

FTC SENIOR ID THEFT WORKSHOP
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TRANSCRIPT
SEGMENT 3

LISA WEINTRAUB SCHIFFERLE: Good afternoon everyone. Thanks for coming back for the second half of the FTC's forum on senior identity theft. This panel is going to focus on the unique challenges of identity theft in the long-term care context. In some respects, seniors in long term care are the most vulnerable seniors there are. So it makes sense that we're building up to this panel throughout the day.

When we talk about long-term care this afternoon, we're going to talk about it broadly to include nursing homes and assisted living and even in-home care, because seniors in all of these different long-term care settings are particularly vulnerable to identity theft. First they're vulnerable because there are at greater risk of identity theft, because their pe

ion on this panel is going to be divided into three parts. First, we're e of the problem, including questions such as why are seniors in long - e to identity theft, what types of ID theft are we seeing in these settings, between different long-term care settings and how vulnerable seniors ngs?

discuss how to prevent identity theft in long-term care. And then third, this problem. We'll also have an opportunity for questions at the end m those of you that are participating by webcast. So please feel free to e question card or send them in via email, and we'll get to them at the

to have a very distinguished panel, which contains some of the nation's term care issues, as well as experts on identity theft and consumer include Becky Kurtz, who's the director of the Office of Long Term ms at HHS's administration on aging, Naomi Karp, who's a policy Financial Protection Bureau in the Office for Older Americans. Next, enior attorney at the American Bar Association's commission on law who's a policy research analyst at AARP, and last but not least, Sarah rector of Consumer Voice

about the scope of the problem. We want to understand what makes vulnerable to ID theft, who exploits those vulnerabilities and how? So elist a targeted question to try to explore these issues. Let me start with at makes seniors in long-term care vulnerable to ID theft?

Is it the higher prevalence of diminished capacity among residents in long-term care? And if so, what challenges exist when you have a senior with diminished capacity issues?

NAOMI KARP: So I would say that, by definition, older adults who receive long-term services and supports, either in nursing facilities, assisted living, or at home, have physical and or cognitive impairment. And they need assistance with activities of daily living. Cognitive impairments in particular make them vulnerable to both identity theft and financial exploitation. And I'm, in some ways, going to merge those two things in my answers, because I think there's not necessarily a really clear line sometimes.

So just to talk a little bit about the capacity issue, the capacity to handle finances is one of the first abilities to decline as cognitive impairment encroaches. And yet, older adults and their families often are unaware that those deficits are developing. One component of financial capacity is the judgment to act prudently and avoid financial exploitation. So the research suggests that diminished financial capacity definitely makes people vulnerable to scams, frauds, and ID theft.

And just to put a little bit more reality to that, declining skills in this area comes with mild cognitive impairment before you even get full blown Alzheimer's. And unfortunately, about 22% of our population 71 and over have mild cognitive impairments. And then once it progresses to Alzheimer's, their capacity goes down a whole lot more.

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LORI STIEGEL: Thank you, Lisa. It's an honor to be here. So in case anybody doesn't know

We talked about this morning on the medical ID theft panel how if your Medicare number is your social security number, that can lead to some greater vulnerability. So if a senior is in a nursing home and may have the government paying the bill, are they at greater risk than a senior in assisted living who may be paying the bill through their own private funds?

BECKY KURTZ: So there's a few different risks to look at. First of all, as Naomi indicated, you've got the challenge of so many individuals, whether they're receiving long-term services and supports in their home or in a facility, having cognitive impairment or functional impairments that make them more vulnerable to the exploitation. So if you're in your own home, you have the risk of isolation, that nobody will be there to catch it, that nobody will be there to intervene. Nobody's watching.

So there's more isolation opportunity. The flip side is that in a facility, particularly larger facilities, there are more people around. That gives more opportunity for a bad actor to be one of those people. So there are different kinds of risks. One is isolation, one is enhanced opportunity, depending on the setting, but cognitive impairment being one of those risk factors that goes across every setting.

One of the things that makes a big difference, though, I think is the way that regulatory oversight and also involvement of a long-term care ombudsman program-- the differences in how they play. So for example, in the nursing home world, you are looking at the vast majority of nursing homes receiving Medicare and or Medicaid and therefore being certified and having to meet federal regulation. That means that they are going to have at least every year an annual survey for federal regulations.

And just as an example, just the federal regulations alone on the protection of resident funds in a personal needs account or a resident fund account are about 15 pages of guidance to surveyors and guidance to facilities of what should happen with those resident funds. The facility has to have a surety bond. There are all kinds of requirements on what the facility needs to be doing.

And then they're surveyed to make sure there's compliance. And then there's an enforcement mechanism. It doesn't always work perfectly, but there's a system there for it. There are also frequently visits by long-term ombudsmen not only in addition to complaint visits, but by having a regular presence in nursing homes. And across the country, long-term ombudsmen are in nursing homes at least once a quarter in about 70% to 80% of the nursing homes.

So even if there's not a complaint, there's someone going in there on behalf of the resident, watching what's going on, asking what's going on, being present, and hopefully preventing, but certainly being there to respond when there are challenges. Assisted living, boarding care, residential care facilities-- there are a variety of names for things that are not nursing home, but are congregate settings. An(r)-5(e)-4(gn, a)4e84 Tu10(a)e84 Tu10(a)e84 Tu10(a)eAn(r 6(o)2(n)-8(g)a)6(te)6(s

ability for long-term care ombudsmen to be present is less. Even though ombudsmen do have a

Oh my god, I'm in trouble. I've been arrested, and you need to wire me \$3,000 right away, or else I'm going to be in the clink in some third world country. Other kinds of unsolicited sales calls or visits, or even the resident might lack some basic possessions or needs, but we find that their personal needs accounts that Becky referred to are depleted. The money should've been there for those things, but someone's not using the money for that.

Some other warning signs might be more indirect, so we might need to work a little harder to make the connection. For example, a resident might become secretive and suddenly start hiding things or hoarding possessions. And that might actually be a sign that something is going awry. And that's how they are manifesting what's going on.

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But realistically, I don't think families are going to go there. I think they're going to be focused on, what's the proxi

So it's really an individual choice. If you know you're not getting a lot of credit, you're not to be taking out mortgages or new credit cards or things like that, it's probably good proactive step to take. It'll at least prevent you from this kind of new account fraud. And of course, if you're a victim and you know someone's using your information actively, then you would definitely want to use the security freeze that's going to be free in most cases.

And this will protect your credit report from getting any further damage.

LISA WEINTRAUB SCHIFFERLE: Thanks. That's a tip that we often give to consumers, especially seniors as well. Lori, you talked before about power of attorney abuse. Are there any tips on how to prevent power of attorney abuse? And in particular, a lot of people also always ask, how do you identify someone who's a good trusted person to have power of attorney?

LORI STIEGEL: Well, let me distinguish again between the front end-- the forgery, the tricking, the capacities already diminished. And then I'll come back to the other side of the misuse of authority. It's harder, of course, to protect against those things. But I think you can try and pick up on the result of those things happening-- the forgery and so forth-- through a lot of the monitoring tips that you've been hearing about all day.

services lawyer, I would have people come in who want to make a power of attorney, and I would talk to them about the pros and cons of doing this. And that education is critical.

I could always sense if somebody really wasn't quite sure. They were naming one kid to do the financial affairs and the other day to do the health care, just because they thought they wanted to be fair to the kids. That's not real smart. I would talk about, well, what if your son? Well, my son would never do this to me.

What if your son marries a bad woman? And their eyes would sort of, yeah, I could see that happening. Just read about the Brooke Astor case if you want to see what happens when that happens. But then they sort of oh no no, but he would make sure she wouldn't do anything like that.

Some of this is pretty hard to avoid. But trying to build in some third-party and monitoring yourself is the way to do it.

LISA WEINTRAUB SCHIFFERLE: Thanks. So our advice so far has been targeted towards seniors and their loved ones. I want to ask Naomi to talk a little bit about advice to nursing homes and assisted living facilities, and the work that the CFPB is doing in those areas.

NAOMI KARP: Sure, and before I do that, I just want to add one thing to all the great things that Lori just said. One thing that I've done a lot of work on guardianship issues and power of attorney issues. There's a growing cadre of professional guardians who can be appointed by the court, because as Lori mentioned, so many people are either outliving their family members or they don't have any family members.

And somebody needs to step in when they become incapacitated. I've learned that some of the people who are serving as court appointed guardians, now there's actually a growing business of people serving as paid agents under power of attorney. So there is the possibility that people could find a professional to whom they'd have to pay a fee. But hopefully, they would be a reputable person.

That's another option. So now, turning back to your question, I just want to mention quickly one project that we are doing right now at the Consumer Financial Protection Bureau's Office for Older Americans. And that is creating a guide for operators of congregate living facilities, such as assisted living and nursing homes to address these issues of identity theft and financial exploitation.

What we learned was, I alluded before to the situation where someone's bills for their residential care are not being paid, because the money's being diverted somewhere else. And we've learned from the field that this is a common occurrence. And what happens is sometimes the person just goes really, really far into arrears, because the facility either isn't top of it, or they don't know what to do about it, or they're in denial.

So it could be six months or a year, and all of a sudden, the facility has a crisis. And they're like, oh, we have to kick Mrs. so and so out because we just can't keep on carrying her. We want them

to be more proactive and not let that happen and start catching these things upstream. So we are creating a guide for operators at facilities on how to identify and intervene in elder financial exploitation cases.

So the guide will include an extensive list of warning signs, such as once we talked about earlier, tips for how to train your staff, how to provide education for providers, and how to identify and intervene in elder financial exploitation cases.

back office who are monitoring things like ATM transactions or electronic funds transfers, can be trained to recognize red flags and report suspected financial exploitation to APS and law enforcement.

Also, something that I think a lot of people don't know about is something called suspicious activity reports which banks have to file for a number of different things. We usually think of them in terms of money laundering, that they're filing reports of something that may be money laundering. But in 2011, FinCEN, which is part of the Department of the Treasury, issued an advisory saying that you can use these suspicious activity reports to report suspected financial exploitation.

And in fact, if the amount in question is \$5,000 or more, it's mandatory. So there's a whole vehicle for financial institutions to report these. Now, these suspicious activity reports or SARS,

That's one of many examples of how that might play out. I should just clarify that the long-term care ombudsmen program is not a regulatory agency. That's a separate licensing and regulatory entity within states. It's also not protective services. It is not going to be the primary finder of fact of whether an exploitation event has occurred. In fact, it's focused on advocacy for the individual, helping them with their goals, which may be about finding out if the neglect or the exploitation happened.

And it may be something totally different that's their goal. So the resident really has a lot of ability to direct that resolution process and work with the ombudsman. In addition to those individual complaint resolutions, ombudsmen also work on systems kind of work, both at the facility and even the bigger level. So in a number of states, long-term care ombudsmen have been working on education and outreach efforts to family councils, resident councils, and facilities around identity theft and other kinds of financial exploitation issues.

They provide a regular presence in facilities, making unannounced visits, being an outside person checking on how are the residents doing, making themselves accessible to the residents. And many ombudsmen believe that can be a very helpful prevention for problems that might have occurred if the fact that someone from the outside wasn't popping in occasionally. Working on policies and laws to improve long-term care, including financial exploitation laws are frequently something that long-term care ombudsmen work on.

And then really strengthening that coordination at the state level and the local level with law enforcement, with senior Medicare 7o(g)1 hE5n Td [(tsJ 0 Tc33 0 Td 0.1 th)12(a002 Tc 0.138buds) fint

And the National Academy of Elder Law Attorneys also provides assistance to low income elderly. And I think if you were to Google these organizations and look across their websites, I think you'd find quite a wonderful wealth of information on ID theft and some really great handouts and such that can be printed for families and consumers.

LISA WEINTRAUB SCHIFFERLE: Those are good to know about. Of course, with all these resources out there, there's always more that we could be doing. So Neal, what resources are needed but not necessarily available right now?

NEAL WALTERS: Well the first thing a victim needs is information. What do I do, is to first question. And the good news is that's covered. A lot of the sources you mentioned and the FTC has provide a lot of information. But the issue really becomes, what happens when you have the unusual case that's not getting solved. And we've all heard the horror stories of three years of trying to get the tax ID fraud taken care of.

So I think there's a real need to understand, especially in these complex cases like medical identity theft, where the roadblocks are to recovery and what we can do to help. It reminds me when I first started working identity theft in about 2001. The most common horror story you would hear is, I went to take out a loan or to get a job or whatever, and they pulled my credit report, and there's all this bad information that prevented me from getting my loan or even hired.

So the victims would be stuck trying to get this information off their credit report. And it was just, they couldn't do it. They kept trying and trying, and then when they'd get it off, it would reappear, because it would be reported. So one of the solutions was the Fair and Accurate Credit Transaction Act of 2003 had a bit of language that said if a victim produces a valid police report or the FTC identity theft affidavit duly signed, then the bureau couldn't report these fraudulent accounts, and the furnisher couldn't report them to the bureau anymore.

And that really removed the huge roadblock to recovery. So I think we need to look for ways amongst these particular-- and it would be individual to the types of identity theft, probably medicals, different laws, different problems. But how do we, from a regulatory or legislature-based approach, how do we help victims so they can recover?

LISA WEINTRAUB SCHIFFERLE: Thank you. And of course, the FTC's materials taking charge do walk through how to help a victim through the recovery process. And we also have a pro bono guide for assisting ID theft victims which is designed for advocates like many of you out there on how to assist victims in depth, step by step with sample letters and other sample material. So please do check those out.

Before we move to the audience questions, I just want to ask each panelist a closing question which is similar to the one that was asked of the medical ID theft panel. And one of them got their wish granted. So you may be that lucky today. If

BECKY KURTZ: I get my wish first-- good. Well, I wish that every individual who had cognitive and functional impairments had someone that they could trust and that is trustworthy, knowledgeable, and vigilant, who could help them with their financial management and is not a provider of the service, doesn't have any conflict of interest, but is truly available for that individual. And meanwhile, while we're waiting for that to happen, it would be awfully great if the states had adequate resources to provide enough volunteer and staff ombudsmen to be regularly present in facilities across the country so that when people needed help, they had ready access to it.

LISA WEINTRAUB SCHIFFERLE: Naomi.

NAOMI KARP: I think I must be channeling Becky, but in a slightly different way. And I know mine is not going to be solved today. But we talk a lot about ways to identify when these things are happening and how to educate people about the red flags and how we get people to report. But the big problem is no matter how much we do about getting people to see the signs and to report, we have some really major challenges. In our first responders, we just have to really inadequate resources, whether it be for adult protective services to investigate and then provide services for law enforcement, even if we can get them all to understand that elder financial exploitation and ID theft are really important and should be priorities, they're just not the capacity there.

So I guess my wish is that we could have both the awareness and the capacity so we could have meaningful response, both for early intervention and then just to help people after they've been victimized.

LISA WEINTRAUB SCHIFFERLE: Lori?

LORI STIEGEL: I would say as my sister said at her wedding when she forgot her wedding vows, ditto, after her husband said his. So I will add I would hope that two products that the commission is currently developing would be useful to professionals and victims. And those tools specifically are, with funding from the Bureau of Justice Assistance at the Department of Justice, a pocket guide on legal issues related to elder abuse that's primarily intended for law enforcement and other criminal justice professionals.

And certainly among its many topics will include power of attorney abuse and make the point that is identity theft as well as other things. And then we're also developing for Naomi's organization, for CFPB, a series of guides for lay fiduciaries, one of which is for agents acting under a power of attorney. And that helps them understand when they as agents should not do-- so again, more if the back end of the problem than the front end.

But it also includes information to help them recognize when somebody else may be exploiting the person for whom they're acting as agent, which could address some of the challenges we've talked about today.

LISA WEINTRAUB SCHIFFERLE: Neal.

NEAL WALTERS: I'm going to stick with my last statement and wish that there was a way that everyone could recover quickly and effectively if they do become a victim. When you hear some of these horror stories, you think, wow, these people have been victimized twice, first by the identity thief and the second time by the system that's making it incredibly stressful difficult to

BECKY KURTZ: Certainly doesn't help when there are some news headlines around ID theft going on in their members facilities. That doesn't help their bottom line at all or the image. So I'm sure they would like to be proactive as membership organizations.

LISA WEINTRAUB SCHIFFERLE: Are there any other questions from the audience? Well, if everyone can join me in thanking our panelists for this interesting discussion. Thank you all. We'll be resuming at 3:00 with the outreach panel.