Protecting the Elderly

March 20, 2013

By: James C. Milton

Oklahoma is one of 12 jurisdictions leading the nation with laws protecting all elderly people against financial exploitation, regardless of whether they suffer from a specific disability, according to a 2011 study. The protections cited by the study are found in Oklahoma’s criminal statutes. Financial exploitation and other abuse of an elderly or vulnerable adult is a felony under Oklahoma law. People convicted of this crime must serve 85 percent of their sentence before eligibility for parole. In addition, the Elderly and Incapacitated Victim’s program adds further teeth to the penalties imposed upon perpetrators of most crimes against vulnerable adults.

To be effective, protection against financial exploitation of the elderly must extend beyond criminal statutes. Oklahoma law currently provides other protections, many of which are found in the Oklahoma Protective Services for Vulnerable Adults Act. The act is designed to “protect the individual from exploitation, abuse or neglect,” and contains mandatory reporting requirements and authorization for investigations and protective proceedings by the Adult Protective Services division of the Oklahoma Department of Human Services.

But are these statutes enough? These civil and criminal statutes rely heavily upon the Department of Human Services and the state’s district attorneys. None of these statutes devote funding resources for prosecution, training or interagency cooperation. Yet, financial exploitation is complex and difficult to evaluate, investigate and prosecute. Some victims’ family members have noticed a lack of training and consistency. Agency professionals report improvement in resources. Yet, in some instances, prosecution is never pursued.
The Legislature appears to be aware of the need to improve protections for the elderly. In 2010, the Legislature created the Oklahoma Vulnerable Adult Intervention Task Force. The task force consists of 11 members appointed to 30-month terms, to study and examine how to best provide interdisciplinary community assistance, intervention, and referral services for people with mental or physical illnesses of disabilities, dementia or other related disease or condition. The task force is charged with a broad scope of issues and challenges. The public would be well-served if the task force also examines methods of improving protections against financial exploitation of vulnerable adults.

According to professor Carolyn Dessin of the University of Akron School of Law, interagency cooperation is key to addressing the problem of financial exploitation of the elderly. Dessin pointed to the Delaware Elder Abuse and Exploitation Project as a model of interagency cooperation with impressive success in prosecuting cases of financial exploitation. The project employs one advocate investigator to coordinate efforts between Delaware’s adult protective services division, its attorney general’s office, and other law enforcement agencies. As part of this approach, the Delaware attorney general’s office investigates complex cases referred by other agencies, assists in prosecution and trains other agencies on the identification of elderly abuse.

The type of special prosecution unit is not unheard of in Oklahoma. The Oklahoma attorney general’s office maintains a Medicaid Fraud Control Unit, established in 1989 as part of a nationwide effort to respond to patient and resident abuse in health care facilities. The unit is funded by appropriations and cost recoveries obtained through prosecutions.

According to the attorney general’s website, “(i)n addition to prosecuting cases in which an individual has defrauded or abused someone in their care, (the unit) prosecutes individuals who fraudulently bill the state through its Medicaid program.”

But the unit appears to address only a narrow aspect of financial exploitation of the elderly - those instances connected to the Medicaid program or involving health care facilities.

The state’s elderly population deserves a special prosecution unit designed to coordinate investigation and prosecution of financial exploitation of vulnerable adults, provide specialized training to law enforcement professionals, and handle investigation and prosecution in more complex cases. Like the Delaware model, Oklahoma should employ an advocate investigator to coordinate these efforts. Our laws prohibiting financial exploitation are only as effective as the coordination, funding and training devoted to the investigators and prosecutors on the front lines of this problem. As our population ages, these law enforcement professionals need to be armed with the state’s full support in protecting our most vulnerable citizens.

Attorneys

- James C. Milton