

**Considerations for Recognizing and Addressing  
Participants with Diminished Capacity  
Testimony Statement for ERISA Advisory Council  
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I've worked all my professional life – over 45 years – with retirement plans, and I've given a lot of thought to financing a long, healthy, fulfilling retirement.

Starting in 1975, I had a 30-plus-year career as a consulting actuary, helping employers design, manage, and communicate their retirement programs. I retired as a vice president from Watson Wyatt in 2006, and also consulted with Mercer from 2010 to 2012.

During my consulting career, I became aware of the series of critical decisions that older workers face as they transition into retirement. These decisions are more complex, with higher stakes, compared to the saving and investing decisions that workers make throughout their careers.

To help workers and their employers make effective retirement planning decisions, I developed an encore career over the course of the past 14 years that uses my actuarial expertise and experience, as follows:

- Since 2006, my wife and I have operated a boutique publishing and retirement education company, *Rest-of-Life* Communications. We've published four books and one DVD/workbook package, all on retirement planning.
- My most recent book focuses on a straightforward retirement income strategy that can be implemented in virtually any IRA or 401(k) plan—*Don't Go Broke in Retirement: A Simple Plan to Build Lifetime Retirement Income*. This strategy can be used to protect retirement resources from losses due to diminished capacity.
- Since 2007, I've conducted over 90 retirement planning workshops and webinars to help older workers and plan participants transition into retirement. I've also spoken at dozens of conferences for retirement professionals and financial advisors on retirement planning strategies.
- Since 2010, I've published more than 1,000 online columns for CBS MoneyWatch and Forbes.com on various retirement topics.
- Since 2013, I've worked as a research scholar at the Stanford Center on Longevity (SCL), where we research retirement income strategies and behavioral economics and psychological science as they apply to retirement decisions.

My encore career has created an effective and productive cycle: My face-to-face interactions with ordinary workers struggling with their retirement challenges informs our research and strategies at SCL. And I incorporate insights from SCL research into my writing, workshops, and presentations.

I am currently working on a project at SCL that will give seniors a toolkit to take steps—while they still have capacity to make effective decisions—to protect themselves when they reach the stage when that capacity might be diminished. My research colleagues are Marti DeLiema, Assistant Research Professor of Social Work at the University of Minnesota, and Naomi Karp, Research Scholar at the Stanford Center on Longevity. This project is supported by AARP and the Society of Actuaries.

In the last few years, my work and research has been more personal. At age 67, I'm applying the strategies and research that I write about to our own situation.

Relevant to the topic of my testimony, my wife and I have personal experience with helping our parents cope with diminished capacity as they aged into their final years. This experience was a wake-up call for us to take steps—now at this stage in our lives—to protect our financial resources when we reach our final stages in life.

Today I'm testifying on my own behalf, incorporating my experience from all aspects of my professional career as described above. I am an independent researcher and retirement educator—I don't work for any investment firm or insurance company.

In my testimony below, I refer to "DC plans" as short-hand for any type of employer-sponsored defined contribution plan, which can include profit-sharing plans, 401(k) plans, 403(b) plans, and 457 plans.

### **Retirement planning requires complex decisions**

As older workers transition from the workplace into retirement, retirement planning decisions become more complex – and more critical. These decisions will impact their financial security and enjoyment of life for the rest of their lives.

Here are the most important decisions they face:

- When to retire,
- Whether to work part time for awhile,
- When to claim Social Security benefits,
- Whether to use retirement savings to optimize Social Security benefits,
- How to use their savings to generate retirement income,
- Whether to deploy home equity, and if so, how,

- Arrange for health insurance, both pre- and post-eligibility for Medicare at age 65,
- Manage and reduce living expenses to fit their retirement income, including where to live,
- Maintain their health, and
- *Take steps to protect themselves from financial losses due to mistakes, exploitation, and fraud in their final years.*

You have previously heard testimony about the challenges of diminished capacity from Anna Rappaport and my co-researchers Marti DeLiema and Naomi Karp. I do not intend to duplicate their insightful and informed testimony. I will supplement their testimony by focusing on action steps that employees and plan participants can take to protect their financial resources in their later years, and the roles that plan sponsors and their service providers can play to support plan participants and their families.

My testimony focuses on these key questions:

- What proactive steps can seniors take as they transition into retirement to protect themselves from financial losses due to diminished capacity in their later years?
- What are the roles that financial advocates can play as they assist seniors with diminished capacity?
- What are the signs that it may be time to transition responsibility for financial management?
- What can employers, retirement plan sponsors, and their service providers do to help their plan participants and families protect themselves from the risks of financial losses in their later years?

### **Proactive steps to protect retirement finances**

As mentioned previously, as older workers transition into retirement, one critical decision is how to deploy their savings in IRAs and DC plans to last throughout retirement. There are several important considerations that can influence this decision, including the desire for risk-protected retirement income, the potential for growth to protect against inflation, and the ability to access savings to address unforeseen emergencies. Another important goal is to fortify their retirement savings and income to protect against potential losses due to diminished capacity.

I will discuss three steps that pre-retirees and retirees can take to fortify their finances:

1. Develop an inventory of financial resources

2. Protect financial resources for daily money management
3. Protect investments, sources of retirement income, major insurance policies

These steps should be taken while the senior can make effective financial decisions, to protect for the time when they might experience diminished capacity to make these decisions.

Marti DeLiema and Naomi Karp have covered other step in their testimony, such as selecting financial advocate(s) and providing these advocates with the recognized authority to act on behalf of the senior when needed.

### 1. Financial Inventory

The purpose of the inventory is to give a roadmap to financial advocates when they might need to help a senior with diminished capacity. Such a financial Inventory can include:

- Checking and savings accounts
- Credit cards
- Regular monthly bills for mortgage, rent, utilities, insurance
- Irregular bills for property taxes, home-owners insurance
- Income tax returns
- Policies for health insurance, home-owners insurance, car insurance, disability or long-term care insurance
- All long-term investment accounts
  - Employer-sponsored DC retirement plans
  - IRAs
  - Investment accounts with mutual fund companies, brokerage firms, or financial advisers
- Sources of retirement income such as Social Security, pensions, annuities
- Sources of debt such as mortgage, credit card, personal loans
- Valuable personal belongings such as cars, jewelry, art, antiques
- Safety deposit boxes or in-home safes
- Professionals who help with senior's finances:
  - Accountant
  - Financial adviser
  - Broker
  - Attorney

Information to include in the inventory:

- Identification of account and financial institution
- Account number(s)

- Where records are kept (online or paper)
- Name and contact information at financial institution
- Estimate of account value

Type of storage:

- Online or cloud (recommended)
- Paper

The best time to prepare the financial inventory is when a pre-retiree transitions into retirement, as part of their overall retirement planning process. However, it's never too late to prepare this inventory.

## 2. Steps to protect financial resources for daily money management

Here are steps that seniors can take to protect the financial resources they use for daily money management:

- Automatic payment of regular monthly bills
- Protect accounts that are managed online:
  - Password protection, including periodically changing passwords and/or use a password manager
  - Two-factor log-in for online accounts, where a unique code is sent to the senior to confirm each log-in
  - Only recognize specified computers
- Apply low maximum limits on credit cards
- Provide access to accounts for financial advocate(s), possibilities include:
  - Review-only account privileges if financial institution offers this resource
  - The ability to conduct transactions
  - Set account alerts for certain transactions, such as transactions over a certain size, transactions beyond a geographic area

## 3. Steps to protect investments, sources of retirement income, major insurance policies

The steps mentioned previously to protect online accounts for daily money management and provide access to financial advocates also apply to long-term savings and financial resources as well.

In addition, pre-retirees and retirees will want to fortify their savings and retirement income against catastrophic losses due to fraud, exploitation, or making mistakes. They can integrate these considerations into their retirement income planning.

Pre-retirees and retirees can reduce the vulnerability of their retirement savings in IRAs and DC plans by deploying them as follows:

- When they retire, leave their savings at employer-sponsored savings plans that are managed by fiduciaries, instead of rolling accounts into financial institutions that may not act in a fiduciary capacity.
- If retirement accounts are rolled out from employer-sponsored savings plans, require that financial advisors or institutions act in a fiduciary capacity.
- Use savings to optimize Social Security benefits by funding a Social Security bridge payment, which enables retirees to delay starting Social Security benefits after their retirement date. Not only will this help maximize their lifetime, risk-protected retirement income from Social Security, it also converts easily accessible savings into a stream of monthly Social Security income, which is less vulnerable to a catastrophic loss.
- For the same reasons, using retirement savings to buy an annuity reduces the risk of catastrophic losses, in addition to other advantages that annuities can offer.
- Retirement savings that are invested and drawn down to generate retirement cashflow can be protected by an account lockdown. With such a lockdown, pre-approved transfers to checking accounts are the only authorized withdrawals from the accounts. The financial institution applies additional security steps for changes in investments or to authorize new withdrawals.

Participants in defined benefit plans that offer lump sum cash-outs, such as cash balance plans, provide traps for the unwary. Electing the monthly pension will provide the protection described above for Social Security benefits and annuities. On the other hand, electing the lump sum payment makes these resources vulnerable to financial losses later in life due to diminished capacity, in addition to other risks such as outliving your savings or stock market crashes.

### **Roles that financial advocates can play**

There are three potential roles that financial advocates can play when helping to manage a senior's finances. It is possible for different people to play these various roles, depending on their availability, location, and expertise.

1. Daily money management
2. Navigating health care providers and processing insurance claims

3. Help with decisions and monitoring of investments, sources of retirement income, and insurance policies

The examples below are intended to be illustrative, and they are not complete lists of the potential tasks that financial advocates can help with.

1. Daily money management

Tasks for financial advocate(s) can include:

- Make sure monthly bills are paid on time for mortgage, rent, credit cards, insurance premiums, and basic services such as utilities and subscription services.
- Monitor checking and credit card accounts, including making sure automatic payments are appropriate and looking for unusual purchase, donations to charity, and payments that may signal poor judgment or victimization.
- Make sure nonregular bills are paid and tax forms are filed on time, such as income taxes, property taxes, home-owners insurance, and professional services such as tax preparers, financial advisers, attorneys.
- Make sure records, bills, tax returns, etc. are stored securely.
- Interact with and help manage in-home providers such as repair-people, gardeners, housekeepers, and home health-care providers to make sure they are not taking advantage of the senior.
  - Secure checkbooks, credit cards, financial records
  - Interview potential providers and monitor their performance

Potential risks to seniors are financial losses due to:

- Mistakes, late fees and penalties
- Loss of service or coverage due to missed payments
- Inappropriate purchases and repairs
- Overzealous solicitors for charitable causes
- Fraud and exploitation

2. Navigating health providers and insurance

Seniors frequently experience health conditions that result in significant claims from Medicare and health insurance policies. Often the paperwork can be overwhelming, and a financial advocate can help the senior navigate the claims process. Note that this help strictly

relates to insurance policies and finances. It's a different role compared to serving as the health care power of attorney, which gives that agent the ability to make medical decisions on behalf of the senior.

Potential tasks for advocate(s) include:

- Case management with health care providers to make sure they are covered by insurance, are not charging excessive costs, or are out-of-network when in-network providers would have been sufficient.
- Review of explanation-of-benefit (EOB) statements from insurance companies, to make sure they are properly paying for services as required by the insurance policy.
- Make sure bills for insurance premiums, deductibles, and copayments are paid on time, (including Medicare supplement policies and prescription drug coverage).
- Make sure health and insurance records are stored securely.

Potential risks are financial losses due to:

- Use of health care providers who are out-of-network or not covered by insurance
- Aggressive claims administration policies of insurance companies, who can be known to deny claims that should be paid
- Loss of coverage if premiums or deductibles and copayments are not paid on time
- Inappropriate health care or care not in keeping with wishes of the senior (which can overlap with a health care power of attorney)

3. Help with decisions and monitoring of investments, sources of retirement income, real estate, rental properties, timeshares, and insurance policies

The goal here is to prevent potentially catastrophic losses in retirement savings due to mistakes, exploitation, or fraud.

Tasks for financial advocate(s) can include:

- Work with the senior to understand their sources of retirement income and investment strategies, and to reassess periodically.
- Periodic monitoring and evaluation of investment and insurance products.
- Monitor for compliance with laws and regulations that can generate penalties for noncompliance, such as IRS required minimum distribution.

- Review insurance claims for health care or long-term care, to make sure the claims are processed in accordance with the terms of the policy.
- Interact with professional financial advisers.
- Review that income amounts are properly transferred from investment accounts to checking accounts.
- Make sure records are stored securely.

Potential risks are financial losses due to:

- Inappropriate investments or insurance products given the senior's circumstances and goals
- High charges for professional services from brokers and advisers
- Purchase of potentially high-cost insurance products such as annuities or life insurance
- Fraud, theft, or exploitation
- Penalties for noncompliance with laws and regulations, such as IRS required minimum distribution

The tasks listed here for financial advocate(s) can easily take many hours per month. If possible, the senior may want to delegate responsibilities among multiple advocates. More affluent seniors or advocates may want to delegate some responsibilities to paid service providers.

### **Signs that indicate a need to transition financial management**

As they age, people become more vulnerable to financial losses due to fraud, exploitation by unethical relatives or friends, or simply making mistakes. Financial advocates, caring family and friends all can play a critical role in protecting the older adults in their families and communities. They can be the trusted eyes and ears that look for the signs that a loved one might need help.

Proactive seniors might also want to develop their own “early warning system” in collaboration with their doctor and a trusted family member or friend. For example, the senior could give advance consent to their primary care physician to take action if the physician notices behavior that suggests cognitive decline; such action steps could include nudging the patient to get help or notifying an identified, trusted family member.

Unfortunately, there isn't a reliable red warning light that comes on, indicating that it's time to transition responsibility for managing a senior's finances. For both seniors and their

advocates, it's important to be aware of the signs—sometimes subtle—that it's time to transition responsibilities of the senior's finances. Ideally, such a transition would happen gradually, but some situations might call for a full and immediate transition.

Accordingly, there are two types of signs to watch for:

1. Situations that are like blazing red “emergency signals” that might require immediate attention.
2. Circumstances that are more subtle and akin to a yellow “caution light,” giving advance warning that it might be time to start implementing a transition plan.

Let's look at each category in more detail.

### 1. Blazing red emergency signals

Here are some signs that can indicate an immediate need to investigate if the senior needs help to protect their finances:

- Significant losses have already occurred. While this can be a “horse has left the barn” situation, action is nevertheless necessary to prevent further losses. These losses could be due to mistakes or exploitation.
- Diagnosis or occurrence of a serious disease or condition that's distracting and debilitating. Examples could include heart disease, severe stroke, some cancers, and injuries or accidents that require lengthy hospitalization. A fall resulting in serious injuries can be an indicator of significant frailty and vulnerability.
- Diagnosis of dementia or Alzheimer's disease.
- Admission to a nursing home, skilled nursing facility, or assisted living facility, or spending a significant amount of time in the hospital.
- Death of a spouse, particularly if the deceased spouse was primarily responsible for financial matters and the surviving spouse is not comfortable with financial management.
- New “friends” appear and are given access to the senior's home, computer, or finances.
- The senior makes serious mistakes, such as forgetting to take medications or pay the bills, not filing tax returns, forgetting to pay property taxes or insurance premiums, or they get lost when driving.

- The senior's physician, attorney, accountant, or financial advisor contacts the family to express concern.

Note these circumstances don't automatically indicate that financial management should be transitioned immediately. Rather, they serve as a warning to immediately investigate if the senior needs help, and the type of help that is appropriate.

## 2. Yellow “caution light” signs

In many situations, there’s a pattern of subtle signals that, taken together, might indicate it’s time to investigate whether it’s appropriate to begin transitioning the responsibility for managing finances to the chosen financial advocate. These signs can include:

- In-home caretakers become necessary to help with tasks such as preparing meals, getting dressed, and taking medications. While these caretakers can be essential for the senior’s health, oversight or safeguards may be needed to make sure they can’t access the senior’s finances or personal financial information.
- The senior stops driving or spends more time alone due to physical or cognitive health issues.
- The senior starts neglecting common tasks regarding balancing the checkbook, home maintenance, housekeeping, and food shopping and preparation—chores that were previously completed effectively.
- Regular bills go unpaid or are paid more than once.
- Personal habits change, for example, the senior doesn’t return phone calls or emails, when previously they responded promptly. Another such indicator is unopened mail piling up.
- Many small charges begin to appear on the senior’s credit card for unnecessary purchases or for new charitable causes, charges that the senior doesn’t remember.
- They have trouble navigating the computer or interacting with financial institutions on the phone.

Often just one of these warning signs may not be sufficient to justify taking immediate action, but taken together, they can be a “heads up” that it’s time to begin the plan to transition financial responsibility to the chosen financial advocate.

Note that this section is written as if the diminished capacity is a permanent condition. However, there are circumstances where such diminished capacity is temporary. Examples include serious illnesses or accidents where the senior expects to eventually recover decision-making capacity. In these instances, financial advocate(s) are still needed until the senior recovers.

The reality is that there’s not a “one size fits all” list of transition signs. Each person’s circumstances can be unique, and their financial advocate(s) might be nearby or across the country.

## **How employers, retirement plan sponsors, and their service providers can help**

Employers, retirement plan sponsors, and service providers play a critical role in helping to protect the financial resources of their plan participants. Employees and plan participants often place a lot of trust in their employers' retirement and benefit plans, and employers return that trust by serving in a fiduciary capacity.

Here are some steps that plan sponsors and their advisors and service providers can take to help protect the financial resources they deliver to plan participants:

### Steps to help participants protect and fortify resources as part of retirement planning

- Design and communicate a robust retirement income menu to help pre-retirees and retirees generate reliable retirement income from their DC plan. This will enable plan participants to maintain the fiduciary protection inherent with these plans. It also helps plan participants make viable retirement income decisions that will help protect from the risks of diminished capacity described previously in this testimony. Many DC plans offer little support for generating retirement income, forcing plan participants to devise their own retirement income strategies and roll over their accounts to retail financial institutions. This topic was the subject of my previous testimony to the ERISA Advisory Council on August 15, 2018.
- Offer retirement planning workshops and educational campaigns that target pre-retirees and retirees, incorporating the issues described here regarding the risk of losses due to diminished capacity.
- Sponsors of defined benefit pension plans with the option of a lump sum payout can provide educational campaigns to help retiring participants make informed decisions, including pointing out the protection that the monthly annuity option provides against the risk of losses due to diminished capacity.
- Host financial wellness programs/employee study groups that educate plan participants on the issues and decisions described here and in testimony from other experts. These programs could be delivered by DC plan administrators or financial wellness firms.

### Steps to enable plan participants and their financial advocates

- Design, implement, and communicate processes for plan participants to identify their trusted financial advocates, so that the plan sponsor recognizes the authority granted to these financial advocates to make necessary transactions on behalf of the senior plan participant. These processes can be needed for DC plans, defined benefit

pension plans, retiree health plans, group life insurance plans, and group long-term care plans.

- DC plan administrators can provide the account lockdown feature described previously in this testimony, as well as other security features to protect online accounts.
- Retirement plan administrators can send warnings about potential noncompliance with legal requirements such as the IRS required minimum distribution.
- Provide a conduit to helpful services designed for employee groups, such as group legal services, employee assistance plans, paid caregivers, or daily money managers.

## **Conclusions**

It's critical that pre-retirees and retirees carefully develop their own convoy of support as they age into their later years. Financial advocates, family, friends, financial institutions, employer-sponsored retirement and benefit plans, and service providers can all play significant roles to help protect the financial resources of their plan participants and families.

Thank you for inviting me to testify today. And much thanks for caring about these critical issues that will make a significant difference in the lives of millions of plan participants and their families.