuse Hotline.

SIS SECURITY - FRAUD WARNING
WARNING - BE CAUTIOUS ABOUT CASH OR CHECK WITHDRAWALS

SIS is concerned about your security. We ask that you take the time to read and **CONSIDER CAREFULLY** this CAUTION FORM.

This form is designed to caution you with regard to the following financial transaction--.

- lump sum withdrawal of \$ _____ (in cash/check from your account)
- transfer of assets
- addition of name(s) to current account

PLEASE CONSIDER THE FOLLOWING FACTS:

1. **IN A "GOOD FAITH" OPERATION:** Swindlers often arrange to have you "find" or "help find" a wallet or other valuable. One way or another, they have you put up some money to show your "good faith" and then leave with the money.
2. **THE POLICE, FBI, BANK REGULATORY AUTHORITIES OR BANK OFFICIALS DO NOT CONDUCT INVESTIGATIONS BY ASKING YOU TO WITHDRAW CASH OR A CHECK FROM YOUR ACCOUNT FOR ANY REASON. [IF SOMEONE ASKS YOU TO WITHDRAW CASH IN THIS MANNER, NOTIFY SIS SECURITY AT 748-8206 (8:30-4:30 M-F) OR THE LOCAL POLICE DEPARTMENT.]**
3. **ELDER ABUSE INCLUDES FINANCIAL EXPLOITATION. ELDER ABUSE IS PROHIBITED BY LAW.** If you are being pressured to give others money, help is available. If you believe you, or another, has been subjected to elder abuse, call the **ELDER ABUSE HOTLINE (#1-800-922-2275)**

If any of these circumstances exist, please contact the local police or the Elder Abuse Hotline and have them investigate the situation **BEFORE** you withdraw your money. Remember, people who want to take advantage of you and your money often are friendly and have "honest" faces.

I HAVE READ AND UNDERSTAND SIS' WARNING STATEMENT. A BANK EMPLOYEE HAS OFFERED TO ANSWER QUESTIONS.

- CHECK ONE I INSIST UPON THE IMMEDIATE WITHDRAWAL INDICATED ABOVE (IN CASH OR CHECK)
- I INSIST THAT SIS PROCESS THE FINANCIAL TRANSACTION NOTED ABOVE

Account # _____

Check # _____

I.D. _____

Teller Stamp: _____

Branch: _____

F655-780

Initials _____

Signature _____

Name: _____

Address: _____

Telephone #: _____

Case Studies

Referral source reported Mrs. A., a 76 year old widow, to be a frequent customer to their bank. During the past month and a half she has made 28 withdrawals from two accounts, amounting to \$8,000. Her CD account has been targeted for unusual activity because she has incurred several penalties for early withdrawals.

Mrs. A. appeared at the bank today, shaking, crying, and stating that her son was threatening her to make withdrawals to give him money. Elder and son were observed by reporter, sitting and talking in her car in the parking lot for ten minutes.

Elder in her nervous state had also shown the bank reporter an overdue \$600 phone bill on which was noted her phone service would soon be disconnected.

Mrs. S., an 80 year old widow, appears at a local bank with her clothing covered with crawling cockroaches. She insists on always seeing the same bank representative. Reporter is concerned about suspicious activity of Mr. B., a neighbor man who transports elder to the bank. Three times in one week she withdrew money to give to him; i.e. two times for his car expenses, and once to pay his electric bill, so it would not be shut off. These withdrawals amounted to \$400. In the past, elder had retained a balance of up to \$3,000, but it has dwindled to a couple hundred.

Bank personnel also noted later that the elder did not follow her usual routine of bringing her check for deposit after the first of the month.

SITUATION I

A bank referral source reported that Mr. A is a frequent customer and at one time had, "some money in the bank". In the past month or so, the elder has been accompanied by two men. Referral source reports that Mr. A's account had been "emptied out". Whenever Mr. A makes large withdrawals, he is accompanied by these two men and appears very shaky. Bank personnel have observed Mr. A to be declining in health and mental status since the men have been accompanying him. Elder has no family, only a roommate, who has been hospitalized for several weeks. When elder was in bank today, he appeared to be in pain and was holding his head. When reporter asked if Mr. A was alright and who was caring for him, one of the men answered that his wife had been appointed by AARP to card for elder. Reporter added that A recently withdrew \$1,000.00 and when reporter inquired where it had gone, one of the men stated they had used it to buy clothes for Mr. A. Elder appears frightened of the men, but when asked if anything is wrong (by Bank Personnel) Mr. A says that everything is O.K.

SITUATION II

Mrs. B is a 64 year old woman who lives with her son. The call came into Protective Services from a bank employee after Mrs. B expressed tremendous fear when she realized she could not access her and her son's joint account because she did not have appropriate information.

The caller says she and co-worker called Mr. B for the required data. They could hear Mr. B verbally abuse Mrs. B, tell her "You better not come home without the money"; f...ng this and f...ing that, using expletives, mostly four-letter words, and threats. According to reporter, the son sounded angry and used a menacing tone of voice. Mrs. B was crying and said she was afraid for her life; her son hits her. Caller said she appeared terrified - called her son a "miserable bastard", then caught herself and immediately stopped talking about her situation. Reporter states elder told her that her son send her on errands, sometimes hits her - she has to take the bus and do a lot of running around.

ELDERLY FINANCIAL ABUSE
TRAINING VIDEO

SCENE 1;

Shot of branch exterior. We see an elder walking into the branch.

(Cut to elder and counselor in a conference room)

Counselor; "Well, Mrs. Simpson, I really enjoyed looking at your family album. It must be wonderful having family close by and seeing them so often. Why don't you tell me about the concerns you have with your son."

Mrs. Simpson; "Well, I'm worried. He has really been pressuring me
me for money. I don't know what to do."

Counselor; "That's why I'm here. Protective Services can help. Let's talk about the different things we can do."

LAST SCENE;

(Mrs. Simpson enters the counselor's office smiling)

Counselor; "Mrs. Simpson, it's nice to see you. You really look wonderful!"

Mrs. Simpson; "I am wonderful. Things have never been better and it's because of your help!"

SCENARIO 1

Mr. Anderson enters the bank looking fearful and is holding his head. He is followed closely by a tall, intimidating male.

(Mr. Anderson makes his way towards the teller line. Tellers notice Mr. Anderson's condition and share a tense glance. He approaches the teller who glances questioningly from Mr. Anderson to his companion.)

Teller; (forcing a smile and with genuine concern for Mr. Anderson's health the teller welcomes him.)

"Hi, Mr. Anderson. Are you alright? You look a little under the weather today."

Mr. Anderson; "No, I'm alright."

Teller; "Well, how is your roommate. Is he still in the hospital?"

Mr. Anderson; "Yes. He'll be in for a while I'm afraid."

Teller; "Who's taking care of you, Mr. Anderson?"

Companion; (with a "back-off" attitude)

of "My wife's been appointed by the AARP to take care of him."

Teller; "Mr. Anderson, I see you were just in here a couple of days ago and withdrew \$1,000.00. Are you sure you need more money today?"

Companion; "We bought him some new clothes with it."

(Mr. Anderson appears agitated.)

Teller; "Mr. Anderson, are you sure everything is alright?"

Mr. Anderson; "Yes. I just need some more of my money"

Teller; "OK, Mr. Anderson."

(FADE OUT)

SCENARIO 2

Change of pattern - The elder looks ill, anxious and frightened.

(Mrs. Marrero, using a cane, enters the branch and approaches the teller window.)

Teller; "Good morning, Mrs. Marrero. How are you today?"

Mrs. Marrero; "Oh, pretty good. I need to withdraw \$50.00 so I can do some grocery shopping."

Teller; "Alright." (Teller begins to process the transaction, reads the screen again and looks embarrassed.)
"Mrs. Marrero, I'm sorry, but you don't have \$50.00 in your account." (confidentially) "In fact, your account is overdrawn."

Mrs. Marrero; (hand to chest) "What! Well, that can't be. My pension and social security checks were deposited

last week. There must be some mistake!"

(The Branch Manager hears the raised voices and quickly approaches the teller's window)

BR.Mgr.; "Mrs. Marrero, perhaps I can help."

Mrs. Marrero; "This young man says my account is overdrawn, but my retirement checks were just deposited."

(Branch Manager checks the computer screen)

Br.Mgr; "I'm afraid it's true. We show several ATM withdrawals made last week."

Mrs. Marrero: "My daughter is the only one with an ATM card. I never should have added her name to my accounts. What will I do? None of my bills have been paid and I have no money for food!"

(FADE OUT)

SCENARIO 3

An obviously distraught elder is being pressured for money in order to buy drugs.

(Sarah Koppleman is 67 years old and a long-time customer of the Bank. She owns her own home which she shares with her daughter. She has exhausted the funds in several accounts. Mrs. Koppleman enters the Trust Department to speak to the Trust Officer.)

Mr.Thomas; "Hello, Mrs. Koppelman. What can I do for you today?"

Mrs. K; "Good day, Mr. Thomas, I'd like to withdraw \$50,000.00 from my Trust account."

Mr. Thomas; "I see. Well, let's have a look at your account. (Mr. Thomas accesses the computer and sees that Mrs. Koppelman's accounts have been flagged for suspicious activity because of the heavy withdrawal activity.) Mrs. Koppelman, you've made several large withdrawals totalling over \$14,000.00 recently. (Mrs. Koppelman looks uncomfortable.) We've worked together for a long time. May I ask if you've decided to take your funds to another bank?"

Mrs. K; "Oh, heavens no! I've been very happy here."

Mr. Thomas; "Well, if you are not depositing your funds in another bank, may I ask if you are experiencing any problems that I might be able to help you with?"

Mrs. K: (in a confidential tone)
"Mr. Thomas, my daughter, Joan, has been involved with drugs for the past 3 or 4 years. She was arrested and as part of her probation, Joan was ordered to co-operate with the police department. The police have asked Joan to buy drugs so that they can catch these drug dealers and help other young people like her stay of drugs. My daughter told me that the police have to use my money up front to buy the drugs, but that the police department will reimburse me later."

Mr. Thomas: "Mrs, Koppelman, I can't give you any money from your Trust account because the terms state that you cannot withdraw before the maturity date. But, I have never heard of the police asking private citizens to co-operate in this manner or to use their own funds."

Mrs. K; (Mrs. Koppelman becomes nervous and distraught)
"Oh, dear. Oh, dear. My daughter will be very angry if I return without the money. I'm not sure what she'll do."

(FADE OUT)

SCENARIO 4

Elder who is "gambling away" his money.

(Henry Marshall enters the bank and approaches the CSR. He has been a loyal customer for 15 years. He has been recently widowed and his only son lives in California. His pattern was to do his banking on the 1st and 15th of the month. For the past several months he comes in 2-3 times per week and withdraws up to \$200.00 - \$300.00 at each visit. His account balance has dropped by several thousand dollars.)

Teller; "Good morning, Mr. Marshall. You're becoming a regular visitor here!"

Mr. Marshall; "Good morning. I'd like to make a withdrawal please."

Teller; "Are you feeling alright, Mr. Marshall? You haven't been yourself lately."

Mr. Marshall: "I'm fine; just trying to keep myself busy since my wife died."

Teller; "I know that your son lives out in California. Do you have any other relatives in this area?"

Mr. Marshall; "I have a good-for-nothing nephew, but he's only interested in me for my money."

Teller; "That's too bad. I have noticed that you've been making frequent withdrawals. Is that because of your nephew?"

Mr. Marshall; "No, no."

Teller; (good naturedly) "Well then, do you have some exciting new hobby you haven't told your friends here about?"

Mr. Marshall: "Well, I decided to check out that new casino in Connecticut. Can't take it with you, you know and I'd rather "gamble it away" then leave my money to my shiftless nephew."

(FADE OUT)

CONSUMER FRAUD:
STRATEGIES FOR PREVENTION

MODERATOR:

Nancy Dale
Consumer Issues Representative
AARP
116 Huntington Avenue, 9th floor
Boston, MA 02116

PANELISTS:

Myra Herrick
AARP
31 Cressy Street
Beverly, MA 01915

Frank Rosen
Director of Consumer Education
Executive Office of Consumer Affairs
One Ashburton Place
Boston, MA 02108

Ernest Sarason, Assistant Attorney General
Deputy Chief
Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

OFFICE OF THE ATTORNEY GENERAL CONSUMER PROTECTION DIVISION

The Consumer Protection Division (CPD) is a division within the Public Protection Bureau. CPD performs a variety of functions to protect consumers. These include investigating and prosecuting consumer cases, maintaining a consumer information and complaint hotline, overseeing a network of local consumer complaint offices, producing consumer education materials, sponsoring consumer protection legislation, and overseeing mediation programs in schools.

The Consumer Protection Division's activities range from handling individual consumer complaints involving only a few dollars, to multi-million dollar cases affecting consumers throughout the Commonwealth. Some of the Division's functions and responsibilities are summarized below:

◆ **CONSUMER CASES/INVESTIGATIONS** - The Consumer Protection Division's primary function is to enforce the Massachusetts Consumer Protection Act, Chapter 93A, and other laws and regulations designed to protect consumers. Some recent cases include ones against debt collection agencies for harrasment, against car dealers for violations of automobile laws and regulations, against mobile home parks for attempting to force many elderly tenants from their homes by closing the parks, against home improvement contractors and financial institutions for deceptive practices which often led to foreclosure of people's homes, and against retail sellers for various acts of false advertising.

◆ **CONSUMER COMPLAINT HANDLING** - Providing information and mediation services to consumers is the primary responsibility of the Consumer Complaint Section within CPD. There, a staff of mediators, consumer information specialists, and interns provide information and referral services over the Attorney General's Consumer Hotline (617-727-8400). Whether the problem has to do with landlord-tenant issues, defective goods or car problems, assistance is available. Staff will also mediate individual consumer written complaints, particularly when the consumer has first tried unsuccessfully on his or her own to resolve the problem.

◆ **CONSUMER EDUCATION** - The Consumer Protection Division encourages consumers to avoid "ripoffs" by learning their consumer rights. To this end, the Division has published a set of "Cite Your Rights" cards, highlighting Massachusetts consumer law on many topics in an easy to understand format. CPD also distributes other brochures about Home Improvement Mortgage Scams and Credit Repair Scams. In addition to printed material, CPD staff have produced television and radio public service

announcements on various consumer subjects, appear regularly on radio and television, and frequently are asked to speak before community organizations.

◆ **LOCAL CONSUMER PROGRAMS** - The Consumer Protection Division funds 26 local programs, which advise consumers and mediate disputes around the Commonwealth. The local consumer programs provide personalized attention to consumers and their complaints, and make direct contact with businesses in an effort to resolve disputes. Seven of these programs are Face to Face Mediation Programs where both the consumer and the business are brought together in an attempt to resolve their disputes. All programs provide a variety of educational materials to the public free of charge.

◆ **SCHOOL MEDIATION PROGRAMS** - The Attorney General sponsors 17 student mediation programs in urban high schools and middle schools, under the SCORE program. The purpose of SCORE is reduce the incidence of violence among teenagers, by funneling their disputes into a mediation program right at their school. An emergency SCORE program was recently set up at Medford High School, after a racial incident closed the school temporarily. Through mediation, the students were able to arrive at a solution to their grievances, and the school was able to reopen the following week.

◆ **CONSUMER LEGISLATION** - The Consumer Protection Division has the power to create regulations to help resolve consumer problems in the marketplace. To this end, the Division has regulations governing Retail Advertising, Nursing Homes, Mortgage Lenders and Brokers, Automobile Sales and Repair, Debt Collection, Landlord-Tenant, and General pricing and misrepresentation issues. In addition, the Division actively sponsors consumer protection legislative each year. Currently, CPD has filed bills to improve the Lemon Law, to provide a three day right to cancel telemarketing transactions, to give tenants more rights in mobile home parks, to prohibit advance fees for loans, and to regulate neighborhood check-cashing stores.

Attorney General's Consumer Hotline:

(617) 727-8400



Commonwealth of Massachusetts
Executive Office of Consumer Affairs
One Ashburton Place
Boston, Massachusetts 02108

WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
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GLORIA CORDES LARSON
SECRETARY

617 / 727-7755

EXECUTIVE OFFICE OF CONSUMER AFFAIRS

GLORIA CORDES LARSON, SECRETARY

The fundamental purpose of this Secretariat is to ensure that the regulatory agencies under its supervision protect the public from unfair and unsound practices in various areas of commerce, trade, professional and health services. It coordinates policy analysis and planning for the nine agencies under its supervision. The Executive Office of Consumer Affairs offers a "consumer information hotline" (617/727-7780) that provides information to consumers on their rights and remedies. In addition, it oversees the New and Used Vehicle Warranty programs. The Secretariat oversees the following nine regulatory agencies and thirty-three licensing boards.

Alcoholic Beverages Control Commission

Board of Registration in Medicine

Community Antenna Television Commission

Department of Public Utilities
Energy Facilities Siting Board

Division of Banks

Division of Insurance

Division of Registration - (33 licensing boards)

Division of Standards

State Racing Commission

ALCOHOLIC BEVERAGE CONTROL COMMISSION - Stuart Krusell, Chairman
100 Cambridge Street, Room 214
Boston, MA 02202
617/727-3040

The Alcoholic Beverages Control Commission is responsible for the administration of the manufacture, import, export, storage, transport quality, and sales of all alcoholic beverages in Massachusetts. The Commission may grant, suspend, or revoke liquor licenses for shippers, taverns and bars, restaurants and hotels, package stores, chartered clubs and pharmacies.

BOARD OF REGISTRATION IN MEDICINE - Alexander Fleming, Executive Director
10 West Street
Boston, MA 02111
617/727-3086

The Board of Registration in Medicine is a separate state agency, with its own budget and staff. It is responsible for ensuring that doctors who are licensed in Massachusetts are properly qualified and that doctors who violate the law are disciplined. A committee of the Board licenses acupuncturists.

COMMUNITY ANTENNA TELEVISION COMMISSION - John M. Urban, Chairman
100 Cambridge Street, Room 2003
Boston, MA 02202
617/727-6925

The Commission oversees cable television activities in the Commonwealth. The local municipalities may grant cable licenses, but the Commission through its regulations has the authority to revoke or suspend the license if there were improprieties in granting the license or if the licensee had failed to conduct business properly. The Commission publishes a local programing newsletter, Cablestate, and sponsors awards for excellence in community programming.

DIVISION OF BANKS - Alan Morse, Jr., Commissioner
100 Cambridge Street, Room 2004
Boston, MA 02202
617/727-2102

The Division of Banks regulates, supervises and audits state-chartered trust companies, savings banks, cooperative banks, credit unions, finance companies, mortgage brokers and lenders and collection agencies. The Division of Banks also grants charters and approves branches, acquisitions and mergers of its financial institutions. It promotes the public interest by fostering the safety and soundness of financial institutions; by encouraging fair competition and reinvestment in the community; and by supervising small loan interest rate, credit, and savings transaction compliance.

EXECUTIVE OFFICE OF CONSUMER AFFAIRS

Gloria Cordes Larson, Secretary

Page Three

DEPARTMENT OF PUBLIC UTILITIES - Kenneth Gordon, Chairman

100 Cambridge Street, Room 1200

Boston, MA 02202

617/727-3531

The Department of Public Utilities regulates the rates and practices of the state's utilities--electric, gas, water and telecommunication companies, as well as bus companies, commercial motor vehicles and, to a limited extent, railroads. The Department of Public Utilities also enforces the "Dig Safe Law," which requires contractors and other parties to notify utilities before beginning to excavate. The Consumer Division handles complaints, including billing and termination practices of utility companies.

ENERGY FACILITIES SITING BOARD - Pamela M. Chan, Executive Director

100 Cambridge Street, Room 2109, Boston, MA 02202 617/727-1136

The Energy Facilities Siting Board (EFSB) is charged with the responsibility of ensuring a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. While the EFSB has a wide array of responsibilities under the statute, its four major functions are: adjudicating proposals to site major power plants, electric transmission lines and intrastate gas pipelines, adjudicating annual forecasts and supply plans of the state's electric and gas utilities, representing the environmental interests of the Commonwealth in Federal Energy Regulatory Commission interstate gas pipeline siting proceedings, and coordinating the licensing of hydropower facilities.

DIVISION OF INSURANCE - Katherine Doughty, Commissioner

280 Friend Street

Boston, MA 02114

617/727-7189

The Division of Insurance regulates all aspects of the insurance industry. It licenses more than 800 insurance entities, companies and health maintenance organizations and more than 100,000 insurance personnel. The Division also conducts financial examinations and audits of licensees, reviews rates and policy forms, and participates in rate setting.

DIVISION OF REGISTRATION - William G. Wood, Director

100 Cambridge Street, Room 1609

Boston, MA 02202

617/727-7406

The Division of Registration oversees the 32 Boards of Registration which were created primarily to protect the health and safety of all consumer in Massachusetts. Each Board examines and licenses applicants, hold disciplinary hearings, and establishes standards for professional conduct. A centralized Investigative Unit handles consumer complaints.

DIVISION OF STANDARDS - Donald B. Falvey, Director
One Ashburton Place, Room 1115
Boston, MA 02108
617/727-3480

The Division of Standards is responsible for setting standards and testing all types of weighing and measuring devices used in the sale of food, fuels, and other products. It determines standards for the accuracy and safety of all thermometers. The Division also governs the advertising and sale of motor fuels, and set standards for lubricating oils, anti-freeze and fuel oils, including the inspection of all fuel-dispensing pumps. It licenses hawkers and peddlers, motor fuel and motor oil dealers and auctioneers. The Division also enforces Unit Pricing and Item Pricing Regulations.

STATE RACING COMMISSION - Robert Hutchinson, Jr., Chairman
One Ashburton Place, Room 1313
Boston, MA 02108
617/727-2581

The Massachusetts State Racing Commission regulates all pari-mutuel activities in the Commonwealth. The Commission oversees thoroughbred, harness and greyhound racing; licenses all racing tracks and all owners, trainers, jockeys, veterinarians, blacksmith and other agents and employees of the tracks. The Commission also hears all appeals from decisions of the Boards of Stewards or the Boards of Judges. The Commission is responsible for the enforcement of rules and regulations governing the security and protection of racing animals and the wagering public. It investigates complaints about business conducted at racetracks or racing fairs, especially when it involves the calculation of odds, payment of winnings, or integrity of specific races.

Consumer's Auto Repair Rights

● RIGHT TO AN ITEMIZED BILL

—Section 5.05 (9), (a), (b), (c), (d), (e), (f), (g), (h).

At the completion of the repair work on your car, including warranty repair work, a repair shop must give you a dated written bill. The bill must contain the following information:

- your name and address, and the name and address of the shop
- date car was received at the shop
- the year, make and registration number of your car
- odometer reading on date car was received
- itemized list of repairs completed
- list of parts supplied indicating:
 - name, number and price of each part used, reconditioned or rebuilt parts (if any)
 - total amount charged for parts
- number of hours of labor (indicating whether they are actual hours worked or flat-rate)
- total amount charged for labor
- total amount charged for parts and labor

If you are billed a flat charge according to a schedule of charges posted in a clear and conspicuous manner, your bill is not required to contain detailed itemization of parts and labor.

● RIGHT NOT TO BE CHARGED FOR REPAIRS WHICH HAVE NOT BEEN MADE

—Section 5.05 (10).

A repair shop may not charge you for repairs which have not been performed.

● RIGHT TO HAVE COPIES OF ANY DOCUMENT SIGNED

—Section 5.05 (11).

You are entitled to receive a copy of any document you have signed either at the time you sign it or at the completion of the repair work.

● RIGHT TO PREVENT UNAUTHORIZED USE OF YOUR CAR

—Section 5.05 (12).

A repair shop may not use your car for any purpose other than for a test drive or for delivery to you unless they have obtained your written authorization in advance.

● RIGHT TO BE PROTECTED AGAINST FALSE ADVERTISING

—Section 5.02 (14) (15).

A repair shop may not advertise that it will perform a "tune up" on a motor vehicle unless the specific work to be performed on the vehicle is listed. If a price is advertised, the advertisement must clearly disclose whether the price includes parts or labor or both.

A repair shop may not advertise that it will perform a particular car repair at a specified price unless the price includes the total charge for all parts and labor necessary to perform the repair.

ABBREVIATIONS

M.G.L. = Massachusetts General Laws;
c. § = Chapter and Section;
CMR = Code of Massachusetts Regulations.

For further information, you may wish to obtain the Consumer's Guide to Auto Repair which is also available from our Office.

Consumer Affairs &
Business Regulation

© 1984 EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
ONE ASHBURTON PLACE • BOSTON • MA 02106
Telephone 617/727-7780



WILLIAM F. WELD
GOVERNOR

GLORIA CORDES LARSON
SECRETARY OF CONSUMER AFFAIRS
AND BUSINESS REGULATION

Consumer Affairs &
Business Regulation

EXECUTIVE OFFICE OF
CONSUMER AFFAIRS AND BUSINESS REGULATION
ONE ASHBURTON PLACE • BOSTON • MA 02108

Consumer's auto repair rights are clearly defined in regulations entitled 940 CMR 5.05, Attorney General's Motor Vehicle Regulations *Massachusetts General Laws, Chapter 93A, Section 2(c)*. The auto repair regulations apply to all auto repair shops, auto body shops and retail stores which offer automotive services. Gasoline service stations, which engage solely in minor repair services such as changing or repairing tires, lubrication, replacing fan belts and oil filters, installing light bulbs, batteries, windshield wiper blades, and other minor accessories and the like, are exempt from Section 5.05(2), (3), (4), (5), and (9).

● RIGHT NOT TO BE MISLED

—Section 5.05 (1), (a), (b), (c).

A repair shop is prohibited from making any statements which it knows to be untrue or misleading such as:

- that repairs to your car are necessary or desirable when this is not the case
- that your car is in a dangerous condition or that its continued use may be harmful when this is untrue
- that repairs have been made on your car when no work has been done.

● RIGHT TO RECORD ESTABLISHMENT

—Section 5.05 (2), (a), (b), (c), (d), (e).

A repair shop must record information about you and your car prior to beginning work. Records should include:

- your name, address and a telephone number where you may be reached
- the car make, year, registration number, odometer reading, and the date and approximate time your vehicle was delivered to the repair shop
- the specific repairs requested or a brief description of the problems the shop is instructed to correct.

● RIGHT TO A WRITTEN ESTIMATE UNLESS WAIVED

—Section 5.05 (3), (a), (b), (c), (d), (e).

Before work is started, a repair shop *must* give you a written estimate listing the specific repairs to be made. The estimate *must* also include the total price itemized in terms of parts and labor unless such charges are posted where they may be readily seen. You *must* give your written authorization by signing the estimate.

When the auto repair problem is undiagnosed and it is impossible to supply a written estimate, the shop still *must* obtain your authorization in advance. When the work required is determined, the repair shop *must* notify you (by telephone is sufficient) of the specific repairs that are needed and the total price to be charged. The shop must receive your oral approval.

The repair shop is *not* required to contact you if you sign a written waiver prior to the repair work which reads as follows:

WAIVER

I understand that I have the right to know before authorizing any repairs what the repairs to my car will be and what their cost will be. You need not obtain approval from me for repairs or inform me prior to performing repairs what the repairs are or their cost, if the total amount for repairs does not exceed \$_____.

SIGNATURE

There is no requirement that you sign this waiver. If the service manager indicates where to sign with an "x", determine whether you are granting authorization for repairs or signing the waiver.

The waiver may be included as part of a repair order provided that it is printed in a clear and conspicuous type. The waiver must be signed separately from any other signature appearing elsewhere on the order. You are not entitled to a written estimate if you bring your car to the repair shop before or after its usual business hours, or if the repair services are rendered off-premises at your request.

● RIGHT TO KNOW STORAGE CHARGE CONDITIONS

—Section 5.05 (4), (a).

Prior to obtaining your oral or written authorization to repair your car, a repair shop must inform you of storage charge conditions and the daily or hourly rate, unless this information is posted where it can be seen easily.

● RIGHT TO OLD PARTS

—Section 5.05 (4), (b).

At the completion of the repairs you have the right to the return of any parts replaced by a repair shop. If the repair shop must return the replaced parts to the manufacturer under a warranty or rebuilding arrangement, you have the right to inspect your parts before they are returned.

● RIGHT TO KNOW ABOUT CHARGES FOR ESTIMATES OR DIAGNOSIS

—Section 5.05 (4), (c).

A repair shop must inform you of any charge for an estimate or diagnosis prior to obtaining your oral or written authorization to repair your car, unless this information is posted where it can be seen easily.

● RIGHT TO RECORD MAINTENANCE

—Section 5.05 (5), (a), (b), (c), (d).

A repair shop which receives your oral authorization *must* proceed at an increased cost, extend the period for completion of the job, or any other type of authorization, *must* maintain records showing:

- a statement of the exact authorization received, including the date and time of authorization.
- the name of the person making the oral authorization, and the name of the employee receiving it.
- the telephone number called (if the repair shop placed the call for oral authorization).

● RIGHT TO SAME-DAY REPAIRS

—Section 5.05 (6).

A repair shop must complete the work on your car the same day you deliver it to them unless you are notified to the contrary, and you consent to a further delay. If the repair shop can show that the delay was caused by unanticipated circumstances beyond its control, same-day repairs are not required.

● RIGHT TO AN AGREED UPON PRICE WITHIN \$10

—Section 5.05 (7).

If it becomes apparent that your car needs repairs other than those which you have authorized, or the price for performing the authorized repairs will exceed the original estimate by more than \$10, a repair shop must notify you of such information and obtain your approval before continuing the work.

● RIGHT TO HAVE SHODDY REPAIR WORK CORRECTED AT NO CHARGE

—Section 5.05 (8).

A repair shop must remedy promptly, at no charge to you, any repairs they have made on your car which were not performed properly in accordance with trade standards.

HAZARD TO FINANCIAL SECURITY:
INSURANCE FRAUD

MODERATOR:

Virginia Hoefling
Assistant Attorney General
Regulated Industries Division
One Ashburton Place
Boston, MA 02108

PANELISTS:

Richard Cody
Director
Special Investigations Unit
Division of Insurance
280 Friend Street
Boston, MA 02114

Jean Farrington
Chief Enforcement Counsel
Massachusetts Division of Insurance
280 Friend Street
Boston, MA 02114

Kevin McDonough
Fraud Specialist
U.S. Postal Inspection Service
P.O. Box 2217
Boston, MA 02205-2217

ATTORNEY GENERAL SCOTT HARSHBARGER
PUBLIC PROTECTION BUREAU
REGULATED INDUSTRIES DIVISION

The Regulated Industries Division represents consumer interests in the areas of utility and insurance related matters. Traditionally, by statute, the Attorney General intervenes on behalf of ratepayers in the Blue Cross and Blue Shield rate cases for their non-group and medex products. In this capacity, the Attorney General fights vigorously to reduce the amount of rate increase granted in order to protect the interest of those consumers who are least able to afford any increase in their health insurance premiums. The Division has undertaken other efforts to try to contain the cost of both auto and health insurance rates.

Other insurance related efforts in which the Regulated Industries Division participates include the enforcement, of Massachusetts' regulatory scheme governing the business of insurance. For example the provisions prohibiting the sale of insurance by unauthorized insurers and the provisions prohibiting the sale of unauthorized products such as legal insurance.

In addition the Division becomes involved in situations where the prohibitions against unfair and deceptive acts or practices by insurers and their agents violate Chapter 93A, the consumer protection statute in Massachusetts. In this role, the division addresses numerous complaint correspondence daily on issues including agent conduct, for instance agents encouraging consumers to undertake a change in their policies that is not in their economic interest or where an agent has failed to make required disclosures.

**VIRGINIA A. HOEFLING
ASSISTANT ATTORNEY GENERAL
REGULATED INDUSTRIES DIVISION**

INSURANCE HAZARDS TO YOUR FINANCIAL SECURITY

*** DUPLICATIVE COVERAGE**

Buying more than one policy to cover the same risk e.g. Medigap, Long Term Care, Health Insurance

*** CANCELLING POLICIES**

Cancelling existing whole life policies to buy another company's life policy or the same company's variable life policy

*** WITHDRAWING FUNDS IN INSURED BANK DEPOSITS**

(e.g. C.D.'s) at the suggestion of an agent who contacts you

*** UNDERSTAND THE PRODUCT**

Purchasing any insurance product without understanding the risk and the fact that projections of future value and dividends are merely estimates and not guarantees. (e.g. variable annuities, universal life, and other variable life products)

*** BALANCED BILLING**

Medicare insureds paying the doctor the amount that his bill exceeds the Medicare approved rate. (e.g. The doctor charges \$120 for a procedure; Medicare determines that the Medicare rate for that procedure is \$100. Medicare pays the doctor \$80 (80% of the Medicare approved rate.) The patient or his Medigap insurer pays the doctor \$20 (20% of the Medicare approved rate.) The doctor is not permitted to balance bill the patient for the excess over the Medicare approved rate (the difference between \$100 and \$120.)



SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

NEWS RELEASE

FOR IMMEDIATE RELEASE
JUNE 3, 1992

CONTACT: KIM HINDEN
(617) 727-2543

HARSHBARGER STOPS "LIVING TRUST" SALES TO SENIORS

In an ongoing effort to combat financial abuse of the elderly, Attorney General Scott Harshbarger's Consumer Protection Division filed an Assurance of Discontinuance today in Suffolk Superior Court in which the American Association for Senior Citizens (AASC) agreed to stop selling memberships and unlicensed prepaid legal insurance to Massachusetts seniors.

"This is a prime example of our proactive enforcement efforts when seniors are targetted," said Attorney General Harshbarger. "Following complaints received by our office, we responded to this case quickly and stopped these unlawful solicitations before large numbers of seniors were victimized."

This Dallas-based non-profit national organization, through telemarketing and door-to-door salespersons, was offering senior citizens a living trust, hours of legal assistance, unlimited telephone consultation with attorney and trial defense services, as well as free air ambulance services and discounts for prescription drugs, travel and shopping services. The price for membership varied with the wealth of the prospective member, but was typically \$2,995 with monthly dues of \$30 after the first year.

-more-

Besides selling unauthorized insurance, the Attorney General's Consumer Protection Division had claimed that AASC used unlicensed sales agents and misrepresented the savings and benefits that would accrue to the consumer by the use of a living trust.

Pursuant to the agreement filed in court today, AASC, which had 44 selling agents at its peak, agreed to refund over \$50,000 to approximately 18 consumers (representing a full refund of all membership fees collected) and to pay the state \$7,500 for costs of investigation. The organization further agreed not to do business again in Massachusetts without prior notice to the Attorney General and obtaining the necessary approvals and licenses to sell insurance.

The American Association for Senior Citizens denied any wrongdoing in this case.

Assistant Attorney General Virginia Hoefling, of Harshbarger's Consumer Protection Division, handled the case with assistance from Kerry Doherty. The investigation was coordinated by Lou Russo, of the Civil Investigations Division and developed from complaints received through the Attorney General's Consumer Complaint Section and the Newton/Brookline Office of Consumer Affairs.

insurance without being duly licensed), G.L. c.176 H (marketing of a legal services plan without being duly authorized), G.L. c.93, §48 (not complying with requirements for agreements consummated away from seller's place of business), and the Attorney General's Consumer Protection Regulations particularly those governing general misrepresentations, door to door sales transactions, and general unfair and deceptive acts (940 C.M.R. 3.05, 3.09, and 3.16). Such alleged violations also constitute violations of the Consumer Protection Act (G.L. c.93A).

It appears that proceedings to restrain and enjoin the use of such methods, acts and practices would be in the public interest.

AASC and TAC deny violating G.L.c. 175, G.L. c.176H, G.L. c.93, §48, the Attorney General's Regulations or provisions of the Consumer Protection Act (G.L. c.93A). After consultation with AASC and TAC concerning the practices investigated, it appears that AASC and TAC are willing to enter into an agreement to terminate the methods, acts and practices complained of by the Attorney General, and the Attorney General pursuant to G.L. c.93A, §5, accepts this Assurance of Discontinuance on the terms contained herein, in lieu of commencing a law suit under §4 of that chapter. This agreement has been entered into by the parties without admission by AASC and TAC of any violations.

Accordingly, AASC and TAC, represented by counsel, voluntarily and knowingly enter into this Assurance of Discontinuance, and agree as follows:

1. AASC and TAC, their officers, directors, agents, employees, successors, and assigns, directly or indirectly, individually or in concert with others, or through any trust or corporate or other device in the business of offering, selling, servicing, and administering membership and membership benefits in AASC, or any affiliated company or companies in any activities in Massachusetts, shall:

A) Refrain from soliciting, offering to sell, selling, and administering membership in the American Association for Senior Citizens in the Commonwealth of Massachusetts to Massachusetts residents without prior notice to the Attorney General;

B) Refrain from soliciting, offering to sell, selling, or administering membership in Pre-Paid Legal Services, Inc. or any other insured legal services plan that is required to be authorized to conduct business in Massachusetts pursuant to G.L. c. 176H unless such plan has been properly authorized and unless TAC and its sales representatives have received all necessary Massachusetts licenses as insurance agents pursuant to G.L. c.175, §1 et seq.;

C) Refrain from offering for sale, selling, or servicing any and all types of insurance either as a separate product or as a benefit of membership in AASC unless said insurance, TAC and its sales representatives have received all necessary Massachusetts licenses pursuant to G.L. c.175, §1 et seq.;

D) Refrain from, directly or indirectly, by explicit statement or by implication, indicating that AASC or its representative(s) is affiliated with any other organization unless AASC is in fact affiliated with such organization;

E) Refrain from, directly or indirectly, by explicit statement or by implication, indicating that any other organization approves or endorses any of the benefits provided by AASC including but not limited to Revocable Living Trusts unless such organization has in fact issued such an endorsement in writing to AASC;

F) Refrain from misrepresenting to Massachusetts consumers, including but not limited to prospective purchasers of membership in AASC or of the Revocable Living Trusts, the cost or complexity of estate planning or probate in the Commonwealth of Massachusetts and the significant savings to be realized from the purchase of a Living Trust;

G) Refrain from failing to provide Massachusetts consumers, who, at their residences, purchase membership, benefits, products, or services of any kind from AASC, with an agreement signed by the seller and containing the terms and information required by G.L. c.93, §48, paragraph B;

H) Refrain from failing orally to inform Massachusetts consumers, who, at their residences, purchase membership, benefits, or services of any kind from AASC, at the time they sign the agreement, of their right to cancellation as provided by G.L. c.93, §48;

I) Refrain from commencing such services referred to in paragraphs G through H during the three business day cancellation period provided by G.L. c.93, §48;

J) Refrain from misrepresenting the authority of AASC, TAC or any of their affiliated company(ies) or their representatives to conduct business in Massachusetts;

K) Refrain from misrepresenting to prospective sales representatives or consumers the nature of the business of AASC and TAC, their affiliated companies, products, benefits, and services and the Massachusetts licensing requirements therefor.

2. AASC and TAC represent and warrant that prior to the execution of this Assurance, they have provided the Attorney General with a statement containing the names and addresses of each and every one of their representatives who have contacted Massachusetts consumers for the purpose of soliciting or selling AASC's memberships, products or services.

3. AASC and TAC represent and warrant that prior to the execution of this Assurance, they have provided the Attorney General with a full and accurate accounting of the names, addresses, and amount of monies paid by Massachusetts consumers for membership in AASC or for any other product or service offered by AASC.

4. AASC and TAC represent, warrant, and agree that AASC shall refund to each person identified in response to paragraph three above, all payments made to AASC for the purchase of memberships, contracts, Living Trusts or any other service sold by or on behalf of AASC and will cancel and rescind any contract entered into with Massachusetts consumers. Such refunds shall be made within forty-five (45) days of the signing of this Assurance.

5. AASC shall send all Massachusetts consumers, identified in paragraph 3 above, the refund described in paragraph 4 above by sending the full amount of the refund together with a letter in the form of Attachment A attached hereto and incorporated herein by reference by certified mail, postage pre-paid, within forty-five (45) days of the execution of this Assurance.

6. AASC agrees, within forty-five (45) days of the execution of this Assurance to send copies of the notification letters, certified mail receipts, return receipts, and refund checks sent to Massachusetts consumers pursuant to paragraph 5 above to Virginia A. Hoefling, Assistant Attorney General, One Ashburton Place, Boston, MA 02108.

7. AASC and TAC agree to notify the Attorney General at least forty-five (45) days prior to its intended reentry into Massachusetts and respond truthfully to any and all inquiries by the Attorney General concerning the nature and scope of the proposed business operations of AASC and TAC. In the event the Attorney General believes the proposed operations are in violation of the law, he will so advise AASC and TAC and representatives of AASC and TAC shall meet with the Attorney General to discuss their efforts to satisfy his concerns prior to doing business in Massachusetts.

8. AASC and TAC agree that its officers, directors, employees, agents, affiliates, and subsidiaries handling all or a portion of AASC and TAC business in Massachusetts, successors

and assigns, individually or in concert with others, or through any trust or corporate or other devices over which AASC and TAC, or either of them, has control shall be bound by this agreement. AASC and TAC agree to provide written notice to any successor or assigns of the terms and obligations of this Assurance of Discontinuance and to provide the Attorney General with evidence of such notification within ten (10) days of said notification.

9. AASC and TAC agree to inform all employees, agents, affiliates and subsidiaries handling all or a portion of AASC business in Massachusetts of the terms of this Assurance of Discontinuance within 14 days of the date AASC and TAC sign this agreement. AASC and TAC further agree to certify to the Attorney General under the penalties of perjury, within 30 days of the date this agreement is signed, that they have provided such notice to said employees, agents, affiliates and subsidiaries.

10. In the event AASC and TAC, or either of them, return to business in Massachusetts, AASC and TAC agree to inform all future employees, agents, affiliates and subsidiaries who will handle all or a portion of AASC business of the terms of this Assurance of Discontinuance at the time AASC and TAC, or either of them, enters into an agreement or agreements with said future employees, agents, affiliates, and subsidiaries.

11. In the six months following the execution of this Assurance, if the Attorney General identifies any additional members of AASC not identified pursuant to paragraph three (3)

above the Attorney General agrees to notify AASC and AASC agrees to make refunds according to the procedure described in paragraph five (5) above within thirty (30) days of receipt of the Attorney General's notice to AASC.

12. This Assurance of Discontinuance in no way impairs any right to private action, if any, which any consumer may have against AASC and TAC, or either of them.

13. AASC and TAC agree within sixty (60) days of the filing of this Assurance of Discontinuance to pay \$7,500 for costs of this investigation to the Attorney General's Local Consumer Aid Fund, as established by G.L. c.12, §11G. The said sum is not intended as an indication of sanction, fine or penalty.

14. AASC and TAC have entered into this Assurance in consideration of the forbearance by the Attorney General from commencing an action under G.L. c. 93A, §4 at this time for the alleged unfair acts and practices earlier set forth in this Assurance.

15. The terms of this Assurance shall not relieve AASC and TAC of their obligations to comply with the requirements of any statutes, regulations or other laws, including amendments and additions thereto, applicable to the transactions and activities which are the subject of this Assurance or which apply to any other transactions or activities engaged in by the defendant.

15. The below named officials of AASC and TAC attest that he or she is authorized to enter into this Assurance on behalf of the corporation.

16. By virtue of the provisions of G.L. c.93A, §5, each violation by AASC and TAC, or any of them, of the terms of this Assurance shall constitute prima facie evidence of a violation of G.L. c.93A, §2(a) in any civil action or proceeding hereafter commenced by the Attorney General.

AASC and TAC agree to comply with the agreement herein contained. Based on AASC's and TAC's undertakings, as set forth above, the Attorney General accepts this Assurance of Discontinuance.

AMERICAN ASSOCIATION FOR
SENIOR CITIZENS

SCOTT HARSHBARGER
ATTORNEY GENERAL

By: Donald J. Berlin

By: Virginia A. Hoefling

THE ADMINISTRATIVE COMPANY, INC.

Virginia A. Hoefling
Assistant Attorney General
Consumer Protection Division
Public Protection Bureau
One Ashburton Place
Boston, MA 02108
(617) 727-2200

By: [Signature]

Date: 5/31/92

Attachment A

Dear :

The purpose of this letter is to notify you that American Association for Senior Citizens has ceased doing business in Massachusetts.

We understand that our decision raises concerns about your membership. Accordingly, we are making a full refund of all payments made by you to American Association for Senior Citizens and cancelling all benefits of membership.

Enclosed is our check in the amount of _____.

Very truly yours,

3017D

OUTLINE OF REMARKS
COLLEGE OF THE HOLY CROSS
WORCESTER, MA
MAY 20, 1993

HEALTH INSURANCE

Long Term Care
Long term care and Medicaid eligibility

Medicare Supplement (Medi-gap)

Discount plans (ancillary health care providers)
Prescription drugs, vision care, dental plans

Replacement of health insurance

Over-insurance

Dread disease policies (e.g., cancer-only)

Disability benefits

LIFE INSURANCE

Direct-marketed insurance: compare costs
limited benefits?
decreasing face value?

Rolling over assets into insurance products, surrendering
paid-up policies

Insurance products as investments (universal life);
annuities

Financial planners; insurance advisors

Replacement regulations

Insurance to fund pre-fund funerals: regulated by DOI,
Board of Registration

PROPERTY AND CASUALTY INSURANCE

Getting the best deal available: discounts; competitive
rates for homeowners.

Protecting yourself from fraud or premium theft: Get a
copy of your policy; Make sure your agent gives you receipts;
mortgage lenders

MISCELLANEOUS:

Legal Service plans
Warranty Coverages (Auto repairs, home warranties)

Help for consumers: Consumer services, Special Investigations

Richard A. Cody, Esq.

Jean F. Farrington, Esq.

THE
MEDICARE
1993 HANDBOOK

**INCLUDING INFORMATION
FOR BENEFICIARIES ON:**

- ★ **MEDICARE BENEFITS**
- ★ **PARTICIPATING PHYSICIANS
AND SUPPLIERS**
- ★ **HEALTH INSURANCE TO
SUPPLEMENT MEDICARE**
- ★ **LIMITS TO MEDICARE
COVERAGE**

Medicare Medical Insurance (Part B) Payments

The Assignment Payment Method

Under the assignment method, your doctor or supplier agrees to accept the amount approved by the Medicare carrier as total payment for covered services: the doctor or supplier agrees to "take assignment."

The assignment method can save you money. The doctor or supplier sends the claim to Medicare. Medicare pays your doctor or supplier 80 percent of the Medicare-approved amount, after subtracting any part of the \$100 annual deductible you have not met. The doctor or supplier can charge you only for the part of the \$100 annual deductible you have not met and for the coinsurance, which is the remaining 20 percent of the approved amount. Of course, your doctor or supplier also can charge you for services that Medicare does not cover.

Doctors and certain other practitioners and suppliers must take assignment on all claims for services furnished to Medicare beneficiaries who are eligible for medical assistance through their state Medicaid program, including Qualified Medicare Beneficiaries. (See 'Assistance for Low-Income Beneficiaries,' page 2.)

Participating Doctors and Suppliers

Doctors and suppliers may sign agreements to become Medicare participating. Medicare-participating doctors and suppliers have agreed in advance to accept assignment on all Medicare claims. Doctors and suppliers are given the opportunity to sign participation agreements each year. Medicare-participating doctors and suppliers can display emblems or certificates that show they accept assignment on all Medicare claims.

The names and addresses of Medicare-participating doctors and suppliers are listed (by geographic area) in the *Medicare-Participating Physician/Supplier Directory*. You can get the directory for your area free of charge from your Medicare carrier (see pages 39 to 44); or you can call your carrier and ask for names of some participating doctors and suppliers in your area. Also, this directory is available for you to use in Social Security offices, state and area offices of the Administration on Aging, and in most hospitals.

When Your Doctor Does Not Accept Assignment

If your doctor or supplier does not accept assignment, you must pay the doctor or supplier directly. You are usually responsible for the part of your bill that is more than the Medicare-approved amount since your doctor or supplier did not agree to accept the Medicare-approved amount as payment in full. In this case, Medicare pays you 80 percent of the approved amount, after subtracting any part of the \$100 annual deductible you have not met.

Even though a doctor does not accept assignment, for most covered services, there are limits on the amount that he or she can actually charge you. In 1993, the most the doctor can charge you is 115 percent of what Medicare approves (see "Medicare Approved Amounts," page 29.) Doctors who charge more than these limits may be fined.

If you think you have been charged more than the limiting charge, ask the doctor for a reduction in the charge. If you have already paid more than the charge limit, ask for a refund. If you cannot get a reduction or refund, you can call your Medicare carrier and ask for assistance.

Some states have laws that could further reduce your medical costs. If you live in one of the states listed below, you can ask the state office listed here about the laws in your state:

Connecticut:

Connecticut Department
of Aging
CONNMAP
175 Main Street
Hartford, CT 06106
1-800-634-8852

Massachusetts:

Executive Office of
Elder Affairs
1 Ashburton Place
Boston, MA 02108
1-800-882-2003

Pennsylvania:

Department of Aging
Market Street State Office Bldg.
400 Market Street
Harrisburg, PA 17101
(717) 783-8975

Rhode Island:

Department of Elderly
Affairs
160 Pine Street
Providence, RI 02903-3708
1-800-322-2880

Vermont:

Department of Aging
and Disabilities
103 South Main Street
Waterbury, VT 05676
1-800-642-5119

New York:

State Office for the Aging
2 Empire State Plaza
Albany, NY 12223
1-800-342-9871 (toll-
free in New York)
(518) 474-5731

Three Payment Examples

The annual Part B deductible has been met

| | Doctor's Bill | Medicare Approved Amount * | Medicare Pays | Beneficiary Responsible For |
|--|------------------|----------------------------------|--------------------------------|---|
| Doctor A accepts assignment | \$480 | \$400 | \$320 (80% of approved amount) | \$80 (20% of approved amount) |
| Doctor B does not accept assignment and charges no more than the limiting charge | \$437 | \$380 | \$304 (80% of approved amount) | \$133 (difference between the \$437 actual charge—which is also the limiting charge—and Medicare payment) |
| Doctor C does not accept assignment and charges more than the limiting charge | \$500 | \$380 | \$304 (80% of approved amount) | \$133 (difference between the \$437 limiting charge and Medicare payment) |

* The Medicare approved amount is less for non-participating physicians than for participating physicians.

Special rule for doctors performing elective surgery: Medicare law requires doctors who do not take assignment for elective surgery to give you a written estimate of your costs before the surgery if the total charge for the surgical procedure is \$500 or more. If the doctor did not give you a written estimate, you are entitled to a refund of any amount you paid him or her over the Medicare approved amount.

Many doctors and suppliers who do not take assignment on all claims may take assignment on some or most claims. Ask your doctor or supplier whether he or she will take assignment on your claims.

Three payment examples for the same service are shown above. Dr. A participates in the Medicare program and therefore accepts assignment on the claim. Drs. B and C do not participate and do not accept assignment. In all three examples, the beneficiary has already met the \$100 deductible. Even though Dr. A's bill is not the lowest, the beneficiary pays the least for Dr. A's services. Also, even though Drs. B and C charge different amounts, the beneficiary pays the same amount because of the limiting charge.

Participating Providers

Hospitals, skilled nursing facilities, home health agencies, hospices, comprehensive outpatient rehabilitation facilities, and providers of outpatient physical and occupational therapy and speech pathology services are all participating providers under Medicare Part B. They

submit their claims to Medicare. Medicare subtracts any deductible you have not met and any coinsurance amount and pays the provider. The provider must accept the Medicare-approved amount as payment in full for covered services. The provider bills you only for any deductible and coinsurance amounts you owe.

Medicare Approved Amounts

Medicare Part B payments are based for the most part on Medicare fee schedule amounts. The fee schedule for physicians and certain suppliers lists payment for each Part B service and takes into account geographic variation in the cost of practice. The fee schedule amount is often less than the actual charges billed by doctors and suppliers. Part B usually pays 80 percent of the fee schedule amount, even if it is less than the actual charge.

When a Part B claim is submitted, the carrier compares the actual charge shown on the claim with the fee schedule amount for that service. The Medicare-approved amount is the lower of the actual charge or the fee schedule amount.

Submitting Part B Claims

Doctors, Suppliers and Other Providers Must Submit Claims for You

Since September 1, 1990, doctors, suppliers and other providers of Part B services have in most cases been required to submit Medicare claims for you

even if they do not take assignment. They must submit the claims within one year of providing the service to you or may be subject to certain penalties. (If you have other health insurance that should pay before Medicare, you can submit your claims yourself. See 'Filing Your Own Claims,' page 32.)

You should notify your Medicare carrier if your doctor or supplier refuses to submit a Part B Medicare claim for you if you believe the services may be covered by Medicare. (Phone numbers and addresses of carriers are listed on pages 39 to 44.)

How Does the Doctor or Supplier Submit Claims?

Your doctor or supplier must submit a form, called HCFA-1500, requesting that Medicare Part B payment be made for your covered services, whether or not assignment is taken. The doctor or supplier completes the HCFA-1500 form and shows it to you. You sign the form and then the doctor or supplier sends it to the proper Medicare carrier.

If your claim is for the rental or purchase of durable medical equipment, a doctor's prescription, or certificate of medical necessity, must be included with the claim. The prescription must show the equipment you need, the medical reason for the need, and an estimate of how long the equipment will be medically necessary.

If You are Enrolled in a Coordinated Care Plan

If you are enrolled in a coordinated care plan—a prepaid health care organization such as an HMO—a claim will seldom need to be submitted on your behalf. Medicare pays the HMO a set amount and the HMO provides your medical care. In most cases, you are required to receive all non-emergency care through your HMO, or through arrangements they make before you receive care. However, if you get an out-of-plan service, the claim should be submitted directly to your HMO.

If your doctor or supplier needs an address, consult your HMO membership handbook, or contact the HMO.

Submitting Claims to the Railroad Retirement System

If you get Medicare under the Railroad Retirement System, the doctor or supplier must submit your claims to The Travelers Insurance Company office that serves your region. Regional offices of The Travelers are listed in *Your Medicare Handbook for Railroad Retirement*

Beneficiaries, which is available at any Railroad Retirement office.

Explanation of Your Medicare Part B Benefits Notice

After your doctor, provider, or supplier sends in a Part B claim, Medicare will send you a notice called *Explanation of Your Medicare Part B Benefits* to tell you the decision on the claim. An illustration of the notice is shown on page 31.

The sample notice on page 31 is for services of a doctor and shows what charges were made and what Medicare approved. It shows what the co-payment is and what Medicare is paying. If the \$100 annual deductible had not been met, that would also be shown. The notice gives the address and toll-free telephone number for contacting the carrier. Note that this doctor did not take assignment, so the limiting charge is shown. Notices for other Part B services are much like the ones for doctor services.

Please read your notices carefully. If you believe payments were made for services or supplies you didn't receive, or payments are otherwise questionable, call or write your carrier.

This is not a bill.

Explanation of Your Medicare Part B Benefits

JOHN D DOE:
APARTMENT 12C
65 WOODLAWN DRIVE
BALTIMORE, MARYLAND 21207-1111

Your Medicare number is: 123-45-789A

Summary of this notice dated June 1, 1992

| | |
|----------------------------|-----------|
| Total charges: | \$ 300.00 |
| Total Medicare approved: | \$ 180.00 |
| We are paying you: | \$ 144.00 |
| Your total responsibility: | \$ 216.00 |

Details about this notice (See the back for more information)

Control number 0000-0000-0000

You received these services from your provider: Elm Street Clinic, Mailing address: 123 Elm Street, Baltimore, Md. 21228

| Services and Service Codes | Dates | Charge | Medicare Approved | Notes |
|---|-----------------|-----------|-------------------|-------|
| Dr. Mary Smith 3 office visits (00000) | May 01-08, 1992 | \$ 300.00 | \$ 180.00 | a,b |

Your provider did not accept assignment. We are paying you the amount that we owe you. See #4 on the back of this notice.

Notes:

- a The approved amount is based on the fee schedule.
- b Your doctor did not accept assignment for this service. Under federal law, your doctor cannot charge more than \$216.00

Here's an explanation of this notice:

| | | |
|---|----------|---|
| Of the total charges, Medicare approved | \$180.00 | See #4 on the back. |
| Less Medicare copayment amount | - 36.00 | Your co-payment is 20%. |
| Amount after copay | \$144.00 | |
| We are paying you | \$144.00 | Please cash the enclosed check right away. |
| | | |
| Of the total charges | \$300.00 | |
| Less amount exceeding charge limit | - 84.00 | You are not responsible for this amount which is in excess of the Medicare limiting charge. See note b. |
| | | |
| The total you are responsible for | \$216.00 | The provider may bill you for this amount. |

IMPORTANT: If you have questions about this notice, call (carrier name) at (carrier telephone number) or see us at (carrier walk-in address). You will need this notice if you contact us.

To appeal our decision, you must **WRITE** to us before **December 1, 1992**. See #2 on the back.

ing Your Own Claims

In some cases, you may need to file your own Medicare Part B claim. If you do, send the claim to the carrier responsible for processing Medicare claims in your area. No claims should be sent to the Health Care Financing Administration in Baltimore, Maryland.

To find out whether you need to file your own claim, call or write your Medicare carrier. (Carrier addresses and phone numbers are listed on pages 39 to 44.)

Time Limits

Under the law, there are time limits for submitting your own Medicare Part B claims. For Medicare to make payments on your claims, you must send in your claims within these time limits. You always have at least 15 months to submit claims. The table below tells you exactly what the time limits are.

| Service you get between | Your claim must be submitted by |
|-----------------------------|---------------------------------|
| Jan 1, 1991 & Sept 30, 1992 | Dec 31, 1993 |
| Jan 1, 1992 & Sept 30, 1993 | Dec 31, 1994 |
| Jan 1, 1993 & Sept 30, 1994 | Dec 31, 1995 |

Calling Your Medicare Carrier

Many carriers have installed an automated telephone answering system to help make their response to you faster and more accurate. When you call, if your carrier has a system of this type, you will be connected to a special automated voice system. If you have a touch-tone telephone, follow the instructions you receive over the phone to get information about the status of your claims.

If you need other information or want to talk about a claim, you can ask the system to connect you with a customer service representative at any time. **If you do not have a touch-tone telephone**, stay on the line after you dial and you will be connected to a customer service representative.

Claims for a Person Who Has Died

When a Medicare beneficiary dies, the way Medicare pays Part B claims depends on whether the doctor's or supplier's bill has been paid. (Any Part A payments due to the hospital, skilled nursing facility, home health

agency or hospice will be made directly to the provider of services.)

If the bill was paid by the patient or with funds from the patient's estate, Medicare's payment will be made either to the estate representative or to a surviving member of the patient's immediate family. If someone other than the patient paid the bill, payment may be made to that person.

If the bill has **not** been paid and the doctor or supplier does not accept assignment, the Medicare payment can be made to the person who has or assumes legal obligation to pay the bill for the deceased patient.

Your Medicare carrier can provide additional information about how to claim a Medicare Part B payment after a patient dies.

FRAUD IN THE MEDICAID SYSTEM:
DETECTION & PREVENTION

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MEDICAID FRAUD CONTROL UNIT
Criminal Bureau

Attorney General Scott Harshbarger's Medicaid Fraud Control Unit (MFCU) surpassed totals of the previous 14 years in virtually every statistical category during calendar year 1992. MFCU prosecutors maintained a balanced enforcement approach to combatting fraud, waste and abuse in the Medicaid system by prosecuting providers of health-related services and, where appropriate, exercised civil enforcement authority. The Unit reported a record number (4) of providers who were sentenced to Massachusetts jails in 1992. In addition to returning \$14,394,271.48 to the state's Medicaid Program, MFCU also recorded 79 criminal indictments, 30 individual convictions, four corporate convictions and 17 convictions of other entities.

Pursuant to the provisions of M.G.L. c. 118E, §21A et seq., the Unit negotiated a number of civil settlements and, for the first time, filed consent judgments in Suffolk Superior Court. Total 1992 civil and criminal recoveries amounted to \$2.394 million - a 14-year high. The previous highest amount recovered was \$2.287 million in 1990. In addition to incarceration and monetary recoveries, the Unit also negotiated a \$12 million settlement with the Franciscan Children's Hospital and Rehabilitation Center - the single largest recovery ever in Massachusetts.

MFCU conducted 91 preliminary investigations which resulted in the opening of 26 formal investigations. The Unit received 476 telephone calls/complaints during this 12-month period. Fifty new cases were opened while 63 investigations were terminated and closed.

The Unit received one-third of its referrals from the Department of Public Health - most of which were related to patient abuse and neglect of nursing home residents. Twenty-two percent of the total investigations were generated internally, while 20 percent came from citizen complaints. A comparison of referrals shows that 1992 had the most balanced referral sources of the previous five years, including 1989, when 79 percent of all referrals were generated internally.

Patient abuse prosecutions also increased in 1992. In addition to the convictions reported below, abuse and neglect prosecutions increased significantly from previous years, with most of the 1992 investigative work to result in applications for criminal complaints after January 1, 1993. A total of 14 abuse prosecutions were undertaken against various individuals in the state's long-term care nursing facilities. As stated, that number is expected to increase dramatically during calendar year 1993.

What follows is a case-by-case analysis of criminal and civil matters which have been completed. This report also contains a comparative analysis of the Unit's activities with previous years dating back to 1988.

5. West Springfield Pharmacist Sentenced

A West Springfield pharmacist was sentenced in Suffolk Superior Court to serve 30 days of a six-month term in the House of Correction for filing false Medicaid claims. He was also ordered to pay \$18,000 in restitution. His corporation was ordered to pay \$6,500 in fines. The guilty plea was the result of the filing of false claims for services which were not rendered.

6. Franklin Taxi Cab Owners Convicted

The former owners of a Franklin taxi company were convicted on charges of larceny and Medicaid fraud involving \$10,000. The defendants overbilled the Department of Public Welfare for more expensive individual trips provided to Medicaid recipients when they were actually sharing rides. One of the owners was sentenced to probation and 1,000 hours of community service.

7. Roxbury Pharmacist Pleads Guilty

A Roxbury pharmacy owner was indicted on 22 counts of larceny and 23 counts of submitting false Medicaid claims. The charges relate to the defendant allegedly submitting \$86,700 in false Medicaid claims.

On July 22, 1992, the owner and operator of the pharmacy pled guilty and admitted to submitting bills for payment to the Department of Public Welfare for prescriptions not actually dispensed. He was sentenced to a three-to-five-year suspended term to Cedar Junction and was also ordered to contribute 100 hours of community service and will serve a two-year probation term.

The defendant also pled guilty to larceny and was fined \$12,500 and was ordered to pay restitution in the amount of \$87,000 to the Department of Public Welfare.

8. Springfield Nursing Home Employee Convicted

A former employee of a Springfield nursing home was convicted of patient abuse and assault and battery in Springfield District Court. The victim of the assault was a 75-year-old resident of the facility.

A nurse's aide was sentenced to concurrent six-month suspended jail terms in the House of Correction, and was placed on probation for a period of one year with the special condition that she neither seek nor accept any employment within the health care field during her period of probation.

9. Two Nurse's Aides Admit Abuse

Two former nurse's aides at the Great Barrington Health Care Nursing Home in Great Barrington admitted to facts sufficient to warrant findings of guilty on a number of abuse charges. The two were placed on probation until July 26, 1993, with the condition that they not work at nursing home facilities and that each perform 100 hours of community service.

10. Worcester Nurse's Aide Pleads Guilty

A former nurse's aide at Spring Valley Convalescent Home in Worcester, pleaded guilty to a single count of patient abuse and was ordered to pay a \$500 fine and serve three years probation. He was also sentenced to 100 hours of community service. He was also ordered to supervised probation and will undergo psychiatric counseling during his probation.

PENDING CRIMINAL PROSECUTIONS

1. Springfield Homecare Agency and Owner Indicted

A Springfield home health care agency and its owner were indicted on charges that they filed false Medicaid claims that bilked the state Department of Public Welfare of \$5,250.

The defendants were each charged by a Suffolk County Grand Jury with 13 counts of filing false claims and a single charge of larceny in excess of \$250. The charges are pending in Suffolk Superior Court and are expected to be tried in February, 1993.

2. Former Nursing Home Owner Indicted

Norfolk and Suffolk County Grand Juries returned multiple indictments charging the former owner and administrator of a Dorchester nursing home with embezzlement, larceny, welfare fraud and unemployment compensation fraud involving more than \$30,000. The former owner of the nursing home was indicted on four counts of larceny, one count of perjury, three counts of making false representation and 15 counts of false statements to obtain unemployment benefits. The indictments are pending in both counties and are expected to be tried in early 1993.

3. Former Fairhaven Lawyer Indicted

A former Fairhaven lawyer and nursing home owner was indicted on larceny, perjury and the filing of false Medicaid claims as part of a scheme which allegedly totaled \$75,000.

The defendant was indicted on two counts of larceny, 13 counts of filing false Medicaid claims and 13 counts of perjury. Also indicted were Center Green Rest Home, Inc., of Fairhaven, and Gardners Grove Nursing Home, Inc., of Swansea.

The former lawyer was also indicted on larceny, perjury and filing false claims in his role as Trustee of a realty trust. The 38-count indictment alleges a period of fraudulent activity from May 1987 to June of 1992.

A Bristol County Grand Jury also indicted him on forgery counts related to the Suffolk County indictments.

The defendant voluntarily suspended the practice of law in 1991 in lieu of disbarment proceedings by the state Board of Bar Overseers.

4. East Boston Nursing Home Aide Charged With Abuse

A nursing home aide, while employed at an East Boston nursing home, allegedly pushed a resident of that facility. He has been charged with patient abuse and assault and battery as a result of the incident. The resident fell and struck his head. The trial was scheduled for December 21, 1992 in East Boston District Court.

5. Plymouth Woman Charged With Patient Abuse

A nursing home employee has been charged with abuse and neglect while manipulating the leg of an elderly resident and asking in a threatening tone, "Are you going to be good?". The resident's medical condition was such that the defendant's handling of the resident was very painful to her. The defendant was aware of the victim's condition. Trial is scheduled May 26, 1993, in Plymouth District Court.

6. Nursing Home Aide Charged With Abuse

An aide formerly employed at a Brockton nursing home has been charged with striking a resident twice. Trial is scheduled February 12, 1993, at Brockton District Court.

7. Nursing Home Aide in Default

A Brighton nursing home aide is in default in Concord District Court. He has been charged with abuse and indecent assault and battery. A warrant was issued for his arrest on November 19, 1992.

CIVIL SETTLEMENTS

1. Boston Hospital Enters Largest Settlement Ever (\$12 Million)

In June, Attorney General Scott Harshbarger's Medicaid Fraud Control Unit entered into the largest civil settlement in its 14-year history when a Boston hospital and rehabilitation center agreed to an unprecedented \$12 million dollar civil settlement.

The settlement with the Attorney General required the hospital to make a total of \$9.5 million in monetary settlements and restitution to the Commonwealth over a five-years-period, including:

- * cash repayments to the Medicaid program;
- * reductions in future Medicaid reimbursements to the hospital; and
- * relinquishing the right to \$3 million in unpaid claims due from the state.

The settlement also contains a Community Care Initiative totalling more than \$2.5 million, including:

- * \$1.5 million in free care to low-income families in need of pediatric medical services;
- * a \$1 million mobile medical van to provide medical and diagnostic services throughout the community; and
- * an interpreter services program at the hospital to serve the increasing needs of the community.

The hospital also agreed to a series of management and board reforms that will allow for greater control and accountability over the fiscal affairs of the hospital.

2. Settlement Reached with Brockton Hospital (\$499,500)

The Medicaid Fraud Control Unit reached a \$499,500 civil settlement with a Brockton hospital stemming from the alleged improper receipt of Medicaid funds. A related health care company entered into the agreement on behalf of the now-defunct hospital.

The investigation focused on the alleged improper receipt of Medicaid monies from 1984 to 1988. Allegations included billing for services performed by other medical entities which were not enrolled in the Medicaid program and, therefore, not entitled to receive fees for services provided to Medicaid recipients.

3. Holyoke Dentist Enters Civil Settlement (\$300,000)

The owner and operator of dental clinics at two malls in Holyoke and Chicopee agreed to pay a total of \$300,000 as a result of an investigation of questionable billing practices. The investigation centered around the dentist allegedly being paid for services that were not reimbursable under the Medicaid program.

4. Revere Pharmacy Settles Overpayment Case (\$300,000)

A Revere pharmacy entered into a civil agreement with the Attorney General's Medicaid Fraud Control Unit for violations of the Medicaid rules and regulations relating to pharmacy providers. As part of a consent judgment filed in Suffolk Superior Court, the pharmacy agreed to repay the Department of Public Welfare \$300,000 in restitution.

5. Springfield Pharmacy Settles Medicaid Case (\$250,000)

A \$250,000 civil settlement with a Longmeadow pharmacist and Springfield pharmacy for alleged violations of state Medicaid laws and regulations was filed in Suffolk Superior Court. The owner and operator of the pharmacy entered into a civil consent judgment whereby \$250,000 was paid to the Department of Public Welfare for payments allegedly received as a result of false statements and misrepresentation to the Commonwealth.

6. Brookline Physician Signs Consent Decree (\$90,000)

A Brookline physician entered into a civil consent decree with the Attorney General whereby \$75,000 was paid to the Department of Public Welfare as restitution for overpayments received from the Medicaid program. The doctor also agreed to pay \$15,000 to the Attorney General's office for the cost of the investigation.

7. Agreement reached with Brockton Dentist (\$60,000)

The Medicaid Fraud Control Unit reached a \$60,000 civil agreement with a Westwood dentist who operates a dental center in the Westgate Mall in Brockton. The Medicaid investigation centered around allegations that the dentist upgraded service codes and received medical payments higher than that to which he was entitled.

8. Taxi Company Agrees to Repay Overpayment (\$60,000)

A Cambridge taxi company entered into a settlement agreement with the Attorney General's Medicaid Fraud Control Unit and paid \$50,000 in damages and \$10,000 for costs of investigation for violations of various rules and regulations of the Department of Public Welfare.

9. Rest Home Owner Pays Restitution (\$55,000)

The Medicaid Fraud Control Unit entered into a \$55,000 civil settlement with the owner and operator of a Jamaica Plain rest home for alleged violations of state laws and regulations in maintaining patients' personal needs bank accounts. The civil agreement required the owner and the rest home to pay \$50,000 directly to the residents for alleged mismanagement and misappropriation of the bank accounts. The owner also paid \$5,000 to the Attorney General's office for costs of investigation.

10. Lawrence Doctor Settles Claims (50,000)

A Lawrence doctor entered into a settlement agreement with the Attorney General's Medicaid Fraud Control Unit and agreed to repay the Department of Public Welfare \$50,000 as a result of computer errors generated by his billing clerk for billing of medium consultations instead of medium office visits. The physician repaid a total of \$50,000, including \$5,000 for the cost of the Attorney General's investigation.

11. Stoughton Obstetrician Makes Restitution (\$30,000)

The Medicaid Fraud Control Unit and a Stoughton obstetrician entered into a civil settlement involving \$30,000 in restitution and investigation costs. The doctor allegedly overcharged the Medicaid program for the delivery of services. The settlement reached with the Attorney General consisted of \$6,250 in overpayments received during the period of May 1990 to October 1991, and \$19,750 in penalties. In addition, the Attorney General recovered \$4,000 for the cost of the investigation.

12. Transportation Provider Agrees to Repayment of Overbilling (\$30,000)

A Lowell transportation provider entered into a civil settlement with the Attorney General and agreed to pay the Department of Public Welfare \$30,000 in restitution. The transportation company, a wheelchair van provider, was transporting Medicaid recipients who were ambulatory and was billing trips for multiple rides as more expensive individual rides when recipients shared the ride.

13. Medford Clinics Reimburse Medicaid Program (\$21,000)

Two Medford clinics entered into civil settlements with the Attorney General's Medicaid Fraud Control Unit.

The clinics paid \$19,529 in restitution to the Department of Public Welfare. The monies represent overpayments made to the clinics for medical services performed but incorrectly billed by the clinics. The clinics also paid \$2,000 to the Office of the Attorney General for cost of investigation.

14. Two Doctors Agree to Pay Restitution (\$20,000)

Two Allston doctors paid \$17,000 to the Department of Public Welfare in restitution based on their billing of routine physical therapy services to Medicaid recipients by an employee who was not a licensed physical or occupational therapist. In addition, the two agreed to pay the Attorney General's office \$3,000 for the cost of investigation.

15. Cab Owner Settles Billing Case (\$17,500)

A Sharon taxi owner entered into a settlement agreement with the Medicaid Fraud Control Unit for improper Medicaid billing practices. In addition to the \$15,000 in restitution to the Department of Public Welfare, the owner also paid \$2,500 for the cost of the Attorney General's investigation.

16. Northampton Physician Signs Consent Judgment (\$17,500)

The Medicaid Fraud Control Unit obtained a \$17,500 consent judgment with a Northampton physician for alleged violations of state Medicaid laws and regulations. The terms of the agreement require the doctor to pay \$10,000 in civil penalties, in addition to the \$5,000 payment to the Department of Public Welfare, as well as a payment of \$2,500 to the Attorney General's office for the cost of the investigation.

17. Quincy Convalescent Home Pays \$16,745

The Medicaid Fraud Control Unit and a Quincy nursing home entered into a civil settlement involving misappropriation of Medicaid funds from patients' accounts into the facility's business operating account. As part of the agreement, the convalescent home returned approximately \$6,000 to the patients' accounts. The nursing home was also fined \$4,745 for failure to have proper authorization forms on file to manage the patients' funds. In addition, the MFCU recovered \$6,000 to cover the cost of its investigation.

18. Lawrence Dentist Settles, Pays \$15,000

A Lawrence dentist entered into a settlement agreement with the Attorney General's Medicaid Fraud Control Unit and paid \$11,000 to the Department of Public Welfare for billings for an incorrect service code. He also agreed to pay \$4,000 for cost of the investigation.

19. Attleboro Cab Company Returns \$10,000

An Attleboro cab company entered into a settlement agreement with the Attorney General's Medicaid Fraud Control Unit. The discrepancies found totalled roughly \$5,000. Under the agreement, the cab company paid \$10,000 in restitution to the Department of Public Welfare.

20. Hull Pharmacy Enters Settlement, Pays \$10,000

The Attorney General's Medicaid Fraud Control Unit entered into a settlement agreement with a Hull pharmacy. The pharmacy agreed to pay the Department of Public Welfare \$8,500 for errors in billing and \$1,500 for cost of the Attorney General's investigation.

21. Springfield Transportation Service Signs Agreement, Pays \$7,500

A transportation service in Springfield, a wheelchair van provider, entered into a civil agreement with the Attorney General's Medicaid Fraud Control Unit and paid the Department of Public Welfare \$7,500 in restitution. The provider was found to be transporting recipients who were ambulatory and also billed multiple riders as more expensive individual rides. The service also agreed to voluntarily and permanently withdraw as a provider of transportation services in the Medicaid program.

22. Lowell Van Company Settles, \$6,000 Recovered

A Lowell-area wheelchair van provider was found to be transporting recipients who were ambulatory. The company entered into a civil settlement agreement with the Attorney General and paid the Department of Public Welfare \$6,000 in restitution.

23. Cape Van Chair Company Pays Back \$5,000

A Mattapoisett wheelchair van provider was transporting recipients who were ambulatory and was cited by Attorney General Scott Harshbarger's Medicaid Fraud Control Unit for discrepancies in the mileage billed to Medicaid. The provider entered into a civil settlement and paid the Department of Public Welfare \$5,000 in restitution.

24. Optometrist Pays \$2,000 to Settle Claims

A Brockton optometrist entered into a settlement agreement with the Attorney General's Medicaid Fraud Control Unit. The optometrist agreed to repay the Department of Public Welfare \$2,000 in restitution.

OTHER RECOVERIES

1. Medical Lab Pays Back \$499,000

The Medicaid Fraud Control Unit assisted in a joint Federal-State inquiry into the billing practices of a Randolph medical laboratory company. As a result of the inquiry, the U.S. Department of Justice and U.S. Department of Health and Human Services reached a \$499,000 civil settlement with the medical laboratory company. The investigation concerned an alleged kickback scheme with physicians to provide holter monitoring services to Medicare and Medicaid recipients during January, 1985 through December, 1988.

2. MAC (Maximum Allowable Cost) Pharmacy Recovery (\$1.7 Million)

Attorney General Scott Harshbarger's Medicaid Fraud Control Unit identified a Medicaid billing error within the state's Medicaid Pharmacy Program which, upon correction, will result in a \$1.7 million recoupment by the Department of Public Welfare's Medicaid Program. Medicaid payments to providers such as pharmacies are based upon a computer billing claims process. Due to a computer billing error, pharmacies across the state were paid a higher amount than allowed during a six-month period. MFCU pharmacy investigators identified the error and reported it to DPW, which began recoupment proceedings.

MEDICAID WHO IS ELIGIBLE ?

PREGNANT WOMEN

CHILDREN UNDER 18

THOSE RESPONSIBLE FOR DEPENDANT CHILDREN

BENEFICIARIES OF SSI AND AFDC

AGED 65 AND OVER

MEDICAID INCOME LIMITS

PERSONS IN THE COMMUNITY

- **INDIVIDUAL - \$568.00 PER MONTH**
- **COUPLE - \$766.00 PER MONTH**

**AMOUNTS ABOVE THE LIMIT SUBJECT RECIPIENT
TO "SPEND DOWN" REQUIREMENTS.
106 C.M.R. 506.430**

INSTITUTIONALIZED PERSONS

- **PERSONAL NEEDS ALLOWANCE - \$60.00**

COMMUNITY SPOUSE/INSTITUTIONALIZED SPOUSE

- **COMMUNITY SPOUSE - \$1,769.00**

**COMMUNITY SPOUSE HAS A RIGHT TO SHARE IN
INSTITUTIONALIZED SPOUSE'S INCOME UP TO THE
SPOUSAL MAINTENANCE NEEDS ALLOWANCE OF
\$1,769.00. THIS AMOUNT IS INCREASED EACH YEAR
WITH THE CONSUMER PRICE INDEX. 106 C.M.R.
506.220(B).**

MEDICAID ASSET LIMITS

- **INDIVIDUAL - \$2000.00**

- **COUPLE - \$3000.00**

- **COMMUNITY SPOUSE - ONE-HALF OF THE TOTAL UP TO A CAP OF \$70,740.00. OR, AT LEAST \$14,148.00 IF COUPLE'S TOTAL ASSETS TOTAL LESS THAN \$28,296.00. THIS AMOUNT IS INCREASED EACH YEAR WITH THE CONSUMER PRICE INDEX. 106 C.M.R. 505.180.**

MEDICAID NONCOUNTABLE ASSETS

- HOME, WHICH IS PRINCIPLE PLACE OF RESIDENCE IF IT IS IN MASSACHUSETTS AND (i)NURSING HOME RESIDENT INTENDS TO RETURN TO IT; (ii) SPOUSE OR CERTAIN OTHER RELATIVES LIVE IN THE HOME; (iii) OR APPLICANT HAS LONG TERM CARE INSURANCE.
- LIFE INSURANCE WITH FACE VALUE OF \$1500 OR LESS
- HOUSEHOLD GOODS AND PERSONAL BELONGINGS
- ONE CAR, IF USED FOR DAILY TRANSPORTATION
- BURIAL PLOT FOR MEDICAID APPLICANT, AND IMMEDIATE FAMILY
- BURIAL CONTRACTS AND UP TO \$1500.00 IN A SEPARATE BURIAL ACCOUNT FOR APPLICANT AND SPOUSE.

TRANSFER OF ASSETS

THIRTY MONTH RULE - THE LAW IMPOSES A TIME PERIOD OF INELIGIBILITY FOR ANY TRANSFER OF A COUNTABLE ASSET OR PRINCIPAL PLACE OF RESIDENCE FOR LESS THAN FAIR MARKET VALUE. THE PERIOD OF INELIGIBILITY IS THE LESSER OF THIRTY MONTHS OR THE NUMBER OF MONTHS CALCULATED BY DIVIDING THE VALUE OF WHAT WAS TRANSFERRED BY THE AVERAGE MONTHLY COST OF PRIVATE PAY NURSING HOME IN THE STATE. 106 C.M.R. 505.125

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WILLS

A will is a document which provides a means by which you can leave instructions to be carried out after your death as to the disposition of your property, designation of a guardian for minor or incompetent children, and naming an executor to be responsible for the administration of your estate and the distribution of your property. Those instructions can be enforced by the Probate Court through the probate procedure. A will governs distribution of property standing in the decedent's name alone or which fails to designate a beneficiary (e.g., life insurance, IRA's, etc.). A will should also name a person to administer the estate and directs the court as to the disposition of the property according to the wishes of the deceased. A well drafted will can reduce the cost of probating the estate.

If you have not prepared a will, the Commonwealth of Massachusetts has prepared a specific statutory plan for the disposition of property. It is defined by the law of intestacy. The law of intestacy divides your property in shares among your family members, depending upon who survives you. If you do not have a spouse, children or blood relatives, the state will inherit your entire estate.

The rules of intestacy provide for different divisions of your estate depending upon whether you are survived by a spouse, by a spouse and children, only by children, by a spouse and other blood relatives but no children, or just by blood relatives in accordance with their relationship to the decedent. This means that your spouse may have to share your estate with your children or in-laws, or that all of your children will receive the same amount regardless of need. There is no division based upon who is in greatest need, most loved or loathed, or who took care of the decedent. There will be no bequests to friends, more distant relatives or charities. The intestacy statute also decides who will administer your estate and requires certain procedures which may be cumbersome to your family in administering your estate. This not only means the person you want for this position, but may

also lead to a court contest as to who should be appointed. If you have minor or incompetent children, the Court will decide who will serve as their guardian, and that may not be the individual you would want to care for your loved ones. In addition, depending upon the size of your estate, your survivors may end up paying estate taxes which might have been avoided. If you do not like the estate plan prepared by the Commonwealth of Massachusetts, it is up to you to take control of your estate and its distribution by establishing your own will.

There are several reasons you should have a will. Perhaps the most important reasons to make a will are that it allows you to:

- (1) make decisions as to the disposition of your property; and
- (2) designate guardians for your children, rather than allowing the Commonwealth of Massachusetts to make them for you. Another reason to have a will is to specifically designate the person responsible for the administration of your estate. Your ability to reduce or eliminate taxes upon your death and the death of your spouse may depend on the tax aspects set forth in your will.

You should update your will in the following instances:

1. You have married or divorced since you made your last will. If you marry, your will is automatically revoked unless the will specifically references your forthcoming marriage. If you divorce, only the bequests or fiduciary designations to your former spouse are revoked.

2. There have been changes among your beneficiaries through birth, marriage, divorce or death.

3. You have moved from one state to another.

4. The size of your estate has changed significantly since the date of your last will.

5. You have changed your mind about beneficiaries, guardians, or executors.

There are specific, statutory formalities required in the signing of a document intended to be a will. It must be in writing, signed by you or by a person instructed by you to sign in your behalf, and witnessed by at least two others. You must be eighteen years or over and of sound mind. It is advisable that the witnesses not be persons who are beneficiaries under your will.

An attorney should prepare your will. A lawyer can raise issues you may not have considered, thus avoiding many of the problems which can arise, including forgotten relatives, unintended beneficiaries, will contests, and litigation. A lawyer can also advise you regarding tax ramifications, property transfer rules, and changes in the law which may affect your estate. Although many

people consider using pre-printed forms in which they fill in the blanks, such documents are not tailor-made to address your specific situation and may result in raising more questions than answers, which may ultimately have to be decided through litigation.

If you have a will and wish to make changes, you should consult your lawyer. You should never alter your original will by crossing out lines or adding words; the court may not honor these changes, and they could result in invalidating your entire will.

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Durable Power of Attorney

A durable power of attorney is a power of attorney which allows an individual (the "Principal") to appoint a third party (the "Agent") to act in his or her behalf in specified situations, and such power shall continue in spite of the Principal's later loss of capacity.

At common law, an agency arrangement automatically terminates upon the incapacity or death of the Principal. However, the durable power of attorney, which is authorized by state statute, enables an Agent to act or continue to act even if the Principal is disabled. The legal requirements of a durable power of attorney vary from state to state. You should consult your attorney to determine the correct format.

For example, some states place restrictions on who may be appointed as the Agent and limits the type of property that may be subject to the power. In contrast, Massachusetts does not require the Agent named to be a relative of the Principal, does not place restrictions on the type of property which may be dealt with, and allows the Principal to designate in advance who should be appointed guardian or conservator, should the need for the court appointment of a fiduciary arise.

There are basically two types of durable powers of attorney:

- A. Immediate Effect: This durable power of attorney becomes effective upon execution of the instrument and gives the Agent immediate power.
- B. Springing Power: The springing durable power of attorney becomes effective at some point in the future when specified events occur; i.e., upon the certificate of the Principal's physician that the Principal is unable to care for himself.*

*N.B. This type of power of attorney is usually coupled with an escrow agreement as to when the power of attorney is released.

Durable powers of attorney can be as broad or as narrow as the Principal desires. Drawn narrowly, they can limit a third party's authority, allowing them only to fund a trust previously established, or drawn broadly, they can execute virtually any document the Principal could; for example, deeds, mortgages, life insurance, benefits, tax returns, checks, stock certificates, etc.

The Principal may name more than one individual as the Agent, or execute several powers of attorney giving specific people specific responsibilities in each document. For example, the Principal may name one individual to manage his/her interest in rental property and a different individual to manage personal affairs. The Principal also may restrict areas or types of transactions which he/she does not want the Agent to undertake. Durable powers of attorney can be irrevocable or revocable - the decision is up to the Principal. If revocable, the document should specify the appropriate method of revocation.

Advantages

1. Maximizes flexibility for care of one's property.
2. Maximizes the duration of independence of Principal.
3. Avoids the expenses and difficulties associated with Probate Court proceedings.
4. Inexpensive to implement and administer.
5. Does not require the Agent to become the owner of property under his care.
6. Takes effect when needed without any waiting period.

Disadvantages

1. Use of power may be difficult in certain situations, e.g., banks, insurance companies and stock transfer agents requiring their own forms.
2. The requirements differ from state to state.
3. Lacks the protections offered by court supervision.
5. Terminates upon Principal's death.

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HEALTH CARE PROXY

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The Health Care Proxy law went into effect in the Commonwealth of Massachusetts on December 19, 1990. The new law enables you to appoint an individual to act as your agent to make health care decisions for you in the event that you are unable to make such decisions for yourself.

The Health Care Proxy allows the designated individual, a "Health Care Agent," to make any and all medical treatment decisions in your behalf, including decisions relating to life sustaining treatment, subject to any limitations you decide to establish in the Health Care Proxy document. The Health Care Proxy is broader in scope than a Living Will.

A Living Will was an expression of intent with regard to withholding medical treatment or life support in particular circumstances. The Living Will commonly requested that measures such as the use of a respirator, hydration, enteral feedings, mechanical resuscitation of the heart, not be administered if the patient was in a coma, persistent vegetative state or terminal illness when there is no reasonable likelihood of recovery. The Living Will was never authorized by statute in the Commonwealth of Massachusetts, but was evidence of an individual's intent with regard to the type of care that was consistent with that individual's values and wishes if certain situations arose. Such evidence of intent, if necessary, could be reviewed by a court.

A Living Will was usually designed to give guidance as to the individual's wishes with respect to certain invasive medical interventions in specifically defined situations. The Health Care Proxy may be limited to apply only in the situations described above, but by the language of the statute, has the capacity to go far beyond the authority granted a decision maker in a Living Will. The Health Care Agent under a Health Care Proxy potentially has the power to make decisions regarding any medical treatment if it is determined by your attending physician that you are unable to make informed health care decisions. Since the Living Will was not authorized by statute, it only served as evidence of an individual's intent and was not binding on a health care provider or the Court. The Health Care Proxy is a document specifically authorized by the Massachusetts's Legislature, and if the proper formalities are followed is much more likely to be upheld in court.

For a Health Care Proxy to comply with statutory requirements, it must be in writing, signed by an individual who is at least eighteen years of age and of sound mind and not under any undue constraint or influence, and it must be witnessed by two disinterested parties. The Health Care Agent cannot be an operator, administrator or employee of a hospital, clinic, nursing home, rest home or other facility where the patient is currently residing or who has applied as a resident, unless such potential Health Care Agent is related to the individual by blood, marriage, or adoption. An individual cannot be required to execute or denied the right to sign a Health Care Proxy as a condition of rendering health care services or health insurance coverage.

The Health Care Proxy can give your Health Care Agent broad decision making authority, or can be tailored to be as broad or as narrow as desired. It is possible to grant broad authority with narrow exceptions, or narrow authority which takes effect in limited circumstances. In any event, the Health Care Proxy is only effective when your attending physician has determined that you are unable to make informed decisions regarding your health care. If you wish to change your Health Care Proxy, it may be revoked at any time until such time as a court determines that you are incompetent to make informed health care decisions.

Your health care provider is not required to honor the decision of your Health Care Agent if the decision made by your agent is one which if made by you, your physician would not honor. However, in such a circumstance, your physician must transfer your care to another physician in the same medical facility, or transfer you to another equivalent medical facility which is willing to honor such decisions. If such a transfer of care cannot be arranged, the matter must be resolved by a court.

In preparing a Health Care Proxy, you should inform your attorney as to what authority, and what limitations, if any, you wish to impose upon your Health Care Agent. Further, it is advisable to appoint a Health Care Agent and an alternate who are familiar with your wishes with regard to health care matters, and it is absolutely essential that you discuss these matters with the designated individual(s) in advance. You may want to consult with your doctor, religious advisor or others before you give specific instructions or limitations to you Health Care Agent. If you do not discuss this with them in advance, the statute states that the Health Care Agent shall make the decisions that they deem to be in your best interest. It is a good idea to execute more than one Health Care Proxy, so that you can give originals to your physician, Health Care Agent, Alternate Health Care Agent, and your lawyer. You may want to keep extra copies for your family, religious advisor and others who are close to you. You should keep track of who you have given an original Health Care Proxy in case you later revoke it.

The Health Care Proxy Law enables you to designate in advance the individual or individuals who you want to make decisions regarding your health care in the event that you are unable to speak for yourself. As such it is perhaps the most critical decision of self determination which you may ever make. I strongly encourage everyone to seriously consider preparing a Health Care Proxy.

Prepared by:

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Living Trust

A trust is a fiduciary relationship with respect to property in which the ownership to the property is divided into two parts: legal and beneficial; the trustee holds legal title to the property for the benefit of the beneficial owners of the property (the beneficiaries).

A living trust (a/k/a an inter-vivos trust) is a trust established during the donor's lifetime and may or may not be funded upon its creation. If the trust is not funded upon creation, funds may later be transferred by the donor making a gift to the trust, or via the use of a durable power of attorney in the event of the donor's incapacity, or upon the donor's death through a bequest in a will.

Individuals often create trusts which are funded at their deaths to maximize estate tax savings. Many of these trusts already contain language regarding the administration of the trust during the donor's lifetime which could be used to assist the donor upon his incapacity. The trust instead of being funded upon the donor's death would be funded upon the donor's disability usually through the use of a durable power of attorney to transfer assets into the trust.

Living trusts are usually revocable by the donor at any time provided the donor has capacity to make such a revocation. Upon the donor's incapacity, or upon the donor's death, the trust usually becomes irrevocable.

The trust designates the trustees, successor trustees and a mechanism for future selection of fiduciaries. The trust should carefully delineate the trustee's powers with regard to the administration of the trust property and these powers are generally broader than those which would be granted by a court pursuant to guardianship or conservatorship proceedings. The trust also specifies the distribution of the property after the donor's death, where the property is either distributed to the beneficiaries or continues to be held in trust for the beneficiaries' benefit for a specified time period. Often, revocable trusts are established currently and used to take advantage of estate tax savings, beginning after the death of one spouse and used during the lifetime of the surviving spouse. Another common use is to provide for funding only in the event that both spouses have died, to provide for the needs of the beneficiaries over an extended period of time.

The use of a revocable trust is sometimes preferable to the use of a power of attorney alone because third parties often accept a trustee's authority to act (even where they won't accept an attorney appointed through a durable power of attorney's authority), and the trustee must account to the beneficiaries (usually annually) with regard to his management of the trust.

Advantages

1. Flexibility
2. Accountability
3. Credibility
4. Continuity of management of assets upon the donor's death
5. Revocable during the donor's lifetime (if capable)
6. Reduces probate costs
7. Confidentiality of dispositions
8. May be particularly effective in the management of specialized assets, i.e., sole proprietorships. (N.B. Special care should be taken in the event of Subchapter S corporations.)

Disadvantages

1. There are significant expenses relating to the creation and administration of the trust.
2. Depending upon the type of trust established, it may not be a tax plan.

N.B. In order to preserve assets for Medicaid planning, assets must be transferred outright or to an irrevocable trust.

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MEDICAID

Nursing home care in Massachusetts can cost between \$45,000 and \$55,000 a year. Medicare and private health insurance will pay for the cost of intermediate and skilled nursing care for a very limited period of time. Medicaid will pay for the cost of intermediate and skilled nursing care for an indefinite period, but before a person can qualify for Medicaid, his life savings must be substantially depleted, and if the individual is married, the spouse's savings are in jeopardy.

Long-term care insurance which has only recently become available in Massachusetts is one avenue to be considered. Long-term care insurance can provide the time necessary to enable a family to transfer assets to protect them and pay for long-term care with the use of the insurance proceeds during the Medicaid disqualification period. Unfortunately, these insurance premiums are high and many people cannot afford them.

I. Medicaid Eligibility

To receive Medicaid in Massachusetts, an individual must be: (1) living in the Commonwealth of Massachusetts, (2) must be categorically and (3) financially eligible. An individual can be categorically eligible for Medicaid if he or she is over the age of 65. To be financially eligible for Medicaid, an individual must satisfy a two-part test which imposes a maximum level on both income and assets. If the applicant is seeking Medicaid to pay for long-term care, the applicant must be certified by the long-term care connection of the Department of Public Welfare as being in need of long-term care. For example, Medicaid will not pay for rest home costs.

The Department will complete an assessment of the total value of a couple's assets as of the beginning of the first period of continuous period of institutionalization occurring after September 30, 1989. A request can be made to perform the assessment even if you are not yet making an application for Medicaid.

II. The Asset Test. Assets are divided into two categories, those which the Department of Public Welfare determines are countable and those which it will not count in making its determination of eligibility.

A. Non-countable Assets. The following are non-countable assets with regard to eligibility for Medicaid:

1. A home used as a principal place of residence (which must be in Massachusetts). The rules with regard to the home have changed radically within the last year. The house will be non-countable if any one of the following individuals resides in it: a spouse, child under the age of 21 or who is blind or permanently disabled, a sibling with an equity interest in the home for at least one (1) year, a child who has lived in the home for at least two (2) years and provided care for the parent, a dependent relative. If the applicant owns the house alone, and none of the individuals listed above reside in the home, the Department of Public Welfare can make a determination that the applicant will not reasonably be expected to be returning home and require that the home be liquidated and the proceeds of such liquidation used to pay for the applicant's care. In any event, the Department of Public Welfare will place a lien on the real estate.
2. Life insurance with a face value of \$1,500 or less.
3. One automobile provided that it is used for transportation.
4. Assets designated for burial purposes including a burial plot, stone, prepaid funeral contract, and a burial account which does not exceed \$1,500.
5. Household goods and personal belongings.
6. Business and non-business property which is essential to self support.
7. Proceeds from insurance for the replacement or repair of an asset that is lost, stolen or damaged.
8. Non-business and business property essential to self support.
9. Inaccessible assets. An asset is deemed to be inaccessible if the applicant has no ready access to the asset.

- B. **Countable Assets.** Countable assets include all cash and other real and personal property which is not otherwise exempt or determined to be a non-countable asset. An applicant may not have more than \$2,000 worth of countable assets to be eligible for Medicaid.
- C. **Disqualifying Transfers.** You may not give away your assets in order to qualify for Medicaid. Any transfer of assets which is not for services rendered or for full consideration will constitute a disqualifying transfer and create a disqualification period.

The disqualification period is the lesser of 30 months, or a fraction, the numerator of which is the amount transferred and the denominator of which is \$100 (the amount which Massachusetts has determined to be the average cost of nursing home care per day).

So, if a individual made a disqualifying transfer of their home which was valued at \$150,000, they would be disqualified for the lesser of 30 months or 1,500 days. Since 30 months is a shorter disqualification period than 1,500 days, the applicant would be disqualified from receiving Medicaid benefits for a period of 30 months. If, for example, an individual made a disqualifying transfer of \$15,000, the individual would be disqualified for a period of 150 days (15,000 divided by 100 = 150) which is a much shorter time period than 30 months.

III. **Income Eligibility.** The income eligibility requirements allow an applicant to qualify for Medicaid if his monthly net income falls below a stated amount. Currently, an individual's income after certain exclusions must be less than \$568 per month. Under current law, if an applicant is married, the couple's income must be less than \$650 per month.

IV. The Community Spouse.

- A. **Assets.** Under current Medicaid law, the community spouse may retain the lesser of one-half of the couple's total assets or \$70,740 or \$14,148 if total assets are between \$14,128 and \$28,296; or a court-ordered amount; or an amount determined after a hearing with the Department. Accordingly, if a couple has \$100,000 worth of assets, the community spouse will only be allowed to retain \$50,000. If, however, the couple has \$150,000 of assets, one-half of that would be \$75,000. The community spouse would only be able to retain a maximum of \$70,740. Any of the funds in excess of the \$70,740 would have to be spent for medical care, or the purchasing of non-

countable assets, i.e., funeral contract, burial plot, etc. Once the couple had "spent down" the excess assets so that the applicant has \$2,000 plus the appropriate non-countable assets and the community spouse has \$70,740, and the applicant meets the other eligibility requirements, the applicant will qualify for Medicaid.

- B. **Income.** The community spouse may have insufficient income based on her social security or retirement fund to support herself. Under current law which went into effect as of September 30, 1989, the community spouse is allowed to keep as much of the income of the applicant spouse as is necessary to bring the community spouse's income level up to the "minimum monthly maintenance needs allowance."

The minimum monthly maintenance needs allowance is computed using a formula by calculating 122% of the current income standard for two individuals, or \$1,149, and excess shelter allowance which is an amount by which the community spouse's shelter exceeds 30% of \$1,149. Accordingly, if the community spouse's actual expenses for rent, mortgage, property taxes, insurance, charge for a condominium plus the applicable standard utility allowance exceeds \$298 a month, then the amount which exceeds 30% of \$1,149 will be added to the \$1,149 to determine the community spouse's minimum monthly maintenance needs allowance. The spousal maintenance needs allowance may not exceed \$1,769 per month unless subject to court order or a fair hearing.

In Massachusetts, the standard utility allowance is \$298, which is under \$345 a month. Accordingly, most community spouses in Massachusetts will have the minimum monthly maintenance needs allowance of \$1,149 increased by their costs of shelter costs up to a maximum of \$1,769. That ceiling may be increased if ordered by a court or after determination by a "fair hearing referee" from the Department of Public Welfare.

In order to reach the appropriate minimum monthly maintenance needs allowance, the community spouse will receive a portion of the applicant spouse's pension or social security benefits to bring her up to the appropriate level.

- V. **Institutionalized Spouse.** The Institutionalized Spouse may retain a personal needs allowance in the amount of \$60 per month (there is an exception for certain veterans without dependents, in which case the personal needs allowance is \$90 per month).

VI. Trusts. As part of an overall plan for Medicaid issues, many individuals have established trusts to protect their resources. Unfortunately, the laws in this area have become increasingly restrictive with regard to the use of trusts. You should consult your attorney to determine if this planning tool is appropriate for you.

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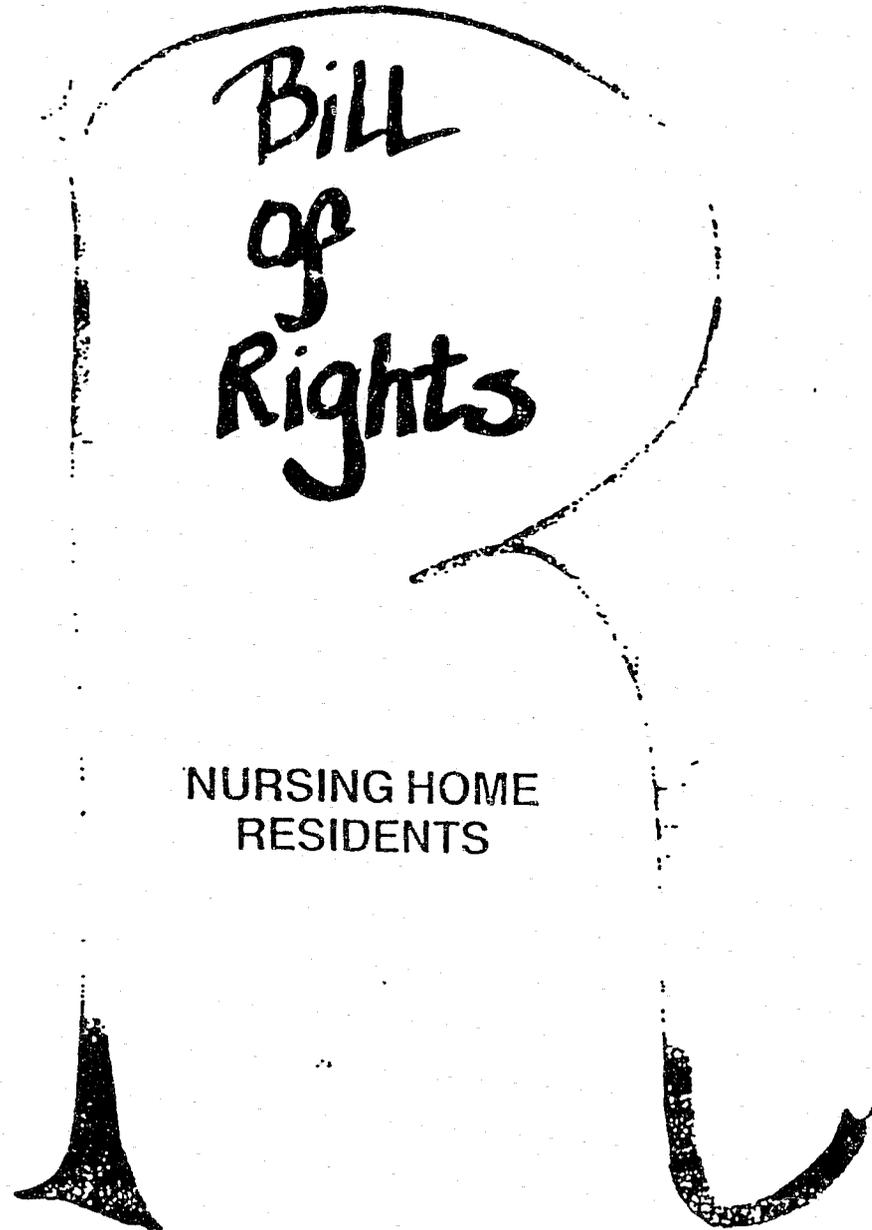
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OCTOBER 1989

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| Leominster | (508) 534-5558 |
| Lexington | (617) 861-0896 |
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| Malden | (617) 324-7705 |
| Milford | (508) 478-0820 |
| New Bedford | (508) 999-6400 |
| Northampton | 1-800-322-0551 |
| Peabody | (508) 535-6220 |
| Pittsfield | 1-800-292-5011 |
| Springfield | (413) 733-7038 |
| Worcester | (508) 755-4388 |

*Call the State Long Term Care Ombudsman Program at (617) 727-7273, if you need assistance in determining the appropriate program.



Paul J. Lanzikos
Secretary of Elder Affairs

Susan McDonough
Long Term Care Ombudsman

Michael S. Dukakis
Governor

This document was prepared by the State Long Term Care Ombudsman Program to assist residents of Nursing Homes and their families.

RULES & POLICIES

- At the time of admission each resident, or his/her next of kin/representative, shall be given a written copy of all the rules and policies of the nursing home.
- The resident, or his/her next of kin/representative, shall receive a written notification of subsequent changes in the rules and policies of the nursing home.
- A schedule of the exact amount charged for each service must be prepared by the nursing home administrator and maintained on an up-to-date basis and provided to each resident on request.
- Under no circumstances shall a resident, other than a private paying resident, be charged for services not covered by the Social Security Act.
- Residents shall be permitted to examine bills and be provided with an explanation of any charges on them.
- Private paying residents must be allowed reasonable written notice of the intent of the nursing home to increase per diem rates, and other services, prior to the effective date of the increase.
- The private paying residents must be given reasonable notice of an intended involuntary transfer. This notice should allow for sufficient time to make the necessary arrangements for transfer to a new location.

ACCESS

- The nursing home shall not interfere with a resident's right to communicate privately with anyone of his/her choice either inside or outside the nursing home, with the condition that such communication is not medically disapproved.
- A resident has the right to join any social or religious activity of his/her choice, unless it is medically prohibited and so noted in the medical records.
- Under no circumstances is a resident's mail to be opened by the nursing home staff, unless such action is specifically provided for in his/her medical record.

RESIDENT'S CARE

- A nursing home cannot interfere with the management of a resident's personal and financial affairs. In many homes the nursing home administration will require the residents to keep their money in a fund for safekeeping. Residents are free to withdraw any amount of money in such a fund at any reasonable time.

- Residents shall not be required to perform any functions or services for the nursing home which are not included in his/her plan of care.
- If it can be arranged, married residents shall be permitted to share a room, unless it is medically prohibited, in one or both of the resident's medical records.

MEDICAL TREATMENT

- Residents must be assured of their privacy during a medical examination.
- A resident should be permitted to examine his/her medical or personal records, unless it is medically prohibited in the resident's medical records.
- A resident may refuse treatment or drugs if he/she has a question or doubt about the potential benefit of the treatment.

DISCHARGE & TRANSFER

- A resident may not be transferred without his/her consent unless:
 - a. a physician orders such transfer;
 - b. reasons related to health and welfare are so indicated in the resident's medical records;
 - c. for reasons of payment, except as prohibited by the Social Security Act;
 - d. required by state or federal agencies (relating to the conditions and quality of care in the nursing homes).
- If a nursing home decides to discharge a resident, the resident and his family or next of kin must be given a written notification with reasonable advance notice.
- If a nursing home cannot provide the level of care required by the resident, it must give written notification and allow reasonable time for the resident to make other arrangements.
- If you have any questions about your rights, entitlements and benefits, you may contact:

Executive Office of
Elder Affairs
38 Chauncy Street
Boston, MA 02111
Hot Line - Toll Free
1-800-882-2003

The State Long Term Care
Ombudsman Program
Executive Office of Elder Affairs
38 Chauncy Street
Boston, MA 02111
(617) 727-7273

Toll free — 1-800-882-2003

The HCFA Link to "Unloving" Nursing Home Care



NOMINEE'S BOOK BLASTS LONG-TERM CARE

BY
RONALD
SCHWARTZ

Unloving Care, *The Nursing Home Tragedy* is authored by Bruce Vladeck, the Clinton administration's choice for Health Care Financing Administration (HCFA) administrator. One of the passages in the book says, "The increasingly small proportion of truly horrible nursing homes may be less distressing in the aggregate, though, than the quality of life in the thousands that meet the minimal public standards of adequacy. In these [minimally complying homes], residents live out the last of their days in an enclosed society without privacy, dignity, or pleasure, subsisting on minimally palatable diets, multiple sedatives, and large doses of television — eventually dying, one suspects, at least partially of boredom."

Vladeck's 1980 book portrays a world of nursing home regulation in which the patient is an afterthought, at best. While politicians, "bought or otherwise, may be sympathetic to the industry's interests, they are reluctant to appear sympathetic in public." This is because "the nursing home has a lousy public image." Meanwhile, "Industry spokesmen seek to establish themselves as representatives of their helpless residents, who deserve a slightly larger pittance from penurious state officials." Adding to this boiling pot are consumer groups who "portray owners as vicious abusers of resident welfare and state officials as cowardly bureaucrats secretly in league with the enemy."

Both states and the federal government have been reluctant to increase resources for nursing home care, Vladeck noted. "A principal reason that nursing homes have fared as poorly as they have in reimbursement is that hospitals have been first in line at the public trough and have left very little behind for the stragglers. Nursing home interests have been best served in the political process when they have managed to align themselves with hospitals" on reimbursement issues. A more subtle gain from the alliance is "the general passivity of inspection agencies, most of which are responsible for hospital as well as nursing home surveys."

Vladeck, whose background is concentrated in the hospital field (since 1986 he has served on the federal Medicare Prospective Payment Assessment Commis-

sion), evidently disapproves of for-profit predominance in the nursing home industry. "...Public policy toward the provision of nursing home services has worked better, by and large, when implemented by non-profit rather than by profit-seeking firms," he wrote. "Nonprofit firms generally share at least some goals and attitudes with the government agencies seeking the provision of services, and that can be a more effective guarantor of 'required performance' than any concatenation of economic incentives and regulatory commands."

When CLTC went to press Vladeck had yet to be confirmed by the Senate. Through spokespersons both at HCFA and the United Hospital Fund in New York, where he has been president since 1983, Vladeck declined to comment on whether his views on nursing homes have changed. It is rare for government officials to answer press queries before being confirmed by the Senate; however, there are exceptions. But as for as his outlook today, keep in mind that Vladeck's book was published over 10 years ago, drew on then-current studies cataloging failures in nursing home care (such as that conducted by then-Sen. Frank Moss (D-UT) of the Aging Committee in the 1970s), and on financial scandals reported in the press. Of course, his book also predated the reforms in the 1987 Omnibus Budget Reconciliation Act.

Among Vladeck's recommendations were increasing regulatory and other quality control efforts. But his major theme argues for significant reduction in the number of nursing home beds and increasingly significant increases in home care, congregate housing and specialized care for the terminally ill. Directing individuals away from the traditional nursing home would be "gatekeeper agencies," which would perform "a channeling function" as in England.

Vladeck's philosophy here dovetails with that of the Clinton team working on health care reform. Ira Magaziner, special assis-

continued on page 92

Ronald M. Schwartz is a freelance writer/ editor specializing in federal health policy, food and drug regulation and legislation and long-term care issues.

tant for policy development to President Clinton and chief staffer on the reform task force, said that any new program should "put the patient as much as possible in the driver's seat about their own care."

The backlog of disability claims is the Social Security Administration's (SSA's) "most critical problem," Health and Human Services (HHS) Secretary Donna Shalala told a House Ways and Means Committee hearing on the Clinton administration's budget proposals for fiscal 1994. Despite budget cutbacks ordered for Medicare and Medicaid (see the Reimbursement column, *CLTC*, April 1993, p. 22), the bottleneck in disability claims processing would be attacked with \$722 million worth of improvements over the next four fiscal years.

An example of how the administration finds dollars for such spending is its proposal to eliminate return on equity (ROE) Medicare payments to proprie-

tary nursing facilities. If the American Health Care Assn. is unable to get Congress to reject the ROE proposal, projected savings here would amount to \$560 million over four years.

Those with disabilities can receive assistance through two programs SSA administers: Disability Insurance and Supplemental Security Income. Acceptance in the disability programs also gives beneficiaries Medicare and Medicaid health coverage.

The General Accounting Office (GAO) told Congress in March that SSA "has experienced significant program administration problems due to unprecedented increases in applications for benefits under the DI and SSI programs. Initial claims for disability benefits reached an all-time high of 2.4 million in fiscal year 1992, a 50% increase over the 1.6 million applications received in fiscal year 1989."

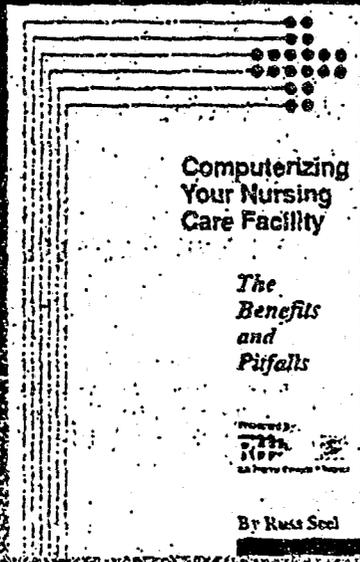
Senate Aging Committee Chairman David Pryor (D-AR) and Rep. Ron Wyden (D-OR), a key member of the

House Energy and Commerce Committee that oversees Medicaid, have written HCFA's Kathleen Buto, Bureau of Policy Development director, inquiring about reports of nursing homes using Medicare's "distinct part" certification as a way of claiming that a limited number of Medicaid beds are available. Such practices, the two wrote, "not only make it difficult for Medicaid-eligible persons to gain access to these facilities, but have resulted in the eviction of elderly and disabled residents who have been impoverished by paying private rates."

Also pressing the issue with HCFA are the National Citizens' Coalition for Nursing Home Reform, the National Senior Citizens Law Center, and the American Assn. of Retired Persons (AARP). Writing Buto, AARP Director of Federal Affairs Marty Corry urged that HCFA prohibit the practice of "limited bed certification" under Medicaid and any "manipulation of the transfer and discharge rules." **CLTC**

Free Booklet!

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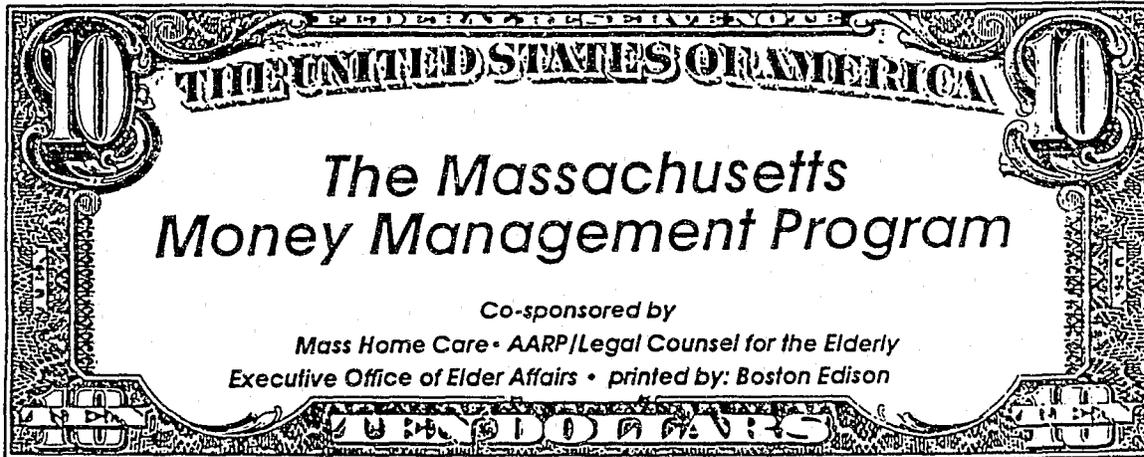
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Boston, MA 02203

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Associate Director
Age Center of Worcester Area, Inc.
51 Harvard Street
Worcester, MA 01609



The Massachusetts Money Management Program

Co-sponsored by

*Mass Home Care • AARP/Legal Counsel for the Elderly
Executive Office of Elder Affairs • printed by: Boston Edison*

***FINANCIAL EXPLOITATION OF ELDERS
& PEOPLE WITH DISABILITIES:
PREVENTION & INTERVENTION***

***Thursday, May 20, 1993
Holy Cross College
Worcester, MA***

***Liz Babbitt, Statewide Coordinator
The Massachusetts Money Management Program
c/o North Shore Elder Services
152 Sylvan Street
Danvers, MA 01923
508/750-4540***

North Shore Elder Services, Inc.

152 Sylvan Street

Danvers, MA 01923

Phone: (508) 750-4540

FAX: (508) 750-8053

The Massachusetts Money Management Program

Co-sponsored by the American Association of Retired Persons (AARP), Mass Home Care and the Executive Office of Elder Affairs, the Massachusetts Money Management Program is designed to help low-income elders who are unable to manage their household finances, balance their checkbooks or pay their bills. North Shore Elder Services manages the statewide program.

Started in September of 1991, the MMMP is currently available in over 70 cities and towns in Massachusetts. Start-up funds were received from Shearson Lehman Brothers. Fundraising is underway to support and expand Money Management services throughout the entire state.

Services

A trained and supervised volunteer is matched with each money management recipient according to individual needs. These volunteers are authorized to serve either as Bill Payers to assist elders with household budgeting and bill paying, or as Representative Payees to manage monthly benefits on behalf of the beneficiary. Volunteers maintain detailed monthly records using an AARP reporting system.

Eligibility

Elders must be at least age 60 with an annual income no greater than \$16,006 (for individuals) or \$22,676 (for couples). There is also a cap on liquid assets.

For More Information

Contact: Liz Babbitt, Statewide Coordinator
Massachusetts Money Management Program
North Shore Elder Services, Inc.
152 Sylvan Street, Danvers, MA 01923
(508) 750-4540 or (508) 744-4184 Voice or TTY

wp50/1&RSheet/1/20/93

Home Care Corporation/Area Agency on Aging

- home care services
 - case management
 - meals on wheels
 - support groups
 - advocacy
 - employment assistance
 - information & referral
 - nursing home/adult day health screening
 - money management
 - corporate eldercare
 - respite for caregivers
 - grants to community groups
 - volunteers
 - nursing home ombudsman program
-

***The Massachusetts Money Management Program
Statewide Advisory Council***

President:

Pamela Merchant, United States Department of Justice, Bank Fraud Unit

Jim Baxter, Section Supervisor, Social Security Administration

Dorothy Bickling, CFP, Boston Women's Fund

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Carol Dietz, Office of the Massachusetts Attorney General

Dawn DiMartino, Better Business Bureau

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Vicky Gramer, UMASS Boston Gerontology Institute

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Susan Millard, CFP, Greater Boston Institute of Certified Financial Planners

Mary Neal, Protective Services, Executive Office of Elder Affairs

Dan O'Leary, Alzheimer's Association of Eastern Massachusetts

Robert Palmer, Jr., Consumer Credit Counseling Service

Donna Reulbach, Protective Services, Executive Office of Elder Affairs

John Soraghan, Veterans Administration Regional Office

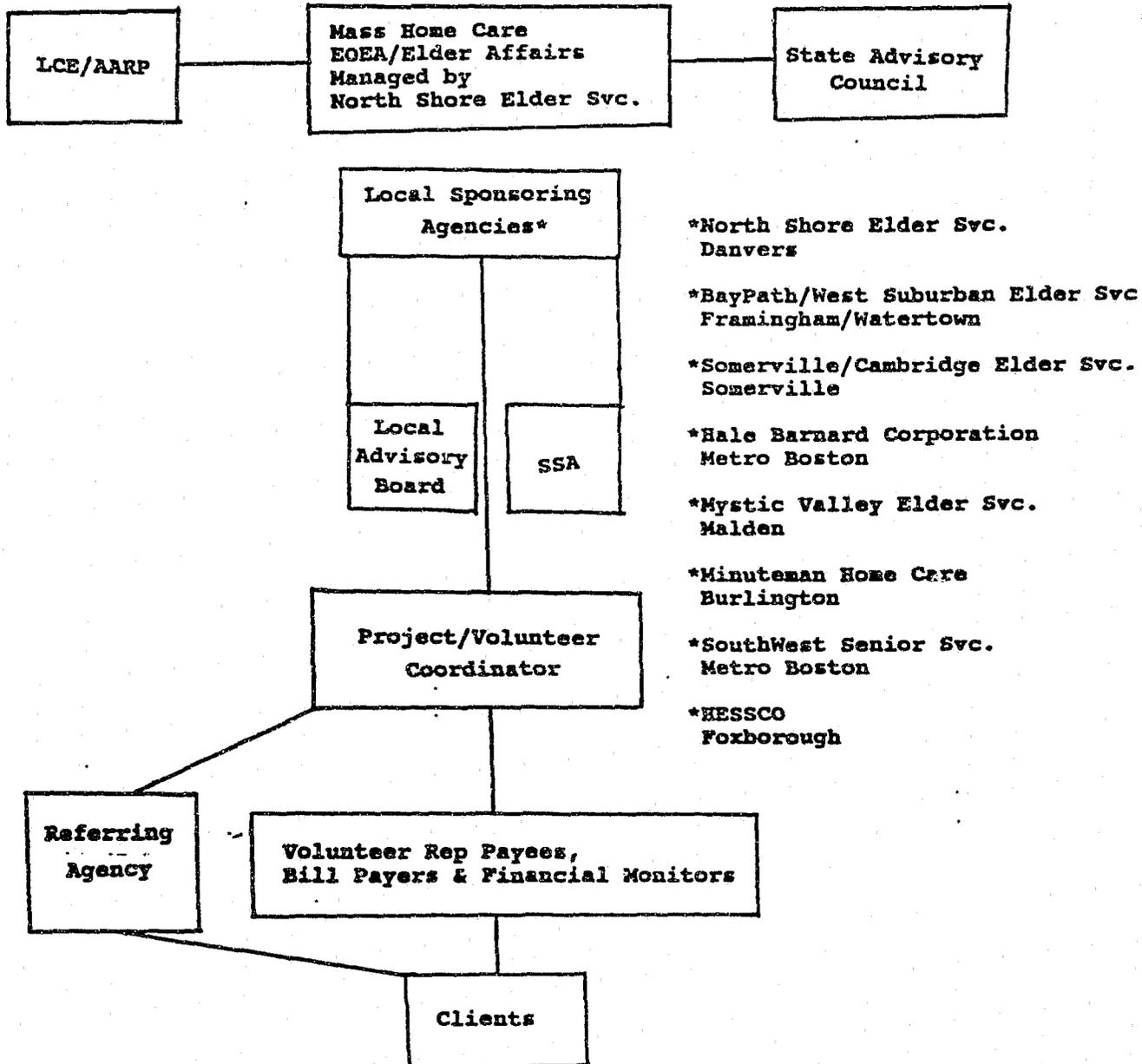
Neal Sullivan, Deputy Secretary of State

Deborah Bloomberg, Public & Community Affairs, Federal Reserve Bank of Boston

Nancy Dale, Economic Security Specialist, AARP Region 1 Office

THE MASSACHUSETTS MONEY MANAGEMENT PROGRAM

PROJECT PROTOTYPE



MASSACHUSETTS MONEY MANAGEMENT PROGRAM

Volunteer Position Descriptions

PROGRAM:

The Massachusetts Money Management Program (MMMP) is co-sponsored by Mass Home Care, AARP/Legal Counsel For The Elderly and The Executive Office of Elder Affairs. MMMP is designed to assist vulnerable, at-risk elders who have difficulty with money management. Volunteers will choose to serve as either a REPRESENTATIVE PAYEE, BILL PAYER or FINANCIAL MONITOR.

AREA SERVED/SUPERVISION:

There are 8 Money Management Project Sites serving 54 cities and towns. For the site nearest you, call 1-800-AGE-INFO. Volunteers are trained and supervised by the Project Site Coordinator.

SPECIFIC DUTIES

BILL PAYER VOLUNTEERS

- Meet With Elder Client Once Per Month (minimal)
- Prepare Monthly Budget With Elder Client
- Assist Bill Paying by Writing Checks for Signature
- Checkbook Balancing and Bank Statement Reconciliation
- Submit Monthly Report Forms listing Financial Activity to Project Coordinator; Assist Financial Monitoring
- Attend Volunteer Training and Inservice Meetings

REPRESENTATIVE PAYEE VOLUNTEERS

- Meet With Elder Client Once Per Month (minimal)
- Appointed by the Social Security Administration
- Assume Legal Authority to Write and Sign Checks To Meet Client's Basic Needs
- Prepare Monthly Budget, Maintain Accurate Records
- Open Special Bank Account, Write & Sign Checks
- Balance Checkbook, Reconcile Bank Statement
- Bank Account Monitored by Statewide Management Agency; North Shore Elder Services, Inc., 152 Sylvan Street, Danvers, MA 01923.
- Attend Volunteer Training and Inservice Meetings

FINANCIAL MONITOR

- Complete Initial Volunteer Orientation/Training
- Attend Volunteer Inservice Meetings
- Perform Monthly Monitoring of All Bill Payer Paperwork (training provided) at Project Site
- Conduct Bank Statement Audit every six months (either in Client's Home with Bill Payer Volunteer or at Project Site)
- Maintain Accurate Records
- Report to Project Coordinator

Page 2/MMMP Volunteer Position Descriptions

QUALIFICATIONS:

- General Knowledge of Household Budgeting and Personal Financial Management
- Accuracy in Maintaining Financial Records
- Possess Basic Skills to Balance Checkbook
- Responsible, Friendly, Patient; Desire to Help Primarily Low-income, Isolated Elders
- Be Able to Commit Time and Travel Necessary for Training, Visits with Elders and other Requirements Necessary for Planning and Conducting a Successful Outreach

NOTE: The Volunteer is NOT responsible for money other than that used for basic living expenses. If the Volunteer learns of any other income or extenuating circumstances, the Volunteer should report it to the Program Coordinator.

COMMITMENT:

On the average, MMMP Volunteers spend 6 hours each month, depending on Volunteer's interest and needs of the elder client. We ask for a commitment of at least one year with the program to develop trust and continuity with the elder.

APPLICATION PROCESS:

All Money Management Volunteers are asked to complete an application naming three personal references and request a personal Criminal Offender Record from The Executive Office of Public Safety. After the applications are screened, personal interviews and training are conducted. A Volunteer Service Agreement is signed for one year.

INSURANCE

AARP/Legal Counsel For The Elderly provides insurance which covers the funds you are officially designated to handle. If you unintentionally commit an error in handling the funds, you are covered; but if you misuse the funds intentionally, you are personally liable. More specifics on Insurance will be covered at your Volunteer Training.

FINANCIAL HOUSEKEEPERS FOR THE ELDERLY

Remember when you were a kid and got excited when something in the mail was addressed to you? Since I took over my grandfather's affairs more than a year ago, those days have seemed far, far away. Today the mailbox bulges, not just with my letters, but also Grandpa's medical bills, medicare forms, junk mail, tax documents, insurance forms, and bank statements. It never ends. Sometimes it seems I'm spending more time managing my grandfather's life than my own.

Unfortunately, I found that Grandpa's business acumen faded long before his health. When I stepped in, his finances were a mess. And he is not alone. As many as 10% of all senior citizens require assistance in performing basic financial tasks. The need increases as people age. A National Institutes of Health study shows that 24% of people 85 and older need help managing their money—and this age group is growing faster than any other. The burden of these statistics often falls on adult children, who must find scarce free moments in their busy lives to balance an extra checkbook, decipher insurance policies, or negotiate with creditors. It's difficult to do all this well. I confess that I still haven't found time to understand my 91-year-old grandfather's medicare paperwork.

Responding to the needs of people like me, a new breed

of social services is evolving. Under the rubric "daily money management," or DMM, a wide variety of agencies is trying to help families handle the financial affairs of their elderly members. The field is still developing and largely unregulated. But advocates say with a little careful research, DMM can be a godsend: It eases the burdens of the elderly while they're independent and

those of adult children if they take over their parents' affairs.

Daily money management is ground-breaking in two respects: First, it is available to middle-income elders whose estates might be too small to interest a bank trust officer. Second, its day-to-day focus contrasts with financial planning services that seek to optimize investments over the long term. Services offered by this new kind of money manager are far from standardized. DMM is a catchall for a wide variety of tasks.

For example, someone who can assist with mundane financial matters is often useful to those with failing eyesight or other health problems. This

helpmate visits the home regularly to help clients pay bills, make bank deposits, prepare and file tax returns, balance checkbooks, and handle medical insurance claims. The client still signs all the checks and makes all decisions.

CHECK SIGNING. Representative payees take more responsibility. In addition to paying bills and budgeting, the manager receives the client's benefit checks from Social Security or Veterans Affairs and is monitored by those agencies. Although regularly consulting the client, the manager takes over check signing and disbursements. With durable power of attorney, money managers can even act as the client's agent to sell real estate and make and oversee investments.

If the client is incapacitated



**NEW PROGRAMS.
HELP THE AGED COPE
DAILY—AND SPARE
THEIR CHILDREN**

or unable to understand what's going on, there are managers who will act as guardians or conservators, serving as agents of a court in administering fiscal affairs.

If you're already balancing a parent's checkbook and paying the bills, it may not be difficult to decide whether one of these DMM services is right for your family. It gets tricky when you suspect an older relative, independent and vital in other ways, is slipping with regard to money matters. "Finances are very private," says Bobbie Popkin, who directs a financial services program sponsored by the Pittsburgh Area Agency on Aging. "It's not like getting an illness, where you can see the symptoms. No one tells you, 'I didn't pay a bill,' or 'I wrote two bad checks this month.'"

WHEN TO ACT. It can be crucial to lend a helping hand at the right time. In Los Angeles County, money-management problems trigger one-third of the referrals to the public guardian's office, the place of last resort for California's elders in need of assistance. Even if you live far from your relative, a few key questions can help determine whether to act (box).

Some areas, usually those with large retiree populations, have established daily money-management services. But in many communities, these programs are just emerging and may not be well-publicized. The Administration on Aging's new Eldercare Locator Service (800 677-1116), the American Association of Retired Persons' Legal Counsel for the Elderly (202 434-2120), and Bethesda (Md.)-based Aging Network Services (301 986-1608) make referrals.

In addition, most communities have access to a federally funded Area Agency on Aging. While they cannot make endorsements, local probate-court investigators can be good resources. An attorney specializing in the emerging field of elder law may also have some ideas. Even employers are getting involved. In the context of the Family & Medical Leave Act just

signed by President Clinton, large corporations are starting to view elder care with the same concern as child care. Companies are hiring consultants to give referrals and help employees make elder-care decisions. Check your human resources department. **CHECK IT OUT.** Be a wary shopper. These agencies will save you time in the long run, but it pays to do extra research in the beginning. The DMM field draws people from a wide variety of backgrounds. Some services are for-profit and charge an hourly fee. Others are nonprofit and funded by charitable foundations or public monies. Some have a stable history; some do not. And while most money managers are honest and well-intentioned, there have been cases of embezzlement.

Check references carefully. Call referral services, the Chamber of Commerce, or the Better Business Bureau. Look for a manager with some professional financial experience or a graduate education: a retired stock broker or bank officer, a professional with an MBA or CPA training.

If the service is for-profit, make sure fees are spelled out. An hourly rate between \$45 and \$60 is typical, though some agencies have sliding scales based on ability to pay. Managers usually spend one to six hours per month per

SOME MONEY MANAGEMENT SERVICES FOR SENIORS

**THE CATHEDRAL PROJECT
URBAN JACKSONVILLE**
Jacksonville, Fla.,
904 798-9500

CINCINNATI AREA SENIOR SERVICES
Cincinnati,
513 721-4330

COMING HOME
San Francisco,
415 296-0937

DESERT STATE LIFE MANAGEMENT SERVICES
Albuquerque,
505 843-7535

JEWISH FAMILY SERVICE OF LOS ANGELES
Los Angeles, 818 984-1380

MASS HOME CARE MONEY MANAGEMENT PROGRAM
Burlington, Mass.,
508 750-4540

PAYMASTER
Washington, D.C.,
800 234-4454

RESOURCE MANAGEMENT FOR SENIORS
Fairfax, Va., 703 352-4582

SANTA MONICA DAILY MONEY MANAGEMENT PROGRAM
Santa Monica, Calif.,
310 576-2550

URSULINE CENTER
Subcontractor for Pittsburgh Area Agency on Aging,
Pittsburgh, 412 363-3100

DATA: BUSINESS WEEK

client. If the service is staffed by volunteers, ask how they are trained.

Also determine how long the service has been operating. Look for a stable history or affiliation with a long-established institution, such as AARP or a charity. What sorts of controls does the program have? Spot checks of the books, a code of ethics, and a quality assurance committee are good signs. Does the service provide reports to clients? It should. Monthly or

quarterly reports, complete with copies of bank statements and canceled checks, are typically available upon request. Reviewing them can cut your financial elder-care commitment from several hours to 30 minutes each month.

As with any service in which you entrust money to someone else, there is risk. But in this era of conflicting demands and mobile families, adult children may not be able to watch over their elderly parents or other relatives as closely as they should. I live 3,000 miles from my grandfather and wish I had known about these services a few years ago. If I, or a daily money manager, had intervened earlier, we might have preserved \$100,000 in assets that he allowed to drift away through bad investment decisions. Then Grandpa could have afforded a private nurse, and I wouldn't have had to put him in a nursing home.

"Daily money management enhances quality of life for the elderly," says Kate Wilber, an associate professor at the Ethel Percy Andrus Gerontology Center at the University of Southern California. And it keeps the mailbox from bursting. *Heather Millar*

HOW TO KNOW IF AN OLDER RELATIVE NEEDS HELP

- ▶ Is the person over 75? This is the age at which the need for financial management starts to increase sharply.
- ▶ Is the person a widow or widower or recently discharged from a hospital or nursing home? A life crisis can throw many routines, including financial ones, off balance.
- ▶ Does the person have trouble getting or cashing Social Security checks?
- ▶ Is the person unsure how many bank accounts he or she has and with which banks?
- ▶ Does the person complain about not having money?
- ▶ Is there a pile of unpaid bills on the dining room table?
- ▶ Have any utilities been shut off in the last 12 months? Many utility companies have third-party notification programs to alert relatives before shutting off power or water.

DATA: DESERT STATE LIFE MANAGEMENT SERVICES INC.

ACT

Balancing your checkbook
and other matters

One in five cases of elder abuse in Massachusetts involve financial exploitation — but a statewide program is responding to the growing need for help.

The Massachusetts Money Management Program (MMMP) is now available in eight regions throughout the state.

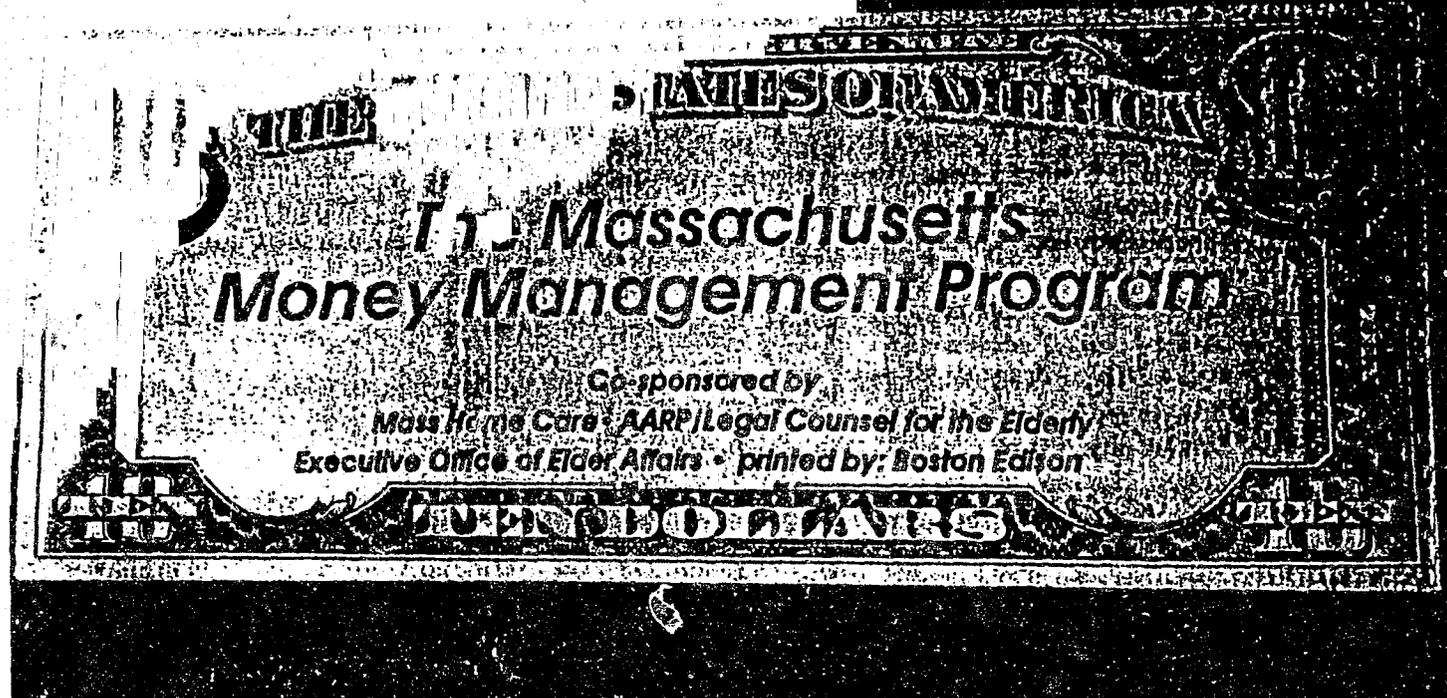
The program is co-sponsored by Mass Home Care, the American Association of Retired Persons, and the Executive Office of Elder Affairs. Since its start-up last year, the MMMP has provided more than 400 elder clients with “representative payee” and “bill payee” services.

Representative Payees help elders handle their Social Security check, while Bill Payers assist with household bills and checking accounts.

Elders unable to keep up with their financial affairs are matched with a Volunteer Money Manager from their community. The Volunteers sort through arrears, keep up payments on current bills, and set up repayment schedules for elders who simply cannot organize their finances without help. The elder maintains control of the account and signs the checks, which have been prepared and ordered by the Volunteer Money Manager.

Focus is on those who cannot afford help

Massachusetts is one of only 3 states to have a statewide money management project. Because the program focuses its resources on people who could not otherwise afford the help, eligibility for the program is limited by income and assets.



To date, the MMMP has been primarily underwritten with private funds. The project was launched last year with a \$50,000 grant from Shearson-Lehman. Additional funds have been received from the Fleet Bank, Bank of Boston, Shawmut Bank, the Greater Boston Society of Certified Financial Planners, the Boston Foundation, and Polaroid Corporation.

Within three years, the MMMP hopes to have sites located throughout the state. Eight sites exist today, located in over 70 communities: Somerville-Cambridge Elder Services, Minuteman Home Care, Mystic Valley Elder Services, West Suburban Elder Services, Hale Barnard Corporation, and Southwest Boston Elder Services. Statewide, more than 250 volunteers serve as Money Managers.

Elders or volunteers seeking more information about MMMP, can call the Elderline, at 1-800-243-4636 to find out about a program in their area.

Material for this article was provided by North Shore Elder Services

A Guide For Representative Payees

Social Security
and SSI



A Message From Social Security

Social Security needs responsible people to manage the Social Security and Supplemental Security Income (SSI) payments for our beneficiaries who are unable to handle their own finances. We call these people "representative payees." In most cases, you are reading this booklet because you have already volunteered to serve as someone's representative payee. We appreciate your help in seeing that the benefits this person receives are used for his or her personal care and well-being.

In this booklet, we will tell you about your responsibilities as a representative payee and explain how to keep track of what you spend.

Who Needs A Representative Payee?

A beneficiary who has a payee may be receiving either a Social Security check or an SSI check, or both. About 25 percent of the people who get SSI, and about 10 percent of the people who get Social Security have payees.

Almost all children under age 18 have payees—a parent, usually. Adults who are unable to manage their finances because of severe physical or mental limitations also need payees. People who receive SSI because of disabilities related to drug or alcohol addiction are required to have payees.

The Duties Of A Representative Payee

As a representative payee, you need to keep informed of the individual's needs so that you can decide how benefits can best be used for his or her personal care and well-being. This is particularly important if the beneficiary doesn't live with you.

Any money left after meeting the beneficiary's current and reasonably foreseeable needs must be saved and maintained in the beneficiary's behalf. Periodically, Social Security will ask you to complete a form accounting for the funds you have received. In the center of this booklet, there is a worksheet you can use to keep track of what you spend. (A sample accounting form is shown on page 12.)

As a representative payee, you will need to keep Social Security informed of changes that may affect the beneficiary's eligibility for benefits. You will find a list of those changes on page 9.

Representative payees are required by law to use benefits properly. If a payee misuses benefits, he or she must repay the misused funds to the beneficiary. A payee convicted of misuse may be fined and/or imprisoned.

How To Use The Benefits

First, make sure that the beneficiary's day-to-day needs for food and shelter are met. Then, benefits may be used for the beneficiary's personal needs, such as clothing, recreation, and other miscellaneous expenses. Benefits can also be used to pay for medical needs (for example,

eyeglasses and hearing aids) and dental care not provided by Medicare, Medicaid, or a residential institution.

If a beneficiary is in a nursing home or other institution, you should use benefits to pay the usual charges for care, as well as to buy personal items not normally provided by the facility.

If you are uncertain about whether an expenditure is proper (for example, paying a bill the beneficiary owed before you became payee), contact your Social Security office before you fulfill such obligations.

How Funds Should Be Held

We recommend that funds for current and foreseeable needs be held in a checking or savings account. As with your own money, it is not wise to keep large amounts of cash at home where it may be lost or stolen. Also, do **not** mix the beneficiary's funds with your own or other funds.

If any money is left after meeting day-to-day and personal needs, **it must be saved**. The preferred ways of holding savings are in U.S. savings bonds or in an interest-paying bank account. Interest paid on savings belongs to the beneficiary.

To protect the beneficiary's funds, checking and savings accounts **must show the beneficiary as the only owner**. Neither the representative payee nor a third party can have ownership interest in the account. While

the beneficiary retains ownership interest, the account title should not permit him or her to have direct access to the funds. Here are two recommended titles:

- "(Beneficiary's name) by (your name), representative payee," or
- "(Your name), representative payee for (beneficiary's name)."

Although these are the most common methods of identifying accounts, any account title, which under State law shows beneficiary ownership, and you as fiduciary, is acceptable. If you are not sure, ask your bank.

A Special Note for Parents: A common checking account for all family members who receive benefits may show a parent as the owner of the account. Children's savings, however, must be held in separate savings accounts for each child, with the child's name shown as the owner of the account.

Keeping Records

As a representative payee, you should keep records showing how much you received in benefits and how the money was used. You are required to account for the funds you have received by completing a Representative Payee Report (Form SSA-623). A sample form is shown on page 12. (Parents who are payees for their children receive Form SSA-6230.) The appropriate form will be mailed to you about once a year.

You must complete the accounting form even if you are a legal guardian; the accounting you make to the court cannot be substituted.

If you wish, you may use the worksheet in the center of this booklet to help you keep track of your expenditures. For your convenience, space is provided for 12 monthly entries. When you need to fill out the Representative Payee Report, you can add the amounts in each column of your worksheet and put the totals on the accounting form.

When you need additional worksheet space, you can call Social Security for another copy of this booklet.

Paying Income Tax

A relatively small number of people who get Social Security, generally those in the upper income brackets, will have to pay Federal income tax on their benefits. At the beginning of each year, Social Security will mail you a Social Security Benefit Statement (Form SSA-1099) that shows the amount of benefits paid during the previous year. Give this statement to the person who handles the beneficiary's taxes to use in determining if any benefits are subject to tax.

Institutions That Serve As Payees

Sometimes nursing homes or other institutions place funds for several beneficiaries in a single checking or savings account. This is called a "collective account."

INCOME AND EXPENSES WORKSHEET

| Month and Year | Amount Received | Food and Shelter | Medical/Dental Clothing Personal Articles Recreation Miscellaneous | Amount Left |
|---|-----------------|---|--|---|
| | | | | |
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| Totals for Report Period | \$ _____ | \$ _____ Put this figure on line 5A of the Representative Payee Report | \$ _____ Put this figure on line 5B of the Representative Payee Report | \$ _____ Put this figure on line 5C of the Representative Payee Report |
| Add in the amount of benefits saved from earlier report periods. Use this figure to complete line 6 of the Representative Payee Report. | | | | \$ _____ |

When you need additional worksheets, contact Social Security.

This is usually acceptable, but special rules apply to these accounts. Contact Social Security for more information.

Some examples of collective account titles are:

- "Sunnydale Nursing Home, representative payee for Social Security beneficiaries," or
- "Sunnydale Patients' Fund for Social Security beneficiaries."

If your institution is serving as a payee and you are considering charging the beneficiary for past care and maintenance costs, you will need to get prior approval from your local Social Security office. The office also needs to approve any decision to pool the personal funds of several beneficiaries to purchase an item that will benefit the group.

If Medicaid pays at least half of the cost of a beneficiary's care, the SSI payment is usually limited to \$30 per month, plus any additional money paid by the State. The \$30 must be used only for the beneficiary's personal needs or saved on his or her behalf.

Changes To Report

You need to tell Social Security about any changes that may affect the checks you receive. For example, you must tell us if:

- The beneficiary moves;
- The beneficiary starts or stops working, no matter how small the amount of earnings are;
- A disabled person's condition improves;

- The beneficiary starts receiving another government benefit, or the amount of the benefit changes;
- The beneficiary will be outside the U.S. for 30 days or more;
- The beneficiary is imprisoned for committing a felony;
- Custody of a child changes or a child is adopted;
- The beneficiary gets married;
- You are no longer responsible for the beneficiary;
- The beneficiary no longer needs a payee;
- The beneficiary dies.

A Special Note About SSI Benefits: In addition to the events listed above, the following changes must be reported if the beneficiary is getting an SSI check. The amount of the SSI check may change if any of these events occurs:

- The beneficiary moves to or from a hospital, nursing home, or other institution;
- A married beneficiary separates from his or her spouse, or they begin living together again after a separation;
- Somebody moves into or out of the beneficiary's household;
- The beneficiary has any change in income or resources;
- A child's SSI check may change if there are any changes in the family's income or resources.

If you are payee for a person who gets SSI, you should be aware that savings and other resources are limited to \$2,000 under the SSI program. Interest earned on savings counts toward that limit. For more information, contact Social Security for a copy of the booklet, *When You Get SSI—What You Need To Know* (SSA Publication No. 05-11011).

Medicare And Medicaid

As a representative payee, you may need to help the beneficiary obtain medical services or treatment. You will need to show the Medicare card or State Medicaid Eligibility Card to the person or place providing the medical service. You should keep a record of medical services the beneficiary receives and medical expenses not covered by Medicare and Medicaid. For information about Medicare coverage, call Social Security to ask for a copy of *The Medicare Handbook* (HCFA Publication No. 10050).

If the beneficiary has limited income and resources, help may be available from the State under the Qualified Medicare Beneficiary (QMB) program. Under the QMB program, the State pays Medicare premiums and some out-of-pocket medical expenses. A person may qualify for QMB, even if income or resources are too high for SSI. For information, contact the State or local medical assistance (Medicaid) agency, social service office, or welfare office.

If You Stop Being Payee

If you will no longer be payee, you must notify Social Security immediately. This is important because a new payee will have to be selected as soon as possible.

You must turn over to the Social Security Administration any benefits remaining after you are no longer responsible for the beneficiary, including interest and cash on hand. In some cases, we will ask you to turn over the funds to the beneficiary or to the new payee.

If The Beneficiary Dies

If the beneficiary dies, saved benefits belong to his or her estate. They must be given to the legal representative of the estate or otherwise handled according to State law. If you need information about State law, contact the probate court or an attorney.

When a person who receives Social Security dies, no check is payable for the month of death, even if he or she dies on the last day of the month. Any check received for the month of death or later must be returned.

An SSI check, however, is payable for the month of death. But you must return any SSI checks which come after the month of death.

Representative Payee Report

Social Security Administration, 36 Courthouse Avenue, Wilkes-Barre, PA 18702

FORM APPROVED
USE TO 03-68-000

| | | | | | |
|--------------------------|----|---------------|----|------------------------|-----|
| PAYEE'S NAME AND ADDRESS | | REPORT PERIOD | | SOCIAL SECURITY NUMBER | |
| | | FROM | TO | | |
| | | BENEFICIARY | | PP | PP |
| B | PC | EC | B | TP | EC |
| | | | SM | FC | SEC |
| | | | | | VIA |
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This report is about the benefits you received during the 12-month report period shown above. Please read the enclosed instructions before completing this form. It will help you answer each question.

- Has the beneficiary's custodian changed during the report period shown above? Please refer to the instructions on page 2 before you answer this question. YES NO
- During the report period shown above, were you convicted of a crime considered to be a felony? If YES, please explain in "Remarks" on the back of this form. YES NO
- Answer this question only if you received Social Security benefits for a child under age 18 or disabled before age 22 who receives benefits on a parent's Social Security record. Otherwise go to item 4.
 - Has the child married? YES NO
 - If YES, is the child's husband or wife receiving Social Security benefits? YES NO
 - Enter the month and year of the child's marriage. MONTH YEAR
- Did you turn over the full amount of benefits to another person during the report period (for example, to the beneficiary's custodian or to the beneficiary)? If you answer YES, please explain in "Remarks" on the back of this form. YES NO
- During the report period shown above, you received benefits on behalf of the beneficiary.
 - How much of these benefits did you spend on food and shelter for the beneficiary during the entire 12-month report period? DOLLAR AMOUNT (NO CENTS)
 - How much of these benefits did you spend on all other things such as clothing, education, recreation and personal items for the beneficiary during the entire 12-month report period?
 - How much, if any, of the total benefits you received during this report period did you save for the beneficiary? If none, show zeros or "None."
- Show the total dollar amount of benefits, if any, you have saved for the beneficiary. Be sure to include benefits saved from earlier report periods. If none, show zeros or "None."
- If you showed an amount in 6. above, place an "X" in the boxes below to show how you are saving the remaining benefits. If you have more than one account, you may mark more than one box in each section.

| A. TYPE OF ACCOUNT | | | | | B. TITLE OR OWNERSHIP | | |
|--------------------------|--------------------------|--------------------------|-----------------------------------|--------------------------|---------------------------------|----------------------------------|--------------------------|
| Savings/Checking Account | U.S. Savings Bonds | Certificates of Deposit | Collective Savings/Patient's Fund | Other | Beneficiary's Name by Your Name | Your Name for Beneficiary's Name | Other |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

FORM SSA-625-OCR-SM (7-92)

Continued on the Reverse

For More Information

For more information, call, visit, or write your local Social Security office. Or, you can call our toll-free number, 1-800-772-1213. If you'd like general information about Social Security and SSI benefits, ask for a copy of the booklet, *Understanding Social Security* (SSA Publication No. 05-10024).

Social Security May Reimburse Representative Payee Expenses

Social Security is accepting applications from qualified organizations seeking reimbursement for expenses they incur when they serve as a representative payee for Social Security or Supplemental Security Income (SSI) beneficiaries. Representative payees are appointed by the Social Security Administration (SSA) to manage the benefits paid to individuals who are unable to handle their own finances.

To Qualify

The Omnibus Budget Reconciliation Act of 1990 allows qualified organizations to collect a fee for representative payee services they provide. The current initiative was mandated for 3 years and is scheduled to expire July 1, 1994. To qualify, an organization must be a community based, nonprofit social service agency that provides ongoing representative payee services to five or more individuals. The beneficiary may not be charged more than \$25 or 10 percent of the monthly benefit, whichever is less. An approved organization receives guidelines from SSA that explain how to determine the fee. The organization collects its approved fee directly from the beneficiary.

To receive authorization to charge a fee, an organization must apply in writing to SSA. The organization must provide proof it existed on October 1, 1988; it is usually not a creditor of the beneficiary; and, it is licensed or bonded by each State in which it serves as a representative payee.

Recruiting Efforts

Usually family members or close friends are appointed as representative payees. However, for a

growing number of individuals, no family member or friend is available to act as payee. Recruiting groups with a base of responsible volunteers who can serve in this capacity is one of SSA's priorities. In every case, Social Security selects the person, agency, or organization it believes will best serve the beneficiary's interests. An organization that requests a fee for providing representative payee services will be selected only when a more suitable candidate is not available.

Representative payees are expected to monitor the beneficiary's needs because they are responsible for determining how the monthly benefit will be used. Currently, 10 percent of all Social Security beneficiaries and about 29 percent of those receiving SSI payments have representative payees. Almost all children under age 18 have payees, usually a parent. Individuals whose SSI eligibility is based on disabilities related to drug or alcohol addiction are required to have a representative payee. Before a payee is appointed for an adult, medical or other evidence must be provided to SSA to establish the beneficiary's inability to manage his or her own benefits.

How to Apply

Organizations that are interested in applying to collect a fee for representative payee services should contact their local Social Security office. The addresses and phone number of these offices are listed in local telephone directories under "U.S. Government" or "Social Security Administration." Information also is available by calling Social Security's toll-free telephone number, 1-800-

772-1213, business days between 7 a.m. and 7 p.m.

Nonprofit groups that are interested in establishing a volunteer representative payee program should call the Social Security Representative Payee Coordinator at 410-965-4006.

To obtain *A Guide for Representative Payees* (which explains what representative payees are responsible for and how to keep records of expenditures) call the toll-free number or contact your local Social Security office.

Social Security Courier is designed to provide timely and relevant information on the retirement, survivors, disability, and Supplemental Security Income programs as well as important Medicare information.

Each issue of Social Security Courier will contain items that should be of interest to your constituency. The camera-ready format is designed for easy reprint in your newsletter.

We welcome your comments and invite suggestions for future editions. Please direct your correspondence to: Editor, Social Security Courier, Social Security Administration, Office of Public Affairs, Room 4-J-10 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235.



Volunteers Helping Social Security Beneficiaries

Volunteer organizations interested in participating in Social Security's representative payee program now have specialized resources available to help them get started. A representative payee kit, available from Social Security, includes an educational video and an accompanying booklet, *Serving As A Representative Payee*.

Social Security representative payees are individuals appointed to manage benefit checks for the care and well-being of certain Supplemental Security Income (SSI) or Social Security beneficiaries. The need for a representative payee may be identified by the Social Security Administration if medical or other evidence indicates that a beneficiary is incapable of managing his or her own benefits. About 28 percent of the people receiving SSI and 10 percent of those receiving Social Security benefits have representative payees.

Usually a family member or friend is the representative payee, but for many individuals no one is available to act in this capacity. In these cases, non-

profit organizations with trained volunteers are a valuable resource to assist the beneficiary.

The primary duty of a representative payee is to stay in touch with the beneficiary so that decisions can be made about how benefits can best be used for his or her personal care and well-being. Benefit checks must be used first to meet the individual's day-to-day needs for food and shelter. The remaining funds should be used for the beneficiary's clothing and other personal needs, recreation, miscellaneous expenses, and for medical care not otherwise provided. If any money is left after meeting day-to-day and personal needs, it must be saved in the beneficiary's name.

More information about the representative payee program can be found in the Social Security booklet, *A Guide For Representative Payees*. Volunteer groups can request any of the materials mentioned by writing to: Representative Payee Coordinator, Social Security Administration, 6401 Security Boulevard, 4300 West High Rise Building, Baltimore, MD 21235.

**ACCESS TO THE COURT SYSTEM:
CHALLENGES & OPPORTUNITIES**

MODERATOR:

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MASSACHUSETTS TASK FORCE
ON ACCESS OF
VICTIMS AND WITNESSES
WITH MENTAL RETARDATION
TO THE
CRIMINAL AND CIVIL JUSTICE SYSTEMS

FINAL DRAFT REPORT

APRIL 14, 1993

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III. THE TASK FORCE: PURPOSE AND ACCESS TO COURTS

In the days of wide-spread institutionalization, persons with mental retardation were neither seen nor heard; in more recent years this isolationism has given way to inclusion with the development of many new community programs and support services. Though persons with mental retardation have become more visible, their access to the courts remains obstructed. The Massachusetts Task Force on Access of Victims and Witnesses with Mental Retardation to the Criminal and Civil Justice Systems ("Task Force") is dedicated to increasing opportunities for citizens with mental retardation to raise their voices and be heard in this important area of public life.

The increasing incidence of sexual abuse of persons with mental retardation is of genuine concern.² During the period between January 1, 1991 to November 30, 1992, there were 1,785 alleged cases of physical and sexual abuse of people with mental retardation reported to the DPPC. About half of the cases reported are found to require further investigation, and abuse is substantiated in about half of those cases investigated.³ The Task Force examined issues associated with this population's vulnerability as victims of crime. Unfortunately, this vulnerability is enhanced by ignorance on the part of caregivers and clinicians as well as flaws in the court system.

Persons with mental retardation are vulnerable to crimes of abuse for a variety of reasons: minimal control over their lives, dependent relationships and emphasis on compliance, fear and/or ignorance of reporting incidents, diminished communication skills and reduced

² President's Committee on Mental Retardation. *Report to the President: Citizens with Mental Retardation and the Criminal Justice System*, U.S. Department of Health and Human Services, Washington (1991).

³See APPENDIX for DPPC STATISTICS.

intellectual ability, and a lack of education and training in self protection.⁴ This is illustrated by the experience of trained caregivers, is recorded in professional literature, and is reflected in the collective experience of the Task Force members.⁵ This problem is exacerbated by the attitude of the general public and professionals, including clinicians and lawyers: our society devalues persons with mental retardation as lacking in credibility - a view which has clouded a just recognition of their abilities and personal worth.

This misperception poses a unique obstacle for the victim in accessing both the criminal and civil justice systems. The court system should be modified to reasonably accommodate the special needs of people with all kinds of disabilities, including mental retardation -- as required by the landmark 1990 Americans with Disabilities Act⁶ which requires all public accommodations and state and local government operations to be fully accessible to people with disabilities. This is also articulated by Article 114 of the Massachusetts Declaration of Rights, and Massachusetts General Laws, Chapter 151B, Section 4.

With the full support and approval of Attorney General Scott Harshbarger and Middlesex District Attorney Thomas Reilly, the Task Force convened in July, 1992 to address these issues and make recommendations. The Task Force is comprised of professionals and representatives from the private sector, provider and advocacy organizations, state agencies concerned with the

⁴ President's Committee on Mental Retardation. *Report to the President; Citizens with Mental Retardation and the Criminal Justice System*, U.S. Department of Health and Human Services, Washington (1991).

⁵Id. See also Conley, Ronald W. *The Criminal Justice System and Mental Retardation* (Paul H. Brookes Publishing Co.)

⁶42 U.S.C. 12101 et seq., P.L. 101-496, 104 Stat. 327. See Appendix for a summary of Titles II and IV, and information regarding the ADA coordinator for the Massachusetts court system.

welfare and quality of life of persons with mental retardation and, notably, the parents of a person with mental retardation who was the victim of a sexual abuse crime.⁷

The Task Force members have concentrated their efforts in two particular areas, **legislation and training, and have:**

- 1) Proposed legislation regarding alternative procedures for the taking of court testimony of persons with mental retardation.**

For the past three years, DMR has filed legislation seeking to authorize alternative methods for taking testimony of individuals with mental retardation. This is one important way to offer "reasonable accommodations" to citizens with this disability. Upon formation of the Task Force, DMR submitted its bill for the Task Force's review and revision, resulting in the bill proposed by the Task Force to the legislature with the support of DMR and others.

- 2) Drafted a comprehensive education and training program which will focus on the prevention of sexual abuse and other crimes, prompt reporting and follow-up within a standardized protocol, and better communication among the many parties involved in dealing with cases.**

Such recommended training is designed to strengthen the mental retardation provider community as well as sensitize the criminal justice system personnel to the special needs of victims with mental retardation.

⁷See APPENDIX for LIST OF TASK FORCE MEMBERS.

IV. NEED FOR LEGISLATION: OPENING THE DOOR TO THE COURTROOM

*** MENTAL RETARDATION IS NOT NECESSARILY SYNONYMOUS WITH INCOMPETENCY ***

Legislation is needed to alleviate some of the problems faced by persons with mental retardation who have been victims or witnesses of sexual abuse and other crimes and who must testify in a court of law. One such problem is the inaccurate assumption that all persons with mental retardation are incompetent to testify and are not worthy of belief, simply because they are mentally retarded. In Massachusetts, competence to be a witness involves an ability:

- 1) to understand the oath administered to witnesses;
- 2) to describe what occurred;
- 3) to know the difference between truth and falsehood; and
- 4) to recognize that there are punishments for not telling the truth⁸

"Any person of sufficient understanding...may testify in any proceeding, civil or criminal, in Court or before a person who has authority to receive evidence." M.G.L. c. 233, Section 20. (emphasis added).

*** TEST OF COMPETENCY ***

"The ultimate test of the competency of a witness whose mental capacity is below normal, whether by reason of defect or immaturity, is the extent of that person's capacity to observe, remember, and give expression to what he has seen or heard or experienced."⁹

Despite assumptions to the contrary, many persons with mental retardation can meet this

⁸Commonwealth v. Brusgulis, 398 Mass. 325 (1986); Kenneth Hughes, 19 MASSACHUSETTS PRACTICE SERIES 6, sect 121, at 99-103.

⁹Kenneth Hughes, 19 MASSACHUSETTS PRACTICE SERIES 6, section 122. See also Commonwealth v. Teregno, 234 Mass. 56, 124 N.E. 889 (1919).

standard. The practical reality is that limited intelligence may affect one's *appreciation of the implications of the situation, not their capacity to remember it or effectively describe what happened to them.* For example, Peter in the case study, was able - with the proper clinical assistance - to describe exactly what happened to him.

In Massachusetts, the issue of whether one is competent to testify in court is determined solely by a judge, who has the ability to call for an expert's opinion as to a witness's competency.¹⁰ With this in mind, the Task Force strongly recommends that the judiciary should seek and utilize evaluations by clinicians, who have the expertise in evaluating the competence of witnesses to testify.

There are a number of factors relating to competency: (1) a person can be competent in one area but not in others (i.e. a judge may have determined in a guardianship proceeding that a person with mental retardation needs a guardian to make substantive decisions concerning, for example, medical treatment; however, this same individual may have the capacity to be a competent witness in a criminal proceeding); (2) physical or sensory impairments (e.g., speech problems, difficulties in hearing or vision), which may also be present, do not affect intellectual competency; some people who are retarded also have such impairments, while some people are mistakenly presumed to be retarded simply because others cannot understand them; and (3) many people with mental retardation lack interpersonal skills and therefore may seem shy, quiet, or either too compliant or uncooperative when first confronted by an unfamiliar party.

For these and many other reasons, communication with victims with mental retardation will require extra time, skill and attention on the part of interviewers. For example, a witness with mental retardation may benefit from the use of simple words and checking back to be sure

¹⁰ G.L. c. 233, Section 20. See also Section 19.

that he or she understands a point. Each case needs to be thoughtfully and carefully considered on its own merits.

*** PROBLEMS FACED BY VICTIMS IN TESTIFYING ***

Once on the witness stand, victims and witnesses with mental retardation are often intimidated by an imposing, unfamiliar, and often hostile courtroom setting and may experience temporary confusion, fear, or conflict which may result from speaking out against an abuser. The development of procedures which would, by reducing the intimidation involved, allow greater access of persons with mental retardation to the justice system is necessary to enforce their right to have their testimony heard in court. Such procedures are particularly important when the victim might suffer severe trauma from the pressure of testifying and undergoing cross examination in court after having already been a victim or witness to a serious crime.

The Task Force examined G.L. c. 6, Sections 121 and 122, which deal specifically with the issue of competency of witnesses, and reviewed leading case law, such as the case of Commonwealth vs. Bergstrom,¹¹ which sets forth requirements for the use of electronically preserved testimony that would allow some victims and witnesses to testify outside the presence of a jury, or in a less threatening setting. Following the case law guidelines, the DMR drafted a bill which the Task Force's Legislative subcommittee reviewed and revised.

In December, 1992, The Task Force endorsed the bill entitled "AN ACT RELATIVE TO ALTERNATIVE PROCEDURES FOR DETERMINING COMPETENCY TO TESTIFY AND FOR TAKING TESTIMONY OF A WITNESS WITH MENTAL RETARDATION."¹² It would allow, among other things, alternative methods of testifying

¹¹ 402 Mass. 534 (1988).

¹² See Appendix FOR LEGISLATION SUBMITTED BY TASK FORCE

for victims and witnesses with mental retardation and would encourage expert witnesses to testify as to the competence of a witness with mental retardation. The Task Force hopes to encourage the support of readers to ensure that it is enacted into law by the General Court in 1993.¹³

*** ALTERNATIVE METHODS AND DMR LEGISLATION ***

The legislation, drafted by the DMR and reviewed and endorsed by the Task Force, contains only alternative methods which meet the constitutional guidelines articulated by the Supreme Judicial Court in Bergstom. The bill addresses the intimidating atmosphere of the courtroom while preserving a defendant's right of confrontation. By doing so, the bill does not exempt the witness with mental retardation from the appropriate demands of the system or alter the system to the detriment of others but merely provides simple accommodations without which many individuals with mental retardation are denied the opportunity to be heard. For example: the testimony might be videotaped outside the presence of the jury and then played back to it; a person familiar to the witness might be permitted to stand near the witness to promote a more reassuring atmosphere; or in a bench trial (civil or criminal), testimony might be taken in a non-courtroom setting, such as in the judge's chambers or some other mutually agreeable place. Such techniques are examples of a "reasonable accommodation" to the disability of a victim or witness, consistent with the requirements of the Americans with Disabilities Act.¹⁴

¹³See APPENDIX for CO-SPONSORS OF THE BILL.

¹⁴Discrimination can occur not only by the presence of physical barriers, but also in the manner in which participation in the governmental process is restricted. "In addition to the architectural considerations, the [Transportation Barriers Compliance] Board believes access to information and participation in the governmental process is vitally important to all citizens. In judicial, legislative and regulatory facilities, the taking of testimony, and public debate and deliberation on local issues, laws

In all cases, for an alternative method of testifying to be used, the court must conduct a hearing and find that the usual procedures for testifying in open court would result in severe psychological or emotional trauma to the witness or would cause the witness to suffer a temporary loss of or regression in cognitive or behavioral functioning or communicative abilities such that his or her ability to testify will be significantly impaired.¹⁵

V. VIDEOTAPING GRAND JURY TESTIMONY: A NEW WAY TO PRESERVE VITAL EVIDENCE

*** BACKGROUND ***

Currently, the Middlesex County District Attorney's Office is the only prosecutor's office in Massachusetts using videotape presentations before the Grand Jury on a regular basis. The use of videotaped presentations has been effective in child abuse cases and would offer the same advantages in cases involving people with mental retardation. Videotaped presentations have several advantages. They eliminate the need for the victim to appear in person before the Grand Jury. In addition, they are made instantaneously when the victim discloses helpful testimony to a prosecutor or trained interviewer. The videotape is superior to the written transcript that accompanies the typical Grand Jury presentation because the witness' demeanor becomes visible to the defendant and the defendant's attorney during case preparation. Expressive videotapes

or ordinances is an integral part of that process." 57 Fed. Reg. 60622 (1992).

¹⁵Massachusetts and other states have attempted legislation in the past to authorize alternative methods (e.g. videotapes, broadcasting the testimony into the courtroom, one-way screen) for eliciting the testimony of child victims in cases involving sexual abuse. The primary concern with these statutory measures has been the infringement on a criminal defendant's constitutional right to confront witnesses. See Coy v. Iowa, 108 S.Ct. 2798 (1988); Commonwealth v. Bergstrom, 402 Mass. 534 (1988).

VII. SUMMARY AND RECOMMENDATIONS: A PLAN FOR THE FUTURE

Serious problems in the system currently limit persons with mental retardation from equal access to the courts. The problems, which range from caregivers not being properly trained in recognizing the signs and symptoms of abuse to a court system insensitive or ineffective in dealing with the problems inherent in persons with mental retardation testifying in court, were revealed by the case study above, which is - unfortunately - all too typical.

It is the intent of the Task Force to outline and to recommend the necessary steps to alleviate these problems. The Task Force needs the support of all agencies involved, including DMR and other funding, licensing, and regulatory agencies, DPPC, the EOHHS, the Attorney General's office, the District Attorneys' offices, and the court system, to promote and facilitate equal access to the judicial process for victims and witnesses with mental retardation. Equally important, the Task Force needs the support of private lawyers and the organized bar, political leaders in the executive and legislative branches, and parents and advocates for persons with mental retardation and other disabilities.

To conclude, the Task Force recommends:

1. Victims and witnesses with mental retardation should not be "presumed" incompetent.
2. Enactment of legislation which would allow persons with mental retardation access to the court system as witnesses. Presently, their competency is questioned and discussed without the consideration of expert testimony. The enactment of the proposed legislation encourages use of expert testimony in determining actual competency to testify and articulates alternative forms of testimony, which increase access of persons with mental retardation to the courtroom. [The Task Force examined and is mindful of the issue of false allegations. While the number of such situations is estimated to be under eight percent¹⁸ we believe comprehensive training will (a) further minimize this problem

¹⁸Edwin Mikkelsen, Thomas Gutheil, and Margaret Emins, *False Sexual-Abuse Allegations by Children and Adolescents: Contextual Factors and Clinical Subtypes*, AMERICAN JOURNAL OF PSYCHOTHERAPY, Oct. 1993, at 556 - 570.

by providing appropriate interventions; (b) better protect the rights of all involved by diligently reviewing every situation; and (c) promote credibility by increasing the effective handling of documented cases of abuse.]

3. Implementation of a comprehensive training initiative by the DMR for all staff within its agency and private provider agencies with whom it contracts for services, in several key areas related to abuse. These areas include but are not limited to: prevention, awareness of signs and symptoms which may be indicative of abuse, standard procedure to follow in order to respond effectively and in a timely manner, preserving evidence, and providing emotional support (at the time and thereafter) to the victim and family. DMR and provider agencies should receive prompt notification of any complaints. All allegations of abuse should be promptly investigated by the appropriate agencies.
4. Standard procedures and safeguards in the recruitment of staff. These include: Criminal Offender Record Information (CORI) checks for all department and private provider staff; the establishment of a registry within the Executive Office of Health and Human Services which would indicate if an individual has been charged or dismissed due to mistreatment of a client; and guidelines for screening and checking on potential staff recruits.
5. The establishment of interdisciplinary teams backed up by DMR clinicians and other expert resources to immediately assist D.A.s and Victim-Witness Advocates in assessing and evaluating a victims' competency. There are a number of existing resources which can assist the court in assessing and evaluating a victim's competence to testify. First, there are court clinicians. Second, resources should be available through the Case Management Team of the victim/witness, for example, to provide relevant information as well as current evaluations to the Court; likewise, if there is a question of retardation, a referral for an eligibility evaluation can address this issue as well as provide information to the court. The resources exist; the challenge is to encourage the Court to access these services.
6. The development of protocols for Clerk Magistrates to follow in interviewing victims of crime who are known or presumed to be mentally retarded.
7. The development of protocols for Victim/Witness Advocates to follow in interviewing victims of crime who are known or presumed to be mentally retarded.
8. The development of protocols for District Attorney Offices to follow relative to the assessment of competency, access to specialized resources, and ethical issues in deciding to prosecute such cases.
9. The initiation of continuing legal and judicial education for lawyers and judges on competency to testify and reasonable accommodations to victims and witnesses with mental retardation.

If you would like more information on the work of the Task Force, or would like to become involved or offer your support or testimony to the Task Force, please contact the Task Force Chairperson or Vice Chairperson.



The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND NINETY-THREE

AN ACT

ESTABLISHING ALTERNATIVE PROCEDURES FOR DETERMINING COMPETENCY TO TESTIFY AND FOR TAKING TESTIMONY OF A WITNESS WITH MENTAL RETARDATION.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately establish alternative procedures for determining competency to testify and for taking testimony of a witness, with mental retardation, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. It is hereby declared that the commonwealth recognizes that people with mental retardation are entitled to the same access to the justice system as provided to all citizens of the commonwealth. The commonwealth recognizes that people with mental retardation are the victims or witnesses of crimes or abuses at least as often as their fellow citizens, and perhaps more often by reason of their disability. The commonwealth also recognizes that our justice system sometimes unwittingly doubly victimizes them by not taking them seriously, by wrongfully assuming that retardation means stupidity, lack of credibility, or poor memory, or by not offering simple accommodations to enable their comfortable participation, understanding and cooperation in the justice system.

NOTE. — Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.

Three major laws require the court system to be as fully accessible to, and useable by, citizens with mental retardation as it is to all other persons: the American with Disabilities Act (P.L. 101-336); Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and Article CXIV of the Constitution of the Commonwealth of Massachusetts. The provisions of this act would promote compliance by the commonwealth with these and other laws protecting the civil rights of individuals with disabilities, by offering mechanisms to afford reasonable accommodation to the particular disability of mental retardation. The availability of such options will reduce the danger that victims or witnesses, who happen to be retarded, will be further victimized by the current system's inability to recognize and honor their rights and needs.

SECTION 2. Chapter 278 of the General Laws is hereby amended by inserting after section 16D the following section.

Section 16E. (a) For the purposes of this section, the following words shall have the following meanings:

"Witness with mental retardation", a witness in a proceeding whom the presiding court has found after hearing, as provided in subsection (b) (1) below, to have mental retardation.

"Mental retardation", substantial limitations in present functioning, manifesting before age eighteen, and characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas; communication, self-care, home living, social skills, community use, self-direction, health

and safety, functional academics, leisure, and work.

(b) (1) In any judicial proceeding wherein a witness with mental retardation may or will testify, the court on its own motion or on motion of the proponent of the witness with mental retardation, and after a hearing, may order the use of one of the alternative procedures for determining competency to testify or for taking testimony of the witness with mental retardation described below, provided that the court finds at the time of the order, by clear and convincing evidence in the case of a criminal proceeding and by a preponderance of the evidence in the case of a noncriminal proceeding, that the witness with mental retardation is likely, as a result of submitting to usual procedures for determining competency or as a result of testifying in open court, as the case may be, (i) to suffer severe psychological or emotional trauma; or (ii) to suffer a temporary loss of or regression in cognitive or behavioral functioning or communicative abilities, such that his or her ability to testify will be significantly impaired. If the court orders the use of an alternative procedure pursuant to this section, the court shall make and enter specific findings upon the record describing the reasons for such order.

(2) A court that makes findings in accordance with (b) (1) above, may order any of the following suitable alternative procedures for determining the competency to testify or for taking the testimony of the witness with mental retardation:

- (i) Taking the testimony of the witness with mental retardation while permitting a person familiar to the witness such as a family member, clinician,

counselor, social worker or friend to sit near or next to him or her.

- (ii) Taking the testimony of the witness with mental retardation in court but off the witness stand;
- (iii) If the proceeding is a bench proceeding, taking the testimony of the witness with mental retardation in a setting familiar to the witness.
- (iv) If the proceeding is a jury trial, videotaping of testimony, out of the presence of the jury or in a location chosen by the court or by agreement of the parties;
- (v) The procedure set forth in (i) in combination with (ii), (iii), or (iv).

(c) Testimony taken by a videotape pursuant to an order under paragraph (b) (1) shall be taken in the presence of the judge, counsel for all parties, and such other persons as the court may allow. Counsel shall be given the opportunity to examine or cross-examine the witness with mental retardation to the same extent as would be permitted if ordinary procedures had been followed.

(d) When the proceedings are criminal, the defendant shall have the right to be present during the taking of the testimony, to have an unobstructed view of the witness with mental retardation, and to have the witness' view of the defendant be unobstructed.

(e) An order issued under paragraph (b) (1) that the testimony of the witness with mental retardation be videotaped out of the

presence of the jury shall provide that the videotape be shown in court to the jury in the presence of the judge, the parties, and the parties' counsel. At such courtroom showing, the audio portion of the video shall be entered into the record as would any oral testimony and shall be treated in all respects as oral testimony to the jury.

(f) The videotape or giving of testimony taken by an alternative procedure pursuant to an order issued under paragraph (b) (1) shall be admissible as substantive evidence to the same extent as and in lieu of live testimony by the witness in any proceeding for which the order is issued, or in any related proceeding against the same party when consistent with the interests of justice, provided that such an order is entered or re-entered based on current findings at the time when or within a reasonable time before the videotape or testimony is offered into evidence, and provided, in the case of a related criminal proceeding, that the requirements of paragraph (d) were satisfied when the videotape was recorded or the alternative procedure was used.

(g) Whenever pursuant to an order issued under paragraph (b) (1), testimony is recorded on videotape, the court shall ensure that:

- (i) The recording equipment is capable of making an accurate recording and is operated by a competent operator;
- (ii) The recording is in color and is taken in well-lit conditions;

- (iii) The presence of the presiding judge, the attorneys, the defendant or parties (if in the room), and all other persons present, is stated on the recording;
- (iv) The witness with mental retardation is visible at all times, and, to the extent reasonably possible, the recording shows all persons present in the room as a jury would perceive them in open court;
- (v) Every voice on the recording is audible and identifiable;

(vi) The recording is accurate, undistorted in picture or sound quality, and has not been altered; and

(vii) Each party is afforded the opportunity to view the recording before it is shown in the courtroom.

(h) The fact that the witness with mental retardation has been found in a court proceeding to be incompetent to make informed decisions of personal, medical or financial nature, or is under a guardianship or conservatorship, shall not preclude the witness from testifying if found competent to testify, and further shall not preclude a determination of competency to testify.

(i) The use of alternative procedures shall not be denied because they may take significantly more time than conventional procedures.

(j) Expert opinion shall be admissible at any hearing held pursuant to this section, including hearings to determine the competency of a witness with mental retardation to testify.

(k) Nothing in this section shall be deemed to prohibit the court from using other appropriate means, consistent with this section and other laws and with the defendant's rights, to protect a witness with mental retardation from trauma during a court proceeding.

**THE INVESTIGATION AND PROSECUTION OF
A FINANCIAL EXPLOITATION CASE**

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THE INVESTIGATION AND PROSECUTION OF A FINANCIAL EXPLOITATION CASE

I. THE PROTECTIVE SERVICES CASE

A. How to Plan the Investigation

1. Strong suspicion that something may be wrong.
 - a. Who to interview.
 - b. What documents to obtain.
2. To determine what are next steps to take and for what purpose, e.g. to get a conservator; get more services; or call the police, etc.

B. The Investigation

1. Victim
 - a. Issues of competency, i.e. a mentally impaired victim.
 - b. Physically impaired victim, e.g. deaf, blind, etc. Can the victim identify the documents? Can the victim be interviewed?
 - c. Providing for immediate/long term needs of the victims.

1. Protective orders, restraining orders;
 2. Conservatorship/guardianship; and
 3. Service plan.
2. Perpetrator
- a. Identifying the suspect; need to interview the victim and others who deal with the victim

Need name or description of suspect, documents with the perpetrator's signature, etc.
 - b. Interviewing the suspect. This may be the only opportunity to find out what the perpetrator is going to say about what happened. Once a law enforcement investigation begins, Fifth Amendment issues arise (Miranda).
 1. Chance to close off possible defenses, e.g. did the victim owe money to the perpetrator? Ask him.
 2. Take down specific statements made by the perpetrator verbatim.
 3. Does the suspect want to make a "deal"? Settle it "out-of-court"?
 - c. Searching the suspect or property within his control, i.e. apartment, car. Will he consent? Should you get his consent in writing? Should the police do the search?
 - d. Safety planning for victim and APS worker.
 1. Vacate orders.
 2. No contact order.
 3. Refrain from abuse orders.
3. Witnesses - need to know their names and addresses and relationship to the case.
- a. Knowledge of the case.

- b. Legal privileges - doctor/patient; lawyer/client; priest petitioner; husband/wife; (social worker/client)
- c. Confidentiality - agency records

(Practice Hints: 1. Bias/self-interest of the person speaking with APS worker
2. APS worker bias)

4. Collection of evidence by Criminal Justice System and Agency

- a. Need to know what's been collected and where it is.
- b. Need to know what else needs to be collected and where it is.
- c. Search warrants, subpoena duces tecums, court orders or other subpoenas may be used. Need to know the names of the people and the agencies they should be sent to.
 - 1. Definition.
 - 2. Who issues.
 - 3. Threshold criteria/legal showing
- d. Types of documents.
 - 1. Public Records, e.g. real estate deeds
 - 2. Privileged or confidential records
 - a. Use releases from the victim to obtain copies of bank records or phone records (confidential not privileged).
 - 3. Financial records. Look for "NSF's", daily account activity number of dishonored items, history of account activity, whose name is on the account, who is to be notified at what address to close the account and what is the method by which the owner of the account is notified that it is to be closed or is already closed, when and who decided to close the account, when was the check dishonored, etc. Are there any promissory notes?

C. Investigation Report

1. Due process issues. How long did the investigation take and why? Was there any undue delay in undertaking the investigation? Need to document investigation, times, why it took so long and when the defendant knew about the investigation.
2. When to contact the police
 - a. To assist in identifying the perpetrator through, for example, a photo array. (Issues of liability, lack of training, source of photos, suggestiveness of array)
 - b. To develop further evidence in the case, for example, to compare the alleged perpetrator's signature on known exemplars with the signature appearing on the documents in question.
 - c. To interview the suspect. Voluntariness issues; no coercion or denial of basic needs; use of tapes; use of written waiver forms.
3. What to report to the police

D. Interface with the Police

1. Interagency protocols (Hand out)
2. Clear objectives - To protect the victim and to stop the perpetrator.

E. Interface with the District Attorney's Office

1. Interagency protocols (Handout)
2. Initiation of relationship - line workers or through agency administrators

II. The Legal Case

A. The Criminal Justice System (CJS)

1. Adversarial process in which witnesses present information (evidence) to a factfinder (Judge/Jury) who then weighs the information (deliberations) and decides who is telling the truth (verdict).
2. Contrast to civil. In a civil case, the parties are on equal footing. Criminal defendant has constitutional rights: right to counsel; right to remain silent; right to confront witnesses; right to trial by jury. Standard of proof in civil is preponderance of the evidence or clear and convincing. In criminal, it's beyond a reasonable doubt.
3. Players (Handout)
 - a. Prosecutor and Victim
 1. Role of the prosecutor
 - b. Defense Attorney and Defendant
 1. Role of the defense attorney
 - c. Other Witnesses
 - d. Judge and/or Jury
 - e. Clerk/Probation Officers/Court Officers
 - f. Voice Recorder/Stenographer
4. What are the appropriate charges, e.g. certain consumer complaints may not be crimes, e.g. shoddy workmanship. If the DA cannot bring charges against the perpetrator, is a civil action possible? Or can the consumer fraud unit of the DAs or AG's office or a Consumer Action network assist.

B. Preparing the case for trial

1. Witnesses
 - a. Competency of the witness. Did the witness have the ability to understand and the opportunity to observe what was going on at the time that it was going on? Can the witness now recall what happened? Can the witness relate what happened?

- b. Can the case go forward without the victim testifying?
- c. Expert witnesses, e.g. handwriting expert
- d. Issues of privilege e.g. what victim told someone else in a privileged relationship with her
 - 1) Definition of privilege vs. confidentiality
 - 2) Can the case be made without these records or this person testifying? Is the victim competent to consent to the release of these records or for the person to testify? If not, what are the options available to the prosecutor?
 - 3) Who has the privilege? Can it be waived?
 - a) Deliberately?
 - b) Inadvertently? e.g. Third Party Presence
 - c) Fully - Yes; Partially - No

2. Rules of evidence

- a. When the protective services worker testifies.
 - 1) Lay witness with first-hand personal knowledge
 - a) You can only testify to what you saw, heard (within limits of hearsay), gained first hand personal knowledge of through your senses. (Peripient witness) (or know as an expert – if you qualify).
 - b) Don't volunteer, guess or overreach.
 - c) Don't be an advocate but a professional here to tell you what I know.

- i. Hearsay - Out of court statement offered in court to prove the truth of the statement.
 - ii. Exceptions
 - a. State of mind/excited utterance
 - b. Fresh complaint
 - c. Admissions
3. Expert
4. Custodian of Records - "Tour Guide".

Practice Hints:

1. It is ok to be prepped; preparation of file. Prepare your testimony with the attorney who has called you as a witness. What questions are you going to be asked?
 2. It is ok to say "I don't recall" but be cautious about saying "I don't know". Refreshing recollection by reviewing file.
 3. Full disclosure of weaknesses in the case.
 4. Find out what the issue in the case is, e.g. gift
 5. Watch other cases in court.
5. Affidavits
- a. Not a substitute for a live witness
 - b. Notarized statement vs. statement testified to under oath
6. Defenses, e.g. issue of consent - how to prove that the victim did not willingly or knowingly sign the checks/documents.
- C. The Trial
1. The oath. Issues of perjury.

2. Basis of knowledge of the witness "laying a foundation".

a. Precipient Witness

b. Expert Witness - person with special training or experience beyond common experience which will assist the trier of fact to understand certain evidence.

1) Foundation

- a) Education
- b) Experience
- c) Teaching
- d) Publications
- e) Previous Testimony

2) Opinion Testimony, e.g. forgery

c. Challenge to Foundation

d. Sequestration of witnesses (exclusion of witnesses not testifying and order not to discuss testimony with other witnesses).

3. Direct examination

a. Testify from memory not from your records

1) Refresh Recollection

2) Past Recollection Recorded

b. Nonleading Questions

c. Factual Information

- 1) Where
- 2) When
- 3) Who
- 4) What

- a) The act
- b) The results

d. Observations Not Characterization

- 1) Upset
- 2) Afraid
- 3) Filthy

e. Listen to the question/Answer what you are asked. Don't try to anticipate the question; you will be distracted.

f. Objections

4. Documentary Evidence

a. Production

- 1) Subpoena duces tecum
- 2) Client consent
- 3) Search warrant

b. Introduction

1) Who can introduce

- a) Custodian
- b) Preparer

2) Review of content in camera

- a) Under what circumstances
- b) Process
- c) Result

- i. Disclosed fully
- ii. Limited disclosure (sanitized)
- iii. Nondisclosure

3) Foundation

- a) Goodfaith
- b) Business records
- c) Not made in contemplation of litigation.

4) What is introduced, e.g. summary of voluminous record.

5. Cross examination

a. Leading questions

b. Discredit you or your testimony

E.g. Bias - the danger of aligning yourself with one or the other side. Need to be objective.

c. Use you to Bolster Defense

1. I wasn't there - alibi
2. I was there but I didn't do it - I.D.
3. It was me but I was justified

a) Intoxication

- i. Lack of intent
- ii. Debt - "It was owed to me."
- iii. Gift

b) Insanity

d. Common Courtesy

1. Don't talk to judge
2. Don't argue
3. Pause for objection
4. Just answer question asked

6. Redirect examination - an opportunity to clarify.

F. Case Outcomes

1. Directed verdict.
2. Not Guilty.
3. Guilty.

1. Incarceration
2. Probation

a. No contact order

b. Restitution - the return of money and property to the victim.

c. Counseling

3. License revocation

III. Miscellaneous

A. Intimidation of a Witness

B. Depositions - Questions and answers between an attorney for a party and the opposite party or witness in a civil suit. Testimony is given under oath and recorded by a stenographer.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety

AN ACT PROTECTING ELDERLY PERSONS FROM FINANCIAL EXPLOITATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 14 of chapter 19A of the General Laws, as appearing in the 1988 Official Edition, is hereby amended by inserting after the word "person", in line 5, the words: or financial exploitation of an elderly person.

SECTION 2. Said section 14 of said chapter 19A, as so appearing, is hereby further amended by inserting after the definition of "Emergency" the following definition:-

"Financial exploitation", an act or omission by another person, which causes a substantial monetary or property loss to an elderly person, or causes a substantial monetary or property gain to the other person, which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented to such act or omission unless such consent is a consequence of misrepresentation, undue influence, coercion or threat of force by such other person; and, provided further, that financial exploitation shall not be construed to interfere with or prohibit a bona fide gift by an elderly person or to apply to any act or practice in the conduct of any trade or commerce declared unlawful by section two of chapter ninety-three A.

House of Representatives, June 26, 1990.

Passed to be enacted,

Robert Conner

Acting Speaker.

In Senate, June 29, 1990.

Passed to be enacted,

William M. Bulger

President.

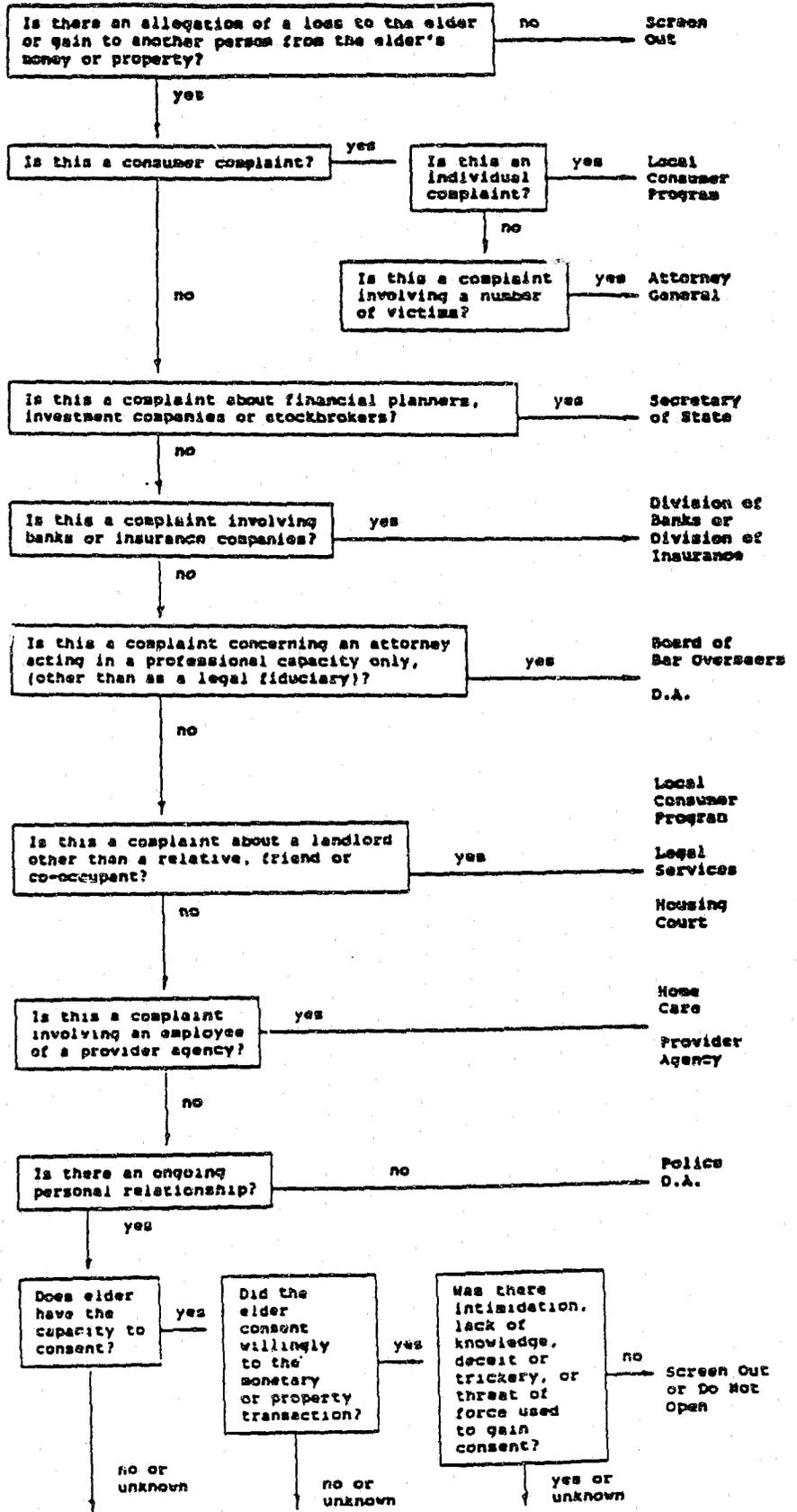
July 10, 1990.

Approved,

William F. Weld Governor.

REPORTS OF FINANCIAL EXPLOITATION

Decision Tree



SCREEN IN OR OPEN - PROTECTIVE SERVICES

LEGAL TERMINOLOGY

ACQUITTAL - a verdict of not guilty in a criminal case.

ADMISSION TO SUFFICIENT FACTS - the act of admitting that there is sufficient evidence to warrant a finding of guilty. (ASF)

ARRAIGNMENT - a court proceeding in which a suspect is formally accused of a crime.

ASSISTANT DISTRICT ATTORNEY - also known as **PROSECUTOR**: lawyer for the State who represents the interests of the general public. (ADA)

BAIL - an amount of money or property sometimes required by a judge to be paid to the court by the defendant to insure that the defendant will appear for trial.

BAIL REVIEW HEARING - an appeal to a judge in a higher court to lower the bail amount set by a judge in a lower court.

BENCH WARRANT - a warrant issued to arrest an individual who fails to appear in court when scheduled - (also known as a **DEFAULT WARRANT**.)

BODY ATTACHMENT - warrant for arrest of a witness or victim who has been subpoenaed to court to testify but has failed to appear. Either attorney can request the bench warrant. The judge has the authority to grant or deny the request.

BURDEN OF PROOF - Prosecution must prove beyond a reasonable doubt that a defendant is guilty of the crime with which he is charged. Defense has only to establish that there is doubt.

CONTINUANCE - postponing of a case until a later date.

CROSS-EXAMINATION - questions asked of a victim or witness by the defense attorney during the trial. Questions asked by the prosecuting attorney of any defense witnesses and the defendant if he chooses to testify.

DEFENDANT - person who is charged with a crime.

DEFENSE COUNSEL - lawyer for the defendant. May be appointed by the Court if defendant can prove he can not afford a lawyer.

DISMISSAL - refusal by the court (for legal reasons) to allow a case to continue to be prosecuted. A case can be dismissed for lack of sufficient evidence, if witnesses for the state fail to appear, etc.

FELONY - certain crimes (such as, but not limited to, murder, rape, assault and battery with a dangerous weapon) considered by the legislature to be more serious than misdemeanors and punishable by a prison term.

HUNG JURY - jury whose members cannot agree beyond a reasonable doubt as to whether the defendant is guilty or not guilty. The case may be retried at a later date with a new jury.

INDICTMENT - a formal written accusation made by a grand jury stating that a specific person has committed a specific crime.

JURISDICTION - the authority of a court to hear a particular matter.

MISDEMEANOR - a crime which is less serious than a felony, and which is punishable by a fine and/or imprisonment in a local jail.

MOTIONS - request by an attorney that the court make a decision on a specific issue.

NOLLE PROSEQUI - (nol pros) Prosecutor's decision not to prosecute a case after charges have been brought.

OBJECTION - a claim by an attorney that a question posed to the witness is legally improper. A judge decides whether the question is to be answered.

OWN or PERSONAL RECOGNIZANCE - the release of an arrested person on his/her promise that he/she will return to court.

PLEA BARGAINING - a defendant may voluntarily plead guilty. The plea can be guilty to the crime as charged or guilty to a related crime. The defendant is told what sentence the prosecuting attorney is recommending before he/she decides to plead guilty. The judge may accept or reject the change of plea after determining that the plea is made voluntarily and that the defendant is fully aware of the consequences of changing his plea.

PRELIMINARY HEARING - hearing held before a judge to determine if there is sufficient evidence that the felony crime charged was committed by the defendant. Both prosecuting and defense attorney present evidence.

PRESENTENCE INVESTIGATION/REPORT - report prepared by probation department to help the judge in imposing sentence. (PSI)

RESTITUTION - money paid back to a victim by the defendant for out of pocket expenses incurred as a result of the crime.
(REST)

SEARCH WARRANT - An order by a judge permitting the search by the police of a particular place for particular items.

SEQUESTER - to set witnesses apart from the court proceedings so they may not hear one another's testimony.

STIPULATIONS - statements by the lawyers that certain information or matters have already been agreed upon.

SUBPOENA/SUMMONS - a court order requiring a person to appear in court to give testimony or to present evidence.

SUBPOENA DUCES TECUM - a court order requiring a person to testify in court and to bring with them certain specified documents or items.

TESTIMONY - statements made in court by people who have sworn to tell the truth.

TRIAL - There are two types of trials - jury trials and bench trials. The defendant can decide which will take place. In a bench trial, the defendant has decided he does not want a jury to hear his case. A judge hears the evidence and makes a decision. In a jury trial, all of the jury members must agree beyond a reasonable doubt that the defendant is guilty or he is acquitted and allowed to go free. If the jurors can not all agree on guilty or not guilty than it is called a "hung jury" and a new trial date may be set.

VERDICT - the decision of the judge or jury at the end of a trial.

WARRANT - an order from the court to arrest a person or seize an object.

7057A

ELDER ABUSE CASES AND THE CRIMINAL JUSTICE SYSTEM

| <u>STAGE OF CASE</u> | <u>LAW ENFORCEMENT AND PROSECUTION</u> | <u>SERVICE PROFESSIONAL</u> | <u>VICTIM</u> |
|----------------------------|---|---|--|
| Investigation | Interview witnesses; obtain records and physical evidence; arrest suspect; secure emergency services for victim, as needed. Contact victim and determine if able to testify. | Document observations; call police when appropriate; provide statement and identify other witnesses and investigative leads for law enforcement and prosecution; assess victim's need for services and assist victim in obtaining them. | Call police when help is needed; provide statement to law enforcement and prosecution, if capable. Identify other witnesses known to victim. |
| Charging | Determine if victim needs no contact order; refer victim to Victim Advocacy Unit; charge case and prepare no contact order. | Refer victim to Victim Advocacy Unit. Consult with prosecution re: facts. Identify possible expert witnesses. | Indicate if no contact order needed; state attitude toward case, bail, disposition, if desired. |
| Arraignment | Request bail, oppose O.R., where appropriate. Request no contact order. Oppose unnecessary or lengthy continuances; mail victim copy of no contact order; assign case to experienced prosecutor. Provide discovery to defense. | Work with victim advocates to assess victim's needs and provide required services. | Does not usually appeal at arraignment. Victim receives copy of no contact order. |
| Pre-Probable Cause Hearing | Subpoena all witnesses, including victim (where competent or needed) and records; victim advocates do initial interview of victim and assess for state compensation eligibility; prepare witnesses for testimony; arrange transportation and court accompaniment for victim, as needed. | Discuss case facts with prosecutor. Confirm case status and availability of service professionals to testify at hearing. Support victim by confirming that victim receiving needed services. | Speak to victim advocate before testifying on role as a witness; review testimony to be offered at hearing with prosecutor. |

Chart prepared by
Candace J. Heisler,
San Francisco
District Attorney's

| <u>STAGE OF CASE</u> | <u>LAW ENFORCEMENT AND PROSECUTION</u> | <u>SERVICE PROFESSIONAL</u> | <u>VICTIM</u> |
|------------------------|---|--|---|
| Probable Cause Hearing | Call witnesses and adduce other evidence to show crime occurred and identity of the offender. May be before grand jury or a judge at a preliminary hearing. | May be called to testify; continue to support victim by assuring that services are provided. | May testify. |
| Pre-Trial | Case conference with judge and defense attorney. Discuss case settlement. Identify and consult with expert witnesses. Notify all witnesses if case is settled. Complete, giving discovery to defense. | Identify additional expert witnesses, if needed; re-contact prosecutor for case update; make recommendation re: disposition to prosecutor; continue to confirm victim's need for services is met. Review earlier testimony and case facts with prosecutor. | Review earlier testimony, case facts, and exhibits with prosecutor; make recommendations regarding disposition to prosecutor. |
| Trial | Produce testimony and evidence to establish guilt beyond a reasonable doubt. Provide victim with transportation and court accompaniment services, as needed. | Testify as needed. | Testify as needed. |
| Sentencing | Make sentencing recommendation to probation department and court; notify victim and service professionals of case disposition. | Make recommendation to probation department regarding needs of victim and defendant. | Provide information regarding restitution, attitude toward the crime and appropriate sentence to probation department. Provide victim impact statement. May be present at sentencing. |

Chart prepared by
Candace J. Heisler,
San Francisco
District Attorney's
Office, 1990.

FrontLine

FROM THE FRONTLINES: WORKING WITH THE CRIMINAL JUSTICE SYSTEM

Candace J. Heisler, Assistant District Attorney for the City of San Francisco, relates how adult protective service and aging agency personnel can most effectively work with members of the criminal justice system to enable successful prosecution of suspected elder abusers. The full text of Heisler's article will appear in the Spring 1991 issue of Journal of Elder Abuse and Neglect. We are indebted to the journal's editors for allowing us to reprint selections from that article.

Professionals who assist the elderly population are experts who are trained to detect elder abuse. They are frequently required to report it. The case worker must understand what the criminal justice system does and how it performs. When criminal justice intervention does occur, the professional should work with the prosecutor and law enforcement to insure that the needs of the victim and offender are addressed.

OBSERVE AND DOCUMENT

Effective criminal court interventions are the result of careful observation and documentation. Professionals working with elderly clients should note all contacts, even when everything appears in order. Information concerning the elder's capabilities, activity level needs and level of awareness should also be included. Don't forget to note the time, place, and date of the observations. These notes will demonstrate what is normal in this client's life and will be used to contrast later observations. They will identify potential witnesses in the event of future victimization, and are relied upon by the police, prosecution and courts to decide future actions.

When all does not appear to be in order, the same type of notations should be made. If physical abuse is suspected, document the existence and location of any unusual marks or injuries. The client and caregiver should be separately questioned about the suspicious injury, and their answers quoted exactly. Changes in the client's demeanor, living situation, level of activity and willingness to communicate should become part of the written record. In some cases, the professional may wish to involve the police.

WORKING WITH THE POLICE

If a professional suspects elder abuse has occurred and police are telephoned, the police operator or dispatcher will ask the following questions. The professional should be prepared to answer them immediately. Who is the victim and where is she or he located? Does the victim need immediate medical care? Who is the alleged suspect? Is the suspect present or likely to return? Who is the caller and where is the caller located? What has occurred? What does the caller want done?

(See Frontline continued on page 7)

The views expressed are those of the author, and are not necessarily endorsed by NARCEA and the Administration on Aging.

If a welfare or well-being check is requested, the professional should be prepared to convince the police that such a check is needed. Are there unusual noises or smells coming from the premises? Are there uncollected newspapers or mail? Has a caregiver denied contact with or access to the elder? Has the elder missed an appointment? Have other attempts to contact the client failed?

The information provided by the caller will assist police in determining the priority to assign and the level of response required to handle the call for assistance. A police unit may be dispatched, or a police report may be mailed to the reporting party. Calls regarding elder abuse and calls for well-being checks should be handled in person by a police unit. After the call, the professional should wait for the police to arrive, if it is safe to do so. Once the officer arrives, be prepared to repeat all the information previously given over the telephone.

Once the immediate police response is completed, the professional will need to provide additional information to the investigator. This will include:

- names, addresses and telephone numbers of witnesses
- names, agencies, addresses and telephone numbers of agencies and caseworkers serving the elderly client or the suspected caregiver
- the name and telephone number of family members, friends and any conservator who should be contacted and who are familiar with the victim and suspect
- the professional's personal history and relationship with the victim and suspect
- behavioral changes that indicate that abuse might have occurred

- information concerning the mental state and capabilities of the victim prior to the incident.

As an expert, the professional knows what the critical facts are. The police frequently are unfamiliar with what is needed to prove that elder abuse occurred and, not trained in the investigation of elder abuse, may not know the critical questions to ask. The professional must take the initiative in providing factual and specific information and in insisting that a report be written and passed, if warranted, to the prosecutor's office. Rather than being cut out of the case, the professional can continue to ensure that the needs of the client and suspected caregiver are considered and met.

WORKING WITH THE PROSECUTOR

The prosecutor generally becomes involved in an elder abuse case after the police have made an arrest. After an arrest, prosecutors have wide discretion in deciding which cases will be charged. The decision is based on the nature of available evidence, seriousness of the offense, availability of witnesses, the offender's criminal history, desires of the victim and other concerned parties, available resources in the criminal justice system, and office priorities.

Most important in deciding whether the prosecution will proceed is whether there is sufficient evidence to prove guilt beyond a reasonable doubt. If this burden of proof cannot be met, charges will not be brought.

It is evident that the period between arrest and charging is a critical one. It places extra responsibility on the agency representative overseeing the victim client's case. Successful prosecution requires that the professional follow-up after the arrest and work cooperatively with the prosecutor's office and case

(See FrontLine continued on page 8)

FrontLine (continued from page 7)

investigator. The professional can be of immeasurable help in preparing his or her own written statement or providing a taped interview. The professional can also assist in identifying and helping contact other witnesses, in helping calm the victim, and in locating a victim who has gone to stay with relatives or is in hiding.

Additionally, there are many ways the professional can help the prosecutor's office build a case. These include:

- identifying available records, concerned agencies and treating facilities
- identifying witnesses to the victim's condition at particular points in time
- identifying the circumstantial evidence of abuse
- identifying the direct evidence of abuse
- relaying the victim's condition before and after the incident
- relaying information about the suspect, including his/her relationship with the victim, the possible motivation for the abuser's behavior, the professional's interaction with him/her, and the effect the victim's aging has had on the suspect
- confirming the social history between the suspect and the victim
- gathering recommendations of experts to be consulted on aging, diseases and conditions associated with aging, the differentiation of trauma from aging, bruising patterns and battered elder syndrome
- noting prior conservatorship or civil proceedings

- assessing the victim, including level of confusion, competence, and special victim needs if the case proceeds to court
- identifying persons who will perform the functions previously completed by the suspect
- locating additional witnesses or agencies with knowledge of the victim or suspect.

If there has been a multi-disciplinary team meeting focusing on the client, the prosecutor needs to contact the participants and locate possible additional evidence.

THE NEED FOR COOPERATION

Traditional methods and approaches for dealing with elder abuse may have discouraged victims and service providers from turning to the criminal justice system for help. However, increased awareness of the seriousness of domestic violence and elder abuse has led to the evolution of new attitudes, the enactment of new laws, and the development of new procedures which enable the system to play a strong part in deterring further violence. In serious cases, the criminal justice system may be the only way to protect the vulnerable elder.

As social service professionals and members of the criminal justice system grapple with the problem of elder abuse, we must recognize our need to work cooperatively, to understand one another's guiding principles and points of view, and to teach and learn from one another. As part of our interdisciplinary approach, we must train one another in our procedures, establish local protocols, develop community shelters and centers for the elderly, and raise public awareness to the plight of elder abuse victims. Working together, we are a powerful weapon against those who victimize the elderly. ♦

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