

Preventing Financial Exploitation of Older Adults in South Dakota by Family Members: A Qualitative Pilot Study Exploring the Role of Financial Powers of Attorney

Financial exploitation of older adults (FEOA) by family member power of attorney (POA) agents is a problem with few available prevention strategies. With the aging population of rural states, including South Dakota, exploring what happens in families in which a family member POA agent is appointed to manage an older adult's finances is critical to developing FEOA prevention strategies. In this pilot study, six participants were interviewed. Interpretive content analysis was used to identify preliminary themes of Trust in Relevant Professionals and Positive Family Relationships.

Axton Betz-Hamilton, Ph.D., AFC® and Jamie Rich, B.S.



Financial exploitation of older adults (FEOA) by family members is a problem; prevalence estimates range from 5.2% (Acierno, et al., 2010) to 6.6% (Amstader, Zajac, & Strachan, 2011). FEOA cases are underreported: for every reported case, as many as 44 are unreported (National Adult Protective Services Association, n.d.). This crime has negative outcomes for victims and non-offending family members. Victims may have difficulty recovering from financial losses (Phelan, 2020). Moreover, victims can experience depression, feelings of shame, and lack resources to obtain food, shelter, and medications, which may exacerbate health conditions (National Adult Protective Services Association, n.d.; Price, King, Dillard, & Bulot, 2011). Betz-Hamilton and Vincenti (2018)

found non-offending, non-victim family members experienced financial costs associated with assisting victims and estranged relationships with other family members.

Twenty percent of older adults in the U.S. live in rural areas; many live in states where more than half of their older populations reside in rural areas, like South Dakota (Smith & Trevelyan, 2019). Most South Dakota residents live in rural counties and are White (Brown, 2018). Residents aged 65 and older are expected to increase to 21.3% by 2030, up from 14.1% in 2015 (West, Cole, Goodkind, & He, 2014). This indicates an increasing number of older South Dakotans who could become victims of FEOA by a family member.

Financial powers of attorney (POA) are used in estate planning; older adults often appoint a relative to the POA agent role (Betz-Hamilton & Vincenti, 2018). A POA agent has the authority to act as another person when he/she does not have the capacity manage his/her affairs and is expected to be a fiduciary (Dalton & Langdon, 2016).

A fiduciary manages the financial affairs of another in that person's best interest (Consumer Financial Protection Bureau, 2013). Unfortunately, POA agents have limited oversight by third parties, leaving an opportunity for them to overstep their authority and engage in FEOA (Betz-Hamilton & Vincenti, 2018).

In 2020, South Dakota adopted the Uniform Power of Attorney Act (UPOAA) (South Dakota Senate Bill 148, 2020). The Act consists of four Articles: Article 1 contains general provisions for the creation and use of a POA, Article 2 provides definitions for various types of authority as well as rules pertaining to certain grants of authority, Article 3 consists of a sample POA form and agent certification form, and Article 4 provides miscellaneous provisions of the Act to other laws and pre-existing powers of attorney (Whitton, 2007). Adoption of the UPOAA in South Dakota closed a loophole which allowed for the insertion of a clause into the POA document stating agents were not responsible for violations of the terms of the POA agreement and imposed limits on POA agent compensation (Miller, 2018).

Much of the focus on estate planning in the rural United States has been on the succession planning of farmers and their families. In Minnesota, many farm families do not have a succession plan or personal estate plan, in part due to the older

generation's reluctance to retire and relinquish control of the farm to younger generations (Hachfeld, et al., 2009). O'Neill, et al. (2010) found farmers were concerned about potential family conflicts over estate distribution. Cooperative Extension programming focused on succession planning and estate planning helped families develop these plans (Hachfeld, et al., 2009).

Having farmers work with an elder law attorney is critical in developing succession and estate plans (Hachfeld, et al, 2009). Estate planning can be complex and beyond the expertise of a general practice attorney. According to the Legal Information Institute at the Cornell University Law School (n. d.), there are only three elder law attorneys in South Dakota who offer estate planning services.

Given the limited number of elder law attorneys, older South Dakotans may turn to financial planners for estate planning advice. Financial planners cannot draft legal documents for an estate plan, such as wills and power of attorney documents, but they can provide general estate planning advice and referrals to attorneys. There are seven financial planners in South Dakota, according to the Financial Planning Association's (n. d.) Planner Search tool. In short, the availability of qualified professionals to assist South Dakotans with estate planning is inadequate, leaving many older adults to rely on informal financial management arrangements with family members (Betz-Hamilton & Vincenti, 2018).

Limited research has focused on identifying risk and protective factors associated with FEOA by family member POA agents. Steinman, et al. (2017) focused on identifying risk and protective factors for FEOA by family member POA agents and found both cognitive and physical health declines and a history of poor financial management by the older adult to be risk factors. Positive family relationships and regular communication with family members were identified as protective factors.

OBJECTIVE

The objective of this study was to explore the research question, "What are the common lived experiences in rural families in which a family member was appointed as a financial POA agent for an older adult relative?"

METHOD

This pilot study used a qualitative design, which enabled a detailed understanding of what happens in rural families in which a family member financial POA agent is appointed through conducting participant interviews (Creswell & Poth, 2018). After receiving IRB approval, participants were recruited by sharing study information with community groups and a gerontology Extension specialist. Inclusion criteria were being 18 years or age or older, a resident of South Dakota, and having served as a POA agent for a relative aged 60 or older or being an older adult aged 60 or older who appointed a family member POA agent. The age of 60 reflects the Centers for Disease Control and Prevention (2019) definition of an older adult.

Six participants were recruited; all were White. Three were women and three were men. All were in separate POA relationships. Four of the POA relationships ranged from 2-10 years and two were of an unknown duration. In four of the relationships, the older adults were still sufficiently in control of their affairs. All three women served as a family-member POA agent and all three men appointed a family member POA agent. Recruiting two gendered subgroups was not intentional and somewhat contrary to previous research on FEOA by a family member POA agent, as POA agent selection can be based on gender biases that are preferential to males (Teaster, Vincenti, Betz-Hamilton, & Bolkan, 2019). More details about the participants are provided in Table 1.



Participants engaged in a semi-structured interview and received a \$30 gift card after its completion. Each participant was asked if he/she was willing to be contacted after completion of the interview to clarify and expand upon any data, which was completed either in person or via phone. Interviews ranged from approximately 25-60 minutes. Many initial interview questions focused on elucidating information about family interactions, such as "Tell me about the

interactions the elder had with the POA agent prior to the implementation of the POA” and “Tell me about the interactions the elder had with the POA agent after the implementation of the POA”. All interviews were conducted by the same researcher.

Five participants were interviewed in person and one was interviewed via telephone due to their distance from the researcher. Interviews were audio recorded and transcribed. One researcher began the data analysis process by reading each transcript multiple times to become familiar with each participant’s story. During the reading of each initial interview transcript, questions were developed, which were asked of each participant after the initial interview. Once all interviews were completed and transcribed, the researcher and an additional researcher read the transcripts for each participant. Then, the researchers engaged in open coding independent from one another, in which codes relevant to the research question were noted in the margins of the transcripts. After open coding was completed, focused coding was conducted to identify categories and themes. All coding was done by hand. After each researcher completed coding, they convened to discuss their interpretations of the data and how they developed codes, categories, and themes. These discussions continued between the researchers until consensus was achieved, which is a means of researcher triangulation (Hawkins & Zuiker, 2019). One researcher discussed the emerging findings from this study with a gerontology expert to obtain additional input, which is consistent with peer review and debriefing (Glesne, 2016). Engaging in researcher triangulation and peer review and debriefing adds to the trustworthiness of the findings.

FINDINGS

Two preliminary themes were present in this data: Trust in Relevant Professionals and Positive Family Relationships. A discussion of each follows.

TRUST IN RELEVANT PROFESSIONALS

Four participants expressed having trust in relevant professionals was central to their experience with or as a family member POA agent. Relevant professionals included attorneys, financial planners, tax professionals, and senior companions. Izzy and Darwin developed trust with their attorneys in part due to the relationships the older adult who appointed them as POA agent had already built with them. Darwin, who served as a POA agent for his mother-in-law, worked with the same legal

firm as his mother-in-law: “The in-laws had worked with [this legal firm] for many years. My mother-in-law’s parents had also worked with them. And since then, we still work with the same firm on some issues”.

Izzy’s mother wanted her “to have met [her] attorney. It was helpful because [Izzy had] to call him a couple of weeks ago. It’s nice talking to somebody who isn’t a complete stranger.” Izzy’s mother established relationships with an attorney and financial planning firm prior to appointing Izzy as a POA agent and “has stayed with them”. Izzy has “spent time with these [financial planners] and [has] met them and [knows] them. They know [her] on a name basis.” She “[thinks] that really has helped, that [she’s] not a stranger to them...they know that [she’s] speaking for [her mother] but yet [her mother] has given her approval for this”.

Darwin described the trust he had in his mother-in-law’s tax preparer, who assisted him: “The fellow that did her taxes for [several] years is a certified accountant and former IRS agent. [He was] very knowledgeable about the proper way of doing things...[he] helped us...”

Darwin and Izzy developed trust with relevant professionals the older adults who appointed them as POA agent trusted. The relationships the older adults had with these professionals was long-term; this was not the case in Scarlett’s family. Scarlett was a POA agent for her aunt, who had a senior companion. The senior companion had

...come in once a week or every other week and would help her pay bills or take her shopping.[She] was the one who called and said it would be a good idea to [get the POA in place] before she gets any older and is still clear-headed.

Scarlett’s aunt did not have a long-term relationship established with the senior companion; however, Scarlett began to trust her “because then she would call me if there was something that—she’d left the cigarette burning in the ashtray and forgot about it. Just the things that you’d be on the lookout for”.

In these families, trust in relevant professionals was present, along with positive family relationships. These families often had trusting relationships, regular, positive interactions, and healthy conflict management, which comprise the following theme, Positive Family Relationships.

POSITIVE FAMILY RELATIONSHIPS

Lilly, who served as a POA agent for both of her parents, “had a really strong trust relationship [with them]. They weren’t worried about me taking their money. I wasn’t worried about them taking advantage of my time. It worked out really well”.

Scarlett’s aunt was distrustful of a niece because she suspected her niece kept money from her sister’s estate that should have been hers; however, “she trusted [Scarlett], and that was good”. This trust was built, in part, due to Scarlett’s aunt “never [learning] to drive” and receiving assistance from Scarlett and her husband. Scarlett said:

“When there would be my other aunt’s birthday party at the nursing home, we would go pick her up, so there started to be a bit more of that. Then I told her that I was available to take her to medical appointments. She wanted a cat, so I got her a cat.”

Lilly “had a close family” and interacted with her parents regularly: “[By the time I was appointed as POA agent for my parents], I was the only one [of my siblings] with children, so that’s Grandma and Grandpa, too. So we had a lot more ties with them [than my brothers]”.

Charlie, an older adult who appointed a family member POA agent, had a wife who “is a good listener when it comes to [family] business...she listens very carefully to what I say and what the boys say, what seems relevant and so forth”. Charlie’s children “can be independent minded as to what ball games they follow. But when it comes to business, when it comes to family, they basically come together”, suggesting that Charlie, his wife, and his children regularly and positively interact, and put the needs of the family above their individual needs. Charlie noted these interactions do not always result in happiness: “We’re certainly not one happy clan, in the sense that there’s a lot of things that we will disagree on. But [as far as the POA] is concerned, we have no problem”. This suggests that Charlie’s family can handle conflict effectively.

DISCUSSION

Overall, these preliminary findings indicate older adults appointed by a family member POA agent had longstanding relationships with relevant professionals, including attorneys, financial planners, and tax preparers.

The family member POA agents engaged with the same professionals as the older adults due to the trust that had been built between the older adults and professionals. This facilitated trust with the family member POA agents. Senior companions were also considered to be trusted professionals. Moreover, the older adults and family-member POA agents in this study experienced positive family relationships characterized by trust, regular, positive interactions, and healthy conflict management.

Prevention of FEOA by family member POA agents has not received as much empirical attention as the identification of risk factors for such exploitation. Ries (2019) found a lack of planning for financial decision-making is a risk factor. None of the participants in this pilot study indicated FEOA had occurred and all the older adults actively engaged in planning for financial decision-making with relevant professionals such as attorneys and financial planners, suggesting this advanced planning may protect an older adult from becoming a victim of FEOA by a family member POA agent. Moreover, these professionals should be open developing trusting relationships with family member POA agents. Extension programming that incorporates involvement from such professionals can help facilitate the development of these relationships.

The preliminary finding of positive family relationships was consistent with Steinman, et al. (2017), who identified positive family relationships as a protective factor for FEOA by a family member POA agent. Extension programming focused on developing positive family relationships, such as the Strengthening Families Program, could have an unintended benefit of helping reduce later FEOA by a family member POA agent (Iowa State University, n. d.).

This study has several limitations. Biases and assumptions were likely present in participants’ responses, as their experiences were perceived to be non-exploitative but may not have been as perpetrators typically do not self-identify. Moreover, the sample lacked diversity. Participants were residents of a rural state which has many tribal nations, yet no residents of tribal nations were recruited. All participants were White. Moreover, all participants were recruited via contacts one researcher had with Cooperative Extension and community groups, which limited recruitment to individuals who had access to these resources. Not all interviews were conducted in person, so some participants’ non-verbal reactions to questions could not be observed and further probed.



You may click here to access the references, tables, and graphs for this article.



CONTACT INFORMATION

Axton Betz-Hamilton
Assistant Professor of Consumer Affairs
South Dakota State University
SWG 147/Box 2275A
Brookings, SD 57007
axton.betzhamilton@sdstate.edu



**National Extension Association
of Family & Consumer Sciences**

**Free Webinars for
NEAFCS Members**



www.neafcs.org/webinars

References

- Acierno, R., Hernandez, M. A., Amstader, A. B., Resnick, H. S., Steve, K., Muzzy, W., & Kilpatrick, D. G. (2010). Prevalence and correlates of emotional, physical, sexual, and financial abuse and potential neglect in the United States: The National Elder Mistreatment Study. *American Journal of Public Health, 100* (2), 292-297.
- Amstader, A. B., Zajac, K., & Strachan, M. (2011). Prevalence and correlates of elder mistreatment in South Carolina: The South Carolina elder mistreatment study. *Journal of Interpersonal Violence, 26* (15), 2947-2972. doi: 10.1177/0886260510390959
- Betz-Hamilton, A. E., & Vincenti, V. B. (2018). Risk factors within families associated with elder financial exploitation (EFE) by relatives with powers of attorney (POA). *Journal of Family and Consumer Sciences, 110* (1), 19-27. doi:10.14307/JFCS110.1.19
- Brown, L. E. (2018). *A profile of older South Dakotans*.
<https://extension.sdstate.edu/sites/default/files/2018-12/04-2003-2018.pdf>
- Centers for Disease Control and Prevention. (2019). *Elder abuse: Definitions*.
<https://www.cdc.gov/violenceprevention/elderabuse/definitions.html>
- Consumer Financial Protection Bureau. (2013, October). *Managing someone else's money: Helpful for agents under a power of attorney*. <https://www.aarp.org/content/dam/aarp/home-and-family/caregiving/2014-10/guide-for-agents-under-power-of-attorney-aarp.pdf>
- Cornell University Law School Legal Information Institute. (n. d.). *South Dakota elder law lawyers*.
<https://lawyers.law.cornell.edu/lawyers/elder-law/south-dakota>
- Creswell, J. W., & Poth, C. N. (2018). *Qualitative inquiry and research design: Choosing among five approaches* (4th ed.). Thousand Oaks, CA: Sage Publications.
- Dalton, M. A., & Langdon, T. P. (2016). *Estate planning* (9th ed.). St. Rose, LA: Money Education.

Financial Planning Association. (n. d.). *Find a financial planner in South Dakota*.

<https://www.plannersearch.org/financial-planner/south-dakota>

Glesne, C. (2016). *Becoming qualitative researchers: An introduction* (5th ed.). Boston: Pearson Education.

Hachfeld, G. A., Bau, D. B., Holcomb, C. R., Kurtz, J. N., Craig, J. W., & Olson, K. D. (2009). Farm transition and estate planning: Farmers' evaluations and behavioral changes due to attending workshops. *Journal of Extension*, 47 (2).

Hawkins, B. P., & Zuiker, V. S. (2019). Financial counselors' experiences working with clients of color: Lessons of cultural awareness. *Journal of Financial Counseling and Planning*, 30 (1), 6-17.

<http://doi.org/10.1891/1052-3073.30.1.6>

Iowa State University. (n. d.). *Strengthening Families Program: For parents and youth 10-14*.

<https://www.extension.iastate.edu/sfp10-14/>

Miller, L. (2018, February 16). *House Bill 1204: The Uniform Power of Attorney Act: Week 6 legislative update*. <https://states.aarp.org/south-dakota/house-bill-1204-uniform-power-attorney-act-week-6-legislative-update>

O'Neill, B., Komar, S. J., Brumfield, R. G., & Mickel, R. (2010). Later life farming: Retirement plans and concerns of farm families. *Journal of Extension*, 48 (4).

National Adult Protective Services Association. (n. d.). *Elder financial exploitation*. Retrieved from

<https://www.napsa-now.org/get-informed/exploitation-resources/>

Phelan, A. (2020). Financial abuse of older people. In A. Phelan (Ed.). *Advances in elder abuse research: Practice, legislation, and policy* (pp. 101-119). Switzerland: Springer Nature.

Price, T., King, P. S., Dillard, R. L., & Bulot, J. J. (2011). Elder financial exploitation: Implications for future policy and research in elder mistreatment. *Western Journal of Emergency Medicine*, 12 (3), 354-356.

Ries, N. M. (2019). Enduring powers of attorney and financial exploitation of older people: A conceptual analysis and strategies for prevention. *Journal of Aging and Social Policy*.

<https://doi.org/10.1080/08959420.2019.1704143>

Smith, A. S., & Trevelyan, E. (2019, October 22). *In some states, more than half of older residents live in rural areas*. Retrieved from [https://www.census.gov/library/stories/2019/10/older-population-in-rural-](https://www.census.gov/library/stories/2019/10/older-population-in-rural-america.html#:~:text=More%20than%201%20in%205,to%2013.8%25%20in%20urban%20areas)

[america.html#:~:text=More%20than%201%20in%205,to%2013.8%25%20in%20urban%20areas](https://www.census.gov/library/stories/2019/10/older-population-in-rural-america.html#:~:text=More%20than%201%20in%205,to%2013.8%25%20in%20urban%20areas)

South Dakota Senate Bill 148. (2020). <https://legiscan.com/SD/bill/SB148/2020>

Steinman, B. A., Betz-Hamilton, A. E., Bolkan, C. R., Jasper, C., Stum, M. S., Teaster, P. B., & Vincenti, V. (2017). Risk and protective factors for elder financial exploitation by family power of attorney agents. *Innovation in Aging*, 1 (suppl_1), 365.

Teaster, P. B., Vincenti, V., Betz-Hamilton, A., Bolkan, C., & Jasper, C. (2019). Themes from elder financial exploitation by family member powers of attorney. In K.P. Lyness & J.L. Fischer (Eds.) *Gender, Sexual Identity, and Families: The Personal is Political*. Ann Arbor, MI: MPublishing, University of Michigan Library. <http://dx.doi.org/10.3998/groves.9453087.0005.001>

West, L. A., Cole, S., Goodkind, D., & He, W. (2014). *65+ in the United States*.

<https://www.census.gov/content/dam/Census/library/publications/2014/demo/p23-212.pdf>

Whitton, L. S. (2007). Navigating the Uniform Power of Attorney Act. *National Academy of Elder Law Attorneys Journal*, 3 (1), 1-32.

https://www.naela.org/App_Themes/Public/PDF/NAELA%20Journal/NAELAJournal2007Vol3No1.pdf

Table 1

Participant Information

<u>Participant</u>	<u>Role</u>	<u>Relationship to Older Adult</u>	<u>Number of Children of Older Adult</u>	<u>Older Adult Living in Rural Area</u>
Izzy	POA agent	Daughter	2	Yes
Chester	Older adult	Self	4	Yes
Lilly	POA agent	Daughter	2	Yes
Darwin	Older adult	Self	2	Yes
Charlie	Older adult	Self	3	Yes
Scarlett	POA agent	Niece	2	No
