



# NEWSLETTER

Colorado Coalition for Elder Rights & Adult Protection

*A Project of the Colorado Nonprofit Development Center*

[www.ccerap.org](http://www.ccerap.org)

*MISSION: To promote statewide understanding of elder/adult abuse and the rights and protections available to elder and at-risk adults.*

*January, February, March 2010*

## **YOU and the New Uniform Power of Attorney Law**

Date: January 20, 2010

Time: 9:00 am – 12:30 pm

Place: Aurora City Hall

City Council Chambers

15151 East Alameda Parkway

Aurora, CO

*Directions to Seminar/Meeting:*

*I-225 to Alameda Ave.*

*East on Alameda about ½ mile to Chambers Rd*

*Left on Chambers Road 1 block*

*Left into City Hall parking lot*

*Parking garage is available on west side or park  
in lot on east side.*

*Please register at [ccerap@comcast.net](mailto:ccerap@comcast.net)*

*or call 1-800-773-1366*

*Provide name, title, organization,  
email and phone number.*

*Walk-ins are welcome.*

*Inside...*

- *“A Brief Summary of Colorado’s New Uniform Power of Attorney Law”, Mary Catherine Rabbitt, Esq.*
- *“Better Opportunities to Stop Financial Exploitation”, Jennifer S. Gormley, Esq.*
- *“Government Agencies Fighting Power of Attorney Financial Exploitation”, Jeffrey L. Lamb, Esq.*
- *Resources: Reading List and Websites*
- *“Is Your Medical Equipment Supplier Still Approved by Medicare?” Richard Jackson, Colorado SMP Medicare Fraud Program*

## **YOU and the New Uniform Power of Attorney Law**

### **CCERAP Training Seminar**

**January 20, 2010**

*Continuing Ed: 3.0 CLEs and POST units (applied for) 3 hours  
recertification for Ombudsmen Training*

#### **Seminar Schedule:**

**9:00 am– 11:00 am *The New Law and Colorado***

**Mary Catherine Rabbitt, Esq., Colorado Legal Assistance**

**Developer for the Elderly**

**The Legal Center for People with Disabilities and Older People**

**11:00 am – 11:30 am Break and Networking**

**Refreshments in Lobby Area**

**11:30 am – 12:30 am Panel: *Implications of the UPOA (Q & A)***

**Moderator: Tom Rodriguez,**

**Vincent, Romeo & Rodriguez, LLC**

**Scott Storey, District Attorney,**

**1st Judicial District**

**Dave Bernhart, Assistant City Attorney,**

**Adult Protection Legal Unit,**

**Denver Department of Human Services**

**Theresa Bradbury, Criminal Investigator, Colorado Attorney**

**General’s Medicaid Fraud Control Unit**

**Mary Catherine Rabbitt, Esq.**

*Colorado was one of the first states to adopt the new Uniform Power of Attorney Act. This newsletter provides the specifics of how the new law will benefit all who work with at-risk adults and their families. Join the Colorado Coalition for Elder Rights and Adult Protection and their panel of experts who will provide essential information on how the Uniform Power of Attorney (UPOA) provides important new safeguards and avenues of prosecution when Power of Attorney financial exploitation is suspected.*

## A Brief Summary of Colorado's New Uniform Power of Attorney Law

By Mary Catherine Rabbitt, Esq.

On April 9, 2009, Governor Ritter signed into law HB09-1198, "*The Uniform Power of Attorney Act*", which takes effect on January 1, 2010. In adopting this Act, Colorado joins with New Mexico, Idaho, Nevada and Maine in enacting this uniform law, which governs financial powers of attorney. Colorado has had a Power of Attorney Act on the books since 1969, but this new Act provides some greater protections and safeguards for the person granting the authority (called "the principal") and also provides greater guidance to the person designated by the principal to act on his or her behalf (called the "agent" or "attorney in fact").

There are four parts to this new Act:

1. How to create and use the power of attorney
2. What authority is given or withheld by the principal
3. A recommended Statutory Form for a power of attorney
4. A recitation of how the Act affects existing law

The following are important changes to the law which affect agents: The agent may not take the following actions unless the power of attorney document expressly states that he or she may do so:

1. Make a gift of the principal's property to anyone
2. Create or change survivorship rights to the principal's property (including joint tenancy ownership rights)
3. Create or change beneficiary designations (including pay on death beneficiary designations)

Certain people are entitled to petition a court to construe the power of attorney or to review the conduct of the agent:

1. The principal or the agent
2. A guardian or conservator
3. Someone authorized to make healthcare decisions for the principal
4. The principal's spouse, parent or descendant
5. An heir of the principal
6. A beneficiary of the principal in a trust or other legal document
7. A governmental agency with regulatory authority to protect the welfare of the principal

8. The principal's caregiver or another person with demonstrated interest in the welfare of the principal
9. A person asked to accept the power of attorney

An agent that violates the Act is liable for restitution to the principal. Ordinarily, a power of attorney functions as it is supposed to do. Problems arise in a small number of cases, but when the authority given to the agent is abused by the agent, the principal can suffer great economic loss. Hopefully, this new legislation will provide education and guidance to the public about how and when to use a power of attorney and provide additional avenues for redress in the event of a breach of trust by the agent.



### Better Opportunities to Stop Financial Exploitation

By Jennifer S. Gormley, Esq.

This article explores how new requirements in the UPOA encourage law enforcement to collaborate with government agencies, such as adult protective services (APS), to prevent financial exploitation of at-risk adults. The new law:

- Provides more teeth for enforcement against agents that illegally utilize the power of attorney for their personal gain;
- May help prevent agents with sticky fingers from dodging civil or criminal penalties;
- May prevent agents from hiding behind gifting powers or other broad language interpreted by them to permit self-dealing;
- Better defines the duties and requirements of the power of attorney; and
- Provides a reporting requirement that increases transparency of the agent's activities.

The UPOA better enables law enforcement and other government agencies charged with protecting the welfare of at-risk adults to stop the exploitation. In the past, a report of exploitation would typically not be investigated by law enforcement because of the difficulties dealing with financial crimes and limited resources. These crimes are tedious to investigate because they are paper crimes usually without witnesses. They require hours of investigation. Also, the exploiter who uses the power of attorney to gain access to the assets can hide behind various clauses in the power of attorney to justify or defend the conversion of the property. For example, many powers of

## Better Opportunities to Stop Financial Exploitation (con't)

attorney contain broad gifting powers that permit the agent to give away the principal's assets. The gifting authority may have been intended to be used for estate tax planning or Medicaid planning, but if not limited, the agent could simply exploit the estate by making gifts. The new power of attorney act allows for gifts limited to the Internal Revenue Code annual exemption which is currently \$13,000 per year, per individual. Broader gifting powers must be expressly provided in the document.

Financial exploitation happens quickly and can go undiscovered for a long time. It is especially sinister because the exploiter is supposed to be a trusted agent, but instead fleeces the estate they are appointed to protect. Some exploiters fleece the entire estate as fast as possible, while others gradually and over time take the assets. The exploitation may be suspected by subtle changes in behavior or spending habits of the person, but often no inquiry is made because of privacy concerns. More obvious indicators may be drastic changes in banking or investments, or new mortgages being obtained. The exploitation is typically discovered by someone close to the person, like a friend, neighbor, family member, or professional like a caregiver, banker, financial planner, CPA or attorney. The person concerned about possible exploitation has various avenues to seek help, but not all will result in protection.

Three ways of handling suspicions about financial exploitation are as follows:

- Informing family members of concerns;
- Making reports to law enforcement or adult protective services; or
- Filing a civil action to remove the agent or to allege exploitation in a petition for conservatorship.

Each approach has its limitations. Investigating these crimes can be challenging because the evidence may be difficult to access and find. Ultimately, the longer it takes to pursue the exploiter, or to protect the at-risk adult from the exploiter, the more likely it will be that none of the stolen assets will be recovered. When the alarm is sounded, immediate action must be taken, because financial exploitation can devastate an estate like a fast moving fire destroys a home.

In the past, obtaining evidence of financial exploitation was always challenging and often took too long. Such delays provide an exploiter with more time

to hide evidence, steal money and escape prosecution.

The UPOA provides a fast tool to deal with suspected exploitation by requiring the agent to provide a report within thirty (30) days upon a request. The new law states that a fiduciary or "governmental agency having authority to protect the welfare of the principal" can require the agent to disclose receipts, disbursements or transactions conducted on behalf of the principal within thirty days. In using this tool, both law enforcement and adult protective services (APS) can more quickly seek protection for the at-risk adult. The prompt reporting requirement mandates the agent to act and bypasses the need for a subpoena or court order. An agent's failure to comply within thirty days is a breach of the agent's duty and may provide further confirmation that the estate is being mishandled. This reporting requirement is substantial because it causes the agent to provide the necessary evidence in a timely manner.

APS working with law enforcement can get faster action on these cases because upon receiving a report of suspected exploitation, APS could demand a report and accounting from the agent with POA. If the report is not received within thirty days, then the County may seek intervention from law enforcement for further investigation or could petition for appointment of a Special Conservator, who would provide immediate protections for the at-risk adult, such as freezing accounts and join in the investigation of the alleged exploitation.

Law enforcement, working with APS will have more ability to evaluate the criminal components of the case with the report provided by the agent, or with information provided by APS or the Special Conservator. While financial exploitation is property crime and ordinarily has a lower priority than crimes against persons, for at-risk adults, property crimes quickly translate into personal danger because the loss of money quickly translates into loss of care and items or services addressing essential needs of the adult. The direct involvement of law enforcement and APS underscores the important message to all agents that financial exploitation will not be tolerated.

*Jennifer S. Gormley, Esq. concentrates her legal work in elder law, estate and trust law, disability law, probate administration and litigation. She teaches law at the University of Denver, Sturm College of Law. She has chaired the Elder Law Institute and the CBA Elder Law Section.*

## Government Agencies Fighting Power of Attorney Financial Exploitation

Jeffrey L. Lamb, Esq.  
Elder Law Attorney  
lambjm@q.com

The new Uniform Power of Attorney Act will become effective on January 1, 2010 and will change how government agencies address financial exploitation by an agent using a power of attorney. Among many changes stated in the Act, government agencies can now ask a court to review a power of attorney (POA) and/or review the agent's conduct under the POA.

The term "government agencies" is not specifically defined in the Colorado Uniform Power of Attorney Act as one specific government agency but instead it is applied to all agencies that have the authority to protect the welfare of the principal. This leaves the act open to interpretation as to which government agencies have the authority to request review of the POA or the agent's conduct. However, the written comments relating to the drafting process of the Uniform Power of Attorney Act clarify that Adult Protective Services (APS) is at least one of the intended government agencies. APS in Colorado can only address financial exploitation of principals who meet APS's at-risk definition of eighteen years or older who are at-risk of mistreatment or self-neglect and are unable to act on their own behalf. In addition to APS, arguments can be made that the police, district attorney, attorney general and possibly other agencies will fit the definition as government agencies.

Under the new POA act there are three main areas of review available to government agencies: a financial records request by a government agency from the agent; a judicial review and interpretation of the POA; and a judicial review of the agent's conduct.

Government agencies may request that an agent produce financial records for all transactions that the agent has made in his capacity as agent. Unless the POA specifically states otherwise, the agent is required to keep records of all receipts, disbursements, or transactions he or she has made on behalf of the principal. The agent has thirty days to comply with the records request or to provide in writing why he or she needs more time. Government agencies can review these financial records with any additional bank records to determine if the agent is exploiting the principal.

If it is a question of interpretation or meaning of a POA, a government agency may petition the court to review the POA. The court's interpretation of the POA is a helpful tool in situations where the agent may be overstepping his or her authority due to a misunderstanding of the POA. While a government agency may not be able to convince an agent that he or she is overstepping their authority, a judge will be able to convince the agent and has authority to order the agent to comply with the terms of the POA.

If a government agency, for example APS, believes that an agent is abusing his or her authority under a POA, APS may petition the court to review the conduct of the agent. If the court finds that the agent is abusing his or her authority, the court may grant appropriate relief. The court may order the agent to reimburse the principal for any loss of value incurred by the principal, and/or sanction the agent and/or remove the agent as agent under the POA. If the agent fails to follow the court's order, the agent can be held in contempt.

This new law provides a safeguard for the principal who doesn't want outside interference in exercising his or her wishes through a POA. If the principal files a motion to dismiss the petition for review of the POA, the court must dismiss the petition even if the court disagrees with the principal's thinking or beliefs regarding the agent's conduct, unless the court finds the principal lacks capacity to revoke the agent's authority.

In addition to a motion to dismiss a petition, the principal may exonerate or remove any liability from the agent for breach of duty by including an exoneration clause in the POA. One of the main purposes of the exoneration clause is to stop family fights over unintended mistakes by the agent in exercising his duties under the POA. Unfortunately, those agents that would financially exploit the principal may try to hide behind the exoneration clause.

There are two situations where a government agency can challenge the validity of an exoneration clause. First if the government agency can establish through the agent's

## Government Agencies Fighting Power of Attorney Financial Exploitation (con't)

actions that the agent not only breached his or her duty but did so dishonestly, with improper motive or without regard to the purposes of the POA or the best interest of the principal. Examples include the agent selling the principal's property and keeping or using the money for the agent's benefit or the agent intentionally acting in a manner that is contrary to the principal's expressed interest.

The second situation is when the principal inserted the exoneration clause because he or she was unduly influenced by the agent. For example, when an agent improperly influences the principal through coercion, threats or manipulation resulting in the principal lacking free will to make a decision, such as an agent insisting that the principal agree to relieve the agent of liability after repeated threats by the agent to leave the principal to take care of himself or herself or threat of violence if the principal did not agree to the exoneration clause.

In summary, government agencies that have authority to protect the principal's welfare have authority under the new Uniform Power of Attorney Act to address financial exploitation by agents. These powers include requesting financial records from the agent, and petitioning the court for a review of the POA and or the agent's conduct. However, these new powers are not without limitations. The principal may motion the court to dismiss any petition to review the POA and the court must dismiss the petition if the principal has capacity or the principal may include an exoneration clause in the POA to relieve the agent from liability. Despite these limitations, government agencies may use these new powers as of January 1, 2010; and they should be positive tools for the fight against financial exploitation.

*Jeffrey L. Lamb Esq. is an elder law attorney with a history of working with clients that are elderly and or have mental illness. He is currently a member of the Power of Attorney Abuse Committee of the Elder Law Section of the Colorado Bar Association.*

***THANK YOU to the Colorado SMP Medicare  
Fraud Program at the Colorado Division of  
Insurance for sponsoring this newsletter.***

***1-800-773-1366  
www.ccerap.org***

## What is the Role of an Agent?

When you create and sign a durable power of attorney, you give another person legal authority to act on your behalf. This person is called your agent. Usually, an agent is given broad power to handle all finances. But you can give your agent as much or as little power as you wish. Here are some things your agent may do under a financial power of attorney:

- Use your assets to pay your everyday expenses and those of your family
- Buy, sell, maintain, pay taxes on, and mortgage real estate and other property
- Collect Social Security, Medicare, or other government benefits
- Invest your money in stocks, bonds, and mutual funds
- Handle transactions with banks and other financial institutions
- Buy and sell insurance policies and annuities for you
- File and pay your taxes
- Operate your small business
- Claim property you inherit or are otherwise entitled to
- Transfer property to trust you have already created
- Hire someone to represent you in court
- Manage your retirement accounts



## INTERNET RESOURCES ON ELDER ABUSE & FINANCIAL EXPLOITATION

### Administration on Aging:

[www.aoa.gov/eldfam/Elder\\_Rights/Elder\\_Abuse](http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse)

### Elder Justice Coalition:

[www.elderjusticecoalition.com](http://www.elderjusticecoalition.com)

National Center on Elder Abuse (Administration on Aging): [www.ncea.aoa.gov](http://www.ncea.aoa.gov)

### Center of Excellence in Elder Abuse & Neglect:

[www.centeronelderabuse.org](http://www.centeronelderabuse.org)

### American Bar Association Commission on Law & Aging:

[www.abanet.org/aging/elderabuse.shtml](http://www.abanet.org/aging/elderabuse.shtml)

### AARP Policy & Research:

[www.aarp.org/research](http://www.aarp.org/research)

### National Clearinghouse on Abuse in Later Life(NCALL):

[www.ncall.us](http://www.ncall.us)

### National Committee for the Prevention of Elder Abuse(NCPEA):

[www.preventelderabuse.org](http://www.preventelderabuse.org)

### National Adult Protective Services Association (NAPSA):

[www.apsnetwork.org](http://www.apsnetwork.org)

### NCEA Clearinghouse on Abuse & Neglect of the Elderly (CANE):

[www.ncea.aoa.gov/NCEAroot](http://www.ncea.aoa.gov/NCEAroot)



## READING LIST...

**“Power of Attorney Abuse: What States Can Do About It”:** A comparison of Current State Laws with the New Uniform Power of Attorney Act. Published by the AARP Public Policy Institute, November, 2008.

**“Broken Trust: Elders, Family, and Finances: A Study on Elder Financial Abuse Prevention”**, by the MetLife Mature Market Institute, the National Committee for the Prevention of Elder Abuse, and the Center for Gerontology at Virginia Polytechnic Institute and State University, March 2009.

**“Elder Abuse Prevention: Emerging Trends and Promising Strategies”**, by Lisa Nerenberg, (2008). This is a good resource on elder abuse and neglect for practitioners, researchers, program planners, policy makers and lawmakers.

**“The American Bar Association Legal Guide for Americans Over 50”**, published by the American Bar Association. This updated edition covers everything from choosing the best pension plan to finding affordable housing and getting appropriate eldercare. It features recent changes in healthcare, Social Security laws, and explains the ins and outs of legal issues concerning income tax breaks, estate planning, and everything to do with the legal protection and wellbeing of all Americans over 50 years of age.

**“The Boomer’s Guide to Aging Parents”**, by Carolyn Rosenblatt (2009). The Boomer’s Guide to Aging Parents provides practical information on topics that aren’t always covered in depth in other books. Topics include how to choose a home care worker, how to get a loved one to move, how to choose an assisted living or nursing home, finding a care manager, handling money for loved ones (including a discussion of durable powers of attorney), how to find a good lawyer, and how to advocate for a parent in the current health care system.

**“Financial Abuse of the Elderly: A Detective’s Case Files of Exploitation Crimes”**, by Joseph Roubicek, former detective with the Fort Lauderdale Police Department (2008). This book offers a sobering view of how predators are able to take advantage of elderly individuals, explaining how the elderly are often exploited financially and offers some tips to avoid such exploitation.

## **Is Your Medical Equipment Supplier Still Approved by Medicare?**

By Richard Jackson, Health Care Consultant,  
Colorado SMP, Division of Insurance

You can help protect yourself and Medicare from fraud committed by dishonest medical equipment suppliers. Medicare fraud can happen in a number of ways. One way is when a supplier who isn't approved by Medicare asks for your business. It can also happen if your supplier gives false or misleading information to you, or to Medicare, to get payment for equipment that isn't medically necessary. This includes having Medicare pay for more advanced equipment than you need.

Medicare fraud wastes billions every year, particularly in the medical equipment supply area. Consumers often bear the consequences: higher out-of-pocket health care costs. Another possible outcome for those who purchase medical equipment is that the product may not be right for their diagnosis and treatment. Consumers can help by making sure that their supplier is Medicare-approved (accredited) and that they provide them with the equipment that best fits their medical needs.

The Center for Medicare and Medicaid Services has recently imposed new guidelines on medical equipment suppliers. They went into effect October 1, 2009. The new requirements for suppliers include being accredited and having a surety bond which will help assure that you continue to get high-quality products and services and help to prevent fraud in the Medicare program.

If your supplier doesn't meet these new requirements, you will have to look for another Medicare-approved supplier in order for Medicare to pay for your equipment and supplies. Medicare consumers are warned to make sure your supplier is still approved by Medicare. Call them to find out.

It's important for Medicare consumers to protect themselves!

Be sure to confirm that your supplier is still a Medicare-approved (accredited) supplier. The new guidelines makes it important to insure that your supplier is still approved by Medicare. You can call 1-800-MEDICARE (1-800-633-4227). TTY users should call 1-877-486-2048. You can also visit [www.medicare.gov](http://www.medicare.gov) and select "Find Suppliers of Medical Equipment in Your Area."

Also, If you think that someone is using your personal information for personal gain, or if you suspect other forms of Medicare fraud, call your Colorado (SMP) Medicare Fraud office at 1-800-503-5190. The Administration on Aging's SMP program can teach you how to protect your Medicare information, detect billing discrepancies, and report suspected errors, fraud, and abuse.



Visit CCERAP's Web site ([www.ccerap.org](http://www.ccerap.org))  
to find...

Updated Fraud and Scam Alerts

CCERAP's Newsletter Archive

Information on Training Opportunities

Podcasts of Prior Trainings

Links to Organizations Serving and Advocating  
for the Elderly

Aging Resources

Additional Articles and Information on  
Powers of Attorney

*For more information or to subscribe to the*

*CCERAP newsletter, contact:*

*Helen Davis, Coordinator*

*1-800-773-1366*

*[ccerap@comcast.net](mailto:ccerap@comcast.net)*

*"Thank you" to the Colorado SMP Medicare Fraud  
Program at the Colorado Division of Insurance.*

*The Coalition Steering Committee is made up of the following members:*

**Sara Canfield**

*Morgan County Adult Protective Services, 970-542-3530*

**Shelly Hitt**

*Colorado Long Term Care Ombudsman, 303-733-0300*

**Saori Kimura**

*Long Term Care Options 720-974-2440*

**Audrey Krebs**

*Colorado Division of Aging and Adult Services, 303-866-2846*

**Amy Nofziger** *Director, AARP ElderWatch, 720-947-5306*

**Pat Stanis** *Colorado Adult Protective Services, 303-866-2834*

**J.D. Wykstra** *Aurora Police Department, 303-739-6349*

*Colorado Coalition for Elder Rights and Adult Protection programs are available to all without discrimination.*

**For more information, contact:  
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1-800-773-1366  
ccerap@comcast.net**

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Vincent, Romeo & Rodriguez, LLC  
Scott Storey, District Attorney, 1st Judicial District  
Dave Bernhart, Assistant City Attorney, Adult Protection  
Legal Unit, Denver Department of Human Services  
Theresa Bradbury, Criminal Investigator, Colorado Attorney  
General's Medicaid Fraud Control Unit  
Mary Catherine Rabbitt, Esq.

*“Thank you” to the Colorado SMP Medicare Fraud Program at the Colorado Division of Insurance.*

**UPCOMING MEETING SCHEDULE:**  
January 20, 2010  
The New  
Uniform Power of Attorney Law  
(meeting details on cover page)  
Mark your calendars for 2010 CCERAP  
meetings:  
April 21  
July 21  
October 20

CCERAP is a project of the Colorado Nonprofit Development Center

CCERAP  
Colorado Nonprofit Development Center  
4130 Tejon Street, Suite A  
Denver, CO 80211-1876

Colorado Coalition for  
Elder Rights & Adult Protection

