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**Presented to the House Children and Seniors Committee
By Deputy Attorney General Loren F. Snell, Jr.**

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Chairman O'Brien and Members of the Committee:

My name is Loren Snell, and I am a Deputy Attorney General and the Director of the Medicaid Fraud and Abuse Division of the Kansas Attorney General's Office. Let me begin by thanking you for the opportunity to appear today on behalf of Attorney General Derek Schmidt and to testify regarding the efforts of the Medicaid Fraud and Abuse Division in investigating and prosecuting crimes committed against some of our most vulnerable citizens.

While the primary mission of the Kansas Medicaid Fraud and Abuse Division is the pursuit of fraud committed against the Kansas Medicaid Program, our Division is also charged with investigating and prosecuting physical abuse, financial exploitation and neglect perpetrated against patients in residential care facilities operating in the State of Kansas. Currently, our office is staffed with one (1) director, two (2) criminal prosecutors, one (1) civil attorney, six (6) special agents (all are certified law enforcement officers), four (4) auditors (also commonly referred to as data analysts) and one support staff. All staff receives specialized training focused on detecting and litigating fraud and abuse that can be utilized in carrying out the duties and obligations of the Division. In addition, the Division regularly provides education and outreach to the community in order to inform and equip those who may come into contact with perpetrators of fraud and abuse with the knowledge they may need in order to stop or prevent further injustice.

Referrals to our Division, both fraud and abuse, are received from a variety of sources, although they are most frequently received from private citizens or other state agencies. Due to the high volume of referrals that are received, the Division is forced to make tough decisions. As is generally the case with most prosecutor offices, there are simply not enough resources to devote to each and every referral that is received. In order to accommodate this, tough decisions must be made in deciding which cases should be followed up on by the Division and which cases must be forwarded to an alternative agency for action. Over the years the Division has developed

numerous relationships with other federal, state and local agencies that have allowed for the partnering of resources when necessary and available.

Elder abuse has been identified as “the crime of the 21st century,” and encompasses many forms – physical, sexual, emotional, verbal, and financial, as well as neglect. Nationwide, more than 5.9 million cases of elder abuse were reported in 2010. While neglect made up more than half of that number (58%), physical abuse constituted nearly 16% and financial exploitation made up more than 12%. While those numbers are disturbing, the National Center on Elder Abuse has estimated that only 1 in 14 incidents of elder abuse, excluding neglect, is actually reported to authorities. As for financial exploitation, it is estimated that only 1 in 25 incidents is being reported, which would mean that nearly 3 million cases of financial exploitation occur on an annual basis.

Closer to home, according to figures obtained from the Department for Children and Families, Adult Protective Services (APS), just over 7,000 reports of suspected abuse involving victims 62 years of age or older were received in state fiscal year 2012. Of those reports nearly 22% involved fiduciary abuse or financial exploitation. It is important to note that not all of these reports are ultimately confirmed as cases of abuse once the investigation is completed. Yet these numbers do give us a starting point from which to evaluate the magnitude of the issue in Kansas. Similarly, the Abuse, Neglect and Exploitation Unit (ANE) of the Kansas Attorney General’s Office, also keeps statistics related to reports of abuse. The ANE unit receives notice of confirmed, or substantiated, reports of abuse from various sources, including APS. During the state fiscal year 2012, ANE received 354 substantiated reports of adult abuse. These reports were received from multiple sources, including APS, The Kansas Department for Aging and Disability Services (KDADS), Kansas Department of Health and Environment (KDHE), law enforcement and private citizens. Nearly 64% of these cases involved allegations of financial exploitation or fiduciary abuse, while almost 27% involved physical abuse in some form.

According to the Department on Health and Human Services, Administration on Aging, nationwide it is projected that there will be 55 million Americans that are 65 years of age or older by 2020, up from 39.6 million in 2009. In Kansas it is expected that nearly 17% of the population (480,000 Kansans) will be 65 or older in 2020, up from 13% in 2009. By 2030 it is projected that nationwide there will be 72 million Americans 65 or older and that just over 20% of the population in Kansas (593,000) will fall into that category. With the aging of our population, both nationally and locally, it is expected that the numbers of reports of suspected and confirmed abuse of our elderly adults will trend upward as well.

Of the many forms of abuse, financial exploitation can be the most challenging to investigate and prosecute. There are a number of factors that contribute to this. A very important factor is that it is estimated that only 20% of elder abuse cases may actually be reported. Many times the perpetrators activities are “justified” through the use of legal documents such as joint tenancy agreements, durable powers of attorney, wills, or trusts granting them authority to act on

behalf of the victim. Often times the perpetrator is a victim's family member, a child or spouse, a new "best friend," caregivers, neighbors or someone who is close to the victim. The ability of the victim to consent, including whether the victim lacks capacity to consent or was somehow duped in to giving consent to the activities, is a very important factor when considering criminal liability.

There have also been many efforts made to identify the factors that make this segment of the population more vulnerable. There are some of the obvious factors such as infirmity that sets on with the increase in age. These can include physical limitations, social problems, and illnesses such as dementia and Alzheimer's disease. Many of our elderly are seen as being creatures of habit, making them predictable and easier targets of abuse. Many are isolated, lonely and in need of attention. It is estimated that half of women age 75 and older live alone. It is also estimated that 67.3% of elder abuse victims are females and that the median age of elder abuse victims is 77.9 years. This makes our elderly females that much more vulnerable to becoming a victim of abuse. It has also been found that many elderly adults, those who remain in the community, generally live in higher crime areas, leaving them more susceptible to becoming a victim of abuse or exploitation. Regardless of the specific factor that may contribute to the problem, the important reality is that this is a growing problem, that deserves our utmost attention.

We are very fortunate in the Attorney General's Office to have a highly skilled staff who are responsible for handling the reports of suspected elder abuse that are received by our Division. Each report of suspected abuse, regardless of the source is given careful review and consideration. While not all cases result in a criminal investigation, each and every case that is received is initially reviewed as if it will result in a criminal investigation. Our staff have been trained to handle these types of cases, from knowing what action steps are required to move a case forward, to knowing how to handle interviews involving a victim witness that may not be able to fully cooperate with the investigation. These cases, especially the financial cases, generally involve hundreds, if not thousands, of documents. Over the years, as more emphasis has been focused on this problem, more efforts have been made to assist law enforcement in handling these cases. This includes the willingness of banks to work with law enforcement in providing financial records necessary to get a complete picture of the potential exploitation. It has meant more cooperation between medical facilities and law enforcement in obtaining medical records and opinions necessary to prove a physical abuse has occurred. These cases are difficult cases to investigate and to prove, so it is important to remember that the more cooperation that can be given to law enforcement, the better.

We are firm believers that criminals deserve to be held accountable for their actions, and should not be rewarded because they chose to victimize a person who may for any number of reasons be unable to protect themselves. We must stand up and do everything in our power to protect our vulnerable from becoming victims. I thank you for the opportunity to discuss this very important topic with you.

Respectfully,

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