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Diminished financial capacity in older investors

More of the Baby Boom Generation enters retirement every year. This generation has been largely responsible for their own retirement security due to the shift from defined benefits (such as pensions) to defined contribution plans (such as 401k, 403b, and other types of do-it-yourself retirement savings). Since those with defined contribution plans need sound investment advice, and those same investors may experience dementia as they age, there may be many persons who lose the ability to manage their investments (financial incapacity). The AARP Public Policy Institute recently issue a report titled "Protecting Older Investors – The Challenge of Diminished Capacity" (www.aarp.org/ppi).

According to the Report, financial capacity is one of the first abilities to decline as dementia progresses. However, since dementia may be in the early stages, and may not even be obvious, the person, their families and their financial advisors may not recognize it. Cognitively impaired persons are at risk for financial exploitation. Financial advisors may not be trained to recognize the signs, or if they do, may not know how to respond appropriately to signals that the client may not be making the best decisions.

Among the key findings determined in a survey of advisors and compliance officers from securities, investment advice, and life insurance industries, coupled with an expert roundtable are that diminished financial capacity is a growing problem. There is no consensus on how to handle this problem; however, the most frequently cited protocol was to make a sure a Power of Attorney was in place. Compliance officers were concerned that Power of Attorney documents did not completely solve the problem, as they are dealing with privacy issues, determining if the fiduciary truly had the power to act on the principal's behalf, and concern about financial abuse by the agent.

Key practice and policy solutions in the report include the following statements: "When an investor loses capacity to make financial decisions, the best remedy for all concerned is for a trusted individual to step into the shoes of the incapacitated person and handle the account in accordance with the principal's preferences and interests. States should ensure that their power of attorney laws enhance autonomy by facilitating appointment of an agent and the acceptance of POA documents by third parties such as financial services firms. At the same time, these laws should safeguard the principal against power of attorney abuse." The report goes on to recommend that States adopt the Uniform Power of Attorney Act (UPOAA) to meet the prior listed goals.

Pennsylvania has **not** yet adopted the UPOAA, although various organizations in the State, including the Pennsylvania Association of Elder Law Attorneys (PAELA) have been working hard to convince legislators that this is important, both to have third parties be more accepting of the documents, and for protection from abuse for the "principals." Power of Attorney documents are very important, and their best use is even more important. Contact your State representative and senator today to explain why the UPOAA will help all of us as we age, as well as those who work with aging clients.