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# Financial Exploitation of the Elderly: A Policy Review and Recommendations for Georgia

Melissa C. Haberlen

## Abstract

**Melissa C. Haberlen**

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(under the direction of Sheryl Strasser, GSU Institute of Public Health)

Eleven percent of Georgians and 13.3% of all Americans are currently over the age of 65. The segment of elderly adults in the United States is the fastest growing subpopulation, attributed to both average lifespan increases and a significant aging of "the baby boomer generation". Thus it is increasingly important that health and policy professionals give attention to issues of health and well-being faced by the aging population. One such issue, financial exploitation of the elderly, has received a large amount of media attention and public concern over the last several years, due to a large increase in the recorded prevalence of the problem. It has been estimated by some studies that financial exploitation of the elderly occurs in 4-5% of the aged population.
A variety of legislation, both state and federal, has attempted to address and curb the problem. Like many states, Georgia has successfully passed and implemented such legislation; however as numbers of exploitation continue to increase, it is clear that all states still require a number of policy changes in order to truly eliminate the problem. The purpose of this capstone project is to synthesize scientific research dedicated to financial exploitation of the elderly and, describe current policies in place to address this problem. Finally, policy recommendations for the State of Georgia will be offered so that response and prevention systems effectively reduce the occurrence of this crime.

INDEX WORDS: financial exploitation, elderly, aging, policy, state, Georgia

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By

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B.S., Georgia Institute of Technology

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## Dedication

This manuscript is dedicated to grandmothers, including my own, Helen Haberlen.

**Acknowledgements**

Sheryl Strasser

Megan Smith

**Author's Statement Page**

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## Chapter I
## INTRODUCTION

Older adults, or those over the age of 65, represent 11% and 13.3% of Georgia's and the U.S.'s population, respectively (U.S. Dept. of Commerce, 2011). Due to scientific and medical advances and an aging baby boomer population, the number of elderly Americans continues to increase. Because of the ever-increasing growth of this population, special attention should be given to the issues negatively affecting their health and well-being. In particular, financial exploitation has recently become an extremely significant problem affecting the health and welfare of seniors. In 2011 Georgia Adult Protective Services had 4,380 substantiated cases of financial exploitation of the elderly (Strasser, 2012). Further, recent data shows that approximately 4 – 5% of the elderly population experiences some form of financial exploitation (Acierno, 2010; Lifespan, 2011). Other studies have attempted to quantify the costs of financial exploitation, with one particular study finding that victims lose $2.9 billion annually to this crime (MetLife, 2011).

Still a lack of data collection and sharing from the states makes the issue's magnitude somewhat hard to quantify (HHS, 2011). Recent studies have, however, had success gathering detailed information on the aspects of the crime of financial exploitation of the elderly, including who the victims and perpetrators typically are, how it occurs, and what the resulting consequences of the exploitation are to the victims and society.

Financial exploitation of the elderly has been defined as the fraudulent use of an elder's financial assets by another for one's own gain (Tueth, 2000). The Older Americans Act defines exploitation as a fraudulent taking or the use of another's resources in a way that deprives older adults of their access to and use of their own assets (MetLife, 2009). Victims tend to be females, 70-90 years old and suffering from cognitive impairment (Gunther, 2010; Tueth, 2000; MetLife, 2011; MetLife, 2009; Denburg, 2007). Perpetrators are usually adults in their 40s, and are frequently persons in trusted positions, including the children, relatives, acquaintances, caregivers, or fiduciaries of the older adult (Gunther, 2010; Payne, 2012; MetLife, 2011; MetLife, 2009). Financial exploitation of the elderly may take the form of larceny, cons, check or credit card fraud, property and insurance benefit theft, and embezzlement from bank or retirement accounts (Tueth, 2000; MetLife, 2009). The negative consequences of financial exploitation include not only the loss of assets for the victim, but also a decline in health due to stress and loss of resources for care, as well as a societal cost in taking care of the often insolvent victims (MetLife, 2011; Cooper, 2008; Price, 2011). Some literature even suggests that financial exploitation is also often tied to elder homicide (Karch, 2011).

A significant amount of the population is at risk for financial exploitation, and those numbers appear to be growing. Therefore it is critical that policies are updated in all states, Georgia included, to better protect the elderly from this crime and its negative health and financial consequences.

This public health project set out to accomplish three main goals. The first goal was to describe the issue of financial exploitation of the elderly, to characterize the victims, perpetrators, prevalence, and associated financial and health costs and consequences. The second goal was to analyze the current state and federal policies attempting to remedy the issue. The third goal was to propose further state-level policy solutions necessary to eliminate the issue, and in particular, to provide specific policy suggestions for the state of Georgia.

In order to achieve these goals, the project focuses on answering the following eight questions:

1) Who are the victims of financial exploitation of the elderly?
2) Who are the perpetrators of financial exploitation of the elderly?
3) What are the methods of financial exploitation?
4) What are the financial costs associated with such exploitation?
5) What are the health costs and consequences associated with such exploitation?
6) What current federal policies attempt to address the issue of financial exploitation of the elderly?
7) What current or proposed state policies, particularly in Georgia, attempt to address the issue of financial exploitation of the elderly?
8) How could state policies, such as Georgia's, be modified in order to better address the issue of financial exploitation of the elderly?

Answers to these questions can help public health professionals advance the violence research agenda promoted by the Centers for Disease Control and Prevention (CDC) (Figure 1).

**FIGURE 1**

**The Public Health Model** (adapted from CDC, 2012)

## Chapter II
## REVIEW OF THE LITERATURE

State data regarding prevalence of financial exploitation of the elderly is not widely available; however certain studies have been carried out, which confirm the frequency of the problem (HHS, 2011). Two studies in particular, one taking place in New York State and the other using a nationally representative sample of older adults, have shown the prevalence of financial exploitation in elderly populations to range from 4.1% to 5.2% respectively (Acierno, 2010; Lifespan, 2011). Further, simple yearly data counts from state agencies show that the incidence of financial exploitation of the elderly is growing. Georgia, for instance, had 4,380 substantiated cases of financial exploitation of a senior in 2011, which was a 54% increase from 2008 (Strasser, 2012).

The literature shows that victims of financial exploitation of the elderly are typically between 70 and 89 years old, with an average age above 75 (Gunther, 2010; Tueth, 2000; MetLife, 2011). Victims are also typically isolated females (MetLife, 2011; MetLife, 2009). Most prominent is the fact that a large majority of victims suffer from some form of cognitive impairment, which causes them to be more vulnerable to deception (Idem.; Gunther, 2010; Tueth, 2000; Denburg, 2007). Victims with more severe cognitive impairment such as dementia, Alzheimer's, or organic brain disorder also suffer the greatest financial losses of those exploited (Gunther, 2010; MetLife, 2011).

Perpetrators of financial exploitation of the elderly are typically in their 40's, and can be strangers or close relatives, acquaintances, friends, or caregivers (Idem.; Payne, 2012; MetLife, 2009). The literature varies as to whether strangers or family and friends are the most common perpetrators, but much of the data points to children and caregivers as frequent perpetrators (Idem.; Gunther, 2010; Cooper, 2008; Payne, 2012). The literature also points to substance abuse as a common characteristic among perpetrators, particularly with children or relatives, as well as other emotional or personality disorders (MetLife, 2009; Tueth, 2000).

Financial exploitation of elderly may be carried out in a variety of ways. Strangers typically use door-to-door, telephone, or internet scams (Idem.). Perpetrators in a professional relationship with the victim may use their fiduciary role as a trusted advisor to gain control over assets, or sell fraudulent or unnecessary products or services to the victim (Idem.). Relatives, caregivers, or acquaintances may use their proximity to the victim to take credit cards, checks and valuables, steal the victim's identity, or otherwise embezzle from their accounts (Gunther, 2010; MetLife, 2009; Payne, 2012).

The literature further shows that there are extremely large financial costs resulting from financial exploitation of the elderly. Studies have estimated annual financial losses among victims to be $2.6 – 2.9 billion a year (MetLife, 2011). Another study found the average loss per case to be $96,309 (Gunther, 2010). Additionally, the crime of financial exploitation of the elderly has health costs and consequences associated with it. One study estimated annual Medicare and Medicaid losses to victims at $38,263,36 (MetLife, 2011). Further, the actual health consequences tied to the crime may include mental or emotional abuse or anguish, neglect, deprivation of daily necessities, or even death (Idem.; Cooper, 2008; Price, 2011; Karch, 2011).

The primary federal policies currently addressing financial abuse of the elderly are contained in the Elder Justice Act, passed as a part of the Patient Portability and Affordable Care Act (PPACA) in 2010, and the Financial Regulatory Reform Bill of 2010. The Elder Justice Act is quite comprehensive in nature, and includes a variety of initiatives to deal with all forms of elder abuse, including funding for Adult Protective Services (APS), funding for research and data collection, creation of additional nursing home and long-term care facility operational requirements, and establishment of forensic units dedicated to elder crimes. The Financial Regulatory Reform Bill focuses on financial exploitation of the elderly, and creates an Office for Older Americans within the Consumer Financial Protection Bureau charged with educating seniors on how to avoid exploitation, and researching and creating further financial regulations to protect the elderly.

The majority of legislation regarding financial exploitation of the elderly lies with the states, and typically takes the form of mandatory abuse reporting laws, criminalization of financial exploitation of the elderly, and creation of civil liability for various actors tied to the exploitation. Forty-two states have laws requiring the mandatory reporting of financial exploitation of the elderly, most of which apply to health care workers, caregivers, and other care workers (Table 1). Two states have no laws on reporting, and three states have voluntary reporting laws.

Fourteen states require anyone with reasonable suspicion of elder exploitation to report, and seven states require financial industry employees to be mandatory reporters. Eight additional states attempted, but failed to pass legislation in 2012 which would require financial industry employees to become mandatory reporters (Table 2). Of the states with mandatory reporting laws, only three have no penalties for failure to report. Among states with penalties for failure to report financial abuse of the elderly, the type and severity of penalties varies as well. Thirty-four states have a criminal penalty (typically misdemeanor), eighteen have a civil penalty (fine, notification of professional licensing boards, or tort liability), and six states have no penalty (Table 1; Tueth, 2000). Georgia's reporting law is quite comprehensive, and mandates under the threat of criminal penalties, that all health professionals, social workers, and caregivers, as well as financial industry employees report suspected elder abuse to APS (O.C.G.A. §30-5-4).

Criminalization of financial exploitation of the elderly also differs from state to state. Financial exploitation may be included under larceny or identity theft, or may be considered a separate criminal offense. The definition of the crime also varies, as do criminal penalties, which may range from misdemeanors and fines, to felonies and repayment of personal property. In Georgia, exploitation, defined as the use of an elderly or disabled person's resources by "undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for another's profit or advantage" is a felony, punishable by one to five years in jail (O.C.G.A. §30-5-3(9), (7.1)).

Twenty-seven states had new legislation related to financial exploitation of the elderly introduced in 2012 (NCSL, 2012; Table 2). In nine states, Arizona, Colorado, Delaware, Indiana, Maryland, Nebraska, Oregon, Virginia, and West Virginia, the legislation passed. Four of the states with new legislation expanded their mandatory reporting requirements or related agency protocols. Five states tasked their state elder abuse agencies with new work or change in protocol related to financial exploitation of the elderly, including increased research, reporting and record sharing, and new training for investigators and caretakers. Three states strengthened their criminal laws related to financial exploitation of the elderly, and three states strengthened the ability of victims to bring lawsuits concerning their exploitation.

In order to further develop and improve policies dealing with the issue of financial exploitation of the elderly, information regarding the crime must be collected and carefully analyzed. Victims, perpetrators, methods, frequency, and financial and health damages must be assessed. Additionally, current state laws must be compared to one another and evaluated against all available data on the issue.

**Chapter III**
**MANUSCRIPT**

**Financial Exploitation of the Elderly: A Policy Review and Recommendations for Georgia**

Melissa C. Haberlen, JD

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**Abstract**

**Objective:** To describe the issue of financial exploitation of the elderly, capture and analyze current and proposed state legislation on the topic, and to propose state-level policy modifications for Georgia and other states, in order to eliminate the issue.

**Data sources:** Studies were identified through PubMed and Google Scholar searches using articles available from 2000 through October 2012. The keywords [“financial” and “exploitation” and (“elderly” or “seniors” or “aging”)] were used. 2012 proposed and passed state legislation was identified through a search on the National Conference of State Legislators website. The words “elderly” and “financial” were used to search the Issues and Research, Banking, Insurance & Financial Services section. Federal legislation was identified through the Administration on Aging’s National Center on Elder Abuse (NCEA). Current state legislation was identified by use of the NCEA “State Resources” and “Legislation” link to the state codes of all fifty states, as well as the American Bar Association’s Commission on Law and Aging’s Research & Resources section on Elder Abuse.

**Methods:** All relevant studies were pulled and scanned. Studies were included if found to contain information about the characteristics, costs, or health consequences of financial exploitation of the elderly. Any relevant federal law was included, but because federal law is somewhat lacking in this area, the focus was primarily on state law. All state laws new or proposed in 2012 were included, as well as any current state law regarding reporting penalties. Georgia and other state code was searched in more detail and expanded where necessary to include all aspects of financial exploitation of the elderly law.

**Policy Synthesis / Results:** Forty-two states (including Georgia) have mandatory exploitation reporting laws for health workers, caregivers and care workers, 2 states have no elder abuse reporting laws, and 3 states have voluntary reporting laws. Three states with mandatory reporting laws have no penalty for failure to report. Fourteen states require that any person with reasonable suspicion report financial exploitation. Seven states designate financial industry employees as mandatory reporters. Eight additional states proposed legislation in 2012 to include financial industry employees as mandatory reporters. Twenty-seven states had newly introduced or pending legislation on the issue of financial exploitation of the elderly. Nine of the 27 states passed the legislation into law.

**Conclusions:** Various policy options addressing financial exploitation of the elderly currently exist. The power and duty to create such policy lies with the states; thus states should work to strengthen their financial exploitation of the elderly laws. Mandatory reporting should include financial industry employees, criminal code should contain all aspects of financial exploitation and ease prosecution, tort law should strengthen the ability of victims to file civil suits against perpetrators and negligent actors, and educational measures targeting victims, reporters, and the general public should be broadened. In Georgia, financial exploitation laws could be improved by: requiring training for mandatory reporters and their employers, expanding opportunities for reporting, strengthening certain aspects of criminal and tort law related to protection of elderly victims of financial exploitation, and increasing efforts to educate seniors, businesses, and the public on the issue.

## Introduction

Over the last two decades, but particularly in recent years, financial exploitation of the elderly has become a topic of increasing concern for elder advocates, law enforcement agents, and public health professionals. The growing concern may be due to increased incidence, but may also be related to increased publication of cases in the news, and an overall increased awareness of this type of abuse. In response to the growing concern, a number of recent studies have been carried out in order to better understand the issue. These studies have provided valuable information on characterization of the victims and perpetrators, methods of exploitation, frequency of occurrence, and economic and health costs. As a result of the availability of such information, media focus, and strong advocacy from health, law, and elder activists, an abundance of new legislation aimed at reducing this problem has been proposed, and in some cases passed. And although a number of these financial exploitation and elder abuse laws have been successfully implemented, there is still a great deficiency in policy necessary to eliminate the problem, particularly in states like Georgia.

Financial exploitation of the elderly can be defined as the fraudulent use or taking of an elder's financial assets for another's gain, either monetary or personal (Tueth, 2000). The definition of elder financial exploitation from the Older Americans Act of 2006 further defines exploitation as not just a fraudulent taking that results in another's gain, but also the use of an elder's resources so that it deprives them of their "rightful access to, or use of, benefits, resources, belongings, or assets" (MetLife, 2009, p.7). Financial exploitation is estimated to affect 5.2% of all elderly, making it, alongside neglect, one of the most prevalent forms of elder mistreatment, and is estimated to cost its victims $2.9 billion annually (Acierno, 2010; MetLife, 2011). Victims are typically in their 70s and 80s, women, and suffer from some sort of mental impairment that makes them more vulnerable to the exploitation. Perpetrators are most often middle-aged adults, and are both strangers and persons in trusted relationships with the victims, either as their caregiver, children or relative, friend, acquaintance, or professionals in financial or legal contexts. Financial exploitation of the elderly is carried out in a variety of ways, including: theft, scams, check fraud, and taking or moving the content of an elder's bank accounts, retirement accounts, insurance benefits, or property.

When an elder is financially exploited, it not only affects their financial stability, but also often affects their quality of life and health. With the removal of funds that would usually be dedicated to everyday costs of living and health, such as food, clothing, shelter, health care, medications, and so on, the health of elders in such positions frequently and sometimes quickly deteriorates. Beyond simply contributing to a victim's physical deterioration of health, financial exploitation also may trigger negative mental health and emotional reactions due to stress of being defrauded and losing money, particularly if by someone in a trusted position. What is more, financial exploitation of the elderly is often directly tied to death of the victim. A recent study from the Centers for Disease Control and Prevention (CDC) and Kentucky Department of Public Health suggests that many homicides of dependent elderly adults are due to a combination of financial exploitation and neglect (Karch, 2011). Further, financial exploitation of the elderly has direct negative effects on the entire health system. Financial exploitation of an elder's Medicare or Medicaid benefits is a frequent type of abuse. In such cases where Medicare or Medicaid money is misappropriated, not only does the victim suffer, but so do the federal government and all taxpayers who have paid into the system. According to an examination of costs associated with financial exploitation in Utah, 89% of loss associated with each case affects directly the older adult, while 11% is stolen from taxpayers through Medicaid. The loss of money to such programs, if great enough, could contribute to extreme negative consequences for the health system, including reduced reimbursement rates for providers and hospitals, or even a potential bankruptcy of the entire program.

Eleven percent of Georgians and 13.3% of all Americans are over the age of 65 (U.S. Dept. of Commerce, 2011). As the baby boomer generation continues to age, and as the average lifespan continues to increase, the population of elderly adults in Georgia and the US will increase further. In 2011 alone, Georgia Adult Protective Services (APS) had 4,380 substantiated cases of financial exploitation of the elderly (Strasser, 2012). With approximately 5% of the elder population at risk for financial exploitation and its related negative health consequences, it is imperative that policy makers make significant progress in order to adequately protect this vulnerable demographic from such harm.

**Purpose**

The purpose of this study was to analyze the issue of and policies related to financial exploitation of the elderly, with an eye towards Georgia. The purpose was to: 1) describe financial exploitation of the elderly, its typical characteristics, and how it relates to health; 2) determine the frequency of such abuse in the US, and Georgia if possible; 3) identify policies that are currently attempting to address this issue on federal and state levels; and 4) propose a policy solution for Georgia and other, similarly situated states. The intended outcome of this study is to make the research, analysis, and policy recommendations contained within it available for legislators, public health and elder advocates, state or local agencies, and other organizations interested in resolving the issue of financial exploitation of the elderly in Georgia and other states.

## Methods

In order to understand the issue, determine its frequency, identify related policies, and propose a policy solution for Georgia, a comprehensive search for any available literature or studies related to financial exploitation of the elderly was carried out on PubMed and Google Scholar. Journal articles that described the abuse through case examples were targeted, as well as studies that provided a quantitative analysis of the issue. A further search for studies that quantified the costs, both general and health, related to financial exploitation of the elderly was also conducted, as well as a search for any literature linking financial exploitation of the elderly to health.

Second, a scan of the internet and databases for current and proposed state and federal laws related to financial exploitation of the elderly was completed. For all 2012 proposed state legislation, the National Conference of State Legislators (NCLS) database, which tracks particular subjects of state law, was used as a source. For current law, the American Bar Association's elder abuse law compilation charts and links to individual state codes provided through the Administration on Aging's National Center on Elder Abuse (NCEA) website were used. The NCEA website and Federal Register were used to find related federal law, including the text of the new Elder Justice Act. Information regarding model laws was obtained from different studies and a basic internet search.

Last, an analysis was carried out regarding the potential effectiveness of current and proposed legislation in adequately resolving the issue of financial exploitation of the elderly in Georgia and elsewhere. All information obtained through review of existing studies, literature, and subject matter expert interviews helped to inform the policy analysis.

## Analysis

## Characteristics of Financial Exploitation of the Elderly

**Victims of the crime**. Anyone at any age can be a victim of financial exploitation. However, elderly persons often find themselves in a unique position of simultaneous physical, mental, or emotional vulnerability and financial independence or stability, making them particularly attractive to perpetrators. Additionally, while individuals of younger ages may be able to recuperate from their loss, for the older adult, these events may be the catalyst for end-of-life declines. The profile of a typical victim has remained the same since financial exploitation of the elderly was first studied in the 1980s (Tueth, 2000). Victims are primarily older, isolated, and female, with physical or cognitive impairment.

Victims are usually between 70 and 89 years old. One study in Utah found the average age of a victim to be 79 years old, Tueth found the average age of a victim to be over 75 years old, and a national MetLife study found the majority of victims to be 80 to 89 years old (Gunther, 2010; Tueth, 2000; MetLife, 2011). Victims are also often socially isolated (MetLife, 2011). Frequently, they are alone or lonely due to the death of a spouse or a partner, and may be more susceptible to exploitation from a person who gives them some sort of companionship, romantic or platonic (MetLife, 2009).

The research has also shown that females are more likely to be victims of financial exploitation, with one study capturing the total number of female victims to be almost two times the number of male victims (Idem.; MetLife, 2011). One possible explanation for this could be that women outlive men, so more women may live to the age at which they would become more vulnerable to financial exploitation (MetLife, 2009). Another explanation may simply be that women, who typically play the role of caregiver or mother, may find themselves more easily exploited by dependent children pretending to care for them (Idem.). Yet another explanation is that a woman who finds herself newly widowed or otherwise alone may become responsible for her finances for the first time in her life, and may thus have more trouble managing her finances (Idem.). However, it should be noted that most victims of financial exploitation, whether male or female, tend to be in positions of lower competence, where they feel they need assistance in caring for their finances (Gunther, 2010; MetLife, 2011).

The health of seniors also plays a major role in their likelihood of becoming victims. Elders who are frail, physically impaired with lower mobility, or have cognitive or memory impairment are primary targets for financial exploitation (Gunther, 2010; Tueth, 2000; MetLife, 2009). Recent research even suggests that prefrontal cortex dysfunction in older adults makes them significantly more susceptible to misleading advertising and poor financial decision making (Denburg, 2007). Furthermore, mentally fragile elders tend to lose the greatest amount of money of all financially exploited victims. Seniors with dementia (including Alzheimer's), or organic brain disorder suffer the greatest financial loss as a result of their exploitation, losing 50% more money on average than the typical case (Gunther, 2010; MetLife, 2011). Seniors at risk for clinical depression are also more likely to be taken advantage of by financial exploiters (MetLife, 2011).

**Perpetrators of the crime**. Unlike many other popular crimes, the average age of a perpetrator of elder financial exploitation is 41 years old (Gunther, 2010). Studies vary regarding who is the most frequent perpetrator of this crime; some have found it to be strangers (varying from 40-51% of cases), and others have found that family, friends, caregivers or other close acquaintances are the most frequent perpetrators (Payne, 2012; MetLife, 2011). According to a study conducted by MetLife in 2010, perpetrators were most often strangers, in 51% of exploitations, but 34% of the time the exploiters were family, friends, and neighbors (MetLife, 2011). This was a change from MetLife's first study in 2008, which found family members, friends, caregivers, and neighbors to be the primary perpetrators of financial exploitation, with 40% of all cases (Idem.; MetLife, 2009). A 2010 Utah study echoes MetLife's 2008 results, finding that children were the most frequent perpetrators of financial exploitation, at 40% of all cases, and that they were also responsible for the greatest financial losses among their victims (Gunther, 2010). Among family members, MetLife found that both children and grandchildren were the likely perpetrators, and that both male and female relatives were equal in their exploitation of elderly relatives (MetLife, 2009).

Professional caregivers are also quite often the perpetrators of financial exploitation of the elderly. It is really no surprise, as professional caregivers have often been found to carry out various types of abuse of the elderly. Over 80% of home care staff has reported seeing abuse from other staff members (Cooper, 2008). Twenty-five percent of elders who are dependent on caregivers are likely to experience psychological abuse and one-fifth of elders dependent on caregivers are likely to experience neglect (Idem.) Research has found that caregiver exploitation can take place in nursing homes, by nursing home administrators and other employees, just as easily as it can take place with home care (Payne, 2012). Additionally, financial exploitation of elderly may also take place within the business sector: in doctors' offices, by financial advisors, attorneys, or other trusted professionals (MetLife, 2009). However, according to the MetLife financial exploitation studies from 2008 and 2010, the amount of exploitations carried out by trusted professionals has declined (Idem.).

The most common behavioral characteristic of perpetrators is substance abuse. The financial exploitation is thought to be a funding method for their abuse. This has been found to be particularly true among child or relative perpetrators; they are usually dependent on the elder for their survival and substance abuse, and what is more, they often believe that as the elder's relative, they have a right to the assets that they have stolen (MetLife, 2009). Other characteristics of perpetrators include: dysfunctional, low self-esteem, caregiver burden, or personality disorders. (Tueth, 2000).

**Types of financial exploitation**. The methods by which perpetrators exploit the elderly financially include a wide variety of scams and tactics, often dependent on the type of perpetrator. Strangers may use door-to-door or internet scams (Tueth, 2000; MetLife, 2009). Elderly are particularly susceptible to internet scams because they are much less familiar with internet use and typical internet scams (MetLife, 2009). Sweetheart scams that target lonely seniors are also quite common for strangers or new acquaintances to initiate (MetLife, 2011). In a sweetheart scam, a person pretending to be romantically or emotionally involved with an elder will convince the elder to transfer money, property, or other assets to the perpetrator. Elderly men are most frequently the victims; however, widowed and or lonely elderly women may also fall victim to such scams (Idem.)

Professionals may take advantage of their advisory role as financial advisors or attorneys and transfer assets, or sell older adults fraudulent insurance or investment opportunities (Tueth, 2000; MetLife, 2009). Recent research conducted with financial experts has shown that most seniors do not have the capability to determine the "legitimacy, value, and authenticity of credentials held by their financial advisors or planners" (Investor Protection Trust, 2012, p.8). It is speculated that elderly men, who tend to take financial risks more frequently, are at greater risk for exploitation through investment fraud (MetLife, 2009). Further, insurance scams may play on a senior's vulnerability and worry about death, injury, or future availability of money

(Idem.). Doctors and medical staff may carry out Medicare fraud on a senior's health insurance plan by charging Medicare for services not rendered, or in some cases, for unnecessary services (Idem.).

Relatives and caregivers with close access to an elder's personal belongings may steal and use credit cards, checks, or other valuables, or carry out identity theft (Idem.; Gunther, 2010; Payne, 2012). Nursing home administrators and other employees may take money from a resident's cash funds, or convince a resident to make checks out to cash. (Payne, 2012). Children, caregivers, or others who are in trusted relationships with the elder may transfer assets, withdraw money from bank accounts, or cash out retirement and savings accounts (Gunther, 2010; MetLife, 2011). According to a survey of financial management experts, family members are the most common perpetrators of theft or diversion of an elder's funds, followed by caregivers, and then by strangers (Investor Protection Trust, 2012). In addition, in order to carry out such advanced exploitation of an elder's funds, family members will often misuse their position as power of attorney or guardian (MetLife, 2009).

**Frequency of occurrence**. The estimated rates of frequency of financial exploitation among elderly vary depending on the study as the types of financial exploitation and populations included in a study are often quite different. One study published in 2010 found the prevalence rate of financial exploitation of the elderly to be 5.2% (Acierno, 2010). Financial exploitation has been said to be the third most common type of elder abuse, after neglect and emotional abuse (MetLife, 2009). However, in a 2011 New York study, financial exploitation of the elderly was found to be more frequent than any other type of elder mistreatment, with a prevalence rate of 4.1%, or 41 per 1,000 persons surveyed (Lifespan, 2011). In Georgia, data from APS shows that there were 4,380 substantiated cases of financial exploitation of the elderly in 2011 (Strasser, 2012). Further, in Georgia, from 2008 to 2011, there was a 54% increase in substantiated cases of financial exploitation of the elderly, which suggests one of two things: 1) either cases are growing and will continue to grow in the future, if nothing is done, or 2) that due to reporting laws and other mechanisms, there was an increase in cases reported and thus substantiated, and that caseloads will eventually decrease once more perpetrators begin to face justice (Idem.). Healthy People 2020 Objectives are attempting to encourage states to collect and share more elder abuse and financial exploitation data (HHS, 2011). As more data becomes available, it will hopefully provide policy makers, professionals, and the public with a better understanding of the true prevalence of the issue in all states.

### A. Costs of Financial Exploitation of the Elderly

**Financial costs of financial exploitation of the elderly**. The financial costs related to financial exploitation of the elderly are extremely large, for both the victims, and for the government (as Medicare, Medicaid, and other social programs are often taken advantage of). In Utah, a 2010 study estimated that with 80 cases, there was a total loss of $7,704,729. The average loss per reported case was $96,309, and $85,253 excluding Medicaid losses. MetLife's Mature Market Institute, in conjunction with the National Committee for the Prevention of Elder Abuse and Virginia Tech, completed national assessments of financial exploitation of the elderly in both 2008 and 2010 (MetLife, 2011). According to the MetLife 2010 study, the estimated annual financial loss of elderly victims of financial exploitation is $2.9 billion, up from $2.6 billion they estimated in 2008 (Idem.).

While those responsible for Medicare and Medicaid fraud comprise the lowest percentage of perpetrators, the fraud carried out in this area results in the highest average loss per victim – approximately $38,263,136 annually according to MetLife (Idem.). The Medicaid losses alone in Utah's 2010 study of only 80 cases of financial exploitation of the elderly amounted to $884,464 (Gunther, 2010).

**Health costs of financial exploitation of the elderly**. It is quite obvious that there is a financial cost tied to the financial exploitation of the elderly for both the victims and society. But it is often forgotten that financial exploitation of an elder often carries with it a significant health cost beyond that of just Medicare and Medicaid.

When an elder is victimized, mental and emotional anguish is certain to occur in the victim. However, some have gone a step further, and tied financial exploitation to homicide. According to a study from the CDC, financial exploitation often results in an eventual killing of the victim, either directly or through neglect. Other literature has also recognized that when resources that the senior would have normally dedicated to food, hygiene, or health care are no longer available, their health suffers greatly. Some researchers have even suggested that financial exploitation of the elderly falls under the World Health Organization's definition of violence, because this definition includes deprivation or neglect, which often goes hand-in-hand with financial exploitation of the elderly (Price, 2011). In support of this theory, Price has pointed out that the World Bank has even referred to financial exploitation as "financial violence" in that it is a "forceful act of controlling another's assets or resources", and the forceful nature often contains an element of intimidation or emotional warfare by the perpetrator on the victim (Idem., p.354). MetLife's research also supports Price's *Theory of Financial Exploitation* as a form of violence, by confirming that emotional manipulation in the form of threats or neglect of care and violence quite often take place during financial exploitation of an elderly person (MetLife, 2011). Thus, when determining the importance of, and solutions to financial exploitation of the elderly, policy makers should be sure to remember the negative health consequences of the crime.

### B. Current Policy

**Federal Policy**. Great strides have been made in both federal and state legislation in order to address the various types of elder abuse, including financial exploitation, that exist in our society. The federal Elder Justice Act was passed as a part of the Patient Portability and Affordable Care Act (PPACA) in 2010, and accomplished a number of important goals. The Act authorized $777 million for 7 years for various senior programs; established an Elder Justice Council to make recommendations to the U.S. Department of Health and Human Services (HHS) on how to coordinate abuse, neglect, and exploitation activities between all levels of government; provided $400 million in funding for APS; established forensic centers dedicated to matters of elder abuse, neglect, and exploitation; authorized grants supporting Long-Term Care Ombudsman and long-term care staffing; created reporting requirements for long-term care facilities, as well as penalties for failure to report and or punishing a reporter; authorized $15 million for data collection and research for APS (The Elder Justice Coalition). Other elder protections included in PPACA include provisions requiring nursing home crimes to be included in the Centers for Medicaid and Medicare System's (CMS) nursing home comparison tool, and criminal background checks to be required for nursing home employees.

The federal Financial Regulatory Reform Bill of 2010 also established protections for senior citizens. As a part of this bill, it was required that an Office for Older Americans be established within the Consumer Financial Protection Bureau. This office is dedicated to helping those aged 62 and over make good financial decisions, including how to avoid financial exploitation (Consumer Financial Protection Bureau). The office also assists the Consumer

Financial Protection Bureau in researching, writing, and enforcing consumer financial regulations as they relate to the elderly.

The U.S. Department of the Treasury also has regulations that offer some financial protection for the elderly. The Department of the Treasury requires actors in the financial industry to report suspicious activity in the transferring of various funds or assets. Clearly, financial exploitation of an elderly person could fall under this charge. However, the criteria that is used to determine whether or not reporting of suspicious activity is required, is somewhat narrow; for example, among other things, the sum in question must be at least $5,000, and the activity must have no lawful purpose or reasonable explanation. This means that for a suspicious financial activity involving an elderly person and their child, relative, or caretaker, particularly if they have power of attorney or guardianship over the elder, a financial professional could easily create a reasonable explanation for the activity, and excuse themselves from the reporting requirement (31 C.F.R. § 103).

**State Policy.** Legislation addressing financial exploitation of the elderly varies greatly between states. However, in general, state laws confront the issue of elder exploitation through reporting rules, professional licensure, elder agency investigation, reporting, and data requirements, and criminal and civil liability. Currently, the most common elder exploitation laws in place deal with 1) mandatory reporting, 2) criminalizing exploitation, and 3) creating civil liability. In Georgia, for example, exploitation is a felony, punishable by one to five years in jail, and is defined as the illegal or improper use of an elder (65 years or older) or disabled person's resources by "undue influence, coercion, harassment, duress, deception, false representation, false pretense, or other similar means for another's profit or advantage" (O.C.G.A. §30-5-3(9), (7.1)). While Georgia law excuses owners or administrators of long-term care facilities for criminal liability for the actions of their employees or others convicted under this law, they may still be found civilly liable for those actions (O.C.G.A. §30-5-8).

Georgia also has a quite comprehensive reporting law, which makes it a misdemeanor to "fail knowingly and willfully" to make a report of elder abuse, including exploitation. Mandated reporters in Georgia include all medical professionals and interns, including doctors, nurses, dentists, and therapists, as well as social workers, day-care personnel, and any other employees of agencies providing health services to elders or disabled adults, as well as coroners, medical examiners, and law enforcement. Employees of financial institutions are also mandated reporters by Georgia law, except for assets where they are acting as the fiduciary. Reporting must take place when a mandated reporter has "reasonable cause to believe that a disabled adult or elder person has . . . been exploited . . ." The law also provides reporters and their institutions with immunity from civil or criminal liability for the contents of their reports, unless they were acting in bad faith (O.C.G.A. §30-5-4(a)(1)(A)). The law further stipulates that a reporter must notify the person in charge of their facility, and that that person must make a report (either oral or written) to APS or law enforcement or a prosecuting attorney if APS is unavailable. Adult Protective Services will then notify law enforcement or the prosecuting attorney. Additionally, any other person not listed as a mandated reporter "may" report with reasonable cause.

Almost all other states have mandatory reporting laws, but there is great variance in who has to report, and what the repercussions of not reporting would be (Table 1). Forty-two states have mandatory exploitation reporting laws; states with without mandatory exploitation reporting laws include: New York and South Dakota with no law whatsoever, and Colorado, New Jersey, and North Dakota with voluntary reporting laws. While Delaware, Indiana, and Ohio have mandatory reporting laws for elder exploitation, they have no penalties for failure to report, which essentially negates the law's mandatory nature. For the large majority of states that do have mandatory reporting laws, mandatory reporters are often limited to health care workers, caregivers, and other care workers, such as social workers, or adult daycare employees. Fourteen states require that any person with reasonable suspicion of elder exploitation report it, but only two of those states give financial industry employees as an example of a mandated reporter. There are only seven states that currently designate financial industry employees as mandatory reporters. However, eight more states attempted to pass legislation in 2012 that would require financial industry employees to start reporting elder exploitation (Table 2).

Besides the variances in who constitutes a mandatory reporter, other important differences in state elder exploitation reporting laws include: how exploitation is addressed, definition of the victim, and penalties. Exploitation may be explicitly mentioned in the law, or may be included under a definition of "abuse" or "mistreatment". The victim may be referred to as a "vulnerable adult", "incapacitated", "elderly", or just an "adult". The minimum required age of a victim also varies depending on the state, most often it is 60 or 65 years old. Penalties for failure to report are also quite different between the states. Thirty-four states have a criminal penalty, eighteen states have a civil penalty, and six states have no penalty. The criminal penalty for failure to report elder exploitation is almost always a misdemeanor, and of the civil penalties, about half are a civil fine, about half require notification of a non-reporter's professional licensing board, and four states make the non-reporter civilly liable for the exploitation (Table 1; Tueth, 2000). Additionally, some states such as Massachusetts and Oregon offer reporter training in order to insure that those who are mandated by law to report understand their role as a reporter, and know how and when to properly report elder exploitation (Payne, 2012).

In addition to reporting laws, states also differ in their definition and criminalization of elder exploitation.  Some include elder exploitation under the crimes of larceny or identity theft, while others account for it separately as its own criminal offense, like Georgia.  Some states, like Georgia, also include “undue influence” as a manner of conducting exploitation, and others do not.  States also vary in the criminal and civil penalties associated with elder exploitation. Criminal penalties include misdemeanors, various classes of felonies, fines, and repayment of personal property.  Civil penalties include civil liability, attorney’s fees, professional license revoking, and lien priority for victim settlements.

**2012 State Policy**.  In 2012, twenty-seven states had newly introduced or pending legislation dealing with financial exploitation of the elderly, and in nine states the legislation became law (NCSL, 2012; Table 2).  Financial exploitation of the elderly legislation was signed into law in Arizona, Colorado, Delaware, Indiana, Maryland, Nebraska, Oregon, Virginia, and West Virginia.  Maryland added employees of financial institutions as mandatory reporters of elder exploitation.  Nebraska, Virginia, and West Virginia expanded their general reporting requirements, changing reporting registry provisions and ensuring that mandatory reporters would be notified by APS as to the opening and close of their investigation.  Colorado instated background checks for employees that have direct contact with elderly adults.  Colorado, Indiana, Oregon, Virginia and West Virginia all implemented changes for their state agencies responsible for dealing with elder abuse.  Colorado created an at-risk APS task force to study reporting; Indiana now requires their Department of Aging’s elder abuse projects to include financial exploitation; Oregon is requiring their Department of Human Services to provide new elder abuse and exploitation training for investigators and caretakers; Virginia and West Virginia are allowing APS to share records with certain individuals and entities, while also ensuring the confidentiality of reporters.

Arizona made some civil law changes in order to protect their elderly from financial exploitation; elderly victims of financial exploitation who sue their perpetrator will be able to ask the court to have the perpetrator pay their attorney's fees if they win their case. Delaware, Oregon and Vermont all had changes to their state criminal laws, relating to financial exploitation of the elderly. Delaware added a new fine for those convicted of financial exploitation of the elderly, which would go towards funding a senior assistance program. Oregon created a 6 year statute of limitations for the prosecution of certain elder crimes and also prohibited the setting aside of convictions for criminal mistreatment of an elder (age 65+). Vermont allowed their attorney general to bring a case against a person or entity that itself does, or negligently allows financial exploitation of the elderly, neglect, or abuse.

### C. **Policy Analysis**

The bulk of elder exploitation laws deal with the issue of reporting suspected exploitation. In order to be most effective, reporting laws should mandate reporters, name specific classes of reporters, and carry enough of a penalty to properly motivate compliance. In addition, there should be required training for all mandated reporters, so that they are able to properly meet their legal duty to report. A listing of mandated reporters should be extremely comprehensive, and include all professions that might come into contact with, and have suspicion of when an elderly person is being subjected to financial exploitation. In particular, health and care facility employees, health care professionals, home care workers, social workers, daycare workers, attorneys, accountants, and employees of financial institutions must all be included. However, laws should not be overly inclusive, because they then might be considered overbroad. If a law simply says that anyone suspecting exploitation must report, and doesn’t name specific professions, it is quite likely that people from professions who have the greatest chance of observing exploitation may not feel as compelled to report, because they have not been specified by law. Further, ensuring that every person in a state complies with a reporting statute would be extremely hard to do, and would lead to a lack of enforcement.

Penalties, either criminal or civil, are also instrumental to encouraging compliance with a mandatory reporting law. Penalties that would entail jail time or a large financial loss would be the most effective; however, because judges may be likely to set aside jail time, financial penalties are probably the best. Additionally, a financial penalty for the institution housing the mandatory reporter (i.e. financial institution, nursing home, assisted living facility, or hospital), such as a few thousand dollars, or civil liability for the financial exploitation would likely be enough for employers to ensure that employees are properly trained and compliant with their reporting duty. Further, it is imperative that employees of financial institutions be included as reporters. They are in a unique position of having a window into the financial activities of their elderly customers, and as such should be compelled to report suspicious activity that may be indicative of financial exploitation.

It is also important that financial exploitation of the elderly is a part of criminal code, and that the criminal code be easily used to prosecute perpetrators. It is likely easier if financial exploitation is described as its own crime, as opposed to adding in qualifiers to protect the elderly in other crimes such as identity theft or larceny. Particularly useful in a financial exploitation of the elderly criminal law would be a long statute of limitations, a modified hearsay rule, and inclusion of “undue influence” as a method of exploitation. The longer statute of limitations is necessary because the crime of financial exploitation is often not discovered until much later on, because the elderly victim is not in a position to either recognize that the crime has occurred, or report it. (Kemp, 2006; Payne, 2012). The modified hearsay rule is also critical because with crimes against the elderly, the victim is often not able to testify properly on the stand due to mental incapacity, physical disability or frailty, death, or other unavailability. A modified hearsay rule that would allow the victim's prior out of court statements to be read by another party could help to even the playing field in elder abuse or exploitation cases, where the prosecution is often at a major disadvantage due to the age and incapacity of the victim. One particular study from 2007 has shown that jurors may respond significantly better to hearsay testimony, than to actual testimony given by an elderly witness (Dunlap, 2007). Additionally, the inclusion of "undue influence" in the criminal code as a method of exploiting an elderly person would further strengthen a prosecutor's ability to build a case against the perpetrator. Undue influence, or the use of power to exploit trust, dependency, and fear in order to gain control over another person, appears frequently in elder financial exploitation cases (Stiegel, 2011). However, because it is not the same as some of the other means of financial exploitation that are typically written into law, such as fraud, persuasion or misrepresentation, and because the victim often can't recognize the harm or even identifies with the perpetrator, it is quite important that statues include undue influence in order to help a prosecutor to try perpetrators who use this method to exploit.

It is equally important that civil laws be in existence that encourage victims to sue their perpetrators, or negligent others, in order to recoup at least a portion of their losses. Criminal laws are an important deterrent and more importantly a method of seeking justice for the victim in punishment of the perpetrator, but punishing a perpetrator alone will not make the victim complete. In order to make the victims of elder financial exploitation whole, they should be able to recoup some of their losses through civil law suits against their exploiter, or against a person or facility that was so negligent in its failure to report, that it should be held responsible. Allowing and encouraging civil lawsuits for victims is important because, often, the victim may not want their perpetrator to face criminal liability, so they might rather just try to recoup their money. One way to help facilitate a victim's suit is by allowing the victim, if they win the case, to have the perpetrator pay their attorney's fees. Many victims do not bring cases because they are not able to afford the cost of civil litigation (Rabiner, 2006). Allowing this would hopefully encourage more victims who do not have the money to pay for a lawyer to bring suits if they have a good case. Attorneys would similarly be more willing to take on such cases if they know that they may have their fees paid by the other side.

Finally, and most essentially, a number of different audiences should be educated about financial exploitation of the elderly. While criminal and civil litigation laws are very important in order to help the victims seek justice, the prevention of elder exploitation and its associated negative sequelae should be given high priority. Even if sufficient criminal and civil court opportunities are in place, victims are often still hesitant to bring cases against their perpetrators out of fear, poor health, or other reasons (Rabiner, 2006). Thus, a combination of education and the proper channels for reporting suspicious activity could be greatly beneficial. First, all people who work with seniors or care for them, particularly mandated reporters, should be educated on the signs of financial exploitation, and how or when to properly report it. By alerting them to the signs and their duty to act, they will hopefully be more likely to identify and report potential cases as or before they occur. Many states currently offer reporter training for child abuse in the form of online courses or worksite workshops; similar training should be offered for elder abuse and financial exploitation.

If the states themselves do not offer such training, then it should be up to the facility or institution to offer the training for their employees, particularly if they could face civil liability for a failure to report by an employee. For example, Utah's Division of Aging and Adult Services and Bank of American Fork have created a model bank program that includes a number of provisions to prevent exploitation of the elderly: 1) include a third-party monitoring system for elderly customers, 2) internal policy on exploitation that includes training for all employees on detecting and reporting abuse, 3) designating one or more employees as final reporter(s) to APS, 4) require a financial exploitation test for all employees, 5) train account managers on account structures that are most beneficial for elderly, 6) hold seminars on preventing exploitation for customers (Gunther, 2010). Further, employee training should use proven methods for spotting financial exploitation of elders, such as Kemp's framework for assessing cases of financial abuse, which was validated through a survey of 159 district attorneys, sheriff investigators, and APS supervisors. Kemp's framework suggests that reporters look for eight signs: 1) the presence of vulnerable elder (capacity or other conditions), 2) a trusting relationship with perpetrator, 3) isolation and control of the older person and/or transaction, 4) exertion of undue influences, 5) lack of concern for welfare of the older person, 6) lack of ethics in the transaction, 7) secretiveness, and 8) a change of assets during the period of vulnerability. There are a number of additional model rules and methods of detection available to state agencies and institutions. The Consumer Financial Protection Bureau's Office for Older Americans and William Mitchell College of Law are also creating a guide for health care, living, and social service providers working in senior living facilities to better identify and intercede in elder financial exploitation. The combination of model rules and model exploitation detection methods could serve as a prototype policy for financial institutions and medical or senior living facilities in states where their employees are considered mandatory reporters.

Second, seniors themselves must be educated on financial exploitation. They should be made aware of who typical perpetrators are, what typical methods are, how to avoid it, and how to report it. Additionally, financial literacy courses may be particularly beneficial in helping seniors to avoid situations where they are tricked into financial exploitation, or where they feel they need assistance from outsiders in managing their finances. By educating seniors, they will become empowered to protect themselves, and to continue maintaining control over their financial affairs where possible.

Third, the proper channels for reporting financial exploitation should be in place, available, and advertised. Facilities that house mandatory reporters should have protocol in place for reporting. The appropriate state agencies should make it known who they are and how a report can be placed. Further, law enforcement must be informed in order to field reports that happen to come directly to them, instead of the state agency for elder abuse. It would be also very beneficial for a state to have a toll free hotline for reporting elder abuse and exploitation available, and publicized, so that cases are easily reported by anyone, including an elderly person themselves. Knowing they have this resource in place could also serve to empower potential victims, and deter prospective perpetrators.

Last, it is also critical to remember that victims of financial exploitation are often isolated. Therefore, safe ways to remove seniors from their isolation must be created. Pairing multiple volunteers or multiple caregivers with a senior could ensure that more eyes are watching their treatment by others. Encouraging health providers and people in other trusted positions to initiate dialogues with the seniors about their daily lives and even finances may be a way for those parties to pick up on suspicious activities. Doctors and nurses are often in a unique position to intervene, as they often have frequent contact and are seen as trusted individuals by both the senior and sometimes even the perpetrator. (Tueth, 2000; Kemp, 2006; Bendix, 2009).

Georgia's laws concerning financial exploitation of the elderly are fairly strong. However, improvements could certainly be made in order to further protect our seniors. Georgia's reporting law, with a large class of mandated reporters, penalties for failure to report, and a designated channel for reporting, is quite strong yet. It could be greatly improved by simply adding a requirement that all mandatory reporters must complete an educational reporting course and maintain certification, so that they fully understand the signs of exploitation and abuse, as well as their duty under the law. The state could even offer a special designation for homes and financial institutions that have completed elder financial exploitation training with their employees. The potential boost in business that a facility could receive because of its special "elder friendly" or "elder protective" designation would be rewarding, and could encourage their participation. Further, making available a toll-free reporting line for any resident to use along with financial exploitation public service announcements or a wide-spread advertisement campaign would likely greatly encourage reporting, and would hopefully also discourage the exploitation itself.

Georgia also has a fairly strong criminal law, particularly because of its inclusion of "undue influence" as a method of exploitation. However, it could be greatly strengthened through inclusion of hearsay exception for elderly incapacitated victims, as well as an increased statute of limitations during which to bring newly discovered yet potentially older cases. Additionally, the law could be strengthened by mirroring the federal definition of exploitation, which includes not just the fraudulent taking of an elder's resources for personal benefit, but also any taking that “results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets” (O.O.A. 2006 § 102(18)(A)). This could open up exploitation to include perpetrators that don’t actually take the property for their own use, but who simply deprive an elder of own use of their own property, which can be equally damaging for a senior. Additionally, if Georgia would allow for attorney’s fees to be awarded to a winning victim in a civil case, it could encourage the bringing of suits by victims, which could also help them to recoup some of their money lost because of the exploitation.

**Conclusion**

Financial exploitation of the elderly is a serious health and justice issue in our society that will require thoughtful policy solutions in order to eliminate its occurrence. As the elderly population continues to age and the baby boomers enter their senior years, it is imperative that effective policy be timely enacted. A number of policy solutions exist, including mandatory reporting laws, criminal laws, civil litigation laws, and educational efforts. Despite federal laws such as the Elder Justice Act, a good majority of the legislation affecting elder exploitation remains the duty of states to create and enact. Thus, states such as Georgia should look to their neighboring states and to model laws created by elder advocacy organizations for ideas on how to strengthen their current elder exploitation laws. Additionally, organizations and businesses that interact with seniors and have the opportunity to prevent elder exploitation should start acting on their own accord to implement internal policies that would reduce the incidence of elder abuse and exploitation among their customers. With proper policy solutions in place among states, their agencies, and businesses, the issue of financial exploitation of the elderly can be eliminated.

**TABLE 1**

**State Reporting Laws: Financial Exploitation of the Elderly[1]**

| State | **Mandatory reporting:** *Health care workers, caregivers* | **Mandatory reporting:** *Other care workers (i.e social, daycare)* | **Mandatory reporting:** *Financial industry employees* | **Mandatory reporting:** *Everyone* | **Criminal penalty** *for non-reporting* *Misdemeanor* | **Civil penalty** *for non-reporting* |
|---|---|---|---|---|---|---|
| AL | ✓ | | | | ✓ | |
| AK | ✓ | ✓ | | | ✓ | ✓LN |
| AZ | ✓ | ✓+ | | | ✓ | |
| AR | ✓ | ✓ | ✓ | | ✓ | ✓CL |
| CA | ✓ | ✓ | | | ✓ | ✓CF* |
| CO | Voluntary reporting | | | | No penalties | |
| CT | ✓ | ✓ | | | ✓ | |
| DE | ✓- | ✓- | ✓- | ✓ | No penalties | |
| DC | ✓ | ✓ | ✓MGR | | ✓ | ✓LN |
| FL | ✓ | ✓ | ✓ | ✓ | ✓ | |
| GA | ✓ | ✓ | ✓ | | ✓ | |
| HI | ✓ | ✓ | | | ✓ | |
| ID | ✓ | ✓ | | | ✓ | |
| IL | ✓ | ✓ | | | ✓ | ✓LN |
| IN | ✓- | ✓- | ✓- | ✓ | No penalties | |
| IA | ✓ | ✓ | | | ✓ | ✓CL |
| KS | ✓ | ✓ | ✓ | | ✓ | |
| KY | ✓ | ✓ | | ✓ | ✓ | |
| LA | ✓ | ✓ | ✓- | ✓ | ✓ | |
| ME | ✓ | ✓ | | | | ✓LN,CF |
| MD | ✓ | ✓ | ✓ | | | ✓CF** |
| MA | ✓ | ✓ | | | | ✓CF |
| MI | ✓ | ✓ | | | | ✓CL,CF |
| MN | ✓ | ✓ | | | | ✓CL |
| MS | ✓ | ✓ | ✓ | ✓ | ✓ | ✓LN |
| MO | ✓-IH | ✓- | ✓- | ✓ | ✓ | |
| MT | ✓ | ✓+ | | | ✓ UCP | |
| NE | ✓ | ✓ | | | ✓ | |
| NV | ✓ | ✓ | | | ✓ | |
| NH | ✓ | ✓ | ✓- | ✓ | ✓ | |
| NJ | ✓HP | Voluntary reporting (FR) | | | No penalties | |
| NM | ✓- | ✓- | ✓- | ✓ | ✓ | ✓LN,CF |
| NY | No reporting law for exploitation | | | | | |

[1]Adapted from Remick, 2009; NCSL, 2012; NCEA website links to state codes

**State Reporting Laws: Financial Exploitation of the Elderly (cont'd)**

| State | **Mandatory reporting:** *Health care workers, caregivers* | **Mandatory reporting:** *Other care workers (i.e social, daycare)* | **Mandatory reporting:** *Financial industry employees* | **Mandatory reporting:** *Everyone* | **Criminal penalty** *for non-reporting* *Misdemeanor* | **Civil penalty** *for non-reporting* |
|---|---|---|---|---|---|---|
| NC | ✓- | ✓- | ✓- | ✓ | No penalties | |
| ND | Voluntary reporting | | | | No penalties | |
| OH | ✓ | ✓+ | | | No penalties | |
| OK | ✓ | ✓ | ✓- | ✓ | ✓ | |
| OR | ✓ | ✓+ | | | ✓UCP | |
| PA | ✓ FW | | | | ✓ | ✓CF |
| RI | ✓- | ✓- | ✓- | ✓ | | ✓CF |
| SC | ✓ | ✓ | | ✓AK | ✓ | ✓LN |
| SD | No reporting law for exploitation | | | | | |
| TN | ✓ | ✓ | ✓- | ✓ | ✓ | |
| TX | ✓ | ✓ | ✓- | ✓ | ✓ | |
| UT | ✓- | ✓- | ✓- | ✓ | ✓ | |
| VT | ✓ | ✓ | | | | ✓CF |
| VA | ✓ | ✓ | | | | ✓CF |
| WA | ✓ | ✓ | | | ✓ | |
| WV | ✓ | ✓ | | | ✓ | |
| WI | ✓ | ✓ | | | ✓F/J | |
| WY | ✓- | ✓- | ✓- | ✓ | ✓ | |

**KEY:**

✓-: Anyone with reasonable suspicions must report, but no specific professional examples given for this category
✓+: Specifically includes attorneys (AZ also includes accountants)
MGR: Bank or financial managers only
AK: Any other person with actual knowledge
UCP: Unspecified criminal penalty
F/J: fine or jail specified, but no misdemeanor
LN: Licensing entity of non-reporter will be notified
CL: Civil liability
CF: Administrative or civil fine
CF*: Administrative or civil fine with fine paid directly to victim by financial institutions
CF**: Administrative or civil fine for financial institutions
IH – in home service providers specified
HP – health professionals, law enforcement, firefighters are only mandatory reporters
FW – facility employees/administrators specified
FR – resident of a residential health care facility, rooming house or boarding house specified as victim

**TABLE 2**

**2012 Proposed State Legislation: Financial Exploitation of the Elderly**[2]

| State | Reporting Requirement: *Financial Institutions* | Reporting Requirement: *General* | Restrictions on Elder Care Providers / Facilities | Agency Actions: *Reports, Data, Protocol* | Civil Law Changes | Criminal Law Changes |
|---|---|---|---|---|---|---|
| AL | ✓ | | | | | |
| AZ | ✓ | | | | ✓AF | ✓CD |
| CA | ✓ | ✓ED<br>✓C | | | ✓S | |
| CO | | | ✓BC | ✓TF | | |
| DE | | | | | | ✓FI |
| FL | | | | | | ✓CCP2 |
| GA | | | | | | |
| HI | ✓ | | ✓BC | ✓SL | ✓CL, AF | ✓CC, CCP2 |
| IL | ✓ | | ✓BC | ✓DS | ✓L | ✓H, EC |
| IA | | | | ✓IFP | | ✓VC, CD |
| KS | ✓ | | | | | |
| MD | ✓CP | | | | | |
| MA | ✓CP | | ✓BC | | | |
| MI | ✓ | | | | | ✓CD, EC, CCP1 |
| MN | | | | | | ✓SOL |
| MS | | | | | | ✓CCP1 |
| MO | | | | | | ✓UI, CD, EC |
| NE | | ✓R | | | | |
| NJ | | | | | | ✓CC, CCP2 |
| NY | | ✓RT | | ✓TR, CR, TF, F, E, TT | ✓CL, JR | ✓EC, CC, CCP1 |
| OH | | | | | | ✓EC |
| OR | | | | ✓TI | | ✓SOL, CCP2<br>✓CCP2 |
| PA | | | | | | ✓EOPS, CD |
| RI | | | ✓RPCA | | | |
| VT | | | | | | ✓NFEE |
| VA | | ✓NMR | | ✓RD, CAPS<br>✓CAPS | | ✓CL,CCEV, E,FP |
| WV | | ✓NMR | ✓NI | ✓RD | | |
| WY | | | | | | ✓CCP1 |

Yellow = Bill has been passed and signed into law

[2] Adapted from NCSL, 2012

**KEY:**

Reporting Requirement
ED – Extends date of current reporting law
C – Expands circumstances under which mandatory reporting is to take place
CP – Mandatory reporting, plus civil penalties for failure to report
R – Changes reporting registry provisions
RT – Establishes reporting training
NMR – Mandatory reporters to be notified at beginning and end of investigation

Restrictions on Elder Care Providers / Facilities
BC – Background check for employees that work with vulnerable adults / or no licensing for adults with FEE convictions
RPCA – Registration of working personal care attendants
NI – Requires notification of investigations regarding incapacitated adults or facility residents

Agency Actions
TF – Creates at-risk adult protection services task force / council
SL – Requests DHS to study impact of new laws related to APS
DS – Expands agency data sharing with regards to elder abuse data
IFP – Include FEE in department of aging projects
TR – Office of family services to track and report elder abuse, issue report to governor, legislature, office of aging
CR – establishes a central registry for access to reports of maltreatment of elders
F – Funding to APS
E – General prevention and outreach for the public, reporters, etc.
TT – Social services to create statewide toll-free telephone number for reporting elder maltreatment
TI – Training for investigators and caretakers regarding abuse
RD – Allows record distribution by APS to certain individuals / entities
CAPS – Confidentiality of APS reports/reporters

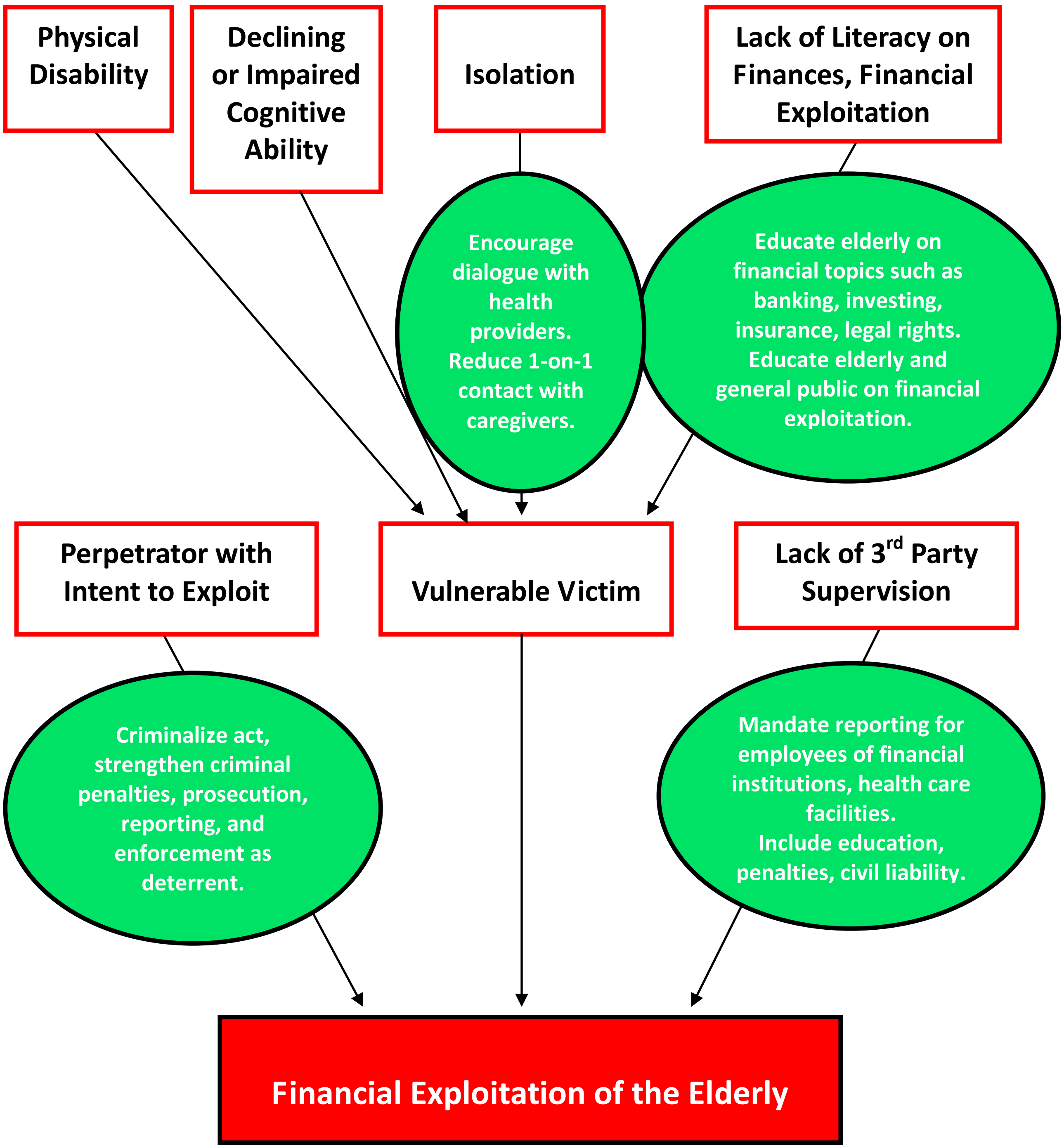
Civil Law Changes
AF – Attorney's fees allowed for civil actions related to FEE
S – Settlements for civil neglect / FEE cases cannot prohibit contact with protective agencies, law enforcement, etc.
CL – creates civil liability / private cause of action for financial exploitation of vulnerable adult
L – gives priority to liens from FE cases
JR – judicial review action against caretakers abusing elderly

Criminal Law Changes
CD – Changes definition of exploitation / defines exploitation / expands other definitions to include exploitation
FI – New additional $100 fine for all elder abusers to go into senior trust fund to fund assistance program for seniors
CC – Creates crime of FEE

CCP1 – Changes criminal penalty for FEE
CCP2 – Changes criminal penalty for other crimes if victim was elderly
H – Changes hearsay rule for cases of elder abuse, neglect, financial exploitation
EC – Expands other crimes to account for FEE (intimidation / fraudulently obtaining signatures / larceny, identity theft)
VC – Include FEE victims in victim compensation program
SOL – Increases statute of limitations for FEE
UI – Adds undue influence to methods of carrying out crime of FEE
EOPS – Agencies can petition the court for emergency orders for protective service of an adult in imminent danger of FEE or other serious harm
NFEE – Attorney general can go after someone who negligently allows FEE, neglect or abuse
FP – Adds forfeiture of property for FEE

FIGURE 1

**Recommended Prevention Pathways to Decrease / Prevent Financial Exploitation of the Elderly**



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# Chapter IV
# CONCLUSION

As the literature demonstrates, financial exploitation of the elderly is a substantial threat to the wellbeing of seniors in the United States and Georgia. With prevalence rates of around 5% of all elderly, which make up approximately 11-13% of our population, it affects a large number of people and demands to be addressed (Acierno, 2010; U.S. Dept. of Commerce, 2011).

The literature shows that victims are typically older seniors, isolated, female, and suffering from cognitive impairment (Gunther, 2010; Tueth, 2000; MetLife, 2011; MetLife, 2009; Denburg, 2007). Perpetrators are usually middle-aged children, relatives, caregivers, or other close acquaintances of the victim, who often suffer from substance abuse problems (Idem.; Payne, 2012). Financial exploitation may be carried out by using scams, taking advantage of a fiduciary role to gain control over assets or embezzle from accounts, or stealing credit cards, checks, and valuables (Gunther, 2010; MetLife, 2009; Payne, 2012). Financial exploitation greatly damages its victims, not only by robbing them of billions of dollars a year, but also by greatly damaging their health. Furthermore, financial exploitation of the elderly affects all citizens, not just victims, as the government and its taxpayers must most often take on the cost of caring for the victim after their assets are gone.

In order to create the best policies to address this problem, the public health community, agency representatives, business leaders, and lawmakers must first define the problem and understand the various aspects of the crime as much as possible (CDC, 2012; Introduction – Figure 1). Special attention should be given to information on frequent victims, perpetrators, and methods used in order to identify risk and protective factors. Second, policy makers should assess the effectiveness of their own state policies. In order to do so, states must start placing a stronger emphasis on data collection and evaluation by their state elder abuse agencies. Last, states, which largely bear the responsibility for making elder abuse policy, must look to strong policies and best practices used across the nation and work to strengthen and extensively implement their laws in all areas affecting financial exploitation of the elderly.

A variety of policy solutions exist for states, and were explored and analyzed in this manuscript. Some of the most common legislative tactics were found to include creation of mandatory reporting laws, criminalization of the act, and strengthening civil litigation capabilities of victims. Other legislation has focused on strengthening capabilities and responsibilities of state elder abuse agencies, or educational measures.

A thorough analysis of the issue of financial exploitation and current policies supports the manuscripts conclusion that at a very minimum, all states should designate financial industry employees, who have the ability to monitor the assets of elderly customers, as mandated reporters. Further, all states should have penalties for non-reporting so as to encourage compliance, and should require all mandated reporters to undergo appropriate educational training upon employment in a designated reporting profession. Also, it is imperative that financial exploitation is most favorably integrated into each state's criminal code. More specifically, criminal laws that designate financial exploitation of the elderly as its own crime, have longer statutes of limitations for prosecution, include "undue influence" as a method of exploitation, and that have modified hearsay rules will enable states to facilitate prosecution of perpetrators and ensure victims receive justice.

Less crucial, but also important is that states empower victims by making it easier for them to file lawsuits against perpetrators and other negligent persons or businesses that may be responsible for their exploitation. In particular, they should be able to sue these actors to recoup their losses, and should be able to get attorney's fees if they win their case. Also central to success is the passage of legislation that would create and fund educational opportunities for seniors, businesses with frequent interaction with seniors, and the general public to learn about financial exploitation of the elderly and how it can be stopped. If such legislation is not in existence, responsible employers with frequent elder contact should enact their own education policies with employees and aging customers in order to help them avoid becoming victims of this crime.

Georgia, being somewhat ahead of the curve on their financial exploitation legislation should nonetheless push forward to further strengthen their legislation. The manuscript suggests that Georgia's reporting law should be modified to include a training or certification requirement for all mandated reporters, and reporting should be made easier through a toll-free reporting hotline that could be accessed by reporters and non-reporters alike. Georgia's criminal law should also be strengthened by adding the hearsay exception for elderly victims, and by expanding their definition of exploitation to match the broader federal definition, which would capture more exploitive acts. Additionally, Georgia should allow victims to win attorney's fees for lawsuits related to their exploitation. If Georgia and other states pass and implement strong policy solutions within their states to combat financial exploitation of the elderly, it is very possible that this terrible crime and health issue for the aging population could be eliminated. Public health professionals and students, elder advocates, and legislators in Georgia should continue to focus their work on creating and passing such legislation as soon as possible.

The literature included in the manuscript has a number of limitations. Most notable is the use of secondary data to answer the study questions, which is in part due to the lack of state data collection and availability on the subject. Additionally, there is a great lack of literature or data available that measures the effectiveness of policy interventions in curbing financial exploitation of the elderly. As a consequence, much of the policy analysis is speculative. Furthermore, it is possible that new legislation has been contemplated and developed in states, but not yet proposed, and thus did not show up in the NCSL review of 2012 laws dealing with financial exploitation of the elderly. Therefore, it would be extremely beneficial if state agencies, such as APS, would track and publicize data related to financial exploitation of elderly persons and policies, so that public health professionals can study the effectiveness of particular policies in reducing the crime and its related health and financial consequences.