



Considerations for Recognizing and Addressing Participants with Diminished Capacity

October 22, 2020

My name is Michele Kryger. As AIG Life and Retirement's (AIG L&R) Elder & Vulnerable Client Care (EVCC) Unit Officer since 2016, I am honored to have this opportunity to provide my company's perspective to the ERISA Advisory Council on "Considerations for Recognizing and Addressing Participants with Diminished Capacity." While this may be an issue that affects more individuals outside of ERISA plans today, those plans certainly are touched by the issue. And as plans increasingly focus on the need to address important income and longevity concerns within the plan, we might expect to see the in-plan occurrence of these issues increase as well. So it is timely that the Council has taken on this issue, and today, I plan to share how AIG L&R addresses the challenges we face in our day-to-day battle against financial exploitation, particularly targeted towards vulnerable individuals with diminished capacity. I hope that my testimony may provide insights to help plan sponsors and service providers protect plan participants from potential fraud and financial abuse.

Executive Summary:

I will address the challenges with diminished capacity, for employees as well as retirees, trends in cases in which indicators of diminished capacity exist as well as the trends in cases involving financial exploitation concerns. I will address the challenges in recognizing financial exploitation perpetrated by an individual with a known relationship to the victim, especially where the victim is a vulnerable adult. I will share the guidance we provide to financial advisors and other client-facing employees with respect to protections employees, plan participants, retirees and other individuals can put in place to provide a system of checks and balances. This guidance includes the following: providing use of powers of attorney, trusted contacts, inviting someone trusted into conversations about finances and working with a financial advisor or professional.

Full Testimony:

According to the SEC Investor Bulletin and Consumer Advisory: **Planning for Diminished Capacity and Illness** issued June 1, 2015, "diminished financial capacity" is defined as a "decline in a person's ability to manage money and financial assets to serve his or her best interests, including the inability to understand the consequences of investment decisions. When people of any age lose the capability to manage their finances, they may also become more vulnerable to investment fraud and other forms of financial abuse."¹ With the aging population and 10,000 Baby Boomers turning 65 each day², we can expect an increase in cognitive decline, diminished capacity, Alzheimer's and dementia. In fact,

¹ https://www.sec.gov/oiea/investor-alerts-bulletins/ib_illness.html

² United States Census Bureau; <https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html>



approximately 5.8 million Americans suffer from Alzheimer's dementia today.³ Individuals with diminished capacity are at risk of becoming targets of bad actors. They might also be at risk of mismanaging their own funds. According to findings from an AIG Elder Financial Abuse Survey (2019 AIG Survey) commissioned in 2019, nearly 50% of seniors aged 65 or older handle their financial decisions and money management alone, with no help at all.

Case Scenario 1:

AIG L&R's EVCC unit handled a case involving an elderly client who began requesting \$11,000 withdrawals frequently. After a few withdrawal requests were received, the company became concerned. If withdrawals continued, the client had a chance of depleting his retirement account in a short period of time. Mindful of our obligations to the client, and also taking note of what might have been either a memory issue or a case of exploitation, we reported this case to Adult Protective Services who informed us that they have had an ongoing investigation related to our client. They suggested we do not honor the client's requests stating the client had plenty of funds to satisfy his daily needs. The client had no power of attorney or trusted contact named on the account that we could consult with. In order to assist the client from mismanaging his account, each time a withdrawal was received, he was sent correspondence asking that he confirm the request. After a short period of time, the requests stopped.

As mentioned, diminished capacity and cognitive decline make individuals more vulnerable to financial exploitation by bad actors. This includes people the individual knows and trusts. It can be more difficult to recognize exploitation when it is being perpetrated by someone who knows the victim well. Some fraud measures, such as security questions or online passwords, may be easy for the exploiter to authenticate. In fact, a review of the cases handled by AIG L&R's EVCC unit found that approximately 70% of the cases reported to state adult protective services agencies or other authorities have involved someone known to the client. Most of the cases involve a suspicion that an immediate family member is exploiting our client including children, siblings and even spouses. We have handled other cases where we suspected non-familial attorneys in fact, friends, landlords and even fellow churchgoers of exploiting our client. On the rise is exploitation by caregivers.

Case Scenario 2:

John, an 80-year-old client, worked closely with an AIG Retirement Services' financial advisor for years. They enjoyed a close relationship and frequently met to discuss John's accounts. John's goal was to leave a legacy to his family. Though John seemed slow to respond at times, he was able to express his wishes and desires and the financial advisor fully understood John's goals for his retirement. The financial advisor lost touch with John in early 2019. There was no power of attorney or trusted contact designated, so no alternate way to get in touch with him. In September 2019, John reached out and requested a change of beneficiary designating a new, unrelated individual named Earl as primary beneficiary. When pressed, the financial advisor learned John had been in assisted living and Earl was his caretaker in the facility. Earl soon became John's good friend and live-in caretaker. Earl subsequently presented a power of attorney executed by John, along with requests to surrender two of John's retirement accounts with AIG. These requests triggered red flags prompting a thorough investigation by AIG's EVCC unit into this matter as well as reporting to Adult Protective Services who quickly involved the police. We learned John was diagnosed with a condition causing him to be unable to manage

³ Alzheimer's Association; <https://www.alz.org/alzheimers-dementia/facts-figures>



his finances, and, in addition to the surrender requests we received, the client was in the process of deeding his property over to Earl. Fortunately, AIG L&R did not honor the surrender requests and the property transfer was stopped. APS informed us they were working to get John a guardian to manage his finances going forward.

It is important to note that diminished capacity, though more prevalent in individuals age 65 or older, can occur to individuals at any age. This point, too, underscores the relevance of this topic to retirement plans as well as accounts outside of them such as IRAs. Our unit has handled cases where individuals under 65 fell victim to exploitation. In our cases, clients suffered from permanent and/or temporary incapacitation or diminished capacity as a result of hospitalization, medical inducement, as a result of a car accident, stroke or other medical condition, alcoholism and even imprisonment.

Case Scenario 3:

AIG received a beneficiary change request from a 54-year-old client. The request changed the beneficiary designation from our client's sister to his brother. The new designation was irrevocable, meaning it could not be changed without the approval of the beneficiary. We learned the client had been hospitalized and highly medicated when his brother showed up and told him to sign the form. The client wasn't aware of what he was signing. Once released, the client learned what happened, contacted AIG and was able to rectify the situation.

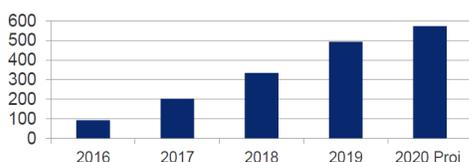
I share this story to show the importance of having protections in place regardless of age. If a power of attorney was on file, AIG could've reached out to the individual to determine if the beneficiary change was appropriate. I will touch upon the importance of having a system of checks and balances in place in a later section.

Trending and Statistics

Over the past four and a half years, AIG's EVCC unit has handled over 1,570 cases in which concerns of elder financial exploitation and/or diminished capacity existed. The volume of cases has trended upward as shown in the EVCC metrics below. Similarly, cases involving concerns of cognitive decline alone is also on an upward trend. We started tracking this category mid-way through 2017 we noticed an increase in these cases. We train all AIG Life & Retirement employees to recognize red flags of exploitation as well as indicators of cognitive decline. Therefore, some of the increase in cases can be explained by enhanced training and awareness, but this trend is expected to continue as the population ages and a large body of research suggests that the number of cases are significantly underreported. As a result, financial institutions are in a unique position to recognize and report red flags that might otherwise go unnoticed or unreported.

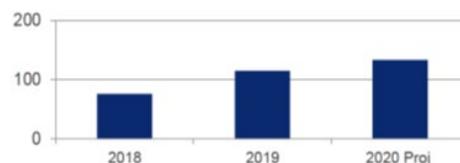
All Cases:

AIG EVCC Case Activity Trending 2016 - Present



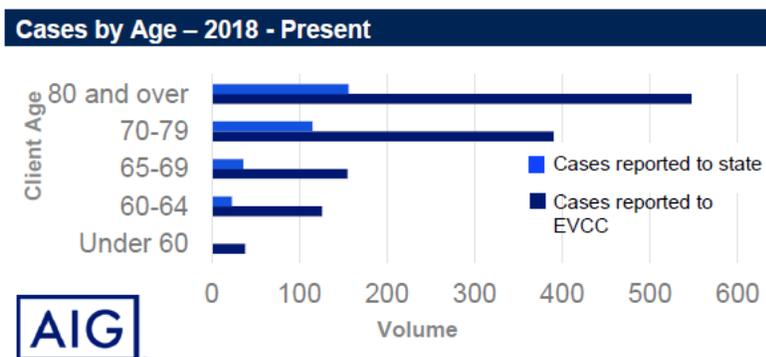
Concerns of Cognitive Decline Only

AIG EVCC Cognitive Decline Cases 2018- Present





AIG L&R has found the products most at risk for exploitation are retirement accounts. We do see activity related to life insurance products, but more in the form of loans taken out or unauthorized beneficiary changes. The age groups most at risk from our experience are those aged 80 and over.



A System of Checks and Balances:

Case Scenario 4:

A client of AIG Retirement Services submitted a request to update the beneficiaries on his account. He requested his new wife receive 70% of the distribution with the remaining 30% going to his three children. The client made an error on the form and when asked to correct it, the client stated he was on hospice and terminally ill with cancer. He was unable to handle the change but asked his new wife to bring the corrected form to the financial advisor. The wife submitted a beneficiary change shortly thereafter signed by her as the client's attorney in fact. She named herself as 100% beneficiary and her children, rather than the client's children, as contingent beneficiaries.

I highlight the case above to emphasize the risks powers of attorney can present. Having a power of attorney in place is highly recommended. Most individuals who hold a power of attorney will do the right thing and act in the best interests and desires of the grantor. However, AIG L&R trains our advisors to discuss putting a system of checks and balances in place in the early stages and periodically throughout their relationships with clients. A designated attorney in fact has significant control over a principal's finances. Certain states allow different types of powers of attorney (i.e. springing power of attorney that only goes into effect if the attorney in fact can evidence incapacitation). There may also be an option to select two attorneys that have to act jointly.



Case Scenario 5:

After receipt of an executed power of attorney naming two individuals as agents, a large withdrawal request was received. The amount of the transaction was unusual for the client and not aligned with the client's goals on the account. The request was signed by one of the designated attorneys in fact. Upon review of the power of attorney documentation, we determined it required both agents to act jointly. The request was deemed not in good order and, thus not honored. No further request was received on the account, potentially saving the client from financial loss.

The benefits that financial advisors, plan sponsors and service providers can provide to employees and retirees is education and awareness regarding the risks discussed today. According to the 2019 AIG Elder Financial Abuse Survey, 81% of senior respondents did not believe anyone close to them would take advantage of them; 74% of all adults surveyed agreed. Our financial advisors talk to clients about not only putting a power of attorney in place but complementing that with a trusted contact. We highly recommend the individual designated as the trusted contact be someone different than the individual acting as attorney in fact. Why? A Trusted Contact cannot act on behalf of the client but can be a resource to financial advisors and firms when exploitation is suspected. They can also be a resource if there are concerns of diminished capacity.

Case Scenario 6:

Power of attorney documentation was submitted on an elder client's account. Shortly after, AIG received a request from the attorney in fact to increase monthly distributions significantly, raising a red flag. The financial advisor attempted to confirm the increase with the client but was unable to locate her. Fortunately, the client previously designated a trusted contact. EVCC learned from the trusted contact that the client was recently moved into assisted living and the increase was needed to pay her rent and other medical bills, thus clearing the red flags of financial exploitation by the attorney in fact.

In other cases, trusted contacts have been helpful in confirming concerns of exploitation and getting help for their loved one by working with state agencies to put a guardianship in place. Without a power of attorney or trusted contact, a firm has no choice but reach out to a state agency when concerns arise.

In addition to a power of attorney and trusted contact, we suggest clients bring someone they trust into conversations with financial advisors related to their accounts. This not only protects the client, but also helps the financial advisor, especially if the client shows forgetfulness or confusion.

Lastly, according to the 2019 AIG Elder Financial Abuse Survey, working with a financial advisor or professional increases the chances for individuals to make smart choices to prevent financial exploitation. Of those partnering with an advisor, more than twice as many had a durable power of attorney in place; 64% had a trusted contact in place and 90% had a significant other involved in conversations about their finances.

In closing, I again thank the ERISA Advisory Council for allowing me to present on this important topic.