

## **Medical Whistleblower Advocacy Network**

### **Benefits Trafficking = Human Trafficking**

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Benefits Trafficking is the exploitation of a vulnerable child or adult for the purpose of financial exploitation, gaining access to their monthly benefits and/or life savings -- a form of servitude. This kind of human trafficking - Benefits Trafficking, has been documented by law enforcement in Georgia, Alabama, California, Colorado, Connecticut, Iowa, New York, Texas, and Nevada. Georgia is the first state to legislate this crime and has worked to spread awareness across the state and country on this matter.

Human Trafficking, also known as trafficking in persons (TIP), is a crime under federal and international law; it is also a crime in every state in the United States. Benefits Trafficking is often not identified as Human Trafficking due to a lack of awareness and understanding of the problem. The federal, legal definition of a severe form of human trafficking describes three facets of the crime: an action, a means, and a purpose. For example, if an individual is recruited by fraudulent means for the purpose of forced labor, that individual has experienced trafficking. A person can be considered Human Trafficking victim if they are recruited, harbored, transported, provided or obtained for labor or services through the use of force, fraud, or coercion, for purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>1</sup> Human trafficking including Benefits Trafficking is a condition of involuntary servitude, which is induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint. A person also may be induced to a condition of servitude by the abuse or threatened abuse of the legal process (for example legal deportation of undocumented persons, or guardianship abuse) Victims of human trafficking, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers.

Human trafficking can occur regardless of whether victims are taken to another country or subjected to human trafficking in the same country where they reside, even if no movement has taken place. Domestic trafficking involves the movement of victims within a country between areas, or within their local area. Trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers. Human trafficking is a

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<sup>1</sup> The Justice for Victims of Trafficking Act of 2015 (P. L. 114-22 (2015)) amended the Federal definition of child abuse and neglect provided by the Child Abuse Prevention and Treatment Act (P. L. 111-320 (2010)) as defined in § 103(10) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7102)) or a victim of severe forms of trafficking in persons described in § 103(9) (A) [22 U.S.C. § 7102(9)(A)]

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crime against the person because of the violation of the victim's rights of movement through coercion and because of their commercial exploitation.

### **Elements of human trafficking**

(According to UN Trafficking in Persons Protocol Article 3)

#### **The Act (What is done)**

Recruitment, transportation, transfer, harboring or receipt of persons

#### **The Means (How it is done)**

Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim

#### **The Purpose (Why it is done)**

For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices and the removal of organs.

### **Elements of Benefits Trafficking**

#### **The Victim/Survivor**

- Victims are persons who are deprived of liberty either physically or legally.
- Victims can be children or adults of any age or sex – youth, young adults, elderly.
- Victims can be disabled, US citizens or foreign-born.
- Some programs deliberately target LGBTQ youth for conversion therapy.
- Can be children in detention, foster care or under power of attorney contract.
- Victims often have limited financial resources, lack of social support
- Victims can also be persons with a disability or elderly who have extensive financial assets or have social security, VA, or welfare benefits.
- Victims of Benefit Trafficking can also be exploited for other human trafficking purposes including: Sexual exploitation, prostitution, and forced labor.

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### Perpetrators/Facilitators/Accomplices

Caregiver – Intrafamilial/ extrafamilial	Evaluators Guardians Conservators	Administrator/staff of hospital assisted living facility or nursing home
Church members	Family members	
Representative Payee	Educational Administrator/staff	Administrator/Staff at Residential Treatment Facility
Persons with Loco parentis	Adoptive parents	
Attorney-in-fact	Foster parents	
Conservators	Attorneys	Fiduciary
Social Workers	Judges	
Guidance Counselors		

### Types of Facilities/Programs

Educational program	Wilderness therapy	Boarding home
	Residential treatment centers	Transitional home
Wilderness Therapy	Therapeutic boarding school	Host family home
		Assisted Living Facility
Behavioral health treatment center	Substance abuse treatment program	Nursing Home
		Charity home

### Characteristics of Facilities/Programs

- Assisted Living Center or Nursing Home taking Medicaid/Medicare patients
- Home and Community Based Care controlled by Guardian or Representative Payee
- Residential Treatment Center or Charity Home
- Vast majority of facilities/programs do not meet minimum standards of care provision.
- Residential care facilities operating without a license.
- Often privately owned – not public facilities/programs
- No training and no mandated reporting by staff of abuse and/or neglect
- No established professional codes of conduct for personnel to hold staff accountable for their behavior
- No regular safety or health inspections
- Often require non-disclosure agreements from staff
- Often under the cover of a religious institution

### The Act (What is done)

- Recruitment/referral via hospitals, shelters, churches, on-line, licensed facilities, senior centers, day programs, substance abuse treatment programs, and even court ordered.
- Transport against the victim's wishes to a place of isolation/imprisonment
- Escort service may be used for transportation to the facility/program

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- Victim becomes a person deprived of liberty – physically and/or legally
- Potential forcible abduction with transportation to another state or another country
- Placement/Confinement in a treatment/educational facility or program often in another state that isolates them from the community and family

### The Means (How it is done)

- Imprisonment, physical restraint or legal restraint of an individual in order to financially exploit them thru billing their family, their insurance company or obtaining payment from governmental medical or welfare programs or educational benefits

#### *Deception and Coercion during Recruitment*

- Promises of benefits and services that are never delivered.
- False representation sometimes using websites or advertisements on-line.

#### *Legal Coercion or Control*

- Removal of legal rights from victim or family by the use of guardianship or loco parentis
- Unregulated custody transfers of children or rehoming - which is an underground practice that happens outside the purview of the courts and the child welfare system. It is a practice in which parents seek new homes for their children and place them without the safeguards and oversight of the courts or the child welfare system.
- Use of a power of attorney over the victim that may not be filed with or approved by a court of law, although it may be signed by both parties and notarized.
- Parent may use a power of attorney to temporarily grant another person certain powers regarding their child's care and physical custody, such as the authority to make medical and educational decisions.
- Use of a Representative Payee program, whereby an individual is designated to receive and manage benefits for beneficiaries
- Excluding the victim from decision making when he or she is capable and wants to be included.
- Preventing victim from making his/her own decisions, including about their own medical care, where they live, work or attend school.
- Maintain legal control over victim at all costs – maintain in loco parentis or guardianship at all costs - Keep family members uninformed; if family members try to regain parental rights or to become guardian, accuse them of abuse or stealing; use the ward's assets for legal fights to retain guardianship.
- Forced incompetency - Have facility staff diagnose victim as incompetent, Perpetrators visit assisted-living facilities and establish employee contacts; obtain voluntary limited financial guardianship; if there is money in the estate, do paperwork to force an evaluation of competency; get control over everything and the ward loses all rights.

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### *Physical, Emotional, Psychological Control*

- Victims may be confined – staff is keeper of the key, sometimes use of restraints.
- Use of coercion, deception, duress, emotional abuse, “brain washing”
- Intimidation and bullying.
- Minimizing, denying and blaming
- Coercion and threats
- Isolation of victim from the outside world/social support network
- Use psychological coercion to create learned helplessness in victims so they sense that they no longer have any autonomy or control over their lives.
- The guardian and/or conservator treats concerned relative, friend or loved one as an outsider
- Withholding mail
- Not allowing access to a phone or internet, monitoring or surveillance of all phone calls, mail or internet communication
- Controlling visitation to public areas – no ability to privately converse
- Staff/Guardian/Conservator/Representative Payee “hovers” - never allows patient privacy
- Staff/Guardian/Conservator/Representative Payee refused to answer questions or take phone calls
- Facility claims visitors “upset” patient or staff or that outside visitation interferes with treatment
- Withholding of food or sleep
- May use physical punishment, drugs or alcohol to control victims
- Sexually Embarrass victim – forced nudity, pressuring victim to undress or have sex or perform sex acts he/she is not comfortable with
- Pressuring victim to use drugs or alcohol.
- Intimidating victim through threatening looks or actions.
- Insulting parents parenting style, or threatening to take away their child
- Intimidating victim with weapons like guns, knives, bats, or mace.
- Violence, assault

### *Financial Control*

- Removal of the financial assets of the victim
- Unexplained loss of personal possessions
- Questionable legal or financial documents
- Sudden changes in financial accounts – accounts closed or changed
- Taxes not paid or filed
- Guardian's control of assets of the ward
- Controlling finances without discussion, including taking victim's money or refusing to provide money for necessary expenses.

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- Creation of a trust by Guardian - Remove all oversight by the court as a provision of the trust agreement; guardian becomes trustee; provide that the trustee can do whatever they want at their sole discretion.
- Sale of property like Real Estate as a lowball price, not listing the property selling the land to a land trust where nobody knows the beneficiary; watch property resold a few months later for a huge increase.
- Maximizing perpetrators profit from investments and use victims assets for risky investments with an investment broker, invest in volatile stocks and trade frequently to generate commissions; if large profits don't pay taxes if you run up a large gain, "fire sale" to raise funds all in one day.
- Undervalue victims assets – have a co-conspirator evaluate assets, forget to list more expensive items on the inventory
- Guardian/Conservator/Representative Payee or Facility fees always highest priority, deplete escrow account for possible future expenses
- Improper financial reporting - Bury asset-management and brokerage fees as aggregate capital losses "due to market fluctuations"; don't classify disbursements separately; file incomplete or incorrect safe-deposit box inventor
- Attorneys involved bill full rate against victims assets
- Not filing required federal tax returns – if there is a refund, wait till the ward dies; get check without oversight.

### The Purpose (Why it is done)

- Exploitation for the value of benefits or financial assets of the at-risk child or adult
- Benefits exploited can be from Social Security (Retirement, SSI, SSDI), Food Stamps, Veteran's Benefits, Medicaid and Medicare Reimbursements, Retirement benefits, Insurance payments, and IEP Educational Funding.
- Billing parents for educational program
- Fraudulent billing for deceptive/inadequate educational programming
- Abuse and neglect of residents can occur in addition to financial fraud of federal programs
- Health Care Fraud – fraudulent billing to medical insurance, Medicaid/Medicare or state/federal benefits
- Sexual Exploitation
- Exploitation for labor

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