
REPORT OF THE
NEW JERSEY DIVISION OF CONSUMER AFFAIRS
ELDER FRAUD TASK FORCE

New Jersey State Library

Peter Verniero, Attorney General
Department of Law & Public Safety

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February 1997

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State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
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CHRISTINE TODD WHITMAN
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Attorney General

February 10, 1997

The Honorable Christine Todd Whitman
Governor, State of New Jersey
State House
CN 001
Trenton, New Jersey 08625

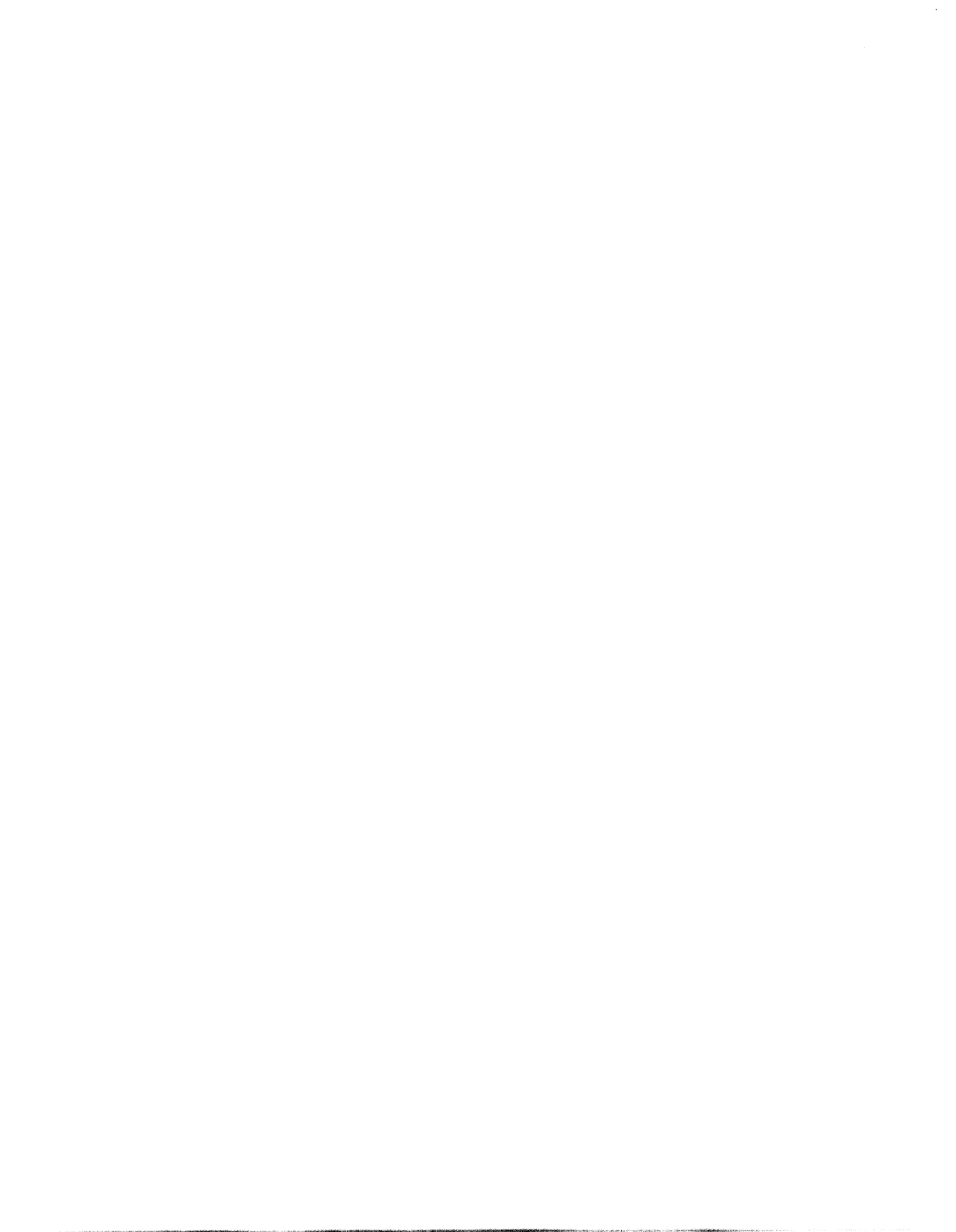
Re: Elder Fraud Task Force Report

Dear Governor Whitman:

In July of 1995, then Attorney General Deborah T. Poritz and Consumer Affairs Director Mark S. Herr created the Elder Fraud Task Force to study consumer frauds which are either aimed at the State's senior citizens or which have a disproportionate impact on that segment of our population. The 27-member Task Force was drawn from both the public and private sectors, and represented a broad cross section of expertise in matters of concern to senior citizens. The Task Force spent many months studying the issues, holding public hearings and formulating recommendations for remedial action.

Although former Attorney General Poritz had the opportunity to review and comment on the initial drafts of the Task Force's Report, she assumed her responsibilities on the New Jersey Supreme Court before the Report could be finalized and released. I have now had the opportunity to review the Report and direct its finalization. On behalf of the Task Force, I now forward the Report to you for your consideration.

With nearly 14 percent of its population over the age of 65, New Jersey has the third highest *per capita* population of senior citizens. As set forth in more detail in the Report, the Task Force concluded that senior citizens are a significant target for those who seek to obtain money through fraudulent means. The Task Force recommends a broad range of action, both statutory and



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regulatory, to help prevent such fraudulent schemes and to punish those who perpetrate them. These include (a) amendment of the Consumer Fraud Act to enhance penalties for senior citizen frauds, (b) registration of home repair and improvement contractors, (c) enactment of legislation to curb telemarketing abuses, and (d) establishment of programs to educate senior citizens about various financial and other types of potential fraud.

We stand ready to work with you as you consider these recommendations.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter Verniero".

Peter Verniero
Attorney General



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INTRODUCTION

The Division of Consumer Affairs ("Consumer Affairs") was created by the Legislature in 1971 to serve as the guardian of and chief advocate for the consumers of New Jersey. See N.J.S.A. 52:17B-119. As part of its statutory responsibilities, Consumer Affairs is to:

- (b) Advise the Governor and the Attorney General as to all matters affecting the interests of the public and consumers;
- (c) Review State policies and programs of primary importance to consumers or the unmet consumer needs which can appropriately be met through State action....

N.J.S.A. 52:17B-5.9(b)(c).

In July 1995, pursuant to this statutory authority, Attorney General Deborah T. Poritz and Consumer Affairs Director Mark S. Herr created the Consumer Affairs Elder Fraud Task Force ("Task Force") to study consumer frauds which were either aimed at the State's elderly population or which had a disproportionate threat to and impact on this population.

The 27-member Task Force, drawn from private and public agencies and organizations responsible for services, programs and policies which affect the State's 1.3 million older citizens, spent six months exhaustively studying the problems which threaten to rob these New Jerseyans of security, wealth and peace of mind. Regional public hearings were held in Ocean, Bergen and Camden counties to provide older consumers an opportunity to share their experiences with the Task Force. County and



local law enforcement officials, State Legislators, representatives of the building trades industry, local building code officials, victims' family members, victims' friends and neighbors, consumer affairs offices, county victim witness offices, senior citizen advocates and organizations, bankers and experts in health care and insurance testified. In addition to three public hearings, thousands of questionnaires were distributed to the State's elderly and later tabulated. The expertise of professionals and specialists from law enforcement agencies and senior citizens groups was sought and provided.

The Task Force quickly determined that four major areas of consumer fraud threatened New Jersey's senior citizens -- frauds involving home repair, telemarketing, health/insurance and securities and created subcommittees to examine each of those areas. This Report is the product of those efforts.



EXECUTIVE SUMMARY

The Graying of New Jersey

Nearly 14 percent of New Jersey's citizens -- or 1.3 million -- are over the age of 65. Only two other states, Florida and Pennsylvania, have a higher number of senior citizens *per capita* in their ranks. U.S. BUREAU OF THE CENSUS, STATE POPULATION BY AGE: 1994. New Jersey is also one of only nine states where more than 1 million of its residents are 65 or older. U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, May, 1995. The percentage of "elderly" citizens swells to approximately 20 percent when the number of New Jerseyans who are 60 or over is considered.

The United States Bureau of the Census reports further that while our elderly population is now growing moderately, the growth will soon become rapid. Since 1982, for example, the number of Americans over the age of 65 has grown approximately 25 percent. U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, BUREAU OF THE CENSUS STATISTICAL BRIEF (1995) ("STATISTICAL BRIEF - 1995"). The greatest surge has come among those Americans 85 and older; this group soared by nearly 50 percent between 1982 and 1995.¹ Gina Kolata, *New Era of Robust Elderly Belies Fears of Scientists*, N.Y. TIMES, Feb. 27, 1996, § A at 1 (Graph: *Living Longer and Better*) (Source: Dr. Kenneth G. Manton, Duke University).

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¹ While life expectancy in 1900 was 47, by 1994 life expectancy had risen to 75.6 years.



Extremely rapid growth is expected to begin in 2010 when baby boomers start to enter their elderly years; indeed, this year the leading edge of the baby boomer generation turned 50. By the middle of the century, it is expected that there will be more persons who are elderly (65 or over) than young (14 or younger). STATISTICAL BRIEF - 1995.

While the need to protect today's older citizens is inarguably important, these demographic projections underscore that today's problems will only grow in scope during the next quarter century.

The Problems

When Willie Sutton was once asked why he robbed banks, his now classic reply was "because that's where the money is." So it is with our older citizens. Despite the reality that many senior citizens live in profound poverty, still more have accumulated significant assets that prove to be irresistible targets for swindlers and crooks. As the United States Senate Special Committee on Aging reported 13 years ago in its Report *Consumer Frauds and Elderly Persons: A Growing Problem*:

It is our conclusion that consumer frauds are a major problem for the elderly. The elderly are perceived as 'easy marks' and targeted for abuse. Over 77 percent of respondents indicated the elderly are more frequently defrauded than the younger population. When victimized, they are likely to suffer disproportionate losses and are slower to recover.

SPECIAL COMMITTEE ON AGING, UNITED STATES SENATE, CONSUMER FRAUDS AND ELDERLY PERSONS: A GROWING PROBLEM 1 (February 1983).

Oddly enough, little has changed for the better in the past 13 years. At a 1992 U.S. Senate Committee Hearing, the committee chairman observed, "Older Americans are



seen as easy prey by very unscrupulous marketing predators who will sell just about anything or promise just about anything to make a dollar ... It matters little that the services or products they market are of little value, unnecessary or many times non-existent." Statement of Hon. David Pryor, Chairman, U.S. Senate Special Committee on Aging, September 24, 1992. It is estimated that consumer fraud, deception and abuse costs consumers an estimated \$100 billion a year. American Association of Retired Persons ("AARP") Survey, *A Report on the 1993 Survey of Older Consumer Behavior 1* (December 1993). One consumer in seven reports being a victim of a major fraud at some point in their lifetime, but, more pertinent, 30 percent of fraud victims were over the age of 65. *United States Senate Special Hearing of the Committee on Aging, 1991.*²

Unquestionably, New Jersey's older citizens fear that they will become a fraud statistic. When surveyed by the Task Force, 93 percent of the respondents told the Task Force that they were increasingly afraid they would become victims. As striking as these figures are, these statistics are merely numbers without tears. The faces of fraud in New Jersey include:

- A seventy-year-old man who paid \$160,000 for various home repairs and improvements to his Bergen County home which is valued at less than \$80,000. An unscrupulous home repair contractor provided no contract estimates, performed extensive work which was not requested, made faulty and inadequate repairs and allowed subcontractors to perform faulty repairs which did not meet code requirements. This elderly man is now faced with

² The 1983 report indicated that more than 77 percent of those responding to the Senate survey indicated the elderly are more frequently defrauded than the younger population. Notwithstanding the discrepancy between the 1983 and 1991 findings, it is clear and unarguable that the elderly are vulnerable to career fraud.



costly repairs to correct much of what was done by or through this home repair contractor.

- A seventy-nine-year-old woman who was raising three of her fourteen great-grandchildren in her Hackensack home, was pressured into agreeing to repairs and deceived into entering into a second mortgage, neither of which she could afford. An unscrupulous home repair contractor had the woman sign loan papers for \$12,900 for the repair of a porch and floor. The work was not performed as promised and the porch was falling down in less than a year. Payments on her loan will total approximately \$27,000.
- The son of an elderly New Jersey investor who reported that his mother's investment account of \$120,000 had dropped almost 15 percent in less than a year and a half as a result of churning and unsuitable investments.
- An 81-year-old woman who had previously been victimized through a telemarketing scam was targeted again as a guaranteed winner of a grand prize if she made a \$599 purchase of pens. The illegal telemarketing company's representative told the woman that her purchase would even be tax deductible and would also benefit a minister and the Boy Scouts.

A variety of factors can contribute to the susceptibility of senior citizens as victims of consumer fraud. Among the *contributing factors* are:

- senior citizens are increasingly accessible to con artists through increased and more sophisticated use of phones, direct mail and home visits;
- fear of inflation resulting in loss of savings, homes and independence. Elderly residents also fear financial losses as a result of costs associated with diminishing health;
- a need for companionship; and
- confusion or lack of understanding of rapidly-evolving banking, investment, and insurance options.



Certain traits characteristic of those born before the Second World War strip away some of the defenses younger generations may have, including:

- a tendency to trust;
- ingrained courtesy -- they are often persuaded by references to authority and hesitant to end phone conversations, rudely or otherwise; and
- reliance upon spouse or others to handle their finances.

Circumstances attendant to aging also contribute to this vulnerability:

- diminished physical strength which creates a need for assistance with household repairs and renovations; and
- possible mental frailty or dementia.

Finally, the elderly may compound their physical isolation by shunning those who could help. These senior citizens display a:

- hesitancy to discuss or seek advice on private financial matters;
- fear of loss of independence or privacy if they confess to being victims of fraud;
- embarrassment as a result of being duped and fear of interpretation as unable to manage finances; and
- lack of awareness of consumer rights, or where to report suspicious business activities or telephone solicitations.

Of those who reported to the Task Force survey and indicated being fraud victims, 90 percent said they did not report the frauds because, in the words of one, "It wouldn't make a difference."



The stories of victims who testified at the public hearings dramatized these conditions. One 83-year-old woman's experiences, as recounted by a companion, were particularly heartrending:

Her problem developed over a period of years, whereby she was entrapped in a scheme of gifts and promises which were never fulfilled. In the beginning, the amount of money involved was merely a few thousand dollars, possibly \$4,000. [A]t that time, when the amount was around \$4,000, the only thing that ... could do was make a minimum payment of \$10 a month. Nothing off the principal. As time went on, she was unable to make the \$10 payment. Then the phone calls began, and the harassment began. Constant phone calls, day and night....

Camden County Regional Public Hearing ("Camden County"), November 20, 1995, T. 43, L. 11-22.

The amount of money that she owes has been transferred from the plastic company to a credit collection agency *[that is]* determined to get this money. The amount of money now approaches \$19,000. That's where it stands right now.

I don't know exactly how ... *[she]* got involved in this originally, but mostly all the conversation was over the phone. And once they got her plastic card number, it was easy for her to say yes. She couldn't refuse it. She was a nice -- she had an old car that was falling apart, and when they said she won a car, naturally she said: 'Sure, I'll pay the \$25 fee to process the situation.'...

They just say cars, blue or black, which color would you like? They didn't say what kind of car....

It was a never ending pattern of phone calls. And if she refused one person on the phone -- for instance, if it was a male on the phone, she refused the phone call, the next phone call would be from a woman which would try her technique on



Camden County, T. 44, L. 24-25; T. 45, L. 2-5; T. 46, L. 15-25; T. 47, L. 2-6, 16-21.

Elderly consumers such as this woman were robbed once when the swindlers defraud them; but overwhelming evidence reflects they are robbed a second time by a fear which silences them and prevents law enforcement agencies such as Consumer Affairs from fighting the frauds which prey upon them. A local official testified:

Most of them are embarrassed to come forward and tell you about the scam. What usually happens in the neighborhood, they'll get four or five houses in a row and one person comes forward and that sort of opens the door up and they all come forward. Like, for example, about three months ago, we had one lady come forward, six more ladies came forward in the same area.

Ocean County Regional Public Hearing, T. 29, L. 9-16.

His observations were not unique. A second local official warned:

Frequently, older adults are embarrassed to share their story. If there is a lack of personal testimony, it does not mean the problem does not exist. The information gathered from the Elder Fraud Task Force survey, which is currently being distributed, will be a major factor in identifying areas of consumer fraud that needs to be addressed....

Scams are going on terribly towards our elderly, but the unfortunate situation about this is that they are afraid to tell their story. Why are they afraid to tell their story?

We are trying our best to try to stamp out whatever we can, but why do these people not report this? When you reach the age of 75, 80 or 85, you are afraid to tell people of what you've done. Why are you afraid? Well, they'll say that I'm mentally incompetent and they will put me away in a nursing home, or the family will take care of me and thus isolate me. This is their fears and it's wrong. They should tell us their



story and we will try to help them because we have the means to help them....

When you can take advantage of a 75 year old or an 85 year old, then you have no character whatsoever.

I talk to you from the bottom of my heart because these people mean so much to us. They have given their lives. They have dedicated their lives to try to bring about this nation to what it is today.

Ocean County, T. 50, L. 3-13; ; T. 51, L. 9-12, 22-25; T. 52, L. 2-7, 16-22

Specific Problems

The 1983 United States Senate Special Committee on Aging identified 10 different frauds based on the frequency with which they were reported. Some frauds, such as the number one problem in 1983, “[q]uackery and medical related frauds,” are less frequently perpetuated today because of the success of Consumer Affairs’ Board of Medical Examiners. Others, such as home repair frauds, the number two problem in 1983, have resisted efforts to eliminate them and not only persist, but appear to have worsened. Still others, such as telemarketing frauds, not anticipated in 1983, are a serious problem in 1996.

Moreover, while in 1983 many of these problems appeared to be separate issues, in 1996 they intertwine to threaten the safety and security of the State’s senior citizens. Those surveyed by the Task Force repeatedly identified investment and home repair frauds as those pitches most frequently made by telemarketers. Senior citizens who must not only navigate the shoals of investment or home repair frauds find the problems



compounded by slick telemarketing come-ons and a significant number of pitches.

Respondents to the survey indicated overwhelmingly that they were the recipients of telemarketing calls at least one-to-five times a week.

Having identified the problems, the next task is to identify the solutions. After careful analysis of the problems in New Jersey, experiences in other states and the federal efforts, the Task Force believes New Jersey must do more to protect its aging population from consumer fraud.

Recommendations

The Task Force recommends the following proposals, aimed at reducing or eliminating fraudulent or deceptive activities directed at or disproportionately affecting New Jersey's elderly consumers:

- (1) **General** - Enact penalties under the Consumer Fraud Act for those who prey on the elderly.
- (2) **Home Repair** - Home repair frauds are the second highest number of complaints registered with Consumer Affairs. Consumer Affairs would combat shoddy and fly-by-night home repair practices through registration within Consumer Affairs of home repair and improvement contractors now subject to the Consumer Fraud Act and N.J.A.C. 13:45A-16-1 et seq. (Home Repair Regulations). This would require a new statute and should:
 - require registration for all contractors who provide contracts in excess of \$100³;
 - require bonding for all contractors who do annual work in excess of \$20,000;

³ This threshold would exempt the handyman doing the odd job and is consistent with existing Act statutes.



- exempt new home builders, owners of residential property working on their own homes, any construction professional licensed by Consumer Affairs, employees of homeowners' associations and those who do voluntary construction work for *bona fide* charities;
- require potential registrants to disclose criminal records to Consumer Affairs as a condition of obtaining registration;
- allow for rejection of registration if the applicant has demonstrated bad character through fraud or other prior bad acts;
- eliminate local licensing and registration;
- provide for the suspension and revocation of registrations;
- require registrants to display their registration numbers in their advertisements and on their trucks;
- vest rule-making authority in Consumer Affairs; and
- take effect six (6) months after enactment.

Any violation of the new legislation would, as the existing law provides, be a violation of the Consumer Fraud Act.

- (3) **Telemarketing** - Telemarketing is a half trillion dollar industry nationwide. Congressional reports estimate \$40 billion is lost to telemarketing fraud. According to AARP, 140,000 telemarketers do business nationwide. AARP, relying on federal sources, alleges 14,000 are crooked. AARP has documented that most elderly are particularly unable to discern an honest pitch from a crooked pitch. According to the National Fraud Information Center ("NFIC"), New Jerseyans have made the seventh highest number of telemarketing fraud complaints to it. **NFIC receives three or four reports each hour of elderly fraud victims whose losses total more than \$5,000 per incident.**

We recommend:

- A cure of the constitutional infirmities in N.J.S.A. 48:17-27 et seq.
- Enact legislation similar to that in use in 30 other states to protect New Jersey from deceptive telemarketing practices. Such a New Jersey Telemarketing Consumer Protection Act would be wise to:

- (a) require the registration and bonding of all telemarketers doing business or operating in New Jersey;
 - (b) allow for a "cooling off" period in connection with telemarketing sales;
 - (c) allow for a right-to-return period for non-conforming goods;
 - (d) require certain disclosures to consumers of material terms of contracts for goods purchased through telemarketing; and
 - (e) make a violation a violation of the Consumer Fraud Act
- (4) **Savings/Securities** - As noted in the Report, the elderly are targeted for fraud because of the presence of liquid assets. To combat the evaporation of this liquidity, the Report urges:
- the establishment of bank alert programs in the counties;
 - adoption of Bureau of Security regulations which clearly define approved conduct regarding suitability of sales and "churning" practices;
 - clarify applicability of the Consumer Fraud Act to securities cases;
 - initiate discussion with industry groups toward establishing a New Jersey site for arbitration hearings; and
 - provide for a joint Banking and Consumer Affairs Task Force study of abuses included in living trusts.
- (5) **Health/Insurance** - The Report also identifies increased vulnerability of the elderly population through access gained by home health aides and by an overselling of insurance. The Report urges that:
- Legislation be enacted to extend the Board of Nursing's authority beyond homemaker/home health aides to license or register individuals who now claim to provide home health care, but do not fit within any of the existing regulatory schemes for home health aides;



- Legislation be enacted to require criminal background investigations, like those conducted on teachers, school bus drivers and others working in New Jersey's educational system, on all home health care workers.
- consumer education efforts for the elderly be expanded;
- senior citizens' knowledge of the Department of Insurance's CHIME program be increased; and
- applicability of the Consumer Fraud Act to insurance fraud cases be clarified.

(6) Education

- Develop and administer a comprehensive program to educate the elderly to protect themselves;
- better educate all appropriate governmental and private agencies in dealing with elder fraud.

Conclusion

The Task Force labored diligently to study the fraud problems that affect the State's senior citizens. On behalf of Consumer Affairs, their efforts were greatly appreciated and will be of great benefit to the State. New Jersey's population is greying, a process which will accelerate over the next 25 years. This aging population is increasingly vulnerable to fraud. Because many of our older citizens are particularly vulnerable to deceptions involving the rapidly developing sectors of our economy such as telemarketing, swindlers view the elderly as inviting targets. As the perils evolve, so too must the law and law enforcement. As a result, the Task Force respectfully suggests the proposals outlined in this report.



HOME REPAIRS

Each year, home repair scams⁴ represent the second largest bloc of complaints reported to Consumer Affairs,⁵ but during the Task Force's six-month examination, home repair frauds, scams and deceptive practices represented the largest bloc of complaints by senior citizens. This is not particularly surprising since the United States Senate Committee on Aging reports nearly three out of four of the nation's elderly own their own home and fewer than 11 percent of those homes were built after 1970.⁶ As the United States Senate Committee on Aging observed, "the combination of the number of elderly who own houses and the age of these dwellings is particularly attractive to phony repairmen."

The State's experience is mirrored by those of county and local consumer affairs offices. In Burlington, Camden and Ocean counties, for example, county consumer affairs officials report being plagued each spring or early fall with thousands of complaints about "traveler" repairmen who move quickly into and out of an area leaving behind victims who have been swindled and cheated. In the most extreme cases, particularly unscrupulous crews use magnetic signs to switch names and disguise

⁴ Home repairs or improvements ordinarily include some modification or mending of a home some time after the initial construction. Frequently, complaints of scams involve, but are not limited to, driveway resurfacing, termite spraying, roofing and chimney work, basement waterproofing, storm window installations, aluminum siding cleaning and refinishing, to major renovations of kitchens and baths.

⁵ The largest bloc of complaints is automobile-related complaints.

⁶ The results of the Task Force survey revealed that the same percentage of respondents indicated that they owned and lived in their homes.



identities, moving rapidly to injure victim after victim. One week the home repairman may be the Acme Company in Brielle, and next week the Beta Company in Berkeley Township. As law enforcement catches up, the defrauders merely switch signs and steal away.

The schemes typically involve bogus roof repairs, driveway resealing and chimney work described by the repairmen as urgently needed. In the usual case, the dishonest repairman will tell the consumer that he will complete the work immediately for a “reduced” price for cash. These operations include large payments by the consumers for repairs which were either never needed, or needed, but done poorly. In the latter cases, the elderly consumer is frequently left with a home in worse condition than before the “repairs” were begun. By the time the inferior work is uncovered, the dishonest repairman has already moved on to a new victim or area leaving the consumer, consumer agencies and law enforcement with no recourse.

It would be a mistake to assume that only “traveler” contractors are a problem. Under existing New Jersey law, anyone with a business card and a phone number can claim to be a repair contractor. As a result, Consumer Affairs, the counties and local offices routinely receive complaints which include the following:

- contractors who take down payments, yet never return to do the promised work;
- contractors who begin work, but do not return to complete work;
- contractors who perform the work poorly and unsatisfactorily and do not correct the substandard work;



- contractors who perform unnecessary work to increase amount of bill;
- contractors who are not reachable at phone numbers or addresses given consumers;
- contractors' sales representatives who arrange high interest second mortgage in connection with financing of large home improvement contracts; and
- contractors or their sales representatives who do not inform consumers of their right to a three-day cooling off period when the contracts are signed.

This problem is not the product of serendipity. As one witness testified:

They target the elderly. That's their main -- it's [*an*] easy, easy source of revenue....

In Dover Township they preyed on women living by themselves, no husbands, no male living in the building, and they would come in and they are waterproofing roofs, for example, insulation, vapor barriers, crawl vents and the jack systems.

They were sort of scared into these contracts. [*The contractor says your*] floor is going to cave in, your roof is going to cave in, you are losing a lot of heat through your crawl space. The insulation scam was probably the best. He used two pieces of insulation 24 by 48 on each side of the crawl space so that if you put your hand in the crawl space you would feel the insulation, and cost him probably \$6 for a \$1200 job.

Ocean County, T. 23, L. 12-22; T. 24, L. 2-10.

Another witness testified:

I would like to just emphasize or re-emphasize what ... [*he*] has stated. When these contractors come into these senior communities, I'll second that they predominantly prey on the



elderly, and a lot of that is because a lot of the older people, especially the older women in the households, when they tell them that they have problems under the crawl spaces, these people are physically incapable of going into their crawl spaces to even see if the work was done or to see if the problem exists. So this type of a scam is very lucrative where you have elderly, concentrations of elderly people.

Ocean County T. 30, L. 20-25; T. 31, L. 2-8.

The Task Force found that home repair swindles are a paramount concern in all regions of the State. At the Bergen County Regional Public Hearing, an officer of the Office on Aging testified:

25 to 30 percent of my cases are complaints from seniors dealing with problems with contractors and construction people and solicitors such as this.... If the contractor can't be located sometimes that creates a greater problem.

Bergen County Regional Public Hearing, November 15, 1995 ("Bergen County"), T. 22, L. 12-16, 19-21.

One senior citizen in Bergen County testified:

[A] man rang my bell and asked me if I wanted to have my foundation painted, and I told him I wouldn't have it done unless somebody I knew recommended him. So he said they were doing a job around the corner, so I went with him and the lady told me that she was having her aluminum siding painted and she was satisfied with them. So I let him do the job....

[T]hey power washed my aluminum vinyl siding and it looked great. Then they asked me if I would like an acrylic seal, where they showed me two pieces on my siding they applied with a brush. [H]e said for ten years I wouldn't have to have the house washed ... they guaranteed this project for ten years.... [I]t was all botched up. I asked them what



happened. They said, Oh, you need a couple of rainy days and sunny days and it will clear up....

And they put the coating on again and my house is a disaster. Everything sticks to it. It's full of white blotches and it's terrible.

[I] tried to call the telephone number that they had on their card, but there was always an answering [*machine*] there and you could never get in touch with the [*company*].

Bergen County, T. 28, L. 4-24; T. 29, L. 4-10.

In Ocean County, a police officer testified:

I gave a quick talk at the ... [*seniors*] club here at the clubhouse next door the other week. The lady is embarrassed. She showed me photos. This gentleman here now, which we got just the information on, he started out with landscaping. He wound up doing mason work. Of course, she paid \$150 for that job, and she didn't pay the rest. Cost \$500 to have the job repaired. He wrote the contract out on a piece of paper. He wrote it on another flyer. He can install, 20 years of experience, alarms, cellular phone. He has three different jobs, three difference professions.

- Q. And he is not competent to do any of them?
- A. Not in my opinion.... I spoke and the woman came up afterwards and said can I speak to you on the side. They're embarrassed. She doesn't want her children to know about it. She wants to keep it to herself. She doesn't want her name mentioned. She doesn't want the money back. She just wants somebody to stop them.

Ocean County, T. 67, L. 7-25; T. 68, L. 2-7.



Existing Law

New Jersey has seven different laws or regulations which regulate all or some portion of the home improvement industry. The "Plain Language Act" (N.J.S.A. 56:12-1); Consumer Fraud Act (N.J.S.A. 56:8-1); the "Home Improvement Practices Regulations" (N.J.A.C. 13:45A-16.1 et seq.) promulgated pursuant to the Consumer Fraud Act; the "Truth for Consumer Contract, Warranty and Notice Act" (N.J.S.A. 56:12-14-18)(the "Truth Act"); the "Home Repair Financing Act" (N.J.S.A. 17:16C-62 et seq.) (HRFA)⁷; and the "Door-to-Door Home Repair Sales Act of 1968" (N.J.S.A. 17:16C-95 et seq.) ("Door Act") each regulates home contractors. In addition, licensing schemes reposed in Consumer Affairs regulate four occupations, architects, engineers, plumbers and electricians, which could play a role in home repair work. The applicable federal statute, 15 U.S.C. 1601, and Regulation Z, the "Truth in Lending" regulations (12 C.F.R. 226) promulgated under federal authority, may also regulate these transactions.

While all of these govern the solicitation of home improvement contracts, the formation and content of the contracts, and the businesses and individuals who comprise the industry, each statute has a different objective. In addition, thirty-seven

⁷ The Home Repair Financing Act, reposed in and enforced by the Department of Banking, requires licensing of home repair and improvement contractors, sales representatives and home financing agencies when contracts include financing of more than 90 days for costs of repair/improvements over \$300. Contracts for home repairs and improvements which do not include financing as part of the contract, or are less than \$300 are not included in this statute. As a result, New Jersey homeowners who do not finance their home improvements do not receive the protective benefits of a licensing requirement. Few contracts involve such financing.



municipalities have passed some sort of ordinance to bar dishonest home repair contractors.⁸

Recommendations:

When law enforcement, local government and industry officials were asked for a solution, opinion was unanimous: registration would dramatically cut fraud and abuse. As a result, the Task Force recommends that home repair contractors be registered with Consumer Affairs.

Experience teaches that registering home repair contractors would provide increased protection at minimal cost. Consumer Affairs received 2,704 written complaints in 1994 for home repair scams and the county and local offices had an additional 2,000 complaints. In contrast, in 1994, only 13 complaints of fraud or deception were filed against the State's 17,000 plumbers and electricians.

⁸ Twenty-six states have some licensing or registration scheme for home repair contractors. See ALA. CODE § 34-14A-1, No. 92-608 (1975); ALASKA STAT. § 34.35.120 (1995); ARIZ. REV. STAT. ANN. § 32-1101 (1995); 1987 ARK. ACTS 162; CAL. BUS. & PROF. CODE § 7151, c. 9 art. 10 (West 1994); CONN. GEN. STAT. ANN. § 20-419 (West 1995); DEL. CODE ANN. tit. 6 § 3502 (1995); FLA. STAT. ANN. § 520.61 (West 1994); HAW. REV. STAT. § 444-25.5 (1995); IOWA CODE ANN. § 2, c.91C (1994); KAN. STAT. ANN. § 79-1010 (1994); LA. REV. STAT. ANN. § 37-2150.1 (WEST 1995); MD. CODE ANN., BUS. REG. § 8-101 (1995); MASS. GEN. LAWS. ANN. CH. 142A, § 1 (WEST 1995); MICH. COMP. LAWS ANN. § 299 (1980); MINN. STAT. ANN. § 326.83 (WEST 1994); MISS. CODE ANN. § 31-3-17 (1993); NEB. REV. STAT. § 77-3101 (1995); NEV. REV. STAT. § 54, C. 624.020 (1995); N.D. CENT. CODE § 43-07-1 (1995); OR. REV. STAT. § 52-701.005 (1993); R.I. GEN. LAWS § 5-65-2 (1995); S.C. CODE ANN. § 40-59-10 (LAW. CO-OP. 1993); TENN. CODE ANN. § 62-37-103 (1995); UTAH CODE ANN. § 58-55-102 (1995); VA. CODE ANN. § 54.1-1100 (MICHIE 1995); WASH. REV. CODE ANN. § 18.27.010 (WEST 1995); W. VA. CODE § 21-11-1 (1995); WIS. STAT. ANN. § 101.655 (WEST 1995).



The voices of experience, the men and women who most come into contact with fraudulent home contractors and their victims, have said repeatedly that registration would cure these problems of abuse and fraud. One local code enforcement official testified:

[It] would be a damn good start to register all home improvement contractors. These guys just fly around. Some of them have magnetic signs on the trucks so they change their names every other day. What they do, they use a referral service, also. They will come in and give you a price on a job for \$1200 and say, well, if you don't like that price, I'll give you another contractor to check with, and usually they are all working together. So he will come in a little cheaper and eventually they will all do the job and divide the money up.

....

Q. Are existing laws adequate to protect the elderly against home repair scams?

A. Not really, no.

A. [I]f you take the professional trades in the State of New Jersey, there are only two trades that are required to be licensed, where there is an accompanying exam and competency exam given, and that's your electrical contractors and your plumbing contractors, and there is very, very little problems with the licensed electrical/plumbing contractors. They are easy to identify because all their vehicles are marked. Their vehicles all have their state license numbers on the vehicle.

The state has established a Board of Master Plumbers or Board of Electricians, so dealing with those boards who control their licenses, these people can lose their license for infractions of building codes and other state laws. It's very very seldom that you find these people not in full compliance.

Q. So the licensing scheme for plumbers and electricians is successful in deterring fraud there, and the absence of a licensing scheme for general contractors encourages fraud; is that fair to say?



A. I would believe so.

Ocean County, T. 26, L. 5-16; T. 27, L. 24-25; T. 36, L. 21-25; T. 37, L. 2-20.

A county consumer affairs official testified:

I can't express how important that is, not only licensing, but make sure that the licensing has some sort of requirements. You know the building inspectors are there to protect the public. They can't protect the public against a contractor who doesn't get the permit. If you required licensing and required qualifications -- there are some comparisons made to plumbers and electricians. You can't just go get a license to be a plumber or an electrician. You have to prove that you are competent in the electrical field or the plumbing field. So I think that would be number one, number one, the licensing of contractors to prove that they are competent. You could have a licensed contractor with different areas of endorsements, in other words, this guy is licensed to be a roofer and a siding man, but not necessarily to build a garage.... I think it's imperative, and we don't have to reinvent the wheel. One of the states is taking the lead in that type of thing, the State of Florida, because they have a similar situation with a large senior population. They do licensing of contractors.

Ocean County, T. 122, L. 2-24.

At least some industry representatives would support a registration plan. The

Executive Director of the New Jersey Remodellers' Association testified:

We have a lot of incompetence in this industry, but the people that really take over senior citizens and everything else in the main are what we term "par houses." Par houses we describe as -- well, the rules of New Jersey say that if you're a salesman in the home improvement industry in New Jersey, you can only work for one home improvement company at a time. These par houses don't adhere to that rule. They'll take any deal from any sleazy salesman on the streets. [T]hey



actually have legendary characters that are known as closers and canvassers, and they are really quite -- they can be quite evil when you owe them money, or if they're trying to close a deal they can be very, very persuasive.

Camden County, T. 141, L. 2-14.

Further:

Q. Would licensing of contractors under some fashion cut down on the fraud that's perpetrated against the elderly?

A. Absolutely, if done correctly.

Every day I get horror stories....

We have something called Operation Good Samaritan, which is a voluntary effort on the part of our members to rectify the problems of home owners whose homes are destroyed by nonmember contractors.

Our first project involved a woman down in Mount Laurel with heart disease. Her husband had cancer. They were taking care of their grandchildren and they got ripped off on a kitchen job. It was brought to my attention ... and we started Operation Good Samaritan and redid this thing. If it wasn't for us, it was about a \$7,000 to \$9,000 kitchen, they would have lost probably their home because they owed so much debt.

[A]nother case in Belmawr ... again an elderly person who hired a contractor on a home that her husband had built, he passed away. When this guy was done, you could actually see into the house through the walls. [E]lectricity in one room in one of the hottest summers that there ever were, and they all had to sleep in the living room, the whole family, because that's the only place where they had electricity. They even had a blind dog that fell down the cellar stairs and died because this guy wrecked the stairs.....

Camden County, T. 43, L. 11-25; T. 138, L. 11-25; T. 139, L. 2-25; T. 140, L. 2-9, 23-25.



A registration scheme would also have the salutary effect of protecting existing professional board licensees from those who would attempt to unlawfully engage in unlicensed practice. As one plumber testified:

Several of my customers will call me and ask me about other work they want done in their home. I say any time you have a problem or question, call me. It's not even my trade, but I will be very happy to answer the questions. They don't. Getting beat on a scam is like -- and going out and admitting it.... They don't want to do it. It's embarrassing to know you were beaten out of a lot of money. It's not a fun thing to go out and admit to somebody. We have problems.

This morning, just for example, I walked out and got two papers, took the advertising pages out of it. The New Jersey Department of Consumer Affairs requires that I have my state license on any advertising that I do, on my cards, *et cetera*. You cannot use the word plumbing or plumbing involved in any advertising without a license number.

One advertisement says here we repair anything from leaky faucets to removing a wall. Now the man did not use the word plumbing, but he stated that he is fixing plumbing.....

[A]nother one here that advertises handyman, specializing in plumbing and electrical, 24 hour service. No license number for either the plumbing or the electrical. And they are in here under handymen.

I found an ad for plumbing under wallpaper one day. The man does wallpaper, furniture refinishing and plumbing all in the same ad.... [I]t says Dial-A-Pro. What makes him a professional if he hasn't got a license. I finished five years apprenticeship. I took a four hour state exam, and I proved my competency to the State of New Jersey before I achieved my license, and this is what they should do. They should have licensing for people.



- Q. Would it be fairer to the general public and more protective to the elderly if general contractors had to face the same sort of thing that a plumber or electrician has to before he or she could go practice their crafts?
- A. It's absolutely fantastic to do something like that. Contractors who work in your home should be licensed. There should be some process that requires some credibility to what you are doing. There is nothing stopping me from going out and putting a new roof on somebody's house. There is nothing stopping me from putting an addition on a house. There is nothing from stopping me from doing any kind of work on a house other than plumbing because it's not licensed....

If you have a license you have something to lose. You consider what you are doing a lot better. Licensing of all contractors, getting it more into a professional mode is definitely a step in the right direction.

Ocean County, T. 93, L. 8-22; T. 94, L. 10-14.

During the past two decades, New Jersey has repeatedly studied when it is appropriate to create licensure, registration or other regulatory schemes. Two reports, popularly known as the Bateman and Eakley Reports, analyzed the issue extensively. Both reports agreed upon the criteria to be used in evaluating regulatory proposals. The criteria were:

1. The unregulated practice can clearly harm or endanger the health, safety and welfare of the public, and the potential for such harm is easily recognizable and not remote or dependent upon tenuous argument;
2. the public's needs are benefited by formal requirements to insure initial and continuing competence in the regulated activity;

3. the existing regulatory means properly relate to the purpose sought to be achieved;
4. the public cannot be adequately protected by other means; and
5. the regulation of the profession/occupation does not create an adverse social or economic impact on the public.

If these tests are applied to the well-documented problems of home repairs, the answers support extending registration to home repair contractors. Ample precedent exists in the experiences of the plumbing and electrical boards to demonstrate the efficacy of regulation. At the same time, registration would pose little adverse impact on the industry. Registration would be one of the simplest steps to protect its senior citizens from one of the greatest and most pervasive threats to their fiscal and psychic well-being.



TELEMARKETING

On December 7, 1995, United States Attorney General Janet Reno announced that Operation Senior Sentinel had netted 400 telemarketers who sought to defraud the nation's elderly. New Jersey, through Consumer Affairs, was one of 26 states which participated in this two-year undercover investigation with the Federal Bureau of Investigation, the United States Secret Service, United States Postal Inspectors, Internal Revenue Service, AARP, retired FBI Special Agents and other law enforcement retirees. Volunteer AARP members and FBI and law enforcement retirees posed as telephone subscribers or assumed phone numbers of previous victims and tape recorded their calls from dishonest telemarketers.

Tape recordings of conversations initiated by the telemarketers to the "victims" revealed bogus prize promotion companies, recovery company boiler rooms (to victimize the elderly a second time), false credit repair companies, fraudulent charities, time share resales, precious metal scams, bogus large-scale investment schemes, employment scams, business and franchise "opportunity" scams and illegal lotteries. The investigation also revealed that the telemarketers obtained names and phone numbers of potential victims primarily through a black market of fraudulent telemarketers who sell the lists of previous victims ("lead" or "sucker" lists) for a profit.

The results of Operation Senior Sentinel should not have been surprising. The United States Department of Justice reports the telemarketing industry employs more than 3.4 million persons and accounts for over \$500 billion in spending yearly. U.S.



DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATIONS, WHITE COLLAR SECTION, TELEMARKETING FRAUD: OPERATION DISCONNECT, (1993). Telemarketing fraud in the United States is estimated to total \$40 billion a year.⁹ U.S. HOUSE COMMITTEE OF GOVERNMENT OPERATIONS, THE SCOURGE OF TELEMARKETING FRAUD, (1991). According to AARP, 140,000 telemarketing companies do business nationwide and, relying on federal sources, alleges that 14,000 of those businesses operate fraudulently. The National Fraud Information Center reports that New Jerseyans have made the seventh highest number of telemarketing fraud complaints to its hotline. The National Fraud Center receives three or four reports each hour of elderly fraud victims whose losses total more than \$5,000 per incident. In the Task Force's survey, 90 percent of the respondents indicated they were recipients of one-to-five unwanted telemarketing phone calls per week. Forty percent of the calls involved home repairs, while 35 percent were for investments.

In 1992, the pollsters Louis Harris & Associates, Inc., found that 92 percent of older Americans across the country had been contacted by mail as part of a telemarketing scheme to notify them of a prize, a frequent technique intended to ensnare the unwary. L. Harris & Assoc. Survey, *Telephone-Based Fraud: A Survey of the American Public* (1992). Nearly 30 percent responded to those come-ons and of those, more than 10 percent -- 5.5 million persons -- believe they were victims of fraudulent telemarketing

⁹ Telemarketing fraud is the unlawful practice of telemarketing for the intent and purpose of inducing a person to purchase, donate or invest personal funds through a deceptive scheme designed to limit the benefit to the consumer, while maximizing the profit for the actor.



operators. Sadly, only one-third of those individuals reported their victimization to an authority.

The Harris findings were no fluke. In 1995, AARP conducted its own survey of telemarketing and its affect on the elderly. AARP confirmed last year that the elderly were particularly vulnerable to telemarketing frauds, even when the respondents described themselves as well-educated, informed, active, and frequently relatively affluent. AARP Survey, *Telemarketing Fraud Victimization of Older Americans* (“Victimization of Older Americans”), Executive Summary of Survey Findings, Princeton Survey Research Associates. AARP found:

- *[Older]* [v]ictims seem to lack the skills to end telephone conversations when they feel some pressure from the person at the other end of the line. Whether that person is a manipulative telemarketer or a friendly interviewer, the outcome is the same. Victims can say they are not interested in pursuing a conversation, but when that statement is not enough, they are simply unable to take the next step and hang up (even though they admit that hanging up is an acceptable thing to do).
- Victims are reluctant to seek advice or assistance from others about financial matters in general, and even in some specific situations where they may have been victimized. For example, most victims did not tell anyone else about sending money to participate in a recent sweepstakes offer, and even half of those who were unhappy about how the sweepstakes turned out did not complain or discuss the situation to try to get help.

Victimization of Older Americans, at 2. Again, statistics do not capture the pathos and pain. But the stories of loss are all too real.



In Camden, the grown daughters of an 80 year old man testified that their father had suffered a mini-stroke, which left him fully capable physically, but with short-term memory loss. It also helped make him a sitting duck for dishonest telemarketers:

This summer time I received a call from Equity Bank. The gal there said that he had been in attempting to get \$14,000 on one of his credit cards. They had given him \$7,000 that day, told him that he would need to return to get the additional \$7,000.

....

He did manage the following day to go to another branch of the bank and get the additional funds. At that time, we met with our father. We had a very difficult time convincing him that he was being scammed. He had been told that if he would send \$14,000 to this man in Las Vegas, that he would then receive \$50,000 in the mail the following week. And this man believed that man.

....

Now, during this time, when this was going on, we also found that he had been involved with some other of these gift-type things, there are boxes of junk that had come into his home....

Camden County, T. 110, L. 23-25; T. 111, L. 2-4, 10-16; T. 113, L. 7-10.

The Camden man's experience was not unique. Testimony in 1992 before the United States Senate Commission on Aging told this sad story:

THE CHAIRMAN. Your phone started ringing?

MR. WILCOX. Your phone started ringing. "Mr. Wilcox, I congratulate you. You've won \$10 million. You've won \$10 thousand. Wonderful, what are you going to do? Are you going to travel? Are you going to do this and that?" But then they say, by the way, what is your



balance in your savings account? Well, we'd like to have you send in \$4,200, \$6,000, \$800, various amounts; send that in first. In other words, you buy your prize. It's a wonderful prize, but you buy it. And I sent in — probably the highest priced one was \$4,200. You never hear from them again.

MR. CHAIRMAN. All right, what were you thinking you were buying?

MR. WILCOX. The prize — the \$10 million, or the \$10,000 —

THE CHAIRMAN. And so you sent them a check for \$4,000?

MR. WILCOX. Yes, yes.

THE CHAIRMAN. And then what happened?

MR. WILCOX. Nothing.

Consumer Fraud and the Elderly: Easy Prey? Hearing Before the Special Committee on Aging, United States Senate, 102d Cong., 2d Sess. (1992).

Other victims brought to the attention of the Task Force, or identified through public hearings, reflected these findings. Regardless of background or circumstances, the overwhelming numbers of senior citizens believe the sales pitches they hear, think they have a real chance of winning a “grand prize,” think the products they purchase are worth the cost or believe they are contributing their money to worthwhile causes. As the Harris survey found, and the Task Force confirmed, embarrassment, fear, shame or a lack of information on how or where to seek help or report incidents keeps victims from reporting these frauds.

Information developed through another federal effort, the United States Department of Justice's Operation Disconnect, reinforced the conclusion that some



telemarketers target senior citizens for costly scams. Any one or a combination of the contributing factors which are noted earlier in this Report account for any success an illegal or unscrupulous telemarketer may have in conducting its fraudulent sales, contests or awarding of prizes which are alleged to benefit "charitable" or social organizations.

Telemarketers who seek to defraud typically hit fast, move quickly and target long distance victims. This makes detection difficult and without a means to track these operators it is difficult for law enforcement to protect these citizens. This, coupled with the weaker defenses many older citizens have and their reluctance to alert law enforcement agencies, provides a recipe for fraud to flourish.

Typically, telemarketers who are intent on successfully selling their fraudulent "pitches" will call and enthusiastically tell the individual that he or she has won a prize, such as a car or even a large amount of cash. All the "winner" needs to do is pay for the processing fee, or perhaps the taxes on the prize, or buy a certain product, or even make a charitable contribution in order to qualify and receive the grand prize. Anecdotal accounts have even included instances where the senior will not initially "bite" and "avail" themselves of this opportunity, but the dedicated scammer may continue to call until successful by establishing a confidence through friendly and interested conversation, until ultimately telling the victim that this is the final opportunity they have to claim their prize.

Victims often pay for the "processing" or other fees through the use of their credit cards, or sometimes courier services are used to pick up checks from victims so that they



can quickly “qualify for their prizes.” This allows the telemarketer to process the charges or to receive the victims’ checks before they change their mind or have an opportunity to speak with someone about their decision.

Existing Law:

In 1993, N.J.S.A. 48:17-27 et seq., was enacted to protect New Jerseyans from the uses of automatic dialers by telemarketers, but the statute was challenged in court and remains in litigation limbo. 30 other states have passed broader statutes specifically to protect their citizens from telemarketers.¹⁰ The approach used by these states has been to register or license telemarketers and, in many instances, to post a performance bond. The statutes generally proscribe deceptive conduct, allow for the return of non-conforming goods and create a right of rescision.

Recommendations:

The hallmarks of telemarketing fraud are the extremely transient nature of the perpetrators and the invasive and intimidating presence of the seller in the almost

¹⁰ ARIZ. REV. STAT. ANN. § 44-1271 (1989); CAL. BUS. & PROF. CODE § 17511.1 (West Supp. 1993); COLO. REV. STAT. ANN. § 6-1-304 (West 1993); CONN. GEN. STAT. ANN. § 42-134a (West 1976); DEL. CODE ANN. tit. 6, § 4310 (1953); FLA. STAT. ANN. § 501.059 (West Supp. 1993); GA. CODE § 10-1-5 (1967); HAW. REV. STAT. § 445-184 (1992); IDAHO CODE § 48-1001 (1992); ILL. ANN. STAT. ch. 815, para. 305/20 (Smith-Hurd 1992); IND. CODE ANN. § 24-5-12-1 (West 1987); KAN. STAT. ANN. § 50-626, c. 50 art. 6 (Supp. 1992); KY. REV. STAT. ANN. § 367.469 (1992); LA. REV. STAT. ANN. § 45.810 (West Supp. 1993); MD. CODE ANN., COM. LAW § 14-2201 (1988); MICH. COMP. LAWS ANN. § 445.855 (West 1987); NEV. REV. STAT. § 599B.010 (1991); OKLA. STAT. ANN. tit. 14A, § 2-395 (West Supp. 1993); OR. REV. STAT. § 83.715 (1991); 69 PA. CONS. STAT. ANN. § 1308 (1966); R.I. GEN. LAWS § T.5, c. 61 (1992); S.C. CODE ANN. § 16-17-445 (Law. Co-op. 1992); S.D. CODIFIED LAWS ANN. § 37-30-1 (1990); TENN. CODE ANN. § 47-18-1501 (Supp. 1992); TEX. BUS. COM. CODE ANN. § 37.01 (Vernon 1991); UTAH CODE ANN. § 13-26-2 (1992); WASH. REV. CODE ANN. § 19.158 (1991); W. VA. CODE § 46A-2-129a (1966); WIS. STAT. ANN. § 134.72 (West Supp. 1992); WYO. STAT. § 40-12-201 (Supp. 1988).



defenseless victims' homes. New Jersey has had extensive experience in fighting fraud caused by other transient perpetrators who would intimidate its citizens in their own homes. For example, at the turn of the century, New Jersey frequently registered fly-by-night "temporary help" agencies to ensure they did not lure young women into prostitution. *See* P.L. 1918, c. 222. During the last decade, the State required health clubs to register with it and post bonds to combat the unscrupulous practices of operators who would take consumers' money one day and disappear the next.

The Legislature has been particularly protective when the State citizens face unequal bargaining power in their homes. In 1968, the Legislature passed the *Door-to-Door Sales Act* to give consumers a three-day period in which to cancel contracts for home repairs if the deals were reached in the consumer's home.¹¹

Yesterday's knock on the door has been replaced by the disturbing ring of the telemarketer's phone call. As the studies and the Task Force's experience made plain, abuses borne of the inequities between the elderly consumer and the telemarketer require remediation. The Task Force recommends a New Jersey Telemarketing Consumer Protection Act be drafted which would include the best provisions of those statutes adopted by our sister states. The Task Force also recommends that the New Jersey Telemarketing Consumer Protection Act include a three-day rescission period, prohibitions of fraudulent and deceptive telemarketing practices, and required registration of

¹¹ In addition, the Legislature has taken special care to protect New Jerseyans where a transaction poses an extraordinary opportunity for deception or where the consumer is particularly vulnerable. For this reason, the Legislature gives consumers a day to review an auto lease before it becomes final and home buyers three days to review a contract to buy a house before it becomes final.



telemarketing businesses located in or doing business in our State. Consumers should also have the right to return merchandise if not as represented to them during phone solicitations. The proposed Act should also include a seven-day-from-receipt return right for non-conforming goods. Violations of this Act would be punishable pursuant to the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. In addition, consideration should be given to amending the State's criminal statutes to punish particularly egregious telemarketing conduct with criminal sanctions.

A statewide education program is recommended to provide for a cooperative prevention, support and enforcement effort among senior citizens, family members and caregivers, private institutions, government and social service agencies and law enforcement. Educational recommendations are discussed in a separate section of this report (*see* pages 53-55).



SAVINGS/SECURITIES

Statistics indicate that, as an age group, senior citizens are the largest holders of wealth in our country. Between 1984 and 1991, the average net worth for households of all age groups dropped 15 percent, but rose 11 percent for households of citizens 65 years of age and older. During that same period, senior citizen homeowners experienced a 4 percent increase in equity and many sold their homes at great profit as a result of increases in home values. Nationally, households of citizens aged 75 or older have the greatest net worth in stock and mutual fund shares of any age group with a median of \$22,000. The Task Force survey found that approximately three out of four respondents lived in their own home.

Despite these assets, many of our older citizens feel vulnerable and insecure because they no longer are drawing earnings from a paycheck. Fearful that their savings will prove inadequate, these fixed income senior citizens become vulnerable to those who hold out the lure of large rates of returns on a wide array of "investments." Successful frauds and scams against these New Jerseyans have a devastating impact on their lives. Savings or "nest eggs" are depleted leading to the possible loss of financial independence or a home.

Financial exploitation can take many forms. Sometimes the victimizer can be a family member, friend or caregiver upon whom an older citizen is physically, emotionally or psychologically dependent. The older person trusts and relies on the victimizer. A typical experience, testified an Assistant Bergen County Prosecutor, involves:

A neighbor would befriend somebody, get power of attorney, and all of a sudden they are buying a car from this elderly person for \$100 that's worth \$2,000. They are getting money for work on the house for their son ... and they are going to paint the house for \$2,000 and the house is never painted.

Bergen County, T. 62, L. 8-14.

In another case, an older person may begin to have difficulty in handling personal financial matters and will turn to an individual he or she has grown to trust for assistance. The trusted individual assumes the financial responsibility while the older person remains unaware of the extent or consequences of the exploitation. Recently widowed individuals are also victims in situations where the deceased spouse conducted all of the financial business. The emotional aspects of their loss, combined with little or no experience in handling finances, can be overwhelming to the older person. An offer of assistance can be a welcome relief. In all of these scenarios, the exploiter can gain control of the older person's assets.

In this age of modems, faxes and flip phones, Alexander Graham Bell's invention poses a greater threat to senior citizens' investments than a knife or a gun. The Task Force survey revealed that 35 percent of telemarketing calls were to sell "investments" of unknown quality and appropriateness. In 1995, Consumer Affairs' Bureau of Securities brought suit against Robert E. Brennan and others alleging they used a telemarketing scheme to defraud thousands of consumers out of hundreds of millions of dollars. In May of 1993, the President of the North American Securities Administrators Association



("NASAA")¹² testified before the United States Senate Committee on Aging and warned that unscrupulous and dishonest brokers and financial planners who engage in abusive practices often seek out the elderly. Senior citizens with investments can experience losses through misrepresentation, unauthorized trading, unsuitable investments, churning (excessive trading of securities to generate commissions), theft and fraud. A Louis Harris & Associates national survey, conducted for the National Consumers League, found that older people are particularly vulnerable to these types of abuses. American adults are considerably more likely to have financial investments (54%) than they are to read the financial news on a regular basis (26%) or understand the language used to describe investment and financial matters (37%). The Harris survey concluded, "This gap between having investments and having the knowledge of what might constitute a sound investment puts many Americans potentially at risk for victimization by investment fraud." L. Harris & Assoc.

At the same Committee on Aging Hearing, a state securities administrator testified:

There is probably no scenario more familiar to securities regulators than that of the older person, who, in search of a higher income on which to live, losses [*sic*] all or part of his savings in a fraudulent or inappropriate investment. As with many problems, this one exacts its greatest toll on those who can least afford it. It is the senior citizen of limited means, who most needs to squeeze out every extra penny of income, who is devastated by any loss of principal.

PENNSYLVANIA SECURITIES COMMISSION, INVESTOR BULLETIN - HOW OLDER AMERICANS CAN AVOID INVESTMENT FRAUD AND ABUSE, June 1993.

¹² NASAA is the national association of the 50-state securities agencies responsible for investor protection at the state level.



Complicating the efforts to fight fraud, many victims frequently believe that losses through investment fraud are often not large enough to justify the costs of litigation or arbitration. Per-hour legal fees and costs may be prohibitive in investment-related fraud where recoveries are generally pennies on the dollar and may be viewed as throwing good money after bad. Even in cases where a victim is awarded 100 percent of his or her losses, after payment of fees and costs of litigation, the older victim nonetheless futilely suffers a net loss and still feels victimized. Respondents to the Task Force survey indicated overwhelmingly that they did not report frauds because they thought it did no good.

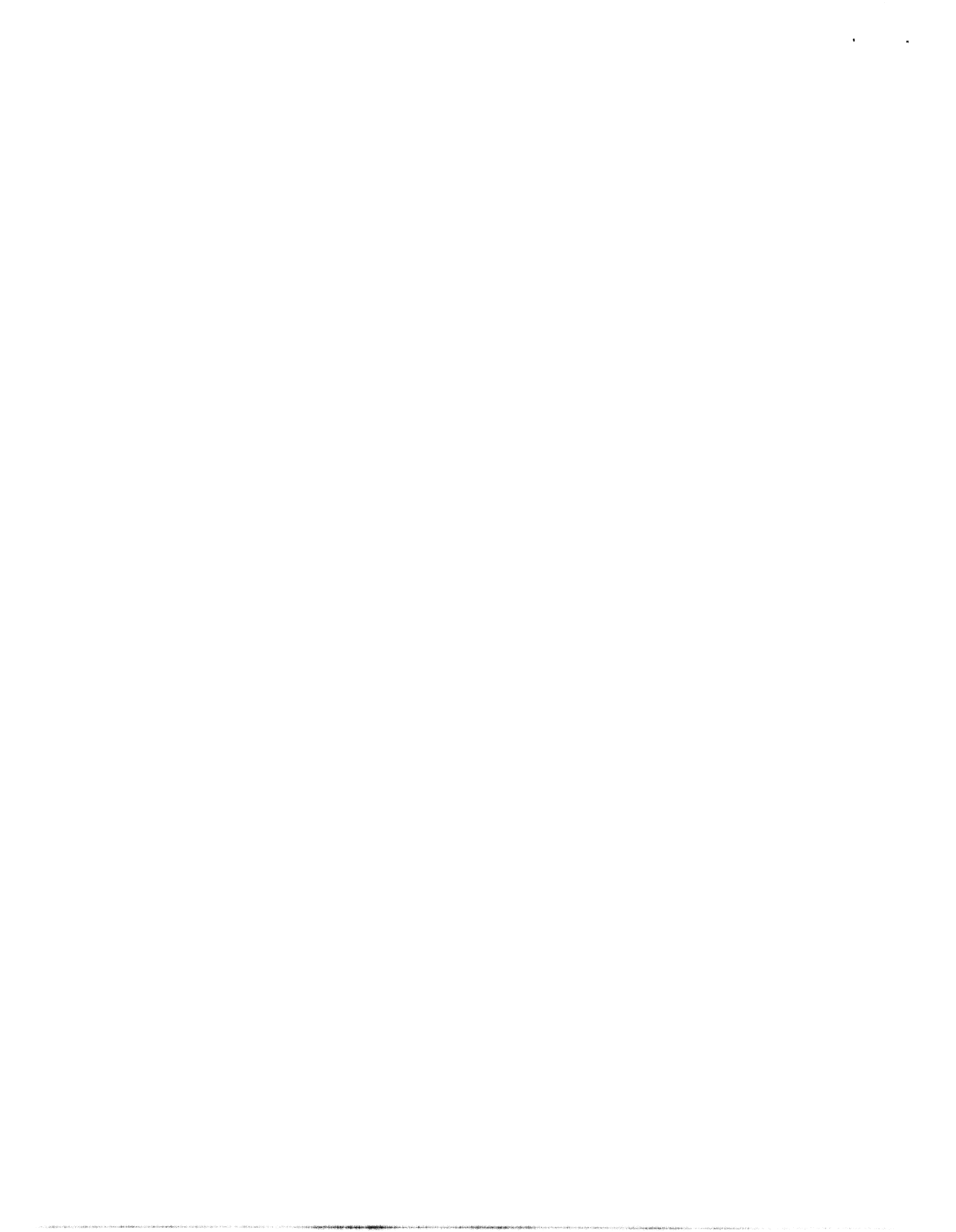
Securities, however, are not the only form of financial exploitation and investment fraud:

The other areas we are looking at is [sic] crimes against the elderly related to insurance and annuities. You have two areas which are very significant to the elderly population of Bergen County and they want to make sure that if they pass away, they are going to have substantial assets to cover the cost of their arrangements and hopefully to give some money to their children or relatives. And you have people to [sic] prey on these types of elderly victims.

They are people who appear to be professionals, who appear to be licensed, although they are not, most of the time. They appear to be types of individuals who have fancy addresses.

....

The typical scenario would be an elderly victim who does have some assets -- a lot of elderly people keep items of value in their homes. They keep items of a bearer document, meaning if you have a certain type of bond, it's a bearer



document, if I get that document, I now can cash that document in.

You see a lady in the neighborhood or gentleman in the neighborhood, doesn't have a lot of people coming to visit, a lot of people prey [on] these types of people. In the community, we have neighbors of these people who befriend them, try to get Power of Attorney, all of a sudden, they are getting money, there's money shifting from accounts to the ... "friend's" account, and then you see a development of shifting of the heirs, this friend is now the beneficiary of the wills. These are the types of cases that were very hidden in the past and are now coming to light and [that we are] trying to address that in Bergen County.

Bergen County, T. 50, L. 18-25; T. 51, L. 2-11, 24-25; T. 52, L. 2-18.

- Q. In the case of the financial planner case, how do they hold themselves out?
- A. He was a certified financial planner. When ... we checked, he was never certified. He was allegedly an authorized agent of a particular private company.... When you check on that company, he was with them for a short time, he knew the ins and outs, he knew the lingo, he knew what to say to make it sound like he was. He was terminated for some particular reason.

Bergen County, T. 56, L.3-7, 13-14, 16-23; T. 57, L. 2-4, 9-12; T. 58, L. 18-24; T. 59, L. 2-5.

Existing Law:

The Bureau of Securities protects the investing public from fraud and abuse by administering the New Jersey Uniform Securities Act (1967), N.J.S.A. 49:3-47 et seq., commonly known as the New Jersey Blue Sky Law. To do business in New Jersey, firms that buy and sell securities (“broker-dealers”), their salespersons (“agents”) and persons



who give investment advice (“investment advisors”) must register with the Bureau. In addition, all securities offered in the State, and not exempt from registration, must be registered. The requirement to register a security is a key enforcement tool in stopping fraudulent securities offerings. The registration of firms and individuals is designed to assure that these registrants meet minimum qualifications.

Furthermore, N.J.S.A. 49:3-52 makes it unlawful for any person, in connection with the offer, sale or purchase of any security, to employ any scheme or engage in any act to defraud, to make untrue statements or omit material facts and to fail to deliver the prospectus for the security in accordance with federal requirements. In enforcing the securities law, the Bureau has the authority to deny, suspend or revoke the registrations of persons and securities. The Bureau may impose monetary penalties and issue cease and desist orders. It may also seek other remedies in court, such as injunctions.

Recommendations:

Three primary recommendations emerged from the Task Force study. First, the Task Force recommends that the New Jersey Bureau of Securities issue new regulations to clarify what constitutes unlawful churning of accounts and a clarification of the application of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., to fraudulent securities sales. Second, the Task Force recommends that legal challenges be made more physically convenient for the elderly by working with the financial services industry to bring an arbitration site to New Jersey. Finally, the Task Force recommends expansion of



the successful programs designed to act as a tripwire to alert the outside world to financial exploitation of the elderly.

Looking at the last suggestion first, the Task Force recommends that a Bank Alert program be established throughout the State. Older depositors tend to maintain highly routinized banking habits. As a result, signs of financial exploitation may often be detected by bank employees as a result of substantially-increased activity in checking accounts, the establishment of joint accounts followed by large withdrawals into another account separate from the older person's, a substantial increase in the older person's credit line, followed by default in payments, loans obtained by using the senior's account as collateral which result in default of payments, and the changing of beneficiaries on trust accounts to benefit the exploiter.¹³ These programs train bank tellers and officers to be alert to unusually large withdrawals or off-schedule visits by the elderly.

Second, it is recommended that the New Jersey Bureau of Securities, a part of Consumer Affairs, develop and adopt new regulations to protect New Jerseyans from unsuitable investment purchases and sales recommendations and churning of their accounts. It is also recommended that the Consumer Fraud Act (N.J.S.A. 56:8-1 *et seq.*) be clarified to apply to investment frauds.

¹³ Home repair scams or telemarketing frauds often include a request that the older person pay a large amount of cash. If the cash is not available at home, the older person may make an "off-schedule" appearance at the bank to withdraw an unusually large amount. In telemarketing frauds, courier services are often engaged to pick up the cash from the victims who believe this fast response in paying a processing fee will allow them to receive their "grand prizes" quickly. Frighteningly, in one case brought by Consumer Affairs, the home repairer drove an older woman to the bank to withdraw cash in payment for the promised repairs.



Finally, it is recommended that the State work in cooperation with the industry to identify a site within the State of New Jersey for arbitration hearings. This would significantly reduce the travel burden on New Jersey's senior citizens.



HEALTH AND INSURANCE

While our older citizens are concerned about many issues, the Task Force found one constant which cuts across all subgroups of the elderly. All asked the same questions: How will I be able to care for myself if I become sick? If I cannot care for myself, who will care for me? If I must seek outside help, how will I pay for someone else to care for me? These fears recognize two chief problems. First, the elderly fear that admitting strangers into their homes may imperil physical and fiscal safety. Second, the elderly also fear that others will attempt to exploit their insecurities about the adequacy of their insurance.

Looking at the latter issue first, the irony is that either through private insurance or government programs such as Medicare, the majority of the elderly are insured. Perception, however, is reality, and the perception by New Jersey's senior citizens that they do not have enough life or health insurance makes them vulnerable to those who would take advantage and oversell:

[In one case,] a lady drew out \$40,000 for a payment ... for a single payment -- it's called a single premium deferred annuity, in other words, you put a lump sum up front, and then it annuitizes later on.

She was 81 years old at the time that she came into our office with a shopping bag full of insurance policies, literally, a shopping bag full of policies.

It turns out that she was spending \$21,500 a year in premiums on insurance policies that she did not need. She was retired military and retired federal civil service. She did not need any of these policies. It left her with \$3,500 a year to live on. And then, the same agent who sold her all of these policies ---



the same agent sold her \$80,000 worth of annuities and left her with less than \$10,000 in the bank. The annuities were due to mature on her 85th birthday.... There were 11 life insurance policies. This woman had no dependents.

Ocean County, T. 97, L. 2-9, 12-15, 21-25; T. 98, L. 2-6, 11-12,

Sadly, again, this victim's experience is not unique. The U.S. Senate's Special Committee on Aging, in its August 13, 1993 hearing, *Health Care Fraud As It Affects the Aging*, found that "fraud involves grossly overcharging people who seek and need medical help." *Health Care Fraud As It Affects The Aging: Hearing Before the Special Committee on Aging, United States Senate, 103d Cong., 1st Sess. 1-2 (1993)* (statement of Senator Herb Kohl, Acting Chairman). Further:

These health care schemes prey upon everyone in our society, but sadly one of their favorite targets is the Nation's growing senior population. The aging are targeted for a variety of reasons. Seniors are certainly big consumers of health care services and so they are often insured through public or private insurance programs. The aging can be particularly vulnerable because they often seek relief for chronic medical conditions in hopes of living out their final years in greater comfort. It is no wonder that slick "snake-oil salesmen" appear on the scene with unproven potions to relieve the pain of arthritis or to reverse the effects of Alzheimers's disease. We need to put these charlatans out of business, and if necessary, put them in jail.

It is important to point out that health care consumers are not the only victims here. Many of these health care fraud schemes are set up to rip off insurance companies, whether they be private companies or Government-sponsored programs like Medicare and Medicaid. Patients are offered so-called "free" medical tests with the promise of "don't worry, you don't have to pay a dime. It will all be billed to your insurance." Because of this, patients may never know



that insurance companies might be grossly overbilled for tests and procedures that were never performed, or might not have been medically necessary. Ultimately, we are all victims, even if we are perfectly healthy, because fraud only drives up the costs of Medical care and insurance for everybody.

Id. at 2 (statement of Senator Herb Kohl, Acting Chairman).

Several contributing factors are particularly relevant:

1. Many elderly citizens lack any support system. It is not uncommon to have an elderly person who has no family in the immediate area and perhaps is also not acquainted with their neighbors.
2. An inevitable part of aging is increasing physical frailty, often making an individual susceptible to illness and injury. Mental frailty can pose just as serious a problem.
3. Many elderly are retired and are, therefore, dependent on a fixed income and whatever savings they have accumulated. They are not able to replace lost resources.
4. The elderly are afraid of being dependent and a burden to others, either through lack of funds or physical debility.

An older citizen who finds himself in these circumstances often is more vulnerable to fraud than those who are not so situated. There are well-documented problems with theft, fraud and physical abuse and, at least in one case, even murder by home health care workers. There have also been problems with the sale of unnecessary life insurance, so-called Medi-Gap policies and annuities. At the Ocean County Regional Public Hearing, the Director of the Ocean County Office on Aging testified:

Some of these scammers, I call them, would sell, two, three, four insurance policies to the people when they didn't need them.... I'm pretty sure it's stamped out a little because the federal government has stepped in because they knew that



these scams were going on. So thank God that was taken care of a little, but I hope, and it's probably going on in a minuscule way at the present time, but it was rampant about five years ago.

Ocean County, T. 54, L. 9-11, 15-21.

Efforts to protect the elderly from arms-length transactions, however, would be inadequate to protect the elderly from relations that are more cheek-to-jowl. As more of the population ages and as cost containment policies in the health and insurance fields rely more on out-patient treatments, New Jersey's senior citizens find themselves relying to a far greater degree than in the past on home health aides. But problems with home health aides posed one of the most serious problems brought to the attention of the Task Force. A member of the Bergen County Prosecutor's Office testified:

We had a case in particular where it was a home health aid worker. She befriended a person, she then got ... Power of Attorney, she then took money out of the account for herself.... What's she's done is she gained the trust -- she was someone from the community, and then she methodically tapped this poor woman's money out of account, then she was named in the will.

We've had two recent incidents with home health aid workers. There's other issues involved with the licensing of these people and it's a very big concern to us....

Bergen County, T. 61, L. 15-22; T. 62, L. 4-7.

In a highly publicized case in Ocean County, an elderly woman was murdered by a home health aide with an extensive criminal record. While this case represents an extreme example of the potential threat posed by home health aides and is the exception,



not the norm, too many opportunities now exist for those who would take advantage of vulnerable older citizens to prey upon and profit from the abuse of New Jersey's older citizens.

New Jersey does not license or register all home health care providers, although jurisdiction exists for the certification of limited groups of those who go into homes. Nurses are required to be licensed by the Nursing Board. N.J.S.A. 45:11-23 et seq. Where a homemaker/home health aide is placed in a home or other care-giving facility in the employ of an agency, the aide is required to be certified by the Board of Nursing. Nurses' aides are required to be certified by the Department of Health.¹⁴ N.J.A.C. 8:39-43.1 et seq. Agencies which employ or refer health care workers are required to obtain a license or registration from Consumer Affairs. These agencies, depending on how the services are provided, are subject to the Consumer Affairs' supervisory regulations. Notwithstanding all these regulatory schemes, an unlicensed or uncertified individual may advertise as a companion or home aide, and accept employment in the homes of the elderly without any State regulatory oversight.

¹⁴ Nurses' aides provide services in long-term care facilities, but may use their credentials to give the appearance of state sanction when applying for jobs in private homes.



Recommendations:

Two conclusions stand out starkly from the evidence gathered: First, CHIME (Counseling on Health Insurance for Medicare Enrollees), a program which is administered by the State Department of Banking and Insurance and the Department of Health and Senior Services through its Division on Aging, has successfully educated the elderly about long-term care insurance and Medicare benefits, especially in regard to Medi-Gap policies. This program receives funding from the United States Health Care Financing Administration for the training of volunteer counselors who assist Medicare enrollees with problems, questions or claim forms. The "CHIME" program should be expanded to include other problems unique to the insurance marketplace such as life insurance and HMOs. Because of its success, the CHIME program could be used as a model in developing educational programs targeting other problems.

Second, the Task Force recommends that the appropriate regulatory or statutory changes be made to provide senior citizens with adequate protection from those who enter their homes. Existing registration or licensure requirements should be broadened to capture all those who provide home health care. In addition, criminal background checks as extensive as those now required for New Jersey's teachers, school bus drivers and others working in the State's educational system should be considered for all home health care workers. This important safeguard, similar to the requirement under N.J.S.A. 18A:6-17.1 for criminal history records of all individuals working within the State's educational system, would go far in ensuring that vulnerable senior citizens receive necessary home



health care from individuals who enter their homes with the intent to assist, not to abuse or exploit. Individuals currently employed, and those seeking employment as health care providers, should be required to assume the nominal cost associated with conducting criminal background histories (approximately \$50). It is suggested that a cooperative effort be developed among the appropriate agencies and the industry in order to expedite the accomplishment of the background investigations. The Task Force also supports Consumer Affairs' efforts to impose greater control and reporting requirements on health care service firms and recommends that those requirements be fully instituted.

While New Jersey's citizens benefit on a daily basis as a result of the professional and ethical services provided by the State's home health care agencies and caregivers, the Task Force recognizes that a substantial portion of the abuses associated with home health care workers are committed by uncertified or unlicensed persons. The Task Force also recognizes that it would be very difficult, as well as an imposition on personal autonomy, to regulate all types of home health care workers and domestic companions; however, we suggest that some action be taken.

Materials should be developed to help older citizens and their caretakers, especially those individuals responsible for employing home health care workers. The area of home health care is particularly vulnerable to the risk of abuse, and some of the current problems facing the elderly could be mitigated through education. The materials could outline what home health agencies are, what services they provide, and what regulations restrict agency actions. In addition, the materials could provide basic advice



regarding appropriate hiring techniques such as interview questions and reference requests.



EDUCATIONAL RECOMMENDATIONS

Almost from the outset, one thing became clear: Older consumers need to be better educated about the transactions that are material to their health, security and the quality of life they seek to lead. Special problems are posed by the reality that when one mentions the elderly, one is not discussing a monolithic group of people, but significantly different subgroups. The overwhelming percentage of those who responded to the Task Force were between the ages of 65 and 75, but 18 percent were 75 or older and 8 percent were 80 or older. A large portion of the State's senior citizens enjoy an active lifestyle with family, friends and neighbors which allows participation in community events, senior centers and clubs, and other social and religious organizations. Another, smaller portion of our older population is homebound; the Task Force survey found fewer than 10 percent of the respondents reported being homebound.

The second thing which became clear is that older New Jerseyans are unsure who to call when they have been the victims of fraud. Some will call the local police, others the county offices of Consumer Affairs or Aging and still others will enlist the aid of the State. It is plain that senior citizens must be educated to reach out to Consumer Affairs or their local or county consumer affairs office when they are the victims of fraud.



Third, it is imperative that older New Jerseyans be persuaded that it is all right to admit they have been victimized. As two representatives of the Bergen County Prosecutor's Office testified, the elderly are extremely hesitant to do so:

This person, number one, fears to go to law enforcement. It doesn't matter if you're an elderly person -- if somebody screws me over I'm like embarrassed. I'm embarrassed. I should have known better. Everyone is like that, young people and older people alike. The first line of approach to handle this -- the human nature will come out to the surface and, Geez, if I ever tell anybody about this, I'm really going to be in trouble. I'm a fool, I shouldn't have let this happen. That's the common instinct. A lot of these crimes do not go reported. That is the big problem here.

Bergen County, T. 62, L. 15-25; T. 63, L. 2.

Fourth, the various front-line agencies must be informed about who should be enlisted. In a cooperative effort involving the Department of Law & Public Safety's Divisions of Consumer Affairs and Criminal Justice, the Department of Health and Senior Services, the Department of Banking and Insurance and other appropriate agencies or departments, an informational course should be developed and presented through one-day seminars, and for inclusion in existing training programs such as those for law enforcement officers and investigators at the State, county and local levels. New Jersey is fortunate to have a wide range of organizations and agencies, both private and public, which deliver various services and programs to its senior population at the local, county and State levels. All of these groups, and the services they can provide, need to be



identified and made part of an on-going education network in order to ensure that up-to-date information is available and communicated to our senior citizen residents.

Delivering the message should not be difficult. The Task Force survey found that 96 percent of the respondents obtain news on a daily basis and 77 percent rely on more than one source. Typically, these citizens report they read at least one paper and get information from radio and television. It is also recommended that a series of audio and video public service announcements (“PSAs”) on fraud directed at senior citizens be developed, produced and disseminated through stations which have large numbers of older viewers or listeners. The PSAs should focus on the frauds and unlawful activities in the areas of home repair, telemarketing, insurance and savings/securities. Senior citizens and well-known New Jerseyans should be enlisted to deliver the messages in an effort to gain maximum attention. Some of these efforts should include those in other languages to serve those who do not speak English.

Equally important, efforts should be made to:

- recruit retired actors and actresses to develop and perform “Don’t Be Scammed Skits” for older audiences;
- enlist assistance of all programs and agencies which visit homes of homebound or other isolated seniors in dissemination of educational materials;
- enlist assistance of businesses or utilities which mail regularly to senior citizens for dissemination of fraud or scam alerts;
and
- place fraud and scam alerts on a senior computer network.



CONCLUSION

A senior citizen has earned the right to expect that worries will be few; but as the late New Jersey Congresswoman and former Consumer Affairs Director, Millicent H. Fenwick, commented, "Old age is not for sissies." The reality is that old age can be complex and pose problems for the State's senior citizens. Predatory con artists and swindlers seek to cheat the elderly out of their peace of mind and life savings.

Although New Jersey has been historically solicitous of the needs of its aging population, rapid developments in an increasingly dynamic marketplace leave the elderly vulnerable to scams undreamed of as recently as only a few years ago. This report documents these problems and makes reasonable recommendations. The Task Force respectfully submits these recommendations and strongly believes they will make New Jersey a better place to live for its older citizens.

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